

Submission to the Joint Standing Committee on Foreign Affairs, Defence and Trade for the Inquiry into Establishing a Modern Slavery Act in Australia By the Advisory Committee of the Modern Slavery Registry

(Business & Human Rights Resource Centre, Humanity United, Freedom Fund, Anti-Slavery International, Ethical Trading Initiative, Unicef UK, Focus on Labour Exploitation (FLEX), Freedom United, CORE Coalition)

Introduction

The Modern Slavery Registry is a central registry for modern slavery statements published pursuant to the transparency in supply chains provision of the UK Modern Slavery Act.¹ It is operated by the Business & Human Rights Resource Centre, a London based charity that tracks the human rights impacts of over 7,000 companies worldwide.

The Advisory Committee is the governance body of the Modern Slavery Registry. It is comprised of a group of diverse stakeholders and represents civil society, business and workers. The Advisory Committee makes this submission and welcomes the Joint Committee's inquiry into a modern slavery act in Australia.

Given the Advisory Committee's experience working on business and human rights, and especially modern slavery, it welcomes the opportunity to offer lessons and advice from our own work on the Joint Committee's terms of reference regarding:

- Provisions in the United Kingdom's legislation which have proven effective in addressing modern slavery, and whether similar or improved measures should be introduced in Australia; and (TOR 5)
- Whether a Modern Slavery Act should be introduced in Australia (TOR 6)

Effective provisions in the UK Modern Slavery Act and whether similar or improved measures should be introduced in Australia (TOR 5)

The Advisory Committee offers the following recommendations with regards to key provisions that are found in the transparency in supply chains provision of the UK Modern Slavery Act:

- **Annual modern slavery statements**

Companies should be required to publish modern slavery statements that describe the actions taken to address modern slavery in their operations and supply chains. Statements should be published annually, as this would allow for year-on-year comparison of companies' efforts. Stakeholders would be able to give recognition to those companies demonstrating improvements over time, and call laggard companies to account. Annual reporting would also enable stakeholders to identify trends more easily, which is important to better address the root causes of exploitative labour practices that allow modern slavery to thrive.

¹ See [FTSE 100 At the Starting Line](#), Business & Human Rights Resource Centre (October 2016); [Lacklustre compliance on anti-slavery law](#), Financial Times (March 2016); [FTSE 100 slow to report on fight against modern slavery](#), Financial Times (October 2016); [Teething problems complying with U.K. Modern Slavery Act](#), The Wall Street Journal (March 2017).

- **Legal requirements**

The Act should include a requirement that modern slavery statements are authorised by the board and signed in a manner that binds the organisation in accordance with Australian corporate law, and that a link to the statement be available on the homepage of the company website. These requirements are significant: approval by the board demands buy-in from the very top for company-wide action to combat slavery risks; director signatures create clear accountability; and access to the statement from the company's homepage demonstrates a clear public stance against modern slavery and allows for easier scrutiny by consumers, investors and other stakeholders.

- **Scope of law should include large and medium sized companies**

While the UK Modern Slavery Act transparency provision applies to "large" companies with an annual turnover of more than £36 million (as defined by the Companies Act 2006), this threshold is in fact much lower than higher figures the Home Office had considered when drafting the UK legislation. A higher revenue threshold would have significantly lowered the number of affected companies. It is estimated that upwards of 12,000 companies are covered by the UK Act, whereas the California Transparency in Supply Chains Act with its \$100 million threshold, for example, covers only around 2500 companies. An Australian modern slavery act should not limit its scope to large companies. Medium sized companies should also be considered for capture under a reporting requirement. Risks exist across sectors, in both domestic and global supply chains, such as the agricultural, construction, manufacturing, hospitality and domestic sectors. The risk of modern slavery extends to all business and not just large companies.

- **Extra-territorial reach**

The Australian legislation should have extra-territorial reach and apply to all companies of a certain size operating in the country, regardless of where their country of headquarters is located. The government should keep in mind that the extra-territorial reach of this type of domestic legislation can also help drive improvements in global supply chains. As we have seen with the UK Modern Slavery Act, requiring companies to investigate and report on their global supply chains can motivate them to use their leverage to influence suppliers around the world to adopt better labour practices. A workforce whose rights are respected creates a more stable workforce and mean disruptions will be less likely, which in turn also benefits the financial stability of companies.

- **Government guidance on reporting**

The Advisory Committee recommends the Australian government publish guidance for companies on how to comply with their reporting obligations, as the Home Office did with the UK Act. The Australian government should engage with and seek input from experts on corporate responsibility and labour exploitation, particularly civil society organisations, when preparing this guidance. It should be a resource that provides information on what companies should include in statements, but could also include more broadly what practices companies can adopt to better identify, mitigate and remedy modern slavery risks.

The government should design transparency legislation that empowers civil society and other stakeholders to press for implementation and wider progress. The Advisory Committee therefore recommends the following improvements to the transparency in supply chains provision of the UK Modern Slavery Act:

- **Central registry maintained by the government**

A publicly accessible central registry where companies would be required to submit their annual statements should be created and maintained by the Australian government. A central registry would allow the government to more efficiently monitor and enforce corporate compliance with the reporting requirement. Companies would benefit from knowing where and with whom to file their

statement. Stakeholders would benefit from having a central location to access statements and measure progress of companies.

- **Require mandatory due diligence and disclosure**

The UK Act transparency provision suggests that companies report on six broad areas: business and supply chain structure, policies, due diligence, risk assessment, effectiveness and training. These topics for reporting are discretionary, and a company can choose what to include in its statement. Analysis by the Business & Human Rights Resource Centre has found that to date, the majority of companies are not providing substantive disclosure in most suggested areas, and tend to only report on basic areas. The Australian government should require companies to put in place and report on due diligence processes, in particular on processes to assess and address modern slavery risks in their own operations and supply chains. Such a requirement would be in line with recent and more progressive legislation, such as the French Duty of Vigilance Law and the proposed Dutch Child Labour Due Diligence Law.

- **Include procurement incentives**

The Australian legislation should include a provision requiring companies bidding for public sector contracts, or seeking export credit guarantees, to publish a compliant modern slavery statement. The Australian government awards large contracts to companies and such a provision could provide significant leverage to incentivise better performance from business on modern slavery.

- **Access to remedy**

The Australian government should consider including in the modern slavery act provisions akin to the U.S. Trafficked Victims Protection Act, which would enable victims of modern slavery to access civil and criminal remedy in Australia. This is of importance, as the United Nations notes that victims of corporate human rights abuse often struggle to access remedy.²

- **Publicly available list of companies required to report**

It is critical for the effectiveness of a reporting provision, that the government publishes a list of all companies that are captured by the reporting requirement. Stakeholders including investors, civil society, consumers and the media can only hold companies accountable if they know which are required to report, and can find this information in a place and format that is easily accessible.

For example, at present, Business & Human Rights Resource Centre has identified over 1700 statements under the UK Modern Slavery Act, whereas the total number of companies required to report is estimated at over 12,000. Identifying which companies are and aren't required to report poses a significant logistical difficulty for civil society and other stakeholders. Not having in place an easy way for stakeholders to identify which companies are captured under the reporting requirements significantly weakens the integrity of the provision and allows less public facing companies to go undetected.

- **Monitoring and enforcement by government**

The Australian government should provide robust monitoring and enforcement mechanisms to encourage a high level of reporting and ultimately, due diligence by companies. Without statutory sanctions in place, companies, in particular non-public facing companies, may not feel the pressure to report and may become complacent, and not give proper import to the reporting.

² [OHCHR Accountability and Remedy Project: improving accountability and access to remedy in cases of business involvement in human rights abuses](#), UN Human Rights Office of the High Commissioner (accessed 7 April 2017).

Sanctions should be imposed where companies:

- Fail to produce a modern slavery statement.
- Produce statements that fail to meet the minimum requirements of being signed and approved by the appropriate entities, and provide a link to the statement on the company website homepage.
- Produce statements that lack mandatory information on due diligence practices.
- Report they have not taken any steps to address their modern slavery risks (failure to comply with mandatory due diligence).

Why Australia should adopt a modern slavery act (TOR 6)

Australia has the opportunity to provide leadership and adopt the first modern slavery legislation in its region.

1. Coherence with global legislative developments

To help create a consistent global reporting regime, such legislation should improve on, while remaining broadly coherent and consistent with, legislation that is in force or awaiting final parliamentary approval. This would help companies reporting under multiple regimes and avoid reporting fatigue by companies. Many responsible companies tell us that they want this floor of corporate behaviour, but they also want to avoid a “spaghetti soup” of incoherent national laws that would lead to increased reporting costs with no extra impact. Bringing together the best of legislation in the UK, the US, the Netherlands, France and Switzerland, would bring ambition with coherence.

According to the US Bureau of International Labor Affairs maintains there are 139 goods from 75 countries likely produced by child labour or forced labour. Many of those are found in the supply chains of Australian companies.³ The prevalence of modern slavery in supply chains demands that governments take a strong stance and adopt mandatory reporting legislation by companies.

Mandatory human rights transparency and due diligence legislation is on the rise globally, examples include:

- California Transparency in Supply Chains Act
- UK Modern Slavery Act
- EU Non-Financial Reporting Directive
- French Corporate Duty of Vigilance law
- Swiss Responsible Business Initiative (initiative by civil society)
- Proposed Dutch Child Labour Due Diligence Law

2. Benefits of corporate disclosure on modern slavery

The Advisory Committee is in favour of placing mandatory reporting requirements on companies to address their modern slavery risks for a number of reasons:

³ [List of Goods Produced by Child Labor or Forced Labor](#), United States Department of Labor – Bureau of International Labor Affairs (accessed 7 April 2017).

- A reporting requirement on modern slavery helps to create a level playing field; all companies of a certain size would be subject to the reporting requirement. At the moment, this is not the case - some Australian companies with global operations may be covered by reporting legislations in other jurisdictions; some big brands may be scrutinised by civil society through benchmarks. Meanwhile, other companies fall through the cracks as they are not subject to reporting and/or aren't being scrutinized by stakeholders.
- Reporting provides companies with examples of what leading practice looks like so that they can learn to improve. The Business & Human Rights Resource Centre has found that a number of companies use its Modern Slavery Registry for this purpose.
- There is an increasing demand by stakeholders including investors, business leaders, consumers, civil society and lawyers for reporting.
- Disclosure provides stakeholders with information that allows them to engage with companies that have poor disclosure on how to improve their efforts. Disclosure enables consumers to make better informed purchasing decisions; civil society can use the information to drive advocacy and campaigns; lawyers can better advise corporate clients on industry practice and how to limit legal liability or reputation risk.
- Investors want information about what companies are doing to address modern slavery risks as part of their own due diligence. Modern slavery poses a material business risk to companies and ultimately investors, and reporting on those issues helps investors understand the extent to which potential and current investee companies understand and manage modern slavery risks.

3. Legislation drives change in corporate behaviour

A report by the Ethical Trading Initiative and Hult International Business School found that the UK Modern Slavery Act has been a game-changer.⁴ According to the report, in the year since the Act was enacted: twice as many CEOs and other senior executives in the companies surveyed are actively involved in addressing modern slavery; 50% of companies surveyed are collaborating more with peers, NGOs and multi-stakeholder initiatives; and business-to-business companies are under growing pressure to provide assurance on what they are doing to address these issues.

Analysis of modern slavery statements by the Business & Human Resource Centre has found that the UK Act transparency provision is driving anticipatory action. Companies across sectors have developed or revised existing policies and due diligence processes to address modern slavery. For example, private equity and venture capital company 3i Group plc has identified its high-risk suppliers to determine whether they are subject to the UK reporting provision, and to learn the steps each supplier is taking to mitigate the risks associated with slavery and human trafficking in their respective businesses and supply chains. Berkeley Group Holdings plc, a property developer, updated its supplier contracts to include robust anti-modern slavery provisions, including 'flow down' provisions to ensure that the obligations are passed on down the supply chain, and not restricted to the first link in the chain.

Conclusion

The Advisory Committee strongly recommends the Australian government act as a leader in its region and introduce mandatory due diligence and transparency legislation that would be applicable

⁴ Corporate Leadership on Modern Slavery, Ethical Trading Initiative and Hult Business School (October 2016).



to all companies of a certain size operating within Australia. As the UK law built and improved upon the California Transparency in Supply Chains Act, the Australian law should build upon existing legislation in the establishment of its own modern slavery act. The Advisory Committee recommends the improvements set forth in TOR 6 to strengthen the impact of a new piece of legislation.

Critically, modern slavery legislation has helped create a discussion on these issues in the public sphere, which has increased the demand for action. It has also highlighted the role business plays in creating and perpetuating the conditions for modern slavery, but also the potential to assist in eradicating it. It is up to leading governments to drive this discussion even further and continue to demand more of companies no matter where they operate.