



WALK FREE
FOUNDATION

**JOINT STANDING COMMITTEE
ON FOREIGN AFFAIRS, DEFENCE AND TRADE**

Inquiry into an Australian Modern Slavery Act

Submission: Walk Free Foundation
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***“It ought to concern every person,
because it is a debasement of our common humanity.***

***It ought to concern every community,
because it tears at our social fabric.***

***It ought to concern every business,
because it distorts markets.***

***It ought to concern every nation,
because it endangers public health and fuels violence and
organized crime.***

***I’m talking about the injustice, the outrage, of human trafficking,
which must be called by its true name -- modern slavery.”¹***

Former President Barack Obama

FOREWORD

The Joint Standing Committee on Foreign Affairs, Defence and Trade Inquiry into an Australian Modern Slavery Act is a tremendous opportunity for Australia to lead the region in harnessing the power of business to put an end to modern slavery. The Walk Free Foundation congratulates the Attorney General George Brandis for his initiative in launching this Inquiry and welcomes the support and positive engagement from members of Parliament from all sides, united in their desire to end modern slavery.

OVERVIEW – WHAT IS MODERN SLAVERY

Modern slavery is the accepted term that captures a range of multifaceted and complex crimes which include all forms of human trafficking, forced labour, debt bondage, forced or servile marriage, and the worst forms of child labour.

Modern slavery surrounds us in our everyday life in Australia and throughout our interconnected world. The crime may often look different today (but not always), but at its core remains the same – those people most vulnerable and marginalised are exploited for the personal and commercial gains of another.

The Walk Free Global Slavery Index estimates there are 45.8 million slaves in the world with a majority in our Asia Pacific region. We know that slavery exists in Australia with some shocking cases reminding us that no country is immune from this terrible exploitation of our fellow human beings.

Australian Governments of both sides of politics have legislated to ensure our country has a strong legal regime that outlaw's modern slavery practices, offers victims support and imposes harsh penalties on perpetrators of these crimes. However, we know that despite our Government's domestic and international actions and the domestic legal frameworks of our Asian neighbour's, modern slavery continues to flourish.

MODERN SLAVERY WITHIN SUPPLY CHAINS

We also know that millions of people in modern slavery are in forced labour or conditions akin to modern slavery within supply chains, manufacturing or producing goods for multinational businesses, that supply Australian businesses and consumers.

With the rapid acceleration of globalisation, global supply chains have exponentially grown, transforming the way businesses conduct cross-border production, investment, trade, and employment. Multinational enterprises are accountable for the majority of international trade and have inherently complex, diverse and dynamic supply chains. These developments together with weak government institutions and poor enforcement capability in many host production nations means tackling modern slavery in our region is beyond the power of national governments alone.

Our businesses have the power to influence change within supply chain networks, to drive up standards and remove the profitability of modern slavery. Driving modern slavery from their

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supply chains is both morally right and good business. The cost of action is minimal and the risk to business of inaction is considerable. There is economic evidence that eradicating modern slavery facilitates sustainable development, the presence of modern slavery stagnates development.²

Governments have a critical leadership role to play in encouraging and guiding industry to take the necessary steps to ensure the integrity of their supply chains. We know what works to drive modern slavery from our supply chains. It requires collaboration and best practise by governments, business and civil society. Our approach must be to encourage business to look and find, and to be open about what they discover. As a community, we must support not shame them. We must work with them and their colleagues to find creative, commercial and long lasting solutions that free the victims, and empower them to pursue free lives.

OVERVIEW OF SUBMISSION

In this submission, we lay out the evidence of the extent of modern slavery in our country and region and its insidious presence in the supply chains of our businesses. We chronicle the existing international legislative and voluntary responses internationally, and we provide examples of best practise by government and business.

The Inquiry has been asked to give special consideration of the UK Act and this approach is one Walk Free Foundation commends and supports. However, we also detail the increasing development of other legislative responses in Europe and the Americas.

The UK Conservative Government recognised that their existing legislation and policy was failing to break the criminal activity of slavery either in their own country or in the goods that UK citizens consumed. They also recognised that, despite the best of intentions, after up to 20 years of various voluntary business codes, very little real impact on modern slavery was being achieved.

The UK government, with cross party support, legislated the UK Modern Slavery Act (2015) ("**UK MSA**"). Despite some early reluctance by government, it was the support from business leaders that proved critical in ensuring transparency in supply chain provisions and the obligation on businesses to report were included in the final legislation.

The UK MSA has been instrumental in real change in corporate response to the risk of slavery in global supply chains. The issue is firmly on the agenda of businesses who previously had not engaged with the issue and many are initiating procedures and educating staff in ways that will have real benefit and impact.

The Office of the Independent Anti-Slavery Commissioner ("**UK Commissioner**") has had a huge impact on public awareness, on policing and prosecution activity, and on mobilising community and business response.

As with any new legislation, weaknesses in the UK MSA have become apparent during implementation. The lack of a central registry of modern slavery statements, the absence of a list of businesses required to report under the Act, the lack of any mandatory content for report requirements and inadequate guidance to businesses are all issues that have emerged. The lack

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of a requirement for public entities to report is another issue that many parliamentarians and others have expressed concern about.

The UK legislation is light touch, but it has allowed businesses to positively embrace it and overcome their traditional aversion to any extra government regulation. They can start the journey to drive out modern slavery in an environment where they are encouraged to look, to find and to partner to institute lasting change. The Walk Free Foundation believes it is less effective to introduce a punitive regime that may result in businesses adopting a tick box approach.

While the UK experience is informative, the Australian Parliament will act in our national interest in assessing what Australia should do to build our response to something every Australian should find repugnant. Australia begins its consideration of these issues from a more developed existing legal and policy framework than the UK Parliament did. While this is a credit to our Parliament, we cannot settle and become complacent as we are not yet winning the battle against the modern slavery trade. The Walk Free Foundation strongly asserts there are compelling domestic and international reasons why the Australian Parliament must act to enhance our capability to impact on the crime of modern slavery.

We must maximise our capacity to end modern slavery within Australia.

We must fill the governance gap that permits goods to be sold in Australian off the labour of enslaved fellow human beings.

We must help drive responsible corporate behaviour, accountability and provide a level playing field for those businesses implementing best practise to minimise the risk of being undercut by those that turn a blind eye to the modern slavery that supports their business.

We must continue to assert Australia's role as a voice for human rights and a leader of anti-trafficking and anti-modern slavery action in our region.

The Bali Process Government and Business Forum in Perth this coming August must see Australia walk the walk, not just talk the talk, when meeting with all the countries in our region and their business leaders to discuss ending modern slavery. The Walk Free Foundation recommends that the Australian Parliament seize this opportunity to take a vital step to end modern slavery.

The experience of the Walk Free Foundation's Chairman Mr Andrew Forrest and other business leaders is that if you look properly, you will find the modern slavery that we know exists. The Business Council of Australia support legislation to combat modern slavery in all its forms.³ The challenge for the Australian Parliament is to find the right legislative balance that supports business to make the change in culture and practise that delivers real outcomes for victims.

The Walk Free Foundation is confident that this Parliamentary Inquiry will provide the consideration and leadership that will see Australia adopt world's best practise laws to stamp out modern slavery.

1. RECOMMENDATIONS: FOR AN AUSTRALIAN MODERN SLAVERY ACT

The Walk Free Foundation recommends an Australian Modern Slavery Act reflect these 3 priorities:

1. Anti-Slavery Commissioner

The appointment of an Independent Anti-Slavery Commissioner to lead Australia's fight against modern slavery. A Commissioner is vital for the success of any efforts to tackle modern slavery in Australia.

As an independent body, the statutory office of the Commissioner would act as a single point of contact and oversight body across all stakeholders; from those on the ground identifying victims and providing emergency support services, to the police and prosecutors pursuing offenders, to businesses addressing modern slavery within their supply chains. The Commissioner would have powers to monitor and assess the impact of legislation, hold businesses and the Government accountable and promote best practices to identify, protect and advocate for victims. The Commissioner would prepare public reports to detail findings, review progress and recommend strategies. While independent, the Commissioner would work together with the Ambassador for People Smuggling and Human Trafficking.

2. Modern Slavery Statements

All large businesses operating in Australia must publish a standalone annual "Modern Slavery Statement" reporting on steps taken to ensure modern slavery is not occurring within their own business and their supply chains.

Every large business, regardless of place of incorporation and structure, across all sectors, that meet a financial threshold test must report. While this needs careful consideration, our preliminary research suggests an appropriate threshold test could be an annual turnover of between AUD\$50 million and \$60 million. The statement must be approved by the board and duly signed to legally bind the business. We recommend mandated content to provide clarity and consistency for business.

3. Central Repository and List

A Government approved and funded central repository for all business modern slavery statements, together with a list of those businesses who are required to file modern slavery statements.

The repository must be neutral, free and publicly accessible. All statements must be filed with the repository. Data from the repository must be available to allow third parties to analyse the progress of business, identify any red flags and statements that do not comply with formalities or are non - substantive. In conjunction with, or integrated within, the repository should be a regularly maintained, approved and public list of those businesses required to publish modern slavery statements.

2. MODERN SLAVERY: NATURE, EXTENT AND PREVALENCE

In this section, we have set out the nature, extent and prevalence of modern slavery in response to this Committee's terms of reference 1 and 2. We have focused on the prevalence of modern slavery both within Australia and in our neighbouring region, given that estimates suggest the majority of victims are located in the Asia Pacific. Given the nature of global supply chains and Australia's close trading partnerships throughout the Asia Pacific region, these supply chains inextricably link Australian business and consumers to the crimes of modern slavery.

2.1. DEFINING MODERN SLAVERY

- 2.1.1. Slavery has existed, in different forms, since ancient times. Despite being outlawed in most countries and the abolitionist movement in the 1800s, the crime persists in ways more pervasive and complex than ever. Slavery is an extreme form of inequality, and exists within a competing matrix of political, economic, societal, cultural and religious pressures. In 2017, modern slavery is bound to some of the most complex issues facing world leaders including global mass migration, political uncertainty, globalisation, rapid technological advances and conflict.
- 2.1.2. The crime of slavery has evolved over the years, and as such, legal definitions have also evolved.⁴ The term "slavery" has had a long legal history with international frameworks originating from 1926.⁵ In short, the definition of "slavery" (as set out in the *1926 Slavery Convention*) is reflected in Australian law.
- 2.1.3. Walk Free Foundation has analysed legal frameworks across the world in respect to the criminalisation of slavery, and Australia has a strong criminal framework.⁶ Despite a concerning lack of prosecutions (please see further discussed at 2.3.4), the Australian criminal framework provides a solid foundation for the Australian legal framework and response to modern slavery. To this end, we refer to Divisions 270 and 271 of the Criminal Code Act 1995 (*Commonwealth*) and the definitions therein of "human trafficking", "forced labour", "forced marriage", "servitude", "slavery" and "slavery like offences"⁷. We rely on these definitions as the agreed framework for Australia, as these definitions have been comprehensively discussed and reviewed, and reflect years of academic rigour and judicial reasoning⁸ within both the domestic and international frameworks.
- 2.1.4. After extensive discussion and consultation with leading experts, academics and businesses, we use the umbrella term "modern slavery" as an overarching concept to capture the range of multifaceted and complex crimes, which includes all forms of human trafficking, forced labour, debt bondage, forced or servile marriage, and the worst forms of child labour. This term is an update of the term "contemporary forms of slavery" which was used for decades by the United Nations to address the same issues. We use this term because it is consistent with international efforts and legislation including the UK Modern Slavery Act, it is increasingly internationally recognised (in academic circles and mainstream media) and, critically, it is one that a range of stakeholders are increasingly familiar with, including the private sector and civil society.

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- 2.1.5. Our plain English informal definition⁹ we use to communicate these complex ideas with those newly engaging with the issues is:

“Modern slavery refers to situations where one person has taken away another person’s freedom – their freedom to control their body, their freedom to choose to refuse certain work or to stop working – so that they can be exploited. Freedom is taken away by threats, violence, coercion, abuse of power and deception. The net result is that a person cannot refuse or leave the situation.”

- 2.1.6. Modern slavery is not the same as exploitative practices, such as underpayment of wages or excessive overtime or debt, and should not be confused with other immigration concerns. However, these factors can often indicate the existence of modern slavery, and these crimes are closely connected. If an individual’s wages are being withheld, his or her passport forcibly removed, he or she is subjected to excessive and unconscionable debts that could never be reasonably repaid, physical violence and that results in the individual being entrapped, not necessarily by physical chains, but the exploitation, threats and abuse – the net result would be that individual is in modern slavery. Modern slavery should be considered within the spectrum of many interconnected crimes. At one end are the grievous instances of modern slavery (often the accumulative result of a series of many crimes), and at the other end is labour exploitation practices or discrimination (such as underpayment of wages or excessive overtime). Critically, the determining indicator for modern slavery is whether the freedom of an individual to control their lives – such as to have the freedom to refuse work or to leave work - has been removed for the exploitation by another.

2.2. PREVALENCE

- 2.2.1. **Modern slavery affects every country, region, business and for many large businesses - their supply chains.** Criminal networks exploit vulnerable scenarios and weak systems by targeting individuals who have been displaced fleeing from conflict, natural disasters, drought,¹⁰ effects of climate change, global mass migration and the gender inequality gaps that exist in many under developed or developing countries. Human traffickers prey upon post-disaster populations¹¹ who are vulnerable to accepting promises of jobs and security.
- 2.2.2. **It is only by understanding what is modern slavery and measuring the scale of modern slavery that we can effectively tackle it.** Measuring modern slavery is extremely difficult, given the hidden and complex nature of the multi-faceted crime of modern slavery. To this end, we have dedicated significant resources to the Global Slavery Index (“GSI”). The GSI measures the number of people living in modern slavery country by country, government responses to the problem and factors within each country that make people vulnerable to exploitation. The GSI ranks the prevalence of slavery across the 167 most populous countries; their combined populations equalling 99 percent of the total world population. This research incorporates data from standardised nationally representative random sample surveys on modern slavery, including forced marriage, for 25 countries which represent about 44 percent of the world population. We have set out the methodology, including the use of multiple systems estimation test, in Appendix 1.
- 2.2.3. Based on this methodology, as set out in the Global Slavery Index 2016, we have produced a estimate that there 45.8 million people subjected to modern slavery within the past five years,

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including an estimated 4,300 victims within Australia within the last five years.¹² Two thirds of the estimated 45.8 million people in modern slavery were identified in the Asia-Pacific region. See paragraph 2.3.1 below for more information on the instances of modern slavery identified in Australia, and paragraph 2.4.1 below in respect of our region – the Asia Pacific. These estimates have been carefully analysed and considered based on the best information available to date. The estimate for Australia can be further strengthened by the use of Multiple Systems Estimation (“MSE”), which has been used to successfully measure the number of people in modern slavery in the UK and the Netherlands (see Appendix 1 for further information).

- 2.2.4. To ensure that global estimates improve, that resources are used efficiently and wisely, and to improve accountability, the Walk Free Foundation collaborates with businesses, governments and the private sector to draw on a range of resources and expertise across the world. This year we announced that for the first time that we will be partnering with the International Labour Organisation (“ILO”) to jointly develop a single global estimate of modern slavery, from which progress towards achieving Sustainable Development Goal Target 8.7 can be benchmarked. This new partnership will draw upon thousands of responses from face-to-face interviews to provide updated insights, breakdown by regions, age group and gender. The International Organisation for Migration will also provide important support for research on migrants in crisis and data from their global victim assistance database. **Significantly, this partnership will provide the first unified estimate on the global prevalence of modern slavery.**
- 2.2.5. Many have asked us, have the rates of slavery increased in recent years? There is no easy answer. At first glance, the 2016 GSI estimate is an increase on the estimate provided in the previous edition of the Index. Yet as efforts to measure this hidden crime are relatively new, it is premature to assert that modern slavery has increased in the intervening period. Indeed, the results from our national surveys reveal a mixed picture, with increases in some national estimates and decreases in others. Further details are available in the current version of the 2016 GSI. The 2017 Global Estimates on Modern Slavery will be presented in New York at UN Week in September 2017, and the 2017 Global Estimate of Child Labour will be presented to the IV Global Conference on Sustained Eradication of Child Labour in November 2017 in Buenos Aires, Argentina.

2.3. **MODERN SLAVERY IN AUSTRALIA**

- 2.3.1. **Modern slavery occurs in Australia.** With severe underreporting and a lack of prosecutions, it is hard to estimate with precision the extent of modern slavery in Australia. Our modelling suggests that there are an estimated 4,300 victims of modern slavery within our borders. The examples of reported cases show how wide-spread the issues are across Australia. Recently reported cases of modern slavery or conditions akin to modern slavery include:

- domestic worker exploitation in a Sydney household,¹³
- forced labour of up to 50 Taiwanese nationals in Brisbane,¹⁴
- migrant workers being exploited in fruit and vegetable markets in Carabooda subjected to excessive unpaid overtime, withholding of wages and confiscation of identity documents,¹⁵
- underpayment and exploitation of students working in convenience stores in major Australian cities,¹⁶
- exploitation of Estonian migrants working as welders in Perth,¹⁷

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- child forced marriage in Melbourne,¹⁸
- child trafficking,¹⁹
- exploitation of a chef forced to work in an Indian restaurant in Sydney.²⁰

2.3.2. Many of these cases involved labour trafficking and forced labour. Reported cases and evidence suggests that individuals vulnerable to labour trafficking include those on temporary visas from developing countries, workers in industries such as industrial cleaning, meat works, hospitality, construction, manufacturing, agriculture, domestic workers, people on bridging visas, and migrants.²¹ Factors that can contribute to vulnerability include age, cultural dislocation, family obligation, debt, physical isolation, linguistic or cultural isolation and a lack of knowledge about what is considered 'normal' in a particular context. Indicators of human trafficking include confiscation of passports by their employers or agents, use of sexual or physical violence and what might broadly be described as abuse of vulnerability that flows from having limited work options and a debt or family obligation. As outlined above in paragraph 2.1.6, there can be a large grey area to be carefully considered between unlawful conduct against workers (e.g. underpayment of wages, poor standards) vis-à-vis modern slavery.²²

2.3.3. The number of cases of labour trafficking reported to the federal agencies is very small in Australia.²³ Research confirms that there have been instances of unreported and/or unrecognised labour trafficking.²⁴ Not only does this demonstrate the existence of under-reporting, but a lack of awareness among a wide variety of 'front line' agencies and service providers that certain exploitative practices in a work context are in fact criminal, and in some cases modern slavery crimes, under Australian law. The detection of labour trafficking remains a complex task that should be supported by training, tools (such as indicators that aid familiarity with, and reduce ambiguity in, complex legal frameworks) and processes of cross-referral between relevant agencies.

2.3.4. **There have only been a handful of successful prosecutions in Australia relating to modern slavery.** For example, since the commencement of Divisions 270 and 271 of the Criminal Code in 1999, 17 people have been convicted of trafficking in persons and slavery-related offences.²⁵ Most convictions have been for slavery offences in the sex industry. As with any crime, criminal justice data on reported cases of human trafficking, slavery and slave-like practices in Australia is not indicative of the nature or scale of offending. Criminalisation of this crime type and responses to it in its modern form are recent, so victims and witnesses may not yet recognise it as a crime and may not report it. Reports confirm that the Australian Federal Police received 691 referrals relating to human trafficking, slavery and slave-like practices such as sexual servitude and forced labour since 2004 to 2016.²⁶ Yet the reported high numbers of investigations compared with convictions highlights the complexity of investigations and prosecutions for this crime.²⁷

2.4. MODERN SLAVERY IN OUR REGION

- 2.4.1. **We estimate there are 30 million individuals subjected to modern slavery within the Asia-Pacific.** Not only is this region one of the most populous in the world, but it also provides low skilled labour for production stage of global supply chains for many industries including food production, garments and technology. Critically, as we will explore in further detail below at paragraph 2.5.6, Australian supply chains are closely connected and reliant upon trade with countries and businesses throughout the region. We estimate 58% of victims of modern slavery are living in five countries, being India, China, Pakistan, Bangladesh and Uzbekistan.²⁸ Most of these countries are powerhouses of the global economy. India, China, Pakistan and Bangladesh all provide low-skilled labour for industries such as food production, textiles and technology. Uzbekistan is a major cotton exporter.²⁹

SUPPLY CHAINS IN FOCUS: AUSTRALIAN BRANDS PLEDGING TO REJECT FORCED LABOUR COTTON

For many years, the Uzbekistan cotton industry has been under scrutiny for its practices and treatment of workers. In 2014, Uzbekistan had the second highest proportion of people in modern slavery, due to the high level of state-imposed forced labour and child labour. Although the Uzbek government has taken steps to address forced labour in the cotton industry with the introduction of a feedback mechanism and increased monitoring, it continues to subject Uzbek citizens to forced labour in the cotton harvest each year. Since 2012, the Uzbek government has increasingly pressured university students and adults, to compensate for the few numbers of children working in the fields.³⁰

As part of the Cotton Campaign,³¹ many global retailers - including high street brands in Australia such as Cotton On, Country Road and Cue - have pledged to reject all Uzbek cotton and now only a handful of countries accept the product.³² Significantly, however, countries that still accept Uzbek cotton include China and Bangladesh—both of which play a major role in feeding cotton back into global supply chains. Western businesses are trying not to source directly from Uzbekistan, and directors are under increased pressure from foreign governments to review all levels of supply chains.

A recent ILO report reports that conditions in Uzbekistan are significantly improving, yet it is estimated that one third of the 2.8 million cotton pickers in Uzbekistan are still “non-voluntary” workers.³³

- 2.4.2. **Within low-skilled and loosely-regulated industries, there is a risk of modern slavery, such as human trafficking, forced labour and debt bondage.** In 2015–2016, there were cases of forced labour within the Malaysian electronics industry,³⁴ exploitation on Malaysian palm oil plantations,³⁵ and debt bondage in the apparel industries of Bangladesh³⁶ and Vietnam.³⁷ Migrant fishermen are trafficked and exploited in boats off the coast of Thailand, entrapped in horrific circumstances, catching fishmeal which is used to feed the fish that end up throughout the supply chains of many major supermarkets and restaurants across western markets.³⁸ Men and women experienced forced labour in manufacturing, agriculture, food production and construction. Growing numbers of women and girls are forced to work in quarries, farms, textile and tea industries in regions such as India.³⁹

SUPPLY CHAINS IN FOCUS: MODERN SLAVERY IN THE FISHING INDUSTRY

Slavery in the seafood industry and the abuse of workers on Thai fishing vessels operating in South East Asian waters has become increasingly well documented.⁴⁰ Researchers and investigative journalists have documented the abuse of migrant workers on fishing vessels, often young men and boys, who have endured brutal treatment including physical abuse, excessive and inhumane working hours, sleep and food deprivation.⁴¹ Some long-haul trawlers and their fishermen remained at sea for years at a time. Between April and September 2015, more than 2,000 men were rescued from Thai fishing vessels, many of which were operating in Indonesian waters.⁴² Ongoing reports of worker exploitation in seafood pre-processing facilities were also evident, with workers from Myanmar, Cambodia and Laos working excessive hours in oppressive and abusive conditions.⁴³ Much of the seafood processed was distributed to the global market, including within the supermarket supply chains of major Australian retailers.⁴⁴

Responding to these issues, the Modern Slavery in the Fishing Industry Project is a combined effort with researchers from the University of Western Australia and the Walk Free Foundation which aims to estimate the proportion of seafood which is produced off the back of forced labour, at both a global and national level. We also want to be able to more accurately map the flow of seafood produced with forced labour through supply chains. We are doing this in order to better inform consumers, government and businesses of the scale of modern slavery in the fisheries sector in the hope that it will prompt investment in sustainable supply chains and greater government regulation of ports and waters. The ultimate aim is to reduce demand for seafood produced with forced labour and to drive the slave holders out of business.

- 2.4.3. **Many of these goods are produced in the Asia Pacific region are linked to the global supply chain of many businesses across the world, including Australia businesses.** In order to address the crime of modern slavery, it is essential that we focus on global supply chains to bring about long-lasting impactful change.

SUPPLY CHAINS IN FOCUS: RIPCURL IN NORTH KOREA

Ripcurl, an iconic Australia surf brand was found to be indirectly promoting slave-like practices as its supplier, in breach of contract terms, was subcontracting to a manufacturer based in North Korea using forced labour to produce Ripcurl's 2015 range of winter clothing. The clothes were being shipped and falsely tagged with "made in China" labels.⁴⁵

The country with the highest estimated percent of its population in modern slavery is North Korea. Nearly one in 20 North Koreans are estimated to be in modern slavery. Though information on North Korea is difficult to verify, pervasive evidence exists that citizens are subjected to state-imposed forced labour within the country, where the government requires forced, uncompensated labour from workers, school children, and university students; and operates an extensive system of prison labour camps. There are reports that individuals are forced to work long hours in agriculture and the logging, construction, mining, and garment industries with harsh punishments for not meeting quotas.⁴⁶

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2.5. GLOBAL SUPPLY CHAINS

- 2.5.1. What do we mean when we refer to supply chains? Using its most commonly accepted definition, a supply chain is the network of businesses, people, activities, information and resources involved to produce or distribute goods or deliver services, from a supplier to a customer.⁴⁷ When factoring in component parts and multiple subcontractors, the network of supply chains connected to businesses can at times appear endless.
- 2.5.2. Supply chains are notoriously difficult to regulate as networks span across countries, often with competing legal standards. Supply chains are also difficult to precisely define in legislation, so typically legislatures (such as the UK under the UK MSA) have left the term “supply chains” undefined, instead requiring reliance on its every day and common sense meaning. By doing this, arguably the net is cast wide, so that any point along the supply chain is covered from source to delivery. This would include supply chains of joint ventures and investments. It is for businesses to determine how to categorise, monitor and manage ever evolving supply chains.
- 2.5.3. **Over the past few decades, with the rapid acceleration of globalisation, global supply chains have exponentially grown, transforming the way businesses conduct cross-border production, investment, trade and employment.**⁴⁸ Multinational enterprises are accountable for the majority of global trade and play an important role in global trade systems.⁴⁹ Increased access to transport, improved technology, changing trade and tariff conditions, the growth of global media and the mobility of labour have all contributed to the transformation of the way businesses conduct global business. Global supply chains are inherently complex, diverse, dynamic and ever evolving. The ability of a business to efficiently and effectively run its supply chains is crucial to its success.
- 2.5.4. The ILO provide a poignant example of a “night out at the movies” to demonstrate the complexity of global supply chains:⁵⁰

“Imagine that you are in a cinema watching a popular animated movie. Now imagine all the people that made the experience possible. The movie itself was made by a company in the United States, using subcontractors in India and the Republic of Korea. The popcorn you are eating was harvested by workers in Argentina, prepared with palm oil from a Malaysian plantation and produced in machines assembled in Italy. The seat you are sitting on was made in Poland. The car you drove to the cinema was assembled in Spain, with parts from Austria, France, Japan, Mexico and Thailand and was transported on a container ship owned by a Greek national through a Liberian company, which was built in Japan and powered by Finnish engines. Indeed, the two hours you spend watching the film may have required the labour of thousands of people in dozens of countries in global supply chains.”

Many countries referred to in this example are countries with a high risk of modern slavery.

- 2.5.5. Global supply chains are important as they create employment and opportunities for economic and social development. Yet when poorly managed, the demand for cheap labour, lack of visibility, dynamics of production in informal unregulated markets can have negative implications, including being at high risk for subjecting individuals to modern slavery.

SUPPLY CHAINS IN FOCUS: 60 SLAVES MADE YOUR SMART PHONE

Research suggests that based on the purchase of one smart phone, there may have been in the region of 40 to 60 slaves involved in the production process.⁵¹

Smart phones are the symbol of the interconnected modern world. The industry is worth US\$425 billion annually.⁵² The supply chains that sit behind the production and distribution of a smart phone is vast and complex, with an ever-growing number of components (an average smartphone has 1000 components) and subcontractors.⁵³ Managing these supply chains is crucial to the profitability of the sector. Hidden within each layer of these supply chains is a significant risk of slavery and human rights abuses, as highlighted below:

MINING STAGE: metals and minerals required for component parts are often sourced from high risk conflict regions, or where there is a risk of child labour or unfair labour conditions. For example, cobalt is needed for rechargeable lithium ion batteries powering smart phones. Up to 60% of world's cobalt originates from the Democratic Republic of Congo where human rights abuses include child labour, hazardous working conditions for miners (who are often digging by hand), significant underpay of wages (including withheld wages), physical abuse, sexual exploitation, violence, forced relocation of villagers, pollution of primary water sources (which can link to serious health issues for local communities).⁵⁴

DISTRIBUTION STAGE: once mined, resources are stockpiled and on-sold by distributors in small trading towns, often through third party brokers who are operating without licenses or registrations, resulting in a severe lack of transparency. The risk of violence and corrupt practices is endemic and many products are smuggled.⁵⁵ Ultimately foreign export businesses then purchase the minerals and ship these overseas. The shipping stage in and of itself is rife for modern slavery and human rights violations.

REFINING STAGE: raw resources are refined into metals by processing businesses, largely in factories based in East Asia. Asia is one of the highest risk regions for forced labour and unfair working conditions, with China and India at the top of the list of high risk regions.⁵⁶ Particularly for lower tier suppliers, code of conducts or whistleblowing procedures are rarely implemented.⁵⁷ Other component parts, such as petrochemicals for plastics are also refined and manufactured.

MANUFACTURING STAGE: component parts are manufactured and assembled in factories in Asia due to lower labour cost and commercial efficiencies. The electronics industry is known for the use of child labour⁵⁸ and the use of migrant labour recruited through brokers.⁵⁹ The combination of a low skilled workforce, low labour costs and developing or underdeveloped economy is a proven recipe for modern slavery. In the case of smart phones, to meet the short product life cycles of many popular brands, dramatic surges in demand are frequent occurrences, which result in excessive hours imposed on workers on a regular basis to meet demand.⁶⁰

Goods are then shipped to their final destinations, which again is another opportunity for a different subcontractor or supply chain opportunity for slavery for sale by retailers (see the case study below for further details).

- 2.5.6. **Australian supply chains are closely connected and reliant upon trade with countries and businesses throughout the Asia Pacific region.** In 2015, Australia exported \$190 billion and imported \$192 billion worth of goods. Australia's top imports by value are cars, refined petroleum, computers, crude petroleum and packaged medicaments. It is estimated that 60% of Australia's trade imports come from Asia, with the top import origins of Australia being China (\$45 billion), the United States (\$23.2 billion), Japan (\$14.4 billion), South Korea (\$10.1 billion) and Thailand (\$10.1 billion). Other major import partners, include Singapore, Malaysia, India, Vietnam, Indonesia and Hong Kong.⁶¹ Many of the goods imported by Australia from these regions are at high risk of being produced by forced labour and child labour.⁶²

SUPPLY CHAINS IN FOCUS: SHIPPING

Shipping is one of the world's largest "out of sight" industries, distributing 80% of global trade by volume and 70% by value moves by sea.⁶³ Yet the sector is largely invisible in most supply chain maps or risk assessments for ethical trade issues despite being a high risk sector for modern slavery.⁶⁴ Australian businesses and consumers are heavily reliant upon shipments for exports or imports, and in our daily consumption of foods and goods. The primary focus has been on whether goods have been ethically grown or manufactured as fair trade, yet the transport of these goods remains a major blind spot.

There are approximately 1.6 million seafarers globally, with numbers steadily increasing as demand for this labour force soars.⁶⁵ Seafarers are vulnerable for many reasons. Firstly, the imbalance of power in favour of ship owners and operators leaves seafarers vulnerable to abuse by their employers.⁶⁶ Secondly, seafarers are often from low skilled backgrounds mainly from China, the Philippines, Russia, Ukraine and India.⁶⁷ Thirdly factors such as extreme periods of isolation out at sea, language barriers, cultural differences and poverty further exacerbate the situation. Mistreatment includes violence, sexual assault, systematic wage withholding and labour exploitation.⁶⁸ Seafarers have a 1 in 11 chance of being injured or killed.⁶⁹ Mistreatment of crews also affects the safe operations of ships, imposes additional layers of costs on coastal states, fatigued and malnourished crews can lead to accidents and pollution incidents.⁷⁰

Off the coast of New Zealand, it was headline news that seafarers from Indonesia and Vietnam were being subjected to forced labour and serious mistreatment.⁷¹ Reports of modern slavery in the North Sea sent shock waves through the oil and gas sector when Aberdeen port authorities investigated vessels for modern slaves.⁷² Australian crews are being pushed out of the markets as ship owners know they can force international crews to work for as little as AU\$2 per hour, in conditions akin to modern slavery.⁷³

Identifying and monitoring ships can be difficult, as accountability can be tied up in a complex web of owners, investors, operators and manning agencies.⁷⁴ Owners will often register ships under a "flag of convenience" that will offer competitive rates for shipping, e. g. Marshall Islands or Liberia, but often these flag countries do not have good reputations for monitoring and enforcing labour rights.⁷⁵ Transparency across the web of relationships for shipping is crucial, requiring greater regulation and training and resourcing authorities to be able to identify the issues at ports.

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2.5.7. What is increasingly clear is that modern slavery is hidden within a vast array of supply chains.

Due to Australia's close ties to the Asia Pacific region, where over two thirds of the victims of modern slavery are estimated to be based, Australian businesses and consumers are most likely unknowingly benefiting from modern slavery in the food we purchase, the clothes we buy, the suppliers we choose and the businesses in which we invest. Businesses that have reported they have found either instances of or indicators of modern slavery within their supply chains including Fortescue Metals Group, Rio Tinto, Marks and Spencer, Nike and many more.⁷⁶ Yet in none of these reported instances were there any cases of blatant or deliberate corporate abuse. Indeed, these circumstances are very rare.

SUPPLY CHAINS IN FOCUS: AUSTRALIAN RETAILERS AGAINST SLAVERY

In 2015, it was found that food picked, packed and processed by exploited workers was being sold to Australian consumers nationwide in supermarkets including Woolworths, Coles, Aldi, IGA and Costco and fast food outlets such as KFC, Red Rooster and Subway.⁷⁷ Organised syndicates of labour agencies who were exploiting migrant workers from Asia and Europe who were not only grossly underpaid, but often abused, harassed and assaulted at work, housed in poor conditions and in some instances forced to perform sexual favours for visas.⁷⁸ Supermarkets and food chains were unaware of the abuses occurring within their supply chains and immediately took action. In addition, in 2015, 8 household Australian brands including Woolworths, Coles and BigW signed a pledge to move towards better practices developed by the Retail and Supplier Roundtable Sustainability Council. The pledge was significant as a sector wide collaboration, bringing together retailers, suppliers, government, NGOs and community members, to eliminate modern slavery.

2.5.8. Many businesses do not know what modern slavery looks like or just how susceptible their own supply chains are to it. Modern slavery can be hard to immediately identify in supply chains for reasons including workers' fear of recrimination from employers, limited access to complex multi-tier supply chains, no paper trails, restrictions on audit rights and deceptive conduct by suppliers.⁷⁹ Typically, large businesses contract with hundreds if not thousands of external suppliers, sourcing from thousands of factories and engaging potentially with millions of workers. Very few own and operate factories directly. Investigating supply chains for modern slavery is challenging. For example, Wesfarmers has reported they have more than 15,000 suppliers across the Group,⁸⁰ and in their modern slavery statement published under the UK, they reported auditing 3,211 supplier sites.⁸¹ Unilever has reported to have customers and consumers in 190 countries, employ approximately 169,000 (of whom about 100,000 work in the Unilever supply chain) and have 76,000 suppliers.⁸² The sheer breadth, width and complexity of the global supply chains of large multinational businesses is vast.

2.5.9. These exploitative practices also occur in well developed countries. For example, a 2015 case in the UK found that Hungarian workers were being employed as "modern slave labour" in factories in Yorkshire, England by a UK bed maker known as Kozee Sleep. This company was in turn supplying these beds to leading British high street retailers including John Lewis and Next. These retailers had conducted audits, but the audits had not revealed the criminal activity of this supplier in breach of contract terms.⁸³ This demonstrates that the risk of modern slavery is not just for those operating in under developed or developing nations. It is a global problem.

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2.5.10. It would be an unduly onerous burden on every global business to roll out comprehensive policies and monitor every single supply chain back to source. Laws such as Section 54 of the UK MSA do not require this, as we explore later in this submission. Rather the focus is on how a business conducts its own risk assessment, and how influence and leverage can be applied to promote best practices across the industry. Businesses at the top of supply chains can have significant negotiation power in respect of on commercial issues such as production deadlines, price and contract conditions. Leverage will be due to its position in the supply chain and also how a business can leverage its partnerships and collaborate to bring about meaningful change. In addition, influence can be exerted on production processes, working conditions and quality control of their suppliers.⁸⁴

2.5.11. **How a business conducts its risk assessment is crucial.** It is not expected nor realistic that the entire supply chain can be assessed. Rather by first assessing where the vulnerabilities are (e.g. is the industry reliant on seasonal workers or are there extreme turnaround times), and then focusing on higher risk sectors and higher risk supplier relationships is a realistic first step.

2.6. **MODERN SLAVERY HINDERS ECONOMIC DEVELOPMENT**

2.6.1. **Modern slavery comes at a serious cost.** Despite appearances of seemingly filling the criminal's pockets with illegal profits, as with many corrupt criminal practices, modern slavery suppresses the economy and reduces sustainable development.⁸⁵ The trouble with modern slavery is that not only is it hidden within the depths of criminal networks trafficking people for exploitation, but modern slavery also occurs where legitimate industries meet informal economies.⁸⁶ Research has proven that modern slavery has an adverse long term impact on economic development.⁸⁷

2.6.2. **Removing reliance on modern slavery can promote economic growth.** This has been recognised as part of Goal 8.7 in the Sustainable Development Goals, which we discuss in paragraph 3.2.9. By addressing modern slavery, particularly within global supply chains, in a sustainable and collaborative matter, globalisation can be made to work for all.

"We all pay for poverty and unemployment and illiteracy.

If a large percentage of society falls into a disadvantaged class, investors will find it hard to source skilled and alert workers; manufacturers will have a limited market for their products; criminality will scare away foreign investments, and internal migrants to limited areas of opportunities will strain basic services and lead to urban blight.

Under these conditions, no country can move forward economically and sustain development ... It therefore makes business sense for corporations to complement the efforts of government in contributing to social development."⁸⁸

- ***Ayala Corporation, Jaime Augusto Zobel de Ayala II
Chief Executive Officer***

3. BEST PRACTICE: GOVERNMENTS AND BUSINESSES

We have set out in this section the best practice of governments and businesses to prevent modern slavery in domestic and global supply chains with a view to strengthening Australian legislation. We also explain how the legal framework around transparency in supply chains for modern slavery is rapidly developing. The move away from voluntary initiatives and towards mandatory reporting laws such as Section 54 of the UK MSA set the new base standard for democratic and responsible governments. Mandatory reporting requirements help to ensure a level playing field for business, and ensures large businesses are focused on addressing the complex issue of modern slavery.

3.1. THE SHARED INTEREST

3.1.1. **Governments, businesses and the community have a shared interest in ensuring that modern slavery does not find its way into supply chains.**

3.1.2. Most governments have worked hard to put criminal laws in place to combat modern slavery, alongside other criminal justice and victim support initiatives. These are vital first steps, but increasingly governments are recognising that modern slavery is a complex crime intertwined with policy issues such as mass migration, conflict, development, globalisation, foreign trade and fair work that necessitates further action by all stakeholders. Leading governments have already started to move towards introducing mandatory laws regulating supply chains of large businesses. The calling of this inquiry by the Committee is timely, as otherwise Australia risks falling behind the new standards set by governments in the UK, US and Europe in response to modern slavery.

3.1.3. **Responsible businesses do not want slavery in their supply chains.** Aside from being morally repugnant, it exposes them to litigation risk and presents a major reputational risk. Modern slavery is closely related to other criminal activities such as corruption, environmental and major safety breaches, risks that responsible businesses cannot countenance. Businesses can bring unique strengths and advantages to this issue. Whereas government capacity tends to be confined within national borders and regions, businesses are very used to operating across borders. With relative freedom to innovate, businesses have developed many different systems and processes that allow identification and rapid response to risk, including in relation to modern slavery offences. This might take the form of contract terms, audit processes, site visits or generally establishing and managing relationships of trust with suppliers.

3.1.4. **Businesses have a unique set of tools and leverage to respond to the risk of modern slavery, and these are yet to be fully harnessed.** While some businesses have begun to respond to modern slavery voluntarily, governments are also increasingly recognising the need to regulate to ensure all large businesses take action. Until very recently, multi-national businesses buying and selling across international borders were rarely held to account for abuses perpetrated by their suppliers. Businesses are realising that expectations are changing and that business as usual is no longer an option.

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3.2. BEST PRACTICE GOVERNMENTS: THE MOVE TOWARDS MANDATORY REPORTING

- 3.2.1. Governments must play a central role in responding to modern slavery in supply chains. The best practice of governments has typically progressed through three key stages: (1) criminalisation of modern slavery, (2) support and implementation of international standards and voluntary initiatives and (3) mandatory reporting via domestic laws. It is the final category of mandatory reporting laws that is setting the new standard for best practice by governments.
- 3.2.2. **The Australian Government should adopt laws equivalent to the UK MSA to match international best practice standards and provide a clear legal framework for businesses operating in Australia.**

CRIMINALISATION

- 3.2.3. Nearly every country in the world has committed, in varying degrees, to eradicate modern slavery through national legislation, policies and criminalising slavery. Countries have arrived at near unified understanding that it is never acceptable (no matter where in the world) to exploit the freedom of another for personal or commercial benefit.⁸⁹
- 3.2.4. Yet, while the black letter law may reflect these standards, in reality there is a significant lack of effective prosecution both within Australia and globally. The absence of global prosecutions is at odds with the estimated number of modern slavery victims and demonstrates the failure by the criminal justice system to effectively implement existing legislation across the world. The “US Global Report on Trafficking in Persons” reported only 6,800 convictions for human trafficking across the world between the period 2012 to 2014. Some 40% of the countries covered in the US TIP Report recorded that only convicting 10 or fewer persons for the offence of trafficking in persons during this period.⁹⁰ Criminal laws are designed to be reactive and punitive rather than preventative, which is why the reporting requirements under the UK MSA are crucial.
- 3.2.5. The GSI reviews the steps taken by governments across the world in response to modern slavery, including steps taken to support survivors, rates of prosecutions and other criminal justice mechanisms, levels of coordination and accountability and how businesses and governments address the risk of modern slavery within supply chains.⁹¹ The GSI estimates that the governments taking the most significant steps to respond to modern slavery are predominantly high GDP (Purchasing Power Parity) (“PPP”) countries: the Netherlands, the United States, the United Kingdom, Sweden, Australia, Portugal, Croatia, Spain, Belgium and Norway. The governments taking the least action to respond to modern slavery are: North Korea, Iran, Eritrea, Equatorial Guinea, Hong Kong, Central African Republic, Papua New Guinea, Guinea, the Democratic Republic of the Congo, and South Sudan. The tragedy is that the population of some of the less-responsive countries concurrently face a high risk of enslavement. When GDP (PPP) is accounted for, it is clear that despite their relative wealth, Hong Kong, Qatar, Singapore, Saudi Arabia, Bahrain, Oman, Kuwait, Japan and South Korea can and should be doing more to address modern slavery problems within their borders. Many countries, including wealthy countries, continue to detain and deport victims and fail to provide meaningful protections for the most vulnerable workers, including a failure to prosecute criminal offenders. **With a few notable exceptions, there is also an almost complete failure globally to seek survivor feedback on experiences of the justice system and service provision.**⁹²

INTERNATIONAL INSTRUMENTS

- 3.2.6. The UN Guiding Principles on Business and Human Rights (“**UNGP**”) are one of the most prominent initiatives addressing the intersection between human rights and businesses more broadly. Unanimously endorsed by the UN Human Rights Council in 2011, the UNGP have received wide support from states, civil society and the private sector – including the Australian Government. Part of the UNGP recommendations include that governments should protect individuals from human rights abuses by business through “appropriate policies, regulation and adjudication”. The UNGP also requires businesses to act with due diligence to “avoid infringing on the rights of others and to address adverse impacts with which they are involved” in public statements. **While the UNGP are viewed as “soft law”, they have formed an important foundation for “hard law”, such as the UK MSA.**⁹³
- 3.2.7. There are many UN Conventions, protocols and guidelines that have developed over many decades articulating the obligations upon governments to respect human rights, starting with the Slavery Convention of 1926.⁹⁴ International bodies such as the Organisation for Economic Cooperation and Development⁹⁵ and the International Labour Organisation⁹⁶ have also introduced guidelines to address the issues of responsible business conduct and respect for human rights, including addressing the issue of modern slavery in supply chains. Australia has supported and ratified many of these international instruments, and **we support the Australian Government ratifying the ILO Forced Labour Protocol (2014) which imposes obligations upon parties to address forced and compulsory labour in the modern context.**⁹⁷
- 3.2.8. The Sustainable Development Goals (“**SDGs**”) are the most recent international initiative, a deliberative process involving 193 member states and spearheaded by the United Nations. The SDGs are a set of 17 universal goals, with 169 targets for governments, business and civil society for the next 15 years until 2030. They build upon the millennium development goals, which were agreed by governments in 2001 and expired in 2015. The SDGs address topics including poverty, hunger, health, gender equality, climate change and decent work. The SDGs are not legally binding, but they provide a focal point for discussion for governments, civil society and business. Governments will be expected to take ownership and establish national frameworks to achieve these goals, and will be subjected to regional follow up and review by the UN. Most relevant for these purposes is SDG 8 “Decent Work and Economic Growth” which focuses on promoting sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all. Target 8. 7 the taking of: **“immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025 end child labour in all its forms.”**⁹⁸

The Alliance 8.7 has been formed in order to act as a catalyst for action at all levels to support this target, conduct research, share knowledge, leverage resources and accelerate timelines.⁹⁹ Other SDGs relevant to the eradication of modern slavery include Goal 16, ‘Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels’, and in particular SDG 16.2 ‘End abuse, exploitation, trafficking and all forms of violence against and torture of children’. Both 8.7 and 16.2 highlight the strengthened resolve of the international community to eradicate modern slavery.

VOLUNTARY INITIATIVES

- 3.2.9. Over the last 20 years, there has been a rapid growth in the number of voluntary initiatives that focus, for example on 'fair trade' or ensuring decent working conditions in a specific region or sector. Voluntary initiatives are usually sectoral or geographically based, and can be driven by both the government and private sector, designed to encourage a behavioural shift. While useful, voluntary initiatives are most effective for those who already have some incentive to comply with the law, particularly for those businesses who are consumer facing or have a strong brand. For example, the powerful images of children in Pakistan sewing Nike footballs in the 1990s were widely reported.¹⁰⁰ Facing the real risk of losing partners and customers, Nike (and arguably the sector) moved to address the wide-spread risks and challenges faced when partnering with cheap manufacturers overseas. As a result, Nike became a vocal and active contributor towards the formation of the Apparel Industry Partnership and the UNGP. **Yet, what has become clear is that not all businesses can be relied upon to take up the mantle of voluntary initiatives, which has led to significant gaps in accountability, particularly for those businesses who are not directly in the public eye.**
- 3.2.10. Another example is the Brazilian National Pact for Eradication of Slave Labour (2005) ("**Pact**")¹⁰¹ which is a nationwide pledge by businesses to eradicate forced labour within their organisation and supply chains. The Pact has been signed by the Brazilian government and about 400 businesses representing 35% of Brazil's GDP. While the Pact is voluntary, once signed, members agree to be monitored by external third parties. In 2014, InPACTO was incorporated to strengthen the impact of the Pact and monitor the commitments made by these businesses.
- 3.2.11. A recent example of sector agreements that are both geographical and sector driven are the covenants negotiated between the Dutch government, civil society and businesses. Under these negotiated agreements, the stakeholders covenant to (amongst other things) identify risks of modern slavery within their supply chains, strengthen due diligence processes and issue regular progress reports. So far two agreements have been signed; one by the garment and textile industry (signatories represent at least 30 percent of sales in the Netherlands and the aim is to achieve 80 percent of clothing businesses as signatories by 2020)¹⁰² and another by the banking sector (signed by 13 major Dutch banks).¹⁰³ Participants agree to be independently monitored.
- 3.2.12. Voluntary initiatives have traditionally been attractive to businesses and governments because they allow for a focused sector approach with limited government involvement. However voluntary initiatives primarily work best for businesses that are already doing, or want to do, the right thing. They do not address the issue of businesses who are either wilfully blind to these issues, or negligent. **Voluntary initiatives can also be costly, and the standard of reporting is at risk of being inadequate or false if unregulated.**
- 3.2.13. Generally voluntary initiatives, whether they be in respect of modern slavery, environment or other policy matters, are largely ineffective in driving real change. Indeed, despite the last 10 to 20 years of developing voluntary initiatives, modern slavery continues to flourish. More is needed to compel a change in behaviour. As a result of these concerns, there are growing calls for governments to move away from sole reliance on voluntary initiatives as a response to modern slavery. **Governments should build on the foundation set by voluntary initiatives, by introducing binding regulation and independent monitoring to ensure a level playing field and sector-wide transparency.**

MANDATORY REPORTING LAWS

- 3.2.14. In the past 4 to 5 years, there has been a significant shift from voluntary initiatives to laws mandating supply chain reporting by large global businesses on modern slavery risks, and in some instances human rights more broadly.¹⁰⁴ Typically, the definition of “large” is often linked to domestic regulations that categorise an organisation’s size based on annual turnover for tax and accounting purposes. High risk sectors such as extractive industries, retail and product manufacturing have also been a target of lawmakers. Mandatory reporting obligations have the advantage over voluntary initiatives as they require all players to meet the same standard, thereby ensuring a more level playing field. Without this, there is a risk of penalising businesses that put the hard work into doing the right thing, while benefiting those who are negligent or unwilling to focus on this issue.
- 3.2.15. Typically, the enforcement mechanisms for these mandatory reporting laws primarily rely on the risk of reputational damage to motivate businesses. Reports must be public, which in theory allows for public access to information to judge whether businesses are doing enough, and vote with their purses, or in respect of investors, with their capital. Yet arguably to date, existing laws have failed to back up these laws with central repository systems, which make comprehensive oversight difficult. However, civil society organisations have taken up the challenge, creating for example registries of modern slavery reports. The increasing analysis of these reports suggests that while still imperfect, the court of public opinion is beginning to operate successfully. Yet, this does depend on the market and consumers having access to sufficiently robust information that they can make informed decisions about where to spend their money. The leading jurisdictions with implemented mandatory reporting laws are the UK, California and the European Union.

3.2.16. **CALIFORNIA**

The California Transparency in Supply Chains Act (2010) (“**Californian Supply Act**”)¹⁰⁵ was the first mandatory reporting legislation introduced globally and was effective 1 January 2012. California remains the only state in the United States to have enacted supply chain transparency legislation. California is the sixth largest economy in the world and is home to strong and diverse economies, including Silicon Valley and Hollywood.¹⁰⁶ The Californian Supply Act requires affected businesses to disclose its efforts to eradicate modern slavery from its direct supply chain for tangible goods offered for sale. It only applies however to retail sellers and manufacturers (wherever incorporated) doing business in California with a global annual revenue of over US\$100 million. It does not apply across all sectors.

The US Franchise Tax Board is required to keep a list of retail sellers and manufacturers required to disclose, based on tax returns. The list is submitted annually to the Attorney General by November 30 each year, but is not publicly available. In terms of mandatory formalities, businesses are required to publish reports on their homepage.

Content is also mandated to a degree, with the law requiring that businesses must at a minimum report on the extent to which it (i) engages in verification of supply chains to evaluate and address risks of modern slavery, (ii) conducts audits of suppliers, (iii) requires direct suppliers certify materials incorporated into the product, (iv) maintains internal accountability standards and (v) provides employee training.

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There is no timing requirement, but it is expected that statements be updated regularly. Failure to comply with this requirement can result in an action being brought by the Attorney General for injunctive relief. The Justice Department has been sending letters to businesses who fall within the Act, which suggests they may move towards enforcement for those who fail to publish. To date, we are not aware of any action taken.

The Californian laws have been met with mixed reactions. It was undeniably ground-breaking and paved the way for the introduction of Section 54 of the UK Modern Slavery Act. However, one key criticism of the Californian Supply Act is that the Franchise Tax Board does not make the list of businesses that are subject to the law available to the public. This means consumers are unaware of which businesses are required to comply with the law, which hinders transparency and makes it difficult for consumer regulation. A recent benchmarking report reviewed the performance of almost 2,000 statements and corporate compliance with the Californian law. The report found that overall that many businesses have demonstrated noticeable improvements. Statements are becoming increasingly compliant with the legal requirements and pro-active initiatives are being taken by individual businesses to responsibly produce and source goods.¹⁰⁷

The US Congress is currently considering the Business Supply Chain Transparency on Trafficking and Slavery Act (2015), a bill amending the Securities Exchange Act of 1934. This bill is modelled on the Californian Act, although if enacted it would apply across all sectors (not just manufacturing and retail).¹⁰⁸

3.2.17. **UNITED KINGDOM**

Section 54 of the UK MSA requires large businesses to annually publish a statement outlining what they do to ensure there is no slavery within their own organisation, and crucially within their supply chains. Every organisation (whether British or foreign) that carries out business in the UK supplying goods or services with a turnover of more than £36 million is required to report. Section 54 covers every sector, not just the perceived 'higher risk' sectors such as manufacturing or food suppliers.

Section 54 has a few mandated formalities, namely that the statement must be (i) approved by the board of directors; (ii) signed by a director; and (iii) published on a prominent place on the organisation's website. In contrast, the content of the statement is not mandated. Government guidance suggests that the statement can (but does not have to) cover six main areas: structure of business and supply chains; internal and external policies; due diligence processes; risks identified and mitigation strategies; KPIs to demonstrate effectiveness of policies and training and whistleblowing policies.¹⁰⁹

The only mandatory requirement is to sign and publish a statement annually. The first statement should be published promptly after the financial year-end. Failure to publish a statement could result in injunctive proceedings being brought to require compliance and continued resistance could result in unlimited civil fines. The content of the statement is not regulated, but businesses risk reputational fall out if the public considers the business has not done enough to respond to the risks of modern slavery. Please see section 4 below for full commentary on the effectiveness of the UK MSA.

3.2.18. **EUROPEAN UNION – NON-FINANCIAL REPORTING DIRECTIVE**

The EU Directive 2014/95/EU (“**EU Directive**”) on disclosure of non-financial and diversity information requires large businesses to include in management reports a non-financial statement containing information relating to social, environmental and human rights matters. While modern slavery is not expressly mentioned, this is caught under the category of “human rights”. Broadly speaking, businesses are required to disclose if they (i) are a large company with more than 500 employees; or (ii) are a company of public interest, which includes EU listed companies and unlisted companies such as credit institutions, insurance undertakings or other “public interest entities” as nominated by member states. It is expected to impact a minimum of 6,000 businesses operating in the EU.¹¹⁰

The EU Directive has strict mandated content. Businesses are required to report information to the extent necessary to understand the development, performance, position and impact of their activities, with a minimum reporting on environmental matters, respect for human rights, social and employees matters and anti-bribery and corruption matters. The mandated content for the statement which must include: (i) a brief description of the business model, (ii) reporting principal risks of severe impacts of the business model including how the business manages that risk and (iii) reporting on policies and due diligence performed. Irrespective of whether the risk is material to the profitability of business operations, the EU Directive requires businesses to consider the scale and gravity of actual and potential societal and environmental impacts of its relationships, products and services.¹¹¹

The statement must be approved by all directors (including non-executive directors) meeting the EU Directive requirements. The EU Directive uses the “comply or explain” principle. In other words, if a business fails to pursue policies for a certain category, it must explain why in the statement. The EU Directive leaves penalties for non-compliance to be set by domestic laws.

The EU Directive was required to be implemented into national laws by 6 December 2016, but it is presently unclear how many EU member states have successfully implemented such laws, other than the UK¹¹² and the Netherlands.¹¹³ An EU Directive is a legal act of the European Union which requires member states to implement domestic laws to comply with it, but it does not dictate how. This gives significant flexibility to member states when introducing the EU Directive domestically. Compulsory reporting will begin from 1 January 2017, with first reports due in 2018.

3.3. OTHER INITIATIVES BY GOVERNMENTS

Other than mandatory reporting laws for large businesses (as per the model set out in Section 54 of the UK MSA) there are a range of other legislative initiatives by international governments designed to tackle the issue of modern slavery in supply chains. We have briefly outlined these initiatives below which include: (i) managing public supply chains (ii) mandatory due diligence, (iii) customs and import controls, (iv) civil sanctions and (v) directors duties.

PUBLIC PROCUREMENT

- 3.3.1. One area of best practice demonstrated by the United States government is the public procurement sector. US lawmakers recognised that public spending contributes significantly to the global economy and governments can exercise considerable influence over their suppliers, and in turn global supply chains. Governments procure a range of goods and services, including electronics, food and logistics services. On average, government procurement accounts for 17% of GDP in OECD member countries.¹¹⁴ The US government is the single largest purchaser in the global economy, with annual spending of up to \$500 billion.¹¹⁵ The Australian Government procurement contracts were valued at \$56.9 billion for the year 2015/16, with over 70,338 contracts.¹¹⁶ The likelihood of finding modern slavery within these vast supply chains is high. **This presents an opportunity for governments to act as a “model provider of goods and services” and demonstrate best practice for all commercial activities whether privately or publicly funded.**
- 3.3.2. In the United States, a series of laws under Executive Order 13627, issued by President Obama in 2012,¹¹⁷ require US government contractors to certify that they, and their subcontractors, are not engaged in human trafficking activities. High value suppliers are also required to create a “compliance plan” detailing how the supplier proposes to prevent modern slavery and to certify that no “prohibited” goods or services are being supplied (including goods produced through modern slavery), in order to access government markets.¹¹⁸ These laws aim to ensure all US government contracts are performed free of human trafficking and forced labour. The government has powers to audit and investigate suppliers, and require compliance plans and certification for high value contracts. These laws also go further than relying on reputation risk, underpinning enforcement mechanic is the threat of excluding non-compliant operators from doing business with the US government.
- 3.3.3. This issue was previously looked at by a previous Australian government. In March 2013, then Prime Minister Julia Gillard announced a new government strategy on ethical contracting to ensure that the Australian Government’s procurement practices assist in identifying and eliminating modern slavery.¹¹⁹ This idea garnered bipartisan support, with the subsequent Abbott Government indicating support for this idea. However, it is not yet clear what action has been taken in this regard, other than the creation of an ethical procurement information guide.¹²⁰
- 3.3.4. It is consistent with governments’ duty to protect human rights under UNGP Principle 6 that governments should undertake a risk assessment of their procurement supply chains. Concrete requirements should be clearly articulated regarding what is expected from preferred suppliers and regarding guidelines to protect the government from inadvertently buying goods or services produced by slavery.¹²¹

MANDATORY DUE DILIGENCE

- 3.3.5. **The recently introduced French Corporate Duty of Vigilance requires mandatory due diligence for large businesses.**¹²² This law establishes a legally binding obligation for parent companies to prepare a “vigilance plan” which identifies and prevents serious infringements and impacts on human rights (including modern slavery) and environmental impacts resulting from their own activities and crucially, the activities of their supply chains and subsidiaries. These plans must be published annually, alongside the company’s annual report. It requires detailed mapping of risks, details of procedures used to assess risks with suppliers, alert mechanisms to collect risk information and a monitoring scheme. Non-compliance with these laws may result in court action requiring businesses to comply with the law, and/or being required to compensate victims who have suffered as a result of their non-compliance. Initial drafts of the law had proposed significant civil fines regime for failure to comply, but these are contested and the provisions were not adopted in the final version of the law as passed. Yet, the law has limited reach; it only applies to the largest businesses established in France, affecting about 150 French businesses.
- 3.3.6. **Similar to the French Corporate Duty of Vigilance, legislatures in both the Dutch and Swiss parliaments are considering laws to introduce due diligence obligations.** The Dutch Bill, which is awaiting approval of the Senate, will require due diligence with regards to child labour. If child labour is identified, an action plan to address the issue must be developed, and the business must publish a plan of action, which will be recorded in a public register as operated by a public authority.¹²³
- 3.3.7. In Switzerland, the Swiss Coalition for Corporate Justice have been campaigning to amend the constitution to require businesses to carry out due diligence to (i) identify impacts (both real and potential) on intentionally recognised human rights issues and environmental standards, (ii) stop existing violations and (iii) account for violations and actions taken. The law would attract civil liability and allow claims for damages against business. Under Swiss law, if an initiative to amend the constitution gains over 100,000 signatures from the Swiss electorate, it can be submitted to the Federal Council for review. If not retracted, it can be put to popular vote (i.e. referendum). This campaign received 120,000 votes and is supported by 80 civil society businesses, and in October 2016 was presented for consideration by the government. It is currently being considered by the Swiss Parliament.¹²⁴
- 3.3.8. Another example of mandatory due diligence is Section 1502 of the Dodd Frank Act (a 2010 US federal law) that addresses the risk of sourcing conflict minerals from regions in Africa. Specifically, these laws relate to the conflict in the Democratic Republic of Congo (“DRC”), a country with immense economic resources but has until recently being at the centre of “Africa’s world war” with some estimates of up to five million lives lost.¹²⁵ This conflict was partly related to the country’s mineral wealth and many rebel groups were illegally using profits from mineral trading to fund further fighting. In response to growing political pressure for western countries not to be inadvertently purchasing conflict minerals, section 1502 of the Dodd Frank Act came into force in November 2012 imposing strict due diligence obligations in addition to reporting requirements.¹²⁶ Section 1502 requires businesses to both undertake due diligence, and to report on it in the context of conflict minerals (specifically gold, tin, tungsten and tantalum) from the DRC and adjoining countries. The rule applies to any business that files reports with the US Securities and Exchange Commission and the minerals are “necessary to the functionality or

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production” of a product manufactured or contracted to be manufactured by the business. The test is whether a business has influence over the manufacturing of the product, and the law sets out parameters for what influence is deemed to be. Crucially, section 1502 applies to USA and foreign businesses.

- 3.3.9. Section 1502 is limited in scope and operation, but if conflict minerals are found to be manufactured, the obligations are onerous and include obtaining independent auditors and extensive due diligence. Section 1502 was expected to apply to approximately 6,000 businesses, and estimated initial costs of compliance to be anywhere between US\$8 billion and US\$16 billion, with annual costs thereafter of US\$207 million and US\$609 million.¹²⁷ Industries primarily affected are electronic and communications, aerospace, automotive, jewellery and industrial products.¹²⁸ Early evaluations have demonstrated positive progress with businesses being forced to perform due diligence deep into supply chains, though concerns have been raised in terms of businesses failing to consult with affected communities and the practical difficulty of verifying conditions and chain of custody on the ground.¹²⁹ With the appointment of Donald Trump as President, one of his priorities appears to be a repeal of the Dodd Frank Act. While Trump publicly campaigned for a repeal of Dodd Frank in its entirety, initial reports seem to suggest a more limited repeal is likely, focusing on reducing government regulation and controls over banks.¹³⁰ Time will tell whether section 1502 is affected during this new presidency period.¹³¹
- 3.3.10. The EU is expected to introduce similar legislation in May 2017, having recently reached broad agreement on similar trade rules for minerals produced in conflict regions.¹³² Technical details are still being established, but the expected EU rules will also regulate trade in tin, tungsten, tantalum and gold. It is anticipated this will affect up to 800,000 businesses, particularly those in the automotive, electronics, aerospace, packaging, construction, lighting, industrial machinery, jewellery and tooling industries.¹³³
- 3.3.11. Finally, it is worth noting that under the Illegal Logging Prohibition Act (2012) (Cth), there is precedent for mandatory due diligence legislation in Australia.¹³⁴ This Australian law operates at a federal level and requires importers and processors of timber to undertake due diligence to minimise the risk of illegal timber imports. This Act came into effect on 30 November 2014 but the initial soft compliance period was extended until early 2017.¹³⁵ Non-compliance with due diligence requirements can result in criminal offences and penalties with imprisonment of up to 5 years and fines of up to \$450,000 for body corporates.

CUSTOMS AND IMPORT CONTROLS

- 3.3.12. Recognising that governments exercise considerable control over business operations through their import and export requirements, in the United States the Trade Facilitation and Trade Enforcement Act (the “**Trade Facilitation Act**”) came into play closing a loophole in the existing US Tariff Act. It sets an absolute prohibition of entry into the US of any goods mined, produced or manufactured in whole or in part overseas by convict labour, forced labour or indentured labour. Upon demand, importers must provide evidence to prove goods are “slavery-free”.¹³⁶
- 3.3.13. These laws have had some significant impacts, as raids against importers have had dramatic financial and reputational consequences. For example, a recent raid wiped US\$75 million off the

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market value of Malaysian company Pure Circle who was attempting to import “Stevia” a form of sweetener which is allegedly produced by forced labour.

- 3.3.14. The US Department of Labour maintains an official list of goods which it has reason to believe have been produced by forced labour, child labour and indentured child labour under the Trafficking Victims Protection Reauthorization Act (2005) and subsequent reauthorisations.¹³⁷ As of September 30, 2016, the List of Goods Produced by Child Labour or Forced Labour comprises 139 goods from 75 countries. The US maintains the list primarily to raise public awareness about forced labour and child labour around the world and to promote efforts to combat them. It is not intended to be punitive, but rather to serve as a catalyst for more strategic and focused coordination and collaboration among those working to address these problems.

DIRECTORS DUTIES

- 3.3.15. In some countries, companies law has been evolving to introduce a new duty of directors, namely that directors must consider human rights (including modern slavery) even if it conflicts with shareholder interests (i.e. profits). An example is the UK Companies Act, where director’s must consider human rights as part of the directors “duty to act in good faith and promote the success of the company” and report annually on human rights issues in the context of business performance and operations.¹³⁸
- 3.3.16. In Australia, it could be debated whether human rights should (and can) be reviewed as part of statutory duties to “act in good faith in the interests of a corporation and for a proper purpose” and to have a “duty of care and diligence” to non-shareholder stakeholders. This is a largely untested but a developing area of law.¹³⁹

CIVIL SANCTIONS

- 3.3.17. In some regions, lawmakers are pushing for greater civil sanctions to punish (and prevent) those businesses who are complicit in modern slavery offences, such as fines, compensation orders and deregistration of companies.
- 3.3.18. For example, in Brazil, the recently reinstated “Dirty List” (names and shames corporates who have been found to be using modern slavery) and the newly adopted Law No 14,946 bans businesses from operating in Sao Paulo for up to 10 years if they have been found to directly or indirectly benefit from modern slavery. However, the Dirty List has recently suffered from accusations of corruption in the administration of the list when several employers who had been known to have profited from human trafficking disappeared from the list.¹⁴⁰
- 3.3.19. In Canada, an emerging body of law prosecuting mining companies operating in high-risk regions has the attention of lawyers, financiers and investors. The civil case against Nevsun Resources for forced labour and other human rights abuses at the hand of an overseas subcontractor based in Eritrea is likely to have significant implications for construction and extractive companies operating in high risk countries. If the prosecutors are successful in proving their case against Nevsun, it will require businesses to conduct thorough due diligence for human rights risks.¹⁴¹

CONCLUSION

- 3.4. **It is important to bear in mind the impact of globally integrated business, when combined with weak legislation and poor law enforcement in many supplier countries.** Governments must be cognisant that imposing varying and different regulations on global businesses may hinder rather than promote sustainable change for business. There is a compelling case for countries to agree on common principles when addressing modern slavery, which provides a consistent approach for multinational corporations. This will be a delicate balance for the Australian Government to manage, but one that with the benefit of the consultation process as part of this Inquiry is more than achievable.
- 3.5. Finally, we also note that laws are undermined unless they are appropriately implemented, enforced and monitored. There are countless examples of countries with terrible records for modern slavery abuses (for further details please see the Global Slavery Index, 2016), but ironically on paper have excellent domestic laws and have ratified all relevant international laws. Australia must consider not only how to implement the new laws, and how to improve on the UK model, but also how to ensure that the new laws are enforced and upheld, particularly given the transnational nature of some of the proposed requirements.

THE BALI PROCESS GOVERNMENT AND BUSINESS FORUM

The Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime is a regional forum that aims to eradicate modern slavery.

The Bali Process is Co-chaired by the Australian and Indonesian Foreign Ministers and was established in 2002 as a forum for policy dialogue, information sharing and practical cooperation. It is made up of 45 member countries, the United Nations High Commissioner for Refugees, the International Organization for Migration and the United Nations Office of Drugs and Crime. The 45 Bali Process member countries represent two-thirds of the world's population and more than two-thirds of the 45.8 million people around the world who are trapped in modern slavery.

The Bali Process Government and Business Forum, which will be launched in August 2017 in Perth, Western Australia. It will bring together Bali Process Ministers and key business leaders from across the region to examine modern slavery with the aim of adopting an agreed set of principles and to work together to ensure real change. It will be co-chaired by Andrew Forrest (Chairman, Fortescue Metals Group) and Eddy Sariaatmadja (Chairman, founder and CEO of Emtek).

“One thing is clear: no nation can end modern slavery alone. Eliminating this global scourge requires a global solution. It also cannot be solved by governments alone...But governments have a special responsibility to enforce the rule of law, share information, invest in judicial resources and espouse policies that urge respect for the rights and dignity of every human being.”¹⁴²

John F. Kerry, Former US Secretary of State

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3.6. **BEST PRACTICE: BUSINESSES**

OVERVIEW

- 3.6.1. There are many issues faced by businesses when addressing modern slavery in supply chains. On the surface, it may appear there is an inherent tension between corporate responsibility and maximising profits of shareholders. The complexity of supply chains can seem insurmountable to inexperienced personnel with insufficient internal resources.
- 3.6.2. However, it is important to understand what businesses are being asked to do and what is considered best practice. Businesses are not expected to monitor every single supply chain back to its source. For most businesses, focusing on first tier, higher risk sectors and higher risk supplier relationships will be a realistic first step. When responding to issues of modern slavery, leadership must be engaged. Senior leaders need to see the issues first hand, and often this will open doors to resources and culture change within an organisation. In addition, sector collaboration is necessary, even with direct competitors. When resources are shared and supplier lists are made public, issues can be addressed on a sector basis and help to create a level playing field.
- 3.6.3. Modern slavery is the first piece of a complex puzzle for businesses addressing human rights, fair working conditions and discriminatory practices, which are related and sometimes indivisible crimes. In some ways, it may in fact be easier to first address modern slavery in supply chains before tackling the broader impact of businesses on human rights and improving employment. With a clear legal framework that encourages businesses to take proportionate and reasonable action within their spheres of influence and through the sharing of resources across all sectors, businesses can play an important part in eradicating modern slavery across the world.
- 3.6.4. In this section, we highlight examples of best practice from leading businesses, including Marks and Spencer and the Ford Group, focusing on:
- The importance of engaging executive level staff
 - Collaborative partnerships
 - Knowing your suppliers
 - Risk assessment
 - Use of technology
- 3.6.5. We also summarise why there is a business case for eradicating modern slavery, as there are commercial benefits for businesses who address these issues proactively and adopt a sustainable long-term business model.

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THE BUSINESS CASE FOR ERADICATING MODERN SLAVERY

- 3.6.6. **Reliance on the labour of modern slaves is not only a moral issue, but a commercial one.**
- 3.6.7. Modern slavery blocks the ability of many sectors to create sustainable jobs and enhance and improve employment. Often when businesses investigate modern slavery, it can unlock the door to reveal other offences further down the spectrum of severity. Businesses may not always find cases of modern slavery within their supply chains, but may find - for example - that contracted workers are being severely underpaid. These issues feed into other priorities for governments, such as labour hire conditions, health and safety and addressing gender inequalities.
- 3.6.8. A recent report by the CORE Coalition¹⁴³ summarised the benefits to businesses of playing an active role to eradicate modern slavery. This includes improved risk assessment; management of suppliers; improved investor relations; improved consumer relations in the face of mounting public pressure; and an increasingly ethically conscious market and improved employee engagement, recruitment, retention and motivation of staff. CORE Coalition reported findings that having an upstanding reputation as an employer of choice will reduce recruitment costs, attract new talent, and ensure workforce stability and a low employee turnover.¹⁴⁴
- 3.6.9. Innovative businesses have already begun to realise that dealing with modern slavery can be a point of competitive advantage, and that competing on substandard ethical practices is not good business practice. Andrew Wallis, CEO Of Unseen, comments that businesses will use legislation such as section 54 of the UK Modern Slavery Act, “as a means to innovate when tackling the problems they face with modern slavery”.¹⁴⁵ Or in other words, as recently stated by the Adidas Group “addressing modern slavery is a pre-competitive issue.”¹⁴⁶

“Sustainability moved from being a risk and reputation function, to a business lever function to being an innovation function ... This unlocked in the company a huge insight, which was solving a sustainability problem can actually unlock new performance, new price or new aesthetic benefits.”¹⁴⁷

Nike, Beverly Jones Chief Sustainability Officer

KEY EXAMPLES OF BEST PRACTICE

3.6.10. We have summarised a few examples of best practices of leading businesses who are successfully responding to the risks of modern slavery.

3.6.10.1. **EXECUTIVE LEADERSHIP**

Best practice initiatives by businesses are always driven by senior leadership. Senior executives and the board must be engaged early on to understand and appreciate the risks of modern slavery, to ensure there is appropriate resourcing and staffing to help transform corporate culture. Engagement by the CEO and Board in these issues encourages businesses to set short to long term key performance indicators and the development of transparent and efficient strategies to transform corporate culture. The ETI Report describes the engagement of senior leaders as the *“strongest enabler of corporate action on modern slavery, seen by all companies as crucial in driving effective responses and overcoming critical challenges”*.¹⁴⁸

Paul Polman, Chief Executive Officer of Unilever is a good example of a business leader who is outspoken on his belief that “business should serve society”, and using Unilever’s leverage and influence to work for change around big issues, including modern slavery. He has also since taking on the CEO position at Unilever in 2009, led a turnaround in profitability for the Group.¹⁴⁹ ***“First and foremost, I am a businessman. I want action. This world is very long on words and very short on action.” Unilever, Paul Polman Chief Executive Officer¹⁵⁰***

3.6.10.2. **COLLABORATIVE PARTNERSHIPS**

Businesses that understand they cannot “do it alone” invest resources and time in engaging meaningfully with other businesses, industry associations, multi-stakeholder initiatives, government bodies and NGOs to ensure greater progress. Benefits include the ability for stakeholders to pool resources across the sectors (such as voluntary initiatives, shared training, providing supplier lists, non-sensitive audit results), avoid duplicative efforts and a greater degree of consistency across sectors.

Engagement with other businesses and organisations also provides a common base line standard for lower tier suppliers who can become overburdened with competing ethical policies from first tier businesses. What is clear is that partnerships must be “fit for purpose” and tailored to the sector, to avoid becoming (or being perceived as) a public relations exercise. When businesses engage actively with the government, there is opportunity to create a policy environment that enables rather than holds back sustainable corporate activities. Many large businesses have already stepped into these roles, particularly in developing countries where large businesses can raise standards and build institutional capacity. Business is increasingly fulfilling key roles that the public sector has been responsible for traditionally.

There are many examples of partnerships and collaborations. A recent example is the partnership between the Marshalls Group and Hope for Justice.¹⁵¹ The partnership focuses on preventative activity aimed at employee and supplier education, providing expert remediation services if required and to follow up on commitments made by the Marshall Group in their first modern slavery disclosure statement. The partnership focuses on the UK, Vietnam and India in the first instance.

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Another well documented example of a corporate/government collaboration between the Adidas Group as part of the 1997 Atlanta Agreement, working together to reduce child labour in the football stitching industry in Pakistan and India. The programme was monitored by the ILO. Further details are described in the Adidas Group submission to this inquiry.¹⁵²

3.6.10.3. KNOW YOUR SUPPLIERS

Just as collaboration with external stakeholders is key, businesses are increasingly realising they need to move away from a purely transactional and arm's length relationship with their suppliers, to forming longer term partnerships with direct suppliers.

For some businesses, this has meant reducing the complexity of their supply chains or publicly sharing lists of suppliers. For others, vertical integration of supply chains is not possible, businesses are seeking to “know their supplier” starting with direct and first tier suppliers.

Businesses should view their relationships with suppliers as a longer-term investment, in which they not only seek to eradicate modern slavery, but also seek to improve working conditions, health and safety and move towards developing a fair living wage. Businesses demonstrating best practice have well developed through policies, contractual protections, procedures and well tested systems. These businesses also know what is achievable and appropriate as a first step. By focusing on first tier and strategic contracts, being those which business can influence and control, and identifying any high risk goods and regions, the business can meaningful identify and tackle the issues. Supply chain mapping is critical. Marks and Spencer are a good example of best practice, with an interactive online supplier map which visualises the full list of suppliers across the world, searchable by region or product, with contact details for each factory and a breakdown of the number of employees and gender.¹⁵³

SECTION 54 MODERN SLAVERY STATEMENT – MARKS AND SPENCER

Marks and Spencer (“M&S”) statement published June 2016 is a leading example of a modern slavery statement. M&S is a global retailer with 3,000 suppliers operating in 70 countries and a turnover of £10.4 billion and arguably has been one step ahead of regulation, with established global sourcing principles since 1998. This demonstrates that a successful approach to modern slavery is not expected to occur overnight, but will take time to establish. The strengths of the M&S statement include:

- Being **upfront** about instances of non-compliance. M&S noted from the 2015/16 ethical audits that 14 non-compliances were identified, ranging from absence of a clear policy on forced labour, reports that toilet breaks were restricted, deposit payments for protective equipment, and retention of workers passports.
- Clearly **identifying its biggest risk**, being the M&S product supply chain.
- **Focused audit** efforts on significant risk areas and prioritising due diligence in these areas e. g. clothing produced in India and migrant workers in Turkey. M&S also recognised limitation of “mainstream” ethical audits, and undertaking specialist audits with forced labour experts in high risk countries.
- **Supply chain mapping** risks across the entire business including retail operations, property, logistics, human resources, IT, international operations, product supply chains.
- The statement itself is succinct and written in plain English, but it contains **links** to more detailed policies, reports and grievance mechanisms on the M&S website. This is important to make sure the statement is a workable and useful document for consumers, with a sufficient level of detail available for those who wish to read in depth.
- **Whistleblowing** policy is available to employees and non-employees who work within the supply chain
- **Supplier contracts** include obligations on suppliers to comply with the MSA, carry out risk assessments within their own supply chains, implement controls to prevent modern slavery and notify M&S immediately of any breaches
- M&S also clearly identify **training** initiatives and commit to training all food employees by the end of financial year 2016/17. They also run bespoke training for M&S Food Suppliers, and all suppliers employing migrant workers for M&S Food are required to attend Stronger Together workshops and cascade the training within their supply bases – including running in local places e. g. Turkey
- For the first time in 2016, M&S listed all first-tier food and clothing suppliers online
- Detailed commitment to **sector collaboration** in UK and internationally
- M&S has clearly identified **key performance indicators** for the next financial year. Consumers can easily check and monitor progress. M&S KPIs are identified as staff training levels, actions taken to strength¹⁵⁴ supply chain auditing and verification, steps taken to upskill high risk suppliers (including ability to detect and mitigate risks) and to investigate reports of modern slavery and remedial actions taken.

M&S is ranked within the top of all statements Business and Human Rights Resource Centre Report “FTSE 100 At the Starting Line” but has still not achieved top tier 1 status. There are noted areas for improvement include reporting on suppliers in second tier or beyond (where risks of slavery increase) and reporting on engagement with potentially affected right holders and other stakeholders (not just suppliers).

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3.6.10.4. **MANAGING COMPLEX SUPPLY CHAINS AND RISK ASSESSMENT**

For many businesses who are newly looking at commencing a risk assessment for modern slavery in supply chains, the task can seem insurmountable. The complexities, sheer breadth and depth of global supply chain networks are well established. Often the first question is: “where do we start”?

Businesses are not expected to conduct risk assessment on every single supply chain back to source. They are, however, increasingly being asked to look at and understand the risk of modern slavery in their supply chains and put reasonable steps in place to respond to this risk. Just as businesses are routinely asked to manage risk in relation to the environment, safety, bribery and corruption, they are being asked to respond where there is a risk of modern slavery in supply chains.

For most businesses, focusing on first tier, higher risk sectors and higher risk supplier relationships (such as those involving third party labour agents) will be a realistic first step. Sector collaboration is necessary, even with direct competitors. When resources are shared and supplier lists made public, issues can be addressed on a sector basis and help to create a level playing field.

Leading businesses who have been looking at these issues for several years have demonstrated proportionate and reasonable responses strive to introduce genuine change and shift of behaviour within their spheres of influence. This requires making a prudent assessment about which audits to undertake (internal and external), when to engage with third party consultants and third party accreditation schemes, and identifying which vulnerable areas of the business and supply chain. Businesses need well established grievance mechanism policies, which set out how the business should respond to breaches. Immediately terminating supplier relationships rarely provides a long-term solution. Further best practice demonstrated by these businesses also includes strategic training for staff, and suppliers, together with accessible and readily available whistleblowing tools to allow suppliers at all levels of the network to report any issues freely and without discrimination.

While every business will need to deliver a tailored and individual response, we have highlighted an example case study from the Ford Group below.

FORD GROUP

(Reproduced extract from <http://www.qbcatt.org/#focusareas>)

For more information on Ford's sustainability efforts, please visit www.corporate.ford.com

The automotive supply chain is one of the most complicated of any industry. Automakers like Ford rely on thousands of suppliers to provide the materials, parts and services necessary to make their final products. Many suppliers serve numerous automakers, and each of those suppliers, in turn, has multiple sub-suppliers. There are often 6 to 10 levels of suppliers between an automaker and the source of raw materials that eventually enter the manufacturing process. The breadth, depth and interconnectedness of the automotive supply chain make it challenging to effectively manage business and sustainability issues.

Understanding and, where necessary, working with suppliers to help improve working conditions in their facilities is one of the key focus of Ford's human rights efforts. This is a major undertaking, as Ford has tens of thousands of supplier facilities globally (see below). It is also a critical task, as they have less control in suppliers' facilities than in their own, and sourcing is increasingly expanding to emerging economies.

Forced Labour in Brazil

In 2006, Ford discovered that charcoal produced in Brazil with the use of forced labour had found its way into its supply chain. Pig iron is a key ingredient in steel production, and in Brazil, charcoal is often used as fuel in the production of pig iron. The charcoal is made from wood harvested in remote areas of Brazil where instances of forced labour have been found to occur. At the time this issue was brought to Ford's attention in 2006, pig iron was purchased directly by Ford and used at their Cleveland Casting Plant.



Ford's response:

Upon learning of the situation in Brazil, Ford immediately stop sourcing from the site that was identified in the investigation. However, they continued dialogue with the pig iron supplier and helped them to develop management systems until the supplier could ensure it was not supporting forced labour in the supply chain for pig iron. Ford then identified all potential points of entry for pig iron in Ford's value chain and engaged with all relevant suppliers, seeking assurances from them that forced labour was not employed anywhere in their value chain. This included an intensive mapping of 5 to 6 tiers of suppliers (including importers, exporters and trading companies). Ford also requested additional details regarding tier 1 suppliers' systems for safeguarding human rights throughout their operations, including procurement.

Collective response:

Ford together with other U. S. automakers decided to start to work together to offer collective training for suppliers on how to avoid purchasing supplies produced using forced labour. This initiative was first coordinated by the Automotive Industry Action Group and then by Business for Social Responsibility. Initial projects from the initiative include joint statements to create a shared industry voice on various issues relating to working conditions, including forced labour. In addition, several local companies together with international organizations and the Brazilian government created the Citizens Coal Institute (ICC) with the aim of preventing forced labour instances in the Brazilian charcoal industry. The organization has created a code of conduct and sends inspectors to assess compliance and to disseminate the code. Non-compliant suppliers are decertified and purchases by ICC's members are discontinued.

Lessons learned:

This case study illustrates Ford's proactive approach to addressing human rights issues deep in Ford's raw materials supply chain. It also underscores the importance of the major effort Ford is undertaking to assess, train and engage suppliers on the Ford Code of Conduct and assist them in integrating the Code into their own policies and systems.

Companies face important challenges in managing forced labour impacts in complex supply chains with multiple tiers of suppliers over which little control can be asserted. Ford's initiative requiring tier 1 suppliers to cascade policies and training to their own suppliers is an effective tool to disseminate best practices and to improve working conditions in sub-tier suppliers. In addition, companies must be ready and able to react to force labour allegations by quickly launching "ad hoc" investigations. Finally, contract clauses enabling companies to cease commercial relations until noncompliance cases are remediated provide suppliers with an important incentive to comply with policies.

A code of conduct is just the first step to ensure fair labour practices in supply chains. Companies need to engage suppliers and assist them developing their own policies and management systems to ensure compliance. Suppliers should do the same with their own suppliers, and so on. Broader patterns of forced labour like the one described in this case, require not only individual responses by companies, but also coordinated action by industry organizations and governments.

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3.6.10.5. TECHNOLOGY

One emerging area of best practice is harnessing the power of technology to address modern slavery risks. While some of this technology is innovative, there are examples of existing systems in most global corporates which expose bribery, corrupt practices and money laundering. These are automated systems and procedures that are well developed to identify red flags for further development. Some leading businesses, including the financial institutions, are extending these technology systems to identify modern slavery risks. There are also exciting new technological developments which should be considered, outline in the case study box below.

EXAMPLES OF TRANSPARENCY TECH

BLOCKCHAIN *As reported by Forbes* - Blockchain is essentially a coding technique that allows for verification of a transaction, no matter how small, between two entities. Reports suggest blockchain technology could one day review every ingredient in every jar, in every case, in every shelf – including whether products have been not only sourced free of modern slavery.

“...blockchain could one day provide certainty on the exact source of every ingredient in every jar, in every case, on every shelf and at all times. Was your palm oil sustainably sourced? Are the cherries in your ice cream organic? Are the avocados in your salad imported from Mexico? To ground it for operations people accustomed to physical product, blockchain is essentially a coding technique that allows for verification of any transaction between two entities. In food, for instance, it means each time a load of apples is confirmed to have arrived at the apple juice factory a code is generated, stored remotely as a string of characters, there to remain available for verification at any time in the future. Information about both the load of apples and the factory receiving it is ‘chained’ together by this code. In aggregate, the data can theoretically be portrayed as color-coded maps of every input, conversion step and output along the way from farm to fork. ... Blockchain does not require devices, reading hardware or any physical process to affix tags to cases or pallets. As a result, virtually no transaction is too small to be worth generating a blockchain code, which means supply chain steps as minute as dumping a single bushel of apples into a juice press or removing the solids in a strainer can be cost-effectively recorded.” – Forbes, Kevin O’Marah¹⁵⁵

LABOR VOICES *As extracted from:* <https://www.laborvoices.com/>

Together with a wider system providing metrics on compliance for labour issues, Labor Voices provides real time notifications of safety and compliance issues before they escalate. Innovatively it also provides a simple text-messaging system which is very basic (there is no need for smartphones), whereby workers based in the factories, mines or in the field can use the system to notify suppliers further up the chain of issues they are facing, whether it is overtime or harassment. This can feed into reports for brands or stakeholders, protecting the identity of the person affected at all times.¹⁵⁶ Technology can be used to survey workers on their satisfaction or to what extent they have understood any training or capacity building exercises. New metrics are being developed for reporting. For example, a company is piloting in Cambodia, a form of “YELP” (being the platform used to review and recommend restaurants, services and entertainment in major cities across the world) platform for workers, so workers can peer-review factories. The idea is that this will push workers into better performing factories and the others will have to improve their systems to recruit new workers.

“Protecting human rights around the world, wherever our product falls or work is done on our product, is not an option; it is a business imperative.

Our customers demand it, our staff demand it, and the board and I demand it ...

What tends to shape business behaviour is customers, shareholders and, of course, legislation.”

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ASOS – Nick Beighton, CEO

4. EFFECTIVENESS OF UK MODERN SLAVERY ACT: LESSONS FOR AUSTRALIA

4.1. OVERVIEW

The UK MSA has been as a “game changer” for tackling modern slavery in the UK and engaging business to tackle modern slavery in their supply chains. The key provisions driving its effectiveness include:

- Part 4 introduced the role of an independent Anti-Slavery Commissioner (the “**Commissioner**”). The appointment of Kevin Hyland as the first Commissioner has driven a strong police, business and community response to modern slavery both within the UK and globally.
- Section 54 which requires large businesses to produce a modern slavery statement (also known as the transparency in supply chain provisions). This has seen businesses in the UK and overseas review and adapt their supply chain procedures and bring a new human rights focus to their corporate behaviour and responsibilities.

In this section, we have identified the key successes of the UK model and the areas where Australian legislation could improve or build upon the UK MSA.

What is clear is that the UK MSA is part of a new standard for any government committed to ending slavery. The UK Modern Slavery Act, together with the Californian Supply Chains Act, are but two of many international initiatives that include:

- the inclusion of human rights due diligence in corporate operations and supply chains on the agenda for the 2017 Germany Presidency of the G20;
- the Netherlands new child labour due diligence laws which are currently waiting for approval before the Senate;
- the new French due diligence reporting laws for the supply chains of the top 150 to 200 businesses operating in France, and
- ongoing discussions in Switzerland to make amendments to its constitution in respect of due diligence on matters impacting on human rights.

The reach of the UK MSA has seen many overseas based businesses reporting against the UK MSA. For example, businesses based in Japan, India, Singapore, South Africa, Mexico, Malaysia, the United States, Canada, the UAE and Australia have reported under the UK MSA.¹⁵⁸

The UK MSA has had tremendous impact but inadequacies in the legislation have also been revealed. There are clear areas for improvement, being primarily:

- mandated content for modern slavery statements
- regulation of the public sector;
- the introduction of a centrally managed repository; and
- the maintenance of a list of businesses required to publish statements.

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4.2. THE FORM OF THE MODERN SLAVERY ACT

EFFECTIVENESS

- 4.2.1. **The enactment of the UK MSA as a piece of separate legislation was an effective method of bringing together the legislative framework as a cohesive response to modern slavery in the UK.** The UK MSA is an “umbrella” act in that it is both a “standalone” act which defines and strengthens the offences of slavery and human trafficking and sets out the relevant penalties,¹⁵⁹ but also acts as an “omnibus” act in that it amends provisions of other acts relating to sentencing, proceeds of crime, treatment of underage witnesses, and the provision of legal aid.

LESSONS FOR AUSTRALIA: AREAS FOR IMPROVEMENT

- 4.2.2. **Within the Australian context, it is likely that the UK form of legislation would work well.** The most appropriate structure for introducing the desired legislative reforms is via a primary piece of legislation or “umbrella” act which both stands alone and introduces amendments to other acts where necessary. Existing Australian legislation, which could be built upon, currently provides for:

- Criminal offences of slavery, servitude, forced labour, deceptive recruiting for labour or services, forced marriage, trafficking in persons, organ trafficking and debt bondage;¹⁶⁰
- Corporate liability for criminal offences in certain circumstances;¹⁶¹ and
- Extensive financial and governance reporting obligations for corporations.¹⁶²

- 4.2.3. Under the “umbrella” act structure, while the key provisions regarding supply chain management may ultimately be located in other acts, the primary piece of legislation would be useful in fostering public awareness and support, and providing a vehicle for the remaining provisions which cannot naturally be included elsewhere. The primary act would be the appropriate location for any statement of purpose and the establishment of a Commissioner and the scope of their role, the creation of the repository and to detail requirements for mandatory reporting.

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4.3. THE ANTI-SLAVERY COMMISSIONER

EFFECTIVE PROVISIONS

4.3.1. **A key success of the UK MSA was the appointment of Kevin Hyland as the UK's first Commissioner.** Mr Hyland's appointment has generated considerable attention among the different stakeholders and mainstream media, and mobilised action against modern slavery both within the UK and globally. The benefit of this type of office is well recognised by other international bodies. The EU Anti-Trafficking Coordinator and EU National Rapporteurs (or equivalents) are tasked to improve coordination and coherence between EU institutions, EU agencies, member states and international actors and to develop existing and new EU policies relevant to addressing human trafficking.¹⁶³ An informal network of National Rapporteurs has been established by the EU since June 2009. They are responsible for monitoring the implementation of anti-trafficking policies and play a key role in data collection on trafficking in human beings at national and EU level. There are an estimated 28 appointments of rapporteurs.

4.3.2. **The strength of the office has been in the ability of the Commissioner to provide independent oversight.** To combat modern slavery effectively requires highly coordinated, coherent responses from many different agencies and stakeholders. The range of stakeholders can include government bodies (at both the state and federal level), police, universities, civil society, faith based communities, businesses, industries, unions and those offering victim support. Independent oversight is vital in order to step back and assess the effectiveness of each of these responses, identify gaps and inconsistencies and to provide a focus point for a comprehensive and cohesive strategy. It also encourages the efficient allocation of resources. In order to encourage such oversight, Section 43 of the UK MSA introduces a "duty to co-operate" with the Commissioner, whereby "*the Commissioner may request a specified public authority to co-operate with the Commissioner in any way that the Commissioner considers necessary for the purposes of the Commissioner's functions*". This duty provides the necessary framework to open up conversations across all stakeholders to ensure this independent oversight is meaningful.

"My role is independent and that means it is independent of everyone, whether that's government, whether it's law enforcement, public authorities or indeed the private sector or the voluntary sector. That doesn't mean that I don't work with people, in fact it means that I should be working with all the parties and all the actors involved. It's about bringing all the ideas together, all the plans together. It's about asking: what is the objective here? Also it's me raising issues which I think need to be addressed in a certain way." – Kevin Hyland, Anti-Slavery Commissioner for the UK¹⁶⁴

4.3.3. **The UK Commissioner reports regularly to the public and directly to Parliament to promote transparency and accountability.** Under Section 42 of the UK Modern Slavery Act, the Commissioner must on appointment, prepare a strategic plan to be approved by the UK Secretary of State for approval. The Commissioner is also subjected to annual reporting obligations, whereby the Commissioner must submit to the UK government an annual summary of the exercise of the Commissioner's functions during the last financial year, detailing to what extent the objectives and priorities have been met, what matters have been addressed and other activities undertaken. Kevin Hyland, as the UK Commissioner has published his first report to date, being the Annual Report for 2016.¹⁶⁵ This report was a useful summary of the achievements made to date, where the Commissioner focused in particular on raising

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awareness for health practitioners and local authorities, galvanising focus, victim support, better crime recording (to ensure crime groups do not act with impunity) and working with the police, borders and immigration staff. His annual report shows the sheer breadth of stakeholders and complexities faced, but how vital a central point of focus is in order to bring sustainable and long lasting change. **The requirement for both the strategic and annual reporting by the Commissioner should be replicated in any Australian Modern Slavery Act.**

- 4.3.4. **The UK Commissioner is supported by a panel of expert advisors and specialised staff.** The office operates with a small team with backgrounds in law enforcement, policy, victim support, research and human rights. The UK Commissioner is further supported by members of an Advisory Panel, comprised of leaders in charity, law, faith groups and academia. The variety of advisors and specialised staff, drawing from all aspects of private, public and civil sectors is crucial, and one of the strengths of the UK model.

LESSONS FOR AUSTRALIA: AREAS FOR IMPROVEMENT

- 4.3.5. **An area for improvement on the UK Commissioner model, would be to clarify the role and degree of oversight across the private sector.** Under Section 41 of the UK MSA, the Commissioner's role is broadly stated to *"encourage good practice in (a) the prevention, detection, investigation and prosecution of slavery and human trafficking offences; and (b) the identification of victims of those offences."* There is no mention of the private sector. Yet it is one of the UK Commissioner's listed priorities to engage with the private sector and promote policies to ensure supply chains are free from slavery and encourage effective transparent reporting.¹⁶⁶ The Commissioner recently wrote a public letter to CEOs one year after the introduction of the UK laws, outlining his expectations for next steps and future content of the statements.¹⁶⁷ If this element of the role could be enshrined in legislation, it would ensure the office of a Commissioner would be appropriately resourced to engage with the private sector.
- 4.3.6. **An Australian Modern Slavery Act would also need to be clear on the demarcation between the role of the Anti-Slavery Commissioner and the Ambassador for People Smuggling and Trafficking.** In our view the office of a Commissioner would complement rather than detract from the existing mandate of the Ambassador. The Ambassador's role is to represent the Australian Government's interests internationally, including to ensure deterrence and resettlement is effectively coordinated across the Government.¹⁶⁸ The Commissioner is an independent oversight body, focused on the domestic response to modern slavery.
- 4.3.7. **An Australian Anti-Slavery Commissioner should have oversight over the existing Australian framework.** For example, the Australian Government is midway through a 5 year "National Action Plan to Combat Human Trafficking and Slavery" ("**NAP**") in response to an audit of its anti-trafficking response.¹⁶⁹ There is no external review mechanism for the NAP. The only monitoring and evaluation of progress is undertaken by the Government itself, drawing on agency reports. The Australian Commissioner should be tasked with providing independent oversight of the response across all sectors; from those on the ground identifying victims and providing emergency support services, to the police enforcing laws and prosecutors pursuing offenders, to businesses addressing modern slavery within their supply chains. He or she must identify gaps or weaknesses in existing framework, provide solutions, and ultimately bolster the success of Australia's response to modern slavery, including Australia's prosecution rates.

RECOMMENDATION 1: AN AUSTRALIAN ANTI-SLAVERY COMMISSIONER

We strongly recommend that an Australian Modern Slavery Act creates the office of an Independent Anti-Slavery Commissioner, whose role includes:

- act as a single point of contact and oversight body across all stakeholders;
- encourage best practice in the prevention, detection, investigation and prosecution of modern slavery offences, as defined under the Criminal Code Act 1995 (Cth);
- encourage best practice to identify and protect victims of modern slavery and advocate generally for victims of trafficking including giving the victims a voice;
- monitor operation and implementation of legislation, and understand trends in the criminal environment, and assess the impact of these on suitability and completeness of policies and legislation;
- hold the private and public sector accountable through reporting on performance indicators;
- collect and request data and information on trafficking;
- ensure greater transparency, coordination and efficiency of Government departments on a national and state level, through driving a focus on outcomes not just activities;
- develop accredited training packages;
- freely undertake inquiries into cases which raise issues of public policy and publish such findings publicly; and
- prepare a strategic report on appointment (and upon request by the Parliament) and thereafter annual public reports to detail findings, review progress and recommend strategies.

The office of an Australian Independent Anti-Slavery Commissioner should be a statutory standalone office with dedicated staff and a broadly representative advisory panel.

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4.4. SECTION 54 – ANNUAL REPORTING MODERN SLAVERY STATEMENTS

EFFECTIVE PROVISIONS: SUPPLY CHAIN REPORTING

- 4.4.1. **The introduction of Section 54 of the UK MSA and the requirement for mandatory reporting has driven enormous change in focusing businesses on the responsibility to monitor their supply chains and ensure they are free of modern slavery.** The UK Government has created a system of accountability for the private sector by introducing these reporting requirements. Mandated reporting, which requires approval by the board and the statement to be signed by a director has raised the stakes. It has firmly brought the issue of modern slavery to the agenda of thousands of boardrooms across the UK and globally, and given the general public insight over their actions. Many commentators have been surprised at the level of corporate engagement following the introduction of these mandatory reporting laws. The Ethical Trading Initiative and Hult Business School published findings in a 2016 Report based on interviews with 25 leading brands and retailers in the UK and survey results from an additional 46 brands (the “**ETI/Hult Report**”).¹⁷⁰ The ETI/Hult Report confirms that increasingly modern slavery is now being treated as a business-critical issue that must be addressed to ensure credibility with customers, investors, NGOs and the general public. Further findings included a significant increase in activity to address modern slavery risks, including training and awareness raising for board members and senior executives (67% increase), carrying out risk assessments (45% increase), and implementing policies and systems to manage their approach (39% increase).¹⁷¹
- 4.4.2. **The requirement on businesses to publish a statement on their homepage provides transparency on their performance in combatting modern slavery.** It is both symbolic, and substantive. By publishing it prominently, consumers, employees and others will be able to judge to what extent the business is addressing modern slavery. Publication online will also ensure statements are accessible via general webpage search functions, which is vital for media, research and other purposes. The degree to which this formality is being executed appropriately has been called into question. A recent Ergon Report suggests that almost one quarter of statements are not available directly from the homepage.¹⁷² If properly implemented, both features serve different but important functions which complement each other.
- 4.4.3. **A modern slavery statement is a standalone statement.** In the UK, there have been calls to integrate statements into annual reporting, as an arguably logical place for reporting and one that many businesses are familiar with.¹⁷³ Yet, by having “modern slavery statements” as a standalone document that has to be approved and signed independently of an annual report, this effectively raises its profile with the board. Annual reports are extensive and there is a risk that modern slavery statements could be lost if integrated into formal reporting, and lose the public impact value. However, there is nothing to stop a business from reporting on modern slavery in a standalone statement and referencing it also in their annual report – indeed this could be considered best practice.
- 4.4.4. **Section 54 of the UK MSA has levelled the playing field for businesses by introducing mandatory reporting across all sectors.** It assists removing any competitive disadvantage for those businesses applying best practice. Previously businesses that did the right thing or those in the public spot light (typically household brand names), arguably found themselves at a competitive disadvantage to less scrupulous businesses who wilfully turned a blind eye to modern slavery risks, or were out of the public eye.

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- 4.4.5. Typically, fashion, retail and food businesses first come to mind when considering which businesses are proactively responding to modern slavery – not financial institutions. Yet the response of the major banks and other financial institutions in the UK and in the US to modern slavery has started to gain more attention. The recent RUSI Whitehall Report (2017),¹⁷⁴ documents the vital role of the financial industry in the fight against modern slavery. Financial institutions can harness their combined power to monitor financial activity which fund the modern slave trade. They do this by reviewing transactions (with well embedded “know your customer” checks and automated pre-screening), accessing financial data of both traffickers and their victims, and the use of other data analytical capabilities. Banks are increasingly training front line staff, undertaking investigations, and working with each other and law enforcement to disrupt these money flows. The RUSI Report documents the willingness of financial institutions to contribute to the task and disrupt human trafficking. However, there are many challenges faced by financial institutions which requires sector wide collaboration, investment in new technology and consistent base line standards. Within Australia, all four major financial institutions, being the Commonwealth Bank Group,¹⁷⁵ Westpac Banking Corporation, National Australia Bank¹⁷⁶ and ANZ Group,¹⁷⁷ have each reported under the UK MSA.
- 4.4.6. **Section 54 has extraterritorial reach.** It impacts the behaviour of local and foreign businesses operating in the UK. The place of incorporation is not relevant. This minimises the risk of jurisdiction shopping or creating a disadvantage for British businesses. Many Australian businesses are already reporting under the UK law including for example Qantas, Wesfarmers, BHP, Woodside, South32, Rio Tinto, Ashurst, Telstra and the major banks.¹⁷⁸
- 4.4.7. **Section 54 adopts a “top to bottom” approach, similar to the approach adopted in the US and EU.** The rationale behind this approach is that when a global business exerts influence, it has a cascading impact down through its networks of suppliers. This can encourage sector wide transformation for the benefit of those enslaved at the end of the supply chain. This avoids impose a reporting requirement on smaller to medium sized enterprises who may not have the available capacity in the way that large multinational corporations have. Large businesses must work with lower tier suppliers when addressing the risks, not delegate or push the burden upon lower tier suppliers. While it is still early days, it seems this model of cascading influence is already being evidenced. The ETI/Hult Report found that as a result of Section 54, communication between businesses and their suppliers has increased. For example, 58% of businesses dramatically increased communications of their expectations on actions to address modern slavery to their suppliers, with many now communicating directly with Tier two suppliers and beyond (53%). There is also an increase in communications with third party audit firms (77%).
- 4.4.8. **Section 54 targets large businesses operating in the UK with an annual turnover of £36 million or more. Smaller businesses are not required to report.** The Section 54 threshold test was adopted following extensive consultation in the UK with NGOs, businesses and the public sector which included a formal 12-week consultation process with over 181 respondents.¹⁷⁹ The overwhelming majority supported a threshold of £36 million.¹⁸⁰ In the UK, businesses with this level of turnover were considered to have the necessary purchasing power, resources and influence to introduce change within their supply chains.¹⁸¹ This threshold aligns with Section 465 of the Companies Act 2006 (UK) test as to what constitutes a “large” company. It does not take up the second or third limb of the “large” company test, being a balance sheet total not more than £18 million and more than 250 employees. We understand these additional limbs of

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the UK threshold test were not adopted as there are some major businesses operating in the UK with less than 250 employees, but with high levels of turnover, and it was determined that they should not be excluded on this basis. The UK threshold test can be changed by amending regulations.

4.4.9. The estimated impact of setting the threshold at the current level is that 12,000 to 17,000 businesses operating in the UK are impacted. It was also noted as part of the UK consultation process that many businesses were in favour of an eventual reduction of the threshold over time, to include medium sized businesses. We are not presently aware of any proposal to amend the UK threshold. Applying reporting requirements on large businesses has also been the approach in other jurisdictions. For example:

- **Californian** law targets large manufacturing businesses with annual turnover of US\$100 million (estimated impact 1,700 businesses)¹⁸²
- **France** duty of vigilance laws targets large businesses with over 5,000 employees (including French subsidiaries) or at least 10,000 employees (for French and foreign subsidiaries) or otherwise of public significance (estimated impact 150 to 200 businesses)¹⁸³
- **EU Directive on Non-Financial Reporting** targets large businesses with over 500 employees or which otherwise are of public interest. It is expected to impact a minimum of 6,000 businesses operating in the EU.¹⁸⁴

4.4.10. **Section 54 encourages businesses to look, find, and then act as they discover modern slavery offences.** Section 54, together with the rapidly developing body of law mandating reporting by large businesses on their supply chains, seek to positively change corporate behaviour, not generate legal defences and fear of penalties. This approach recognises that financial penalties and legal risks may well drive the crime of modern slavery further underground and out of view, rather than promote transparent and free open communication about the risks. It also encourages businesses to collaborate, innovate and find new solutions, rather than treat modern slavery as a litigation risk to be responded to defensively by lawyers. The ETI/Hult Report found improved and enhanced collaboration, with 50% of businesses collaborating more with peers, NGOs and multi stakeholder initiatives since the Act was passed. It also reported that more businesses are seeking help from each other, with 50% of businesses seeking external advice and expertise since the Act was passed.¹⁸⁵

LESSONS FOR AUSTRALIA: AREAS TO IMPROVE SUPPLY CHAIN REPORTING

MANDATED CONTENT

- 4.4.11. **A key area where the Section 54 model could be improved is to set out clear mandatory content to guide businesses in completing their modern slavery statements.** In our consultations with businesses, one common theme is that the lack of mandated content creates confusion and a lack of clarity for businesses trying to prepare their modern slavery statements. They would welcome greater clarity and guidance. The Adidas Group in their submission to this Inquiry noted that *“a more uniform reporting standard would be helpful for larger enterprises, which may have greater reach and impact in terms of global supply chains.”*¹⁸⁶ The UK Government Guidance confirmed that an organisation could elect to state that it has taken no steps to address modern slavery, and bear then risk of reputational fall out. To date, we are not aware of any UK Modern Slavery Statement that has adopted this approach. However, NGOs who are benchmarking and analysing statements are reporting that many statements are of low quality, adopting a minimalist approach, and incorporate generic language without meaningful content.¹⁸⁷ For example, a recent Ergon Report notes that most statements lack detail and use broad descriptions of processes and activities.¹⁸⁸ The Ergon Report also notes that statements do not sufficiently respond to the issue of contractors, due diligence processes or outcomes. While a few leading businesses have identified risks in their modern slavery statements, most statements published to date fail to include details of actual or potential risks, and do not comment on risk assessment processes in detail.¹⁸⁹ Without this information, it is difficult for businesses to learn from the examples, successes and failures of each other, and the risk is that reporting viewed as a public relations exercise. This is against the “spirit” of mandatory reporting, which should be encouraging businesses to be transparent, open and authentic about challenges and successes, without fear of punishment, in order to bring sustainable change and protection for victims.
- 4.4.12. **We recommend that mandatory reporting on the following key areas.** This is not an exclusive list, but incorporates best practice by leading businesses and information that would assist a meaningful review and analysis of impact.
- *Organisation structure, business and scope and size of supply chain:* every organisation should detail not only its own structure, group relationships, and brand names but also the breadth and width of its supply chain network as a supply chain mapping exercise
 - *Sector/geographical location:* details of the sector within which the organisation operates, including details of any seasonal workers or third party labour hire recruiters and activities in high risk countries where forms of modern slavery are most prevalent
 - *Policies:* details of its policies in relation to modern slavery, including the issues the policy covers (and a link to the policy itself)
 - *Due Diligence:* details of due diligence processes both internally and within external supply chains, and reports of any due diligence undertaken

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- *Risks*: (actual or potential), including an evaluation on how the organisation is addressing and remedying such risks, including details of risk assessment process, details of any audits performed (and whether these were external or internal)
- *Key Performance Indicators*: an evaluation from the business on its effectiveness at addressing the risk of modern slavery, measured against key performance indicators and confirming what the key areas for priority for action will be
- *Training*: details of training and capacity building available to staff, and crucially any specialist training and availability of training to suppliers
- *Whistleblowing*: details of available whistleblowing procedures within the organisation and supply chain
- *Collaboration*: details of any collaboration and wider stakeholder engagement

The majority of these reporting areas were suggested by the UK Government in its non-binding governmental guidance notes.¹⁹⁰ As per the EU Directive and “comply or explain” principle described above, if a business cannot report on any area of mandated content, it must explain why.

THE PUBLIC SECTOR

- 4.4.13. **We recommend that the Australian Government review the adequacies of existing procedures that federal and state public sectors apply in assessing their supply chains for modern slavery.** The Government may wish to consider the US model of a compliance plan for high value suppliers and annual public disclosure. It may also be desirable for the public sector bodies to report in some way against the requirements of an Australian Modern Slavery Act.

THE TIMING OF PUBLICATION

- 4.4.14. **There is logic in aligning the timing of publication of modern slavery statements with annual reporting,** as it is a time in the corporate calendar where board and executives are available and engaged. The time for lodgement of annual reports generally in Australia is within three months after the end of the financial year for listed companies, and within four months after the end of the financial year for most other companies.¹⁹¹

DEVELOPING A SUITABLE THRESHOLD TEST FOR AUSTRALIA

- 4.4.15. **Australia should follow the approach of Section 54 by requiring all large businesses across all sectors to report on modern slavery.** An Australian Modern Slavery Act should mirror the provisions of Section 54 by requiring a modern slavery statement to be approved by the Board and authorised by the organisation in accordance with Australian corporate laws and published online on the business' homepage. In the statement, it should be confirmed that the authorising signatories have obtained full Board approval. This will ensure the entire executive team are aware of the businesses response to the issue of modern slavery. Please see Appendix 2 for an overview of how to legally bind an organisation under Australian law.
- 4.4.16. Determining the Australian threshold test provisions will require detailed consideration and an inclusive consultation process. A balance must be struck that requires those large businesses with the capacity to appropriately respond, to do so, without imposing requirements on smaller to medium sized enterprises with less capacity to meet those obligations.
- 4.4.17. **When determining who is a "large business", we recommend an Australian threshold test reflect the underlying principle that large businesses (regardless of structure) should be required to report based on its financial turnover.** As per the UK model, and in contrast to the approach adopted in the EU, we recommend not using the number of employees as part of this threshold test, as there will be businesses operating in Australia with low headcount but who have considerable turnover and extensive international supply chains.¹⁹²
- 4.4.18. **Large businesses in Australia are already well versed with mandatory reporting requirements, with embedded systems and processes in place.** For example, large proprietary companies must prepare and lodge financial reports, audited accounts and directors' reports for each financial year.¹⁹³ Public ASX listed companies are also heavily regulated, with continuous and periodic disclosure requirements (on a quarterly, half yearly and annual basis), including annual reports.¹⁹⁴ By excluding small to medium sized enterprises, who are not yet subjected to mandatory reporting obligations, it would reflect a level of consistency in terms of general expectations for public disclosure.
- 4.4.19. Any threshold test should also include consideration of offshore subsidiaries. While the UK Government Guidance indicates that this should occur, the legislation does not require their inclusion.¹⁹⁵ This is an area where an Australian Modern Slavery Act could improve the operative provisions and require reporting from all subsidiaries, including offshore subsidiaries.
- 4.4.20. **Our preliminary research suggests that a threshold test that captures all businesses with an annual turnover of \$50 to \$60 million (across all corporate structures), would be appropriate.** This is largely consistent with recent changes to the corporate tax rate made in the Enterprise Tax Plan (\$50 million was considered the cut off for large businesses).¹⁹⁶ While a simple currency conversion exercise is not appropriate, this range is largely consistent with conversion of the UK GB36 million threshold (on current conversion rates, approximately AU\$61 million), which would provide some consistency for business.¹⁹⁷ Please see our preliminary research in greater detail in Appendix 3.

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CONSEQUENCES FOR FAILURE TO COMPLY

- 4.4.21. **Walk Free Foundation does not support the introduction of penalties for reporting on finding modern slavery within supply chains.** Businesses must be encouraged to look to find modern slavery, and report that it has found modern slavery, without fear of criminal penalties. We note existing criminal laws in Australia provide liability in circumstances of reckless and intentional corporate criminal conduct. The existing mechanisms in Division 12 of the Criminal Code, Section 12.3 would apply to hold the body corporate's directors responsible. There is a defence if the corporate can demonstrate it has exercised due diligence to prevent the conduct. These provisions only apply to offences engaged by the business itself, not by its suppliers (who are not said to represent the body corporate as per an employee, agent or officer).
- 4.4.22. We would also draw the Committee's attention to the recent corporate crime reforms discussions occurring in Australia, led by Hon Michael Keenan, Minister for Justice. There is a public consultation on options to improve enforcement for serious corporate crimes with the introduction of Deferred Prosecution Agreements (published March 2017). The second is a public consultation, about proposed amendments to consider how the Federal Government can strengthen Australian foreign bribery laws. The Global Slavery Index 2013 shows a statistically significant correlation between corruption and modern slavery.¹⁹⁸ Where there is an extreme corruption risk, there is also an extreme risk of modern slavery. The Australian approach is consistent with that of the UK which has one of the world's strictest laws surrounding bribery and corruption under the Bribery Act 2010. Many businesses have substantially overhauled internal systems to ensure compliance with these stricter obligations.

RECOMMENDATION 2: AUSTRALIAN MANDATORY REPORTING

We strongly recommend the introduction of mandatory reporting requirements for large businesses conducting business in Australia that require them to report on steps taken to eradicate modern slavery from within their own business and their supply chains.

WHO WOULD BE REQUIRED TO REPORT? All large businesses operating in Australia.

Determining the threshold test of who is a large business requires careful and detailed consideration. Based on initial research, we consider an appropriate threshold test may capture all businesses with an annual turnover of more than \$50 to \$60 million. We also recommend the public sector be required to report efforts to stamp out modern slavery in their supply chains.

TIMING: Statements should be published annually each financial year, alongside the reporting for annual reports.

FORMALITIES: Statements should be a standalone statement, but can be duplicated or referenced to in annual reports. The statements must be approved by the entire board, and duly authorised to bind the business in accordance with Australian law (for many company structures, this will be typically 2 directors or 1 director and the company secretary). The statements must be published in a prominent place on the business home page, and filed in the official repository.

MANDATED CONTENT: There should be mandatory content for modern slavery statements to provide greater clarity for businesses and consistency for the purposes of evaluating the impact and performance of businesses.

We recommend mandatory content could include:

- organisational structure, business, scope and size of supply chains
- sectors and regions in which the organisation operates
- policies, due diligence processes and activities
- risks identified and evaluation of risk assessment, and remediation of risks
- key performance indicators and evaluation of effectiveness by the business itself
- training and capacity building
- whistleblowing procedures
- collaboration efforts

If a business cannot comment on any area of mandated content, it must explain why.

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4.5. CENTRAL REPOSITORY

- 4.5.1. **The absence of an official central repository of modern slavery statements is a major weakness in the UK Modern Slavery Act.**¹⁹⁹ Who must comply with a Modern Slavery Act? What risks are being identified? Are businesses doing enough? Without a repository, it is difficult to answer these questions or properly analyse business responses and the effectiveness of mandatory reporting laws. An Australian Modern Slavery Act must include the provision of a repository as it would complement the proposed reporting laws by critically promoting public accountability; ensuring progress of businesses is measurable; and providing an efficient system to monitor progress and ultimately the impact of the laws.
- 4.5.2. Currently in the UK there are at least two unofficial repositories managed by separate NGOs. TISC Online is an open source data registry, run by a social tech start up enterprise and provides paid services.²⁰⁰ It hosts over 20,000 statements including subsidiary names and the platform was built using the UK Companies House templates. The Business and Human Rights Resource Centre host another registry which is a free and relatively simple service, where an excel spreadsheet of all statements can be easily downloaded and accessed by stakeholders. It currently hosts over 1,500 statements excluding subsidiary names and is frequently used by NGOs and interested stakeholders when generating analytical reports.²⁰¹ Whilst these efforts are commendable, there are concerns that the absence of an official repository has undermined one of the central objects of the UK Modern Slavery Act. In December 2016, the UK Anti-Slavery Commissioner Kevin Hyland called for written submissions on how a central repository for modern slavery statements would help monitor the impact and translate transparency into accountability.²⁰²
- 4.5.3. In the UK, a private members Bill was introduced into the House of Commons, which amongst other things, seeks to amend the UK MSA to include the requirement for a central repository.²⁰³ In a recent report published April 2017, Sarah Newton MP, Home Office responded to further questioning on the UK Government response to calls for a repository and responded: “I *do not think that you will be waiting too much longer, and I do not think you will be disappointed when you see the outcome...I hope that by the end of the year you will be very pleased with the positive steps that we have taken.*”²⁰⁴ The UK Government is facing mounting pressure from business, civil society and NGOs to respond to the obvious need for a central repository and an authorised list of businesses required to report under the legislation. This was said powerfully and clearly by Marks & Spencer in January 2017 as part of the Joint Committee on Human Rights consultation with businesses in the UK:

“We feel quite strongly that there needs to be one more push from government to finish off the journey ... There is no central repository that says which companies in Britain you would expect to receive a report and statement from ... A list held centrally that says: “These are the companies that should be reporting. This is what they have actually reported against.”²⁰⁵

Marks & Spencer’s Sustainable Business Director, Mike Barry

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- 4.5.4. **A repository should be independent managed, free, and publicly accessible.** It is essential that the repository be managed by a trusted independent body that has business and public confidence. Ideally the operator would be a government funded body or an independent organisation funded in a transparent manner. It should be accountable to an advisory board, that would oversee and guide the operator of the repository. At this initial stage, we have not identified an existing body within Australia that appears to have the mandate and resources to manage and maintain a repository of this nature.
- 4.5.5. We have considered the role of the Australian Securities & Investments Commission (**ASIC**) given its role maintaining the official companies register in Australia. While ASIC has experience in maintain public registers, infrastructure and personnel, it is the corporate regulator. ASIC has a policing function, a culture of fees and limited public accessibility. For these reasons, we do not support ASIC as a suitable site for a repository. We have also considered whether the Australian repository should be managed by the Office of the Anti-Slavery Commissioner. The Office of the Commissioner may be the appropriate home for the repository, particularly given the Commissioner's remit to work with the private sector. While the maintenance and management of a repository will require a different skill set and additional staff, the Office of the Commissioner would provide the required independence and ensure business and community confidence.
- 4.5.6. **The repository must serve as more than a filing system. It should be a comprehensive report generating database.** Ideally the repository should include the following features:
- *Simplicity and ease of use* – a database that becomes clunky, onerous and bureaucratic will detract from its ultimate purpose and function. A user friendly online system, that avoids technical jargon or legal terminology should be paramount to the design of the repository.
 - *Historical data* – the database should house statements from businesses for a 5 to 7 year period (to match record keep standards well accepted under tax law) to allow business progress to be monitored and analysed, reflecting the reality that modern slavery cannot be “fixed” overnight and encouraging a mid to long term investment by businesses in their anti-slavery strategies.
 - *Administrative details* – automated collection of administrative data such as the date of filing (including details of late filings), sector, turnover, employee numbers, head quarter location, operation locations and other geographical considerations.
 - *Group details* - filters to link together corporate groups and subsidiaries to get an accurate picture of multinational group responses to modern slavery. Searchable features should also factor in that some major conglomerates are responsible for multiple brand names, so that consumers and interested stakeholders can search by commonly known brands rather than unknown corporate names.
 - *Red flags* – a system of identifying and flagging statements which are missing or non-compliant should be considered. Any non-compliant statements, including those that are

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deficient, unduly short, contain repetitive content or haven't complied with legal requirements (such as mandated content), should be flagged with a warning alert.

- *Automated alerts* – regularly and automated alerts of newly filed statements should be a key feature, so that subscribers can be notified in real time of business responses.

Each of these features would ensure that the repository is not just a filing system, but a meaningful database that can be freely accessed and reviewed with the end of goal of ensuring reporting translates into positive impact on victims.

4.5.7. **The repository should complement, not replace the requirement to publish the statement in a prominent place on the business webpage as they both serve important functions and complement each other.** The repository can serve as a searchable database and provide the ability generate reports, benchmark companies and other analytical functions. Publishing a modern slavery statement prominently on a homepage will target a different audience (e.g. consumers, employees and media) and will provide a clear and prominent statement of what a business is doing to address the issues of modern slavery.

4.5.8. **The repository should harness modern technology including data analytics.** Rapid technological advances should be integrated into any repository, including using QR Codes, block chain technology (coding techniques that allow for instantaneous verification of transactions), real time notifications and alerts or even to have a repository hosted on multiple platforms such an app or interactive web page.

4.6. **THE LIST**

4.6.1. **An official list of businesses required to publish modern slavery statements should be maintained and made publicly available.** The absence of such a list has been found to be a major impediment to the success of the UK Modern Slavery Act. The UK MSA is designed to harness the power of the “court of popular opinion”.²⁰⁶ In the absence of knowledge of which businesses are required to report that objective is substantially undermined.

4.6.2. The Californian laws require the US Franchise Board to keep a list of retailer sellers and manufacturers required to file disclosure reports, based on tax returns. The list is submitted annually to the Attorney General by November 30 each year, but unhelpfully it is not publicly available. The failure to publish this list has been a major criticism of the Californian laws, as it means consumers are unaware of which businesses are required to comply – ultimately hindering transparency and making it difficult for the “court of popular opinion” to operate.

4.6.3. While we recognise the complexities of managing such a list, given turnover will fluctuate and businesses may come on and off the list, the problems are not insurmountable and businesses can choose to comply even when operating below the threshold.²⁰⁷ The list could be integrated within the central repository, or maintained separately.

RECOMMENDATION 3: CENTRAL REPOSITORY AND LIST

We strongly recommend the introduction of a centrally managed and Government approved repository for modern slavery statements, together with a list of businesses who are required to file modern slavery statements.

Key features of the repository should include:

- Neutrally governed, free and publicly accessible
- Accountable to an independent advisory board
- Simple and easy to use, free of technical and legal jargon
- House historical statements (up to 5 to 7 years)
- Collate administrative data (such as date of filing, sector, turnover, HQ location, operational location, employee numbers etc)
- Ability to link group and subsidiary statements to get an accurate picture of multinational group responses, searchable by business name and brand names
- A system of identifying red flags and any non-compliant statements
- Ability to generate automated alerts (when new statements are filed)
- Provide open source data to generate (directly or via third parties) reports analysing statements

Repository should complement not replace the requirement to publish statement on a prominent place on the business webpage.

In conjunction with (or integrated within) the repository, should be a regularly maintained list of those businesses required to publish modern slavery statements, which is publicly available.

“[The Modern Slavery Act, UK] has driven us to look even further in our business, and we have identified things we need to do better.

I’m saying clearly, as a businessman, that piece of regulation has been helpful.

It has driven consistency in the marketplace.”

***Marks and Spencers –
Mike Barry, Sustainable Business Director²⁰⁸***

5. CONCLUSION:

WHY AUSTRALIA SHOULD ADOPT A MODERN SLAVERY ACT

5.1. WHY WE MUST ACT

The real question for the Australian Parliament is not why, but why not?

Why would a democratic wealthy nation like Australia, committed as we are to human rights, not do all in its power to end the enslavement of millions of people many of whom are exploited for the purposes of manufacturing and processing the food we eat, the clothes we wear and the goods we buy.

There are some Australians who respond by saying that the problem is too hard, or that the extent of modern slavery here in Australia is relatively small, or that it is for governments in Asia to do more, or that we already have laws that make modern slavery a criminal offence or just that there are more pressing issues confronting Australia.

The Walk Free Foundation and many others believe that these are morally indefensible responses. The Australian Government, Australian businesses, and the Australian people can, and must do everything in our power to end modern slavery.

Globalisation has brought tangible benefits and positive changes to many across the world. Living standards in many countries have been lifted by their participation in the production of goods as part of supply chains of multi-national businesses that market throughout the globe.

And still, modern slavery continues to persist.

We believe that for Australia to knowingly continue to take advantage of people enslaved without taking the actions we know can make a real difference to people's lives is not an option.

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5.2. **WHY WE MUST HARNESS THE POWER OF BUSINESS**

Globalisation, weak national governments and poor regulatory frameworks in many countries has seen modern slavery survive the best efforts of international institutions and national governments to legislate its demise. What we lack in Australia is the legislative support for those who want to embed a zero-tolerance culture and best practice to drive out modern slavery from within supply chains.

We know that governments cannot on their own end slavery.

We know that the reliance on modern slavery prevents long term sustainable development both for a country's economy and civil society.

We know that businesses have the power to influence change within supply chain networks, to drive up standards and remove the profitability of modern slavery.

We also know that the impost on business of regulation is a contentious issue. Many people with a traditional mindset about the burden of regulation fail to understand the reality of international business experience with modern slavery. Leading businesses know that ending modern slavery is good business, they are open and welcoming of political leadership and support. Many international businesses are already well down the track of adopting policies and practices that are way in front of any legislative requirements yet adopted anywhere in the world. Adidas, Coca Cola, Nike and Marks and Spencer, to name a few, have all developed sophisticated responses to modern slavery in their supply chains that they regard as essential good business practise. They know that creating sustainable supply chains can contribute positively towards growth, improve competition, provide job opportunities and bring families out of poverty. They also know that this supports sustainable business.

The UK supply chain transparency provisions were added into the UK MSA only after a campaign by leading businesses in support of those provision. These businesses argued that clean supply chains are ethically responsible, are good business and that a legislative framework assists those businesses operating ethically from being undercut by competitors who are prepared to turn a blind eye to modern slavery in their supply chains.

The laws in the UK, US and EU have international reach and are already holding both local and foreign businesses operating inside their borders to public account. Almost 10% of the top 100 Australian Stock Exchange listed companies and other large private companies are already filing modern slavery statements under the UK MSA. These include Qantas, Wesfarmers, Telstra, Rio Tinto, South 32 and all major Australian banks.²⁰⁹ Many global businesses are seeking clarity around reporting and welcome guidance on best practise.

We know that the UK MSA has helped drive collaboration and the sharing of learnings among companies, even among those that are direct competitors. CEOs are increasingly recognising there is no value in competition on ethical standards or values, the real value is in collaboration. Investment advisors, shareholders and investors are demanding greater clarity and accountability on risks such as modern slavery in determining where to invest their funds. Modern slavery transparency and policy is contributing increasingly to the success or not of a business.

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5.3. **WHY AUSTRALIA MUST LEAD**

No one person can end modern slavery, but together we can end it.

We have the evidence.

We have the opportunity and capacity to lead in the region where the greatest prevalence of modern slavery exists and from where our business supply chains are most prevalent.

We have a robust legal and human rights framework on which to build.

We have through our businesses the capacity to impact on those who enslave even though they are far from our shores.

We have leaders across government, business, religion and community organisations who are willing to support decisive action by the Australian Parliament.

We know what works, we know that when we harness the power of governments, businesses and community we can step by step end modern slavery and free its victims.

Australia has a unique opportunity and obligation to play a leading role in this endeavour. While other nations have already legislated to drive supply chain transparency, it is Australia that must lead in the Asia Pacific.

Introducing an Australian Modern Slavery Act will unite all Australians and send a strong message to the world that we shall not stand by and ignore the millions subjected to modern slavery.

“It is not acceptable for any organisation to say, in the twenty-first century, that they did not know.

It is not acceptable for organisations to ignore the issue because it is difficult or complex.

And, it is certainly not acceptable for an organisation to put profit above the welfare and well-being of its employees and those working on its behalf.”²¹⁰

UK Prime Minister, Theresa May

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APPENDIX 1:

GLOBAL SLAVERY INDEX METHODOLOGY

When examining the nature, extent and prevalence of modern slavery, we refer to the extensive research done as part of the Global Slavery Index, where we have ranked the 167 most populous countries; their combined populations equalling 99 percent of the total world population. This research incorporates data from standardised nationally representative random sample surveys on modern slavery, including forced marriage, for 25 countries which represent about 44 percent of the world population.

The GSI comprises three separate measures; prevalence of modern slavery, vulnerability to modern slavery and government response to modern slavery.

The 2016 prevalence estimates were sourced from surveys conducted with Gallup Inc through the World Poll, in 25 countries, covering 44% of global population. For the remaining unsurveyed countries, survey results have been extrapolated to countries with an equivalent risk profile. The risk profile is determined in the vulnerability model, a separate component of the Global Slavery Index, explained below. In 2016, we also conducted state-level surveys in India. When these are included, we have interviewed more than 42,000 respondents in 53 different languages.

The GSI includes a model of 24 variables which affect vulnerability to enslavement and cover (i) political rights and safety, (ii) financial and health problems, (iii) protection for the most vulnerable and (iv) conflict. Statistical testing identified and grouped these factors due to their relationship to the prevalence of modern slavery.

The final component of the GSI is a score of government responses based on an assessment of approximately 100 indicators of good practice, taking into account factors such as whether each country has the necessary laws in place, provides support to victims, and ensures the application of labour standards to vulnerable populations. This information allows an objective comparison and assessment of both the problem and adequacy of the response in 167 countries. Research for this aspect of the Index involved a partnership between the Walk Free Foundation's research team and Data Motivate, an organisation that provides training and employment for survivors of modern slavery in the Philippines. Governments are ranked from "AAA" being those who have implemented an effective and comprehensive response to all forms of modern slavery to "D" those governments who have a wholly inadequate response to modern slavery and/or evidence of government-sanctioned modern slavery. A summary of the methodology is in Appendix 2 of the 2016 Global Slavery Index, and a detailed methodology paper is available to download from our website.²¹¹

Estimating the prevalence of modern slavery in developed countries such as Australia is difficult for many reasons, but a work in rapid progress. In most developed countries, victimisation by modern slavery is typically unevenly distributed amongst the population and cannot be measured through random sampling. In some instances, focused sampling, for example of vulnerable immigrant populations, might be more appropriate. Yet, special care and qualifications are required to interview victims of such sensitive crimes.²¹²

Reflecting these challenges, when developing the prevalence rate of modern slavery for Western countries for the Global Slavery Index, we worked with the UK Home Office to develop an estimation

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methodology called “Multiple Systems Estimation” which uses multi-source data on victims as identified by the British authorities. The results showed that the estimated number of victims exploited in the United Kingdom were in fact 4 to 5 times higher than those formally identified purely through surveys. MSE results are used to complement, not replace survey results, to assist working towards painting an accurate and reliable picture of the prevalence of modern slavery. Full details of this methodology are set out in the paper “*Modern Slavery in the UK, how many victims?*”²¹³. While it is not perfect, it is an important methodology as it does not rely upon extrapolation from secondary sources, but actual reports of suspected or verified slavery cases. It is also the framework supported by the Monitoring Framework

When estimating the prevalence of modern slavery within Australia, we applied by the UK percentage as a proxy to the Australian population. We are the first to admit that this is imperfect and it would be better for Australia to have its own estimate as per the UK. This would require collaboration of the Federal Government with experts and organisations to conduct MSE within Australia. The Walk Free Foundation would provide expertise if required.

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APPENDIX 2: CORPORATE AUTHORISATIONS

We recommend the appropriate way for an organisation to approve a modern slavery statement would be to follow the same requirements needed to bind the organisation, plus the authorisation of the board (if any) under Australian corporate law.

As a non-comprehensive summary, this would likely involve (at a high level):

- For a company, this would mean authorisation by two directors, or a director and a company secretary (or, for a proprietary company that has a sole director who is also the company secretary – that director) (section 127 of the *Corporations Act 2001* (Cth)). Additionally, it should be confirmed that the authorising signatories have obtained full board approval, to ensure that the entire executive team has considered the issue of modern slavery.
- In relation to listed companies, it may be desirable to require the audit committee (if any) to oversee the production of the modern slavery statement and provide advice to the board on its authorisation.
- The execution of documents by a partnership is likely to vary across jurisdictions. In Victoria, each partner has the ability to bind a partnership (for example, section 9 of the *Partnership Act 1958* (Vic)).
- For Commonwealth entities, the relevant accountable authority may be required to endorse the statement, which are set out in section 12 of the *Public Governance, Performance and Accountability Act 2013* (Cth) ("PGPA Act"):

If the Commonwealth entity is:	then the accountable authority of the entity is:
a Department of State	the Secretary of the Department
a Parliamentary Department	the Secretary of the Department
a listed entity	the person or group of persons prescribed by an Act or the rules to be the accountable authority of the entity
a body corporate	the governing body of the entity, unless otherwise prescribed by an Act or the rules

APPENDIX 3:

AN AUSTRALIAN THRESHOLD TEST

OVERVIEW

We have set out a few initial comments in response to the threshold question concerning whether businesses in Australia should be required to publish modern slavery statements. In our view, the threshold for Australian businesses should be carefully considered. A separate consultation process should be conducted involving all affected stakeholders in order to obtain an accurate estimate of businesses impacted.

FINANCIAL TEST NOT STRUCTURE TEST

As a starting point, reporting obligations in Australia would more logically attach to all businesses by reference to a monetary threshold, irrespective of corporate structure, place of incorporation, employee headcount, gross value of assets or other test. Reference to employee head count or gross value of assets can defeat the rationale behind mandatory reporting laws, as foreseeably there would be very large and influential businesses operating in Australia with a low headcount and, in more limited cases, low value of assets. For these reasons, we advocate for reference only to financial turnover of an organisation.

There may be some excluded corporate structures which are not appropriate for this type of reporting (e. g. public no liability companies or registered schemes). This requires further analysis. Broadly speaking the major businesses that should be included are public (listed and unlisted) companies, private “Pty Ltd” proprietary limited companies, partnerships and large foreign multinational companies either with an Australian subsidiary or otherwise registered to do business in Australia, that satisfy the financial turnover threshold test.

Organisations which should be considered for inclusion without reference to a financial turnover threshold would be Commonwealth entities (such as Departments of State, Parliamentary Departments bodies corporate established by a law of the Commonwealth, or other prescribed bodies corporate or Commonwealth companies, should the Australian Government decide to include both the private and public sector in any equivalent mandatory reporting laws under an Australian Modern Slavery Act. The public sector’s reporting should then be reviewed in the context of which contracts and suppliers are considered “high value” and would reflect a reasonable and proportionate response by the Australian Government to use best efforts to ensure it is not procuring any goods and services impacted by modern slavery. Again, this requires thorough and detailed analysis and consultation process.

OPTIONS

We propose three possible options to explore:

1. **TAX THRESHOLD TEST:** match existing threshold tests for what is considered a “large organisation” for taxation purposes. The Australian Taxation Office defines large businesses to have turnover levels above \$250 million (including public, private, foreign owned companies, partnerships, trusts and super funds). ²¹⁴ The ATO indicates there are about 1,400 large business groups and super funds, 700 large market partnerships and trusts as represented by over 30,000 entities. In terms of

small to medium sized enterprises, the ATO classifies the threshold test for turnover to be in the range of \$2 million to \$250 million, which is an estimated 190,000 enterprises. However, the recent Federal law agreement introduced tax cuts for small to medium sized companies, being those with an annual turnover of less than \$50 million, meaning that large businesses are those with a turnover that exceeds this threshold.²¹⁵ Detailed investigation would need to be undertaken to understand the appropriate taxation threshold to be matched, but on this initial analysis, a threshold test for large businesses in Australia could fall anywhere between an annual turnover above AU\$50 million and an annual turnover above AU\$250 million.

2. **STANDALONE THRESHOLD TEST:** legislatures could consider a bespoke and standalone threshold test, specifically designed for the context of the issues and on the number of businesses that need to be regulated. This could be done on a purely conversion rate basis. If so, in comparison to overseas laws, the equivalent threshold test would fall within region (at current interest rates) of annual turnover between approximately AU\$60 million (UK Modern Slavery Act) to AU\$130 million (Californian Transparency Act). This is somewhat consistent with AFR reports that the Top Fortune 500 private companies in Australia all have an annual turnover of greater than AU\$63 million.²¹⁶ While a pure conversion rate comparison is simple and straight forward, and would provide a degree of consistency for global corporates, we have some concerns with this approach. A straight conversion analysis may not cover what is considered “large” organisations for the Australian market, which is a very different financial market to the UK and Californian economies. If the rationale is to catch all “large” organisations doing business in Australia, there needs to be thorough analysis of what does constitute “large” in the context of the Australian economy and market.
3. **CORPORATIONS ACT THRESHOLD TEST:** Following the UK approach, it may be that a threshold test is derived from existing corporate laws, relying on both an asset value and a turnover threshold test. For ease of reference, we have summarised our analysis by reference to different types of corporate structures.

Private Companies

In respect of private proprietary company, section 45A of the *Corporations Act 2001* (Cth) provides that a private proprietary company is considered large if it during a financial year (as per current regulations), if it satisfies two of the following three tests:

- (i) Consolidated revenue of company and entities it controls is \$25 million or above;
- (ii) Consolidated gross assets of company and entities it controls is \$12.5 million or above;
- (iii) More than 50 employees of the company and entities it controls (this includes full time employees and part time employees, appropriately fractioned into equivalent of full time employee).

Simplifying this test to only refer to the consolidated revenue (reference to the size of employees and assets may not be appropriate for reasons outlined above), would provide clarity to companies which are already aware of their classification under the *Corporations Act 2001* (Cth). Using this definition will also allow the reporting obligations to sit logically within Chapter 2M of the *Corporations Act 2001* (Cth) (discussed below), which currently imposes obligations on all public companies, large proprietary companies and registered schemes.

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At this early stage, it is difficult to estimate with any degree of certainty how many companies would be impacted if Australian legislatures adopted the financial threshold at \$25 million. Limited data publicly available from the Australian Tax Office differs from year to year:

- From the 2013-14 financial year indicates that 2,700 companies and other entities had an income of over \$100 million, and around 21,000 companies and other entities had an income of between \$10 million and \$100 million. This suggests that somewhere around 20,000 companies and other entities may be impacted within these financial limits, though it is difficult to determine this with any specificity.²¹⁷
- For the 2015 to 2016 financial year, the ATO indicates 190,000 companies had an income between \$2 million to \$250 million, and 1,400 corporate groups (30,000 entities) had an income of over \$250 million.

Partnerships

In respect of partnerships, in Australia partnerships are regulated by State legislation, such as the *Partnership Act 1958* (Vic) and the *Partnership Act 1895* (WA), rather than by Commonwealth legislation. There are no financial reporting requirements for partnerships contained in those Acts, and there are no existing concepts of "large" or "small" partnerships which could be utilised to distinguish between partnerships (such as, for example, small family businesses). In the absence of a comparable threshold, it may be most appropriate to use the same threshold test for a "large proprietary company" for consistency.

Public Companies

In respect of public companies, under Australian corporate law, we are not aware of a financial threshold test for whether an organisation is a large public company. Rather public companies are defined in respect of structure rather than size (section 9 of the *Corporations Act 2001* (Cth) defines a public company as a company that is other than a proprietary company but in practice offers shares to the public, whether listed on a securities exchange or not).

In respect of listed companies, they are all subjected to extensive reporting requirements to be listed on the Australian Stock Exchange ("ASX"). In order to be listed, companies must (alongside satisfying shareholder tests), satisfy the ASX that they are of a sufficient size by reference to an asset test (value must exceed over \$4 million or market capitalisation of over \$15 million) or profit test (aggregated profit from continuing operations over 3 years over \$1 million plus \$500,000 consolidated profit from continuing operations over last 12 months).²¹⁸ Listed companies are already subject to more extensive regulatory and reporting requirements than unlisted public companies and proprietary companies. Beyond the obligations in the *Corporations Act 2001* (Cth), listed companies must also comply with the ASX Listing Rules. Specifically, listing Rule 4.10.3 requires companies to include a corporate governance statement in their annual report, which sets out the extent to which they have complied with the Corporate Governance Principles and recommendations published by the ASX Corporate Governance Council. If they have not complied, they must then state the reasons for not following the recommendation and set out (if any) alternative governance practices were adopted in lieu of the recommendation. Notably, the Corporate Governance Principles and Recommendations touch upon anti-slavery in their current form. Principle 3 provides that a listed entity should act ethically and responsibly, including by

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respecting the human rights of its employees, by not employing forced or compulsory labour or young children, even where it may be legally permitted, and by only dealing with business partners who demonstrate similar ethical and responsible business practices.

Listed companies are therefore more familiar with the type of reporting obligation proposed, and would face less of a burden in publishing a modern slavery statement annually. On this basis, there is an argument that reference to turnover for listed companies is not as relevant as the real marker of whether a listed company is “large” and influential is by reference to its market capitalisation (being the number of and value of its shares). Consideration should be had as to whether all listed companies, irrespective of financial turnover, should be required to publish an annual modern slavery statement or whether a financial threshold test should be maintained by reference to annual turnover or market capitalisation.

In terms of companies listed on the ASX, if all listed companies were required to publish a statement (irrespective of threshold), this would impact approximately 2,200 companies.²¹⁹ Of the Top 100 ASX Listed companies, 10% of these companies are already reporting under the UK Modern Slavery Act.

Foreign Companies

Finally, in respect of foreign companies which are publicly listed or incorporated elsewhere but carry on business within Australia, there is no existing financial test as to identify what is “large”. One option is for a threshold test to attach to foreign companies which are listed on financial markets other than those prescribed by Australian regulations. This would capture all foreign publicly listed companies which carry on business in Australia. Alternatively, the obligation could be limited to foreign publicly listed or un listed companies with a meaningful presence in Australia. A threshold test could be introduced to determine which foreign companies are obliged to report, by assessing the level of business carried on in Australia by the foreign company and any Australian subsidiaries. The threshold could be based on an expanded version of Section 45A test, to refer to consolidated revenue within Australia, in excess of \$25 million per year.

For ease and simplicity, we recommend one financial threshold test applies across all corporate structures.

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6. CONTACTS

The Walk Free Foundation

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ENDNOTES

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² Dr James Cockayne, "Unshackling Development: why we need a global partnership to end modern slavery", The Freedom Fund, published 2015 by the United Nations University, accessed 26/04/2017: <http://freedomfund.org/wp-content/uploads/Unshackling-Development-FINAL-FOR-EMAIL.pdf>.

³ Business Council of Australia, "No Place for Modern Slavery", published 29 March 2017, accessed 27/04/2017: <http://www.bca.com.au/media/no-place-for-modern-slavery>.

⁴ "Slavery" as defined in Article 1 of the *International Convention to Suppress the Slave Trade and Slavery* (1926) and *Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery* (1956).

⁵ For further information on the history and international treaty definitions we refer you to Fiona David, *Labour Trafficking*, (Australian Institute of Criminology, 2010): accessed 20/04/17: http://www.aic.gov.au/media_library/publications/rpp/108/rpp108.pdf.

⁶ *Global Slavery Index*, 2016.

⁷ *Criminal Code 1995* (Cth), division 270.1.

⁸ In particular, the High Court has provided valuable guidance on the meaning of slavery in the *Criminal Code 1995* (Cth) in its ruling *R v Tang* (2008) 237 CLR 1.

⁹ Walk Free Foundation is not advocating for the term "modern slavery" to be translated into law, but rather used as an umbrella term under which the existing definitions covered by Divisions 270 and 271 of the *Criminal Code 1995* (Cth) fall within, in accordance with Australia's obligations under international law.

¹⁰ Anuradha Nagaraj, "Scorching drought forces farmers into debt bondage", *Thomson Reuters Foundation*, April 23, 2017, accessed 24/04/17: <http://morungexpress.com/scorching-drought-forces-farmers-debt-bondage/>.

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¹² *Global Slavery Index*, 2016. For the purposes of the GSI we do not disaggregate our figures into definitions or further categories.

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²⁰ *R v Yogalingam Rasalingam* (Unreported, District Court of New South Wales, Puckeridge DCJ, 2 November 2007).

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