

5 May 2017

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Committee Secretary  
Joint Standing Committee on Foreign Affairs, Defence and Trade  
PO Box 6021  
Parliament House  
Canberra ACT 2600

By email: [jscfadt@aph.gov.au](mailto:jscfadt@aph.gov.au)

Dear Honourable Members,

**Re: Submission of International Justice Mission Australia to the Joint Standing Committee on Foreign Affairs, Defence and Trade's Inquiry into Establishing a Modern Slavery Act in Australia**

International Justice Mission Australia welcomes the opportunity to provide a submission to the inquiry into establishing a Modern Slavery Act in Australia.

International Justice Mission ('IJM') protects the poor from violence in the developing world. We partner with local authorities and organisations to rescue victims, bring criminals to justice, restore survivors and strengthen justice systems. IJM combats slavery, sex trafficking, online sexual exploitation of children, sexual violence, police abuse of power, property grabbing and citizenship rights abuse.

IJM Australia joins this mission globally and works locally to grow the movement of Australians seeking justice for the oppressed. We are proud to be the Australian arm of the world's largest anti-slavery organisation. We have seen time and again on a local level how greater enforcement and accountability for the perpetrators of injustice can disrupt the business model for traffickers and bring about restoration for survivors.

We submit that:

- A Modern Slavery Act should be introduced in Australia.
- This should include a comprehensive due diligence scheme, supported by meaningful penalties for non-compliance and industry-specific guidance on its implementation.
- Australia should improve support mechanisms for victims of human trafficking.
- Australia should have an Anti-Slavery Commissioner.

Accompanying these submissions, we have recommended that the Commonwealth government:

1. Enact a Modern Slavery Act ('MSA') that introduces supply chain due diligence measures, an Anti-Slavery Commissioner, and support for victims.
2. Encourage businesses to prioritise investment in civil society organisations working with local law enforcement as part of their due diligence processes on human trafficking.
3. Make available to survivors of human trafficking a comprehensive aftercare program including an individual treatment plan and access to skills training.
4. Establish a national compensation scheme for victims of human trafficking.
5. Consider other initiatives of governments worldwide for best practice in encouraging cooperation between government and the private sector to end modern slavery.
6. Include in the MSA a requirement that companies establish a due diligence framework for their supply chains with respect to modern slavery, based on the EU Conflict Minerals Regulation as discussed.
7. Include in the MSA mandatory items that must be disclosed on an annual basis based on the optional items in the UK MSA as discussed.
8. Provide for in the MSA a central repository where all disclosure statements from reporting companies are held and made publicly available online.
9. Set the turnover threshold for disclosure at \$10 million or \$25 million to account for the greater role that SMEs play in the Australian economy as compared with the UK.
10. Subsidise the development of industry-specific 'supply chain due diligence schemes' to assist companies in complying with the legislation.
11. Include a penalty for failure to disclose or comply with the due diligence legislation sufficient to incentivise businesses to comply.
12. Precisely state in the MSA the nature of the required disclosure and that the entire supply chain is subject to the obligation.
13. Make the supply chain due diligence requirements of the MSA apply to the public sector.
14. Introduce an independent office of the Anti-Slavery Commissioner.

Please do not hesitate to contact us should you require further information.

Yours faithfully,

Kimberly Randle  
Director of Corporate and Legal

## International Justice Mission Australia

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## 1. THE NATURE AND EXTENT OF MODERN SLAVERY – TOR 1 & 2

### 1.1. Global

The International Labour Organisation estimates that there are 21 million people in forced labour worldwide, in an industry that generates US\$150 billion in illegal profits per year.<sup>1</sup> More than one third of these profits are made in the Asia-Pacific region.<sup>2</sup> Global supply chains form a complicated network characterised by ‘interconnectedness and interdependence’.<sup>3</sup> This means that even if an Australian company does not use forced labour directly, it is highly probable that a second- or third-tier supplier does, and this is borne out by internal industry reports.<sup>4</sup>

In supply chains for ‘apparel, electronics, footwear, food, toys’, and other industries, the poor regulation in many developing countries allows for people to be exploited through ‘child labour, hazardous working conditions, excessive working hours and poor wages’.<sup>5</sup> It may be difficult to distinguish in many cases between forced labour and poor working conditions or rights. For example, in the Malaysian electronics industry, one third of 438 foreign workers surveyed by Verité were in situations of forced labour,<sup>6</sup> however, 90 per cent of all workers surveyed had their passports retained, which significantly restricted their freedom of movement.<sup>7</sup> Similarly, in Guatemala, of 372 workers in the coffee sector, nearly two-thirds were completely dependent on their employer for accommodation, and therefore ‘even if eviction were not explicitly threatened’, their freedom of movement was restricted.<sup>8</sup>

### 1.2. Australia

In 2013, ABC reported that some of Australia’s leading retailers, including Rivers, Coles, Target and Kmart were sourcing clothes from factories that threatened workers with abuse.<sup>9</sup> Nevertheless, garment manufacturing for Australian companies in Bangladesh had increased 1500% in the five years since 2008.<sup>10</sup>

Although not all of the global forced labour exploitation is linked to global supply chains, and ones that reach Australia, a significant amount is. Concerning the examples in section 1.1 above, Malaysia was one of the top eight exporters of electronic goods in 2013,<sup>11</sup> and

<sup>1</sup> International Labour Organisation, [Profits and Poverty: The Economics of Forced Labour](#) (2014) 13.

<sup>2</sup> Ibid.

<sup>3</sup> Citi Research, [‘Modern Slavery & Child Labour: Assessing Risks in Global Industries and ASX-Listed Companies’](#) (Research Report, 21 August 2014) 31.

<sup>4</sup> Richard M Locke, ‘We Live in a World of Global Supply Chains’ in Dorothee Baumann-Pauly and Justine Nolan (eds), *Business and Human Rights: From Principles to Practice* (Routledge, 2016) 299, 303.

<sup>5</sup> Ibid 299.

<sup>6</sup> Verité, [‘Strengthening Protections against Trafficking in Persons in Federal and Corporate Supply Chains’](#) (January 2015) 15.

<sup>7</sup> Ibid 53.

<sup>8</sup> Ibid 31.

<sup>9</sup> Four Corners, [‘Australian Retailers Rivers, Coles, Target, Kmart Linked to Bangladesh Factory Worker Abuse’](#) (24 June 2013).

<sup>10</sup> Ibid.

<sup>11</sup> Verité, [‘Strengthening Protections against Trafficking in Persons in Federal and Corporate Supply Chains’](#) (January 2015) 50.

Guatemala was the fifth largest supplier of coffee to the US in 2013.<sup>12</sup> 85% of the world's palm oil, which is found in 'approximately half of all packaged foods in [Australian] supermarkets', is produced in Malaysia and Indonesia, where '[t]he use of forced, child and trafficked labour is reportedly common'.<sup>13</sup>

Research has found that there is a serious risk that Australian companies in most sectors are using forced labour in their supply chains.<sup>14</sup> The implementation of due diligence measures have been proven effective, however.

In 2014, ANZ was criticised for financing Phnom Penh Sugar ('PPS'), 'a Cambodian company reportedly involved in child labour, military-backed land grabs, forced evictions, and food shortages'. Later, following direct requests and pressure for greater stringency from ANZ, leading to the cessation of the relationship between the companies, PPS did ultimately begin reforming its supply chain practices.<sup>15</sup>

In 2012, a survey of seven ASX companies was met with 'mixed answers' about the steps being taken to address the use of Uzbek cotton in supply chains.<sup>16</sup> Uzbekistan was notorious for the use of child and forced labour in the cotton industry. However, since 2011, the Responsible Sourcing Network has issued a Cotton Pledge which now has over 200 businesses committing not to knowingly source cotton from Uzbekistan until labour conditions improve.<sup>17</sup> While significant deficiencies remain, the campaign has prompted the government of Uzbekistan to begin taking steps to remedy the situation and cooperate more fully with the ILO.<sup>18</sup>

The issue of forced labour in Australian supply chains is therefore one that can, and must, be remedied.

## **2. WHY AUSTRALIA SHOULD INTRODUCE A MODERN SLAVERY ACT – TOR 6**

Australia should introduce a Modern Slavery Act ('MSA').

### **2.1. Obligations under International Law and Agreements**

Slavery is an international problem, and one that should weigh on the conscience of humanity as a whole. In recognition of this, Australia has committed under international conventions and agreements to addressing the problem of slavery in a robust way:

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<sup>12</sup> Economic Research Service, United States Department of Agriculture, [US Food Imports](#) (3 October 2016).

<sup>13</sup> World Vision Australia, [Forced, Child and Trafficked Labour in the Palm Oil Industry](#) (Don't Trade Lives Factsheet, 2012) 1.

<sup>14</sup> Citi Research, [Modern Slavery & Child Labour: Assessing Risks in Global Industries and ASX-Listed Companies](#) (Research Report, 21 August 2014).

<sup>15</sup> Ibid 68.

<sup>16</sup> Ibid 73–5.

<sup>17</sup> Ben Dalton, [Forced Fashion: Made in the USA with Uzbek Cotton?](#), *The Diplomat* (online), 2 November 2016.

<sup>18</sup> Department of State (US), [2016 Trafficking in Persons Report](#) (June 2016) 395–7.

- Under the *Slavery Convention*, ‘to bring about, progressively and as soon as possible, the complete abolition of slavery in all its forms’.<sup>19</sup>
- Under the *Palermo Protocol*, to ‘consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons’.<sup>20</sup>
- Under the *ICCPR*, ‘to adopt such legislative or other measures as may be necessary to give effect to the rights’ in the Covenant, including the requirement that ‘[n]o one shall be required to perform forced or compulsory labour’.<sup>21</sup>
- Supporting the Sustainable Development Goals, to ‘[t]ake immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking’.<sup>22</sup>
- Supporting the *UN Guiding Principles on Business and Human Rights*,<sup>23</sup> to ‘advise on ... human rights due diligence’<sup>24</sup> and to ‘take appropriate steps to investigate, punish and redress business-related human rights abuses when they do occur’.<sup>25</sup>

In light of these commitments, Australia should set an example in the international community in setting due diligence procedures for businesses with respect to human trafficking in supply chains and adopting measures to respond to human trafficking more broadly.

Further, Australia has a responsibility to take a leading role in advancing the movement to eradicate modern slavery. Positive steps have been taken to creating stricter and more comprehensive obligations on businesses to take steps to address slavery, as shown by the progressively more robust legislation introduced in the UK, France and the European Union. However, at the same time, some jurisdictions have taken steps in the other direction.<sup>26</sup> The Australian MSA should continue the transition towards greater transparency and accountability with respect to human trafficking and slavery.

## 2.2. Gaps in Existing Legislation

When Australia’s offence provisions criminalising slavery were modernised in 1999,<sup>27</sup> the offences of entering ‘into any commercial transaction involving a slave’ or simply exercising ‘control or direction’ over such a transaction or ‘conducting a business involving forced labour’ were introduced.<sup>28</sup> This was a first step in recognising that the responsibility for

<sup>19</sup> [Slavery Convention](#), opened for signature 25 September 1926, 60 LNTS 253 (entered into force 9 March 1927) art 2.

<sup>20</sup> [Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children](#), opened for signature 12 December 2002, 2237 UNTS 319, (entered into force 25 December 2003) art 6 (*Palermo Protocol*).

<sup>21</sup> [International Covenant on Civil and Political Rights](#), opened for signature 19 December 1966, 999 UNTS 171 (entered into force 23 March 1976) arts 2, 8 (*ICCPR*).

<sup>22</sup> [Transforming Our World: The 2030 Agenda for Sustainable Development](#), GA Res 70/1, UN GAOR, 70<sup>th</sup> sess, 4<sup>th</sup> plen mtg, Agenda Items 15 and 16, UN Doc A/RES/70/1 (21 October 2015, adopted 25 September 2015) para 59 [8.7].

<sup>23</sup> Australian Government, [Report of the Working Group on the Universal Periodic Review: Australia: Addendum](#), 36<sup>th</sup> sess, Agenda Item 6, UN Doc A/HRC/31/14/Add.1 (29 February 2016) [Advance Version] [63].

<sup>24</sup> Ibid 5.

<sup>25</sup> Ibid 27.

<sup>26</sup> See sections 3.2, 3.3.

<sup>27</sup> Jennifer Norberry and Krysti Guest, [Criminal Code Amendment \(Slavery and Sexual Servitude\) Bill 1999](#), No 167 of 1998–99, 4 May 1999.

<sup>28</sup> [Criminal Code](#) (Cth) ss 270.3(1)(c)–(d), (2), 270.6A(2).



slavery should extend beyond the physical coercion of another human to those who profit or benefit, even indirectly, from this coercion.

However, the regulatory framework needs to be updated to reflect the modern situation that transnational businesses operating without due diligence measures in place are profiting from and providing a market for the persistence of slavery and human trafficking.<sup>29</sup>

The changing regulatory landscape and the need for sustainable business practices into the future has been recognised by recent legislative developments:

- The European Parliament (concerning their non-financial disclosure requirements) recognised the ‘importance of businesses divulging information on sustainability such as social and environmental factors, with a view to identifying sustainability risks and increasing investor and consumer trust’ and that ‘disclosure of nonfinancial information is vital for managing change towards a sustainable global economy by combining long-term profitability with social justice and environmental protection’.<sup>30</sup>
- The UK Home Office (introducing their guidance on the Modern Slavery Act) has recognised that ‘[o]rganisations with significant resources and purchasing power are in a unique and very strong position to influence global supply chains’ and that ‘[i]t is simply not acceptable for any organisation to say, in the twenty-first century, that they did not know ... to ignore the issue because it is difficult or complex ... [or] to put profit above the welfare and wellbeing of its employees and those working on its behalf’.<sup>31</sup>
- The Californian Attorney General (introducing guidance on the transparency legislation) recognised that ‘[a]uditing is an important part of a company’s efforts to eliminate human trafficking from its supply chain, since human trafficking and forced labor are complex and often hidden’.<sup>32</sup>

The complexities of the modern business landscape necessitate an updating of Australia’s law and policy in response to human trafficking.

### 2.3. Level Playing Field for Business

There is support from industry in Australia for the introduction of a ‘comprehensive approach to combating modern slavery’.<sup>33</sup> This recognises that eradicating human trafficking and slavery from supply chains is in the interests of businesses by avoiding ‘reputational damage and operational risks’.<sup>34</sup>

<sup>29</sup> See IJM Australia, [Submission No 31](#) to Joint Committee on Law Enforcement, Parliament of Australia, *Inquiry into Human Trafficking*, 24 February 2017, 23.

<sup>30</sup> [Council Directive 2014/95/EU amending Directive 2013/34/EU as Regards Disclosure of Non-financial and Diversity Information by Certain Large Undertakings and Groups](#) [2014] OJ L 330/1, 1.

<sup>31</sup> Home Office (UK), [‘Transparency in Supply Chains etc. A Practical Guide’](#) (29 October 2015) 2.

<sup>32</sup> Kamala D Harris, Attorney General (California), [‘The California Transparency in Supply Chains Act: A Resource Guide’](#) (2015) 14.

<sup>33</sup> GCNA, [‘Support Builds for Australian Modern Slavery Act, with Statements from the BCA and Investors’](#), *Global Compact Network Australia News & Views* (online), 31 March 2017.

<sup>34</sup> Ibid; See AHRC, ACCSR, GCNA, [‘Human Rights in Supply Chains: Promoting Positive Practice’](#) (Report, December 2015) 23.



Requiring businesses to conduct due diligence on their supply chains will also level the playing field so that companies that are already taking the lead in relation to slavery and human trafficking are no longer at a disadvantage to companies that are avoiding the costs of compliance.<sup>35</sup> In many cases, implementing transparency and due diligence processes will not require companies to go far beyond existing systems in place for managing their supply chains.<sup>36</sup>

## 2.4. Strengthening Institutional Responses to Slavery

Governments overseas have carried out overhauls of their responses to slavery and human trafficking to ensure relevant law enforcement, criminal justice and social service institutions are adequately equipped to respond to human trafficking.

The Netherlands government provides a best practice model of fostering awareness of human trafficking across government departments.

For example, the government has allocated resources for the Inspectorate SZW (the Fair Work Commissioner equivalent) the National Police and the Public Prosecution Service to receive appropriate training to identify trafficked victims.<sup>37</sup> Custodial Institutions Agency staff are also being trained to recognise human trafficking amongst irregular migrant in detention centres and staff dealing with asylum procedures have been trained to look for signs of possible trafficking. Further, at the municipal level, front-line staff who register people taking up residence in the community have been trained to recognise signs of trafficking.<sup>38</sup>

In addition, the training institute of the Dutch judicial system and the Public Prosecution Service offers specialised courses on human trafficking for judges and prosecutors. All public prosecutors must be trained on human trafficking and each district has a prosecutor that specialises in this field.<sup>39</sup>

This holistic approach to strengthening key government players is partly owing to International and European instruments that have mobilised the legal framework for the protection of victims of slavery. The Netherlands, the UK and Finland (see section 4.1 below) are signatories to the *Council of Europe Convention on Action against Trafficking in*

<sup>35</sup> See Department of Agriculture and Water Resources (Cth), '[Reforming Australia's Illegal Logging Regulations](#)' (Consultation Regulation Impact Statement, 2016) 12.

<sup>36</sup> Department of Agriculture and Water Resources (Cth), '[Information for Importers – Illegal Logging](#)' (19 April 2017).

<sup>37</sup> Committee of the Parties to the Council of Europe Convention on Action against Trafficking in Human Beings, '[Report Submitted by the Authorities of the Netherlands on Measures Taken to Comply with Committee of the Parties Recommendation CP\(2014\)11 on the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings](#)' (Report No CP(2017)8, 16 February 2017) 6.

<sup>38</sup> Group of Experts on Action against Trafficking in Human Beings, '[Compendium of good Practices on the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings](#)' (2016) 12.

<sup>39</sup> Committee of the Parties to the Council of Europe Convention on Action against Trafficking in Human Beings, '[Report Submitted by the Authorities of the Netherlands on Measures Taken to Comply with Committee of the Parties Recommendation CP\(2014\)11 on the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings](#)' (Report No CP(2017)8, 16 February 2017) 6.

*Human Beings*.<sup>40</sup> Presently the Australian government is not subject to any external or internal monitoring in relation to modern slavery. It is recommended that a Modern Slavery Act is needed in Australia as a baseline awareness raising and accountability mechanism to strengthen key government institutions to respond to modern slavery as seen in the UK and the Netherlands.

**[1] Australia should enact a *Modern Slavery Act* that introduces supply chain due diligence measures, an Anti-Slavery Commissioner, and support for victims.**

### 3. INVESTING IN THE PUBLIC JUSTICE SYSTEM – TOR 3 & 5

#### 3.1. Recommendation

##### 3.1.1. *Encourage Business Investment in Local Reforms to the Public Justice System*

Many existing strategies targeted at labour exploitation in supply chains focus on what companies can do at the management and strategic level and what they can do in the absence of the effective enforcement of local labour laws.<sup>41</sup> However, from IJM's experience addressing forced labour at the source of supply chains, it is clear that 'slavery won't be eradicated from electronics, fishing or any other industry unless and until national and local governments protect workers – including migrant workers – by enforcing laws against forced labor and trafficking and sending slave owners and traffickers to jail'.<sup>42</sup>

The problem of labour exploitation in supply chains needs to be addressed by implementing both 'top-down' and 'bottom-up' strategies.<sup>43</sup> Without strong policy and accountability frameworks designed and enforced by company leadership on the one hand, the desirability of cheap goods and services will allow injustice to go overlooked. On the other hand, unless companies invest in the anti-trafficking infrastructure of the regions in which they work, they will perpetually be just one carelessly-arranged sub-contract away from exploiting slaves in their supply chain.<sup>44</sup>

IJM has seen success in addressing exploitation in supply chains of the commercial sex trade in India by beginning with collaborative casework with local law enforcement at a particular point in the supply chain. The operation was then scaled up and along the supply chain until key individuals causing the exploitation could be identified and prosecuted.<sup>45</sup>

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<sup>40</sup> [Council of Europe Convention on Action against Trafficking in Human Beings](#), opened for signature 16 May 2005, CETS No 197 (entered into force 1 February 2008).

<sup>41</sup> See, eg, AHRC, ACCSR and GCNA, '[Human Rights in Supply Chains: Promoting Positive Practice](#)' (December 2015) 14–16; Fiona David et al, '[Starting a Dialogue: Harnessing the Power of Business to Eliminate Modern Day Slavery](#)' (December 2012) 3.

<sup>42</sup> Gary Haugen, 'Lessons from Two Decades of Casework: How to Restore Survivors and Communities' in Margaret S Archer and Marcelo Sánchez Sorondo (eds), [Human Trafficking: Issues Beyond Criminalization](#) (Pontifical Academy of Social Sciences, 2016) 247, 262.

<sup>43</sup> Anti-Slavery International, '[Organisational Strategy 2015–20](#)' (2015) 7.

<sup>44</sup> See Michael Hobbs, '[The Myth of the Ethical Shopper](#)', *The Huffington Post* (online), 15 July 2015.

<sup>45</sup> USAID, '[Scaling Up Interventions to Prevent and Respond to Gender-based Violence: An Analytical Report](#)' (30 March 2015) 35–7.

Recognising the effectiveness of this approach, Walmart has provided funding for IJM to investigate the extent of forced labour exploitation in their supply chain for seafood sourced in Thailand.<sup>46</sup> This will allow targeted responses to be developed not only by Walmart and partner NGOs, but also importantly by government stakeholders.<sup>47</sup>

In approaches led by Australian governments and businesses to address forced labour in supply chains, investment in local law enforcement in source countries should be a top priority. This is consistent with recent feedback on the *OECD Supply Chain Guidance* indicating that the implementation of risk management by downstream companies was not addressing the ‘root causes and the underlying socio-economic conditions’ that lead to human rights abuses, and that investment in local civil society organisations was ‘particularly crucial’.<sup>48</sup>

**[2] The government should encourage businesses to prioritise investment in civil society organisations working with local law enforcement as part of their due diligence processes with respect to human trafficking.**

#### 4. VICTIM SUPPORT AND REDRESS – TOR 4 & 5

##### 4.1. Recommendations

The following recommendations are from IJM’s fieldwork supporting thousands of survivors of trafficking through aftercare programs over nearly two decades.<sup>49</sup>

##### 4.1.1. Trauma Informed Care

Slavery is a violent crime, and victims of slavery therefore require specialised care and services to restore them to safety.

The government support scheme for victims should go beyond mere financial compensation and also include:<sup>50</sup>

- Access to trauma-focussed therapy from a psychotherapist;
- An individual treatment plan developed in collaboration with an aftercare team that has received specific training on care for victims of trafficking; and
- Ongoing evaluation of progress through recovery based on a comprehensive successful outcomes monitoring tool.<sup>51</sup>

<sup>46</sup> Walmart and Walmart Foundation, ‘[Giving Report: Fiscal Year 2015](#)’ (2015) 13.

<sup>47</sup> Ibid.

<sup>48</sup> Secretary-General (OECD), [Report on the Implementation of the Recommendation on Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas](#), OECD Doc COM/DAF/INV/DCD/DAC(2015)3/FINAL (28 April 2016) 73–4.

<sup>49</sup> Currently over 3700 survivors are undergoing being assisted through aftercare programs implemented in cooperation with our local partners: IJM, [Our Solution](#) (2017).

<sup>50</sup> See Gary Haugen, ‘Lessons from Two Decades of Casework: How to Restore Survivors and Communities’ in Margaret S Archer and Marcelo Sánchez Sorondo (eds), [Human Trafficking: Issues Beyond Criminalization](#) (Pontifical Academy of Social Sciences, 2016) 247, 254–7.

<sup>51</sup> IJM, ‘[Justice Review 2014–15: A Journal on Protection and Justice for the Poor](#)’ (2014) 50 ff.

#### 4.1.2. Skills Training

IJM works with local NGOs and government social services to ensure that survivors in our aftercare program have access to skills training to help them find employment and prevent revictimisation.<sup>52</sup> The government should ensure that survivors of trafficking are provided access to job-readiness training centres and, where necessary, placement opportunities to help them re-enter the workforce.

**[3] The government should make available to survivors of human trafficking a comprehensive aftercare program including an individual treatment plan and access to skills training.**

#### 4.1.3. Resourcing Support for Victims

We acknowledge that a comprehensive aftercare program for victims of human trafficking will require a significant investment of resources. However, such funding is consistent with the existing strategies outlined in the *National Action Plan to Combat Human Trafficking and Slavery 2015–19*,<sup>53</sup> particularly Action Items 43, 51 and 61.

We agree with Anti-Slavery Australia and the Law Council of Australia's recommendation that the government implement a national compensation scheme for victims of human trafficking, and that such a scheme should, among other things, prioritise the best interests of survivors, receive direct government funding, have a civil standard of proof for eligibility, and not penalise survivors for failing to engage with law enforcement.<sup>54</sup> Consistent with our recommendation above, however, we submit that the government should make available to victims of trafficking a comprehensive aftercare support program as an alternative to or in addition to purely monetary compensation.

**[4] The government should establish a national compensation scheme for victims of human trafficking.**

### 5. FUND TO END MODERN SLAVERY – TOR 3 & 5

#### 5.1. Recommendations

As discussed at section 3.4.9 above, the eradication of slavery will require investment in the reform of local justice systems at the source end of supply chains as well as due diligence requirements imposed from the consumer end.

In order to fund such projects, the US introduced legislation to establish the End Modern Slavery Initiative Foundation which funds projects in countries that have a higher incidence

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<sup>52</sup> See Gary Haugen, 'Lessons from Two Decades of Casework: How to Restore Survivors and Communities' in Margaret S Archer and Marcelo Sánchez Sorondo (eds), *Human Trafficking: Issues Beyond Criminalization* (Pontifical Academy of Social Sciences, 2016) 247, 254–7.

<sup>53</sup> Australian Government, *National Action Plan to Combat Human Trafficking and Slavery 2015–19* (2014).

<sup>54</sup> Anti-Slavery Australia and Law Council of Australia, '*Establishing a National Compensation Scheme for Victims of Commonwealth Crime*' (Report, 2016).

of modern slavery.<sup>55</sup> The foundation is intended to be funded with a one sixth seed contribution from the US government, a one third contribution from foreign governments, and a one half contribution from private donors.<sup>56</sup> The efforts funded will be monitored to ensure they are effective in meeting goals with a view to reducing slavery by 50% overall.

**[5] The government should give consideration to other initiatives of governments around the world for best practice in encouraging cooperation between government and the private sector to end modern slavery.**

## **6. SUPPLY CHAIN TRANSPARENCY AND DUE DILIGENCE – TOR 3 & 5**

### **6.1. Existing Australian Legislation**

#### *6.1.1. Textile, Clothing and Footwear Industry*

Current state legislation is in place that provides for transparency and protection of worker rights in supply chains in the textile, clothing and footwear (“TCF”) industry. The combination of mandatory legislative and voluntary industry codes means that all national TCF retailers in Australia ‘are now compelled to provide details of their TCF supply contracts to regulators’.<sup>57</sup>

These codes require retailers to include standard provisions in supply contracts that mandate the reporting of information about the conditions of workers further down the chain, with failure a ground for terminating the contract.<sup>58</sup> These provisions have legislative backing, with NSW, for example, requiring ‘all suppliers within supply chains to fully and accurately disclose details of their subcontracting or else bear the liability for any unpaid workers’ compensation insurance premiums within that chain’.<sup>59</sup> Breaches of the NSW code may also result in financial penalties up to \$11,000.<sup>60</sup>

Further, access by regulators to information about the volume and value of the orders within the supply contracts allows them to ‘utilise their legislative and contractually based powers to inspect all production sites without notice to check the accuracy of workplace records and locate the entire workforce’.<sup>61</sup>

Nossar et al comment that some of these obligations already apply to overseas workers in supply chains of Australian retailers,<sup>62</sup> and that ‘there is no obvious impediment (other than

<sup>55</sup> [National Defense Authorization Act for Fiscal Year 2017](#), Pub L No 114-328, § 1298.

<sup>56</sup> Bob Corker, [End Modern Slavery Initiative Act](#).

<sup>57</sup> Igor Nossar et al, ‘Protective Legal Regulation for Home-Based Workers in Australian Textile, Clothing and Footwear Supply Chains’ (2015) 57 *Journal of Industrial Relations* 585, 592.

<sup>58</sup> Ibid 591.

<sup>59</sup> Ibid; [Workers Compensation Act 1987](#) (NSW) s 175B.

<sup>60</sup> See [Ethical Clothing Trades Extended Responsibility Scheme 2005](#) (NSW) cl 7(2); [Industrial Relations \(Ethical Clothing Trades\) Act 2001](#) (NSW) s 13; [Crimes \(Sentencing Procedure\) Act 1999](#) (NSW) s 17.

<sup>61</sup> Igor Nossar et al, ‘Protective Legal Regulation for Home-Based Workers in Australian Textile, Clothing and Footwear Supply Chains’ (2015) 57 *Journal of Industrial Relations* 585, 593.

<sup>62</sup> Ibid 590–1.

a lack of political will) preventing the regulation of transnational supply chains extending into the jurisdiction of a domestic government'.<sup>63</sup>

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<sup>63</sup> Ibid 600.



### 6.1.2. *Illegal Logging Supply Chain Regulation*

In 2012, Australia introduced offences of importing illegally logged timber or importing a prescribed product without implementing the requisite due diligence measures.<sup>64</sup> The penalty for the importation offence is 5 years imprisonment or \$90,000 and for not completing due diligence it is \$54,000.<sup>65</sup> Logging is classified as ‘illegal’ based on the domestic legislation of the source country.<sup>66</sup>

The prescribed due diligence measures include:<sup>67</sup>

1. Setting out in writing the process by which the due diligence standards will be met;
2. Gathering information on the product including:
  - a description of the regulated timber product;
  - its origin, including region of the source country and the forest harvesting unit;
  - the country in which the product was manufactured;
  - the name, address, trading name, business and company registration number (if any) of the supplier of the product;
  - the quantity of the shipment of the product;
  - the documentation accompanying the product;
  - evidence of relevant domestic licensing in source country;
  - information required by the specific guideline for the source country; and
  - evidence the product has not been illegally logged.
3. Identifying and assessing the risk that product includes illegally sourced timber;
4. Carrying out risk mitigation or refraining from importing the product; and
5. Supplying documentation of due diligence procedures to the Secretary.

The Australian Government has developed ‘Country Specific Guidelines’ that identify the particular information gathering and risk assessment that should be carried out depending on the country of origin of the timber.<sup>68</sup> Additionally, the Australian Government provided funding to industry body the Timber Development Association to develop free tools and guidance to assist importers in complying with the scheme.<sup>69</sup>

One of the reasons for these laws was to ensure that legitimate and sustainable foresting practices in Australia and overseas would not have to compete with illegal operations.<sup>70</sup> An initial review of the regulations has shown that they are beginning to have an effect, with importers less likely to source from suppliers that cannot supply valid documentation.<sup>71</sup>

<sup>64</sup> [Illegal Logging Prohibition Act 2012](#) (Cth) ss 8, 12.

<sup>65</sup> Ibid; [Crimes Act 1914](#) (Cth) s 4AA.

<sup>66</sup> [Illegal Logging Prohibition Act 2012](#) (Cth) s 7 (definition of ‘illegally logged’).

<sup>67</sup> [Illegal Logging Prohibition Regulation 2012](#) (Cth) regs 9–16.

<sup>68</sup> Department of Agriculture and Water Resources (Cth), [Information for Importers – Illegal Logging](#) (19 April 2017).

<sup>69</sup> Ibid.

<sup>70</sup> Department of Agriculture and Water Resources (Cth), [Reforming Australia’s Illegal Logging Regulations](#) (Consultation Regulation Impact Statement, 2016) 12.

<sup>71</sup> Ibid 22.



### 6.1.3. Corporate Governance Disclosure

The ASX Corporate Governance Council developed the *Corporate Governance Principles and Recommendations* which encourage companies to, amongst other things, ‘disclose whether it has any material exposure to economic, environmental and social sustainability risks and, if it does, how it manages or intends to manage those risks’.<sup>72</sup> ‘Social sustainability’ is defined as ‘the ability of a listed entity to continue operating in a manner that meets accepted social norms and needs over the long term’,<sup>73</sup> which would include its susceptibility to the risk that forced labour occurs in the company’s supply chain.<sup>74</sup>

ASX requires disclosure of a company’s implementation of these principles on a ‘comply or explain’ basis, where companies must either detail steps they have taken in accordance with the principles or explain why they have not done so.<sup>75</sup> ASX may suspend trading in a company’s securities if it fails to make the appropriate disclosures.<sup>76</sup>

Less than 65% of ASX500 companies fully comply with the principles, although 100% do in fact report on an ‘if not, why not’ basis.<sup>77</sup> Further, many companies fail to go into detail about the nature of their compliance or lack thereof.<sup>78</sup>

<sup>72</sup> ASX Corporate Governance Council, ‘[Corporate Governance Principles and Recommendations with 2010 Amendments](#)’ (ASX, 2014) 30 [Recommendation 7.4].

<sup>73</sup> Ibid 38.

<sup>74</sup> See AHRC, ACCSR, GCNA, ‘[Human Rights in Supply Chains: Promoting Positive Practice](#)’ (Report, December 2015) 23.

<sup>75</sup> See Juliette Overland, ‘[Corporate Social Responsibility in Context: The Case for Compulsory Sustainability Disclosure for Listed Public Companies in Australia?](#)’ (2007) 4(2) Macquarie Journal of International and Comparative Environmental Law 1.

<sup>76</sup> Australian Securities Exchange, ‘[Disclosure of Corporate Governance Practices](#)’ (Guidance Note No 9, 19 December 2016) 12.

<sup>77</sup> Grant Thornton, ‘[Corporate Governance Reporting Review](#)’ (2013) 18, 25. In 2007, the rate was 45% for ASX300: Grant Thornton, ‘[Corporate Governance](#)’ (Reporting Review, August 2008) 2.

<sup>78</sup> Grant Thornton, ‘[Corporate Governance Reporting Review](#)’ (2013) 5.

## 6.2. International of Supply Chain Transparency and Due Diligence Frameworks

The following table sets out the key regulatory schemes that have been implemented in jurisdictions overseas to encourage companies to improve transparency and due diligence processes with respect to issues of social importance such as human trafficking.

Jurisdiction	Obligation	Breadth of Application	Reporting Guidelines	Penalties for Non-Compliance	Rate of Compliance
<b>California</b> <sup>79</sup>	Disclose efforts to eradicate slavery from company's 'direct supply chain'.	All 'retail sellers' and 'manufacturers' doing business in California with worldwide gross receipts exceeding US\$100 million.	<p>Disclosure must be placed on website with 'conspicuous and easily understood link' on homepage.</p> <p>Mandatory to disclose to what extent, if any:</p> <ul style="list-style-type: none"> <li>• Supply chains are verified (and whether by third party);</li> <li>• Supply chains are audited (and whether audits are independent and unannounced);</li> <li>• Suppliers are required to certify compliance with human trafficking laws;</li> <li>• Accountability standards and procedures are in place for employees and contractors; and</li> <li>• Appropriate training is provided to employees and management.</li> </ul> <p>Additional resource guide provides examples and required level of detail disclosures should take and how prominently link must be displayed on homepage.<sup>80</sup></p>	Attorney General may bring action for injunctive relief.	Only 14% of businesses are fully compliant. <sup>81</sup>
<b>United Kingdom</b> <sup>82</sup>	Prepare a statement each financial year detailing steps	All 'commercial organisations' which carry on business in the UK with a total	<p>Statement must be available on website via a link in 'a prominent place on that website's homepage' or in writing on request.</p> <p>Statement must be approved and signed by person(s) with authority</p>	Secretary of State may bring civil action for injunction or specific	Currently approximately 16.8% of businesses have

<sup>79</sup> Cal Civ Code § 1714.43 (Deering 2012).

<sup>80</sup> Kamala D Harris, Attorney General (California), '[The California Transparency in Supply Chains Act: A Resource Guide](#)' (2015).

<sup>81</sup> Michael Ball et al, '[Corporate Compliance with the California Transparency in Supply Chains Act of 2010](#)' (Development International, 2 November 2015) 33.

<sup>82</sup> [Modern Slavery Act 2015](#) (UK) c 30, s 54.

Jurisdiction	Obligation	Breadth of Application	Reporting Guidelines	Penalties for Non-Compliance	Rate of Compliance
	taken, or lack thereof, to ensure absence of slavery and human trafficking in business and supply chains.	turnover over £36 million. <sup>83</sup>	<p>in organisation, eg approval of board of directors and signature of a director is required for a body corporate.</p> <p>Statements <i>may</i> include:</p> <ul style="list-style-type: none"> <li>• Organisational structure, policies and due diligence processes with respect to human trafficking and supply chains;</li> <li>• Identification of risk of slavery and human trafficking in the supply chain;</li> <li>• Effectiveness in prevention measured against performance indicators; or</li> <li>• Appropriate training available to staff.</li> </ul> <p>Additional guidelines provide greater detail and case studies as to the information that may be disclosed.<sup>84</sup></p>	performance if companies do not comply.	<p>completed a statement.<sup>85</sup></p> <p>An initial sample of early statements found that more than half were less than 500 words long.<sup>86</sup></p>
<b>United States<sup>87</sup> (conflict minerals)</b>	Report annually on use of minerals that finance armed groups in the designated countries, and if so, prepare an independently audited report on due diligence	All 'reporting companies', that is: those listed on a national securities exchange; having equity securities held by 2000 persons or 500 who are not accredited investors, and assets exceeding US\$10	<p>Report to be made available on website.</p> <p>US Securities and Exchange Commission made a final ruling providing extensive guidance on and interpretation of the legislation and the requirements imposed on businesses.</p> <p>The guidance required that due diligence be carried out in accordance with accepted guidelines such as those prepared by the Organisation for Economic Co-operation and Development ('OECD').<sup>89</sup> In particular, it detailed the requirements of a Conflict Minerals Report, which included 'a description of the facilities used</p>	Purchasers of products from entity may bring action for damage due to misleading statements. <sup>93</sup>	Estimates range from 7% to 20% of companies being compliant. <sup>94</sup>

<sup>83</sup> [Modern Slavery Act 2015 \(Transparency in Supply Chains\) Regulations 2015](#) (UK) reg 2.

<sup>84</sup> Home Office (UK), '[Transparency in Supply Chains etc. A Practical Guide](#)' (29 October 2015).

<sup>85</sup> Approximately 10,796 businesses were estimated to be covered by the legislation: Home Office (UK), '[Modern Slavery Act – Transparency in Supply Chains](#)' (Impact Assessment No HO0192, 15 July 2015) 12. The Business and Human Rights Resource Centre holds 1808 statements in its public database, accessed on 17 April 2017: Business and Human Rights Resource Centre, [UK Modern Slavery Act & Registry](#) (April 2017).

<sup>86</sup> Daniel Hudson and Oliver Elgie, '[Potential Confusion about Modern Slavery Act Reporting Requirements](#)' (Legal Briefing, Herbert Smith Freehills, 11 May 2016).

<sup>87</sup> [Dodd-Frank Wall Street Reform and Consumer Protection Act](#), Pub Law 111–203, § 1502, 124 Stat 1375, 2213–18 (2010).

Jurisdiction	Obligation	Breadth of Application	Reporting Guidelines	Penalties for Non-Compliance	Rate of Compliance
	measures taken in response.	million; or having filed a registration statement under the <i>Securities Act of 1933</i> . <sup>88</sup>	to process [the] conflict minerals, the country of origin ... and the efforts to determine the mine or location of origin with the greatest possible specificity'. <sup>90</sup>  This ruling, however, was deemed unconstitutional due to its effect on commercial speech, <sup>91</sup> and is currently under reconsideration. <sup>92</sup>		
<b>European Union<sup>95</sup> (conflict minerals)</b>	Take due diligence steps to prevent the use of minerals sourced in conflict zones and make information on steps taken publicly available.	Importers of designated minerals above particular thresholds such that 95% of all imports are covered. <sup>96</sup>	Importers must report publicly 'as widely as possible, including on the internet', including steps taken and details of third party audits. <sup>97</sup>  The Regulations also provides for the establishment and monitoring of 'supply chain due diligence schemes' which will allow governments and industry associations to create procedures that allow companies to comply with the Regulations. <sup>98</sup>  The due diligence obligations are based on the OECD Due Diligence Guidance relating to conflict minerals. <sup>99</sup>	Penalties are to be set by member states. <sup>100</sup>  Adequacy of penalties will be reviewed periodically to ensure that they are effective in having due diligence	Becomes binding on 1 January 2021. <sup>102</sup>

<sup>89</sup> Securities and Exchange Commission (US), [SEC Final Rule – Conflict Minerals](#), RIN 3235-AK84, 22 August 2012, 205–7.

<sup>93</sup> [Securities Exchange Act of 1934](#), 15 USC § 78m, s 13(p).

<sup>94</sup> Susan Ariel Aronson and Ethan Wham, 'Can Transparency in Supply Chains Advance Labor Rights? Mapping Existing Efforts' (Working Paper IIEP-WP-2016-6, Institute for International Economic Policy, George Washington University, April 2016) 8, 11.

<sup>88</sup> Anna T Pinedo, Ze'-ev D Eiger and Brian D Hirshberg, 'Frequently Asked Questions about Periodic Reporting Requirements for US Issuers: Overview' (Morrison & Foerster LLP, 2016) 1–2.

<sup>90</sup> Securities and Exchange Commission (US), [SEC Final Rule – Conflict Minerals](#), RIN 3235-AK84, 22 August 2012, 351.

<sup>91</sup> Anna T Pinedo, Ze'-ev D Eiger and Brian D Hirshberg, 'Frequently Asked Questions about Periodic Reporting Requirements for US Issuers: Overview' (Morrison & Foerster LLP, 2016) 11.

<sup>92</sup> Acting Chairman Michael S Piwowar, 'Reconsideration of Conflict Minerals Rule Implementation' (Public Statement, 31 January 2017).

<sup>95</sup> [Proposal for a Regulation of the European Parliament and of the Council Setting Up a Union System for Supply Chain Due Diligence Self-certification of Responsible Importers of Tin, Tantalum and Tungsten, Their Ores, and Gold Originating in Conflict-Affected and High-Risk Areas – Outcome of the European Parliament's First Reading](#), EU Doc 7239/17, 20 March 2017 ('EU Conflict Minerals Regulation').

<sup>96</sup> *EU Conflict Minerals Regulation* art 18.

<sup>97</sup> *EU Conflict Minerals Regulation* art 7.

<sup>98</sup> *EU Conflict Minerals Regulation* art 8.

<sup>99</sup> See, eg. *EU Conflict Minerals Regulation* art 4(b).

<sup>100</sup> *EU Conflict Minerals Regulation* art 16.

Jurisdiction	Obligation	Breadth of Application	Reporting Guidelines	Penalties for Non-Compliance	Rate of Compliance
				schemes implemented. <sup>101</sup>	
<b>European Union (non-financial disclosure)<sup>103</sup></b>	Include in annual report information on the 'performance, position and impact of its activity, relating to' issues of social importance. <sup>104</sup>	Companies limited by shares or guarantee (in the UK, and equivalents elsewhere), with more than 500 employees. <sup>105</sup>	Reporting must be made publicly available, including on entity's website.  Reporting must address 'as a minimum, environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters', by means of description of the entity's business model, and relevant policies, due diligence processes, risk management and non-financial key performance indicators. <sup>106</sup>  Where no policy is implemented, the entity must provide an explanation for not doing so. <sup>107</sup>	Member states to implement penalties that are 'effective, proportionate and dissuasive'. <sup>108</sup>  Germany has considered a penalty based on a percentage of the entity's turnover. <sup>109</sup>	First reports due for financial year beginning in 2017. <sup>110</sup>  Denmark was the first to incorporate these obligations into domestic legislation. <sup>111</sup>
<b>Denmark<sup>112</sup></b>	Include report in accordance with EU non-financial	Applies to companies that have two or more of: 250 employees; a	Reports are to be made available on the company's website.  Companies are required to complete reports as outlined above, however, they are also encouraged to use the format outlined by the	Companies can be fined (an unknown amount), <sup>115</sup> and penalties up to EUR	66% of companies fully complied before the most recent

- <sup>102</sup> Council of the European Union, '[Conflict Minerals: Council Adopts New Rules to Reduce Financing of Armed Groups](#)' (Press Release, 181/17, 3 April 2017).
- <sup>101</sup> *EU Conflict Minerals Regulation* art 17.
- <sup>103</sup> [Council Directive 2013/34/EU on the Annual Financial Statements, Consolidated Financial Statements and Related Reports of Certain Types of Undertakings, Amending Directive 2006/43/EC of the European Parliament and of the Council and Repealing Council Directives 78/660/EEC and 83/349/EEC](#) [2013] OJ L 182/19, as amended by [Council Directive 2014/95/EU amending Directive 2013/34/EU as Regards Disclosure of Non-financial and Diversity Information by Certain Large Undertakings and Groups](#) [2014] OJ L 330/1 ('*EU Non-financial Disclosure Directive*').
- <sup>104</sup> *EU Non-financial Disclosure Directive* art 19a(1).
- <sup>105</sup> *EU Non-financial Disclosure Directive* arts 1–2, 19, Annex 1.
- <sup>106</sup> *EU Non-financial Disclosure Directive* art 19a(1).
- <sup>107</sup> *EU Non-financial Disclosure Directive* art 19a(1).
- <sup>108</sup> *EU Non-financial Disclosure Directive* art 51.
- <sup>109</sup> Géraldine Bourguignon et al, '[Disclosure of Non-financial and Diversity Information by Large European Companies and Groups](#)' (Alert Memorandum, Cleary Gottlieb, 2017) 8.
- <sup>110</sup> [Council Directive 2014/95/EU amending Directive 2013/34/EU as Regards Disclosure of Non-financial and Diversity Information by Certain Large Undertakings and Groups](#) [2014] OJ L 330/1, art 4.
- <sup>111</sup> See Danish Business Authority, '[Implementation in Denmark of EU Directive 2014/95/EU on the Disclosure of Non-financial Information](#)' (2015).
- <sup>112</sup> *Financial Statements Act 2001* (Denmark) s 99a.

Jurisdiction	Obligation	Breadth of Application	Reporting Guidelines	Penalties for Non-Compliance	Rate of Compliance
	disclosure directive.	balance sheet over EUR 19.2 million; or a turnover over EUR 38.3 million. <sup>113</sup>	Global Reporting Initiative. <sup>114</sup>	10,000 have been given to auditors for reports that do not comply. <sup>116</sup>	changes to the legislation were introduced. <sup>117</sup>
<b>France<sup>118</sup></b>	Companies must report annually on vigilance plan adopted to address potential human rights abuses.	Companies based in France with 5000 or more employees, or companies based outside of France with 10,000 or more employees. <sup>119</sup>	<p>Vigilance plan is to be published as part of annual report under France's Commercial Code.</p> <p>The vigilance plane must include: identification and mitigation of risks of serious human rights abuses in the supply chain; procedures for periodically assessing the compliance of suppliers; and mechanisms for monitoring the effectiveness of these procedures.<sup>120</sup> The plans are contemplated to fall within the remit of existing multi-stakeholder initiatives.<sup>121</sup></p>	Draft law had fines up to EUR 30 million for non-compliance, but this was found unconstitutional, and only injunctive relief is now available. <sup>122</sup>	Only came into effect on 29 March 2017. <sup>123</sup>

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- <sup>115</sup> Bech-Bruun, '[Corporate Social Responsibility: Focus on Growth and Knowledge](#)' (CSR Report, 2013) 4.
- <sup>113</sup> UNEP and Group of Friends of Paragraph 47, '[Evaluating National Public Policies on Corporate Sustainability Reporting](#)' (2015) 38.
- <sup>114</sup> See Danish Business Authority, '[Implementation in Denmark of EU Directive 2014/95/EU on the Disclosure of Non-financial Information](#)' (2015).
- <sup>116</sup> UNEP and Group of Friends of Paragraph 47, '[Evaluating National Public Policies on Corporate Sustainability Reporting](#)' (2015) 40.
- <sup>117</sup> Danish Government, '[Executive Summary: Three Dimensions of Corporate Social Responsibility \(CSR\)](#)' (2013) 1.
- <sup>118</sup> *Code de commerce* [Commercial Code] (France) arts L 225-102-4 – L 225-102-5.
- <sup>119</sup> *Code de commerce* [Commercial Code] (France) L 225-102-4(I).
- <sup>120</sup> Sabine Smith-Vidal and Charles Dauthier, '[French Companies Must Show Duty of Care for Human and Environmental Rights](#)', *Lexology* (online), 3 April 2017.
- <sup>121</sup> *Code de commerce* [Commercial Code] (France) arts L 225-102-4(I).
- <sup>122</sup> Jean-Philippe Robé, '[Partial Invalidation of the French Duty of Vigilance Statute by the Constitutional Council](#)' on Jean-Philippe Robé, *LinkedIn* (23 March 2017).
- <sup>123</sup> Antoine F Kirry et al, '[French Corporate Human Rights and Environmental Due Diligence Legislation](#)' (Client Update, Debevoise & Pimpton, 29 March 2017) 1.



### 6.3. Other Important Existing and Proposed Measures

#### 6.3.1. OECD Due Diligence Guidance

The OECD has prepared guidance to assist companies in carrying out due diligence measures in their supply chains.<sup>124</sup> The *OECD Conflict Minerals Guidance* has provided companies with concrete steps they can take to ensure that minerals used in their products are not directly or indirectly financing armed groups. These were prepared following ‘a multi-stakeholder process with engagement from OECD and the [International Conference on the Great Lakes Region] member countries, industry, civil society, as well as the United Nations Group of Experts on the Democratic Republic of the Congo’.<sup>125</sup>

The guidance is based around an overarching ‘Five-Step Framework for Risk-Based Due Diligence in the Mineral Supply Chain’, which encourages companies to:

1. Establish strong company management systems;
2. Identify and assess risk in the supply chain;
3. Design and implement a strategy to respond to identified risk;
4. Carry out independent third-party audit of supply chain due diligence at identified points in the supply chain; and
5. Report on supply chain due diligence.<sup>126</sup>

The benefits of industry engagement with these guidelines have been:

- Increased participation in initiatives encouraging greater investment in responsible mining activities;<sup>127</sup>
- Use of ‘standardised industry tools’ that have allowed more robust and efficient checks to take place at lower levels of the supply chain;<sup>128</sup> and
- Companies have ‘made significant improvements in their understanding of the conflict mineral issue’<sup>129</sup> and the complexities in their own supply chains;<sup>130</sup>
- The contribution of mining to violence in the target region is estimated to have decreased;<sup>131</sup> and

<sup>124</sup> See OECD, [OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas: Third Edition](#) (OECD Publishing, 2016) (‘*OECD Conflict Minerals Guidance*’); OECD, [OECD Due Diligence Guidance for Multinational Enterprises](#) (OECD Publishing, 2008) (‘*OECD Multinational Guidelines*’); OECD, ‘[OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector](#)’ (2017) (‘*OECD Garment and Footwear Guidance*’).

<sup>125</sup> Secretary-General (OECD), [Report on the Implementation of the Recommendation on Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas](#), OECD Doc COM/DAF/INV/DCD/DAC(2015)3/FINAL (28 April 2016) 11.

<sup>126</sup> Ibid 17–19.

<sup>127</sup> OECD, ‘[Downstream Implementation of the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas](#)’ (Final Report, January 2013) 59.

<sup>128</sup> Ibid.

<sup>129</sup> Andreas Manhart and Tobias Schleicher, ‘[Conflict Minerals – An Evaluation of the Dodd-Frank Act and Other Resource-Related Measures](#)’ (Öko-Institut e.V., August 2013) 36.

<sup>130</sup> OECD, ‘[Downstream Implementation of the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas](#)’ (Final Report, January 2013) 59–60.



- The volume of legal ‘conflict free’ minerals now being sourced from the region has increased.<sup>132</sup>

Much of the success of this method has been due to the mandatory reporting requirements instituted by the Dodd-Frank Act for US companies which have permitted implementation of the *OECD Conflict Minerals Guidance* to constitute compliance under the disclosure provisions.<sup>133</sup> This is encouraging because the European Union regulations on conflict minerals are also based around the guidance and will mandate its implementation for European companies in a similar way.

However, the operation of the Dodd-Frank Act and subsequent rulings by the US Securities and Exchange Commission has had some negative impacts. Because greater auditing and reporting obligations are placed on companies that source from certain countries, the regulations have created an incentive for companies to boycott those countries altogether.<sup>134</sup> It has also made it more difficult for legitimate mining operations to compete because of the increased compliance costs.<sup>135</sup> Further, some companies have been reluctant to conduct lower-tier suppliers as they have discovered the complexities of their supply chains.<sup>136</sup>

### 6.3.2. Brazil’s ‘Dirty List’

In 2004, Brazil introduced a system whereby companies that were using forced labour were placed on a publicly available ‘dirty list’, updated every six months.<sup>137</sup> The government introduced guidelines and supported multi-stakeholder initiatives with business and financial institutions such that other companies would refuse to lend to or do business with companies named on the list.<sup>138</sup> Companies could only be removed from the list once all fines and restitution have been paid and it has demonstrated slave-free activities for two years.<sup>139</sup>

<sup>131</sup> OECD, ‘[Upstream Implementation of the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas](#)’ (Final Report, January 2013) 9.

<sup>132</sup> Secretary-General (OECD), [Report on the Implementation of the Recommendation on Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas](#), OECD Doc COM/DAF/INV/DCD/DAC(2015)3/FINAL (28 April 2016) 72.

<sup>133</sup> OECD, ‘[Upstream Implementation of the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas](#)’ (Final Report, January 2013) 11.

<sup>134</sup> OECD, ‘[Downstream Implementation of the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas](#)’ (Final Report, January 2013) 16–17.

<sup>135</sup> Secretary-General (OECD), [Report on the Implementation of the Recommendation on Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas](#), OECD Doc COM/DAF/INV/DCD/DAC(2015)3/FINAL (28 April 2016) 71–2.

<sup>136</sup> OECD, ‘[Downstream Implementation of the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas](#)’ (Final Report, January 2013)

<sup>137</sup> Ashley Feasley, ‘[Deploying Disclosure Laws to Eliminate Forced Labour: Supply Chain Transparency Efforts of Brazil and the United States of America](#)’ (2015) 5 *Anti-Trafficking Review* 30.

<sup>138</sup> Ibid.

<sup>139</sup> Ibid.

The initiative was very effective at mounting financial pressure on entities caught using forced labour.<sup>140</sup> Part of its success was due to the effective integration of government transparency measures and industry cooperation.<sup>141</sup> Unfortunately, the list was suspended in 2014 following a challenge in the Brazil's Federal Supreme Court. It was reinstated in 2016 but their remains significant opposition to its continued operation from some large employers.<sup>142</sup>

### 6.3.3. US Federal Procurement Executive Order

In 2012, President Obama signed an Executive Order requiring the public sector to eradicate slavery from supply chains. All federal government contracts valued over US\$500,000 for work to be performed outside the US must not be entered into without adequate compliance procedures to ensure employees are not trafficked.<sup>143</sup> Required measures include awareness programs for employees and the use of recruitment agencies with appropriate training and wage agreements.<sup>144</sup> It also established a multi-agency taskforce 'to identify, adopt and publish appropriate safeguards guidance and compliance assistance to prevent trafficking and forced labour in federal contracting'.<sup>145</sup>

### 6.3.4. Proposed Dutch Child Labour Due Diligence Law

The lower house of the Dutch Parliament has passed legislation requiring due diligence investigation of supply chains for child labour, to enter into force on 1 January 2020 if approved by the Senate.<sup>146</sup> The law would require companies to make a one-off declaration that they have carried out due diligence with respect to child labour in their supply chain. Such due diligence must be consistent with existing international standards, such as those of the International Labour Organisation.<sup>147</sup>

Key features of the scheme include:

- a publicly available register of all declarations submitted by companies;<sup>148</sup>
- a EUR 4100 fine for failure to declare, with persistent refusal resulting in imprisonment;<sup>149</sup> and

<sup>140</sup> Annie Kelly, '[Brazil's "Dirty List" Names and Shames Companies Involved in Slave Labour](#)', *The Guardian* (online), 25 July 2013.

<sup>141</sup> Ibid.

<sup>142</sup> Chris Arsenault, '[Brazil Prosecutors Demand Answers on Names Missing from Slavery "Dirty List"](#)', *Reuters* (online), 17 April 2017.

<sup>143</sup> Office of the Press Secretary, White House, '[Fact Sheet: Executive Order Strengthening Protections Against Trafficking in Persons in Federal Contracts](#)' (25 September 2012).

<sup>144</sup> President Barack Obama, *Executive Order – Strengthening Protections Against Trafficking In Persons In Federal Contracts*, EO 13 627, 25 September 2012.

<sup>145</sup> Ashley Feasley, '[Deploying Disclosure Laws to Eliminate Forced Labour: Supply Chain Transparency Efforts of Brazil and the United States of America](#)' (2015) 5 *Anti-Trafficking Review* 30.

<sup>146</sup> MVO Platform, '[Frequently Asked Questions About the New Dutch Child Labour Due Diligence Law](#)' (April 2017).

<sup>147</sup> Ibid.

<sup>148</sup> Gerard Oonk, '[Child Labour Due Diligence Law for Companies Adopted by Dutch Parliament](#)' (8 February 2017) India Committee of the Netherlands.

<sup>149</sup> MVO Platform, '[Frequently Asked Questions About the New Dutch Child Labour Due Diligence Law](#)' (April 2017).

- for failure to conduct appropriate due diligence, a fine the maximum of EUR 750,000 or 10% of a company's revenue, with persistent refusal resulting in imprisonment.<sup>150</sup>

### 6.3.5. *Proposal for Australian Supply Chain Transparency*

Michael Rawling has proposed that companies should have to collect and disclose to an industry regulator detailed information about their supply chains and workforces, including:<sup>151</sup>

- the name of workplace;
- location of the workplace;
- number of workers in foreign locations who are engaged to produce goods or services supplied to the regulated business;
- age range of those workers (for child labour transparency);
- wage rate profiles for workers;
- what the occupational health and safety measures at the workplace are;
- whether or not worker representatives can access the workplace; and
- a list of locations of supplier's contractors and subcontractors and so on, where all of the work is undertaken to produce goods or services ultimately supplied to the regulated business.

The information should be submitted to an industry regulator who then makes it publicly available. There should be penalties for failing to disclose and for providing false or misleading statements.<sup>152</sup>

### 6.3.6. *Proposal to Eliminate Forced Labour*

Following recent review of operations by US companies in the Greater Mekong Subregion, Sasha Beatty has put forward a proposal that would eliminate forced labour entirely from these supply chains.<sup>153</sup> Support exists for such a proposal in principle, with various organisations calling for obligations to move 'beyond transparency'.<sup>154</sup>

Beatty argues for a three-phase approach of investigation, replacement and prevention, to be carried out in the US over five to seven years.<sup>155</sup>

**Investigation:** companies are given time to identify where forced labour is used in their supply chain. Beatty notes that: 'Associated Press members, who connected Thai fishing boats with slaves to CP Foods by actually witnessing a supply run, did all this in little under a year and that was only with a handful of investigative reporters and limited resources'. By

<sup>150</sup> Ibid.

<sup>151</sup> Michael Rawling, 'Legislative Regulation of Global Value Chains to Protect Workers: A Preliminary Assessment' (2015) 26 *Economic and Labour Relations Review* 660, 668.

<sup>152</sup> Ibid.

<sup>153</sup> Sasha Beatty, '[Justice by Proxy: Combatting Forced Labor in the Greater Mekong Subregion by Holding U.S. Corporations Liable](#)' (2016) 49 *Vanderbilt Journal of Transnational Law* 1109.

<sup>154</sup> See Adjoa Kwarteng et al, '[Building on the Modern Slavery Bill: Going Beyond Transparency](#)' (Report, 2015).

<sup>155</sup> Sasha Beatty, '[Justice by Proxy: Combatting Forced Labor in the Greater Mekong Subregion by Holding U.S. Corporations Liable](#)' (2016) 49 *Vanderbilt Journal of Transnational Law* 1109, 1136–40.

the end of this phase, companies should be able to account for and document each step of the supply chain for every component of their products, ideally including ‘records of on-site interactions with foreign suppliers’. This would be provided to the Department of Labor for review. Companies should be able to access subsidies for the costs of investigation.

**Replacement:** companies to replace all non-reputable suppliers with reputable ones. Process would be supervised by the Department of Labor, again with federal subsidies available.

**Prevention:** ongoing monitoring of activity and penalties for non-compliance. The principle vehicle for enforcement would be monetary fines based on a percentage of the company’s revenue. The funds raised could fund the subsidies in the first and second phases.

## 6.4. Recommendations

Having reviewed the existing and proposed transparency and due diligence legislation in Australia and overseas, IJM Australia recommends that a comprehensive mandatory due diligence scheme be phased in over the next five years, with strict pecuniary penalties for non-compliance. This is consistent with the steps taken by jurisdictions overseas in recent years, and would not go far beyond existing measures that are already in place in the Australian in the timber and textile, clothing and footwear industries.

### 6.4.1. Comprehensive Due Diligence

The trend in the legislation that has been introduced overseas has been beyond mere ‘transparency’ provisions to obligations on companies to undertake due diligence processes in their supply chains to ensure compliance with human rights standards.

It is the integration of international due diligence standards, industry cooperation, and domestic enforcement that has seen the greatest impact in achieving ethical supply chains. In Australia, the regulation of the illegal logging industry with support from the industry and the use of foreign domestic legislation has caused importers to begin to eliminate disreputable suppliers from their supply chains.<sup>156</sup> Similarly, an increase in minerals sourced from ‘conflict-free’ suppliers was achieved following industry cooperation to implement the *OECD Conflict Minerals Guidance* to comply with the Dodd-Frank Act in the US.<sup>157</sup>

As has been noted in relation to these initiatives, the burden placed on companies should not be significantly beyond the existing management systems the company has in place for their supply chains.<sup>158</sup> Furthermore, there are existing due diligence guidelines and industry frameworks in place that will assist companies in undertaking supply chain due diligence with respect to modern slavery, such as the *OECD-FAO Guidance for Responsible*

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<sup>156</sup> See section 3.1.2.

<sup>157</sup> See section 3.3.1.

<sup>158</sup> Department of Agriculture and Water Resources (Cth), [Information for Importers – Illegal Logging](#) (19 April 2017).

*Agricultural Supply Chains*<sup>159</sup> and *OECD Due Diligence Guidance on Responsible Garment and Footwear Supply Chains*.<sup>160</sup>

A due diligence framework should be introduced in Australia with respect to slavery in supply chains modelled off the *EU Conflict Minerals Regulation* adopted this year. This regulation is in many ways comparable to the Illegal Logging legislation in Australia, and requires:<sup>161</sup>

- Detailed information to be recorded about the products in the supply chain, including the value of each sub-contract, the details of each location where goods are produced or processed including the number of workers, and the wage rate profiles for workers;
- A risk identification and assessment framework to be implemented;
- A risk mitigation strategy to be implemented, or the termination of supply contracts where risks cannot be mitigated;
- Third party auditing of the risk assessment and mitigation strategy; and
- Public disclosure of due diligence measures and reporting to the industry regulator.

The regulation also accepts participation in a recognised industry due diligence scheme as equivalent to complying with the regulations.<sup>162</sup> This is similar to the interaction of the voluntary and mandatory codes in the TCF industry in NSW.<sup>163</sup>

**[6] The MSA should include a requirement that companies establish a due diligence framework for their supply chains with respect to modern slavery, based on the *EU Conflict Minerals Regulation* as discussed.**

#### 6.4.2. Specific Disclosure Items

The UK MSA does not specify what needs to be included in the annual statement on steps taken to address human trafficking and slavery. The legislation does recommend that certain topics such as policies and risk assessment may be included, but these are not mandatory. As a result, many of the statements submitted have been very brief.<sup>164</sup> Similarly in Australia, the ‘comply or explain’ requirement for ASX’s *Corporate Governance Principles and Recommendations* has meant that many companies give inadequate explanation of the extent to which they are implementing the principles.<sup>165</sup>

For the disclosure statements to be useful, it should be mandatory for companies to report annually on, at least:

- Organisational structure, policies and due diligence processes with respect to human trafficking and supply chains;
- Identification of risks of slavery and human trafficking in the supply chain and risk mitigation measures;

<sup>159</sup> OECD and FAO, [OECD-FAO Guidance for Responsible Agricultural Supply Chains](#) (2016).

<sup>160</sup> OECD, ‘[OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector](#)’ (2017).

<sup>161</sup> [EU Conflict Minerals Regulation](#) arts 4–7.

<sup>162</sup> Ibid art 8.

<sup>163</sup> See section 3.1.1.

<sup>164</sup> See section 3.2.

<sup>165</sup> Grant Thornton, ‘[Corporate Governance Reporting Review](#)’ (2013) 5.

- Evaluation of the effectiveness of the risk mitigation measures in prevention measured against performance indicators;
- Details of any supply chain audit on human trafficking that has been carried out; and
- What appropriate training is available to staff.

These items are drawn from the optional items in the UK MSA.

**[7] The MSA should include mandatory items that must be disclosed on an annual basis based on the optional items in the UK MSA as discussed.**

#### 6.4.3. Central Registry

All statements submitted under the MSA should be kept on a publicly available register. A central public location where the public and civil society can look to for information on the compliance of companies has been a key aspect of the Brazilian scheme and the proposed Dutch scheme. Allowing for comparison between companies and identification of companies that are not complying is essential to encourage a 'race to the top'.<sup>166</sup>

**[8] The MSA should provide for a central repository where all disclosure statements from reporting companies are held and made publicly available online.**

#### 6.4.4. Threshold for Disclosure

The threshold for disclosure for the Australian MSA should be significantly lower than that of the UK MSA to account for the different profile of Australian businesses. The Australian market is dominated by small and medium-sized enterprises ('SMEs') to a far greater extent than that of the UK.

For example, in the UK, companies employing more than 250 people contribute 40% of total employment,<sup>167</sup> and 50.2% of total value added in the private sector.<sup>168</sup> By contrast in Australia, companies employing over 200 people (a lower threshold) account for just 29.9% of total employment and 42.9% of total value added.<sup>169</sup> Similarly, the average market capitalisation on the London Stock Exchange is US\$1466 million: more than three times that of the Australian Stock Exchange at US\$487 million, with 95% of entities making up only 20% of the total market capitalisation (that is, a larger number of smaller entities).<sup>170</sup>

These differences suggest that in order to achieve the same level of change in corporate culture across industries in Australia as in the UK, a lower threshold for financial disclosure will be required so that a similar proportion of the market is affected. This is particularly so

<sup>166</sup> Business and Human Rights Resource Centre, [UK Modern Slavery Act & Registry](#) (April 2017).

<sup>167</sup> Chris Rhodes, '[Business Statistics](#)' (Briefing Paper No 06152, House of Commons Library, Parliament of UK, 2016) 5.

<sup>168</sup> Matthew Ward and Chris Rhodes, '[Small Businesses and the UK Economy](#)' (Standard Note No SN/EP/6078, House of Commons Library, Parliament of UK, 2014) 7.

<sup>169</sup> Megan Clark et al, [Australian Small Businesses: Key Statistics and Analysis](#) (Department of Industry, Innovation, Science, Research and Tertiary Education (Cth), 2012) 20–4.

<sup>170</sup> Australian Securities & Investments Commission, '[Assessment of ASX Limited's Listing Standards for Equities](#)' (Report No 480, June 2016) 10.



given that the early indicators suggest that the intended flow-on effects of disclosure from larger to smaller companies has not taken place in the UK, with 61% of SMEs unaware of the existence of the MSA in December 2015.<sup>171</sup>

The threshold in the UK MSA is the same as the turnover threshold for the definition of a 'large' company under the *Companies Act 2006* (UK) for the purposes of auditing obligations.<sup>172</sup> Similarly, it may be appropriate to set the threshold in Australia based on the financial reporting threshold in the definition of 'large proprietary company' in the *Corporations Act 2001* (Cth). This would mean the threshold for disclosure was \$25 million.<sup>173</sup>

Alternatively, to better account for the larger role that SMEs play in the Australian economy in comparison to the UK, the threshold for disclosure could be the proposed new small business entity turnover threshold of \$10 million.<sup>174</sup>

**[9] The government should set the turnover threshold for disclosure at \$10 million or \$25 million to account for the greater role that SMEs play in the Australian economy as compared with the UK.**

#### 6.4.5. Industry Participation and Best Practice Guidelines

The government should subsidise the preparation of industry-specific schemes that will comply with the legislation and provide detailed guidance to companies on the risks of modern day slavery in different contexts. The provisions for this step can be modelled on the *EU Conflict Minerals Regulation*, and the implementation should be modelled on the illegal logging scheme in Australia whereby government subsidises the preparation of industry-specific guidance on how to carry out due diligence.<sup>175</sup>

The provision of detailed guidance to support the legislation has been an important part of the Californian transparency legislation. One deficiency of the implementation of the law was that companies were unsure of how to report until the guidance was released.<sup>176</sup>

**[10] The government should subsidise the development of industry-specific 'supply chain due diligence schemes' to assist companies in complying with the legislation.**

<sup>171</sup> ['UK SMEs Overwhelmingly Unaware of the Modern Slavery Act's Impact on Them, CIPS Research Finds'](#), *Chartered Institute of Procurement & Supply: News* (online), 26 March 2016.

<sup>172</sup> Home Office (UK), ['Modern Slavery Act – Transparency in Supply Chains'](#) (Impact Assessment No HO0192, 15 July 2015) 7; see [Companies Act 2006](#) (UK) s 465, as amended by [The Companies, Partnerships and Groups \(Accounts and Reports\) Regulations 2015](#) (UK) reg 9(2)(a).

<sup>173</sup> [Corporations Act 2001](#) (Cth) s 45A(3).

<sup>174</sup> Australian Taxation Office, ['Increase the Small Business Entity Turnover Threshold'](#) (10 April 2017).

<sup>175</sup> See section 3.1.2.

<sup>176</sup> Susan Ariel Aronson and Ethan Wham, ['Can Transparency in Supply Chains Advance Labor Rights? Mapping Existing Efforts'](#) (Working Paper IIEP-WP-2016-6, Institute for International Economic Policy, George Washington University, April 2016) 14.



#### 6.4.6. Penalty for Failure to Comply

Penalties for non-disclosure need to be significant enough to incentivise companies to take on the extra costs that will come with the due diligence framework. A criticism of the UK MSA has been the over-reliance on civil society and consumer pressure to bring about changes in company behaviour. Rather, there should be a 'synergy between punishment and persuasion' that reinforces consumer-driven accountability mechanisms.<sup>177</sup>

Comparing the disclosure rates under the Californian and UK legislation (where the remedy for non-compliance is no more than an injunction) with that of Denmark (where auditors and companies are exposed to civil fines) makes the importance of strong penalties clear. In the former case, less than 20% of companies fully comply with the requirements, where as in the latter case, the rate of full compliance rate is 66%.<sup>178</sup>

As stated in the European Union non-financial disclosure scheme, penalties should be 'effective, proportionate and dissuasive'.<sup>179</sup> The draft German legislation introduced to comply with this requirement proposes financial penalties on companies as a percentage of the entity's turnover.<sup>180</sup> Similarly, the draft Dutch legislation on due diligence responding to child labour proposes penalties of EUR 750,000 or 10% of a company's revenue, with persistent refusal resulting in imprisonment.<sup>181</sup>

**[11] The MSA should include a penalty for failure to disclose or comply with the due diligence legislation sufficient to incentivise businesses to comply.**

#### 6.4.7. Clear Definition of Terms

The MSA should be very clear in the terms that are used. For example, in the Californian supply chain transparency legislation, there has been confusion over the meaning of 'direct supply chain' and whether this includes more than first tier suppliers,<sup>182</sup> as well as the term 'homepage' as the place where reports are to be published.<sup>183</sup>

The importance of specificity in language is also exemplified by the Danish experience. When companies were required to report (or explain) their 'corporate social responsibility' policies, only 16% included comment on 'human rights' (increasing to 41% to years later).<sup>184</sup> However,

<sup>177</sup> Ryan J Turner, ["Transnational Supply Chain Regulation: Extraterritorial Regulation as Corporate Law's New Frontier"](#) (2016) 17 *Melbourne Journal of International Law* 188, 195, quoting Ian Ayres and John Braithwaite, *Responsive Regulation: Transcending the Deregulation Debate* (Oxford University Press, 1992) 25.

<sup>178</sup> See section 3.2.

<sup>179</sup> *EU Non-financial Disclosure Directive* art 51.

<sup>180</sup> See section 3.2.

<sup>181</sup> See 3.3.3.

<sup>182</sup> Michael Ball et al, ["Corporate Compliance with the California Transparency in Supply Chains Act of 2010"](#) (Development International, 2 November 2015) 13.

<sup>183</sup> Benjamin Thomas Greer and Jeffrey G Purvis, 'Corporate Supply Chain Transparency: California's Seminal Attempt to Discourage Forced Labor' (2016) *International Journal of Human Rights* 55, 61.

<sup>184</sup> Danish Business Authority, ["Corporate Social Responsibility Reporting in Denmark: Impact of the Third Year Subject to the Legal Requirements for Reporting on CSR in the Danish Financial Statements Act"](#) (Report, March 2013) 8.

when a specific requirement was introduced into the legislation mandating the inclusion of comment on 'human rights', this increased to 66%.<sup>185</sup>

If there is vagueness in the language, this may allow companies to circumvent their disclosure obligations and leave the regulator with no remedy, as has been foreshadowed with respect to the Californian legislation.<sup>186</sup>

**[12] The disclosure requirements for the transparency provision in the MSA should precisely state the nature of the required disclosure and that the entire supply chain is subject to the obligation.**

#### 6.4.8. Application to the Public Sector

The US Executive Order mandating compliance procedures in federal government contracts has been called 'a best practice in regards to governmental self-regulation'.<sup>187</sup> The application to government contracts recognises the significant amount of economic activity that falls under government-controlled contracts.<sup>188</sup> Australia has already implemented commendable requirements for slavery-free supply chains in its procurement policy,<sup>189</sup> and providing information and guidance to assist the implementation of this policy.<sup>190</sup>

However, consistent with this approach, the supply chain due diligence of the MSA should also apply to the public sector. This would also be consistent with the *UN Guiding Principles on Business and Human Rights*.<sup>191</sup>

**[13] The supply chain due diligence requirements of the MSA should also apply to the public sector.**

<sup>185</sup> Danish Government, '[Executive Summary: Three Dimensions of Corporate Social Responsibility \(CSR\)](#)' (2013) 1.

<sup>186</sup> Benjamin Thomas Greer and Jeffrey G Purvis, 'Corporate Supply Chain Transparency: California's Seminal Attempt to Discourage Forced Labor' (2016) *International Journal of Human Rights* 55, 62–4.

<sup>187</sup> Ashley Feasley, '[Deploying Disclosure Laws to Eliminate Forced Labour: Supply Chain Transparency Efforts of Brazil and the United States of America](#)' (2015) 5 *Anti-Trafficking Review* 30.

<sup>188</sup> Brynn O'Brien and Martijn Boersma, '[Human Rights in the Supply Chains of Australian Businesses: Opportunities for Legislative Reform](#)' (Catalyst Australia, 2016).

<sup>189</sup> Attorney-General's Department (Cth), '[Human Trafficking Guidelines and Factsheets](#)' (24 October 2012).

<sup>190</sup> Ibid.

<sup>191</sup> Human Rights Commission, '[Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework](#)', UN Doc HR/PUB/11/04 (2011) 6–8.

## 7. ANTI-SLAVERY COMMISSIONER – TOR 3 & 5

### 7.1. Overseas Examples

#### 7.1.1. UK

The Anti-Slavery Commissioner established under the *Modern Slavery Act 2015* ('the Act') has the mandate to encourage good practice in the prevention, detection, investigation and prosecution of slavery and human trafficking offences and in the identification of the victims of those offences.<sup>192</sup>

Kevin Hyland OBE, the current Commissioner, identified five priorities to guide the UK's response to slavery in their current strategic plan: to ensure improved identification and care of victims of modern slavery; to drive an improved law enforcement and criminal justice response; to promote best practice in partnership working; to engage the private sector to encourage supply chain transparency and combat labour exploitation; and to encourage effective and targeted international collaboration.<sup>193</sup>

In addition to providing research, data analysis and reporting to the government on issues of modern slavery, the Commissioner plays a key role in training other government departments to recognise and respond to victims using the UK's National Referral Mechanism. For example, in 2016 the Commissioner launched awareness videos for the National Health Service, local councils and emergency services to educate front line staff given that 1 in 8 health professionals report contact with a suspected or actual victim of modern slavery.<sup>194</sup>

The Commissioner has the requisite funding and command of information from other departments through the Act to carry out its mandate. Under the Act several public authorities are obligated to cooperate with the Commissioner in carrying out its mandate including chief officers of police, the chief constable of the British Transport Police Force, The National Crime Agency, immigration officers, customs officials, local government and certain health bodies.<sup>195</sup> The data from these departments has resulted in targeted policy recommendations to address high risk groups in the UK, which in turn mobilised the government to meet these recommendations with the political will and resources needed in several key areas.

As result of the Commissioner's work, the UK government has allocated 5 million pounds to combat trafficking from Nigeria, including working in Edo State, Nigeria's trafficking hub.<sup>196</sup> The Commissioner also used its position to highlight the lack of support for victims of modern slavery leaving safe houses which in turn led to an inquiry by the House of Commons Work and Pensions Committee into access for these victims to state benefits.<sup>197</sup>

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<sup>192</sup> *Modern Slavery Act 2015* (UK) c 30, s 41(1).

<sup>193</sup> Independent Anti-Slavery Commissioner, '[Annual Report 2015-2016](#)' (October 2016) 5.

<sup>194</sup> Ibid.

<sup>195</sup> *Modern Slavery Act 2015* (UK) c 30, s 43, sch 3.

<sup>196</sup> Independent Anti-Slavery Commissioner, '[Annual Report 2015-2016](#)' (October 2016) 4.

<sup>197</sup> Ibid 12.



### 7.1.2. Netherlands

The Dutch National Rapporteur on Trafficking in Human Beings was established in 2000 as an independent mechanism to report on the nature and extent of trafficking in the Netherlands.

The position enjoys significant independence from government. The Rapporteur's office is neither a government department nor a non-government organisation and their advisory relationship to government has been likened to a 'critical friend'.<sup>198</sup> The current National Rapporteur, Corinne Dettmeijer-Vermeulen maintains that this independence is 'the essential requirement' for fulfilling her mandate as it induces both NGOs and government to give the Rapporteur access to their data which, by extension, allows for proper data analysis and good policy decisions.<sup>199</sup>

The Rapporteur's main duties are to: conduct research on the scale and nature of trafficking in human beings and sexual violence against children, as well as the effects of policy; ascertain the measures taken to tackle trafficking in human beings and sexual violence against children; advise the government on policies to prevent and suppress trafficking in human beings and sexual violence against children; and report periodically to the government by sending reports relating to trafficking in human beings and to sexual violence against children to the Minister of Security and Justice.<sup>200</sup>

To achieve the above the Rapporteur has access to data on trafficking victims from law enforcement agencies, prosecution and trials data from the Public Prosecution Service, data on residence permits from the Immigration and Naturalisation Service, compensation data from the Central Fine Collection Agency and data from the Departure and Repatriation service.<sup>201</sup>

Importantly, the Rapporteur does not receive complaints or provide direct support to victims and has no power of criminal investigation.<sup>202</sup>

### 7.1.3. Finland

The Finnish National Rapporteur is another independent public authority, housed within the Non-Discrimination Ombudsman since 2015. The Rapporteur describes their overarching role as evaluating the implementation and the implications of anti-human trafficking

<sup>198</sup> United Kingdom, [Parliamentary Debates](#), House of Commons, 21 July 2014, col 27 (Lucy Maule).

<sup>199</sup> Corinne Dettmeijer-Vermeulen, '[National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children in the Netherlands](#)' (Speech delivered at the Conference on Data Protection and Right to Privacy for Marginalised Groups: A New Challenge in Anti-Trafficking Policies, Berlin, 27 September 2016).

<sup>200</sup> [The National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children \(Establishment\) Act](#) (The Netherlands) trans art 5.

<sup>201</sup> Group of Experts on Action against Trafficking in Human Beings, [Compendium of Good Practices on the Implementation of the Council of Europe Convention on Action against Trafficking in Human Beings](#), Council of Europe: Action against Trafficking of Human Beings, 5.

<sup>202</sup> National Rapporteur on Trafficking in Human Beings and Sexual Violence against Children, [About Us](#) (23 January 2017).

legislation and practices from a human rights perspective.<sup>203</sup> The Rapporteur aims to ‘highlight the victim’s perspective, and the impact of measures taken or non-intervention of state authorities on victims and the implementation of their legal protection’.<sup>204</sup>

Through their independence, the National Rapporteur brings any deficiencies in the law and practice of anti-trafficking to the attention of the politicians and government officials. This provides for comprehensive and concrete legislative and other recommendations for improvement.<sup>205</sup>

The Rapporteur has the right, notwithstanding confidentiality provisions, to obtain information from authorities and from service providers for victims of trafficking and from other state-funded bodies in this field.<sup>206</sup> The Rapporteur also provides support to victims through their assistance system. The type of support will vary on a case-by-case basis and can include legal advice. Importantly, this service may be accessible to victims who are not yet formally recognised as victims of human trafficking.<sup>207</sup> Roth notes that at its best the Rapporteur ‘can act as a bridge builder between various stakeholders by offering a neutral forum for discussion and change of views’.<sup>208</sup>

## 7.2. Recommendations

IJM Australia recommends that, consistent with the models above, an independent Anti-Slavery Commissioner be set up in Australia. The office should be independent from government. We are in agreement with the Law Council of Australia’s recommendation that the office should not be linked with the Ambassador for People Smuggling to ensure that ‘the work and initiatives taken in respect of human trafficking are not limited to law enforcement, but also encompass a human rights and victim-centred response’.<sup>209</sup> This is also consistent with the recommendations the Special Rapporteur on Trafficking in Persons.<sup>210</sup>

The Commissioner should be adequately resourced, and carry out the roles and duties outlined by Anti-Slavery Australia’s proposal.<sup>211</sup>

### **[14] The government should introduce an independent office of the Anti-Slavery Commissioner.**

<sup>203</sup> Venla Roth, Senior Adviser, Office of the Ombudsman for Minorities/National Rapporteur on Trafficking in Human Beings, [‘Fostering Partnership’](#) (Speech delivered at Second Consultative Meeting on Strengthening Partnerships with National Rapporteurs on Trafficking in Persons and Equivalent Mechanisms, Bangkok, 21 May 2014).

<sup>204</sup> Ibid.

<sup>205</sup> Ibid

<sup>206</sup> Office of the Ombudsman for Minorities/National Reporteur on Trafficking in Human Beings, [Rapporteur on Trafficking](#).

<sup>207</sup> Ibid.

<sup>208</sup> Ibid.

<sup>209</sup> Law Council of Australia, [Submission No 21](#) to Joint Committee on Law Enforcement, *Inquiry into Human Trafficking*, 15 February 2016, 10.

<sup>210</sup> [Report of the Special Rapporteur on Trafficking in Persons, Especially Women and Children](#), UN GAOR, 69th sess, Provisional Agenda Item 69(b), UN Doc A/69/33797 (28 July 2014).

<sup>211</sup> Anti-Slavery Australia, [‘Summary: The Case for an Anti-Slavery Commissioner’](#) (February 2016).