24 October 2017

MODERN SLAVERY IN SUPPLY CHAINS REPORTING REQUIREMENT

1. SUMMARY

IJM Australia welcomes the Government's decision to implement legislation requiring companies to report on the actions they are taking to address modern slavery in their supply chains.

Below is a summary of our position on the current proposal. Following this is more detailed feedback in response to the questions posed in the Consultation Paper. Finally, we have attached as an Appendix part of our submission to the Inquiry into Establishing a Modern Slavery Act in Australia that relates to supply chain reporting.

1.1. Three Key Positives

1. Having a public **central registry** of statements overseen by an independent body is a welcome proposal. It could be effective to include such oversight within the role of the new Independent Anti-Slavery Commissioner. Oversight should extend to monitoring which businesses are complying, the adequacy of compliance, assisting businesses in complying and identifying which industries or types of businesses are commonly encountering difficulties or not doing enough. This is consistent with how the role of the Independent Anti-Slavery Commissioner has developed in the UK to include advising companies on their statements.

2. Having explicit **mandatory criteria** against which to report will be helpful. In other jurisdictions reporting on specific elements such as 'human rights' risks has greatly increased when governments have made them express criteria. The Government could go into further detail about what they want from companies in this regard, to ensure that companies must really engage with the process and eliminate the risk of it becoming a PR exercise. The Government should also clarify that there is not 'flexibility' to essentially provide no information at all, as the Consultation Paper currently suggests.

3. Providing early and detailed **guidance** will be very effective. This will overcome some of the deficiencies in the implementations of disclosure in the UK and California. In addition to clear guidance on the disclosure itself, the Government should use this as a means to give companies guidance on *practical* measures to address modern slavery. The Government has expressed its objective to be enabling companies to effectively respond to modern slavery, but the disclosure/soft law solution will have absolutely no direct impact on that actual practices of companies unless the accompanying guidance is robust (and the disclosure requirements are stringent enough). The guidance should include advice on:

- Top down measures: Due diligence procedures that have been effective in other jurisdictions and industries (see Appendix for examples).
- Bottom up measures: Companies need to support civil society efforts to strengthen regulatory responses to modern slavery in the jurisdictions at the end of their supply chains. An example is IJM's partnership with Walmart to identify and reduce the prevalence of forced labour in their seafood supply chain in Thailand.

1.2. Proposed Amendments

1. The decision not to implement a comprehensive **due diligence** scheme should be explained with explicit and adequate reasons. There is a clear gap between the Government's

express objective to 'equip and enable the business community to respond effectively to modern slavery' and the disclosure scheme it is implementing. There is precedent for due diligence legislation in Australia and internationally, and the Government cannot dismiss this option but claim to be taking a 'direct regulatory' response to the issue.

The Government should also ensure that the long-term strategy for addressing modern slavery, the information required of companies under the reporting requirement, and the guidance provided to industry as part of the scheme are all carefully designed to achieve the ultimate goal of ensuring all Australian companies are taking appropriate due diligence measures to keep their supply chains free from slavery.

2. The lack of a **penalty** for non-disclosure in the proposed scheme is disappointing. No penalty for non-compliance means that the system really is a voluntary one. There are extremely low compliance rates for jurisdictions that have implemented disclosure requirements without a penalty provision, while there are much higher rates of compliance in jurisdictions where effective penalties are introduced (see Appendix). The Consultation Paper states that the Government does *not* want to take a 'voluntary' approach, but that is what it has proposed.

3. The **threshold** for disclosure is too high. The goal of the scheme is to require compliance from large companies that form a significant part of the economy such that there are flow-on effects to the rest of the economy resulting in reduced modern slavery throughout. This has not happened in the way hoped for in the UK with the threshold set there. So, the starting point should be that the threshold should be A$60 million at maximum, and consistency would favour this starting point as well. In Australia, it would be appropriate to choose a lower value because of the fact that large companies make up a smaller segment of the economy than in the UK. In addition to this general threshold, it may also be appropriate to have another lower threshold for certain high-risk industries.

1.3. Overall Comment

The Government should consider clarifying its objectives to ensure that the disclosure model will be effective. This will only occur if measures are in place to ensure companies disclose as much information as possible and there are sufficient resources to enable Government in partnership with civil society to monitor compliance with the legislation.

2. RESPONSE TO CONSULTATION QUESTIONS

2.1. Is the proposed definition of 'modern slavery' appropriate and simple to understand?

The proposed terminology that would use offences in divs 270 and 271 of the *Criminal Code* (Cth) will be effective. However, they should be coupled with the proposed focus on the 'risk of modern slavery' rather than 'modern slavery'. That is, it should be clear that businesses need to be addressing risks of modern slavery which would include exploitative labour practices or recruiting methods, for example, so that companies do not see the requirement as simply saying 'we are not aware of slavery in our supply chains', given that the offence definitions are quite specific and designed to require proof of each element in court. Supply chain risk assessment should be aimed more broadly at addressing situations that could give rise to those offences.

2.2. How should the Australian Government define a reporting 'entity' for the purposes of the reporting requirement? Should this definition include 'groups of entities' which may have aggregate revenue that exceeds the threshold?

The overarching logic in defining which companies are required to report should be as follows. The ultimate aim should be for all companies to monitor, disclose and address the risk of modern slavery in supply chains. However, in order to quickly mainstream these practices in corporate culture, government resources should be focussed on the companies that are already well-positioned to fulfil the reporting requirements and where the highest risks of slavery are present. This will facilitate the desired 'race to the top', rewarding the companies already taking action and creating momentum such that this will flow to the rest of the economy. Therefore, any threshold should be seen as a temporary measure due to limited resources and expertise in government and the corporate sector.

In these circumstances, the definitions defining which companies are required to report should be as clear as possible and ideally based on definitions in existing legislation. This will reduce the time and resources companies put into determining whether they are required to report, so those that are can invest in equipping themselves to do so.

There should be a public list that specifies which companies are required to report.

The definition of 'entity' should be linked to the definition of 'revenue' for the purposes of the threshold. For example, if the revenue threshold were to be set based on the definition of 'large proprietary company' in s 45A of the *Corporations Act 2001* (Cth), then similarly, 'entity' should include 'the company and any entities it controls' as defined under that Act. This way, companies will be able to determine easily based on their existing disclosure obligations whether they are required to report under the new reporting requirement.

2.3. How should the Australian Government define an entity's revenue for the reporting requirement? Is $100 million total annual revenue an appropriate threshold for the reporting requirement?

Lowering the general revenue threshold

When the UK Government set the revenue[1] threshold for disclosure, they engaged in a lengthy public consultation process and considered a number of options before settling on the threshold for 'large companies' under the UK equivalent of the *Corporations Act 2001* (Cth).[2] This amount was £36 million, or approximately A$60 million.

As the Consultation Paper notes, modern slavery is extremely pervasive across many different sectors.[3] The UK had intended that the pervasive nature of modern slavery would be addressed due to the flow-on effects from regulating large corporations, such that small and medium-sized enterprises would also begin to address modern slavery. However, these flow-on effects did not materialise, even though their threshold covered approximately 40% of total employment, and 50.2% of total value added in the private sector.[4]

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1 See, eg, Australian Accounting Standards Board's definition of revenue (relevant for *Corporations Act* (Cth) s 45A(3)). This is essentially the same as 'turnover' for the ATO and for the UK in the Modern Slavery Act.

2 IJM Australia, Submission No 118 to the Modern Slavery Act Inquiry, [6.4.4].

3 Consultation Paper, 6–7.

4 IJM Australia, Submission No 118 to the Modern Slavery Act Inquiry, [6.4.4].

In Australia, a similar threshold would cover an even smaller proportion of the economy, making it even less likely that the full extent of modern slavery in our economy will be addressed. Arguably, an even lower threshold is required.[5]

In this context, the Government's indication that 'the revenue threshold for the reporting requirement will be set no lower than $100 million total annual revenue' is disappointing.[6] Furthermore, the statement that this is 'broadly consistent with other thresholds' is not accurate. The most relevant threshold is that for large companies under the *Corporations Act 2001* (Cth), as this is the equivalent figure used for the UK threshold, and this is only A$25 million here.[7]

The threshold should be significantly lower.

Below are some examples of companies that fall below the $100 million threshold, yet objectively have a significant influence in the economy and would have capacity to address the risk of modern slavery in their supply chains. These companies are based in Australia across various industries that fall below the $100 million threshold and were sourced from a quick web survey.

Company	**Revenue (A$mil)**	**Description**	**Source**
Farm Pride Foods	97.8	'leading grader, packer, marketer and distributor of eggs and egg products'	ASX Report to Shareholders
Kresta Holdings	85.8	largest window covering retailer in Australia and New Zealand	ASX Report to Shareholders
PS & C Ltd	73.9	ICT Services Company	ASX Report to Shareholders
ASI Solutions	63.3	IT services company	Australian Financial Review
Interlloy Pty Ltd	64.3	'Australia's lead supplier of Engineering Steels and Alloys to engineering machine shops both nationally and internationally'	Australian Financial Review
Sundown Pastoral Co	65.1	'the production of high quality beef cattle as well as high quality irrigated cotton production, wheat, sorghum, pulse crops, lucerne and other forage crops'	Australian Financial Review
Carter & Spencer Group	68.2	'specialists in fresh produce growing, packing, procurement, logistics, packaging and marketing'	Australian Financial Review
Nobles	70.2	'Australia's leading specialist provider of lifting & rigging equipment, technical services & engineering design'	Australian Financial Review

High-risk industries

In addition to having a general threshold that applies to all companies, IJM Australia supports the introduction of lower thresholds for particular industries known to have a high risk of modern slavery, such as fashion and electronics. This will have a more direct and

5 Ibid.

6 Consultation Paper, 15.

7 IJM Australia, Submission No 118 to the Modern Slavery Act Inquiry, [6.4.4]. It may be more appropriate to take this figure adjusted for inflation since 2001, which would be approximately $36.5 million: The Freedom Partnership, Submission No 199 to the Modern Slavery Act Inquiry, 2017, 70.

rapid effect on reducing slavery, and many companies in these industries are already conducting due diligence and disclosure.

Such an application to high risk industries should operate alongside a general threshold based on revenue, rather than replacing it.

2.4. How should the Australian Government define an entity's 'operations' and 'supply chains' for the purposes of the reporting requirement?

The intention to extend the scope of the requirement beyond first-tier suppliers is welcome. Research indicates that many companies have been reluctant to conduct investigations into human rights abuses by lower-tier suppliers after embarking on the due diligence process and discovering the complexity involved in their supply chains.[8] The Government should ensure the terms used in the legislation make it very clear that companies are expected to disclose on modern slavery risks throughout their entire supply chains.

2.5. What regulatory impact will this reporting requirement have on entities? Can this regulatory impact be further reduced without limiting the effectiveness of the reporting requirement?

Clarifying the seriousness of slavery

'No business should tolerate modern slavery or other serious abuses of human rights in their operations or supply chains and the Australian Government expects the Australian business community to respect human rights'.[9] IJM Australia agrees. However, currently the global community is not doing anywhere near enough to address slavery.

Based on estimates of modern slavery worldwide:[10]

- Approximately 66,000 victims are rescued and 7000 perpetrators arrested each year. This amounts to **less than 1%** of total victims and perpetrators.
- $150 billion in profits are made from slavery and $350 million is spent combatting it each year.

Thus, the current measures being taken to address slavery need to be significantly scaled up to eliminate the problem. However, we are presently spending less than 0.25% of what perpetrators are earning on these measures. Any considerations of regulatory burden should be considered with this context in mind.

Overstating the burden of regulation

The current cost to companies is estimated at $11,500 per entity.[11] This does not appear to take into account the fact that addressing modern slavery will actually have positive financial effects, as acknowledged by the Consultation Paper.[12] The burden as stated constitutes about 0.01% of revenue for the companies under the current threshold.

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8 IJM Australia, Submission No 118 to the Modern Slavery Act Inquiry, 5 May 2017, [6.3.1], [6.4.7].

9 Consultation Paper, 7.

10 Matt Friedman, CEO, Mekong Club, 'Ending the Business of Modern Slavery' (Speech presented at the Ending the Business of Modern Slavery Seminar, UTS, 25 July 2017).

11 Consultation Paper, 13.

12 Ibid 7.

Given the magnitude of the problem the Government is trying to address and the current severe underspending towards that problem (as outlined above), this should not be seen as a very high burden at all. Accordingly, the Government's suggestion that to go beyond these requirements *would* in fact have an 'undue regulatory impact' should be reconsidered in context of the above.[13]

Encouraging meaningful action by companies to address the serious and complex problem of modern slavery may require greater regulatory involvement than currently proposed.

2.6. Are the proposed four mandatory criteria for entities to report against appropriate? Should other criteria be included, including a requirement to report on the number and nature of any incidences of modern slavery detected during the reporting period?

Responding to these questions requires consideration of what the Government means by 'mandatory', how penalties are necessary to enforce truly 'mandatory' requirements, and only then considerations of what criteria should be included.

'Mandatory' disclosure

The Consultation Paper states that the Government will introduce four 'mandatory' criteria that companies must report on in relation to their action on modern slavery. However, it goes on to state that companies 'will also have the flexibility to determine what, if any, information they provide against each of the four criteria'.[14]

This seems to mean that the categories are voluntary. Companies can choose to provide no information. This undermines the benefits of having 'mandatory' criteria in the first place.

During the roundtables, it was clarified that the intention was to have reporting on an 'if not, why not' ie 'comply or explain' basis. An example of such a disclosure mechanism in Australia is the *Corporate Governance Principles and Recommendations* regulated by ASX. While the ASX disclosure requirements have had some success in improving transparency on issues such as environmental and social sustainability, a number of features are of note:

- ASX has power to suspend trading of company's securities if it fails to disclose (penalty).
- Many companies claimed they were not required to disclose on a particular principle (that is, chose to 'explain' rather than 'comply') but did not provide an adequate explanation.
- Less than two thirds of companies provided full disclosure even with penalties, many choosing to 'explain' in some areas.[15]
- Companies had a tendency to disclose in a generalised way that did not necessarily provide useful information to stakeholders or regulators.[16]

Penalties

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13 Ibid 13.

14 Ibid 16.

15 IJM Australia, Submission No 118 to the Modern Slavery Act Inquiry, 5 May 2017, [6.1.3], [6.4.2].

16 Grant Thornton, 'Corporate Governance Reporting Review' (2013) 25.

The Government states that, as in the UK, there will be no penalties for failure to provide a statement, or to provide a statement that does not comply with the requirements. In the UK, this has resulted in a very low proportion of companies providing statements, and those that do providing very brief statements, consistent with other countries where compliance with reporting requirements is voluntary.[17]

Without penalties, the criteria cannot be said to be 'mandatory', since there are no consequences for non-compliance. Companies are just as free as in the UK to omit information under any one of the criteria.

The Government should establish a penalty for non-compliance.

- All that is being asked of companies is to disclose what actions they are currently taking. They will not be penalised for not having in place industry-leading due diligence procedures.
- This is important if the disclosure is to have the effect of creating a 'level playing field', otherwise, it will have no effect as the companies that are already taking positive steps will be willing to disclose, while the companies that are lagging behind will have little incentive to do so.
- The penalty should be significant enough that large companies would rather pay to engage in the necessary action to disclose than pay the penalty.

The Government should consider what type of penalty will be most effective, including:

- Monetary penalties significantly larger than the estimated cost of compliance;
- Monetary penalties as a percentage of organisation revenue; and/or
- Personal liability for directors, including disqualification from management.

Criteria

The Government should include further specific points on which reporting is required and the criteria should enable objective assessment of the company's efforts.

- Companies should have to disclose the results of their due diligence processes, not just describe the processes themselves. This should include disclosing the 'parts of its business and supply chains' where a risk has been identified (see the UK Act).
- Companies should be required to disclose what grievance mechanisms they have in place for victims of modern slavery, consistent with the 'remedy' component of the UNGPs.
- Companies should be required to establish measurable objective indicators of how effective their procedures are at addressing modern slavery, to enable civil society and government to monitor performance over time. Otherwise companies may simply provide 'broad, sweeping statements' that do not assist stakeholders.[18]

The Government could establish regulations that specify certain items that must be disclosed in certain industries or across all sectors, where there is agreement that such measures are effective.

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17 See IJM Australia, Submission No 118 to the Modern Slavery Act Inquiry, [6.2].

18 Cf Grant Thornton, 'Corporate Governance Reporting Review' (2013) 25.

- For example, in the electronics industry, asking a company whether it has traced all its smelters or component manufacturers is an easy way to encourage first steps towards slavery free supply chains.[19]
- However, care should be taken to avoid encouraging companies to follow a 'box-ticking' approach rather than engaging with the relevant human rights issues to try to shift their culture to address them.

2.7. Is the five month deadline for entities to publish Modern Slavery Statements appropriate? Should this deadline be linked to the end of the Australian financial year or to the end of entities' financial years?

IJM Australia considers this deadline to be appropriate. As indicated above, the reporting requirement should be consistent with existing disclosure legislation where possible to encourage compliance.

2.8. Are the requirements for statements to be approved by boards and signed by directors appropriate?

The requirement to have a director's signature is welcome, as it will make senior management aware of supply chain risks. Furthermore, unlike in the UK,[20] this may have the effect of enhancing the accuracy of statements as directors could be held personally liable for any false or misleading representations made in the statements.[21] This liability should be preserved.

2.9. How should a central repository for Modern Slavery Statements be established and what functions should it include? Should the repository be run by the Government or a third party?

Having a central repository will be especially helpful for enhancing transparency and comparisons between companies facilitating a 'race to the top'.[22] Whether the repository is managed by government or a third party, it should be funded by government and publicly accessible.

Helpful features would include:

- All information on the repository should be fully searchable, including full text searches of the statements and the ability to filter by the different details recorded about the companies, eg, 'all companies in the electronics industry with revenue under $100 million';
- Keeping records of statements from previous years;

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19 See, eg, Gershon Nimbalker, Jasmin Mawson and Haley Wrinkle, '2016 Electronics Industry Trends' (Report, Baptist World Aid Australia, 9 February 2016) 25.

20 In the UK, company directors are personally liable only for false and misleading statements made in specific annual reports required by other legislation, and this likely does not cover statements under the *Modern Slavery Act 2015* (UK) c 30, s 54: *Companies Act 2006* (UK) c 46, ss 414D, 419, 463; Colleen Theron, 'Understanding the *Modern Slavery Act*', *The Environmentalist* (online), 15 January 2016.

21 *Corporations Act 2001* (Cth) s 1309; *Criminal Code* (Cth) s 137.1. See also Ryan J Turner, 'Transnational Supply Chain Regulation: Extraterritorial Regulation as Corporate Law's New Frontier' (2016) 17 *Melbourne Journal of International Law* 188, 196–7.

22 IJM Australia, Submission No 118 to the Modern Slavery Act Inquiry, [6.4.3].

- All statements recorded in text format, preferably indexed by the mandatory criteria the Government ultimately chooses to include in the legislation;
- Recording the date on which each statement was submitted;
- Recording company information including: name, annual revenue, industry, a brief description of its business activities, list of subsidiaries, and country where it is headquartered;
- Contact details for each company, such as email address and/or mailing address to which inquiries about the modern slavery statement can be addressed;
- Information from the database should be downloadable in bulk, eg, multiple statements at once, or CSV files with lists of companies and their information and compliance; and
- Public recording of any assessment given to any company's statement or any part of it, eg, if the oversight body views a statement as non-compliant, this should be recorded on the repository and this should be searchable.

2.10. Noting the Government does not propose to provide for penalties for non-compliance, how can Government and civil society most effectively support entities to comply with the reporting requirement? What issues need to be covered in guidance material?

Due diligence

The guidance should provide details on how companies should conduct due diligence in order to adequately report on risks in their supply chains. This guidance should be based on international best practice as found in the UNGPs and the various OECD Guidelines for multinational enterprises in different sectors.

Risks

The guidance should advise companies on specific risks that they should be aware of based on their industry and country of operation, similar to the 'Country Specific Guidelines' created under the illegal logging due diligence scheme.[23]

Up to date practical measures to address modern slavery

The guidance should go beyond due diligence, disclosure and risk management to providing companies with practical measures they can put in place when they do identify slavery occurring in their supply chains. This guidance should be regularly updated based on feedback from civil society organisations who are conducting work on the ground at the end of multinational supply chains in various industries.

An example of this is the prevalence study of forced labour in the Thai seafood industry from 2011 to 2016 conducted by IJM and the Issara Institute, with funding from the Walmart Foundation. The findings included that 76% of migrant workers in the industry experienced debt bondage, among other forms of exploitation.[24] The authors of the study recommended that global brands and retailers should engage 'on-the-ground solutions' in order to 'increase visibility and strengthen their supply chains down to the vessel level'.[25]

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23 Ibid [6.1.2].

24 Issara Institute and International Justice Mission, 'Not in the Same Boat: Prevalence and Patterns of Labour Abuse across Thailand's Diverse Fishing Industry' (Report, January 2017) 1.

25 Ibid 33.

Based on extensive interviews and observations, the study was able to recommend specific strategies global brands and retailers could undertake, for example: ensuring their suppliers provide workers with 'contracts, payslips, and timesheets recording hours and payments that are legal, and that all workers have control over their identity documents';[26] and expanding satellite-based communications coverage for fishermen working far out at sea who may be able to seek help via mobile.[27]

2.11. Is an independent oversight mechanism required, or could this oversight be provided by Government and civil society? If so, what functions should the oversight mechanism perform?

IJM Australia believes an Independent Anti-Slavery Commissioner should be charged with monitoring compliance with the reporting requirement. This body should work with civil society to assist companies in implementing due diligence procedures and taking steps to address modern slavery in supply chains, as well as drawing attention to companies that fail to comply.

There must be significant resources directed to this oversight mechanism, as the proposed model will not work unless businesses face pressure from civil society and a regulator that is monitoring compliance. Otherwise, the proposed 'community policing' model will simply be ineffective, as illustrated below.

Clarifying how the proposal meets the Government's objectives

The stated objective of the Government is to '*equip and enable* the business community to *respond effectively* to modern slavery and *develop and maintain* responsible and transparent supply chains'.[28] Secondary objectives include 'encouraging the business community to *identify* and *address* modern slavery risks beyond first tier suppliers' and 'facilitating a "race to the top"',[29] as well as raising awareness and investor and consumer information.

However, the Consultation Paper does not make clear how the reporting requirement will actually result in an *effective response* from businesses in the *development* of responsible supply chains. The reporting requirement is only directed at providing a very low level of transparency, but does not mandate any concrete actions to be taken or provide any guidance as to how businesses can actually begin eliminating modern slavery from their supply chains.

In the UK, the Government was explicit about exactly how the transparency legislation was intended to work. First, companies that were already taking action on modern slavery would get credit for the work they were doing.[30] Second, companies that were not doing enough would be encouraged to do more by 'pressure from consumers, shareholders and

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26 Ibid 33.

27 Ibid 33–4.

28 Consultation Paper, 10 (emphasis added).

29 Ibid (emphasis added).

30 Inter-Departmental Ministerial Group on Modern Slavery (UK), '2015 Report of the Inter-Departmental Ministerial Group on Modern Slavery' (October 2015) 27.

campaigners and competition between businesses'.[31] These were both acknowledged as 'indirect' consequences of the legislation.

Hence, the reporting requirement is not designed to have any effect on removing modern slavery from a given company's supply chain unless:

- The company complies with the requirement to provide a statement;
- The company's statement gives sufficient detail to show weaknesses in its response to modern slavery;
- The statement is identified by civil society and attention is drawn to the weakness;
- The weakness is important enough to the company's consumers and shareholders that it perceives this negative attention as a reputational risk or sees the positive attention its competitors are (presumably) gaining from their positive actions on modern slavery as something valuable to pursue;
- The company judges that taking action on modern slavery will be less expensive than any direct or opportunity costs due to the weakness of its current response; and
- The action the company takes is effective and not merely sufficient to show that they are doing 'something'.

The Government should clarify that this is the way that implementing the reporting requirement is intended to work as in the UK.

Overstating the impact of the reporting requirement

The Government suggests that the reporting requirement is in response to findings by the AHRC that 'many businesses lack clear strategies and processes to trace, monitor and address such risks'.[32] As indicated above, the current proposal does not necessarily do anything to address this. It simply requires companies to report on their current actions. Whether companies go on to improve their methods and the manner in which they do so is entirely up to them.

The Government also suggests that the reporting requirement is needed because 'Australia's current regulatory frameworks do not directly encourage the business community to take action to combat modern slavery'.[33] However, as expressly stated by the UK Government and implicit in Australia's adoption of their model, any actual impacts of the reporting requirement operate 'indirectly'. This is not direct regulation.

Implications

The desired positive effects of the disclosure scheme will only be achieved if the oversight mechanism is adequately resourced.

2.12. Should Government reconsider the other options set out in this consultation paper (Options 1 and 2)? Would Option 2 impose any regulatory costs on the business community?

The Consultation Paper distinguishes between 'non-regulatory' action that relies on 'voluntary' actions by companies to address modern slavery and the 'regulatory' reporting

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31 Draft Explanatory Memorandum, The Modern Slavery Supply Act 2015 (Transparency in Supply Chains) Regulations 2015 (UK) [7.2].

32 Consultation Paper, 9.

33 Ibid.

requirement that is proposed.[34] However, according to the wording in the Consultation Paper the reporting requirement will in fact be voluntary in three ways:

- Companies can choose to provide as much or as little information as they like;
- Companies can choose not to report at all and there are no legal consequences; and
- Whether companies actually do anything about modern slavery in their supply chains as a result of reporting is contingent on their own initiative.

Therefore, the distinction between 'non-regulatory' and 'regulatory' action is not immediately clear. The solution proposed by Government is not a regulatory option in its current form.

Specifically, the Government states that the 'non-regulatory' option was not satisfactory because its 'effectiveness is contingent on business engagement'.[35] As illustrated, the effectiveness of the reporting requirement will also be contingent on business engagement.

The Government states it is committed to achieving 'an appropriate balance between regulation and flexibility', impliedly through the reporting requirement.[36] However, companies have total flexibility as to what action they take on modern slavery under the proposed regime, so there is effectively no 'regulation'.

In light of these comments, we suggest that the Government should not consider any scheme that is weaker than the one currently proposed.

3. FURTHER CONSIDERATIONS

3.1. Due Diligence

'Due to the regulatory impost of these approaches, the Australian Government is not implementing due diligence requirements or broader human rights-based reporting'.[37] This decision appears in part to be based on pages 40–1 of the Interim Report of the Inquiry into Establishing a Modern Slavery Act in Australia. However, the concerns highlighted do not adequately respond to the merits of the due diligence system.

The Committee pointed to Norton Rose Fulbright's submission as not supporting due diligence measures. While that submission ultimately did not recommend due diligence measures, it did summarise a recent report conducted by the company which found that express human rights due diligence measures were effective in enabling businesses to identify relevant human rights risks and tracking and monitoring their responses to them.[38] Further, the research found that:

> companies would generally prefer clearer regulation over uncertainty and inconsistency. For example, it has been shown that those human rights which are generally regulated, such as health and safety and labour rights, have a higher likelihood of being considered as part of due diligence processes, most notably by companies which are not undertaking comprehensive or dedicated HRDD. One interviewee stated that whereas they previously wanted to 'think positively', they had changed their mind and now believed that legislative change is needed, as

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34 Ibid 11–13.
35 Ibid 12.
36 Ibid 13.
37 Ibid 9.
38 Norton Rose Fulbright, Submission No 72 to the Modern Slavery Act Inquiry, 15, 22–3, 26.

'sometimes you just need the ***forceful push***.' Another interviewee stated that regulation tends to 'mainstream' the issues and referred to the example of statutory requirements regarding the percentage of women on the board, which resulted in the issue swiftly being 'fixed' after the legislation was adopted.[39]

The Committee also referred to the Business Council of Australia's assertion that the due diligence model was 'new and untested' and would cause 'unnecessary regulatory overburden'. Two things may be noted in response to this. First, as demonstrated in our submission,[40] due diligence mechanisms have been demonstrated to be successful in both Australian and international arenas, and the findings from Norton Rose Fulbright's survey above support this view. Second, the statement that the regulation is 'unnecessary' assumes that eliminating slavery from supply chains is also 'unnecessary', or that other methods will in fact be successful in achieving this objective.

The same can be said for the statement in the Consultation Paper at page 14 that 'the cost of regulating [under the reporting model] is in proportion to the real-world risk'.

Finally, this ignores the fact that Australia has already implemented a due diligence model in the logging industry. In relation to this point, it is not clear how the reporting requirement model is 'consistent with the Australian Government's response' to illegal logging, as stated at page 13 of the Consultation Paper. The proposed reporting model is not consistent with this approach as it applies to a small number of companies, does not require a significant level of disclosure, does not require due diligence processes, and has no penalties for non-compliance.

We do welcome the Committee's statement that it will further consider due diligence requirements at pages 51–2 of the Interim Report. If no legislation is implemented, however, this consideration should include concrete goals for introducing due diligence legislation in the future as the next phase beyond reporting requirements.

3.2. Application to Public Sector

The Government has stated that the reporting requirement will not apply to the public sector because 'Commonwealth procurement is already governed by a legislative framework that sets out rules for spending public money, including in relation to ethical sourcing'.[41] However, the current proposed approach is about *disclosure*, and encouraging a 'race to the top' for business, not about implementing due diligence *procedures*. By requiring public entities to report on the actions they themselves are taking on modern slavery, this will encourage the private sector to do the same. It should not impose any extra costs if ethical procedures are already being followed.

3.3. The Current Proposal Does Not 'Build On' the UK Legislation

The Government claims that its proposal 'builds on' the UK reporting requirement.[42] In light of the deficiencies outlined above, it becomes apparent that the proposal to some degree *walks back* on the UK approach.

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39 Robert McCorquodale et al, 'Human Rights Due Diligence in Law and Practice: Good Practices and Challenges for Business Enterprises' (2017) 2 *Business and Human Rights Journal* 195, 223 (emphasis added, citations omitted).

40 IJM Australia, Submission No 118 to the Modern Slavery Act Inquiry, [6.1.2], [6.3.1], [6.4.1].

41 Consultation Paper, 15.

42 Ibid 14.

Although there are some improvements, such as the introduction of a public register for statements, other aspects are exactly the same, and the higher threshold in the Australian economy will have a significantly reduced impact on corporate culture in this country.

Furthermore, it is now two years after the implementation of the UK legislation, and since that time there has been more comprehensive due diligence legislation introduced in other countries such as France and the Netherlands,[43] and the impacts of OECD Due Diligence initiatives have begun to be seen.[44] Additionally, Australia has already successfully implemented a due diligence scheme to confront the social issue of illegal logging in supply chains.[45]

In this context, simply implementing effectively the same scheme as the UK, and even more so implementing a higher reporting threshold, is in fact taking global progress towards eradicating modern slavery backward.

3.4. Need for Long-Term Strategy

In light of the points at 3.1 and 3.3 above, the Government should outline a long-term strategy with respect to modern slavery. The eventual goal should be that all companies have due diligence procedures in place directed at modern slavery in their supply chains. The Government should view the implementation of this reporting requirement as merely a first step toward that objective.

In the meantime, the Government must do all it can to maximise the effectiveness of the reporting requirement in encouraging companies to begin to implement due diligence processes now.

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43 IJM Australia, Submission No 118 to the Modern Slavery Act Inquiry, [6.2] 'France', [6.3.4].

44 Ibid [6.3.1].

45 Ibid [6.1.2].

APPENDIX: EXTRACT FROM SUBMISSION TO MSA INQUIRY

International Justice Mission Australia, Submission No 118 to the Joint Standing Committee on Foreign Affairs, Defence and Trade, *Inquiry into Establishing a Modern Slavery Act in Australia*, pt 6 ('Supply Chain Transparency and Due Diligence').

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'.

[57]

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.[58] 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'.[59] Breaches of the NSW code may also result in financial penalties up to $11,000.[60]

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'.[61]

Nossar et al comment that some of these obligations already apply to overseas workers in supply chains of Australian retailers,[62] and that 'there is no obvious impediment (other than a lack of political will) preventing the regulation of transnational supply chains extending into the jurisdiction of a domestic government'.[63]

6.1.2. *Illegal Logging Supply Chain Regulation*

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57 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.

58 Ibid 591.

59 Ibid; *Workers Compensation Act 1987* (NSW) s 175B.

60 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.

61 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.

62 Ibid 590–1.

63 Ibid 600.

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

The prescribed due diligence measures include:[67]

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.[68] 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.[69]

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.[70] 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.[71]

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

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64 *Illegal Logging Prohibition Act 2012* (Cth) ss 8, 12.

65 Ibid; *Crimes Act 1914* (Cth) s 4AA.

66 *Illegal Logging Prohibition Act 2012* (Cth) s 7 (definition of 'illegally logged').

67 *Illegal Logging Prohibition Regulation 2012* (Cth) regs 9–16.

68 Department of Agriculture and Water Resources (Cth), *Information for Importers – Illegal Logging* (19 April 2017).

69 Ibid.

70 Department of Agriculture and Water Resources (Cth), 'Reforming Australia's Illegal Logging Regulations' (Consultation Regulation Impact Statement, 2016) 12.

71 Ibid 22.

risks and, if it does, how it manages or intends to manage those risks'.[72] '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',[73] which would include its susceptibility to the risk that forced labour occurs in the company's supply chain.[74]

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.[75] ASX may suspend trading in a company's securities if it fails to make the appropriate disclosures.[76]

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

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72 ASX Corporate Governance Council, 'Corporate Governance Principles and Recommendations with 2010 Amendments' (ASX, 2014) 30 [Recommendation 7.4].

73 Ibid 38.

74 See AHRC, ACCSR, GCNA, 'Human Rights in Supply Chains: Promoting Positive Practice' (Report, December 2015) 23.

75 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.

76 Australian Securities Exchange, 'Disclosure of Corporate Governance Practices' (Guidance Note No 9, 19 December 2016) 12.

77 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.

78 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
California[79]	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.	Disclosure must be placed on website with 'conspicuous and easily understood link' on homepage. Mandatory to disclose to what extent, if any: • Supply chains are verified (and whether by third party); • Supply chains are audited (and whether audits are independent and unannounced); • Suppliers are required to certify compliance with human trafficking laws; • Accountability standards and procedures are in place for employees and contractors; and • Appropriate training is provided to employees and management. Additional resource guide provides examples and required level of detail disclosures should take and how prominently link must be displayed on homepage.[80]	Attorney General may bring action for injunctive relief.	Only 14% of businesses are fully compliant.[81]
United Kingdom[82]	Prepare a statement each financial year	All 'commercial organisations' which carry on business in	Statement must be available on website via a link in 'a prominent place on that website's homepage' or in writing on request.	Secretary of State may bring civil action for injunction	Currently approximately 16.8% of

79 Cal Civ Code § 1714.43 (Deering 2012).

80 Kamala D Harris, Attorney General (California), 'The *California Transparency in Supply Chains Act*: A Resource Guide' (2015).

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

82 *Modern Slavery Act 2015* (UK) c 30, s 54.

Jurisdiction	Obligation	Breadth of Application	Reporting Guidelines	Penalties for Non-Compliance	Rate of Compliance
	detailing steps taken, or lack thereof, to ensure absence of slavery and human trafficking in business and supply chains.	the UK with a total turnover over £36 million.[83]	Statement must be approved and signed by person(s) with authority in organisation, eg approval of board of directors and signature of a director is required for a body corporate. Statements *may* include: • Organisational structure, policies and due diligence processes with respect to human trafficking and supply chains; • Identification of risk of slavery and human trafficking in the supply chain; • Effectiveness in prevention measured against performance indicators; or • Appropriate training available to staff. Additional guidelines provide greater detail and case studies as to the information that may be disclosed.[84]	or specific performance if companies do not comply.	businesses have completed a statement.[85] An initial sample of early statements found that more than half were less than 500 words long.[86]
United States[87] (conflict minerals)	Report annually on use of minerals that finance armed	All 'reporting companies', that is: those listed on a national securities	Report to be made available on website. US Securities and Exchange Commission made a final ruling	Purchasers of products from entity may bring action for damage due to	Estimates range from 7% to 20% of companies being

83 *Modern Slavery Act 2015 (Transparency in Supply Chains) Regulations 2015* (UK) reg 2.

84 Home Office (UK), 'Transparency in Supply Chains etc. A Practical Guide' (29 October 2015).

85 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).

86 Daniel Hudson and Oliver Elgie, 'Potential Confusion about Modern Slavery Act Reporting Requirements' (Legal Briefing, Herbert Smith Freehills, 11 May 2016).

87 *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
	groups in the designated countries, and if so, prepare an independently audited report on due diligence measures taken in response.	exchange; having equity securities held by 2000 persons or 500 who are not accredited investors, and assets exceeding US$10 million; or having filed a registration statement under the *Securities Act of 1933*.[88]	providing extensive guidance on and interpretation of the legislation and the requirements imposed on businesses. 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').[89] In particular, it detailed the requirements of a Conflict Minerals Report, which included 'a description of the facilities used 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'.[90] This ruling, however, was deemed unconstitutional due to its effect on commercial speech,[91] and is currently under reconsideration.[92]	misleading statements.[93]	compliant.[94]
European Union[95]	Take due diligence steps	Importers of designated minerals	Importers must report publicly 'as widely as possible, including on the internet', including steps taken and details of third party	Penalties are to be set by member	Becomes binding on 1 January

88 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.

89 Securities and Exchange Commission (US), *SEC Final Rule – Conflict Minerals*, RIN 3235-AK84, 22 August 2012, 205–7.

90 Securities and Exchange Commission (US), *SEC Final Rule – Conflict Minerals*, RIN 3235-AK84, 22 August 2012, 351.

91 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.

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

93 *Securities Exchange Act of 1934*, 15 USC § 78m, s 13(p).

94 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.

95 *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*').

Jurisdiction	Obligation	Breadth of Application	Reporting Guidelines	Penalties for Non-Compliance	Rate of Compliance
(conflict minerals)	to prevent the use of minerals sourced in conflict zones and make information on steps taken publicly available.	above particular thresholds such that 95% of all imports are covered.[96]	audits.[97] 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.[98] The due diligence obligations are based on the OECD Due Diligence Guidance relating to conflict minerals.[99]	states.[100] Adequacy of penalties will be reviewed periodically to ensure that they are effective in having due diligence schemes implemented.[101]	2021.[102]
European Union (non-financial disclosure)[103]	Include in annual report information on the 'performance, position and impact of its	Companies limited by shares or guarantee (in the UK, and equivalents elsewhere), with more than 500 employees.[105]	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	Member states to implement penalties that are 'effective, proportionate and dissuasive'.[108]	First reports due for financial year beginning in 2017.[110] Denmark was the

96 *EU Conflict Minerals Regulation* art 18.

97 *EU Conflict Minerals Regulation* art 7.

98 *EU Conflict Minerals Regulation* art 8.

99 See, eg, *EU Conflict Minerals Regulation* art 4(b).

100 *EU Conflict Minerals Regulation* art 16.

101 *EU Conflict Minerals Regulation* art 17.

102 Council of the European Union, 'Conflict Minerals: Council Adopts New Rules to Reduce Financing of Armed Groups' (Press Release, 181/17, 3 April 2017).

103 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*').

Jurisdiction	Obligation	Breadth of Application	Reporting Guidelines	Penalties for Non-Compliance	Rate of Compliance
	activity, relating to' issues of social importance.[104]		model, and relevant policies, due diligence processes, risk management and non-financial key performance indicators.[106] Where no policy is implemented, the entity must provide an explanation for not doing so.[107]	Germany has considered a penalty based on a percentage of the entity's turnover.[109]	first to incorporate these obligations into domestic legislation.[111]
Denmark[112]	Include report in accordance with EU non-financial disclosure directive.	Applies to companies that have two or more of: 250 employees; a balance sheet over EUR 19.2 million; or a turnover over EUR 38.3 million.[113]	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 Global Reporting Initiative.[114]	Companies can be fined (an unknown amount),[115] and penalties up to EUR 10,000 have been given to auditors for reports that do not comply.[116]	66% of companies fully complied before the most recent changes to the legislation were introduced.[117]

105 *EU Non-financial Disclosure Directive* arts 1–2, 19, Annex 1.

108 *EU Non-financial Disclosure Directive* art 51.

110 *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.

104 *EU Non-financial Disclosure Directive* art 19a(1).

106 *EU Non-financial Disclosure Directive* art 19a(1).

107 *EU Non-financial Disclosure Directive* art 19a(1).

109 Géraldine Bourguignon et al, 'Disclosure of Non-financial and Diversity Information by Large European Companies and Groups' (Alert Memorandum, Cleary Gottlieb, 2017) 8.

111 See Danish Business Authority, 'Implementation in Denmark of EU Directive 2014/95/EU on the Disclosure of Non-financial Information' (2015).

112 *Financial Statements Act 2001* (Denmark) s 99a.

113 UNEP and Group of Friends of Paragraph 47, *Evaluating National Public Policies on Corporate Sustainability Reporting* (2015) 38.

114 See Danish Business Authority, 'Implementation in Denmark of EU Directive 2014/95/EU on the Disclosure of Non-financial Information' (2015).

115 Bech-Bruun, 'Corporate Social Responsibility: Focus on Growth and Knowledge' (CSR Report, 2013) 4.

116 UNEP and Group of Friends of Paragraph 47, *Evaluating National Public Policies on Corporate Sustainability Reporting* (2015) 40.

117 Danish Government, 'Executive Summary: Three Dimensions of Corporate Social Responsibility (CSR)' (2013) 1.

Jurisdiction	Obligation	Breadth of Application	Reporting Guidelines	Penalties for Non-Compliance	Rate of Compliance
France[118]	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.[119]	Vigilance plan is to be published as part of annual report under France's Commercial Code. 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.[120] The plans are contemplated to fall within the remit of existing multi-stakeholder initiatives.[121]	Draft law had fines up to EUR 30 million for non-compliance, but this was found unconstitutional, and only injunctive relief is now available.[122]	Only came into effect on 29 March 2017.[123]

118 *Code de commerce* [Commercial Code] (France) arts L 225-102-4 – L 225-102-5.

119 *Code de commerce* [Commercial Code] (France) L 225-102-4(I).

120 Sabine Smith-Vidal and Charles Dauthier, 'French Companies Must Show Duty of Care for Human and Environmental Rights', *Lexology* (online), 3 April 2017.

121 *Code de commerce* [Commercial Code] (France) arts L 225-102-4(I).

122 Jean-Philippe Robé, 'Partial Invalidation of the French Duty of Vigilance Statute by the Constitutional Council' on Jean-Philippe Robé, *LinkedIn* (23 March 2017).

123 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.

[124] 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'.[125]

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.[126]

The benefits of industry engagement with these guidelines have been:

- Increased participation in initiatives encouraging greater investment in responsible mining activities;[127]
- Use of 'standardised industry tools' that have allowed more robust and efficient checks to take place at lower levels of the supply chain;[128] and
- Companies have 'made significant improvements in their understanding of the conflict mineral issue'[129] and the complexities in their own supply chains;[130]

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124 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*').

125 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.

126 Ibid 17–19.

127 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.

128 Ibid.

129 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.

130 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 contribution of mining to violence in the target region is estimated to have decreased;[131] and
- The volume of legal 'conflict free' minerals now being sourced from the region has increased.[132]

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.[133] 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.[134] It has also made it more difficult for legitimate mining operations to compete because of the increased compliance costs.[135] Further, some companies have been reluctant to conduct lower-tier suppliers as they have discovered the complexities of their supply chains.[136]

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.[137] 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.[138] 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.[139]

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131 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.

132 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.

133 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.

134 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.

135 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.

136 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)

137 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.

138 Ibid.

139 Ibid.

The initiative was very effective at mounting financial pressure on entities caught using forced labour.[140] Part of its success was due to the effective integration of government transparency measures and industry cooperation.[141] 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.[142]

6.3.3. *US Federal Procurement Executive Order*

In 2012, President Obama sigend 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.[143] Required measures include awareness programs for employees and the use of recruitment agencies with appropriate training and wage agreements.[144] 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'.[145]

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.[146] 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.[147]

Key features of the scheme include:

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

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

141 Ibid.

142 Chris Arsenault, 'Brazil Prosecutors Demand Answers on Names Missing from Slavery "Dirty List"', *Reuters* (online), 17 April 2017.

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

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

145 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.

146 MVO Platform, 'Frequently Asked Questions About the New Dutch Child Labour Due Diligence Law' (April 2017).

147 Ibid.

148 Gerard Oonk, *Child Labour Due Diligence Law for Companies Adopted by Dutch Parliament* (8 February 2017) India Committee of the Netherlands.

149 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.[150]

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:[151]

- 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.[152]

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.[153] Support exists for such a proposal in principle, with various organisations calling for obligations to move 'beyond transparency'.[154]

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

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 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

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150 Ibid.

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

152 Ibid.

153 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.

154 See Adjoa Kwarteng et al, 'Building on the Modern Slavery Bill: Going Beyond Transparency' (Report, 2015).

155 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.

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.[156] 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.[157]

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.[158] 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 Agricultural Supply Chains*[159] and OECD *Due Diligence Guidance on Responsible Garment and Footwear Supply Chains*.[160]

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

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156 See section 6.1.2.

157 See section 6.3.1.

158 Department of Agriculture and Water Resources (Cth), *Information for Importers – Illegal Logging* (19 April 2017).

159 OECD and FAO, OECD-FAO Guidance for Responsible Agricultural Supply Chains (2016).

160 OECD, 'OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector' (2017).

regulation is in many ways comparable to the Illegal Logging legislation in Australia, and requires:[161]

- 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.[162] This is similar to the interaction of the voluntary and mandatory codes in the TCF industry in NSW.[163]

[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.[164] 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.[165]

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;
- 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.

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161 *EU Conflict Minerals Regulation* arts 4–7.
162 Ibid art 8.
163 See section 6.1.1.
164 See section 6.2.
165 Grant Thornton, 'Corporate Governance Reporting Review' (2013) 5.

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'.[166]

[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,[167] and 50.2% of total value added in the private sector.[168] 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.[169] 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).[170]

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 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.[171]

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.[172] Similarly, it may be appropriate to set the threshold in Australia based on the

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166 Business and Human Rights Resource Centre, *UK Modern Slavery Act & Registry* (April 2017).

167 Chris Rhodes, 'Business Statistics' (Briefing Paper No 06152, House of Commons Library, Parliament of UK, 2016) 5.

168 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.

169 Megan Clark et al, *Australian Small Businesses: Key Statistics and Analysis* (Department of Industry, Innovation, Science, Research and Tertiary Education (Cth), 2012) 20–4.

170 Australian Securities & Investments Commission, 'Assessment of ASX Limited's Listing Standards for Equities' (Report No 480, June 2016) 10.

171 '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.

172 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).

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.[173]

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.[174]

[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.[175]

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.[176]

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

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.[177]

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

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173 *Corporations Act 2001* (Cth) s 45A(3).

174 Australian Taxation Office, 'Increase the Small Business Entity Turnover Threshold' (10 April 2017).

175 See section 6.1.2.

176 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.

177 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.

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%.[178]

As stated in the European Union non-financial disclosure scheme, penalties should be 'effective, proportionate and dissuasive'.[179] The draft German legislation introduced to comply with this requirement proposes financial penalties on companies as a percentage of the entity's turnover.[180] 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.[181]

[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,[182] as well as the term 'homepage' as the place where reports are to be published.[183]

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).[184] However, when a specific requirement was introduced into the legislation mandating the inclusion of comment on 'human rights', this increased to 66%.[185]

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.[186]

[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*

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178 See section 6.2.

179 *EU Non-financial Disclosure Directive* art 51.

180 See section 6.2.

181 See 6.3.4.

182 Michael Ball et al, 'Corporate Compliance with the California Transparency in Supply Chains Act of 2010' (Development International, 2 November 2015) 13.

183 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.

184 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.

185 Danish Government, 'Executive Summary: Three Dimensions of Corporate Social Responsibility (CSR)' (2013) 1.

186 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.

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

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*.[191]

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

187 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.

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

189 Attorney-General's Department (Cth), *Human Trafficking Guidelines and Factsheets* (24 October 2012).

190 Ibid.

191 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.