

Business & Human Rights Resource Centre

**Submission to Attorney General's Department of the Australian Government in relation to the
Review of the Modern Slavery Act and related Issues Paper**

21 November 2022

About us

[Business & Human Rights Resource Centre](#) is the leading international NGO working globally to advance respect for human rights in business. BHRRC is an agenda-setter, thought-leader and digital platform for action to empower advocates striving toward greater respect for human rights in business and build the human rights movement around the world. It is the only non-profit organisation drawing attention to the human rights impacts, both positive and negative, of over 10,000 companies worldwide. Our Weekly Update email newsletter has over 15,600 subscribers around the world, including advocates, activists, businesspeople, governments, investors and the UN.

We have been pleased to support the Australian government in its efforts to address modern slavery. We have contributed both as a member of the expert advisory group convened for the purposes of producing the [Guidance for Reporting Entities](#) and the [modern slavery expert advisory group](#) convened to provide strategic advice to the government to support the effective implementation of the Act.

We are part of the research team that published [Paper Promises: Evaluating the early impact of Australia's Modern Slavery Act](#) (February 2022) (**Paper Promises**) and the recently released, follow-up report [Broken Promises: Two Years of Corporate Reporting under Australia's Modern Slavery Act](#) (November 2022) (**Broken Promises**). In the UK, we operated the [Modern Slavery Register](#) for five years prior to the UK government launching its own central registry of modern slavery statements in 2021. During that time, we undertook longitudinal analysis on [reporting under the UK Modern Slavery Act](#).

Review responses

We refer to the review of the *Modern Slavery Act* 2018 (Cth) (the **Act**) currently being conducted by the Attorney General's Department of the Australian Government (**Review**) and its related Issues Paper. We note the government has invited submissions and comments on the Issues Paper. We appreciate the opportunity to provide this submission in response.

We recognise that the subject of the Review is the Act and that this requires certain entities to report annually on the risks of modern slavery in their operations and supply chains and actions

taken to address those risks. We continue to support the reporting requirement set out in the Act and as strengthened in line with the recommendations set out in this submission. We do, however, consider that a **mandatory human rights due diligence measure** would present a more effective means of addressing modern slavery in company operations and supply chains. We expand on this in the responses that follow.

In responding to the consultation questions in the Issues Paper, we have provided information and insights on those questions that relate directly to our institutional experience and expertise, namely, matters relating to the responsibility of businesses to respect human rights. We have adopted the same numbering as used in the Issues Paper and provide the following responses for your consideration:

Consultation questions

Impact of the Modern Slavery Act

1. Has the Modern Slavery Act had a positive impact in the first three years?

As noted in the [Issues Paper](#), the ‘dual aim of the Act is to increase business and government awareness of... modern slavery risks, and support entities to identify, report and address the risks... Two phrases commonly used to describe the Act are that it creates a ‘transparency framework’ that will instigate a ‘race to the top’.

It is our view that the Act has had a positive impact, albeit a limited one. Its greatest achievement has been to raise awareness about the presence of modern slavery in business operations and the need to address it. The Act has had a positive impact in terms of encouraging greater collaboration and engagement by companies with their suppliers, workers and peers. It has also prompted greater engagement with human rights in business, importantly, at board-level. These changes in attitude are essential prerequisites to bringing about change in corporate human rights practices. At the time of writing, close to [4,700](#) mandatory statements have been lodged on the government’s Online Register for Modern Slavery Statements. Compliance levels, in terms of the numbers of entities responding to the Act by submitting a statement, appear to be relatively high.

However, whilst the Act has raised awareness amongst businesses, its impact in terms of bringing about improvements in the way businesses identify and address modern slavery risks is not yet readily apparent. In our view, the Act has yet to have a discernible impact on corporate human rights practices, particularly in those areas most likely to bring change to workers on the ground. More is said in relation to this in our response to Question 2.

2. Is the ‘transparency framework’ approach of the Modern Slavery Act an effective strategy for confronting and addressing modern slavery threats, including the drivers for modern slavery?

The transparency regime established by the Act is a useful early legislative step in confronting modern slavery in business. By mandating reporting on human rights - albeit limited to those constituting ‘modern slavery’ - it codifies certain **expectations** of business as articulated by the UN Guiding Principles on Business and Human Rights 2011 (UNGPs). Whilst the Act does not explicitly require businesses to conduct human rights due diligence, nor to remedy harm, its provisions on mandatory reporting criteria for modern slavery statements expressly refer, at section 16(1)(d), to both due diligence and remediation processes. This creates an expectation that entities will

undertake these actions as part of their reporting process. The Act is useful as a **transparency tool**. It is yielding information about company practices to address modern slavery and allows for improvements to be measured over time. The Act also establishes a valuable avenue for **engagement** with business on human rights.

However, the 'transparency framework' approach merely nudges incremental improvements in reporting by companies over time. Standing alone, without further requirements on companies to act or measures to hold them to account, it is an **incomplete and inadequate** strategy for confronting and addressing the egregious human rights abuse of modern slavery.

Limitations on effectiveness

The Act has limitations which limits its ability to achieve significant change. The first of these is the nature of the Act itself. As a reporting requirement, not a requirement to act, the Act does not create direct legal liability for companies that continue to cause harm via supply chains. This can occur when, for example, companies stipulate unreasonably short lead times, or place small volume orders for constantly changing goods to accommodate fleeting fashion tastes. Like other social disclosure laws, there is a danger this law is engendering a 'tick-the-box' form of reporting that prizes cosmetic compliance over a substantive response.

Second, the Act contains inherent weaknesses, inherited from the UK model, which have yet to be addressed. These are: no exclusion of non-compliant entities from **public tenders**; no financial **penalties** to induce compliance; and no explicitly mandated human rights **due diligence** requirement.

Third, the **reliance of transparency frameworks on external forces**, as opposed to compliance measures or sanctions, to encourage entities to engage meaningfully with the law and address modern slavery in their supply chains is resulting in poor results. The experience in Australia and other jurisdictions (including the UK) suggests that the 'race to the top' approach has its limitations, and that it is unlikely to herald an era of 'transformative change' without additional due diligence requirements and compliance mechanisms.

A [plethora](#) of research has been published about the **limited impact of the disclosure requirements** of the UK Modern Slavery Act. In Australia, our research has similarly revealed poor reporting standards together with s16 compliance issues. Our reports evaluating responses to the Act in the first and second reporting periods - [Paper Promises](#) and [Broken Promises](#), respectively - have found that the rate of change in terms of companies' efforts to address modern slavery is occurring glacially. The average rate of improvement, between the first and second reporting periods, is only **7%**. Further, where change has been detected, between round one and round two reporting, it is generally not happening in the areas fundamental to addressing modern slavery – support for freedom of association, implementation of responsible purchasing practices, effective and safe worker engagement and resolution of grievances.

Even on a basic measure of compliance with s16, companies are failing to achieve adequate results. In our research, the **average score** across our evaluation indices was **44%** overall, up from **37%** in the first reporting period.

Growing inequality

These results should be viewed against a backdrop of growing inequality and exploitation, globally, as the dual challenges of the climate and cost of living crises bite ever harder on workers.

There is a pressing need to address modern slavery threats by **reorientating** the Act so as to require **action** by companies, rather than simply reporting on their existing approach.

Many countries are now moving beyond voluntary reporting on modern slavery towards enforceable obligations on companies to investigate and address modern slavery and other serious human rights abuses in their supply chains. It is our view that this is also required in Australia.

Mandating human rights due diligence

To best address modern slavery threats, Australia requires a robust and effective human rights due diligence law requiring decisive action by companies and penalties for those who fail to take it.

In order to drive action by companies, including responding to modern slavery threats, we are seeing, increasingly, human rights due diligence laws being considered and implemented in other jurisdictions.

Human rights due diligence is a key aspect of the international, regional and national debates about corporate accountability for human rights abuses. In the rapidly developing area of business and human rights, the notion of **prevention** is key, and relates to the prevention of the activities of businesses around the world from causing, contributing to or being linked to adverse human rights impacts. Prevention is a key aspect of human rights due diligence and **working in tandem with increased transparency**, can be a useful framework for addressing human rights abuses. Human rights due diligence laws, which require companies to take action to identify harm before it eventuates, are now considered ‘gold standard’ for regulating corporate human rights efforts.

Mandatory human rights due diligence, in its many forms, has been integrated into legislation and National Action Plans on Business and Human Rights, implementing the UNGPs, in several countries in Europe, as well as in South Korea, Chile, Colombia and Georgia. Civil society organisations and governments are developing similar policies in countries across Africa, Asia, wider Europe and South America. Australia now lags behind a growing number of jurisdictions which have adopted or proposed more robust legislation to tackle modern slavery and other adverse human rights impacts through mandatory human rights due diligence. Laws have been adopted in France, the Netherlands, Norway and Germany, with a draft Directive under consideration in the EU. Further laws are under active consideration in Austria, Belgium, New Zealand and Canada.

The need for mandatory human rights due diligence is borne out by research findings. [Corporate Human Rights Benchmark's](#) results reveal that over half of major companies in apparel, extractive, food and beverage and tech manufacture are failing on human rights, and particularly on human rights due diligence. Even in cases where a company reports on its human rights risks and impacts, CHRB findings reveal that few proceed and take action to address them. This is mirrored by poor overall performance by most companies under our latest [KnowTheChain](#) benchmark. [KnowTheChain](#) - which grades over 115 apparel, food, and ICT companies on their measures to

tackle forced labour - has given businesses an average score of 33 out of 100 on their efforts to eliminate modern slavery in their supply chains.

The disparity between the small number of leading companies and those in the lower scoring bands has the potential to become entrenched. This creates a commercial disadvantage for leading companies that conduct business to a higher ethical standard.

Based on our experience researching, assessing and benchmarking the efforts of companies to act on human rights, it is our view that further steps, beyond voluntary reporting, are required to embed respect for human rights in business. In particular, we stress the importance of advancing human rights due diligence by companies and note that few companies, globally, are conducting adequate and appropriate human rights due diligence.

Reporting in and of itself, even if properly enforced, will not result in the transformative changes to corporate practices needed to confront modern slavery. To achieve progress on these issues by companies and address an unequal commercial playing field, we **recommend** the Australian government introduces **legislation to require reporting entities to undertake due diligence** to address modern slavery.

Under a due diligence law, companies should be required to conduct human rights due diligence, in line with the UNGPs, so as to avoid adverse human rights impacts in their domestic and international operations, including in their supply and value chains. Penalties for non-compliance should apply so that companies are held to account for failure to meet their legislative requirements. Under this approach, companies would have to show reasonable and appropriate due diligence as a defence to legal liability.

The Australian government should encourage companies to act in accordance with global standards, meet their human rights due diligence expectations and provide certainty for companies about the procedures required to comply with these standards. There is an opportunity now for the government to build on the leadership it has demonstrated with the Act by introducing a mandatory human rights due diligence law and cement its position as a global leader in combating modern slavery and promoting responsible business practices.

We **recommend** the government initiates an **inquiry** into establishing a mandatory human rights due diligence law which could be undertaken either in its own right, or as part of a further 3-year review of the Act.

4. Should the Modern Slavery Act spell out more explicitly the due diligence steps required of entities to identify and address modern slavery risks?

As detailed above, in our response to Question 2, we consider a better approach would be to require companies by law to undertake human rights due diligence.

That aside, and considering whether the Act should, in its current form as a transparency law, more explicitly spell out due diligence steps we would respond affirmatively.

Section 16(1)(d) requires reporting entities to report on their actions to assess and address the risks of modern slavery practices in their operations and supply chains, including due diligence and remediation processes. As noted in the Issues Paper, the term ‘due diligence’ is not defined in the Act, but the Explanatory Memorandum to the Bill provides that the mandatory reporting terms in the Act draw on terminology and concepts used in the business and human rights context, particularly in the UNGPs. Further, we note that guidance is provided on conducting due diligence in the [Guidance](#) that accompanies the Act.

However, [research](#) by us is showing companies are not doing human rights due diligence well with an over-reliance on social auditing. Nor are they fully complying with the reporting requirements of s16 of the Act, including the requirement to report on due diligence processes in s16(1)(d) (where we found [40%](#) of those assessed were non-compliant and responses overall revealed a largely cosmetic approach).

This suggests that there needs to be more specific guidance for business on what is expected in this respect and that companies should be expressly required under the Act to **disclose specified information** about their human rights due diligence practices.

Key elements of effective human rights due diligence should entail the following:

1. Prioritise meaningful and safe direct **stakeholder engagement**, including supply chain workers and other stakeholders possessing knowledge of local operating contexts to facilitate effective risk identification.
2. **Worker-driven monitoring** techniques.
3. Involve **collaboration with peers** to investigate modern slavery risks in common supply chains and develop initiatives that can bring about industry-wide change.
4. Be embedded in **strategic decision-making** at board level, and integrated across company functions.
5. Inform the development of a company’s **responsible purchasing practices**.
6. Feed into effective **remediation** with concrete, appropriate outcomes for workers where a company is implicated in harm.
7. Involve companies examining the **impacts of their own sourcing** practices and models, as well as suppliers.

Further guidance on what constitutes human rights due diligence, and how to do it well, is recommended. This could form part of any **refresh** of the **Guidance**. Consideration should also be given to conferring **statutory status** on the Guidance and requiring entities to have regard to it.

5. Has the Modern Slavery Act been adequately supported and promoted by government, business and civil society?

It is our view that it is the role of government to promote the Act and that more could be achieved in this respect, particularly with regards to funding for monitoring, enforcement and research capabilities. See further our response to Question 27 below.

Modern Slavery Act reporting requirements

6. Is AU\$100m consolidated annual revenue an appropriate threshold to determine which entities are required to submit an annual statement under the Modern Slavery Act? Does the Act impose an appropriate revenue test for ascertaining the \$100m threshold?

The responsibility of business to respect human rights, as articulated by the UNGPs, applies to all enterprises regardless of their size (UNGP 14). However, the means through which companies meet this responsibility (which would include reporting steps) may vary according to their size. As such, differential reporting levels may be appropriate and it is our view, at this time, that the current threshold of AUD\$100m is set at an appropriate level.

We would want to see higher standards of reporting, and evidence that the reporting regime is having a flow-through positive impact on workers' conditions on the ground, before steps are taken to lower the reporting threshold and extend the application of the Act to a larger number of reporting entities. We note this step would place additional strain on regulatory budget. In order to reach a point where this issue can be more readily determined, further scrutiny and longitudinal research to evaluate impacts of the Act would be required.

7. Should the Modern Slavery Act require annual submission of a modern slavery statement? Does the Act contain appropriate rules for ascertaining the annual reporting timeline for entities?

We support the annual reporting requirement. This is required to assess changes in corporate practices over time.

9. Is further clarification required of the phrase 'operations and supply chains', either in the Modern Slavery Act or in administrative guidelines?

We support a refresh and update of the [Guidance for Reporting Entities](#) to ensure it remains current and meets the evolving needs of reporting entities. From our analysis of statements issued under the Act, it is apparent that some entities find it challenging to differentiate between their own business operations and their supply chains. Other issues, such as guidance for entities operating in **high-risk contexts**, what to do when **actual instances** of abuse are identified and reporting on this, should also be covered.

We **recommend** that government consults on key areas requiring further clarification or updating in the Guidance and convenes an **advisory group**, constituted by members representing different stakeholder groups, for the purposes of undertaking a refresh of the Guidance.

10. Are the mandatory reporting criteria in the Modern Slavery Act appropriate – both substantively and in how they are framed?

We do not consider the current mandatory criteria set out in s16 of the Act to be appropriate and **recommend** improvements in three key areas:

1. Reporting on risks

Under s16, companies should be required to report on **actual instances** of risk that the entity has encountered, including what they did to address that risk. Our research has highlighted the fact that

reporting on instances of abuse by companies is extremely poor. Only **8%** of those entities assessed in round one, and **14%** in round two, reported on actual instances of abuse they had identified. We note that, in some cases, non-disclosure may be required in the interests of protecting workers from retaliation or jeopardising law enforcement investigations. However, overall, greater transparency on actual instances of risk, and what was done to address them, would benefit the scheme. Where companies are reporting on risks, in the majority of cases this is on a generic, sector-wide basis which suggests that identification methods are lacking and entities do not understand the extent to which modern slavery risks reside in their operations and supply chains. We **recommend** the Guidance is updated so as to better explain expectations in this area.

2. Explicit steps – due diligence, grievance mechanisms and remediation

Reporting on key corporate human rights processes remains patchy and lacking in detail with statements revealing widely differing levels of effort by companies. We **recommend** the mandatory reporting requirements be amended to specify the key human rights processes on which entities are required to report. These should include: **due diligence, modern slavery grievance mechanisms and remediation of instances of abuse.**

3. Reporting on effectiveness

Our latest research on the Act found that **40%** of those entities assessed are not reporting on how they measure the effectiveness of their actions to assess and address modern slavery. Efforts should be measured against specific, time-bound targets if efficacy is to be tracked and assessed. We **recommend** adding a requirement that companies also report on progress against their KPIs in subsequent statements.

Further, **forward-looking statements** should be followed-up in subsequent statements. Our research found that more than **half (56%)** the future commitments made in statements in the first reporting period were not then met by reporting entities in the second reporting cycle. Empty promises will not prevent modern slavery.

11. Should more be done to harmonise reporting requirements under the Australian Modern Slavery Act with reporting requirements in other jurisdictions, such as the United Kingdom? How should harmonisation be progressed?

Given the shift in focus globally to the introduction of mandatory human rights due diligence obligations of companies, we would **recommend** that attention be given to harmonising the Act with such requirements, rather than the reporting regime in the UK.

Enforcement of the Modern Slavery Act reporting obligations

14. Has there been an adequate – or inadequate – business compliance ethic as regards the Modern Slavery Act reporting requirements?

The [Explanatory Memorandum](#) states that its “primary objective [is] to assist the business community in Australia to take proactive and effective actions to address modern slavery” and to “drive a ‘race to the top’ as reporting entities compete for market funding and investor and consumer support”. The intention was that businesses would go beyond the black letter of the law in

terms of compliance ethic - they would initiate proactive steps, above and beyond meeting the reporting obligations of the Act, in a bid to top ethical sourcing benchmarks and so drive out modern slavery practices from systems of supply.

Our evaluation of the impacts of the Act over the first two years of reporting (see [Paper Promises](#) and [Broken Promises](#) reports) reveals that this is not the case and that responses to the Act are lacking. We found that companies are failing to comply with even the basic mandatory reporting requirements of the Act, with **77%** of companies assessed failing to address all of the mandatory reporting requirements in round one and **66%** in round two. Further, our analysis reveals concerning weaknesses with respect to more substantive elements of companies' responses to modern slavery - risk identification and evidence of effective actions to address key risks were both assessed to be lacking. For risk identification, **52%** failed to identify obvious sectoral risks in round one and **43%** in round two. On our measure of effective action, only **27%** of companies we assessed in round one demonstrated some form of effective action, and **33%** in round two. Examples provided, from our latest findings, of failings in risk identification are that **72%** of those companies sourcing from China failed to identify Uyghur forced labor as a risk factor, and **50%** of the healthcare companies we examined failed to acknowledge that PPE gloves from Malaysia have a high risk of being associated with modern slavery in production.

These findings suggest that the business compliance ethic, as regards the Act's reporting requirements, is inadequate. ***There is incomplete compliance and superficial reporting on those areas stipulated by s16 of the Act. Beyond basic compliance with the Act, there is also limited evidence of companies successfully identifying significant risks, even less so of effective action to address those risks.***

15. Has government administrative action been effective in fostering a positive compliance ethic? What other administrative steps could be taken to improve compliance?

The government has provided useful education and guidance on the Act. However, a positive compliance ethic has not been fostered by government administrative action. Rather, public scrutiny by civil society organisations, academia and other interested parties has provided the necessary information and awareness of non-compliance to exert pressure on businesses to improve practices and reporting standards.

We **recommend** three further steps are taken by the government to improve compliance.

First, the publication of a **public list** of all entities covered by the Act, and those who failed to report, so that non-reporters can be easily detected and pressure brought to bear upon them to comply with the Act. This would facilitate greater scrutiny of corporate action against slavery by all stakeholders and encourage entities to take positive steps to meet their human rights responsibilities. The Attorney-General's Department, or the Australian Securities Investments Commission, could be responsible for providing such a list of compliant and non-compliant companies.

Another action the government could take to improve compliance with the Act is the use of **public procurement incentives**. Only commercial organisations that comply with the reporting requirements of the Act should benefit from, and participate in, public procurement opportunities.

Companies tendering for government contracts should, as a minimum, be able to satisfy specified standards requiring a responsible approach to human rights and ethical sourcing, including demonstrating they are compliant with the Act (ie: submitted report on time and in compliance with s16 disclosure requirements). Smaller entities, falling below the legislative reporting threshold, should be encouraged to opt-in to the reporting requirement and so be eligible to contract with government. The removal of other forms of government support, such as export credit guarantees, for non-complaint reporting entities should be considered.

Third, changes to the **Register** could be made so as to encourage greater compliance. See further our response to Question 22 below.

16. Should the Modern Slavery Act contain additional enforcement measures – such as the publication of regulatory standards for modern slavery reporting?

See above our response to Question 15.

17. Should the Modern Slavery Act impose civil penalties or sanctions for failure to comply with the reporting requirements? If so, when should a penalty or sanction apply?

As outlined above in response to Questions 2 and 14, our research shows that many companies are submitting reports that fail to address even the basic ‘mandatory’ reporting criteria. For reporting to be a useful tool in helping to combat modern slavery, the government must, at a minimum, ensure that those companies required to report are submitting statements in accordance with the provisions of the Act.

For this reason, we support the amendment of the Act to introduce **financial penalties** and other sanctions for non-compliance by qualifying entities. We **recommend** that financial penalties should apply where entities:

1. Fail to **produce** a modern slavery statement.
2. Produce a statement that fails to meet the minimum requirements of being **signed** and approved by the appropriate person(s) and is submitted to the government within the prescribed reporting **deadline**.
3. Produce a **partial** statement that omits information required by **s16** of the Act.
4. Contains **false and misleading information**.

It is noted that, having completed two full reporting cycles as at 30 July 2022, eligible entities have had an ample grace period within which to understand their reporting obligations. We consider financial penalties for non-compliant entities to be a critical element of an effective reporting requirement. The absence of financial penalties in the UK Modern Slavery Act represented a significant legislative weakness and has subsequently been [recommended](#) by an Independent Review of the UK Act.

In addition to the imposition of financial penalties for failure to report in accordance with the Act, we **recommend** the adoption of a scaled, or graduated, **suite of sanctions**:

1. Warning **letters**.

2. Identification on the **Register** as non-compliant.
3. Exclusion from **public contracting** opportunities.
4. **Disqualification** from directorship.

These sanctions could be stepped-up, in terms of severity, over time in response to repeated or persistent instances non-compliance by an entity.

We **recommend** the government commences consultations on this question, in line with [election commitments](#), as soon as practicable.

Public sector reporting requirements under the Modern Slavery Act

21. Does the Register provide a valuable service?

Having annual statements accessible in a central repository is an essential element for a transparency regime as it facilitates the tracking of progress, as revealed in statements, over time.

In this respect, the government's Register provides a valuable service which benefits all stakeholders. It creates a 'one stop shop' for business, civil society, academia, members of the public and other interested parties to review and compare the modern slavery disclosures of different companies within and across sectors.

22. Could improvements be made to the Register to facilitate accessibility, searchability and transparency?

Based on our experience, which includes as operator of the Modern Slavery Registry in the UK and as a user of the government's Register, we **recommend** introducing some form of compliance indicator/ **traffic light** or pass/ fail system into the operation of the Register. In this way, Register users can readily identify whether a reporting entity is meeting its reporting obligations under the Act and businesses will be encouraged to engage meaningfully with the law.

An administrative step that would also improve the Register would be to **link all statements** for individual reporting entities in one spot (rather than by separate statement). This would ensure the historical record of statements for each entity is readily apparent and an entity's reporting history can be tracked over time.

Additionally, for the Register to operate effectively, we also **recommend** a **public list** of the companies required to comply with the reporting provision. Compliance can be more effectively monitored, and companies held to account, if there is clarity on which entities are required to report. See also our response to Question 15 above.

Administration and Compliance Monitoring of the Modern Slavery Act

23. What role should an Anti-Slavery Commissioner play in administering and enforcing the reporting requirements in the Modern Slavery Act? What functions and powers should the Commissioner have for that role?

An Anti-slavery commissioner should have an educative role as well as having oversight of, and responsibility for, enforcement of the Act, including the penalty regime. The position should be adequately resourced and independent of government.

Whilst government and civil society both have an important role to play in ensuring that entities are compliant with the Act, a well-resourced and independent commissioner, with oversight of the Act, would be able to work with government, business and civil society to ensure compliance with the Act. We would envisage that the role would encompass the following:

1. Evaluating the **operation** and **effectiveness** of the Act, and making suggestions for its improvement over time.
2. Overseeing **compliance** with the Act by reporting entities.
3. Serving as an **advocate** for the Act in the business and wider community.
4. Enforcing **sanctions** in cases of non-compliance.

24. Responsibility within government for administering the Modern Slavery Act?

In the absence of a commissioner, responsibility within government for administering the Act should include the following functions:

1. Maintenance of the **Register**.
2. Updating and promoting accompanying **Guidance**.
3. Monitoring **compliance** with the Act, including the quality of reporting.
4. Enforcing a **penalty regime**.
5. **Education** and awareness-raising about the Act and modern slavery more generally with business and the public at large.

Should an independent Anti-slavery commissioner be established with adequate powers and resourcing to effectively oversee, monitor and enforce the Act, then those responsibilities mentioned above would pass accordingly to the commissioner.

Review of the Modern Slavery Act

25. Is a further statutory review (or reviews) of the Modern Slavery Act desirable? If so, when? And by whom?

A further statutory review of the Act in three years' time with a parliamentary report on the current operation and effectiveness of the Act is **recommended**. Ideally, such a review would occur every three years on a rolling basis. Business and human rights law and policy initiatives, and corporate responses, are evolving at a rapid rate, globally. If the government is to protect the competitiveness of Australian businesses and maintain currency on the global stage, regard should be had to ensuring Australia's laws are in line with developing expectations.

A further review at which the question of the **introduction of a mandatory human rights due diligence law** in Australia can be fully considered should be on the government's agenda to maintain currency and keep in step with other jurisdictions and trading partners around the world, including one of our closest neighbours, New Zealand.

26. Should a periodic review process (other than a statutory review) be conducted of the Modern Slavery Act and its implementation? What form should that review process take?

See above. Our view is there should be a regular review of the Act and that this should take the form of a statutory review every three years.

Other issues

27. Is there any other issue falling within the Terms of Reference for this review that you would like to raise?

1. Access to justice for people experiencing abuse

There are currently insufficient pathways to justice for those experiencing abuse. We **recommend** the current regulatory framework be reformed so as to introduce provision for access to justice for exploited workers. Workers subjected to severe forms of labour exploitation should not have to rely on voluntary remediation processes by businesses to obtain remedy. The Act should include a **specific cause of action** so that workers subjected to modern slavery can seek redress in the event that reporting entities have failed to exercise due diligence to prevent modern slavery in their operations and supply chains.

We also **recommend** a **national compensation scheme** be established to provide access to no-fault compensation. Governmental support will become increasingly important as growing numbers of survivors are likely to be identified as Australia's response to modern slavery deepens and broadens. This experience has been borne out in the UK where, following the introduction of the UK Modern Slavery Act in 2015, the number of survivors identified has increased.

2. Guidance on what to do when modern slavery is identified

Greater focus on **remediation** is required to transform corporate responses to modern slavery from reporting on risk to addressing risk. Further guidance is required to educate business on what to do when modern slavery is identified. It is acknowledged that more is required in the Guidance on this and we **recommend** government works with victim-survivors, and their representatives, to develop appropriate **protocols** for business to follow.

3. Import ban

We **recommend** the introduction of an import ban on goods made with modern slavery, modelled on the US Tariff Act. An import ban, if backed by targeted interventions and operating in tandem with due diligence requirements, has the potential to lead to improved conditions for exploited workers overseas and will encourage business to prioritise due diligence efforts.

4. Public awareness campaign

We refer to the findings of a [CHOICE](#) consumer survey on modern slavery which indicate that knowledge about modern slavery and the Act amongst consumers is very low. CHOICE found that the majority of people surveyed (**78%**) have not heard of the Act and, of those who had, **66%** had limited understanding of it.

It is apparent there is widespread lack of public awareness about this issue and Australian consumers are not alive to the fact they may be buying goods produced through exploitation. We **recommend** the government runs a public awareness campaign informing Australian consumers about modern slavery in goods. In this way, consumer pressure can more likely be brought to bear upon companies and a shift in business models brought about.

5. Fund research

Support for civil society and academic projects aimed at ensuring compliance with the Act, such as that conducted by us and partners with the Paper Promises and Broken Promises research, is an essential element of a robust transparency regime. Continued evaluation of the effectiveness of the Act, and its longitudinal impacts, through the tracking, analysis and scrutiny of modern slavery statements by independent non-business actors, will be essential to achieve robust engagement with the Act over the longer term. This necessitates adequate and ongoing funding by government for such initiatives.

We are happy to respond to any questions. Please contact Amy Sinclair at sinclair@business-humanrights.org.

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