



INQUIRY INTO ESTABLISHING A MODERN SLAVERY ACT IN AUSTRALIA

Joint Submission

International Trade Union Confederation

International Transport Workers' Federation

17 May 2017



(1) Submitting Organisations

The International Trade Union Confederation (ITUC) is the global voice of the world's working people representing 181 million workers in 163 countries and territories. The ITUC's primary mission is the promotion and defence of workers' rights and interests, through international cooperation between trade unions, global campaigning and advocacy within the major global institutions. Its main areas of activity include the following: trade union and human rights; economy, society and the workplace; equality and non-discrimination; and international solidarity.

The International Transport Workers' Federation (ITF) is an international trade union federation of transport workers' unions. Any independent trade union with members in the transport industry is eligible for membership of the ITF. 686 unions representing over 5 million transport workers in 148 countries are members of the ITF. It is one of several Global Union Federations allied with the International Trade Union Confederation.

Forced labour is the very antithesis of decent work. Eliminating contemporary forms of slavery is a rights-based issue and a moral imperative for the global union movement. We therefore welcome the opportunity to make a written submission into establishing a Modern Slavery Act in Australia (MSA Australia).

(2) Summary

The submitting organisations fully support the introduction of the MSA Australia as an important means to combat forced labour and modern forms of slavery in Australia and globally. There are numerous national and international legislative initiatives targeted towards ending slavery. The Australia MSA should build on these experiences without repeating some of their shortcomings.

Key recommendations to the Government of Australia:

- Introduce the MSA Australia;
- Ratify the ILO Forced Labour Protocol;
- The MSA Australia should cover all companies over a certain threshold; require the disclosure of a non-exhaustive list of information on a mandatory basis; provide for a central repository to which all covered entities must upload their statements; provide for sanctions in cases of serious failure; provide for extraterritorial jurisdiction; and mandate human rights due diligence;
- Require public procurement contracts to include social clauses including on respect of labour rights.



(3) The Nature and Extent of Modern Slavery

The global economy is riddled with modern-day slavery and labour exploitation. Investors put their money in countries where they find cheap labour, even though forced labour is pervasive in sectors such as domestic and care-giving work, agriculture, fisheries, construction, manufacturing and entertainment. Migrant workers and indigenous people are particularly vulnerable.

Minimum estimates of workers in forced labour have consistently gone up in the last decades, today ranging from an alarming 21 million to 36 million.

Forced labour persists in countries with historic and cultural slavery issues such as Mauritania while trafficking for forced labour is on the rise in industrialised countries.

In fact, modern-day slavery is everywhere: from the construction of World Cup stadiums in Qatar to the cotton farms of Uzbekistan, from cattle ranches in Paraguay to fisheries in Thailand and the Philippines to agriculture in Italy, from sweatshops in Brazil and Argentina to berry pickers in Sweden. The production chains of clothes, food and services consumed globally are tainted with forced labour.

In the global private economy, forced labour generates USD 150 billion each year. In all countries, unscrupulous employers and recruiters are increasingly exploiting gaps in international labour and migration law and enforcement. After drugs and arms, human trafficking is now the world's third biggest crime business.

(4) Prevalence of Modern Slavery in Global Supply Chains

Forced labour increasingly feeds into mainstream economic sectors and global supply chains. Corporate power and profits increasingly depend on the impoverishing model of trade based on global supply chains, which exploits labour and natural resources. Corporate power is consolidated as markets open, and this power is projected onto small producers and companies, and their workers, in the supply chain, to squeeze their income. The integration of supply of raw materials, production of goods, logistics, and services means all kinds of corporations are involved. In this model, corporations keep for themselves the value-intensive and most profitable parts of production (design, branding and financial management) and outsource the labour-intensive processes that offer to them little profit. Combined with a lack of strong political will to observe international labour standards, this model leads to greater inequality and increasing numbers of forced labourers. As a consequence, millions of workers remain in poverty and in precarious work while the environment is abused.

In addition, poor regulation and monitoring of labour recruiters, including private employment agencies and other intermediaries or subagents that offer recruitment and placement services, agencies and intermediaries are a key factor that facilitates modern slavery. Increasingly, migrant working men and women end up in forced labour due to fee charging and false promises. Upon arrival,



many face contract substitution and end up in another job, earning much less than promised in poor conditions. Many migrant workers take out loans to cover for exorbitant recruitment fees and are unable to pay off the loan due to deceptive recruitment, low and irregular pay and unforeseen additional charges and salary deductions.

(5) International tools

The ILO Forced Labour Convention of 1930 is one of the most widely ratified of all ILO standards. This acknowledges the international consensus that forced labour is morally unacceptable.

In June 2014, governments, employers and workers at the ILO International Labour Conference (ILC) decided to give new impetus to the global fight against forced labour, including trafficking in persons and slavery-like practices, and voted overwhelmingly to adopt a protocol to supplement the Forced Labour Convention of 1930 (C29). It now is the new international legal standard to address modern slavery and offers governments specific guidance on effective measures for its elimination. Governments are also directed to adopt a national action plan to prevent forced labour in consultation with the social partners. The Protocol has already been ratified by 13 countries and many more are expected this year. Governments should ratify the protocol as a part of any comprehensive strategy to combat forced labour and human trafficking, and implement the protocol in domestic law and policy.

Businesses also have responsibilities for workers throughout their supply chains. Global standards include the UN Guiding Principles on Business and Human Rights, the OECD Guidelines for Multinational Enterprises and the ILO Declaration on Multinational Enterprises. Accordingly, businesses have the responsibility to respect human rights, and are required to put due diligence procedures in place throughout their operations in order to identify, prevent, mitigate and account for how they address their impacts on human rights.

In September 2015, the United Nations General Assembly approved the 2030 Agenda for Sustainable Development, featuring 17 Sustainable Development Goals (SDGs) replacing the Millennium Development Goals (MDGs). The 2030 Agenda is a universal agenda for both developed and developing countries, and it includes a specific SDG 8 to promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all. SDG 8 identifies several more specific targets in line with the demands of the labour movement relevant in the fight against forced labour such as decent job creation, formalising work, non-discrimination, the protection of labour rights of migrant workers and those in precarious employment, etc. SDG 8.7 explicitly calls to “Take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025 end child labour in all its forms.”



This means the UN has endorsed a global development agenda that makes ending modern slavery a global priority, framed within a larger commitment to realise decent work for all. Indeed, workers' rights go far beyond freedom from slavery. We want much more for the workers in the 21st century than just not to be enslaved. We want decent pay and working conditions, respect for labour and social standards and rights and freedoms protected. The elimination of modern slavery is a starting point towards decent work for all.

(6) UK Modern Slavery Act

In 2015, the UK Modern Slavery Act (MSA UK) entered into force, signaling an important effort to establish legal tools to combat the scourge of forced labour – not only in its territory but also in the supply chains of UK-based enterprises. The law was supported by a broad coalition, including business, labour and NGOs, though many had urged the government to show greater ambition with regard to many aspects of the legislation.

Supply Chain Transparency

Perhaps the most discussed provision of the MSA UK is Section 54 on Supply Chain Transparency. Section 54 asks companies to publish an annual “slavery and human trafficking statement”¹, which would disclose the steps the company has taken during that year to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its own business. The statement must be approved by the board or its equivalent. Where a company has a website, it must publish the statement on its website. The UK Government set a threshold so that the law applies to any company with an annual turnover of £36 million. As a result, the Act applies to an estimated 12,000 UK companies.

The Government argues that the Act will create a “race to the top” among businesses to disclose information about their supply chain policies, which will lead to changes in their corporate behaviour. However, corporations are unlikely to provide comprehensive and accurate information about adverse impacts – especially if it could lead to legal liability. Indeed, the UK NGOs CORE and Business and Human Rights Resource Centre found that most initial annual statements are little more than PR

¹ Section 54(5) provides that a company’s statement “may include” the following: (a) the organisation’s structure, its business and its supply chains; (b) its policies in relation to slavery and human trafficking; (c) its due diligence processes in relation to slavery and human trafficking in its business and supply chains; (d) the parts of its business and supply chains where there is a risk of slavery and human trafficking taking place, and the steps it has taken to assess and manage that risk; (e) its effectiveness in ensuring that slavery and human trafficking is not taking place in its business or supply chains, measured against such performance indicators as it considers appropriate; (f) the training about slavery and human trafficking available to its staff.



and do not disclose information as recommended by the law and the non-binding guidance. Indeed, the Government gave businesses significant flexibility as to what to disclose.²

The submitting organisations have identified the following concerns:

Section 54:

- The law applies to commercial organisations, which are defined as corporations or partnership. They must carry on a business or part of a business in the UK. While this will cover a substantial number of businesses, it appears that the wholly owned subsidiaries of UK corporations are outside the scope of the law. So long as the goods or services are not coming into the UK, they are exempt from this requirement. Thus, a subsidiary of a UK company providing, e.g., construction services in Qatar would not have to report under the MSA UK.

Recommendation: The MSA Australia should ensure that subsidiaries of Australian companies are equally covered by the legislative obligations.

- The UK Government set an annual turnover of £36 million to be covered. Of course, we understand that micro and small enterprises should probably not be within the scope of the reporting requirements.

Recommendation: The Government of Australia should determine the appropriate threshold amount in consultation with national social partners in order to ensure that the MSA Australia covers those companies that are likely to be engaged in international trade and investment.

- The law provides for no mandatory disclosures. The types of information listed in subsection 5 are permissive, not mandatory. Further, the guidelines which accompany the MSA UK are also not binding. While peer-pressure may result in firms not issuing superficial statements, it would not violate the MSA UK if they did so. Further, the law does not even refer to information about companies' remediation processes where negative impacts have taken place and the company has caused or contributed to them.

Recommendation: The MSA Australia should require the disclosure of a non-exhaustive list of information on a mandatory basis. The UK NGO CORE, in its report, "Beyond Compliance: Effective Reporting under the Modern Slavery Act," provides useful guidance as to what companies should

² See Lindsay Fortado, Lacklustre Compliance on anti-slavery law, Financial Times, March 6, 2016, available at <https://www.ft.com/content/d8147d76-e22d-11e5-9217-6ae3733a2cd1>



disclose in each of the 5 areas listed at Section 54(5) of the MSA.³ This detail is probably best enacted through implementing regulation.

- The MSA UK does not establish a central repository to which these statements must be uploaded. For governments, investors and civil society to know which companies are taking effective action, the reports need to be in one place on a single website, and easily comparable between companies. Otherwise, one would have to go website by website to collect and compare information. This is all the more difficult, as it is not disclosed specifically which entities are covered by the MSA UK. At present, the only repositories in the UK are voluntary initiatives supported by business or NGOs and labour.

Recommendation: The MSA Australia should provide for a central repository to which all covered entities must upload their statements.

- There is a lack of penalties for businesses, which fail to comply with the MSA UK supply chain provisions. Companies that ignore the requirement will technically be breaking the law, but they do so without risk of any consequence. Further, those that fail to report are most likely the ones most likely to have forced labour in their supply chains.

Recommendation: The MSA Australia should provide a sanction in the following circumstances:

- *Failure to issue the statement or issuance of an incomplete statement;*
- *Issuance of a misleading or fraudulent statement;*
- *Failure to have an appropriate policy on forced labour and human trafficking.*

Extraterritoriality

A major shortcoming in the MSA UK is the lack of an extraterritoriality offence. For example, if a British person or company were to hold a person in slavery or exact forced labour from that person abroad, they can do so with impunity (unless it were to violate the criminal laws in that state). This is despite the fact that the UK already recognises that some crimes committed by British citizens should be punished no matter where the act to place, such as torture or child sexual slavery. In contrast, under the Trafficking Victims Protection Act, 18 USC 1596, the US has explicit extraterritorial jurisdiction to pursue criminal sanctions against US citizens or non-citizens present in the US, regardless where the crime (forced labour, trafficking) was committed.

³ CORE's guidance on disclosure is found at pp 21-22 of their report, available online at http://corporate-responsibility.org/wp-content/uploads/2016/03/CSO_TISC_guidance_final_digitalversion_16.03.16.pdf



Recommendation: The MSA Australia should provide that any natural or juridical persons, who commit the act of slavery, servitude and forced or compulsory labour and human trafficking should be held to account in an Australian court, regardless where these crimes were committed.

Due Diligence and Civil Remedies for Supply Chain Violations

Article 54(5)(c) of the MSA UK merely suggests that the statement include information about a company's due diligence processes but does not require a company to have a due diligence policy or to carry out effective human rights due diligence along the lines indicated by the UN Guiding Principles on Business and Human Rights and related guidance. Legislation can and should go beyond transparency to mandate that companies conduct human rights due diligence in their supply chains regarding forced labour/human trafficking.

Further, legislation should provide for a civil cause of action for victims of forced labour/human trafficking that occurs in a company's supply chains. Legislation could provide companies a defence to liability evidence that have in fact carried out due diligence to identify risks of forced labour and human trafficking in their supply chains, put in place systems to prevent such violations from happening and provided an effective remedy when it occurred. The MSA UK currently creates no such legal requirements.

Recommendation: The MSA Australia should mandate that a company undertake human rights due diligence in their supply chains, at least with regard to forced labour/trafficking and provide a civil remedy in Australian courts for victims of forced labour/trafficking.

(7) Other National Initiatives

United States

- The California Transparency in Supply Chains Act (California Act)

In 2010, Senate Bill 657, now the California Act, was signed into law. The Act went into effect on 1 January 2012 and applies to all retailers and manufacturers with an annual global revenue of more than US\$100 million that 'do business' in California. The Act requires these businesses to disclose on their websites any actions they are taking to 'eradicate slavery and human trafficking from its direct supply chain for tangible goods offered for sale.' Its purpose is 'to educate consumers on how to purchase goods produced by companies that responsibly manage their supply chains, and, thereby, to improve the lives of victims of slavery and human trafficking.'

Scope



Companies impacted by the California Act are selected based on their California State Tax Classification ('retail seller' or 'manufacturer'). Each year, the California Franchise Tax Board evaluates information from tax returns to determine which companies must comply with the California Act, and provides the list to the Attorney General. A public list of companies required to comply would improve transparency and increase the level of compliance. An official registry of company responses with a benchmark to monitor the implementation of the laws could provide a reputation reward for companies taking steps to eradicate slavery from their supply chain, and reputation risk for those companies that disclose no action.

Transparency

The California Act requires companies to publicly disclose a 'conspicuous and easily understood' document on their websites' homepage. The document should describe the extent of engagement towards eliminating human trafficking and slavery in their supply chains.

The California Act requires a company to disclose to 'what extent, if any,' it: 1) verifies its product supply chains to evaluate and address risks of human trafficking and slavery; 2) audits its suppliers to evaluate their compliance with company standards for human trafficking and slavery; 3) requires certifications from direct suppliers confirming that materials incorporated into the products comply with laws regarding human trafficking and slavery in the countries in which the suppliers operate; 4) maintains internal accountability through internal standards and procedures for employees and contractors that fail to meet company standards regarding human trafficking and slavery; and 5) trains company employees and management who have direct responsibility for supply chain management on human trafficking and slavery.

The California Act allows companies considerable freedom regarding the contents of the statement. The California Attorney General's guidance on reporting encourage clear, detailed and informative statements, although this is not required in order for a company to be in compliance with the legislation. The law does not require that companies report on the prevalence or known incidences of modern slavery in their operations or supply chains, nor do they include any positive obligation for a company to implement measures or introduce any policies or operational changes to ensure that their operations and supply chains are free from slavery. In fact, under both laws companies can comply by stating they have taken no steps to address the risk of modern slavery in any form in their business and supply chain.

Recommendation: The MSA Australia should include requirements to report on known instances of modern slavery in a company's operation and supply chains, and to provide consistent information about whether the measures companies are taking are effective or not.



Enforcement

The California Attorney General has exclusive authority to enforce the California Act and may file a civil action for injunctive relief. This means companies will not face a monetary penalty for failure to disclose, but that they will receive an order from the Attorney General to take specific action.

The California Act does not grant citizens a private right of action. Yet, several disclosure-based punitive consumer class action lawsuits have been filed against several companies, including Costco, Hershey, Iams, Mars, and Nestlé. Claimants alleged that in their disclosures under the California Act and other corporate social responsibility statements, those companies falsely represented that they forbid modern slavery in their supply chains, even though they sold products tainted by modern slavery. They claimed that such practices violate consumer protection and unfair competition statutes under California law and sought injunctive relief and monetary damages. Plaintiffs also contended that statements condemning modern slavery create a separate duty to disclose non-compliance practices to the public. These cases, which have been dismissed based on comparable legal considerations, raise questions regarding the scope, application and enforcement of the California Act. For example, are consumers allowed to pursue civil claims under the Act using California's unfair competition laws – since the Act itself has no civil consumer enforcement provision? Are companies complying with the California Act protected from other potential liabilities related to their supply chain disclosures? In the Nestle case⁴, a claim that the company was obliged to inform consumers that some proportion of its cat food products may include seafood which was sourced from forced labour was dismissed on the grounds that the California Act had created a 'safe harbour'. This is a restrictive ruling as it means that a company only has to disclose the efforts it is making to prevent forced labour, and it is not obligated to disclose the actual risk of forced labour in its supply chain.

Reporting

The California Act does not specify how often a company needs to update its statement. A company would be in compliance with the law just by posting a statement once and never revisiting it again.

Recommendation: The MSA Australia should require annual statements.

- Dodd-Frank conflict minerals provision

⁴ *Barber v. Nestlé USA, Inc.*, No. 15-01364-CJC (C.D. Cal. Dec. 9, 2015)



In November 2012, the Dodd-Frank conflict minerals provision came into effect, which seeks to prevent the complicity of companies in the conflict in the Democratic Republic of Congo via the trade of minerals.

➤ Trade Facilitation and Trade Enforcement Act

With the Trade Facilitation and Trade Enforcement Act of 2015, the United States modernised a 1930s law to prohibit the entry of goods into its territory which were produced by forced or compulsory labour. See, Section 307 of the Tariff Act of 1930 (19 U.S.C. § 1307). Such merchandise is subject to exclusion and/or seizure, and may lead to criminal investigation of the importer(s).

In the original version, a petitioner had to demonstrate that the forced-labour-made goods were harming domestic production of the same good. This has been eliminated with the 2015 amendment – transforming the law from a trade law to an important human rights tool. Of note, similar language encouraging the non-importation of forced-labour-made goods was included in the Labour Chapter of the (now stalled) Trans-Pacific Partnership.⁵

European Union

➤ EU Directive on Non-Financial Reporting

The European Parliament adopted the Directive on disclosure of non-financial and diversity information (2014/95/EU) requiring around 6,000 large companies listed on EU markets, or operating in the banking and insurance sectors, to disclose relevant environmental and social information in the management report, with the first reports to be published in 2018 (on financial year 2017). Companies are obliged to report on their policies, main risks and outcomes in relation to at least the following issues: environmental matters; social and employee aspects; respect for human rights; anticorruption and bribery issues, and diversity in their board of directors.

France

In February 2017, France adopted the Duty of Vigilance law requiring large companies to implement a vigilance plan stating the measures taken to identify and prevent the occurrence of human rights

⁵ See Article 19.6 of Chapter 19 of the TPP, which provides, “Each Party recognises the goal of eliminating all forms of forced or compulsory labour, including forced or compulsory child labour. Taking into consideration that the Parties have assumed obligations in this regard under Article 19.3 (Labour Rights), each Party shall also discourage, through initiatives it considers appropriate, the importation of goods from other sources produced in whole or in part by forced or compulsory labour, including forced or compulsory child labour.”



and environmental risks resulting from their activities, the activities of companies they control and the activities of sub-contractors and suppliers on whom they have a significant influence. The law applies to companies headquartered in France with at least 5.000 employees and companies headquartered abroad with at least 10.000 employees. According to the most recent information, this corresponds to around 100 - 150 large companies.

According to Article 1 of the law, which incorporates Art. L. 225-102-4 of the French Commercial Code, the vigilance plan has to include:

- A mapping that identifies, analyses and ranks risks;
- Procedures to regularly assess, in accordance with the risk mapping, the situation of subsidiaries, subcontractors or suppliers with whom the company maintains an established commercial relationship;
- Appropriate actions to mitigate risks or prevent serious violations;
- An alert mechanism that collects potential or actual risks, developed in working partnership with the trade union organisations representatives of the company concerned;
- A monitoring scheme to follow up on the measures implemented and assess their efficiency.

If a company under the law's scope fails to establish, implement or publish a vigilance plan, any concerned parties can file a complaint with the relevant jurisdiction.⁶

The Netherlands

The Child Labour Due Diligence Law was adopted by the Dutch Parliament on 7 February 2017. Companies covered by the law have to submit a statement to regulatory authorities declaring that they have carried out due diligence related to child labour throughout their supply chains. The law applies not only to companies registered in the Netherlands, but also to companies from anywhere in the world that deliver their products or services to the Dutch market twice or more a year. The government can exempt certain sectors or categories of companies for which the risk of child labour is low. It is not defined yet which regulatory authorities will be responsible, but it is very likely to be the Dutch Consumer and Market Authority (ACM). Companies only have to submit the statement once; it has a long-term validity and there is no provision about the length of time for which it is valid.⁷

(8) Procurement

⁶ ECCJ, French Corporate Duty of Vigilance Law (<http://corporatejustice.org/documents/publications/french-corporate-duty-of-vigilance-law-faq.pdf>)

⁷ MVO Platform, Dutch Child Labour Due Diligence Law (<https://www.mvoplatform.nl/news-en/frequently-asked-questions-about-the-new-dutch-child-labour-due-diligence-law>)



Public procurement is the purchase by the public sector of the goods and services it needs to carry out its functions. Such purchasing represents a significant share of the total economy. Public procurement globally accounts for €1000 billion per year, and 12% of GDP on average across OECD countries. The USA is the largest single purchaser in the global economy, with an annual spending between USA\$350 and USA\$500 billion.

The state's positive obligations to protect human rights arguably extend to their own supply chains in the context of public procurement. Sustainable Development Goal 12.7 calls on all countries to implement sustainable public procurement policies and action plans. The UNGPs affirm that the 'state duty to protect' extends to situations where a 'commercial nexus' exists between public actors and businesses through public procurement. National Action Plans on Business and Human Rights (NAPs) provides further support to the interpretation of the state duty to protect as encompassing procurement. To date, the UK, the USA, and 10 European countries have published NAPs, and the majority refer to human rights and public procurement.

There are some legal and policy developments in the USA, the UK and the EU, which are integrating human rights considerations, and in particular freedom from forced labour and human trafficking, into the purchasing process.

European Union

Under EU public procurement rules public authorities take multiple issues into account when awarding a contract. This should now include 'social clauses' in public procurement contracts. Since April 2016, the primary source of procurement law for EU member states is the EU Procurement Directive of 2014/24/EC, which superseded EU Directive 2004/17/EC and EU Directive 2004/18/EC). The new Directive strengthens the integration of human rights into public procurement and describes how public authorities should purchase works, supplies, and services. In particular, the Directive requires EU member states to adopt measures to ensure that, in the performance of public contracts, suppliers comply with applicable obligations in the fields of environmental, social, and labour law established by the EU, national law, collective agreements, or by international labour law provisions, including the ILO Core Conventions.

In Spain, the Ley de Contratos del Sector Público (Law of Public Contracts), revisited in 2011, establishes that public authorities can include social conditions in order to respect basic labour rights in the supply chain in compliance with the ILO Conventions. A draft law on public procurement intended to implement the 2014 EU Procurement Directive into Spanish law would establish an obligation on contracting authorities to include social conditions. These social conditions include the respect of basic labour rights along the supply chain in compliance with the ILO Conventions. The draft law also requires that contracting authorities adopt the necessary measures to ensure suppliers respect national labour laws, as well as the international obligations of the state.



In Sweden, County Councils require that contractors have due diligence processes in place to identify and mitigate risks of adverse impacts in the production of goods or services. Specifically, the contract performance clauses used by the County Councils require suppliers to implement procedures to ensure that the production of goods or services delivered during the term of the contract takes place under conditions that are compatible with the Councils' Code of Conduct. Sweden's County Councils and the municipality of Stockholm include a question regarding knowledge of their supply chain in their sustainability assessment questionnaire for contract awardees.

In Denmark, all suppliers signing a contract with SKI (Denmark's central purchasing body) commit to follow SKI's Framework Agreement, which provides a basis for requesting that suppliers undertake due diligence based on the OECD Guidelines for Multinational Enterprises.

United States

The Federal Acquisition Regulation (FAR), which contains the rules for procurement by US federal agencies, prohibits the use of forced child labour and reliance on human trafficking in relation to federal contracts sourced abroad. US law requires the Department of Labor to prepare a 'List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor.' Contractors must certify that they either will not sell a product on the list, or they have made a good-faith effort to determine whether forced child labour was used.

In January 2015, the government released a final rule that amends FAR to include new anti-human trafficking requirements. The new rule came into effect on 2 March 2015, and requires government contractors to certify that they and their subcontractors are not engaged in human trafficking activities. In addition, contractors must also prepare a 'certification and compliance plan' for contracts that are performed outside the USA and exceed US\$500,000 in value. Agencies must insert a clause in all contracts that imposes obligations on suppliers to prevent human trafficking. This clause refers to US policies which prohibit trafficking in persons, use of forced labour, confiscation of employee identity or immigration documents, and use of misleading or fraudulent recruitment or employment practices. It also stipulates the contractor's obligation to terminate subcontractors that engage in trafficking, and protect employees who are harmed by trafficking.

The Walsh-Healey Public Contracts Act of 1936 also prohibits US federal agencies from purchasing sweatshop goods in contracts of more than US\$10,000 of value. Sweatshop goods are defined with respect to compliance in the country of production with applicable rules regarding minimum wages, maximum working hours, child and convict labour. The Secretary of Labor, however, has exempted imported goods or services. Walsh-Healey Act therefore only applies to goods produced or services provided in the USA, and so protections do not extend to government supply chains abroad.

Switzerland



The first revised draft of the Swiss Federal Act of Public Procurement (FAPP), published in April 2015, reiterates the conditions concerning compliance with ILO Core Conventions for services provided abroad. The Sustainable Procurement Recommendations for the Federal Procurement Offices address the compliance of subcontractors and suppliers with ILO Core Labour Conventions. According to the Recommendations, ensuring compliance with ILO Conventions should require a bidder to submit a self-assessment of compliance including existing evidence of the way they and their key third parties comply with the minimum social standard.

Recommendation: Require public procurement contracts to include social clauses including on respect of labour rights.

(9) Conclusion

This joint written submission addressed the terms of reference of the Inquiry into establishing a Modern Slavery Act in Australia. We strongly support the elaboration of effective legislation to combat forced labour and stand willing to work with the ACTU and Australian unions to provide advice in this regard. We would like to express our interest and availability for providing an oral submission during an eventual hearing.

Steve Cotton,

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