

Advisory Committee of the Modern Slavery Registry Australian Government Modern Slavery in Supply Chains Reporting Requirement Response to Public Consultation Questions

(Business & Human Rights Resource Centre, Humanity United, Freedom Fund, Anti-Slavery International, Trades Union Congress), Ethical Trading Initiative, Unicef UK, Focus on Labour Exploitation (FLEX), Freedom United, CORE Coalition)

We refer to the [Submission by the Advisory Committee of the Modern Slavery Registry](#) to the Joint Standing Committee on Foreign Affairs, Defence and Trade for the Inquiry into Establishing a Modern Slavery Act in Australia. These responses are supplemental to that Submission.

We note that the Australian Government is conducting a Public Consultation and has invited responses to a Public Consultation Paper and Regulation Impact Statement (August 2017).

We recognise that the subject of the Public Consultation is a proposed modern slavery in supply chains reporting requirement. We support the proposed reporting requirement whilst acknowledging that a mandatory due diligence measure would represent an important future step by the Australian Government to address modern slavery in supply chains.

In responding to government's consultation questions, we have sought to provide information and insights on the issues that relate directly to our organisational experience and expertise.

Consultation questions

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

Any legislative provision introduced by the Australian Government (government) should apply to each entity that separately or, together with other entities within its group, meets the proposed legislative threshold at which the provisions will apply.

An 'entity' under the proposed modern slavery in supply chains reporting requirement should be defined so as to include commercial organisations, including companies and partnerships.

The reporting requirement should also apply to the government. We note that the government is, in its own right, a significant consumer of goods and services. The introduction of these proposals provides the government with an invaluable opportunity to lead by example in encouraging both business, and other national governments, to take steps to address slavery in supply chains.

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We recommend that the government should also be subject to the provisions of the proposed reporting requirement. This would include:

- publishing an annual statement reporting on the prescribed criteria; and
- non procurement of goods or services from suppliers who are themselves required to report and are non-compliant (noting the need for an opt-in provision so as not to disadvantage smaller operators).

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?

We recommend that an entity's revenue should be defined as the consolidated revenue for both the entity and its group.

Noting that a large company is currently [classified](#) by consolidated annual revenue of \$25 million, we further recommend a threshold of no more than approximately \$50-60 million consolidated annual revenue, the equivalent level at which large companies operating in the UK are required to report under the Modern Slavery Act 2015. It is estimated by the UK Government that this threshold captures between 9,000 and 11,000 large companies which represents a significantly broader reach than that currently proposed in Australia.

We would welcome the release by the government of data on the relative numbers of companies in different revenue bands. This would be an invaluable contribution to the public consultation process and would assist in informing current discussion on this critical issue.

We understand that a threshold of \$100 million would result in the proposed provisions applying to approximately 2,000 entities. These 2,000 entities will likely represent the very largest of commercial entities operating in Australia, many of whom may already be required to publish an annual Slavery and Human Trafficking Statement in compliance with the UK Modern Slavery Act or, given their size and available resources, are likely to have commenced the process of implementing internal measures to address slavery in their operations and supply chains. The aim of the proposed Australian legislation should be to drive change by encouraging those

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entities that are lagging on human rights to improve their performance and raise themselves to meet the standards of leading businesses.

Achieving certainty and a consistently level legislative playing field for companies operating around the world should be a priority. A lower threshold, more closely aligned with that imposed by the UK Modern Slavery Act, would have a significantly broader reach than that currently proposed in Australia. The proposed legislation will require sufficiently broad application in order to encourage laggards to act and drive meaningful change in corporate efforts to address slavery.

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

We recommend that a common sense approach is used and that the UN Guiding Principles on Business and Human Rights are referenced in defining these terms.

5. How will affected entities likely respond to the reporting requirement? As this is how the regulatory impact is calculated, do Government’s preliminary cost estimates require adjustment?
6. 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?
- 7. 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?**

We support the inclusion of the proposed four mandatory criteria in the reporting requirement, as a minimum.

We recommend that, in determining the mandatory reporting criteria, reference should be made to the UN Guiding Principles on Business and Human Rights.

In addition to the four proposed criteria, we recommend including a requirement that entities also report on:

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- information about how an entity identifies, addresses and mitigates the modern slavery **risks** present in its operations and supply chains and **how effective** the entity has been in this;
- details of how an entity **tracks and monitors** the effectiveness of its response to modern slavery;
- information on effectiveness that demonstrates how the entity is assessing its actions to improve performance in addressing modern slavery, rather than reporting on key performance indicators or similar; and
- details of an entity's **grievance mechanisms** and other forms of **remediation** for those impacted by slavery.

We note that the proposals include a criterion that would require reporting on '[t]he modern slavery risks present in the entity's operations and supply chains'. In providing this information, we would recommend that entities be required to disclose full details of such **risk** and that would include the number and nature of any incidences of modern slavery detected during the reporting period.

Analysis of modern slavery statements published by companies under the UK Modern Slavery Act by Business & Human Rights Resource Centre shows that few companies disclose detailed information about their risks. This includes whether risks have been identified at all or, where there is acknowledgement that risks have been identified, no information on the specific risks are and how they are addressed. We recommend that providing information on risks is mandatory under the proposed Australian reporting requirement.

We do not recommend that entities should be permitted, in satisfaction of the reporting requirement, to publish a statement stating that **no steps** have been taken in that financial year to address slavery in an entity's operations or supply chains. At a minimum, all qualifying entities should be in a position to report on information about their own structure and supply chains, as well as steps to introduce measures, if none currently exist.

We further recommend that statements are signed-off by either the **Chief Executive Officer or Chairperson** of a company, or person of comparable standing in other entities. Given the severity of the crime of slavery and the importance of business' role in tackling it, it is imperative that the public 'face' of a company should sign-off on this critical public statement.

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8. 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?

A central repository for modern slavery statements should be **free, independent and publicly accessible**. Its primary function should be to facilitate scrutiny of which companies are complying with the reporting requirement of the modern slavery act and which companies are not. Companies should be required by the government to submit their annual statements to the repository. Companies would benefit from knowing where, and with whom, to file their statement. Other stakeholders would benefit from having a central location to access statements. Having annual statements held in a central repository would enable stakeholders to track progress over time.

The repository should be a resource that is useful to different stakeholders. It should have functionality that allows users to search and collate statements according to a user's specifications, such as by company name, country of headquarters, sector/industry and stock exchange (if applicable). It could also provide access to additional resources such as guidance, analysis or commentary published by governments and civil society.

For a central repository to be an effective monitoring mechanism, a **list** of the companies required to comply with the reporting provision is critical. Compliance can be more effectively monitored, and companies held to account, if there is clarity on which entities are required to report. The UK Government estimates that at least 9,000 companies are required to publish modern slavery statements (the higher estimate is 11,000). Yet, the Modern Slavery Registry operated by Business & Human Rights Resource Centre currently holds just over 3,000 statements. The lack of a list of companies required to report creates large gaps in the ability to effectively monitor compliance and enforce the measure. This in turn undermines the potential impact of the reporting requirement.

We support a government operated repository, which would establish the repository as the official and legitimate monitoring mechanism. However, should the government elect to collaborate with a third party in providing the repository, there is a strong case for the government to collaborate with Business & Human Rights Resource Centre, as operator of the Modern Slavery Registry. We would welcome the opportunity to partner with the government

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on this. The government has stated in its consultation paper that, where appropriate, it proposes to adopt similar requirements to the UK Modern Slavery Act to minimise the need for the business community to comply with inconsistent regulation across different jurisdictions. In light of the government’s efforts to harmonise regulation around modern slavery, it would be beneficial for stakeholders to have all reporting held in a **single central repository**. The Modern Slavery Registry is such a central repository, being widely accepted amongst international business and human rights practitioners as the go-to reference point for statements published pursuant to the UK Modern Slavery Act. It also meets the essential criteria of being free, independent and publicly accessible. The Modern Slavery Registry is guided and supported by: Freedom Fund, Humanity United, Freedom United, Anti-Slavery International, CORE Coalition, Trades Union Congress, Ethical Trading Initiative, Focus on Labour Exploitation (FLEX), Unicef UK and Oxfam GB.

The repository should be actively endorsed, promoted and supported by the government. This includes financial support to effectively maintain the repository and ensure its sustainability.

In summary, we recommend that a repository for statements published pursuant to an Australian reporting requirement be established that meets the following criteria:

- free, open and publicly accessible;
- government-funded;
- continuously updated;
- single, central location;
- user-friendly;
- easily searchable to facilitate analysis and comparison; and
- well publicised.

9. 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?

We strongly recommend the inclusion of financial **penalties** for non-compliance by qualifying entities. We recommend that financial penalties should apply where entities:

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- fail to produce a modern slavery statement;
- produce statements that fail to meet the minimum requirements of being signed and approved by the appropriate person(s) and provide a link to the statement on the company website homepage;
- produce statements that omit prescribed information; or
- report they have not taken any steps to address their modern slavery risks.

These penalties could be phased-in after an initial three year grace period post enactment.

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 represents a significant legislative weakness and has encouraged [high rates of non-reporting](#) by companies that are subject to the provisions of the act.

We note that the government does not propose to provide for financial penalties for non-compliance. In the absence of penalties, it is imperative that **alternative compliance mechanisms** are incorporated into the reporting requirement.

We recommend three such drivers to encourage and support entities in complying with the reporting requirement.

First, we recommend the establishment of a government-funded, publicly-accessible central **registry** of public statements published pursuant to the reporting requirement.

Second, we recommend the publication by the government of a **list** of entities subject to the provisions of the act and those that are non-compliant. This will facilitate scrutiny of corporate action against slavery by all stakeholders. It will 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 the list of compliant and non-complaint companies.

Third, we recommend **public procurement incentives** for compliance. Only commercial organisations that comply with the reporting requirements should benefit from, and participate in, public procurement opportunities. Should smaller entities, falling below the legislative

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reporting threshold, wish to opt-in to the reporting requirement, then this should be encouraged and facilitated.

Additionally, we note that the government intends to provide clear and detailed **guidance** and awareness-raising materials for the business community and we fully support this. The introduction of new legislation could also be supported by a **public awareness campaign**. This should aim to increase engagement by consumers with modern slavery issues and raise awareness amongst both business and the wider community about the human rights risks associated with supply chains.

10. 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?

We recommend that modern slavery statements be published at the same time as entities' financial reporting. This facilitates stakeholder scrutiny and opportunities to engage, such as at company annual general meetings.

11. Should the reporting requirement be 'phased-in' by allowing entities an initial grace period before they are required to publish Modern Slavery Statements?

We recommend that the reporting requirement is not phased-in and that it applies immediately following the first reporting date, be that determined by reference to financial year end, or to an entity's financial cycle.

Entities should be encouraged to take immediate steps to examine their operations and consider measures to address the existence of slavery in their operations and supply chains. There is no expectation that all reporting entities will be producing far-reaching, fully comprehensive statements in the first reporting cycle. The reporting requirement should be approached as an iterative measure, with successes and achievements being built upon, year-on-year, as entities' human rights knowledge and capabilities grow.

12. How can the Australian Government best monitor and evaluate the effectiveness of the reporting requirement? How should Government allow for the business community and civil society to provide feedback on the effectiveness of the reporting requirement?

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A central repository would allow the government to more efficiently monitor and enforce corporate *compliance* with the reporting requirement, that is whether the companies that are required to report are doing so.

Monitoring and evaluating the *effectiveness* of the reporting requirements would require assessing the quality of company statements and whether the information provided demonstrates robust company action such as due diligence and identification of modern slavery risks. This analysis could be commissioned by the government and conducted by civil society organisations with proven expertise on modern slavery and labour rights.

Government should encourage civil society to analyse company efforts and reporting in order to provide a reputation reward to those companies that are showing leading practice, and to hold laggard companies to account and call on them to improve their efforts. This will help create competition among companies and motivate them to constantly improve their efforts. It will also create a level playing field. Currently, consumer-facing companies, or those with well-known names are more likely to be scrutinised for their efforts and be targeted by campaigns or media. Having statements available in a central repository would enable organisations to group companies and analyse reporting by reference to, for example, sector or geographic region. This would provide a wider scope of analysis into what companies are doing and reporting, facilitate more effective scrutiny and enhance legislative impact.

Analysis also provides stakeholders with insight into the quality of reporting. Analysis of company reporting under the UK Modern Slavery Act by Business & Human Rights Resource Centre has shown that, with the exception of a few leading companies, most companies must improve their efforts to identify and mitigate modern slavery risks in their operations and supply chains. Companies, investors and civil society can use this analysis to encourage improved corporate action and reporting on modern slavery.

Government should consider mechanisms to encourage and facilitate engagement between business and civil society. Business will need to engage with experts, workers or their representatives, NGOs, among others, to obtain the information needed to identify risks and learn how to mitigate them.

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Government is encouraged to be receptive to feedback on the effectiveness of the reporting requirement. This could be in the form of an open consultations every few years, especially in the first years of the reporting requirement.

13. 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?

14. 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?

We recommend that the government considers Option 3.

Instances of abuse in corporate supply chains, both global and domestic, continue to occur regularly. Self-regulatory measures, such as codes and pledges, have not succeeded in embedding a respect for human rights in business. Whilst awareness-raising and guidance materials are important, they should be incorporated into, and used to support, a legislative approach to addressing the issue of slavery in corporate supply chains.

The 'business and usual' and non-regulatory approach are inadequate to effectively address the issue of slavery in corporate supply chains. We do not support Option 1, nor do we consider Option 2, on its own, to be an adequate solution.