

PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

Modern slavery and global supply chains

Interim report of the Joint Standing Committee on Foreign Affairs, Defence and Trade's inquiry into establishing a Modern Slavery Act in Australia

Joint Standing Committee on Foreign Affairs, Defence and Trade

August 2017
CANBERRA

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Members

Joint Standing Committee on Foreign Affairs, Defence and Trade

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Senator Chris Ketter (8.11.16 – 9.2.17)	ALP, QLD
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Members

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Ms Madeleine King MP Brand, WA

Mr David Littleproud MP Maranoa, QLD

Senator Claire Moore ALP, QLD

Senator Linda Reynolds CSC LP, WA

Senator the Hon Lisa Singh ALP, TAS

Senator Dean Smith (from 9.8.17) LP, WA

Mrs Ann Sudmalis MP Gilmore, NSW

Ms Maria Vamvakinou MP Calwell, VIC

Mr Trent Zimmerman MP North Sydney, NSW

Secretariat

Mr James Rees, Committee Secretary

Mr Jerome Brown, Committee Secretary

Dr Joshua Forkert, Inquiry Secretary

Mrs Dorota Cooley, Office Manager

Mr Danny Miletic, Officer Manager

Ms Natasha Kaleb, Administrative Officer

PO Box 6021

Parliament House

Canberra, ACT 2600

Telephone: 02 6277 2313

Facsimile: 02 6277 2221

Email: jscfadt@aph.gov.au

Internet: www.aph.gov.au/jfadt

Terms of Reference

With reference to the United Kingdom's *Modern Slavery Act 2015* and to relevant findings from the Joint Standing Committee on Foreign Affairs, Defence and Trade's report, *Trading Lives: Modern Day Human Trafficking*, the Committee shall examine whether Australia should adopt a comparable Modern Slavery Act.

The Committee shall have particular regard to:

- 1 The nature and extent of modern slavery (including slavery, forced labour and wage exploitation, involuntary servitude, debt bondage, human trafficking, forced marriage and other slavery-like exploitation) both in Australia and globally;
- 2 The prevalence of modern slavery in the domestic and global supply chains of companies, businesses and organisations operating in Australia;
- 3 Identifying international best practice employed by governments, companies, businesses and organisations to prevent modern slavery in domestic and global supply chains, with a view to strengthening Australian legislation;
- 4 The implications for Australia's visa regime, and conformity with the *Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* regarding federal compensation for victims of modern slavery;
- 5 Provisions in the United Kingdom's legislation which have proven effective in addressing modern slavery, and whether similar or improved measures should be introduced in Australia;
- 6 Whether a Modern Slavery Act should be introduced in Australia; and
- 7 Any other related matters.

Abbreviations

ACCI	Australian Chamber of Commerce and Industry
ACTU	Australian Council of Trade Unions
AGD	Attorney-General's Department
Alliance 8.7	Global Alliance to Eradicate Forced Labour, Modern Slavery, Human Trafficking and Child Labour
BHRRC	Business and Human Rights Resource Centre
Business Council	Business Council of Australia
CORE	Corporate Responsibility Coalition
DFAT	Department of Foreign Affairs, Defence and Trade
DRC	Democratic Republic of Congo
ILO	International Labour Organisation
JCLE	Joint Committee on Law Enforcement
JSCFADT	Joint Standing Committee on Foreign Affairs, Defence and Trade
National Action Plan	<i>Australia's National Action Plan to Combat Human Trafficking and Slavery 2015-2019</i>
NGO	Non-government organisation

SME	Small and medium-sized enterprise
statement	Slavery and human trafficking statement
UK Act	<i>Modern Slavery Act 2015</i> (UK)
UN Guiding Principles	United Nations Guiding Principles on Business and Human Rights

List of Recommendations

Recommendation 1

4.55 The Committee recommends that the Australian Government consider supporting in-principle the development of a Modern Slavery Act in Australia, including supply chain reporting requirements for companies, businesses, organisations and governments in Australia, as well as an Independent Anti-Slavery Commissioner, subject to reviewing the recommendations of the Committee’s final report. The Committee will provide further recommendations for the content of a Modern Slavery Act in its final report, as well as other necessary changes to Australian legislation, policies and practices to combat modern slavery.

Recommendation 2

4.56 The Committee recommends that the Australian Government consider the Committee’s in-principle support for a Modern Slavery Act, including supply chain reporting requirements and an Independent Anti-Slavery Commissioner, as part of Australia’s contribution to the Bali Process Government and Business Forum in Perth on 24 and 25 August 2017.

Recommendation 3

4.57 The Committee recommends that the Australian Government consider this interim report as part of its current review of corporate reporting, with a view to developing legislation requiring businesses, companies, organisations and governments operating in Australia to report on measures taken to address modern slavery in their global supply chains, in accordance with the recommendations in the Committee’s final report.

Statements of in-principle support and considerations

A Modern Slavery Act

- 4.2 The Committee gives in-principle support for developing a Modern Slavery Act in Australia, including mandatory supply chain reporting requirements for companies, businesses, organisations and governments and an Independent Anti-Slavery Commissioner. The Committee notes that it will consider other elements of a potential Modern Slavery Act in its final report, including prevention measures, support for victims, improvements to Australia's visa regime and prevention of orphanage tourism, as well as other recommended changes to Australian law, policy and practices to combat modern slavery.

Support for supply chain reporting

- 4.6 The Committee gives in-principle support for mandatory annual modern slavery supply chain reporting requirements to apply, above a particular threshold, to companies, businesses, organisations (including religious organisations) and governments operating in Australia.
- 4.7 The Committee gives in-principle support for a requirement that the Board (or equivalent level of a company, business, organisation or government) approve modern slavery statements.

Support for the UK model

- 4.11 The Committee gives in-principle support to key elements of the UK model of supply chain reporting and will continue to investigate possible improvements to this model in its final report.

Proposed principles for Australian legislation

Consistency with international jurisdictions and best practice

- 4.13 The Committee gives in-principle support for ensuring that any supply chain reporting requirement be consistent with international jurisdictions and best practice, including Australia's obligations under international law.

Repository of statements

- 4.16 The Committee gives in-principle support for the establishment of a legislated and government-funded central repository containing modern slavery statements. The Committee is of the view that the Australian Government should work with existing modern slavery registries to create a combined and consistent registry to which statements can be submitted to prevent unnecessary duplication.
- 4.17 The Committee will further consider whether a modern slavery central repository should sit under the Independent Anti-Slavery Commissioner or elsewhere, noting the comments by the UK's Independent Anti-Slavery Commissioner on this matter outlined in Chapter 3.
- 4.18 The Committee will further consider whether it should be made compulsory for a company, business, organisation or government to publish their modern slavery statement on their website and/or in their annual report.

Threshold for reporting

- 4.21 The Committee gives in-principle support for a threshold to be introduced, above which companies, organisations, businesses and governments must report on modern slavery in their supply chains. The exact threshold will be considered further in the Committee's final report.
- 4.22 The Committee gives in-principle support for the introduction of an opt-in option to allow companies, businesses, organisations and governments below the threshold to undertake supply chain reporting on modern slavery.
- 4.23 The Committee gives in-principle support for ensuring that the proposed reporting requirement enables businesses, companies, organisations and governments that are part of a supply chain to provide a single statement of compliance to multiple clients.

Prescribing reporting requirements

- 4.28 The Committee will further consider prescriptive requirements for what statements include. Notwithstanding, it is of the view that the Modern Slavery Act outline at minimum what statements should include, in addition to allowing for innovation in reporting. The Committee is also of the view that guidelines should also be produced consistent with international best practice. These issues will be considered further in the Committee's final report.
- 4.29 The Committee is of the view that its final report further consider due diligence requirements, as suggested by a number of submitters and witnesses.

Guidance for businesses

- 4.31 The Committee gives in-principle support for a broad definition of modern slavery to be included in the Modern Slavery Act, to help guide companies, businesses, organisations and governments on what to look for within their supply chains, including, but not limited to, forced labour, child labour, bonded labour, human trafficking, domestic servitude, orphanage trafficking, sex trafficking, forced marriage, slavery and other slavery-like practices. A full non-exhaustive list of terms will be considered in the Committee's final report.
- 4.32 The Committee gives in-principle support for the Australian Government to fund public awareness raising, information and training about modern slavery and modern slavery in supply chains, particularly for companies and businesses, as well as for front-line services, departments and embassies.
- 4.33 The Committee gives in-principle support for lists of at-risk industries, at-risk areas and at-risk groups in Australia and within Australian supply chains to be published by the Australian Government.
- 4.34 The Committee gives in-principle support for the Australian Government to publish a list of companies, organisations, businesses and governments to which the Modern Slavery Act supply chain reporting requirements apply.

Penalties and compliance measures

- 4.37 The Committee gives in-principle support for the Australian Government to mandate reporting for companies, businesses, organisations and governments above the threshold, with penalties applying for those that do

not report or do not report in compliance with the Modern Slavery Act reporting requirements.

- 4.38 The Committee does not in-principle support penalties applying to companies, businesses, organisations and governments that look for and do find modern slavery within their supply chains, and are acting to address the issues identified, as this would discourage them looking into their supply chains in the first place.
- 4.39 The Committee gives in-principle support for the Australian Government to publish a list of companies, businesses, organisations and governments above the threshold that do not comply with the Modern Slavery Act supply chain reporting requirements.
- 4.40 The Committee gives in-principle support for the Australian Government to publish a list of companies, businesses, organisations and governments above the threshold that are in compliance with modern slavery statements.
- 4.41 The Committee gives in-principle support for the Australian Government to publish a list of companies, businesses, organisations and governments below the threshold that submitted optional statements to encourage others to report.

Public procurement

- 4.44 The Committee gives in-principle support for the Australian Government to introduce into its procurement requirements that it only engages with companies, businesses, organisations and other Australian governments that have submitted modern slavery statements. The Committee considers that this would encourage smaller companies to also report via the opt-in option.

Independent Anti-Slavery Commissioner

- 4.47 The Committee gives in-principle support for Australia establishing in its Modern Slavery Act an Independent Anti-Slavery Commissioner, who would have the ability to consult, advise, report on and make recommendations with respect to modern slavery supply chain reporting. The Committee concurs with the recommendation of the Joint Committee on Law Enforcement on this matter, but notes that the Commissioner should be truly independent of government. The Australian Government could consider incorporating the current People Smuggling and Human Trafficking Ambassador within this role. The possible role of the Commissioner will be considered further in the Committee's final report.

- 4.48 The Committee gives in-principle support to a legislated review of an Australian Modern Slavery Act at least every three years. The Committee is of the view that the proposed Independent Anti-Slavery Commissioner would be best placed to undertake these reviews, in addition to suggesting other recommended changes outside of the Modern Slavery Act to combat modern slavery.

Further consultation

- 4.51 The Committee is of the view that its final report should consider, along with supply chains, how to ensure that foreign aid or corporate, business and organisational giving does not directly or indirectly support modern slavery practices, including via aid or giving to foreign governments.
- 4.52 The Committee is of the view that its final report should consider other measures to combat modern slavery in global supply chains, such as regulating the importation of goods that have been produced using modern slavery, similar to the US Trade Enforcement and Facilitation Act of 2015.
- 4.53 The Committee is of the view that its final report should consider whether the Australian Government should, at a later stage, introduce a mark that could be used by modern slavery compliant companies, businesses, organisations and governments.
- 4.54 The Committee will consider and consult further on the statements of in-principle support above, leading up to the final report. The Committee will consider additional supply chain and other elements of a Modern Slavery Act in its final report, as well as other changes necessary to combat modern slavery in Australia.

1. Introduction

- 1.1 Modern slavery is a heinous crime that affects millions of people around the world. Evidence to this inquiry has highlighted the devastating impact of modern slavery and the need for stronger measures to combat it.
- 1.2 This interim report addresses one aspect of how to better combat modern slavery in the global supply chains of Australian businesses, companies, organisations and governments.

Conduct of the inquiry

- 1.3 On 15 February 2017, the Attorney-General, Senator the Hon George Brandis QC, referred the inquiry to the Joint Standing Committee on Foreign Affairs, Defence and Trade (JSCFADT). On 15 February 2017, the JSCFADT referred the inquiry to its Foreign Affairs and Aid Sub-Committee to undertake.
- 1.4 In referring the inquiry, the Attorney-General requested the Committee ensure there would be no unnecessary overlap between this inquiry and an inquiry by the Joint Committee on Law Enforcement (JCLE) into human trafficking, slavery and slavery-like practices. The report for the JCLE's inquiry was tabled on 18 July 2017.¹
- 1.5 At the time of publication the Committee had published 201 submissions. These submissions are available from the Committee's website.² The full list

¹ Joint Committee on Law Enforcement, *An inquiry into human trafficking, slavery and slavery-like practices*, 18 July 2017, http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Law_Enforcement/Humantrafficking45/Report (accessed 24 July 2017).

² See: www.aph.gov.au/modernslavery.

of submissions and other evidence will be published in the Committee's final report.

- 1.6 At the time of publication, public hearings had been conducted in Canberra, Sydney and Melbourne. Transcripts of these hearings are available from the Committee's website.³ The full list of public hearings will be published in the Committee's final report.
- 1.7 The Committee thanks those submitters and witnesses who have provided evidence to the inquiry to date. The Committee will continue to consider submissions and hold further public hearings as it prepares its final report.

Overview of inquiry

- 1.8 'Modern slavery' is a broad umbrella term used to describe a number of crimes including, but not limited to, human trafficking, forced labour, sexual slavery, child labour and trafficking, domestic servitude, forced marriage, bonded labour including debt bondage, slavery and other slavery-like practices. Estimates suggest 45.8 million people around the world are victims of modern slavery, including 20.9 million victims of forced labour.⁴ Notably there are an estimated 30.4 million victims of modern slavery in the Asia-Pacific region.⁵
- 1.9 This inquiry addresses how Australia can better combat modern slavery in Australia and around the world to eradicate these exploitative practices. Central to the Committee's inquiry is the question of whether Australia should introduce a Modern Slavery Act similar to and improving on the United Kingdom's *Modern Slavery Act 2015* (UK Act). The Committee has received a large number of submissions addressing a wide range of issues, including, but not limited to:
 - defining 'modern slavery';

³ See: www.aph.gov.au/modernslavery.

⁴ The Walk Free Foundation's *Global Slavery Index* estimates that 45.8 million people are victims of modern slavery. The International Labour Organisation's (ILO) *2012 Global Estimate of Forced Labour* estimates 20.9 million people are victims of forced labour. Definitions and statistics of modern slavery will be examined in detail in the Committee's final report.

⁵ See: Walk Free Foundation, *Global Slavery Index 2016*, p. 50, <https://www.globalslaveryindex.org/> (accessed 30 July 2017). The Committee notes that estimates of the number of victims of modern slavery differ depending on the organisation, terminology and criteria used.

- the prevalence of modern slavery in Australia and overseas, including human trafficking, forced labour and child exploitation through orphanage tourism;
- identifying and prosecuting cases of modern slavery;
- supporting and protecting victims of modern slavery;
- establishing an Independent Anti-Slavery Commissioner; and
- introducing supply chain transparency reporting requirements.

Scope and purpose of interim report

- 1.10 The Committee recognises that the Australian Government is co-hosting the Bali Process Government and Business Forum on human trafficking in Perth on 24-25 August 2017. The forum aims to bring together ministers and business leaders from the 45 Bali Process countries to determine policies to tackle human trafficking, modern slavery and forced labour. The forum will be led by Mr Andrew Forrest AO and Mr Eddy Sariaatmadja as the private sector co-chairs, recognising the private sector's critical role in combating these crimes in supply chains in the region.⁶
- 1.11 Ahead of the forum, the Committee agreed to prepare an interim report summarising responses to whether Australia should, more generally, introduce a Modern Slavery Act and, under this Act, introduce requirements for companies, businesses, organisations and governments operating in Australia to report on how they identify and address risks in their global supply chains, similar to section 54 of the UK Act.
- 1.12 The Committee received a large number of submissions from a range of stakeholders including governments, businesses, non-government organisations, academics, peak bodies and individuals commenting on the supply chain reporting aspect of the UK Act. This interim report summarises these submissions.
- 1.13 The Committee notes that submissions addressed a range of other important issues for consideration including support for victims of modern slavery, prevention of orphanage tourism, Australia's visa regime and identification and prosecution of cases of modern slavery in Australia and overseas. The Committee agreed to address these issues in its final report.

⁶ Minister for Foreign Affairs, the Hon Julie Bishop MP, 'Bali Process Government and Business Forum on Human Trafficking', Media release, 16 March 2017, http://foreignminister.gov.au/releases/Pages/2017/jb_mr_170316.aspx (accessed 24 July 2017).

- 1.14 The Committee notes that the JCLE's report on human trafficking, slavery and slavery-like practices has made a number of recommendations relating to issues addressed in submissions to this inquiry, including establishing an independent anti-slavery and trafficking commissioner, improving Australia's visa framework and establishing a federal victim compensation scheme.⁷ The Committee also notes that the NSW Parliament's Legislative Council Select Committee on human trafficking in New South Wales is due to report by September 2017 on the role and effectiveness of NSW law enforcement agencies in responding to human trafficking.⁸ The Committee will consider the recommendations of these inquiries in its final report.

Outline of interim report

- 1.15 This chapter sets out the scope and purpose of this interim report.
- 1.16 Chapter two summarises and examines the operation of section 54 of the UK Act and other international examples of supply chain reporting and due diligence requirements. It also summarises the outcomes of a parliamentary delegation of members of the Committee which visited the UK in April and May 2017 to investigate the operation of the UK Act.
- 1.17 Chapter three summarises submissions to the inquiry responding to whether supply chain transparency reporting should be introduced in Australia, similar to section 54 of the UK Act. It highlights the significant support from Australian businesses and organisations to introduce supply chain transparency reporting, and outlines many key principles identified by submitters and witnesses to consider in the development of any proposed legislation.
- 1.18 Chapter four outlines the Committee's recommendations, statements of in-principle support and areas for further consideration in the Committee's final report.

⁷ See: Joint Committee on Law Enforcement, *An inquiry into human trafficking, slavery and slavery-like practices*, 18 July 2017, Canberra, Recommendations, pp xi–xiv.

⁸ NSW Parliament, Legislative Council Select Committee on human trafficking in New South Wales, <https://www.parliament.nsw.gov.au/committees/listofcommittees/Pages/committee-details.aspx?pk=250> (accessed 27 July 2017).

2. Supply chain reporting in the UK

- 2.1 The UK Prime Minister, the Rt Hon Theresa May MP, has described modern slavery as the ‘great human rights issue of our time’ and has committed that the UK Government will ‘lead the way in defeating modern slavery and preserving the freedoms and values that have defined our country for generations’.¹
- 2.2 The *Modern Slavery Act 2015* was passed by the UK Parliament and received royal assent on 26 March 2015.² The Act introduced a number of changes in England and Wales to combat human trafficking and slavery, focussing on:
- offences, prevention orders and enforcement;
 - prevention and establishment of an Independent Anti-Slavery Commissioner;
 - protection for victims; and
 - global supply chain transparency.
- 2.3 This chapter examines the global supply chain transparency reporting requirements introduced by section 54 of the Act.

Section 54 of the *Modern Slavery Act 2015*

- 2.4 Section 54 of the UK *Modern Slavery Act 2015* (the UK Act) requires companies, businesses and organisations operating in the UK to report on measures to address modern slavery in their global supply chains.

¹ The Rt Hon Theresa May MP, ‘Defeating Modern Slavery’, 31 July 2016, <https://www.gov.uk/government/speeches/defeating-modern-slavery-theresa-may-article> (accessed 27 July 2017).

² The Act applies in England and Wales. Separate legislation was passed to give effect to the Act in Northern Ireland and Scotland.

- 2.5 Under the UK Act and regulations, commercial organisations with a total turnover of £36 million are required to prepare a slavery and human trafficking statement (statement) for each financial year, defined as:
- a statement of the steps the organisation has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or its own business; or
 - a statement that the organisation has taken no such steps.³
- 2.6 Under the UK Act, statements must be:
- approved by the board of directors (or equivalent);
 - signed by a director (or equivalent); and
 - published on the organisation's website (or be available on request).⁴
- 2.7 The prescribed threshold amount of £36 million was agreed to following consultation with businesses and NGOs.⁵ The threshold aligns with the definition of a large business under the *Companies Act 2006* (UK) to ensure that those businesses 'who have the resources to undertake effective due diligence will be required to produce a statement'.⁶ The UK Home Office estimates that 12,000 companies are required to report under the UK Act.⁷
- 2.8 The UK Act does not prescribe what a statement must contain, but does within section 54 (5) provide six areas that a statement could contain (though these are not required):
- the organisation's structure, its business and its supply chains;
 - its policies in relation to slavery and human trafficking;
 - its due diligence processes in relation to slavery and human trafficking in its business and supply chains;

³Modern Slavery Act 2015 (UK), Part 6, section 54,
<http://www.legislation.gov.uk/ukpga/2015/30/contents/enacted> (accessed 30 July 2017).

⁴Modern Slavery Act 2015 (UK), Part 6, Section 54.

⁵ Over 80 per cent of respondents supported the £36m threshold. See: UK Home Office, *Modern Slavery and Supply Chains Government Response: Summary of consultation responses and next steps*, 2015, <https://www.gov.uk/government/consultations/modern-slavery-and-supply-chains> (accessed 30 July 2017).

⁶ Explanatory memorandum to the Modern Slavery Act 2015 (Transparency in Supply Chains) Regulations 2015, 2015 No. 1833, p. 2,
http://www.legislation.gov.uk/uksi/2015/1833/pdfs/uksiem_20151833_en.pdf (accessed 30 July 2017).

⁷ UK Home Office, *Submission 13*, p. 6.

- 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;
- 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; and
- the training about slavery and human trafficking available to its staff.⁸

2.9 The Committee heard that section 54 was not included in the original draft of the UK Act. The Committee notes that, following consultation, the UK Parliament's Joint Committee on the Draft Modern Slavery Bill recommended introducing a legislative requirement for certain companies to report on modern slavery in their annual strategic reports.⁹

2.10 The Committee heard that the inclusion of section 54 came about due to the significant support and advocacy for the measure from NGOs and businesses.¹⁰ The UK Home Secretary, the Rt Hon Amber Rudd MP, submitted that the 'single most decisive factor in shaping the UK's approach was the views of businesses themselves'.¹¹ The Home Office stated that consultations with businesses highlighted that the majority of businesses supported introducing a reporting requirement:

They said that the single most useful thing government could do was to create a level playing field: an environment where responsible businesses (that take action to identify and prevent slavery in their supply chains) are rewarded and recognised, rather than being singled out for criticism or under-cut by unscrupulous competitors. They wanted the State to use legislation to create the conditions for a (fair) race to the top, while leaving each business to work out how best to fight slavery in the context of their unique situation.¹²

2.11 The UK Home Secretary submitted that the aim of the reporting requirement is:

⁸ *Modern Slavery Act 2015* (UK), Part 6, Section 54 (5),

<http://www.legislation.gov.uk/ukpga/2015/30/contents/enacted> (accessed 30 July 2017).

⁹ Joint Committee on the Draft Modern Slavery Bill, Report, Session 2013-14, 8 April 2014, p. 89,

<http://www.parliament.uk/business/committees/committees-a-z/joint-select/draft-modern-slavery-bill/> (accessed 5 July 2017).

¹⁰ See, for example: Ethical Trading Initiative, *Submission 145*, pp 5–6.

¹¹ UK Home Office, *Submission 13*, p. 7.

¹² UK Home Office, *Submission 13*, p. 7.

...that information published by businesses will be used by consumers, investors, activists and competitors to give positive recognition to businesses who take action against slavery, while exposing laggards to public pressure and scrutiny that would ultimately hurt their brand and bottom line.¹³

International reporting requirements

- 2.12 The Committee heard that governments around the world are considering a range of supply chain reporting requirements to address concerns about modern slavery in global supply chains.
- 2.13 The Department of Foreign Affairs and Trade (DFAT) submitted that international momentum to prevent and combat modern slavery in global supply chains is ‘accelerating’, with the introduction of legislation in the UK, the United States and Europe and increasing international cooperation. DFAT highlighted that supply chain transparency will be one of the key themes of Germany’s presidency of the G20 in 2017, and may be a feature of the Commonwealth Heads of Government meeting in 2018.¹⁴
- 2.14 In particular, DFAT highlighted the establishment of the Global Alliance to Eradicate Forced Labour, Modern Slavery, Human Trafficking and Child Labour, known as Alliance 8.7 (named after the UN Sustainable Development Goal Target 8.7).¹⁵ Alliance 8.7 aims to strengthen coordination between the key UN bodies working on modern slavery, forced labour, human trafficking and child labour.¹⁶ Australia’s Ambassador for People Smuggling and Human Trafficking, Andrew Goledzinowski AM, told the committee that Australia is taking a lead role in supporting Alliance 8.7 and advocating for more coordinated action.¹⁷
- 2.15 An overview of some of the key international supply chain reporting regimes are outlined below.

¹³ UK Home Office, *Submission 13*, p. 7.

¹⁴ Department of Foreign Affairs, Defence and Trade, *Submission 32*, p. 1.

¹⁵ Sustainable Development Goal Target 8.7 is 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’. See: Sustainable Development Goal 8, <https://sustainabledevelopment.un.org/sdg8> (accessed 25 July 2017).

¹⁶ See: Alliance 8.7, <http://www.alliance87.org/> (accessed 27 July 2017).

¹⁷ Ambassador Andrew Goledzinowski AM, *Committee Hansard*, Canberra, 22 June 2017, p. 3.

USA – Californian Transparency in Supply Chains Act 2010

- 2.16 California was one of the first jurisdictions to introduce transparency in supply chains legislation. In January 2012, the *Transparency in Supply Chains Act 2010* entered into force.
- 2.17 The Californian Act requires some businesses with revenues of over \$100 million to report on initiatives to eradicate slavery and human trafficking from its supply chains for goods offered for sale. The Act aims to educate and assist consumers to make more ethical purchasing decisions and to encourage businesses to ensure that their supply chains are free of human trafficking and slavery.¹⁸
- 2.18 Subsequent reviews of the Act have indicated a number of issues with its implementation. For example, a 2015 report by Development International found that, of the 2126 companies subject to the law, only 14% of companies complied fully with the requirements.¹⁹ Anti-Slavery Australia further noted that the Act is weakened by the lack of effective sanctions for contravention of reporting requirements or other regulatory incentives or penalties.²⁰

Dodd-Frank Wall Street Reform and Consumer Protection Act

- 2.19 Section 1502 of the *Dodd-Frank Wall Street Reform and Consumer Protection Act* introduced due diligence reporting requirements for organisations in the United States that use conflict minerals originating in the Democratic Republic of Congo (DRC) and bordering countries.²¹
- 2.20 The Act requires organisations that source minerals from this area to submit a report to the US Securities and Exchange Commission on due diligence measures taken to determine whether the minerals directly or indirectly finance armed groups in the DRC, and must meet internationally recognised

¹⁸ United State Department of Labor, *California Transparency in Supply Chains Act*, <https://www.dol.gov/ilab/child-forced-labor/California-Transparency-in-Supply-Chains-Act.htm> (accessed 26 July 2017).

¹⁹ Development International, *Corporate Compliance with the California Transparency in Supply Chains Act of 2010*, 2 November 2015, <http://www.developmentinternational.org/reports> (accessed 26 July 2017).

²⁰ Anti-Slavery Australia, *Submission 156*, p. 75.

²¹ US Securities and Exchange Commission, 'Specialized Corporate Disclosure', <https://www.sec.gov/spotlight/dodd-frank/speccorpordisclosure.shtml> (accessed 27 July 2017).

standards, such as the OECD *Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas*.²²

France – Duty of vigilance legislation

- 2.21 In February 2017, the French Parliament adopted a new law establishing a ‘duty of vigilance’ obligation for businesses. The legislation requires businesses to monitor their company and supply chains for human rights and environmental protection violations and to publish an annual risk report assessing the impact of these policies. The law applies to companies based on number of employees, and is estimated to apply to around 150 large companies.²³
- 2.22 The French legislation originally included strong penalties for non-compliance, including fines of up to €10 million when a company fails to publish a plan, and up to €30 million if the failure resulted in preventable damages.²⁴ However, Anti-Slavery Australia notes that these penalties were found to be unconstitutional by the Constitutional Council and were not enacted.²⁵

The Netherlands – Child labour due diligence legislation

- 2.23 In February 2017, the Dutch Government adopted the proposed Child Labour Due Diligence Bill. If approved by the Dutch Senate, the law would require companies to publicly report on efforts to identify whether child labour is present in their supply chains and, where this is found, to develop a plan to combat it. The law would apply to companies registered in the

²² Anti-Slavery Australia, *Submission 159*, p. 77.

²³ Anti-Slavery Australia notes that the threshold for businesses headquartered in France would be 5000 employees, and for businesses headquartered outside of France be 10,000 employees. The 150 to 200 companies estimated to be captured by the legislation generate two-thirds of the international trade of French organisations. See: Anti-Slavery Australia, *Submission 159*, p. 78.

²⁴ European Coalition for Corporate Justice, ‘France adopts corporate duty of vigilance law: a first historic step towards better human rights and environmental protection’, 21 February 2017, <http://corporatejustice.org/news/393-france-adopts-corporate-duty-of-vigilance-law-a-first-historic-step-towards-better-human-rights-and-environmental-protection> (accessed 26 July 2017).

²⁵ Anti-Slavery Australia, *Submission 159*, p. 79.

Netherlands and those selling to Dutch consumers (including online retailers). Small businesses would be exempted.²⁶

- 2.24 If approved, the Netherlands legislation would provide for penalties, including an administrative fine of up to €4100. If an organisation is fined and does not comply with its obligations within 5 years, the directors may be guilty of an offence and be liable to 6 months imprisonment.²⁷

European Union – Non-financial reporting directive

- 2.25 In December 2014, the EU Directive on disclosure of non-financial and diversity information (2014/95/EU) entered into force.²⁸ The Directive requires companies with over 500 employees to report on relevant environmental, social, human rights and corruption risks and outcomes, which could include trafficking and slavery. The first reports under the Directive are due to be published in 2018.²⁹

Brazil – ‘dirty list’ of companies using forced labour

- 2.26 In 1995, the Brazilian Government officially recognised the existence of ‘labour analogous to slavery’ following the highly publicised case of José Pereira, who escaped from a farm where he was forced to work as an indentured labourer. According to the International Labour Organisation’s 2010 report, the Brazilian Government introduced measures to eradicate slave labour through the establishment of the Executive Group for the Repression of Forced Labour (GERTRAF) and the Special Mobile Inspection Group (GEFM). In 2004, the Brazilian Government passed a ministerial ordinance to enable a list of companies found by the GEFM to be using forced labour (the *lista suja*, or ‘dirty list’) to be publicly released.³⁰

²⁶ Littler Mendelson PC, Dutch and French Legislatures Introduce New Human Rights Due Diligence Reporting Requirements, *Lexology*, 13 March 2017, <http://www.lexology.com/library/detail.aspx?g=153b6746-8734-43b0-8462-4bfd9dc25f5a> (accessed 30 July 2017).

²⁷ Anti-Slavery Australia, *Submission 129*, p. 78.

²⁸ Directive 2014/95/EU of 22 October 2014, <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32014L0095&from=EN> (accessed 26 July 2017).

²⁹ European Commission, Company reporting, https://ec.europa.eu/info/business-economy-euro/company-reporting-and-auditing/company-reporting_en#news (accessed 26 July 2017).

³⁰ International Labour Organisation (ILO), *The good practices of labour inspection in Brazil: the eradication of labour analogous to slavery*, 15 April 2011, http://www.ilo.org/global/topics/forced-labour/publications/WCMS_155946/lang-en/index.htm (accessed 26 July 2017).

Assessments of the UK Act

Reviews of section 54

2.27 A number of formal reviews of the UK's Modern Slavery Act have been undertaken since the introduction of the Act. The aspects of these reviews that relate to section 54 are outlined below. Further aspects of these reviews will be considered in the Committee's final report.

UK Joint Committee on Human Rights

2.28 In April 2017, the UK Parliament's Joint Committee on Human Rights examined section 54 of the UK Act as part of its review of business and human rights. While the Joint Committee applauded the passage of the UK Act and commended the Government for showing 'genuine leadership', it identified a number of shortcomings with the reporting requirements, namely:

- no central list of companies required to report or repository of statements;
- inadequate reporting requirements for companies;
- lack of awareness among businesses; and
- public bodies not included.³¹

2.29 The Joint Committee also recommended that the Government bring forward legislative proposals to make:

... reporting on due diligence for all other relevant human rights, not just the prohibition of modern slavery, compulsory for large businesses, with a monitoring mechanism and an enforcement procedure.³²

2.30 The Joint Committee supported the passage of the Modern Slavery (Transparency in Supply Chains) Bill, introduced to the House of Lords by Baroness Young of Hornsey in May 2016. The Bill proposed to:

- include public bodies in the transparency in supply chains requirements of the Act;

³¹ Joint Committee on Human Rights (UK), *Human Rights and Business 2017: Promoting responsibility and ensuring accountability*, Sixth Report of Session 2016-17, 5 April 2017, pp 41 – 42, <https://www.publications.parliament.uk/pa/jt201617/jtselect/jtrights/443/443.pdf> (accessed 30 July 2017).

³² Joint Committee on Human Rights (UK), *Human Rights and Business 2017: Promoting responsibility and ensuring accountability*, Sixth Report of Session 2016-17, 5 April 2017, p. 42.

- require companies and public bodies to publish their statements in their company reports;
- require the Secretary of State to compile a list of companies that should be compliant with Transparency in Supply Chains, to make it possible for NGOs, civil society and the general public to find the information required for effective monitoring; and
- prevent public bodies from procuring services from companies that have not conducted due diligence.³³

2.31 The Bill was not debated in the House of Commons prior to the UK election in mid-2017.

2.32 In his submission to this inquiry, Professor Robert McCorquodale, Director of the British Institute of International and Comparative Law and specialist advisor to the UK Joint Committee on Human Rights, recommended that the Committee take into account the conclusions of the UK Joint Committee on Human Rights' report, including the support for Baroness Young's Bill.³⁴

Independent Anti-Slavery Commissioner

2.33 One of the key provisions of the UK Act established the office of the Independent Anti-Slavery Commissioner. The Commissioner is required to encourage good practice in the prevention, detection, investigation and prosecution of slavery and human trafficking offences and the identification of victims of those offences.³⁵ Importantly, this position is independent of government. The current Independent Anti-Slavery Commissioner is Mr Kevin Hyland OBE.

2.34 In the first annual report in October 2016, the UK Commissioner noted:

Section 54 of the Modern Slavery Act, with its reporting requirement for large businesses operating in the UK, has forced the business community to discuss the topic of slavery openly to an extent that has not occurred since the days of the 19th century abolitionists.³⁶

³³ Modern Slavery (Transparency in Supply Chains) Bill [HL] 2016-17, <http://services.parliament.uk/bills/2016-17/modernslaverytransparencyinsupplychains.html>

³⁴ British Institute of International and Comparative Law, *Submission 108*, p. 4.

³⁵ Explanatory Notes, *Modern Slavery Act 2015*, pp 28–29. See: *Modern Slavery Act 2015* (UK), Part 4.

³⁶ Independent Anti-Slavery Commissioner, *Annual Report 2015-16*, October 2016, p. 3, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/559571/IASC_Annual_Report_WebReadyFinal.pdf (accessed 30 July 2017).

- 2.35 Mr Hyland told the Sub-Committee that the change in the private sector since the introduction of the Act has been significant, with business CEOs viewing the requirement ‘as a race to the top, not just a function that they have to fulfil’.³⁷
- 2.36 However, the Commissioner highlighted that more needs to be done to better engage with the private sector in supply chain reporting:
- While the Modern Slavery Act has undoubtedly pushed modern slavery up the agenda and into the boardrooms of large businesses, this is just the first step. There is still much more to be done to ensure that companies produce statements that both comply with the Act’s obligations and point to decisive action being taken, as opposed to merely being a ‘tick box’ exercise.³⁸
- 2.37 The Commissioner’s report highlighted the work undertaken to better engage with the private sector on supply chain reporting, including communicating with over 1000 companies outlining his expectations of reporting, leading roundtables on supply chain transparency and working with trade bodies to tackle modern slavery.³⁹

UK delegation outcomes

- 2.38 In May 2017, a delegation from the Committee visited the UK and met with a number of non-government organisations, legal experts, businesses required to report under the UK Act, and government officials responsible for its implementation. The itinerary for the delegation is at **Appendix A**.
- 2.39 The delegation discussed a range of issues related to the UK Act. The key themes related to the implementation of section 54 are outlined below. The Committee will address the other issues discussed in its final report.

A ‘game changer’

- 2.40 Overall, businesses and NGOs supported the introduction of supply chain reporting and reported it was having a positive impact on combatting modern slavery in global supply chains. In its submission to the inquiry, Marks and Spencer, which has a well-established and highly regarded human rights policy and framework, described the legislation as

³⁷ Mr Kevin Hyland OBE, Independent Anti-Slavery Commissioner, *Committee Hansard*, 30 May 2017, Canberra, p. 2.

³⁸ Independent Anti-Slavery Commissioner, *Annual Report 2015-16*, October 2016, p. 3.

³⁹ Independent Anti-Slavery Commissioner, *Annual Report 2015-16*, October 2016, p. 31.

‘game-changing’ in terms of raising awareness of modern slavery issues for many businesses. Marks and Spencer noted that the legislation had:

... forced businesses yet to consider ethical practices in their own businesses to rapidly get started and those with more mature systems to get greater time on the board agenda to discuss how to embed [these] more effectively in their organisations.⁴⁰

2.41 Anti-Slavery International noted that the inclusion of section 54 into the UK Act was the direct result of lobbying by businesses involved in the Ethical Trade Initiative and British Retail Consortium. Anti-Slavery International noted that these businesses:

... recognised that their efforts towards ethical practices were undermined by competitors who were able to undercut them with impunity by adopting exploitative labour practices, including slavery. These businesses therefore wished for increased regulation in order to “level the playing field” somewhat by compelling unethical competitors to be more transparent about their practices.⁴¹

2.42 The delegation also met with barrister Ms Caroline Haughey, who was commissioned by the Home Office to undertake an independent review of the Modern Slavery Act.⁴² In her submission and evidence to the inquiry, Ms Haughey noted that the reporting requirement under section 54 has had ‘multiple benefits’ in the UK, including raising public and consumer awareness about modern slavery and exploitation. Ms Haughey noted that, while some companies pay only ‘lip service’ to the requirement, a number have embraced its intention:

... reviewing their supply chains, proactively ensuring that exploitation if not eradicated its risk is reduced, changing terms of contracts to include ethics clauses, undertaking spot checks and ensuring their own employment standards are appropriate. Each company that takes such an action is having a ripple effect of setting standards and reducing exploitation.⁴³

⁴⁰ Marks and Spencer, *Submission 159*, p. 1.

⁴¹ Anti-Slavery International, *Submission 186*, p. 10.

⁴² The findings of this review will be considered in the Sub-Committee’s final report. See: Caroline Haughey, *The Modern Slavery Act review*, 31 July 2016, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/542047/2016_07_31_Haughey_Review_of_Modern_Slavery_Act_-_final_1.0.pdf (accessed 30 July 2017).

⁴³ Ms Caroline Haughey, *Submission 190*, p. 2.

Central repository

- 2.43 One of the most significant concerns with the UK Act was the lack of provision for a central repository of modern slavery statements. As the UK Act does not include enforcement mechanisms, a central repository of statements was viewed as a key mechanism to hold businesses and organisations to account.⁴⁴ Ms Haughey noted that recurring criticism of the section is that ‘there is no single repository to ensure that companies are compliant and it is suggested that this would add significant weight to the effect of the section’.⁴⁵
- 2.44 The delegation met with representatives from the Business and Human Rights Resource Centre (BHRRC), a privately funded NGO that administers the Modern Slavery Registry. BHRRC told the delegation that its main aim in publishing the registry was to drive change and act as an ‘unofficial watchdog’. At the time, BHRRC had published around 1800 statements of the estimated 12,000 to 18,000 required to report under the UK Act.⁴⁶
- 2.45 BHRRC also noted that it publishes analyses of the statements to compare and contrast how different businesses are reporting and aims to track how the reports develop over subsequent years.⁴⁷
- 2.46 The Committee notes that TISCreport also publishes a registry of human rights statements, including modern slavery statements prepared under the UK Act, and has made a submission to this inquiry outlining how it could assist in the development of a registry in Australia.⁴⁸

⁴⁴ The UK Act contains limited penalties for non-compliance and relies on market forces to encourage businesses and organisations to report. If a business or organisation fails to comply with the reporting requirement, the Secretary of State may seek an injunction from the High Court requiring the organisation to report. See: *Modern Slavery Act 2015* (UK), Section 54 (11).

⁴⁵ Ms Caroline Haughey, *Submission 190*, p. 3.

⁴⁶ See: Business and Human Rights Resource Centre (BHRRC), *Modern Slavery Registry*, <http://www.modernslaveryregistry.org/> (accessed 27 July 2017).

⁴⁷ See, for example: BHRRC, *At the Starting Line: FTSE 100 & the UK Modern Slavery Act*, 2016, <https://business-humanrights.org/sites/default/files/documents/FTSE%20100%20Modern%20Slavery%20Act.pdf> (accessed 26 July 2017).

⁴⁸ See: TISCreport, Semantrica, *Submission 183*, p. 3.

Consistency across jurisdictions

2.47 UK businesses and organisations highlighted the importance of ensuring that any requirements considered in Australia be consistent with the UK Act. Marks and Spencer submitted its concerns that:

... parallel legislative requirements in different parts of the world (including Australia) could create duplication in effort or multiple, varied approaches. This should be avoided.⁴⁹

Guidelines and templates

2.48 Some businesses suggested that clearer guidelines on the reporting process would have assisted them in developing their statements. Anti-Slavery International submitted that, to date, 'the quality of the statements is mixed, with the majority being poor', but highlighted that the requirement to report 'has increased consideration of slavery risks by businesses and promoted increased dialogue on how slavery may be eradicated from business supply chains'.⁵⁰ BHRRC noted that it publishes the available guidance developed by government and the NGO sector as part of the Modern Slavery Registry.⁵¹

2.49 In its submission, Marks and Spencer supported the UK Government's approach not to specify what modern slavery statements should contain, allowing businesses to determine what is appropriate.⁵² Marks and Spencer highlighted recent research by Ergon Associates that highlights that modern slavery statements are generally longer and more detailed than a year ago, containing more information on their structure, operations, supply chains, policies and training on human rights and modern slavery.⁵³

2.50 As discussed in Chapter 3, other submitters to this inquiry, such as the Walk Free Foundation, noted that the lack of clear guidelines made it hard for

⁴⁹ Marks and Spencer, *Submission 159*, p. 2.

⁵⁰ Anti-Slavery International, *Submission 186*, p. 10.

⁵¹ See: BHRRC, Modern Slavery Registry, https://www.modernslaveryregistry.org/pages/reporting_guidance (accessed 27 July 2017).

⁵² Marks and Spencer, *Submission 159*, p. 2.

⁵³ See: Ergon Associates, Modern slavery statements: One year on, April 2017, http://www.ergonassociates.net/images/stories/articles/msa_one_year_on_april_2017.pdf (accessed 27 July 2017).

businesses to know what to report and made comparisons of statements more difficult.⁵⁴

Other measures

2.51 A number of organisations highlighted other mechanisms government could use to address modern slavery in supply chains. Both BHRRC and Anti-Slavery International highlighted the US *Trade Enforcement and Facilitation Act of 2015* as an example the Australian Government could consider.⁵⁵ The Act increases the powers of US customs officials to exclude from US markets goods that have been produced using forced or child labour.⁵⁶ This Act, together with other best practice examples to combat modern slavery beyond supply chain reporting, will be considered in the Committee's final report.

⁵⁴ See: Chapter 3, 3.62.

⁵⁵ See: US Congress, *HR 1907 – Trade Facilitation and Trade Enforcement Act of 2015*, <https://www.congress.gov/bill/114th-congress/house-bill/1907> (accessed 4 August 2017).

⁵⁶ See: Anti-Slavery International, *Submission 186*, p. 11.

3. Supply chain reporting in Australia

- 3.1 The Committee heard from a large number of businesses, non-government organisations (NGOs), investors, legal experts, academics, unions and individuals on the issue of supply chain reporting.
- 3.2 The majority of these submitters and witnesses supported the introduction of supply chain reporting requirements similar to section 54 of the UK *Modern Slavery Act 2015* (UK Act). Many submitters and witnesses also suggested that any Australian legislation should seek to improve on the UK model based on international best practice.
- 3.3 This chapter outlines some of the key proposed principles for Australian legislation suggested in submissions.

Modern slavery in global supply chains

- 3.4 Submitters and witnesses to the inquiry recognised the significant risk of modern slavery in the global supply chains of businesses operating in Australia. Anti-Slavery Australia defines supply chains as the ‘vertically integrated systems of production that link raw materials to finished products’, highlighting that:

Modern business relationships frequently involve engagement with complex international supply chains, often with multiple tiers. These supply chains can involve industries that involve a high risk of exploitation in Australia, or

extend to countries overseas with [a] high incidence of human trafficking and slavery.¹

- 3.5 Submitters acknowledged the particularly high risk of forced labour in the Asia-Pacific region, where many Australian businesses source materials and products. The International Labour Organisation (ILO) estimates that over half (11.7 million) of the 20.9 million victims of forced labour across the world are in the Asia Pacific region.² The Walk Free Foundation, which publishes the annual *Global Slavery Index*,³ estimates that 30.4 million people are victims of modern slavery in the Asia Pacific region.⁴ The Committee notes that the Walk Free Foundation and the ILO are currently working on developing common definitions and data on the number of victims of modern slavery, including in the Asia-Pacific region.⁵
- 3.6 Mr Andrew Forrest AO, Chairman and Founder of the Walk Free Foundation, told the Committee that when he investigated his own company, Fortescue Metals Group,⁶ he was shocked to discover ‘a number of incidences of slavery in our supply chain’ and took immediate steps to address it. Mr Forrest noted that his experience highlighted that:

The reality of people being kept in forced labour conditions and having their freedom removed is apparent in Australia and all over the region which feeds goods and services into Australia.⁷

¹ Anti-Slavery Australia, *Submission 156*, p. 69.

² International Labour Organisation (ILO), *Global Estimate of Forced Labour*, 1 June 2012, pp 13–17, http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_182004.pdf (accessed 28 July 2017).

³ See: Walk Free Foundation, *Global Slavery Index 2016*, p. 50, <https://www.globalslaveryindex.org/> (accessed 30 July 2017).

⁴ Walk Free Foundation, *Submission 91*, p. 12.

⁵ Walk Free Foundation, *Submission 91*, p. 10. See also: ILO, ‘ILO and Walk Free Foundation to collaborate on Global Estimate of Modern Slavery’, Press release, 17 March 2017, http://www.ilo.org/global/topics/forced-labour/news/WCMS_547316/lang-en/index.htm (accessed 4 August 2017). The Committee notes that due to the lack of an agreed definition of modern slavery, estimates of its prevalence differ between organisations.

⁶ For further details on the steps Fortescue Metals Group took to address modern slavery risks in its supply chain, see: Fortescue Metals Group, *Submission 58*.

⁷ Mr Andrew Forrest AO, Chairman and Founder, Walk Free Foundation, *Committee Hansard*, Sydney, 23 June 2017, p. 2.

- 3.7 Similarly, Ms Fiona Lawrie, Sustainability Manager at Australia's largest private sector employer, Wesfarmers, acknowledged:
- ... that forms of forced labour and very real human rights [abuses are] occurring across global supply chains, and there is no doubt that there have been instances of unfair treatment of workers in our supply chain.⁸
- 3.8 The Committee notes that its predecessor Committee has previously expressed concerns about the risks of modern slavery in global supply chains in its 2013 report, *Trading Lives: Modern Day Human Trafficking*. The Committee notes that that report recommended that the Australian Government undertake a review of Australia's anti-slavery mechanisms with a view to introducing legislation to improve transparency in supply chains.⁹
- 3.9 The Committee also notes the concerns about modern slavery in the supply chains of companies and businesses operating in Australia recently expressed by the Joint Committee on Law Enforcement.¹⁰

Support for supply chain reporting

- 3.10 The majority of submitters to the inquiry supported action to address and eliminate the risks of modern slavery in the global supply chains of companies and businesses operating in Australia.
- 3.11 The Committee heard significant support for supply chain reporting from NGOs, charities, religious leaders, unions, legal experts and consumers. These submitters emphasised that a reporting requirement was an important piece of the jigsaw to address modern slavery in Australia and around the world.¹¹

⁸ Ms Fiona Lawrie, Sustainability Manager, Wesfarmers, *Committee Hansard*, Sydney, 23 June 2017, p. 29.

⁹ See: Joint Standing Committee on Foreign Affairs, Defence and Trade, *Trading Lives: Modern Day Human Trafficking*, 24 June 2013, Recommendation 7, http://www.aph.gov.au/parliamentary_business/committees/house_of_representatives_committees?url=jfadt/slavery_people_trafficking/report.htm (accessed 30 June 2017).

¹⁰ Joint Committee on Law Enforcement, *An inquiry into human trafficking, slavery and slavery-like practices*, 18 July 2017, Canberra, p. 56.

¹¹ See, for example: Australian Freedom Network, *Submission 26*; Baptist World Aid Australia, *Submission 35*; Fairtrade Australia and New Zealand, *Submission 49*; Oxfam Australia, *Submission 59*; Law Council of Australia, *Submission 60*; Walk Free Foundation, *Submission 91*; Stop the Traffik Australia, *Submission 93*; Australian Council of Trade Unions (ACTU), *Submission 113*;

3.12 The Committee notes strong support for combatting modern slavery from the Business Council of Australia (Business Council). The Committee notes the statement of 29 March 2017 by the Business Council's President and Chief Executive calling for a comprehensive approach to combatting modern slavery in Australia, including legislation.¹² The Business Council submitted that supply chain reporting would be an 'important piece of the jigsaw' to combat modern slavery and would:

- close the governance gap that is inherent in global supply chains;
- increase transparency by providing more information about what is occurring in global supply chains;
- shape corporate behaviour; and
- ensure there is a level playing field so companies who are regulated in other jurisdictions are not put at a disadvantage by companies that do not face the same requirements and therefore may not face the same costs as well as scrutiny.¹³

3.13 The Committee also notes the significant support from the union movement, as outlined by the Australian Council of Trade Unions (ACTU).¹⁴ The ACTU submitted that supply chain reporting is a 'game changer in fighting slavery in supply chains':

We strongly believe that having a robust act which clearly compels companies to pay attention to the risks in their supply chains would have a very beneficial impact both by stopping the practices of modern slavery and by creating a level playing field amongst companies. As trade unions, we would like to see the act require businesses to report on what they are doing to address slavery because we believe that a minimum standard established in law provides clarity to business and prevents good practice from being undermined by less responsible companies.¹⁵

International Justice Mission Australia, *Submission 118*; UNICEF Australia, *Submission 129*; Amnesty International Australia, *Submission 154*; The Freedom Partnership, *Submission 199*.

¹² Business Council of Australia, 'No Place for Modern Slavery', 29 March 2017, <http://www.bca.com.au/media/no-place-for-modern-slavery> (accessed 30 July 2017).

¹³ Business Council of Australia, *Submission 121*, p. 3.

¹⁴ The Committee notes that the ACTU submission was endorsed by: Maritime Union of Australia, *Submission 115*; United Voice, *Submission 116*; and the International Trade Union Confederation and International Transport Workers' Federation, *Submission 149*.

¹⁵ Australian Council of Trade Unions (ACTU), *Submission 113*, p. 3.

- 3.14 However, the Committee notes that some business groups questioned the need for legislation to address this issue. The Australian Chamber of Commerce and Industry (ACCI) suggested that the introduction of legislation would be premature and recommended the need for further consultation, particularly with businesses.¹⁶ ACCI recommended that ‘a great deal more work’ needs to be done to consult with businesses to:
- ... determine where any efforts should be focussed, which behaviours and practices should be addressed, and how best to do so, prior to starting to consider modern slavery legislation for Australia or its terms.¹⁷
- 3.15 The Committee also heard from businesses, such as Adidas Group and Rio Tinto, which highlighted the significant work they have already undertaken to address modern slavery risks and the robust frameworks they have introduced to monitor and audit their supply chains.¹⁸ The Committee heard that many Australian businesses are already collaborating to address these issues through voluntary initiatives such as the United Nations Global Compact,¹⁹ and the Australian Business Pledge against Forced Labour.²⁰
- 3.16 These businesses supported the introduction of a legislative requirement to report on measures taken to address modern slavery risks in their supply chains. The Committee notes the significant support for supply chain reporting in Australia across a number of sectors including retail and clothing,²¹ food and grocery,²² mining²³ and finance and investment.²⁴

¹⁶ See: Australian Chamber of Commerce and Industry, *Submission 173*, p. 5. See also: Australian Retailers’ Association, *Submission 131*; National Farmers’ Federation, *Submission 193*.

¹⁷ Australian Chamber of Commerce and Industry, *Submission 173*, p. 5.

¹⁸ See, for example: Adidas Group, *Submission 1*; Wesfarmers, *Submission 3*; Nestlé Australia Ltd, *Submission 65*; Fortescue Metals Group Pty Ltd, *Submission 58*; Rio Tinto, *Submission 78*; Westpac Group, *Submission 136*.

¹⁹ The UN Global Compact was launched in 2000 and is the leading global voluntary initiative for corporate social responsibility and sustainability, including business and human rights. The UN Global Compact has over 9000 business signatories in 162 countries, including some of Australia’s largest companies. For further details, see: Global Compact Network Australia, *Submission 83*.

²⁰ The Australian Business Pledge against Forced Labour (the Pledge) is an initiative of the Retail and Supplier Roundtable Sustainability Council, an industry-led forum for collaborating on sustainability practices. Signatories to the Pledge include Woolworths, Big W, Simplot, Ingham’s and Goodman Fielder. See: Retail and Supplier Roundtable Pledge against Forced Labour, *Submission 82*.

²¹ See: Adidas Group, *Submission 1*; David Jones, *Submission 88*.

3.17 The Committee also heard that investors are increasingly concerned about ensuring that the supply chains of businesses they invest in are free of modern slavery and other human rights violations. Ms Nicolette Boele from Responsible Investment Association Australasia told the Committee that investors:

... view human rights violations and their management as social and governance risks that, when poorly managed, may impact negatively on the long-term value of companies ... eradicating modern slavery in Australian companies and their supply chains is fundamental to well-performing companies and stable economies.²⁵

3.18 The Walk Free Foundation submitted that government intervention would assist and strengthen efforts by businesses already trying to address modern slavery risks in their supply chains:

Governments have a critical leadership role to play in encouraging and guiding industry to take the necessary steps to ensure the integrity of their supply chains. We know what works to drive modern slavery from our supply chains. It requires collaboration and best practise by governments, business and civil society. Our approach must be to encourage business to look and find, and to be open about what they discover. As a community, we must support not shame them. We must work with them and their colleagues to find creative, commercial and long lasting solutions that free the victims, and empower them to pursue free lives.²⁶

3.19 Businesses and NGOs emphasised that a reporting requirement would help to 'level the playing field' for businesses in Australia already seeking to address these issues. Ms Alice Cope, Executive Director of the Australian

²² See: Wesfarmers, *Submission 3*; Nestle Australia Ltd, *Submission 65*; Australian Food and Grocery Council, *Submission 77*; Woolworths Ltd, *Submission 87*; Australian Sporting Goods Association, *Submission 125*.

²³ See: Woodside Energy Ltd, *Submission 28*; Fortescue Metals Group Pty Ltd, *Submission 58*; Rio Tinto, *Submission 78*; South32, *Submission 81*; BHP, *Submission 178*.

²⁴ See: ANZ Banking Group Ltd, *Submission 30*; National Australia Bank, *Submission 54*; Westpac Group, *Submission 136*; Financial Services Council, *Submission 33*; Australian Council of Superannuation Investors, *Submission 107*; Christian Super, *Submission 46*; Australian Ethical Investment, *Submission 86*. The Committee also acknowledges the signatories to the Investor Statement in Support of Establishing a Modern Slavery Act in Australia. See: Principles for Responsible Investment, *Submission 39*, pp 4–9.

²⁵ Ms Nicolette Boele, Executive Manager – Policy and Projects, Responsible Investment Association Australasia, *Committee Hansard*, Sydney, 23 June 2017, p. 34.

²⁶ Walk Free Foundation, *Submission 91*, p. 5.

branch of the UN Global Compact, told the Committee that there are already a number of leading Australian businesses ‘investing in getting this right’ and that:

This sort of regulatory development would help create a more level playing field for, and drive change in, those businesses that are not yet being proactive ...²⁷

- 3.20 Similarly, Professor Paul Redmond from Anti-Slavery Australia told the Committee that a reporting requirement would reward businesses that are addressing modern slavery issues and remove the advantage for the ‘determined laggard’:

We need to remove the competitive advantage that the determined laggard has in this area. The firm that adopts best practice should not be punished for it ... Movers of best practice suffer a competitive disadvantage through the expenses they incur and the opportunity to free ride ... by competitors who do not.²⁸

- 3.21 The Committee notes that a 2015 report by the Australian Centre for Corporate Social Responsibility, together with the Australian Human Rights Commission and Global Compact Network Australia, identified that while some Australian businesses may aspire to address human rights impacts in their supply chains, most businesses lack clear strategies and processes to trace, monitor and address such risks.²⁹

Australian government actions

- 3.22 The Committee notes the Australian Government’s commitment to combatting human trafficking and slavery. A whole-of-government strategy has been in place since 2004 to combat these crimes covering four key areas: prevention and deterrence; detection and investigation; prosecution and compliance; and victim support and protection.³⁰ The Committee notes that

²⁷ Ms Alice Cope, Executive Director, Global Compact Network Australia, *Committee Hansard*, Sydney, 23 June 2017, pp 48–49.

²⁸ Professor Paul Redmond, Anti-Slavery Australia, *Committee Hansard*, Sydney, 23 June 2017, p. 13.

²⁹ See: Australian Centre for Corporate Social Responsibility, *Submission 40*. For a copy of the report, see: Australian Human Rights Commission, *Human rights in supply chains: Promoting positive practice*, December 2015, <https://www.humanrights.gov.au/our-work/rights-and-freedoms/publications/human-rights-supply-chains-promoting-positive-practice> (accessed 27 July 2017).

³⁰ Australian Government, *Submission 89*, p. 4.

Australia's National Action Plan to Combat Human Trafficking and Slavery 2015-19 (National Action Plan) provides the strategic framework for Australia's response to human trafficking and slavery.³¹

3.23 The National Action Plan identifies the Australian Government's 'response to labour exploitation in supply chains' as a key area for focus.³² In 2014 the Minister for Justice established the Supply Chains Working Group, made up of experts from government, business, industry, civil society, unions and academia.³³ On 28 November 2016, the Australian Government announced it would respond to recommendations by the Supply Chains Working Group to:

- create a suite of awareness-raising materials for business;
- further consider the feasibility of a model for large businesses in Australia to publicly report on their actions to address supply chain exploitation;
- examine options for an awards program for businesses that take action to address supply chain exploitation; and
- explore the feasibility of a non-regulatory, voluntary code of conduct for high risk industries.³⁴

3.24 The Australian Government also announced that it would review the corporate reporting requirement established by the UK Act, as well as other international best-practice. The Australian Government submitted that this review is being progressed by the Attorney-General's Department in

³¹ See: Commonwealth of Australia, *Australia's National Action Plan to Combat Human Trafficking and Slavery 2015-19*, <https://www.ag.gov.au/CrimeAndCorruption/HumanTrafficking/Documents/Trafficking-NationalActionPlanToCombatHumanTraffickingAndSlavery2015-19.pdf> (accessed 28 July 2017).

³² *Australia's National Action Plan to Combat Human Trafficking and Slavery 2015-19*, p. 2.

³³ See: Attorney-General's Department, Australia's response to human trafficking, <https://www.ag.gov.au/CrimeAndCorruption/HumanTrafficking/Pages/Australias-response-to-human-trafficking.aspx> (accessed 26 July 2017).

³⁴ Mr Adrian Breen, Assistant Secretary, Transnational Crime Branch, Attorney-General's Department, *Committee Hansard*, Canberra, 22 June 2017, p. 2. See also: Minister for Foreign Affairs, Ministry for Immigration and Border Protection and Minister for Justice, 'Working with business and civil society to target human trafficking and slavery', Joint media release, 28 November 2016, <https://www.ministerjustice.gov.au/Mediareleases/Pages/2016/FourthQuarter/Working-with-business-and-civil-society-to-target-human-trafficking-and-slavery.aspx> (accessed 26 July 2017).

consultation with the Department of Foreign Affairs, Defence and Trade and is due to be completed within 12 months as at the date of the submission.³⁵

- 3.25 The Committee further notes that, in March 2016, the Minister for Foreign Affairs, the Hon Julie Bishop MP, launched *Australia's International Strategy to Combat Human Trafficking and Slavery*, which complements the National Strategy and aims to amplify the impact of Australia's international efforts to combat human trafficking and slavery.³⁶

Support for the UK model

- 3.26 The Committee heard significant support for a reporting requirement based on section 54 of the UK Act. The majority of submitters and witnesses supported the following requirements of section 54 of the UK Act:

- annual reporting on the steps taken to ensure slavery and human trafficking is not taking place in any part of its business or supply chains;³⁷
- statements to be approved by the board of directors (or equivalent) and signed by a director (or equivalent);³⁸
- statements to be published;³⁹ and
- extra-territorial reach to apply to entities conducting business in the UK, regardless of where they are incorporated or formed.⁴⁰

- 3.27 One key advantage of the UK model highlighted by submitters and witnesses was in raising the awareness of modern slavery risks at the highest levels of organisations and across the community. The Committee heard that awareness of modern slavery issues in Australia is generally low. For example, while acknowledging that businesses in Australia 'are at many different stages', Ms Margaret Stuart from Nestlé Australia told the Committee that:

³⁵ Australian Government, *Submission 89*, p. 3.

³⁶ See: DFAT, *Australia's International Strategy to Combat Human Trafficking and Slavery*, March 2016.

³⁷ *Modern Slavery Act 2015 (UK)*, Part 6, Section 54 (4).

³⁸ *Modern Slavery Act 2015 (UK)*, Part 6, Section 54 (6).

³⁹ *Modern Slavery Act 2015 (UK)*, Part 6, Section 54 (7).

⁴⁰ *Modern Slavery Act 2015 (UK)*, Part 6, Section 54 (12). See, for example: LexisNexis, *Submission 137*, p. 6; Responsible Investment Association Australasia, *Submission 68*, p. 6; The Freedom Partnership, *Submission 199*, p. 72.

... awareness of worker exploitation, such as slavery and slavery-like practices, is very low among Australian businesses. Raising awareness has to be the starting point.⁴¹

3.28 The Committee heard that a board-level (or equivalent management level) reporting requirement would help to elevate awareness of modern slavery risks. Ms Tanya Barden, Chief Executive Officer of the Australian Food and Grocery Council, told the Committee:

... the real change here will come from elevating this to a board level. The fact that the act requires either senior executive or board directors to take responsibility will be really where the conversation has the most impact, because the key role of boards is in identifying and managing risks for their organisations. They will have the incentive to take the issue seriously and will face repercussions if issues are found and if they are not adequately dealt with. They will face social licence issues and public pressure because there will be that transparency in that reporting.⁴²

3.29 The other key advantage highlighted was the impact of the public disclosure of statements in driving cultural change towards addressing modern slavery. The Institute for Human Rights and Business submitted that the UK Act:

... has been instrumental in delivering significant change in company practice and has seen anti-slavery initiatives being undertaken by companies individually and collectively in a range of sectors. In particular it has encouraged engagement and action from companies and industry sectors not normally exposed to market-based pressure through consumer-facing reputational risk.⁴³

Commentary on UK Act

3.30 The Committee heard that the introduction of section 54 of the UK Act was having a positive impact in efforts to combat modern slavery in global supply chains.

3.31 The Committee notes that a number of businesses operating in Australia and already required to report under the UK Act, such as Wesfarmers and

⁴¹ Ms Margaret Stuart, Head of Corporate and External Relations, Nestlé Australia, *Committee Hansard*, Sydney, 23 June 2017, p. 27.

⁴² Ms Tanya Barden, Chief Executive Officer, Australian Food and Grocery Council, *Committee Hansard*, Sydney, 23 June 2017, p. 31.

⁴³ Institute for Human Rights and Business, *Submission 146*, p. 3.

Qantas, made submissions to the inquiry.⁴⁴ The Business Council submitted that 46 of its members have published a modern slavery statement in some form. The feedback from these members has been ‘largely positive’, noting the process of reporting:

... has helped identify reporting gaps and systemic issues and provided an impetus for enhanced supply chain governance and the risk of modern slavery to be discussed by a large group of people across the organisation.⁴⁵

3.32 Evidence from UK businesses and NGOs suggested that the introduction of supply chain reporting under the UK Act has been a ‘game-changer’.⁴⁶ In its submission to the inquiry, Ethical Trading Initiative highlighted that research from its 2016 study on business responses to the UK Act⁴⁷ found it was having a ‘galvanising effect’ and that addressing modern slavery was becoming a business-critical issue. The study found that since the introduction of the Act:

- CEO and senior executive engagement on modern slavery issues had doubled;
- communication between companies and suppliers increased by 58%;
- collaboration between companies, peers, NGOs and multi-stakeholder initiatives increased by 50%; and
- companies seeking external advice increased by 50%.⁴⁸

3.33 The positive impact of the UK Act was also highlighted by the UK Home Office’s submission to the inquiry. The UK Home Secretary, the Rt Hon Amber Rudd MP, submitted that while it is ‘too early’ to reliably evaluate the impact of supply chain reporting in the UK, the ‘early signs are promising’:

⁴⁴ See, for example: Wesfarmers, *Submission 3*; Woodside Energy Ltd, *Submission 28*; ANZ Banking Group, *Submission 30*; Rio Tinto, *Submission 78*; Westpac Group, *Submission 136*; Qantas Group, *Submission 141*; Philip Morris, *Submission 179*.

⁴⁵ Business Council of Australia, *Submission 121*, p. 8.

⁴⁶ See, for example: Stronger Together, *Submission 76*; Ethical Trading Initiative, *Submission 145*; Institute for Human Rights and Business, *Submission 146*; Thomson Reuters Foundation, *Submission 144*; Shift, *Submission 150*; Marks and Spencer, *Submission 159*; Pentland Brands, *Submission 164*.

⁴⁷ See: Ethical Trading Initiative, *Corporate Leadership on Modern Slavery*, 28 October 2016, <http://www.ethicaltrade.org/resources/corporate-leadership-modern-slavery> (accessed 27 July 2017).

⁴⁸ Ethical Trading Initiative, *Submission 145*, pp 5–6.

Businesses have responded positively and tell us that modern slavery has been discussed in many board-rooms for the first time. NGOs are setting up online registries to collate the statements, making them readily accessible to 'armchair auditors'. Many business leaders have taken significant action to identify and confront modern slavery in their supply chain[s], and many are working collaboratively with us because they recognise the strong moral and business case for doing so.⁴⁹

3.34 The UK Home Secretary encouraged the Committee to consider introducing similar transparency legislation in Australia and submitted that, in regard to supply chain reporting:

... we think there is merit in governments adopting a legislative approach that incentivises and supports business to take action against slavery, without too many restrictions or red tape.⁵⁰

3.35 However, submitters and witnesses to this inquiry highlighted a number of areas where Australia could improve on the UK Act and proposed a number of principles for consideration. These proposed principles are summarised below.

Proposed principles for Australian legislation

Consistency with international jurisdictions

3.36 Submitters and witnesses highlighted the importance of ensuring that any Australian reporting requirements are consistent with those in other jurisdictions, including the UK, to avoid duplication or varied approaches.⁵¹

3.37 In particular, global companies operating in multiple jurisdictions emphasised the importance of ensuring consistency between reporting requirements and mutual recognition. For example, the Qantas Group, which already produces a statement under the UK Act, expressed concerns about 'the potential duplication of reports companies will be required to

⁴⁹ UK Home Office, *Submission 13*, p. 8.

⁵⁰ UK Home Office, *Submission 13*, p. 8.

⁵¹ See, for example: Adidas Group, *Submission 1*, p. 7; ANZ Banking Group Ltd, *Submission 30*, p. 3; Nestlé Australia, *Submission 65*, p. 14; UN Working Group on Business and Human Rights, *Submission 134*, p. 2.

draft and publish to meet the requirements of these Acts and potentially future parallel legislation around the world'.⁵²

- 3.38 Based on the experience of businesses in the UK, the Advisory Committee for the Modern Slavery Registry submitted that to create a 'consistent global reporting regime', Australia's legislation 'should improve on, while remaining broadly coherent and consistent with, legislation that is in force or awaiting final parliamentary approval':

This would help companies reporting under multiple regimes and avoid reporting fatigue by companies. Many responsible companies tell us that they want this floor of corporate behaviour, but they also want to avoid a "spaghetti soup" of incoherent national laws that would lead to increased reporting costs with no extra impact.⁵³

Consistency with international best practice

- 3.39 A number of submitters and witnesses emphasised that any Australian legislation should be consistent with international business initiatives such as the United Nations Guiding Principles on Business and Human Rights (UN Guiding Principles).⁵⁴
- 3.40 The UN Guiding Principles were endorsed by the UN Human Rights Council on 16 June 2011 and provide a global standard for preventing and addressing the risk of adverse impacts on human rights linked to business activity.⁵⁵ The UN Guiding Principles make it clear that States must protect against human rights abuses by business enterprises within their jurisdiction, and should clearly set out the expectation that businesses respect human rights through their operations, including their supply chains.⁵⁶

⁵² Qantas Group, *Submission 141*, p. 2.

⁵³ Advisory Committee for the Modern Slavery Registry, *Submission 9*, p. 4.

⁵⁴ See, for example: Financial Services Council, *Submission 33*, p. 4; Nestle Australia Ltd, *Submission 65*, p. 13; Shift, *Submission 150*; UNICEF Australia, *Submission 129*; Westpac Group, *Submission 136*; Global Compact Network Australia, *Submission 83*; Sustainable Business Australia, *Submission 101*; Oxfam Australia, *Submission 59*; Law Council of Australia, *Submission 60*; Australian Council of Superannuation Investors, *Submission 107*; Amnesty International Australia, *Submission 154*.

⁵⁵ United Nations Office of the High Commissioner for Human Rights, Guiding Principles on Business and Human Rights, HR/PUB/11/04, 2011, http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf (accessed 30 July 2017).

⁵⁶ UN Working Group on Business and Human Rights, *Submission 134*, p. 1.

3.41 In its submission to the inquiry, the UN Working Group on Business and Human Rights of the UN Human Rights Council urged Australia to:

... demonstrate leadership by joining the growing group of States that have taken legislative steps to strengthen protection of human rights in domestic economies and global supply chains. It is essential that such efforts are aligned with international standards, notably the UN Guiding Principles and relevant ILO conventions and recommendations.⁵⁷

3.42 The Global Compact Network Australia noted that Australian businesses are increasingly using the UN Guiding Principles to 'identify and manage their involvement in adverse human rights impacts including those relating to modern slavery'. Global Compact Network Australia noted that consistency between the UN Guiding Principles and any new legislation would:

... help to avoid confusion and to situate progress around prevention and remediation within the broader human rights framework, ultimately driving better performance around all internationally recognised human rights.⁵⁸

3.43 Australian NGOs strongly supported aligning any possible legislation with the UN Guiding Principles. For example, Anti-Slavery Australia submitted that the UN Guiding Principles:

... provide a flexible framework for businesses and states to prevent human rights abuses. Human trafficking and slavery are often caused by, or occur alongside other human rights abuses, such as extreme poverty and violence against women. The preventative framework of the Guiding Principles is a valuable tool in the elimination of the causes and conditions of human trafficking and slavery.⁵⁹

3.44 The Committee notes that, on 2 June 2017, the Minister for Foreign Affairs, the Hon Julie Bishop MP, announced the establishment of an Advisory Group on Business and Human Rights to provide advice to government and business on the UN Guiding Principles.⁶⁰

⁵⁷ UN Working Group on Business and Human Rights, *Submission 134*, p. 1.

⁵⁸ Global Compact Network Australia, *Submission 83*, p. 3.

⁵⁹ Anti-Slavery Australia, *Submission 156*, p. 76.

⁶⁰ Minister for Foreign Affairs, the Hon Julie Bishop MP, 'Establishment of an Advisory Group on Business and Human Rights', Media Release, 2 June 2017, http://foreignminister.gov.au/releases/Pages/2017/jb_mr_170602b.aspx (accessed 25 July 2017).

Repository of statements

3.45 A majority of submitters and witnesses supported establishing a central repository of modern slavery statements.⁶¹ The Committee heard that a repository would be central to facilitating scrutiny by NGOs, investors and consumers, and in encouraging a ‘race to the top’ among businesses. Mr Gershon Nimbalker from Baptist World Aid Australia told the Committee:

... if we are relying on market forces again to suppress this problem then a central repository just makes sense ... If civil society, business, industry groups and investors want to be able to gather that data and analyse it and understand which companies are putting in relatively more effort, then having that housed in a central place that is regulated helps that to happen.⁶²

3.46 Some submitters expressed a range of views on how an Australian repository should be supported by government, with some suggesting it be hosted by a government department or agency,⁶³ and others suggesting it be funded by government and administered by an NGO or independent agency.⁶⁴

⁶¹ See, for example: Adidas Group, *Submission 1*; Baptist World Aid Australia, *Submission 35*; Anti-Slavery Australia, *Submission 156*; Stop the Traffik, *Submission 93*; Australian Freedom Network, *Submission 26*; Fairtrade Australia and New Zealand, *Submission 49*; Oxfam Australia, *Submission 59*; Australian Sporting Goods Association, *Submission 125*; Law Council of Australia, *Submission 60*; Human Rights Law Centre, *Submission 27*; University of Melbourne, *Submission 61*; Australian Council of Superannuation Investors, *Submission 107*; Hagar Australia, *Submission 99*; The Freedom Partnership, *Submission 199*; Australian Council of Trade Unions, *Submission 113*; Walk Free Foundation, *Submission 91*; Konica Minolta Business Solutions Australia, *Submission 56*; Nestlé Australia, *Submission 65*; Australian Ethical Investment, *Submission 86*; Responsible Investment Association Australasia, *Submission 68*; UNICEF Australia, *Submission 129*. The Committee particularly notes the support for a repository from businesses and NGOs in the UK. See, for example: International Corporate Accountability Roundtable (ICAR) and the Corporate Responsibility Coalition (CORE), *Submission 148*; Stronger Together, *Submission 76*; Marks and Spencer, *Submission 159*; Advisory Committee for the Modern Slavery Registry, *Submission 9*; Ethical Trading Initiative, *Submission 145*; Principles for Responsible Investment, *Submission 39*.

⁶² Mr Gershon Nimbalker, Advocacy Manager, Baptist World Aid Australia, *Committee Hansard*, Sydney, 23 June 2017, p. 57.

⁶³ See, for example: Law Council of Australia, *Submission 60*, p. 8; ACTU, *Submission 113*, p. 5.

⁶⁴ For example, the Walk Free Foundation suggests that the repository be hosted by an independent anti-slavery commissioner. See: Walk Free Foundation, *Submission 91*, p. 57.

- 3.47 The UK Act does not require the government to maintain a repository. The Committee received submissions from two UK NGOs that maintain repositories of modern slavery statements without government support:
- Business and Human Rights Resource Centre: maintains the Modern Slavery Act Registry which lists all statements published under the UK Act;⁶⁵ and
 - TISCreport: maintains a worldwide registry of statements prepared by companies reporting on supply chain transparency.⁶⁶
- 3.48 UK submitters and witnesses suggested that the lack of a legislated and government resourced central repository of statements was a key weakness of the UK Act. Professor Robert McCorquodale, who was the Specialist Advisor to the UK Joint Committee on Human Rights, submitted that while the two NGO-run registries are ‘important projects’:
- ... without a central list of companies required to report under the terms of the Act, it is difficult to put pressure on companies that have not met their obligations.⁶⁷
- 3.49 Mr Kevin Hyland OBE, the UK Independent Anti-Slavery Commissioner, told the Committee that the inclusion of a repository in the UK Act would have been ‘useful’. Mr Hyland suggested that a repository could be funded by government and administered by NGOs or universities to encourage innovation, drive change and raise awareness.⁶⁸
- 3.50 Witnesses at public hearings also gave support for possible Australian collaboration with existing UK registries, to have one reporting database and thus preventing overlap, particularly for companies that might have to report in multiple jurisdictions.

Threshold for reporting

- 3.51 Submitters and witnesses offered a range of views on what the reporting threshold should be for businesses and organisations operating in Australia. Some submitters and witnesses suggested the threshold amount should

⁶⁵ See: Advisory Committee for the Modern Slavery Registry, *Submission 9*. As noted in Chapter 2, a delegation from the Committee met with representatives from the Business and Human Rights Resource Centre during its visit to the UK in late April-early May 2017.

⁶⁶ See: TISCreport, *Semantrica, Submission 183*.

⁶⁷ British Institute of International and Comparative Law, *Submission 108*, p. 2.

⁶⁸ Mr Kevin Hyland, Independent Anti-Slavery Commissioner, Committee Hansard, Canberra, 30 May 2017, p. 9.

consider a combination of factors, including annual turnover and business size.⁶⁹ A range of thresholds based on annual turnover were suggested, including:

- similar to the UK threshold of £36 million (around \$50m to \$60m);⁷⁰
- higher than the UK to only capture large businesses;⁷¹
- lower than the UK to capture small and medium enterprises (SMEs);⁷²
- similar to the \$25 million definition of large companies under the *Corporations Act 2001*;⁷³ or
- other arrangements, such as a tiered threshold for different types of organisations.⁷⁴

3.52 Submitters highlighted the need for particular consideration of SMEs in determining the threshold mechanism. Mr Russell Zimmerman, Executive Director of the Australian Retailers' Association, told the Committee:

... special care must be taken regarding over-regulation and impact on businesses with small turnover who do not have the resources to deal with what are very complex issues.⁷⁵

3.53 Some submitters also suggested that SMEs below the threshold (however determined) should have the option to 'opt-in' and report on supply chain risks.⁷⁶ Mr Forrest told the committee that a mechanism that 'encourages

⁶⁹ See, for example: Business Council of Australia, *Submission 121*, p. 9; Human Rights Law Centre, *Submission 27*, pp 19–20; EY, *Submission 153*, p. 5.

⁷⁰ See, for example: The Freedom Partnership, *Submission 199*, p. 71; Walk Free Foundation, *Submission 91*, p. 53.

⁷¹ See, for example: Australian Retailer's Association, *Submission 131*, p. 1; Business Council of Australia, *Submission 121*, p. 9.

⁷² See, for example: Advisory Committee of the Modern Slavery Registry, *Submission 9*, p. 2; Mr Ryan Turner, *Submission 126*, p. 3; Maritime Union of Australia, *Submission 115*, p. 3; Hagar Australia, *Submission 99*, p. 6; Australian Centre for Corporate Responsibility, *Submission 40*, p. 14.

⁷³ See: Law Council of Australia, *Submission 60*, p. 23.

⁷⁴ See for example: Westpac Group, *Submission 136*, p. 5; Australia Food and Grocery Council, *Submission 77*, p. 5; Ms Siobhan Toohill, Westpac Group, *Committee Hansard*, Sydney, 23 June 2017, p. 37.

⁷⁵ Mr Russell Zimmerman, Executive Director, Australian Retailers' Association, *Committee Hansard*, Sydney, 23 June 2017, p. 19.

⁷⁶ See, for example: Care Australia, *Submission 112*, p. 6; Synceritas and Anderson Fredericks Turner, *Submission 157*, p. 30; UNICEF Australia, *Submission 129*, p. 13; Institute for Human Rights and Business, *Submission 146*, p. 5.

those beneath the threshold to opt-in will improve competition and improve the value of businesses across Australia'.⁷⁷

- 3.54 Similarly, Global Compact Network Australia recommended that businesses below the threshold 'be able to voluntarily "opt in" and produce a modern slavery statement'.⁷⁸
- 3.55 Under the UK Act, the threshold is determined by annual turnover and is set at £36 million, which captures an estimated 12,000 to 18,000 companies.⁷⁹ The threshold amount of £36 million was determined following a consultation process with businesses, NGOs and relevant stakeholders. Around 80 per cent of respondents to the consultation supported the £36 million threshold.⁸⁰
- 3.56 The UK Home Secretary submitted that the reason for applying the threshold to large companies was to reduce the burden on smaller companies:
- By applying Section 54 only to large businesses, we aimed to reduce the administrative burden on smaller businesses while simultaneously ensuring that the actions (or inaction) taken by small businesses who act as suppliers to large businesses would be indirectly captured in those larger companies' statements.⁸¹
- 3.57 Australian businesses supported further consultation on a possible threshold mechanism, coupled with support and guidance from government, particularly for SMEs. The Business Council highlighted the need for further consultation with businesses 'to explore different options for the threshold' and recommended that the Australian Government 'consults extensively

⁷⁷ Mr Andrew Forrest, *Committee Hansard*, Sydney, 23 June 2017, p. 8.

⁷⁸ Global Compact Network Australia, *Submission 83*, p. 5.

⁷⁹ Explanatory memorandum to the Modern Slavery Act 2015 (Transparency in Supply Chains) Regulations 2015, 2015 No. 1833, p. 2, http://www.legislation.gov.uk/ukxi/2015/1833/pdfs/ukxiem_20151833_en.pdf (accessed 27 July 2017).

⁸⁰ Following the passage of the Bill through the Parliament (but prior to Royal Assent), the UK Home Office ran a consultation on the transparency in supply chains clause in the Bill. See: UK Home Office, *Modern Slavery and Supply Chains Government Response: Summary of consultation responses and next steps*, 2015, <https://www.gov.uk/government/consultations/modern-slavery-and-supply-chains> (accessed 27 July 2017).

⁸¹ UK Home Office, *Submission 13*, p. 7.

with business before they define which businesses the legislation will apply to or which parts of a supply chain a business must report on'.⁸²

Guidance for businesses

- 3.58 Submitters and witnesses emphasised the importance of providing government guidance for businesses and organisations on how to report, including on the operation of any threshold mechanism.⁸³ ACCI suggested that one of the key weaknesses of the UK Act was that not enough guidance was provided to businesses prior to the introduction of the legislation.⁸⁴
- 3.59 To assist businesses in complying with the reporting requirements, the UK Home Office prepared guidance for businesses on who is required to publish a statement, how to write a statement and how to approve and publish the statement.⁸⁵
- 3.60 Civil society organisations also played an important role in providing guidance to businesses. In 2016, the Corporate Responsibility Coalition (CORE) prepared guidance material to complement the government material to share ideas about how the UK Act could be used to drive positive change and prevent modern slavery, including forced labour. CORE's report, *Beyond Compliance*, provides advice from civil society groups in the UK.⁸⁶

Prescribing reporting requirements

- 3.61 Submitters and witnesses suggested a range of views on what businesses should be required to report on in their modern slavery statements. As

⁸² Business Council of Australia, *Submission 121*, p. 9.

⁸³ See, for example: ANZ Banking Group Ltd, *Submission 30*, p. 3; Nestlé Australia, *Submission 65*, p. 14; Anti-Slavery Australia, *Submission 156*, p. 84; Konica Minolta Business Solutions, *Submission 56*, p. 2; Ms Abigail McGregor, *Committee Hansard*, Sydney, 23 June 2017, p. 64.

⁸⁴ See: Australian Chamber of Commerce and Industry, *Submission 173*, p. 12.

⁸⁵ UK Home Office, *Transparency in Supply Chains etc.: A practical guide*, 29 October 2015, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/471996/Transparency_in_Supply_Chains_etc_A_practical_guide_final.pdf (accessed 27 July 2017).

⁸⁶ See: CORE, *Beyond Compliance: Effective reporting under the Modern Slavery Act – A civil society guide for commercial organisations on the transparency in supply chains clause*, February 2016, http://corporate-responsibility.org/wp-content/uploads/2016/03/CSO_TISC_guidance_final_digitalversion_16.03.16.pdf (accessed 26 July 2017).

outlined in Chapter 2, the UK Act does not prescribe what a statement must contain, but does provide six areas that a statement *could* contain.⁸⁷

- 3.62 Some NGOs suggested that any Australian legislation should specifically prescribe what modern slavery statements should contain, such as those six suggested areas listed in the UK Act.⁸⁸ These groups expressed concern that the lack of prescribed requirements in the UK has led to inconsistencies in how businesses report. For example, the Walk Free Foundation submitted that in the UK the ‘lack of mandated content creates confusion and a lack of clarity for businesses trying to prepare their modern slavery statements’.⁸⁹
- 3.63 The Committee notes that analysis of UK modern slavery statements by the Business and Human Rights Resource Centre (BHRRC) has found that, to date, the majority of companies are not providing substantive disclosure in most suggested areas under the UK Act, and tend to only report on basic areas.⁹⁰ CORE submitted that only an estimated 14 per cent of the 1800 statements available on the BHRRC’s Modern Slavery Registry comply with the three mandatory requirements of section 54.⁹¹
- 3.64 Some submitters provided suggestions for what requirements should be prescribed. For example, Baptist World Aid Australia suggested a template for reporting similar to those it uses in producing its annual reports on the supply chains in the fashion and electronic industries. Mr Gershon Nimbalker from Baptist World Aid Australia told the Committee:

Our experience of getting companies to report on a template has been that it has helped them guide their behaviours and helped shift their culture, particularly amongst those businesses that recognise this is a problem they want to address. They become businesses that actively seek the guidance of where they want to go.⁹²

⁸⁷*Modern Slavery Act 2015 (UK)*, Part 6, section 54 (5). See Chapter 2.

⁸⁸ See, for example: Baptist World Aid Australia, *Submission 35*, pp 11–12; Anti-Slavery Australia, *Submission 156*, p. 83; Walk Free Foundation, *Submission 91*, p. 51; The Freedom Network, *Submission 199*, p. 75.

⁸⁹ Walk Free Foundation, *Submission 91*, p. 51.

⁹⁰ Advisory Committee of the Modern Slavery Registry, *Submission 9*, p. 3.

⁹¹ International Corporate Accountability Roundtable (ICAR) and the Corporate Responsibility Coalition (CORE), *Submission 148*, p. 10.

⁹² Mr Gershon Nimbalker, Advocacy Manager, Baptist World Aid Australia, *Committee Hansard*, Sydney, 23 June 2017, p. 60.

- 3.65 Other submitters and witnesses, particularly businesses, supported the UK model, which does not prescribe what statements should contain, allowing businesses flexibility to determine how statements should be structured.⁹³ The Business Council expressed support for the UK approach, noting that it ‘provides a common framework for the statements, while not limiting an organisation’s ability to determine which areas they can meaningfully report on.’⁹⁴
- 3.66 Some businesses suggested this ‘light touch’ model of reporting would be more effective in raising awareness of modern slavery issues, and that a more prescriptive requirement could risk becoming a ‘tick-box’ exercise. Ms Margaret Stuart from Nestlé Australia told the Committee:

... the simple reporting requirements of the UK Modern Slavery Act provide a useful way to raise awareness among businesses, and are a way to encourage businesses to begin to turn their collective minds to the question of what might be happening in their supply chains beyond tier 1. We understand the viewpoint of those who want more—who want businesses to do more, to report more and to be held accountable. However, we first have to address awareness, otherwise we risk tick-a-box compliance from businesses that do not really understand what they are doing and therefore do not make any difference to any exploited person anywhere.⁹⁵

- 3.67 Ms Stuart went on to suggest that the market-based system in the UK, which relies on businesses self-regulating how they report, is beginning to yield positive results:

There are early [signs] in the UK that this approach can make a difference. It is encouraging to see that some companies are beginning to put out their second modern slavery report, that they are demonstrating more depth and length and more engagement and thinking around what they can do. It does not take a huge leap of the imagination to expect that businesses in the UK would have been looking over other businesses’ reports, learning what they might do, and

⁹³ See, for example: ANZ Banking Group Ltd, *Submission 30*; Australian Chamber of Commerce and Industry, *Submission 173*; Australian Retailers’ Association, *Submission 131*; Norton Rose Fulbright, *Submission 72*; Ms Abigail McGregor, Norton Rose Fulbright, *Committee Hansard*, Sydney, 23 June 2017, p. 68.

⁹⁴ Business Council of Australia, *Submission 121*, p. 12.

⁹⁵ Ms Margaret Stuart, Head of Corporate and External Relations, Nestlé Australia, *Committee Hansard*, Sydney, 23 June 2017, p. 27.

beginning to see what they can do next. In short, the market is beginning to work.⁹⁶

- 3.68 The UK Home Secretary submitted that the UK model is designed to encourage innovative approaches from businesses on how to address modern slavery risks in their supply chains:

We decided to avoid setting minimum standards in the Act because this would run the risk of incentivising businesses to achieve the bare minimum - compliance and nothing more - instead of creating a space for business leaders to work collaboratively with us on innovative and creative ways to pull up slavery by the root.⁹⁷

Due diligence

- 3.69 Some submitters and witnesses, particularly NGOs, suggested that the prescriptive reporting requirements should include mandatory due diligence. These groups argued that Australia's legislation should go further than the UK Act and require businesses to demonstrate due diligence in examining their supply chains, similar to recently introduced legislation in France and the Netherlands, and conflict mineral reporting requirements in the United States (see Chapter 2).⁹⁸

- 3.70 The Advisory Committee for the Modern Slavery Registry in the UK suggested that the Australian government should:

...require companies to put in place and report on due diligence processes, in particular on processes to assess and address modern slavery risks in their own operations and supply chains.⁹⁹

- 3.71 However, a number of businesses and business groups did not support due diligence measures.¹⁰⁰ For example, the Business Council noted that the due diligence model is 'new and untested' and there is 'a high risk that this type of approach will result in unnecessary regulatory overburden and be

⁹⁶ Ms Margaret Stuart, Head of Corporate and External Relations, Nestlé Australia, *Committee Hansard*, Sydney, 23 June 2017, p. 27.

⁹⁷ UK Home Office, *Submission 13*, p. 7.

⁹⁸ See, for example: Assent Compliance, *Submission 7*, p. 4; Ethical Trading Initiative, *Submission 145*, p. 4; Baptist World Aid Australia, *Submission 35*, p. 12; Dr Leeora Black, Australian Centre for Corporate Social Responsibility, *Committee Hansard*, Sydney, 23 June 2017, p. 49.

⁹⁹ Advisory Committee of the Modern Slavery Registry, *Submission 9*, p. 3.

¹⁰⁰ See, for example: Norton Rose Fulbright, *Submission 72*, p. 19.

onerous and costly for companies without any experience reporting on modern slavery issues'.¹⁰¹

Penalties and compliance measures

- 3.72 Submitters and witnesses expressed a range of views on whether the Australian model should contain penalties and compliance measures for those businesses and organisations required to report. As noted in Chapter 2, the UK Act does not contain penalties or sanctions.¹⁰²
- 3.73 Some submitters expressed concern about the UK approach of relying on market and reputational consequences to encourage compliance. The Adidas Group noted that while potential reputational risks may be a strong motivator for consumer-facing companies, it is 'less effective for businesses where their public profile, scale, services or products are not reputation-sensitive'.¹⁰³
- 3.74 Some submitters suggested that Australia's model should include penalties or sanctions.¹⁰⁴ Anti-Slavery Australia submitted that market disclosure is a 'weak regulatory tool' and argued that the 'serious risk of criminal slavery and human trafficking being supported and hidden by complex supply chains necessitates a stronger regulatory framework', including penalties and sanctions to deter non-compliance.¹⁰⁵
- 3.75 A number of submitters suggested that compliance measures should include government publishing a list of those businesses required to report.¹⁰⁶ Others suggested publishing a list of businesses that do not report.¹⁰⁷ The Advisory Committee for the Modern Slavery Registry in the UK submitted that experience in the UK had shown that:

Identifying which companies are and aren't required to report poses a significant logistical difficulty for civil society and other stakeholders. Not

¹⁰¹ Business Council of Australia, *Submission 121*, p. 9.

¹⁰² See: Chapter 2, 2.43.

¹⁰³ Adidas Group, *Submission 1*, p. 7.

¹⁰⁴ See, for example: Advisory Committee of the Modern Slavery Registry, *Submission 9*, pp 3–4; Baptist World Aid Australia, *Submission 35*, p. 13; Mr Ryan J Turner, *Submission 126*, p. 5.

¹⁰⁵ Anti-Slavery Australia, *Submission 156*, p. 86.

¹⁰⁶ See, for example: Walk Free Foundation, *Submission 91*, p. 7; Advisory Committee of the Modern Slavery Registry, *Submission 9*, p. 3; Ethical Trading Initiative, *Submission 145*, p. 3; Institute for Human Rights and Business, *Submission 146*, p. 7.

¹⁰⁷ See, for example: Australian Centre for Corporate Social Responsibility, *Submission 40*, p. 4.

having in place an easy way for stakeholders to identify which companies are captured under the reporting requirements significantly weakens the integrity of the provision and allows less public facing companies to go undetected.¹⁰⁸

3.76 However, other submitters, particularly businesses, did not support a punitive approach. These submitters suggested that a market-based system based on the UK model would be more effective in encouraging businesses to investigate and report.¹⁰⁹ Mr Forrest told the Committee:

The prospect of severe penalties if industries look for slavery in their supply chains and find it is the exact reason why they will not look. In fact, we need to really encourage and celebrate industries that do look and that have found slavery in their supply chains, because we know for sure that active looking and finding will bring freedom to those otherwise completely enslaved people.¹¹⁰

3.77 Similarly, Ms Siobhan Toohill from Westpac Group argued that an ‘if-not why-not’ approach, rather than a punitive approach, would encourage businesses to work more collaboratively to address modern slavery issues:

We think encouraging participation is certainly an important way to drive engagement and, by taking an if-not why-not approach, would be more likely to ... [ensure having] conversations around how organisations can improve. You might see greater levels of disclosure and organisations prepared to talk about the challenges as well as the opportunities, and that is where you see the greatest cultural change.¹¹¹

3.78 Some evidence supported mandating the submission of statements, with penalties for non-compliance; penalties for those who find modern slavery then refuse to do anything about it; and/or penalties for companies directly engaged or knowingly using companies with modern slavery. However, most opposed penalties for those companies that look for and find incidences of modern slavery.

¹⁰⁸ Advisory Committee of the Modern Slavery Registry, *Submission 9*, p. 3.

¹⁰⁹ See, for example: Norton Rose Fulbright, *Submission 72*, p. 19.

¹¹⁰ Mr Andrew Forrest, *Committee Hansard*, Sydney, 23 June 2017, p. 6.

¹¹¹ Ms Siobhan Toohill, Westpac Group, *Committee Hansard*, Sydney, 23 June 2017, p. 37.

Public procurement

3.79 Some submitters and witnesses questioned whether government and public bodies should also be required to report on their supply chains. As outlined in Chapter 2, public bodies in the UK are not required to report.

3.80 A number of organisations recommended that public bodies, including the Australian government, be required to report on their procurement activities.¹¹² Professor Jennifer Burn from Anti-Slavery Australia told the Committee this would provide an opportunity for the Australian Government to demonstrate global leadership in ethical and responsible business practices:

... there is an inescapable and compelling obligation on government to exercise ethical and moral leadership and ensure that government procurement processes are free of the risk of human rights abuses, including slavery and forced labour.¹¹³

3.81 Other submitters and witnesses suggested that government and public bodies should be required to source only from those businesses found to be in compliance with the proposed supply chain reporting requirements. Australia's Ambassador for People Smuggling and Human Trafficking, Mr Andrew Goledzinowski, told the Committee:

I would think that it would be open to government to say that government agencies should procure only from those Australian companies that were in compliance with that modern slavery act.¹¹⁴

3.82 The Committee notes that an opt-in reporting option for businesses below the threshold would ensure that small businesses would not be disadvantaged in working with government.

3.83 Ambassador Goledzinowski went on to state that well over 90 per cent of all procurement from government comes from Australian companies:

So if those companies are in compliance I would have thought that was, at least prime facie, satisfying of our obligation to ... procure ethically. If they are

¹¹² See, for example: Ethical Trading Initiative, *Submission 145*, p. 4; The Freedom Partnership, *Submission 199*, pp 78–79; Anti-Slavery Australia, *Submission 156*, pp 87–88; Walk Free Foundation, *Submission 91*, p. 27.

¹¹³ Professor Jennifer Burn, Director, Anti-Slavery Australia, *Committee Hansard*, Sydney, 23 June 2017, p. 11.

¹¹⁴ Ambassador Andrew Goledzinowski, *Committee Hansard*, Canberra, 22 June 2017, p. 9.

not in compliance I would think it might be open to government to say that departments should not procure from those companies.¹¹⁵

3.84 The Committee notes that, in June 2017, the Joint Select Committee on Government Procurement Rules considered human rights risks in government procurement policies and recommended that the Attorney-General's Department:

... oversee the introduction and application of a procurement connected policy requiring Commonwealth agencies to evaluate suppliers' compliance with human rights regulation.¹¹⁶

3.85 Some witnesses suggested that the requirement to comply with the requirements of a Modern Slavery Act should also apply to Australia's foreign aid program and funds provided to foreign governments.¹¹⁷

Need for further consultation

3.86 Submitters and witnesses emphasised that further consultation on the specifics of any reporting requirements would need to be undertaken prior to the introduction of any legislation.¹¹⁸ ACCI suggested that possible next steps could be:

... a discussion paper / more refined set of questions to encourage further engagement and invite more detailed input on how Australia should do more to address forced labour beyond our shores ... Only following the next stage of this process should there be any consideration of legislation.¹¹⁹

3.87 The Committee notes that, in the UK, the Draft Modern Slavery Bill was considered by a Parliamentary Joint Committee prior to its introduction, and businesses were later consulted in the development of the threshold

¹¹⁵ Ambassador Andrew Golezdzinowski, *Committee Hansard*, Canberra, 22 June 2017, p. 9.

¹¹⁶ Joint Select Committee on Government Procurement Rules, *Buying into our Future: review of amendments to the Commonwealth Procurement Rules*, June 2017, Canberra, p. 130, http://parlinfo.aph.gov.au/parlInfo/download/committees/reportjnt/024068/toc_pdf/BuyingintourFuture.pdf;fileType=application%2Fpdf (accessed 27 July 2017).

¹¹⁷ See, for example: Cambodian Children's Trust, *Submission 25*, p. 3.

¹¹⁸ See, for example: Mr Russell Zimmerman, Executive Director, Australian Retailers' Association, *Committee Hansard*, Sydney, 23 June 2017, p. 19.

¹¹⁹ Australian Chamber of Commerce and Industry, *Submission 173*, p. 5.

mechanism.¹²⁰ The Committee notes that this approach could be considered should an Australian Modern Slavery Bill be drafted.

Independent Anti-Slavery Commissioner

3.88 A number of submitters and witnesses supported the establishment of an Independent Anti-Slavery Commissioner, similar to the role established under the UK Act.¹²¹ The UK Commissioner, Mr Kevin Hyland OBE, told the Committee that the key focus of his role is in assisting to identify and support victims of modern slavery, and prosecute offenders:

... my role as the commissioner is about working with government and other agencies. We are working with non-government organisations, businesses and key stakeholders as a critical friend to ensure that consistent focus on the identification and support of victims is there for this abhorrent crime whilst, at the same time, we need to make sure that we are pursuing those who inflict the suffering so that they are brought to justice.¹²²

3.89 The Committee notes that the Joint Committee on Law Enforcement has recently recommended that the Australian Government consider appointing an Anti-Slavery and Trafficking Commissioner to monitor and implement the *National Action Plan to Combat Human Trafficking and Slavery 2015-19*.¹²³

3.90 Some submitters and witnesses to this inquiry suggested that a Commissioner should have a role in monitoring and enforcing the proposed supply chain reporting requirements. For example, the Walk Free Foundation suggested that the Commissioner host the repository of modern slavery statements:

The Office of the Commissioner may be the appropriate home for the repository, particularly given the Commissioner's remit to work with the

¹²⁰ See: Joint Committee on the Draft Modern Slavery Bill, Report, Session 2013-14, 8 April 2014, <http://www.parliament.uk/business/committees/committees-a-z/joint-select/draft-modern-slavery-bill/> (accessed 5 July 2017).

¹²¹ See, for example: Walk Free Foundation, *Submission 91*, p. 7; Stop the Traffik, *Submission 93*, p. 13; International Justice Mission Australia, *Submission 118*, p. 35; Anti-Slavery Australia, *Submission 156*, p. 6; The Freedom Network, *Submission 199*, p. 6. The arguments for the establishment of an Independent Anti-Slavery Commissioner will be considered in detail in the Committee's final report.

¹²² Mr Kevin Hyland OBE, Independent Anti-Slavery Commissioner, *Committee Hansard*, Canberra, 30 May 2017, p. 3.

¹²³ Joint Committee on Law Enforcement, *An inquiry into human trafficking, slavery and slavery-like practices*, 18 July 2017, Canberra, p. 42.

private sector. While the maintenance and management of a repository will require a different skill set and additional staff, the Office of the Commissioner would provide the required independence and ensure business and community confidence.¹²⁴

3.91 Mr Hyland did not support his office maintaining a repository, suggesting that it could challenge his independence:

If I were seen as the adjudicator on whether it is a good statement or a bad statement, suddenly I would get drawn into arguments and issues I should not be addressing.¹²⁵

3.92 The Committee notes that, in the UK, providing oversight of supply chain reporting is only one aspect of the Commissioner's role. As the other key functions of the Commissioner's role fall outside the scope of this interim report (such as law enforcement and victim support), the Committee will consider the exact role of an Australian Independent Anti-Slavery Commissioner in its final report.

¹²⁴ Walk Free Foundation, *Submission 91*, p. 57.

¹²⁵ Mr Kevin Hyland, Independent Anti-Slavery Commissioner, *Committee Hansard*, Canberra, 30 May 2017, p. 9.

4. Recommendations and statements of in-principle support

4.1 The Committee shares the concerns of submitters and witnesses to this inquiry about the significant risk of modern slavery in the supply chains of companies, businesses, organisations and governments operating in Australia. The Committee acknowledges that similar concerns were also expressed by its predecessor Committee in its 2013 report *Trading Lives: Modern Day Human Trafficking*,¹ and more recently by the Joint Committee on Law Enforcement.²

4.2 The Committee gives in-principle support for developing a Modern Slavery Act in Australia, including mandatory supply chain reporting requirements for companies, businesses, organisations and governments and an Independent Anti-Slavery Commissioner. The Committee notes that it will consider other elements of a potential Modern Slavery Act in its final report, including prevention measures, support for victims, improvements to Australia's visa regime and prevention of orphanage tourism, as well as other recommended changes to Australian law, policy and practices to combat modern slavery.

¹ See: Joint Standing Committee on Foreign Affairs, Defence and Trade, *Trading Lives: Modern Day Human Trafficking*, 24 June 2013, Recommendation 7.

² Joint Committee on Law Enforcement, *An inquiry into human trafficking, slavery and slavery-like practices*, 18 July 2017, Canberra, p. 56.

Support for supply chain reporting

- 4.3 The Committee acknowledges the strong support from businesses, investors, NGOs, unions, legal experts and other groups for the introduction of a supply chain reporting requirement in Australia, similar to but improving upon section 54 of the UK Act.
- 4.4 The Committee acknowledges that some business representatives, such as the Australian Chamber of Commerce and Industry, suggested that the introduction of reporting requirements should be subject to further consultation prior to consideration. The Committee notes that the high level of engagement from businesses and NGOs already demonstrates a strong level of support for action on this issue.
- 4.5 The Committee particularly recognises suggestions from businesses that a reporting requirement would 'level the playing field', both for those businesses already taking measures to address modern slavery risks in their supply chains and those already required to report in overseas jurisdictions.
- 4.6 The Committee gives in-principle support for mandatory annual modern slavery supply chain reporting requirements to apply, above a particular threshold, to companies, businesses, organisations (including religious organisations) and governments operating in Australia.
- 4.7 The Committee gives in-principle support for a requirement that the Board (or equivalent level of a company, business, organisation or government) approve modern slavery statements.

Support for the UK model

- 4.8 The Committee acknowledges the support for the basic reporting model set out in section 54 of the UK Act, particularly the requirements for public disclosure and board approval of modern slavery statements, and extra-territorial application. While acknowledging that the UK model has only recently been implemented, the Committee is encouraged by the early indications of its positive effect in raising the awareness of modern slavery issues among businesses and the broader community, while recognising the need to make further improvements.
- 4.9 The Committee recognises that during the recent visit to the UK by a delegation of the Committee, the positive impact of the UK Act in raising awareness of modern slavery was described by some organisations as a

‘game changer’. The delegation is grateful for the valuable advice provided by these groups during its visit. The itinerary for the delegation is at **Appendix A**.

4.10 The Committee recognises that, should a reporting requirement be introduced in Australia, there is significant potential to improve on the UK model.

4.11 The Committee gives in-principle support to key elements of the UK model of supply chain reporting and will continue to investigate possible improvements to this model in its final report.

Proposed principles for Australian legislation

Consistency with international jurisdictions and best practice

4.12 The Committee agrees that consistency with international jurisdictions should be a central consideration for any potential Australian reporting requirement. The Committee also acknowledges that existing voluntary initiatives, such as the UN Guiding Principles on Business and Human Rights, provide a useful framework and should be considered in the development of any Australian legislation.

4.13 The Committee gives in-principle support for ensuring that any supply chain reporting requirement be consistent with international jurisdictions and best practice, including Australia’s obligations under international law.

Repository of statements

4.14 The Committee is persuaded by arguments that a central repository of modern slavery statements would improve scrutiny by NGOs, investors and consumers, and encourage a ‘race to the top’ for businesses and organisations. It notes the opportunity to collaborate on a combined platform or international registry.

4.15 The Committee notes that the need for consistency with international jurisdictions and a central repository were key themes raised by UK businesses and organisations during the delegation visit to the UK.

4.16 The Committee gives in-principle support for the establishment of a legislated and government-funded central repository containing modern

slavery statements. The Committee is of the view that the Australian Government should work with existing modern slavery registries to create a combined and consistent registry to which statements can be submitted to prevent unnecessary duplication.

- 4.17 The Committee will further consider whether a modern slavery central repository should sit under the Independent Anti-Slavery Commissioner or elsewhere, noting the comments by the UK's Independent Anti-Slavery Commissioner on this matter outlined in Chapter 3.
- 4.18 The Committee will further consider whether it should be made compulsory for a company, business, organisation or government to publish their modern slavery statement on their website and/or in their annual report.

Threshold for reporting

- 4.19 The question of a threshold, and the appropriate level of the threshold, for reporting requirements attracted a range of views from submitters and witnesses. The Committee considers that a threshold above which businesses and organisations must report should be introduced. The Committee will continue to receive submissions and evidence in public hearings, as well as consult with businesses and organisations, in the lead up to the final report to determine an appropriate threshold.
- 4.20 The Committee considers that any threshold should consider both size and turnover of businesses and should ensure that small businesses are not unfairly disadvantaged. The Committee agrees that an opt-in option for businesses below the threshold should be considered.

- 4.21 The Committee gives in-principle support for a threshold to be introduced, above which companies, organisations, businesses and governments must report on modern slavery in their supply chains. The exact threshold will be considered further in the Committee's final report.
- 4.22 The Committee gives in-principle support for the introduction of an opt-in option to allow companies, businesses, organisations and governments below the threshold to undertake supply chain reporting on modern slavery.
- 4.23 The Committee gives in-principle support for ensuring that the proposed reporting requirement enables businesses, companies, organisations and governments that are part of a supply chain to provide a single statement

of compliance to multiple clients.

Prescribing reporting requirements

- 4.24 The Committee acknowledges that submitters and witnesses offered a range of differing views on the level of government involvement in prescribing reporting requirements (including due diligence), setting a threshold for reporting and enforcing penalties and compliance measures. The Committee will consider these arguments in more detail in its final report, and offers its preliminary assessment of each issue below.
- 4.25 The Committee acknowledges concerns that the UK model of not prescribing specific reporting requirements may lead to confusion for businesses and difficulties for NGOs in scrutinising potentially inconsistent statements. However, the Committee also acknowledges that allowing businesses and organisations flexibility in how they report could encourage more innovative approaches to reporting and more detailed consideration appropriate to the structure and operation of the organisation. Any reporting requirements should be clear for businesses and organisations required to report, and flexible enough to encourage innovation and to avoid a 'tick box' exercise.
- 4.26 The Committee recognises the support for due diligence requirements, similar to legislation in France and the Netherlands. The Committee shares the concerns of some businesses that due diligence requirements are only relatively new and risk placing an undue burden on small and medium-sized enterprises. The Committee notes that some businesses have already developed internal due diligence processes and that a public reporting mechanism based on the UK model will assist these businesses in promoting these endeavours.
- 4.27 The Committee will continue to consider possible due diligence requirements, leading up to the final report.
- 4.28 The Committee will further consider prescriptive requirements for what statements include. Notwithstanding, it is of the view that the Modern Slavery Act outline at minimum what statements *should* include, in addition to allowing for innovation in reporting. The Committee is also of the view that guidelines should also be produced consistent with international best practice. These issues will be considered further in the Committee's final report.
- 4.29 The Committee is of the view that its final report further consider due

diligence requirements, as suggested by a number of submitters and witnesses.

Guidance for businesses

4.30 The Committee recognises the important role for government in raising awareness of modern slavery issues and providing clear guidance for companies, businesses, organisations and other Australian governments on how to report on supply chain risks.

4.31 The Committee gives in-principle support for a broad definition of modern slavery to be included in the Modern Slavery Act, to help guide companies, businesses, organisations and governments on what to look for within their supply chains, including, but not limited to, forced labour, child labour, bonded labour, human trafficking, domestic servitude, orphanage trafficking, sex trafficking, forced marriage, slavery and other slavery-like practices. A full non-exhaustive list of terms will be considered in the Committee's final report.

4.32 The Committee gives in-principle support for the Australian Government to fund public awareness raising, information and training about modern slavery and modern slavery in supply chains, particularly for companies and businesses, as well as for front-line services, departments and embassies.

4.33 The Committee gives in-principle support for lists of at-risk industries, at-risk areas and at-risk groups in Australia and within Australian supply chains to be published by the Australian Government.

4.34 The Committee gives in-principle support for the Australian Government to publish a list of companies, organisations, businesses and governments to which the Modern Slavery Act supply chain reporting requirements apply.

Penalties and compliance measures

4.35 Similarly, the question of penalties and compliance measures attracted a range of conflicting views. The Committee acknowledges concerns from NGOs that the lack of penalties for non-compliance in the UK Act has meant many businesses and organisations have not reported, and that those that have lack incentive to adequately identify and address modern slavery risks in their supply chains. However, the Committee considers that the market-

based model of compliance used in the UK will develop over time and encourage a 'race to the top' for businesses and organisations.

4.36 The Committee is encouraged by evidence from the UK that the content of modern slavery statements in the UK is improving, and that businesses and organisations are developing more sophisticated approaches to addressing supply chain risks.

4.37 The Committee gives in-principle support for the Australian Government to mandate reporting for companies, businesses, organisations and governments above the threshold, with penalties applying for those that do not report or do not report in compliance with the Modern Slavery Act reporting requirements.

4.38 The Committee does not in-principle support penalties applying to companies, businesses, organisations and governments that look for and do find modern slavery within their supply chains, and are acting to address the issues identified, as this would discourage them looking into their supply chains in the first place.

4.39 The Committee gives in-principle support for the Australian Government to publish a list of companies, businesses, organisations and governments above the threshold that do not comply with the Modern Slavery Act supply chain reporting requirements.

4.40 The Committee gives in-principle support for the Australian Government to publish a list of companies, businesses, organisations and governments above the threshold that are in compliance with modern slavery statements.

4.41 The Committee gives in-principle support for the Australian Government to publish a list of companies, businesses, organisations and governments below the threshold that submitted optional statements to encourage others to report.

Public procurement

4.42 The Committee notes that the Australian Government has an opportunity to lead by example in applying any modern slavery supply chain reporting requirements to government procurement policies.

4.43 The Committee supports the recommendation by the Joint Select Committee on Government Procurement Rules to develop a procurement policy

consistent with human rights regulation. The Committee considers that consideration of modern slavery risks should be included in this policy.

- 4.44 The Committee gives in-principle support for the Australian Government to introduce into its procurement requirements that it only engages with companies, businesses, organisations and other Australian governments that have submitted modern slavery statements. The Committee considers that this would encourage smaller companies to also report via the opt-in option.

Independent Anti-Slavery Commissioner

- 4.45 The Committee acknowledges the support for the establishment of an Independent Anti-Slavery Commissioner. As the key functions of the Commissioner fall outside the scope of this interim report, the Committee will consider the exact role of a Commissioner in its final report.
- 4.46 The Committee notes that the Joint Committee on Law Enforcement has already recommended that the Australian Government consider establishing an Anti-Slavery and Trafficking Commissioner. The Committee agrees that it is crucial that such a role be independent of government.

- 4.47 The Committee gives in-principle support for Australia establishing in its Modern Slavery Act an Independent Anti-Slavery Commissioner, who would have the ability to consult, advise, report on and make recommendations with respect to modern slavery supply chain reporting. The Committee concurs with the recommendation of the Joint Committee on Law Enforcement on this matter, but notes that the Commissioner should be truly independent of government. The Australian Government could consider incorporating the current People Smuggling and Human Trafficking Ambassador within this role. The possible role of the Commissioner will be considered further in the Committee's final report.
- 4.48 The Committee gives in-principle support to a legislated review of an Australian Modern Slavery Act at least every three years. The Committee is of the view that the proposed Independent Anti-Slavery Commissioner would be best placed to undertake these reviews, in addition to suggesting other recommended changes outside of the Modern Slavery Act to combat modern slavery.

Further consultation

- 4.49 The Committee agrees that, should a Modern Slavery Act be considered, further consultation should be undertaken with businesses, NGOs and other relevant stakeholders on the specific draft provisions for supply chain reporting requirements. The Committee suggests that the UK approach of consulting on a draft Bill prior to its introduction to the Parliament may be appropriate for Australia to consider.
- 4.50 The Committee acknowledges that the Australian Government is currently considering the reporting requirements of the UK Act and other best practice legislation. The Committee considers that its in-principle support for supply chain reporting requirements should be looked at as part of the Bali Process Government and Business Forum in Perth on 24 and 25 August 2017.
- 4.51 The Committee is of the view that its final report should consider, along with supply chains, how to ensure that foreign aid or corporate, business and organisational giving does not directly or indirectly support modern slavery practices, including via aid or giving to foreign governments.
- 4.52 The Committee is of the view that its final report should consider other measures to combat modern slavery in global supply chains, such as regulating the importation of goods that have been produced using modern slavery, similar to the US *Trade Enforcement and Facilitation Act of 2015*.
- 4.53 The Committee is of the view that its final report should consider whether the Australian Government should, at a later stage, introduce a mark that could be used by modern slavery compliant companies, businesses, organisations and governments.
- 4.54 The Committee will consider and consult further on the statements of in-principle support above, leading up to the final report. The Committee will consider additional supply chain and other elements of a Modern Slavery Act in its final report, as well as other changes necessary to combat modern slavery in Australia.

Recommendations

Recommendation 1

4.55 The Committee recommends that the Australian Government consider supporting in-principle the development of a Modern Slavery Act in Australia, including supply chain reporting requirements for companies, businesses, organisations and governments in Australia, as well as an Independent Anti-Slavery Commissioner, subject to reviewing the recommendations of the Committee's final report. The Committee will provide further recommendations for the content of a Modern Slavery Act in its final report, as well as other necessary changes to Australian legislation, policies and practices to combat modern slavery.

Recommendation 2

4.56 The Committee recommends that the Australian Government consider the Committee's in-principle support for a Modern Slavery Act, including supply chain reporting requirements and an Independent Anti-Slavery Commissioner, as part of Australia's contribution to the Bali Process Government and Business Forum in Perth on 24 and 25 August 2017.

Recommendation 3

4.57 The Committee recommends that the Australian Government consider this interim report as part of its current review of corporate reporting, with a view to developing legislation requiring businesses, companies, organisations and governments operating in Australia to report on measures taken to address modern slavery in their global supply chains, in accordance with the recommendations in the Committee's final report.

Senator David Fawcett

Mr Chris Crewther MP

Chair

Chair

Joint Standing Committee on

Foreign Affairs and Aid

Foreign Affairs, Defence and Trade

Sub-Committee

A. UK delegation itinerary

From 26 April to 2 May 2017, an Additional Parliamentary Delegation from the Foreign Affairs and Aid Sub-Committee of the Joint Standing Committee on Foreign Affairs, Defence and Trade visited London as part of this inquiry.

The delegation participated in the Commonwealth Parliamentary Association (CPA) UK's Modern Slavery Project Asia-Pacific Regional Workshop from 26 to 28 April together with parliamentarians and officials from Bangladesh, India, Pakistan, Sri Lanka and New Zealand. The delegation also met with representatives from the UK Government, businesses and NGOs about the development and implementation of the UK *Modern Slavery Act 2015*.

Table A.1 outlines the itinerary for the delegation.

Table A.1 UK delegation itinerary

Date	Meeting
26 April 2017	
27 April 2017	CPA UK Modern Slavery Project Asia Pacific Regional Workshop
28 April 2017	
2 May 2017	UK Home Office Modern Slavery Unit Mr Offer Stern-Weiner, Head Ms Helen Richardson, Head of International

Ms Elizabeth Gear

ECPAT UK

Ms Bharti Patel, Chief Executive Officer

Mr Ryan Mahan, Head of Information and Online Campaigns

British Red Cross

Ms Kathryn Baldacchino, Head of Anti-Trafficking

Ms Rosie Langley

Mr Alex Fraser

Salvation Army Mission Service

Major Anne Read, Director of Anti-Trafficking and Modern Slavery

Major Paul Kingscott, Assistant Secretary

Sky UK

Ms Fiona Ball, Responsible Business Manager

AMAR Foundation

Baroness Nicholson of Winterbourne

3 May 2017

The Freedom Fund

Mr Nick Grono, Chief Executive Officer

Business and Human Rights Resource Centre

Mr Phil Bloomer, Executive Director

Ms Patricia Carrier, Modern Slavery Registry Project Manager

Ms Samentha Goethals

**National Society for the Prevention of Cruelty to Children
(NSPCC)**

Mr John Cameron OBE, Head of Helplines

Ms Mandy John-Baptiste

Ms Louise Exton

Gangmasters and Labour Abuse Authority

Mr Darryl Dixon, Director of Strategy

Ms Caroline Haughey, Furnival Chambers

Anti-Slavery International

Dr Aidan McQuade, Director

Marks and Spencer

Mr Mike Barry, Director of Sustainable Business

Ms Louise Nicholls, Head of Corporate Human Rights
