

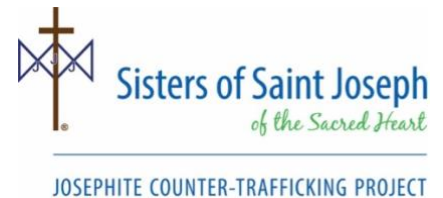


# INQUIRY INTO CUSTOMS AMENDMENT (BANNING GOODS PRODUCED BY UYGHUR FORCED LABOUR)

## Bill 2020



Australian Catholic Religious Against Trafficking in Humans



## 1. INTRODUCTION

Be Slavery Free is part of the global movement that aims to prevent, disrupt and abolish slavery. We work collaboratively with other organisations to effect change. Be Slavery Free has been engaged in this issue involving China's persecuted minorities, including as a member of the Coalition to End Uyghur

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Forced Labour in China.<sup>1</sup> Together with the organisations listed at the conclusion, we have examined the documents related to this Inquiry, agreed on the key issues which we wish to address, and prepared this response.

The organisations who make up the Coalition are diverse. We work in areas of:

- Consumer-driven campaigning and general community awareness, education on modern slavery and its prevention
- Working with business to increase traceability and transparency in their supply chains
- Introduce measures to illuminate human trafficking, slavery and slavery-like practices and highlight businesses that are making progress
- Convening and collaborating with other civil society groups for joint actions to abolish slavery and slavery-like practices
- International development work focused on poverty alleviation, economic dignity, after-care of survivors and re-integration programs
- Legal services and care for persons who have experienced slavery in Australia

Together, we welcome this opportunity to comment on the Customs Amendment (Banning Goods Produced by Uyghur Forced Labour) Bill 2020. We would be happy to appear before the Inquiry to discuss this submission.

We understand the amendment is seeking to address the following:

1. More than a million Uyghurs and Turkic Muslim minorities are in ‘re-education camps’ as well as being forced into ‘vocational training’ work in factories and on farms in Xinjiang Province and being moved to other Chinese provinces.
2. Their labour takes place in the context of extensive and intrusive surveillance and at times in the context of internment or imprisonment. They are not free to leave.
3. Failure to comply with the programs results in penalties, including loss of personal freedom and other sanctions, including against family members.
4. These factories supply global brands in industries ranging from garments and electronics to home decorations. These brands profit from this forced labour and provide their goods to consumers, including in Australia.

## **2. THE PROPOSED AMENDMENT**

To prohibit the importation into Australia of goods from Xinjiang province in the People's Republic of China as well as goods from other parts of China that are produced in whole or part by using forced labour.

*The importation of the following goods is prohibited absolutely:*

*a. Goods produced or manufactured in the Xinjiang Autonomous Region of the People's Republic of China;*

*b. Goods produced or manufactured in the People's Republic of China through the use of forced labour (within the meaning of the Criminal Code).<sup>2</sup>*

### 3. MOVING FROM OUR USUAL ‘NAME AND FAME’ APPROACH

Be Slavery Free typically takes a ‘Name and Fame’ approach to addressing modern slavery and slavery-like practices in supply chains. This means we seek to work with entities to identify the changes which need to be made, to more fully address slavery issues. We request the changes needed, publicly acknowledge the changes that are made, and learnings which come out of the process.

We encourage continuous improvement in policies, programs and impact. We highlight ‘what good looks like’ in addressing modern slavery. This approach means it is rare for us to be part of asking for a ban or a boycott.

#### **So why are we supporting this Bill which takes a more decisive approach regarding the Xinjiang region and forced labour in China?**

When an issue is a gross violation of human rights and a practice is systemic, embedded and sanctioned in the policies and plans of a government, the actions of business and civil society become at best, limited and at worst, futile without Government engagement.

We also take very seriously the potential impacts of such a ban. In this case, our deliberations have included (but is not limited to):

1. Such a ban will likely impact the entire Xinjiang economy – even those places where forced labour is not present. In this instance, we listen to the people most impacted and try and establish if they are supportive of such bans.<sup>3</sup> We believe there is support backed by credible complaints of forced labour of Uyghur and other Muslim minorities from Xinjiang (which is explained in more detail in Section 8 of this submission)
2. There will be an impact on Australian businesses who source (knowingly or unknowingly) from the region. Australian businesses are scrambling to know what to do. Access to the factories and the region is severely limited. The safety and security of people working for Australian businesses in the region is a major concern. Government action is required to support business concerns in addressing this matter.
3. Whilst China is not the only place in the world where state-sanctioned forced labour is taking place, it is our only major trading partner engaged in such human rights violations. Australia imports in excess of 78 million dollars’ worth of products from China a year.<sup>4</sup>
4. Australian consumers need a way to know they are not supporting this forced labour through their purchases, and
5. The proposed amendment Bill is a proportionate response to the situation of human rights abuses against Uyghurs and other minorities in China

Taking all these into account we recommend the following:

### **Recommendation 1**

**We urge the Inquiry to recommend amendments to the Customs Bill, so the legislation is strengthened to suspend the import of goods made with the forced labour of Uyghur and other minorities in the Xinjiang region and from forced labour in China.**

## **4. THE AUSTRALIAN CRIMINAL CODE (BUSINESS AND GOVERNMENT OBLIGATIONS)**

Our recommendation, the proposed suspension of imported goods made with forced labour from Xinjiang, is backed by provisions in the Australian Criminal Code.

Division 270<sup>5</sup> of the Australian Criminal Code is the main division in the Code relating to slavery and forced labour. It defines and criminalises slavery, servitude, forced labour, deceptive recruiting and forced marriage.

Division 270.6 defines “forced labour” in these terms:

*the condition of a person (the victim) who provides labour or services if, because of the use of coercion, threat or deception, a reasonable person in the position of the victim would not consider himself or herself to be free:*

*(a) to cease providing the labour or services; or*

*(b) to leave the place or area where the victim provides the labour or services.*

In terms of Forced labour offences (section 270.6A)

*a person commits an offence if:*

*(a) the person conducts any business; and*

*(b) the business involves the forced labour of another person (or persons).*

The offence described in 270.6A carries a penalty of between 9-12 years’ imprisonment.

These Australian laws require Australian business entities to respect human rights by ensuring their business does not involve the forced labour of another person or persons in their business. According to our criminal code any person conducting business in Australia, shown through investigative processes to be involved in forced labour, could potentially be charged and convicted of a forced labour offence.

As well as outlining business responsibilities the UN Guiding Principles for Business and Human Rights also outline government responsibilities. According to these principles, the Australian Government has an obligation to ‘ensure that their current policies, legislation, regulations and enforcement measures are effective in addressing the risk of business involvement in gross human rights abuses.’<sup>6</sup>

## **5. THE AUSTRALIAN MODERN SLAVERY ACT (2018)<sup>7</sup>**

The Modern Slavery Act requires entities with a consolidated revenue over certain a threshold and the Commonwealth to submit an annual Modern Slavery Risk Statement (as well as allowing voluntary statements for other entities) which addresses the following seven mandatory criteria:

1. Identify the reporting entity
2. Describe the reporting entity’s structure, operations and supply chains

3. Describe the risks of modern slavery practices in the operations and supply chains of the reporting entity and any entities it owns or controls
4. Describe the actions taken by the reporting entity and any entities it owns or controls to assess and address these risks, including due diligence and remediation processes
5. Describe how the reporting entity assesses the effectiveness of these actions
6. Describe the process of consultation with any entities the reporting entity owns or controls (a joint statement must also describe consultation with the entity giving the statement), and
7. Provide any other relevant information

The proposed suspension of imported goods made with forced labour from Xinjiang parallels the spirit of the Australian Modern Slavery Act, to end slavery in all its forms. However, the Australian Modern Slavery Act (2018) is not sufficient to address issues such as state-sanctioned forced labour and human trafficking. The Modern Slavery Act builds on the concept that through due diligence processes, entities will continually improve their response to modern slavery crimes. The Government stated that the reporting requirement is 'intended to facilitate a collaborative "race to the top" amongst business.'<sup>8</sup>

Further the Government considered there was 'a risk that penalties may limit Government's ability to foster a collaborative, multi-stakeholder approach to combating modern slavery' as stated in the Department of Home Affairs submission to the Joint Standing Committee's Inquiry into the Modern Slavery Act.<sup>9</sup>

The deadline for the first reporting period for entities under the Australian Modern Slavery Act is 31 March 2021 and full analysis of the reports will indicate the extent to which business has sufficient understanding of all tiers of their supply chains, knowledge of the inherent risks in their business contexts, and capacity to remediate instances of modern slavery.

Prior to completing their Modern Slavery Statements entities would have been aware of the high risk of sourcing from China in general and the Xinjiang Province in particular. The context of Xinjiang has been reported widely in reputable newspapers since 2018 and some businesses have been beginning to take action to withdraw their sourcing from the area over the last two or more years.

The Better Cotton Initiative (BCI) suspended its activities in Xinjiang in China on the back of concerns over the prevalence of labour abuses in the region. BCI said it would suspend its assurance activities in the region for the 2020-21 cotton season 'based on the recognition that the operating environment prevents credible assurance and licensing from being executed.'<sup>10</sup> 20% of the cotton it certifies comes from Xinjiang Province and it is used by many Australian garment sellers as the assurance mechanism for their raw cotton.

Of the 700+ entities who have so far uploaded their modern slavery statements, 25 list their industry sector as including 'fashion, textiles, apparel and luxury goods.' An analysis of those 25 statements shows the following:

- **Nine** companies do not mention China at all in their report. At least three of these are on lists of companies named as sourcing from Xinjiang
- **Seven** companies identify risks in sourcing from China but do not mention Xinjiang as a specific risk

- **Six** companies identify that they source from China but do not identify China specifically as a risk country
- **Two** companies specifically name the Xinjiang province and identified the actions they are seeking to take. We congratulate Woolworths and Kathmandu for this action.
  - Woolworths stated, 'In response to allegations of forced labour in Xinjiang province in China, we have commenced tracing our garment supply chain in that region. We have no direct suppliers producing goods in Xinjiang and are conducting further due diligence on cotton sourced as a raw material.'<sup>11</sup>
  - Kathmandu stated, 'A further risk of forced labour stems from the internment of over one million Chinese citizens of ethnic Turkic origin in the Xinjiang region as well as forced labour by prisoners incarcerated in China's regular judicial system. This risk is therefore potentially present at all levels of the supply chain, from the farm level (for cotton and other agriculture products) to the manufacture of finished goods.'<sup>12</sup>
- **One** company, PVH Brands Limited (Calvin Klein, Tommy Hilfiger, Heritage Brands portfolio) made a Modern slavery statement to the effect that it has withdrawn from the area and states that 'In 2019 Xinjiang Province was added to our restricted Jurisdiction.'<sup>13</sup>

On the balance, it is clear that the Modern Slavery Statement due diligence approach is not addressing this state-sanctioned forced labour in Xinjiang province. The approach of the Australian Modern Slavery Act (2018) has been a step forward for Australia, however is insufficient to address such issues as the imminent genocide of Uyghur and other minorities in the Xinjiang region.

## 6. WHAT HUMAN RIGHTS ABUSES ARE OCCURRING?

The Universal Declaration of Human Rights (UDHR)<sup>14</sup> enshrines the rights and freedoms of all human beings. The Investor Alliance for Human Rights has provided a detailed list of human rights set out in the UDHR that are currently being violated by Chinese government authorities, at times with the involvement of business enterprises, in relation to Uyghurs.

Those relevant Articles are:

Article 2: Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status

Article 3: Everyone has the right to life, liberty and security of person.

Article 5: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 7: All are equal before the law and are entitled without any discrimination to equal protection of the law

Article 9: No one shall be subjected to arbitrary arrest, detention or exile.

Article 12: No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation

Article 13: Everyone has the right to freedom of movement and residence within borders of each State.

Article 16: The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 18: Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19: Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20: Everyone has the right to freedom of peaceful assembly and association.

Article 23: Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

Article 27: Everyone has the right to freely participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

To explore the validation of each of the above Articles in relation to human rights abuses involving Uyghurs, please see the full report by the Investor Alliance for Human Rights, 'Human Rights Risks in Xinjiang Uyghur Autonomous Region, Practical Guidance for Investors.'<sup>15</sup>

Australia has been persistent in its pursuit of human rights. According to the Department Of Foreign Affairs and Trade website:

*Australia is committed to advancing human rights globally. Men, women and children have the right to fundamental freedoms and to live their lives with dignity. Human rights underpin peace and prosperity. Australia's commitment to human rights reflects our national values and is an underlying principle of Australia's engagement with the international community.*<sup>16</sup>

On International Human Rights Day 2020, Senator the Hon Marise Payne, Minister for Foreign Affairs and Trade said

*Australia will continue to defend longstanding human rights principles and norms, protect hard won gains and raise serious concerns about human rights situations around the world.... Australia will continue to be a strong voice in defence of freedom of expression, freedom of religion or belief, and the critical role of national human rights institutions and civil society.*<sup>17</sup>

For Human Rights to be an underlying principle of our engagement with the international community, it must also be the basis of the way we engage in trade. Recommendation 5 outlines a number of steps that the Australian Government can and should take in order to fulfill these obligations in relation to trade.

## 7. WHAT IS FORCED LABOUR?

We have already cited the Australian Criminal Code definition of Forced Labour (Section 3). Any reasonable person would agree that people placed 're-education camps' and forced into 'vocational training' work in factories and on farm (as described in Section 1), would not consider themselves free to cease providing the labour or services; or to leave the place or area where they provide the labour or services.

The International Labor Organisation's (ILO) Forced Labour Conventions define forced labour as:

C029 - Forced Labour Convention, 1930 (No. 29)<sup>18</sup>

*all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.*

C105 - Abolition of Forced Labour Convention, 1957 (No. 105)<sup>19</sup> prohibits the use of any form of forced labour

*as a means of political coercion or education or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system*

or

*as a means of racial, social, national, or religious discrimination.*

Australia has ratified both the above Conventions but is yet to ratify P029 - Protocol of 2014 to the Forced Labour Convention, 1930. Whilst it indicated its intention to do so some three years ago, in order to do so the government of Western Australia (WA) must amend its Industrial Relations laws to bring WA in-line with the requirements of the P029. It would be hypocritical of the Australian Government to request China to ratify these Conventions without having fully done so itself.

### Recommendation 2

**We recommend that the Inquiry:**

**a. Communicate with all members of Parliament in Western Australia the necessity to swiftly bring its laws in-line with the requirements of Protocol of 2014 to the Forced Labour Convention, 1930.**

**b. Recommend that the Australian Government ratify Protocol of 2014 to the Forced Labour Convention, 1930 as soon as possible**

**Subsequent to the above**

**c. Recommend that the Australian Government identify opportunities to persuade the Chinese government into ratifying the Convention on Forced Labour, 1930 (No. 29), Abolition of Forced Labour Convention, 1957 (No.105) and the Protocol of 2014 to the Forced Labour Convention.**

The ILO has produced a list of indicators of forced labour, the presence of which may imply the existence of forced labour.<sup>20</sup>

The indicators are:

- Abuse of vulnerability
- Deception
- Restriction of movement
- Isolation



- Physical and sexual violence
- Intimidation and threats
- Retention of identity documents
- Withholding of wages
- Debt bondage
- Abusive working and living conditions
- Excessive overtime

All these indicators have been cited by various Governments, investigative journalists, academics and civil society in relation to the Uyghur and other minority groups in Xinjiang.

## 8. HOW DO WE REALLY KNOW ABOUT THE ABUSES THAT PRECIPITATE STRONG ACTION BY AUSTRALIA?

Be Slavery Free's first encounter with the issues relating to Uyghur and other minorities was through the excellent work of the International Coalition to End Transplant Abuse in China.<sup>21</sup> Their investigations and reports are strongly evidence-based, compelling and recognised globally, particularly the work of the China Tribunal and its findings regarding the treatment of the Uyghurs in the internment camps.<sup>22</sup>

The evidence of state-sanctioned forced labour relating to the Uyghur people and other minorities is also compelling, evidence-based and recognised by governments globally. Some of the more recent evidence and calls for action are as follows:

- In October 2020, the German Ambassador to the UN presented a statement on the human rights situation in Xinjiang on behalf of 39 countries including Australia. The statement expressed these countries were

*...concerned about the existence of a large network of 'political re-education' camps where credible reports indicate that over a million people have been arbitrarily detained. We have seen an increasing number of reports of gross human rights violations. There are severe restrictions on freedom of religion or belief and the freedoms of movement, association, and expression as well as on Uyghur culture. Widespread surveillance disproportionately continues to target Uyghurs and other minorities and more reports are emerging of forced labour and forced birth control including sterilization.*

They called on China 'to allow immediate, meaningful and unfettered access to Xinjiang for independent observers including the UN High Commissioner for Human Rights.'<sup>23</sup>

- In January 2021, the United States Customs and Border Protection issued a Withhold Release Order (WRO) against cotton products and tomato products produced in Xinjiang based on information that reasonably indicates the use of detainee or prison labor and situations of forced labor. The agency identified the following forced labour indicators through the course of its investigation: debt bondage, restriction of movement, isolation, intimidation and threats, withholding of wages, and abusive living and working conditions.<sup>24</sup>

- Coinciding with the WRO, US Secretary of State, Michael Pompeo determined that the People's Republic of China, under the direction and control of the Chinese Communist Party, has committed

genocide against the predominantly Muslim Uyghurs and other ethnic and religious minority groups in Xinjiang.

Amongst the crimes committed, Pompeo cited forced labour.<sup>25</sup>

- Also, in January 2021, British Foreign Secretary Dominic Raab made a statement to the House of Commons on the human rights violations in Xinjiang. He announced a number of actions including guidance to businesses in the UK<sup>26</sup> and strengthening the UK Modern Slavery Act (2015) with penalties for businesses that do not comply with their obligations under the Act. The aim:

*that no company that profits from forced labour in Xinjiang can do business in the UK, and no UK business is involved in their supply chains.*<sup>27</sup>

- The Canadian Government simultaneously announced it would be collaborating with the UK and other international partners ‘adopting a comprehensive approach to defending the rights of Uyghurs and other ethnic minorities, including by advancing measures to address the risk of goods produced from forced labour from any country from entering Canadian and global supply chains and to protect Canadian businesses from becoming unknowingly complicit.

Canada’s approach includes the following seven measures:

- *The Prohibition of imports of goods produced wholly or in part by forced labour;*
  - *A Xinjiang Integrity Declaration for Canadian companies;*
  - *A Business Advisory on Xinjiang-related entities;*
  - *Enhanced advice to Canadian businesses;*
  - *Export controls;*
  - *Increasing awareness for Responsible Business Conduct linked to Xinjiang; and*
  - *A Study on forced labour and supply chain risks.*<sup>28</sup>
- As recently as February 4, 2021, Australian Foreign Minister Senator Marise Payne said, Australia had been consistent in raising its ‘significant concerns with the human rights abuses in Xinjiang’.<sup>29</sup>

All the above actions by governments take seriously the need to support business in addressing their supply chains matters specifically in relation to Xinjiang and goods produced with Uyghur forced labour. Australia must work closely with these like-minded countries to act collectively.

Notable civil society and policy groups and journalists have also released research, made statements and called for action. Businesses have begun to take action to ensure their supply chains are not implicated with the forced labour that is occurring. Below is a selection of some of the important reports.

- In July 2019, ABC Four Corners pieced together eye-witness accounts from Australian citizens and uncovered evidence of detainees being forced to work in factories. The story linked six Australian brands to cotton from Xinjiang.<sup>30</sup>
- In March 2020, Australian Strategic Policy Institute released a report ‘Uyghur’s for Sale’. The report identified 27 factories in nine Chinese provinces using Uyghur labour transferred from Xinjiang since 2017. Those factories are a part of the supply chain of 82 well-known global brands.<sup>31</sup>

- In May 2020, the south China Morning Post reported ‘the Chinese government has resumed a job placement scheme for tens of thousands of Uyghur Muslims who have completed compulsory programmes at the “re-education” camps in the far-western region of Xinjiang.’<sup>32</sup>
- In July 2020, the human rights coalition End Uyghur Forced Labour<sup>33</sup> announced that it believed cotton produced in camps in Xinjiang region finds its way into one in five cotton products worldwide. Australian retailers and brands were named alongside other global companies as sourcing from the region.
- Human Rights Watch in their World Report 2021 states that, ‘While the Chinese government appears to have shut down some political education camps ... ‘released’ Uyghur detainees are forced to work in factories and fields inside and outside Xinjiang’.<sup>34</sup>
- In January 2021, UK company Marks and Spencer announced its commitment to exit the Uyghur region.<sup>35</sup>

The Chinese Government denies all the above and continues to refuse access to Xinjiang Province by independent observers.

### **Recommendation 3**

**That the Australian Government uses all means possible to persuade the Chinese government allow immediate, meaningful and unfettered access to Xinjiang for independent external observers, including the UN High Commissioner for Human Rights.**

## **9. CASE STUDY: COTTON AND FORCED LABOUR      HOW DECISIVE ACTION REDUCES HARM**

Forced labour, child labour (including worst forms) and state-enforced forced labour is not unknown in cotton. In fact, of the top ten cotton producing countries in the world (including the US), only Australia has a clean record for its cotton.

### **Uzbekistan**

For years, Uzbekistan was one of the world’s largest cotton exporters, ranking 3rd at one stage (it is now 6th). Since before 2012, the government of Uzbekistan used one of the largest state-orchestrated systems of forced labour to produce it. In 2013, the ILO began monitoring the situation. The government of Uzbekistan forcibly mobilised over a million citizens (including children, young people, students, teachers, doctors, nurses, and employees of government agencies and private businesses) to the cotton fields to grow cotton and deliver production quotas under threats of penalty. These included the loss of the lease to farm the land, criminal charges and fines, expulsion from school, job loss, and loss of social security benefits.

Profits of the Uzbek cotton sector supported only the inner circle of Uzbek government. Uzbek farmers were forced to meet state-established cotton quotas, purchase inputs from one state-owned enterprise, and sell the cotton to a state-owned enterprise at artificially low prices. The system trapped farmers in poverty, and the state profited from sales to global buyers. The profits disappeared into a secret fund to which only the highest-level officials had access.

The practice violated Uzbek labour laws and fundamental international labour and human rights conventions ratified by the Uzbek government. Businesses all over the world who sold and

produced products made with cotton (including all such companies on the ASX 200) signed pledges to not knowingly source cotton from Uzbekistan.<sup>36</sup>

## Turkmenistan

Neighbouring Turkmenistan has been the ninth largest producer and seventh largest exporter of cotton in the world (it is now 14th). It has maintained that status through a system of forced labour under the auspices of the State. The Government had complete control over cotton production and obliges cotton farmers to respect annual quotas.

In a 2016 report the ILO expressed 'deep concern [of] the widespread use of forced labour in cotton production which affects farmers, businesses and private and public sector workers, including teachers, doctors and nurses, under threat of losing their jobs, salary cuts, loss of land and extraordinary investigations.'<sup>37</sup>

Also in 2016, Be Slavery Free (then known as STOP THE TRAFFIK) joined 57 stakeholders (companies, investors, business associations, trade unions and human rights organisations) in writing to the President of Turkmenistan requesting action from the Turkmen government to end these practices and pointing out the importance of, 'brand reputation is a vital part of success in the competitive textile and apparel industry.'<sup>38</sup>

The good news is Uzbekistan is gradually reforming its cotton industry. In Turkmenistan forced labour remains entrenched. Earlier this year Be Slavery Free interviewed exiled journalist Ruslan Myatov and hear first-hand of the ongoing situation in Uzbekistan. The interview can be viewed as part of our webinar 'Cotton is Soft; Forced Labour is Not'.<sup>39</sup>

In addition to the concerns for human rights violations, this situation creates considerable human rights and reputational risk to the world's garment industry. At every stage of the supply chain of garments there is a risk of forced and child labour. When this is also state-sanctioned, this industry needs the support and engagement of Governments to address the issue. More than 60% of garments sold in Australia come from China.<sup>40</sup>

## 10. ADDRESSING FORCED LABOUR IN GLOBAL SUPPLY CHAINS

To address such issues (and have the best chance of avoiding unintended consequences) requires a 'shared responsibility' where business, civil society, government, academics and local communities (where the forced labour is occurring) jointly address and discern ways forward.

We have already cited the actions of some governments in relation to this. At the moment Australia is lagging in processes which support this, leaving civil society and business for fewer options of their own.

### 10.1 United States of America (US)

The US has long taken a global leadership role in address human trafficking and forced labour beyond their borders. Their engagements are three-fold

### **10.1.a Trafficking in Persons Report (TIP Report)<sup>41</sup>**

Each year for the last 20 years, the State Department produces the Trafficking in Persons Report (TIP Report) to monitor and combat trafficking in persons. It ranks governments based on their perceived efforts to acknowledge and combat human trafficking (including child and forced labour). In the process of developing the report, US Embassies throughout the world collate reports and consult civil society actors in the content relating to and ranking of countries.

The report is an important tool for diplomatic discussions regarding changes required in addressing human trafficking, forced and child labour, provides civil society with tools to identify human trafficking and forced and child labour abuse, and offers business a framework for assessing their risk. It is used by most assessment tools that measure risk of modern slavery and trafficking (such as the Global Slavery Index<sup>42</sup> and other business and investor tools).

### **10.1.b Trafficking Victims Protection Reauthorization Act (TVPRA) and Executive Order 13126<sup>43</sup>**

On a biennial basis the US Department of Labor, Bureau of International Labor Affairs produces a list of products and their source countries for which there is a reasonable basis to believe they are produced by forced or child labour. The list is intended to ensure US federal agencies do not procure such goods. It is also used by businesses for similar purposes. It is limited in its use by Australian business and government agencies as the products and source countries for Australia are different to the US.

The US Department of Labor has a clear process (see page 78 of the 2020 report<sup>44</sup>) including how countries can protest being listed and how they can be removed from the list. Civil society and other stakeholders can make submissions to the process.

### **10.1.c Withhold Release Orders (WRO)<sup>45</sup>**

The US has long prohibited the importation of product made by forced or child labour. Such merchandise is subject to exclusion and/or seizure and may lead to criminal investigation of the importer(s). When information reasonably but not conclusively indicates such products are being imported, the Commissioner of US Customs and Border Protection (CBP) may issue withhold release orders which are presumptive in nature.

There is a mechanism for any person (which includes media, human rights organisations, non-government organisations, businesses and individuals) who believe such products are being imported to communicate this with the Commissioner of CBP. It enables the government to take some action whilst investigation still continues.

Notwithstanding criticism that these processes may become politicised, they still offer a range of clear actions that may be taken, and also support businesses which are seeking to identify their risk.

## **10.2 European Union**

### **10.2.a EU Yellow Card<sup>46</sup>**

The EU is the largest importer of seafood and fish in the world. It has developed an official warning system it issues to trading partners to tackle issues (including human trafficking and forced labour) in the illegal, unreported and unregulated fishing. It is a 'wake-up' call before trader sanctions are imposed.

## **10.2.b EU Mandatory Due Diligence Legislation**

The EU is in the process of developing mandatory human rights due diligence legislation. 'The new rules will hold companies legally responsible for avoiding and limiting risks in their entire value chain. They will give victims a legal right to support and to seek reparations, and will ensure fairness, a level playing field and legal clarity for all businesses, workers and consumers.'<sup>47</sup> This legislation will place the EU well ahead of Australia in addressing human rights violations in business supply chains.

## **10.2.c EU Ban on Imports from Forced and Child Labour**

The European Parliament has also called for a new EU instrument that allows for import bans on products related to severe human rights violations such as forced labour or child labour. The import ban instrument would be a complement the EU due diligence law. The proposed legislation would be similar to the US WRO to stop goods with suspected forced labour child labour or human rights abuses in their supply chain, at EU borders. The onus is would then be on company in questions to prove that there is no forced or child labour or that they have remedied the situation.<sup>48</sup>

## **10.3 United Kingdom**

### **10.3.a UK Modern Slavery Act (2015)**

The Australian Modern Slavery Act (2018) is modelled on the UK Act (Section 54) on transparency in supply chains, but with a number of improvements. However, the UK is about to leap-frog ahead of Australia with recent announcements of reforms and additions, including increasing the content required in the report, publication on a government website and more effective enforcement. (see section 7 regarding actions the UK is taking in relation to Forced Labour in Xinjiang Province)

Section 54 of the UK Modern Slavery Act (2015) formed the basis of the Australian Modern Slavery Act (2018). In an independent review of the UK Act it was determined that while the Act has been effective in raising awareness, there needed to be strengthening of provisions for addressing non-compliance.<sup>49</sup> Such a move may be necessary in Australia as well.

## **11. AUSTRALIA**

### **Australian Modern Slavery Act (2018)**

Australia's legislation in addressing slavery (including forced and child labour) in supply chains was considered world's best at the time. However, when it comes to addressing issues such as state sanctioned forced labour or entrenched forced labour, Australia is clearly lacking in mechanisms for the Government to support businesses in addressing these matters and business is lacking in capacity to address them on their own.

Whilst there is a review proposed of the Australian Modern Slavery Act (2018) at the three-year point, it is clear that there are issues emerging which require addressing more urgently. The Australian Government does not have a mechanism for investigating allegations of forced labour in supply chains; it does not have an instrument for trade mechanisms to address high risk products entering Australia; and it does not support business in their risk assessments and due diligence through providing a common list of products and places where there is a high risk of human trafficking and forced labour. Further, the Act does not make it mandatory for businesses operating in the country to undertake human rights and

environmental due diligence in their own operations and their global value chains. The Act should be amended accordingly.

Restricted access to the Xinjiang region by business and third-party social auditors makes the conventional due diligence and risk assessment approach required by the Australian Modern Slavery Act almost, if not totally, impossible. Social Auditing companies we are in contact with indicate that they can no longer effectively or safely determine whether factories and farms are relying on forced labour. Be Slavery Free is in contact with a number of potentially impacted businesses who are looking for help, now.

## **Recommendations from ‘Hidden in Plain Sight’<sup>50</sup>**

‘Hidden in Plain Sight’ is the report of the Inquiry into establishing a Modern Slavery Act in Australia. It is regarded globally as one of the most comprehensive and potentially effective report and set of recommendations made by a government committee. It made the following recommendations yet to be enacted. We are of the opinion that the following three offer a robust mechanism for an Australian Government to address entrenched modern slavery risks which business cannot address on its own.

The recommendation numbers below are those used in the Government’s Response to the Hidden in Plain Sight Report.<sup>51</sup>

### **1. Independent Anti-Slavery Commissioner (Recommendation 6)**

*The Committee recommends that the Australian Government establish an Independent Anti-Slavery Commissioner under the proposed Modern Slavery Act with powers and resources to undertake the following functions .... (potential functions then listed)*

*(Recommendation from Hidden in Plain Sight)*

The role of an Independent Anti-Slavery Commissioner should be established and then resourced with the capacity to investigate allegations of forced labour and human trafficking in the supply chains of a product and make recommendations to the appropriate Government department or Minister.

Few entities have the capacity to undertake such investigations on their own. There are economies of scale for such investigative work to be done by on behalf of many businesses. Such reports would assist those who need to report under the Australian Modern Slavery Act (2018) including the Commonwealth itself which must report under the Act.

### **Recommendation 4**

**That the Inquiry recommend to the three-year review of the Modern Slavery Act (2018) that there be an Independent Anti-Slavery Commissioner whose role includes the investigation of allegations of forced labour, child labour and human trafficking in supply chains.**

### **2. Trade Mechanisms (Recommendation 20)**

*That the Australian Government consider introducing other trade mechanisms to address modern slavery risks in the supply chains of goods entering Australia. In considering these mechanisms, the Committee suggests the Australian Government consider the US model of importation restrictions under the Trade Facilitation and Trade Enforcement Act 2015.*

*(Recommendation from Hidden in Plain Sight)*

This recommendation not only applies to products from Xinjiang Province and Uyghur forced labour. A number of the US CBP WRO's are for goods imported into Australia such as disposable rubber gloves from Malaysia, cotton from Turkmenistan and a range of products from China.

In response to this Recommendation, the Government noted the recommendation and stated

*The ABF is closely monitoring the effectiveness of overseas importation restriction schemes and considered, the viability of this approach as part of the development of the Modern Slavery Act 2018 (the Act). Unlike importation restrictions, which target goods at the border, Australia's Act ensures large entities address modern slavery risks throughout their global operations and supply chains. This includes modern slavery risks related to the production<sup>52</sup> and provision of goods or services that are not imported into Australia.*

*Importantly, the complexity of global supply chains and the prevalence of modern slavery across all industries and sectors makes it difficult to accurately identify specific goods produced using modern slavery and track these goods to the border. As a result, importation restrictions are generally limited to unrefined goods and raw materials. Importation restrictions may also unintentionally incentivise entities to withhold information from governments and consumers about modern slavery risks in their supply chains to avoid enforcement action. This may limit the effectiveness of the Act, which aims to improve supply chain transparency and encourage companies to publicly disclose and respond to modern slavery risks.*

Now is the time for this to be more closely addressed.

Many jurisdictions (US, the EU and India) make their import data publicly available. Such information can assist importers in their awareness of modern slavery risks. In Australia such information is only available to those directly importing the product. We recommend that such data be publicly available.

Australia regularly engages in making or reviewing free trade agreements. We recommend that such agreements include clauses reflective of Australia's stance on modern slavery and respect for human rights.

The Australian Trusted Trader<sup>53</sup> program of the Department of Home Affairs facilitates businesses to streamline their trade through expediting their flow of cargo in and out of Australia. This program should include a requirement for businesses to address their modern slavery risks.

## **Recommendation 5**

**That the committee recommend that:**

- a. the Australian Government consider introducing trade mechanisms to address modern slavery risks in the supply chains of goods entering Australia, including importation restrictions and presumptive action in relation to modern slavery and forced labour**
- b. the Department of Home Affairs make public its importation data in a format which can be accessed by the public**
- c. the Department of Home Affairs ensure any amended or new Free Trade Agreements include clauses reflective of Australia's stance on modern slavery and respect for human rights including minimum standards for worker's rights in the other country's own laws**



**d. the Department of Home Affairs include in the Trusted Trader program a requirement to address modern slavery risks for imports to and exports from Australia, regardless of the size of the company**

### **3. Lists of High-Risk Products and Service (Recommendation 15, (h))**

*... publishing a list of products or services, people groups, areas and industries with a high risk of modern slavery, both within Australia and internationally.*

*(Recommendation from Hidden in Plain Sight)*

In the Government's response to the 'In Plain Sight' Report, this recommendation was accepted in full. It must urgently be undertaken as a matter of urgency.

### **Recommendation 6**

**We urge the committee to recommend:**

**a. to the Business Engagement Unit of the Department of Home Affairs that they prioritise the publishing a list of products or services, people groups, areas and industries with a high risk of modern slavery, both within Australia and internationally**

**b. to the three-year review of the Modern Slavery Act (2018) that it be mandatory for entities to report specifically on products or services from high-risk areas identified in the list published by the Business Engagement Unit**

## **12. IS IT DOABLE? (TO BAN IMPORTING GOODS)**

We believe it is.

We would argue that the Australian Modern Slavery Act (2018) with its focus on large entities addressing modern slavery risks in their operations and supply chains cannot be expected to address the situation of state-sanctioned forced labour in China. The Governments of the US, UK and Canada and actions of the EU include providing guidance to business in how to address this situation. These governments are doing as recommended by the Guiding Principles on Business and Human Rights.<sup>54</sup> They are ensuring that their 'current policies, legislation, regulations and enforcement measures are effective in addressing the risk of business involvement in gross human rights abuse and taking action if they are not'.

Supply chain tracing has a range of scientific tools and resources at its disposal. Companies like Sourcemap<sup>55</sup> are offering businesses concerned about forced labour (particularly in relation to Xinjiang Province and Uyghur forced labour) a streamlined due diligence solution that can be rapidly deployed across a global supply chain for any industry. The supply chain mapping approach uses a vendor portal with cascading functionality to quickly and accurately identify sub-suppliers and ensure that they have the right policies and procedures in place, and transaction traceability to verify the authenticity of each inbound shipment. It enables business to provide the evidence they need to exclude forced labour.

There are also 'bottom-up' approaches. Top-down approaches require the buy-in of every supplier in every tier. But intermediary suppliers are often deterred by the time and cost of reporting. Even those who may not be doing wrong will try to avoid any scrutiny. Putting on a good show for audits is a well-honed practice. Blunumber<sup>56</sup> is an NGO providing a platform for bottom-up opt-in by any workers in a supply chain. Blunumber triangulates the count of workers volunteering their locations, declaring what

they are working on, for whom, and with what that supplier produces. People with bluenumbers show up on a supply map so their existence can be matched with products. Bluenumber measures supply chains using unfiltered data provided by people, not just third-party audits of facilities and sampled product outputs. Bluenumber would enable enforcement when every legitimate worker is properly co-located within the supplier's licensed facilities and their smartphone logs reasonable working hours at that place. A spot check on any audit report would simply require calling or messaging the worker directly to check details of their working conditions. Any unanswered or blocked call from a previously registered person would raise a red flag.

Oritain<sup>57</sup> traces actual products back to their true origin using advanced science. They analyse Isotopes and Trace Elements from samples of products and materials, to determine their origin or other characteristics. They can accurately determine the geographic origins of any natural product. We understand their technology may be assisting the US government in monitoring the WRO's.

We have not spoken to a single business who is not concerned about what is happening in Xinjiang and with the Uyghur people as a human rights issue. They are also concerned to engage in providing a solution. They know they cannot do this alone. They are willing to share their knowledge, insight and struggles. With the correct convening of business, government, civil society and academic partners, we believe it is doable.

### **Recommendation 7**

**That the Inquiry recommend to the Department of Foreign Affairs and Trade and the Business Engagement Unit of the Department of Home Affairs that they urgently convene and fund a think-tank of business, government, civil society and academics to**

**a. Consult with Australian business, civil society and academics on the ways they are exposed to forced labour risks from the Xinjiang Province and forced labour of Uyghur and other minorities and issue advice or guidance on how awareness can be raised on this matter**

**b. Develop a framework for a joint call to action by entities impacted by this risk**

## 13. NEVER AGAIN

“Never again” is more than a slogan:  
It's a prayer, a promise, a vow.  
here will never again be hatred, people say.  
Never again jail and torture.  
Never again the suffering of innocent people,  
or the shooting of starving, frightened, terrified children.  
And never again the glorification of base, ugly, dark violence.  
It's a prayer.

Elie Wiesel, Nobel Laureate and Holocaust survivor  
'Hostage: A Novel' 2012

This Inquiry will inevitably be about more than bans on products from Xinjiang. There is more to this than forced labour and further actions will be required. But this is a start.

Over 200 years ago, William Wilberforce and his band of abolitionists ended the trans-Atlantic slave trade. The abolitionists would be horrified to know that there are more slaves in the world today than any other time in history and their work must be re-done.

Over 70 years ago the UN first recognised genocide as a crime under international law. It was codified as an independent crime in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (the Genocide Convention).<sup>58</sup> China ratified this Convention in 1983.

The intent (and the promise) was 'never again'. That intent has not been realised. Definitions have been argued about, the world has failed to act (and even withdrawn) when help was most needed by the most vulnerable and there have been limited consequences for perpetrators.

Unfortunately, this vital call is all too often fragmented. We didn't get it right for Yugoslavia. We didn't get it right with Rwanda. We didn't get it right in Cambodia. We didn't get it right many, many, many times. This is another chance to give it a go. Let's not decide it is too risky, too expensive or too difficult.

If we look the other way – history will judge us.

“You may choose to look the other way, but you can never say again you did not know.” William  
Wilberforce, Abolitionist

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