



# BE SLAVERY FREE

## SUBMISSION TO THE REVIEW OF AUSTRALIA'S MODERN SLAVERY ACT 2018

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**Forget Me Not**

## **About Be Slavery Free**

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 advocated for the inception of the Modern Slavery Act and has actively supported companies and consumers to understand and comply with the Act.

For more information visit [beslaveryfree.com](https://beslaveryfree.com).

## EXECUTIVE SUMMARY

This collective of civil society organisations strongly believes that the statutory review of the *Modern Slavery Act 2018* (Cth) (**Act**) should prioritise effectiveness over efficiency. Government must uphold its duty to both prevent, investigate and respond to risks and incidences of slavery within its own operations, as well as supporting business and civil society within its jurisdiction to mitigate and address slavery. Only through a collaborative approach will Australia be able to meaningfully address modern slavery.

Through this collaborative submission, we summarise 25 civil society organisations' priorities for a revised Modern Slavery Act. We support recommendations made in recent prior inquiries into modern slavery and recommend a review of previous inquiries and reports with a view to implementing the recommendations with ongoing saliency.

We have used the structure of the United Nations Guiding Principles on Business and Human Rights (UNGPs) to structure the submission,<sup>1</sup> as we believe that aligning with relevant, established international universal principles will enhance Australia's response.

We consider it our collective duty to prevent modern slavery and recommend the application of a due diligence approach.

We know that slavery can only be solved by working together and that this requires clear leadership from the Australian Government and a coordinated all-of-government approach to anti-slavery legislation and initiatives. We recommend the appointment of an independent Anti-Slavery Commissioner to spearhead this, who must be furnished with the authority to oversee, investigate and enforce compliance.

This new appointment should be accompanied by a better-resourced Ambassador for People Smuggling and Human Trafficking in the Department of Foreign Affairs and Trade.

At the time of passing the Act, the Government stated that the reporting requirement was '*intended to facilitate a collaborative "race to the top"*'.<sup>2</sup> This race to the top has been limited by several factors, including a lack of consequences for not 'joining the race' or simply taking short-cuts. We recommend the Act enforces penalties for non-compliance, negligence or falsified reporting to improve effectiveness, and ensure non-compliant entities cannot benefit, whether that be through profit, exploitation or any other form of modern slavery.

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<sup>1</sup> United Nations (2011) *Guiding Principles on Business and Human Rights*. Available at: [https://www.ohchr.org/sites/default/files/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](https://www.ohchr.org/sites/default/files/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)

<sup>2</sup> Parliament of Australia (16 August 2018) *Modern Slavery Bill 2018*. Available at: [https://www.aph.gov.au/Parliamentary\\_Business/Bills\\_Legislation/bd/bd1819a/19bd012](https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/bd/bd1819a/19bd012)

The Government's responsibility to protect people from slavery and Australian entities from contributing to slavery, requires the provision of resources, data and learnings as well as legal protections.

We recommend that the Act have provisions for civil liability, which would permit harmed individuals to bring actions to seek damages. The Act should also enforce a ban on companies importing high-risk products from countries and regions, including Australia, at high risk of modern slavery.

We address the importance of access to remedy. We recommend a national compensation scheme be implemented to provide appropriate remedy to people subjected to exploitation through an Australian company's operations or supply chain.

We also believe timely and transparent reporting on modern slavery incidences is required to uphold accountability, support subsequent investigations, and improve data collection on modern slavery in Australian supply chains.

Adequate funding of civil society programs and participation in Government processes is essential for the Government to achieve the goals of the National Action Plan to Combat Modern Slavery 2022-2025 (**National Action Plan**).

## INTRODUCTION

We welcome the opportunity to contribute to the review of the Act, following the first three years of implementation.

We believe through this review and subsequent amendments to the Act, Australia has the potential to lead the world in its anti-slavery efforts. To do so requires a review to learn from the collective expertise of the corporate, civil society, academic sectors, and experiences of implementing international anti-slavery legislation and regulations.

Together with the organisations listed, we have reviewed the documents related to this review, drawn on our significant collective experience through consultation workshops and stakeholder surveying, agreed on the key issues we wish to address, and prepared this response. The organisations that contribute to this response are diverse. We work in areas of:

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

We believe Australia can lead the world in addressing modern slavery. However, this requires applying a rights-based, duty to prevent approach, and a shared responsibility model, that meets, if not exceeds, best-practice trends in international legislation<sup>3</sup> that prioritises the prevention of slavery, protection, and remedy for victims of slavery and slavery-like practices.

The Terms of Reference<sup>4</sup> and Issues Paper have informed the shaping of our submission.

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<sup>3</sup> For example the proposed New Zealand values based legislation - <https://www.mbie.govt.nz/have-your-say/modern-slavery> - and the most recent Dutch legislation - <https://www.mvoplatforn.nl/en/english-translation-of-the-bill-for-responsible-and-sustainable-international-business-conduct/> - which includes the full value change and effective access to justice and remediation amongst other things.

<sup>4</sup> Australian Government (2022) *Review of the Modern Slavery Act 2018: Issues Paper*. Available at: [https://consultations.ag.gov.au/crime/modern-slavery-act-review/user\\_uploads/review-modern-slavery-act-issues-paper.pdf](https://consultations.ag.gov.au/crime/modern-slavery-act-review/user_uploads/review-modern-slavery-act-issues-paper.pdf)

## BACKGROUND

Whilst the Act has been welcomed by business and civil society alike, numerous reports<sup>5,6</sup> have shown that implementation and compliance have fallen short.

More than 90 per cent of Australian businesses have identified potential risks of slavery in their supply chains.<sup>7</sup> Yet nearly 85 per cent of 404 company statements submitted to the Modern Slavery Statement Register, fail to show any response to slavery or risks of slavery in their operations and supply chains.<sup>8</sup>

Our experience in working with reporting entities is that the task of identifying risk is made more complicated than necessary. Also, companies rarely get beyond a Tier 1 risk assessment in their supply chain and do not get to responding to risk. Given slavery is most likely to occur in Tier 3 or beyond, the chance of identifying the appropriate risk is limited. A list of high-risk products and regions, including in Australia, would assist government procurement and would expedite the risk assessment process for reporting entities.

A specific aim of the Act is to assist ‘consumers to make more informed decisions when using, buying and selling goods and services’.<sup>11</sup> There is no evidence to suggest that this is occurring. Research conducted by Kyla Raby from the University of South Australia, in

### Modern slavery is a wicked problem!<sup>9</sup>

Jeffrey Conklin<sup>10</sup> distilled the characteristics of a wicked problem to six:

1. The problem is not fully understood until after the formulation of a solution
2. Wicked problems have no stopping rule – each wicked problem is connected to a series of other wicked problems
3. Solutions to wicked problems are not right or wrong
4. Every wicked problem is essentially novel and unique
5. Every solution to a wicked problem is a ‘one shot operation’
6. Wicked problems have no given alternative solutions

Each of these apply to modern slavery.

<sup>5</sup> Human Rights Law Centre (2022) *Paper Promises? Evaluating the Early Impact of Australia’s Modern Slavery*. Available at: <https://static1.squarespace.com/static/580025f66b8f5b2dabbe4291/t/6200d3d9db51c63088d0e8e1/1644221419125/Paper+Promises+Australia+Modern+Slavery+Act+7+FEB.pdf>;

<sup>6</sup> Human Rights Law Centre (2022) *Broken Promises: Two years of corporate reporting under Australia’s Modern Slavery Act*. Available at: <https://www.hrlc.org.au/reports/broken-promises>

<sup>7</sup> International Justice Mission (2022) *Spot Fires in Supply Chains*. Available at: <https://ijm.org.au/spot-fires-in-supply-chains-report/>

<sup>8</sup> Ibid.

<sup>9</sup> It is a term thought to have been coined by C. West Churchman in 1967 in the *Journal Management Science* (Churchman, C. West (December 1967). ["Wicked Problems"](#), *Management Science*, 14 (4): B-141–B-146.), though some think he may have been answering back to a term by Horst Rittel. Rittel and Melvin M. Webber released a paper in 1973 Rittel, Horst W.J.; Webber, Melvin M. (1973). ["Dilemmas in a General Theory of Planning"](#) (PDF). *Policy Sciences*, 4(2): 155–169. doi:10.1007/bf01405730. S2CID 18634229. Archived from [the original](#) (PDF) on 30 September 2007 where they compared and contrasted “tame” problems with “wicked” problems.

<sup>10</sup> Conklin, Jeffrey (2006) *Dialogue mapping: building shared understanding of wicked problems*. Chichester, England, Wiley Publishing

<sup>11</sup> Parliament of Australia (16 August 2018) Op. Cit.

collaboration with CHOICE and the Australian Red Cross,<sup>12</sup> has found many barriers exist which prevent it from doing so.

There is a lack of awareness of modern slavery and of the Act within the Australian community, and consumers prioritise other factors such as price over worker welfare when choosing products and services. Although some consumers believe what they buy can make a difference, they find it difficult to identify which products and services are 'ethical'.

Modern slavery statements are generally too long and complex to have meaning for the Australian public and are not seen as trustworthy sources of information. Consumers are also more likely to reactively punish businesses that have been linked to modern slavery, rather than seek out information to proactively support those that have not, or those that are taking steps to prevent modern slavery.

Consumers feel that government and business are responsible for ensuring products and services sold to them are not made using exploited workers, rather trying to ascertain this themselves.

Accordingly, entities that disclose modern slavery risks can experience unintended consequences. The connection between a company or product and modern slavery in the media can lead to consumers avoiding that company or product, even if the company is doing the 'right thing' in terms of addressing slavery. Consumers feel that the government and business are responsible for ensuring products and services sold to them are not made using exploited workers rather than trying to ascertain this themselves.

As stated in the Issues Paper, it is important to consider options that can strengthen transparency, improve reporting, and increase understanding of the challenge of modern slavery and how to combat it.<sup>13</sup> Therefore, it is important that the review explores how the Act can increase company transparency on, and accountability for, the steps they are taking to prevent and remedy slavery in their supply chains – rather than focusing on just the efficiency of the Act. It is also important to recognise the role of the Government in supporting business in this task.

It should also be noted that the Act is unique globally. It is in essence a transparency in supply chain legislation – an improved version of the *California Transparency in Supply Chain Act*.<sup>14</sup> It does not, at this time, include mandatory due diligence processes, customs or tariffs, ban on forced labour products, penalties or strong guidance regarding procurement by governments. Whilst comparison, benchmarking and learning from international standards is essential, it is important to note:

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<sup>12</sup> Research yet to be made publicly available.

<sup>13</sup> Australian Government (2022) Op. Cit.

<sup>14</sup> State of California Department of Justice (2022) *The California Supply Chains Transparency Act* Available at: <https://oag.ca.gov/SB657>

- When comparing the Australian Act with the *Modern Slavery Act 2015* (UK) (**UK Act**), it must be noted that the UK Act brings together a range of provisions related to modern slavery and only Part 6, Section 54 relates to Transparency in Supply Chains. The Australian *Criminal Code Act 1995* (**Criminal Code**)<sup>15</sup> Divisions 270 and 271, when considered in conjunction with the Act are similar to the UK Act.
- When speaking of the USA Customs and Border Protection Tariff Act and the Uyghur Forced Labor Prevention Act,<sup>16</sup> these are Customs Acts relating to imports and importers.
- When speaking of the USA Department of Labor’s actions in producing a list of products and countries at high risk of child or forced labour, they are responding to an Executive Order, intended to ensure that US federal agencies do not procure goods made by forced labour or indentured child labour
- When speaking of the proposed EU legislation around Corporate Sustainability Due Diligence Directives,<sup>17</sup> in most cases they operate in contexts where there is no current modern slavery legislation.

Australia is unique. We need to take lessons learned from these other contexts, however, we need to do so in the context of our own Act and the Criminal Code relating to Modern Slavery. This is particularly the case with the role of the Anti-Slavery Commissioner.

### Exploitation of Women and Girls<sup>1</sup>

An intersecting ‘wicked problem’ is the exploitation of women and girls and their vulnerability to all forms of modern slavery due to gender norms, power dynamics and discrimination. While attention is needed on whole-systems change to tackle the wicked problem of modern slavery, there should be an appreciation of the compounding and intersecting disadvantage of the world's income-poor women and girls.

<sup>15</sup> Australian Government (28 April 2022) *Criminal Code Act 1995*. Available at: <https://www.legislation.gov.au/Details/C2022C00156>

<sup>16</sup> United States Customs and Border Protection (31 October 2022) *Forced Labor*. Available at: <https://www.cbp.gov/trade/forced-labor>

<sup>17</sup> This has passed the Commission but yet to be passed in Parliament.

[https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_1145](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_1145); [https://ec.europa.eu/info/publications/proposal-directive-corporate-sustainable-due-diligence-and-annex\\_en](https://ec.europa.eu/info/publications/proposal-directive-corporate-sustainable-due-diligence-and-annex_en)



## PAST INQUIRIES

There have been at least seven inquiries and joint or select committee reports in the past five years on matters which also relate to modern slavery. Most of the reports were presented without qualification, the recommendations were unanimous and supported by civil society. We strongly recommend that the review considers past inquiries related to trafficking, modern slavery and forced labour, and enacts regulation or legislation on the key issues that have been consistently raised, in addition to the recommendations raised within this report. If this is not considered to be in the Terms of Reference for the review, then we recommend that the Government undertakes such a task.

See Appendix 1: Summary of recommendations from past inquiries.

There have been:

- Five recommendations relating to appointment of an Anti-Slavery Commissioner.
- Five recommendations concerning a Labour Hire Licensing Scheme.
- Four recommendations for a National Compensation Scheme.
- Two recommendations on penalties for non-compliance with reporting.
- Two recommendations on alignment between states and territories and the Commonwealth.
- Numerous recommendations relating to de-coupling support for victims from criminal cooperation, reviewing visa frameworks, more pre- and post-departure briefings for seasonal workers.

### **Compassion, not Commerce: An Inquiry into Human Organ Trafficking and Organ Transplant Tourism<sup>18</sup>**

The current definition of 'organ trafficking' in Australia does not include an offence for the trafficking of human organs as provided for in the Council of Europe Convention against Trafficking in Organs (Convention).<sup>19</sup> The offence in Australia only relates to the offence of trafficking in persons for the removal of organs.

<sup>18</sup> Parliament of Australia (2018) *Inquiry into Human Organ Trafficking and Organ Transplant Tourism*. Available at: [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Foreign\\_Affairs\\_Defence\\_and\\_Trade/HumanOrganTrafficking](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Foreign_Affairs_Defence_and_Trade/HumanOrganTrafficking)

<sup>19</sup> Available at: <https://rm.coe.int/16806dca3a>

In the report of the Human Rights Subcommittee of the Joint Standing Committee on Foreign Affairs, Trade and Defence, it is recommended that the Australian Government sign and ratify the Convention. This is yet to be done.

This is one example of an important inquiry and an important recommendation that has still not been addressed and leaves Australia lagging in relation to the rest of the world and a concerning lacuna in the law with respect to offences relating to trafficking in human organs as provided for in the Convention.

# A DUTY TO PREVENT

## 1. A due diligence approach

Achieving the scale of corporate practice change needed to eliminate modern slavery, requires a shift to a due diligence approach, rather than a reporting and transparency-based framework.

A due diligence framework for reporting should align with international conventions, such as the UNGPs<sup>23</sup> and the OECD Guidelines for Multinational Enterprises.<sup>24</sup> This would ensure that all reporting entities are required to 'do no harm', have a 'duty to prevent' and a responsibility to 'respect human rights' – by taking actions to identify, prevent, mitigate and remedy risks, or incidences of modern slavery in their operations and supply chains – both in Australia and overseas.

To do so they must be supported with resources that facilitate accurate and appropriate reporting. It is recommended that existing resources by Australian Border Force<sup>25</sup> be updated accordingly. This should include guidance or tools with a focus on mitigating potential risks, and an approach to remedy and resolution of incidences of known risk or harm.

The overarching due diligence framework presented by the Act, must require all relevant entities to conduct due diligence.

### **Ansell is accused of 'knowingly profiting' off the labour of slaves<sup>20</sup>**

Increasingly we are seeing victims of modern slavery crimes resorting to civil action in instances where the reporting requirements are not sufficient in driving companies to offer a remedy.

Twelve people have lodged a case in a US Court against Australian company, Ansell, seeking compensation. They allege that Ansell and a major US corporation, Kimberly-Clark, 'knowingly profited' from exploitation, by contracting a factory to make latex gloves.

Ansell submitted a compliant report under the Act,<sup>21</sup> and has been regarded as 'leading the way' by a report ranking the modern slavery statements of the 100 largest listed companies on the ASX.<sup>22</sup> The alleged claims would indicate that Ansell may not have undertaken the remedy that would be required in a reporting mechanism focused on due diligence.

<sup>20</sup> ABC News (24 August 2022) *Ansell is accused of 'knowingly profiting' off the labour of slaves. Shuvo is one of them.* Available at: <https://www.abc.net.au/news/2022-08-24/ansell-slave-labour-brightway/101362990>

<sup>21</sup> Australian Border Force (10 November 2021) *Modern Slavery Register*. Available at: <https://modernslaveryregister.gov.au/statements/6020/>

<sup>22</sup> Monash University (6 September 2021) *Identifying Modern Slavery: An analysis of Australia's largest companies*. Available at: <https://www.monash.edu/news/articles/identifying-modern-slavery-an-analysis-of-australias-largest-companies>

<sup>23</sup> United Nations (2011) Op. Cit.

<sup>24</sup> OECD (2018) *Due Diligence Guidelines Responsible Business Conduct*. Available at: <https://www.oecd.org/daf/inv/mne/due-diligence-guidance-for-responsible-business-conduct.htm>

<sup>25</sup> Australian Border Force (2018) *Commonwealth Modern Slavery Act 2018: Guidance for Reporting Entities*. Available at: <https://modernslaveryregister.gov.au/resources/>

At a minimum this should include:

- Demonstrated leadership from directors, executive and other high-profile organisational leaders of a zero-tolerance approach to modern slavery risks.
- Effective worker and stakeholder consultation in situations of increased modern slavery risk.
- Direct engagement with suppliers – going beyond third-party auditing – and capacity building as required.
- Direct engagement with workers to ensure the voice of workers is adequately included in the design and review of any prevention and response mechanisms.
- Effective and consistent training for all eligible staff on implementing modern slavery prevention and response protocols.
- Specific initiatives to manage and mitigate modern slavery risks – and reporting on measured impact of these initiatives.
- Mandatory reporting frameworks to ensure goods are not made with forced labour, for companies operating in high-risk industries, products, countries and regions.
- Robust reporting and grievance mechanisms and accessible whistleblowing protocols that are tailored to address modern slavery.
- A clear, timely, well understood, and customisable incident response plan should modern slavery be identified in operations or the supply chain.
- Access to appropriate compensation and other forms of support for all workers who have experienced labour exploitation within the supply chain.

To be compliant with the Act, companies may be called upon to prove they acted appropriately to meet all the requirements of the due diligence approach.

Assessment of performance demands that the Act is supported by a system of governance that objectively checks fulfilment of the reporting standards (as per the UNGPs<sup>26</sup> and OECD Due Diligence Guidelines<sup>27</sup>), including rigorous review of submitted reports, enquiry into the listed interventions, and demonstration of due care to prevent the company's association with modern slavery risks, rather than merely meeting basic compliance standards.

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<sup>26</sup> Ibid.

<sup>27</sup> OECD (2018) Op. Cit.

## **2. Governance, oversight, and enforcement by an independent Anti-Slavery Commissioner**

To fully enact a due diligence approach, requires independent oversight by a ‘mechanism’ with the authority to investigate and enforce compliance. An independent Anti-Slavery Commissioner should be established (outside of any existing commission) to work with business, civil society, NGOs and State and Territory governments to ensure compliance and improve transparency of supply chains. The role must be well resourced, enshrined in legislation (including re-appointment timeframes) with the capacity to investigate allegations of modern slavery in supply chains.

The role must significantly extend beyond the parameters of the Act and oversee an all-of-government approach to addressing modern slavery. This includes, but not limited to, implementation of the National Action Plan, work on supply chain transparency (as per the remit of the Act), and work to support victim-survivors of trafficking, slavery, and exploitation.

An Anti-Slavery Commissioner would play a pivotal role in showcasing best-practice and supporting Australia to achieve world-leading standards. See Appendix 2 for an expanded list of proposed duties for the Commissioner.

Alongside the Commissioner’s investigative authority, they would be equipped to oversee and conduct independent analysis of modern slavery statements, to reduce the current reliance of academia and civil society, and ensure compliance. The investigative process, reports and analysis produced would also assist the companies that need to report under the Act. Few existing entities have the capacity to undertake such investigations on their own and there is opportunity to learn from the recommendations from a collective review of business performance. This includes the Commonwealth itself which must also report under the Act.

Resourcing for the Ambassador for People Smuggling and Human Trafficking also needs to be increased to enable them to better coordinate efforts to strengthen regional country responses to modern slavery in alignment with the intention of the Act. For example, targeted sanctions should be placed on foreign companies, officials and other entities known to be directly profiting from forced labour and other human rights abuses.

### **3. Who should report**

The current threshold is significantly higher than other jurisdictions, which does not allow Australia to be ‘world leading’ in its response to modern slavery. We believe Australia should align with the UK Act and New Zealand (proposed) threshold of \$50 million revenue for reporting entities.

The initial implementation of the Act showed us that small and medium-sized enterprises (SMEs) are already impacted by the requirements of the Act, even if officially below the threshold. This results from their engagement with larger reporting entities (as suppliers or partners), who use a ‘cascade’ approach to compliance that requires a supplier to sign a code of conduct on modern slavery. This results in an increasing need to keep up with best-practice standards in order to win business, as well as meet evolving stakeholder expectations and benchmarks for social license related to modern slavery. This is a good thing.

To enable SMEs to continue to deliver against these requirements, they need to be provided with resources and frameworks to support them. For example, a reporting framework platform which allows easy access and assessment of entities for these purposes would assist SMEs in meeting the requirements of their suppliers and partners as well as improve reporting quality. The repository could be designed to contain the information required of SMEs by those they supply or partner with.

### **4. Strengthen modern slavery legislation in line with lessons learned and international trends**

Internationally, we are seeing the following trends in legislation:

1. There is a shift away from relying on recommendations, guidelines, codes of conduct, and standards to hold companies accountable, to laws which are legally binding, enforceable and are indeed enforced. This requires business to be addressing their responsibilities under the UNGPs and for governments to also undertake their responsibilities under the same principles.
2. There is a trend away from disclosure-based legislation to duty to prevent based models which codify mandatory human rights due diligence. This requires businesses to have robust human rights due diligence processes in place.
3. There is growing acceptance that responsibility to undertake human rights due diligence extends to a company’s entire value chain – downstream and upstream. Businesses must trace entire value chains, both upstream and downstream, to ensure that they are able to identify, mitigate, and remediate human rights risks and impacts. Business can be supported by Government in this task by a list of high-risk products and geographies be produced.

4. An increasing number of import bans being introduced to prevent goods produced wholly or in part with forced labour, and in some cases child labour, from entering certain jurisdictions, including US, UK, Canada and the EU. Businesses must be able to demonstrate that their goods were not produced wholly or in part by forced labour. In contexts where the risk for business in publicly divesting from regions of high risk, there is a strong role for Government in providing legislation and advice which protects and supports businesses.
5. A move from compliance-based approaches to values-based approaches. Seeking to address modern slavery and human rights is not simply complying with a set of principles, but it is about our identity as a nation. In the land of the 'fair-go' we want to be a country where people have dignity and respect in their workplaces and where we are not consuming products which are the result of the abuse of another human being.

The review should consider international trends, particularly in relation to the recommendations laid out in this submission.

This is the only way to ensure that companies are doing what is required, to consistently and adequately ensure that workers in Australian company operations and supply chains are protected from potential harm. Legislative reform should at minimum uphold the corporate responsibility to respect human rights<sup>28</sup> and respond to community (public and civil society) expectations of responsible business practice.

Additionally, it is imperative that there is alignment between Commonwealth, State and Territory government's modern slavery acts, or other responses to modern slavery.

## **5. Penalties for non-compliance**

To date, the Act has focused on transparency through reporting, by implementing the Modern Slavery Statement Register. Full effectiveness requires accuracy in reporting and accountability for failing to deliver on the reporting requirements.

At a minimum the Government should enforce reporting against the mandatory criteria and implement penalties for non-submission and non-compliance with the criteria. It is also critical to ensure all submitted reports are reviewed and assessed. This includes investigating the accuracy of claims within reports. Whilst a 'supportive before punitive' approach may be applied to improve company understanding of reporting requirements, consequences must also be applied to companies who do not conduct appropriate due diligence, and a mechanism established to put entities 'on notice'.

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<sup>28</sup> United Nations (2011) Op Cit.

Penalties for non-compliance should include, but are not limited to:

- Public disclosure as non-compliant by naming the entity in Parliament if they do not act on a non-compliance notice within a certain timeframe (the responsible Minister already has this capacity), and publishing on the public register.
- Fines and financial penalties for failing to meet the responsibilities of the Act once the entity has been placed on notice.
- Ineligibility and exclusion from public tenders, contracts, and trade delegations if an entity fails to meet the requirements of the Act.
- Directors and sole traders who either intentionally or negligently break the law, should be prohibited from owning, running, or holding any kind of shareholding in an entity for either a pre-determined amount of time, or permanently, if of an acute or serious nature, or a repeat offender.
- Mandatory education on modern slavery and the risks in their supply chain for directors, executives, and sole traders.
- Exclusion from trading on the stock exchange.

In addition, penalties should be implemented for lack of reporting and inaccurate or falsified reporting.

Should incidences of modern slavery occur, and a company can demonstrate adequate due diligence to prevent it from occurring, they may not be liable for penalties. This would be assessed on a case-by-case basis, and once a comprehensive analysis and investigation into the due diligence undertaken has been completed.

The Act should allow provision for civil liability, which would allow harmed individuals to bring actions to seek damages where the harm was caused by the entity's failure to take reasonable and proportionate action, or failure to comply with its due diligence obligations. In doing so, the Act would increase accountability to stakeholders, including workers and the Australian public.

When the Act was established, many companies supported the 'level playing field' that it would create. However, without investigation or penalisation for non-compliance those that invest heavily in doing the right thing and meeting or exceeding compliance standards, are being financially disadvantaged compared to their underperforming competitors. Without penalties for non-compliance and/or lack of reporting and inaccurate or falsified reporting, the Act becomes powerless and the promised 'race to the top' meets roadblocks as some entities take short cuts.



# RESPONSIBILITY TO PROTECT

## 6. A list of at-risk goods and regions, and import ban

Whilst Australia’s legislative approach to addressing modern slavery may be country and product agnostic; enforcement of legislation needs to focus on chronic and acute human rights violations that occur in specific countries or regions. To address such issues — and have the best chance of avoiding unintended consequences — requires a Whole-of-Government Approach and a shared responsibility model between business, civil society, academics, and local communities (where the forced labour and other human rights violations are occurring) to jointly address and design ways forward.

Currently, each reporting entity is undertaking its own risk assessment of the goods and services in its supply chain. In a few instances, industries are collaborating. The Government also needs to assess the risk associated with its procurement. This replication of effort does not make sense, nor does it offer sufficient assistance to businesses sourcing high-risk products and services from high-risk countries or regions.

We recommend that the Anti-Slavery Commissioner publish an annual list of countries, regions, industries, and products with a high risk of modern slavery, including forced labour. The list must include both domestic and international products to ensure compliance with World Trade Organization Agreements.

### When business’ due diligence needs Government measures

When it comes to addressing issues such as state-sanctioned forced labour or entrenched forced labour, Australia is currently lacking in mechanisms for the Government to support businesses in addressing these matters, and business lacks in its capacity to address them on their own.

The Office of the UN Human Rights Commissioner and the UN Special Rapporteur on contemporary forms of slavery<sup>29</sup> have both recently highlighted human rights violations, including state enforced forced labour in the Xinjiang region of China.

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 Act almost, if not totally, impossible. Additionally, there has been retaliation<sup>30</sup> experienced by companies who have made public statements or sought to divest from the region.

324 Government measures including business advisories, sanctions and import/export restrictions have occurred globally. Australia has not taken any public action.<sup>31</sup>

<sup>29</sup> Office of the UN High Commissioner on Human Rights (31 August 2022) *OHCHR Assessment of human rights concerns in the Xinjiang Uyghur Autonomous Region, People’s Republic of China*. Available at: <https://www.ohchr.org/sites/default/files/documents/countries/2022-08-31/22-08-31-final-assesment.pdf>

<sup>30</sup> BBC (25 March 2021) *Nike, H&M face China fury over Xinjiang cotton ‘concerns’*. Available at: <https://www.bbc.com/news/world-asia-china-56519411>

<sup>31</sup> Making Xinjiang Sanctions Work (last accessed 18 November 2022) *Government Measures*. Available at: <https://www.xinjiangsanctions.info/datasets/xjs-gms/>

A new trend in governments addressing forced and child labour is the introduction of bans to import goods made with forced and child labour. For example:

- The EU is in the process of developing mandatory human rights due diligence processes and will be releasing a new EU instrument which allows for import bans on goods made with forced and child labour.<sup>32</sup>
- The UK has legislated a ban on the use of goods made with forced and child labour in its procurement under the National Health Service (NHS).
- Canada has instituted some bans, particularly in relation to personal protective equipment.
- The USA has the S.602 – Stop Forced Organ Harvesting Act of 2021 aimed at combatting forced organ harvesting and trafficking in persons for purposes of the removal of organs, and for other purposes.<sup>33</sup>
- The USA also has long taken a global leadership position in addressing human trafficking and forced and child labour beyond their borders as follows:
  - *The Trafficking Victims Protection Reauthorization Act (TVPRA)* and Executive Order 13126<sup>34</sup> 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 US has long prohibited the importation of product made by forced or child labour through Withhold Release Orders (WRO)<sup>35</sup>. Such merchandise — whether conclusively evidenced or not — is subject to exclusion and/or seizure and may lead to criminal investigation of importers. Recently, the USA also instituted the *Uyghur Forced Labour Prevention Act* which applies the same processes as WRO's to goods at risk of Uyghur forced labour.
  - The US Department of Labor has a clear process<sup>36</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. 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 USA.

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<sup>32</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022PC0453>.

<sup>33</sup> <https://www.congress.gov/bills/117/congress/senate-bill/602/text>.

<sup>34</sup> United States Department of Customs and Border Control (31 October 2022) Op Cit.

<sup>35</sup> Ibid.

<sup>36</sup> US Department of Labor (Last accessed 9 November 2022) *List of Products Produced by Forced or Indentured Child Labor Child and Forced Labor* Available at: <https://www.dol.gov/agencies/ilab/reports/child-labor/list-of-products>

It is recommended that the Australian Government draw on the example modelled by the USA's *Tariff Act* and *Trade Facilitation and Trade Enforcement Act of 2015*<sup>37</sup> and emerging legislations in the EU.

The Act (or other legislation) should enable the enforcement of a ban on the importing of high-risk products or from countries and regions deemed high risk. The ban may be extended to those jurisdictions, industries and products noted in an annual list published by the Anti-Slavery Commissioner. Such a list offers a guide to business, and an indication of where more robust due diligence is required. If companies wish to continue to import from these jurisdictions there should be a duty to provide evidence of due diligence and in some cases to positively prove goods are not made with modern slavery or forced labour. Importantly, importing goods from countries engaged in modern slavery should be made unlawful in Australia.

Unlike the USA and the EU, Australia already has modern slavery legislation with a reporting requirement and a Modern Slavery Statement Register. As such the reporting framework for high-risk products, countries and regions can easily be made a part of modern slavery reporting requirements. Strategically, it would make sense for this to be staged in its implementation, with the Anti-Slavery Commissioner developing a roadmap for addressing high-risk products and services.

### **The Chocolate Scorecard<sup>38</sup>**

Over the last ten years, Be Slavery Free and partners, have developed a Chocolate Scorecard for those in the supply chain of chocolate products. The Chocolate Scorecard aims to:

- Give a quick and easy resource to consumers to make decisions about their chocolate consumption and be empowered to demand change.
- Drive change in the cocoa/chocolate industry through identifying key practices which are having impact.
- Highlight front-runners who show that it is possible to source 'slavery-free' cocoa and to contribute to the whole industry being 'slavery-free'.
- Encourage mainstreaming of practices.
- Help chocolate companies to understand the best emerging practices to address social and environmental issues in their value chains relating to cocoa.
- Provide key stakeholder groups such as consumers, policymakers, and financial institutions with key information to underpin decisions that help create enabling conditions for the elimination of deforestation, ecosystem conversion, human rights abuses.

<sup>37</sup> United States Congress (2016) *Trade Facilitation and Trade Enforcement Act of 2015* Available at: <https://www.congress.gov/bills/114/congress-house-bill/644>

<sup>38</sup> Be Slavery Free (2022) *the Chocolate Scorecard*. Available at: <https://www.chocolatescorecard.com>

The Chocolate Scorecard covers more than 90 per cent of the chocolate industry, includes all actors in the supply chain and is heralded as driving change. It is an example of the harvesting of public data for the purposes of reporting, benchmarking, informing consumers and driving change.

## 7. Publish guidance and improve the Modern Slavery Statement Register

The Modern Slavery Statement Register should be user-friendly for consumers and civil society. If the Act is to assist *'consumers to make more informed decisions when using, buying and selling goods and services'*, it must be in a format which allows such use, rather than providing globules of data from which it is difficult to draw conclusions. The Workplace Gender Equality Agency<sup>39</sup> provides a model for this approach, as does the example of the Chocolate Scorecard discussed above.

Whilst reporting should not be a 'tick-box' activity, the repository itself should have inbuilt questions relating to expectations for particular products and industries, so that some benchmarking and assessment in a sector is intrinsically possible. Our experience is that business does want to know how it compares with others in the sector, what best practice looks like, and where they can improve.

Several external bodies are assessing Modern Slavery Risk Statements. These assessments are in fact crucial to the success of the Act providing consumers with information and resourcing reporting entities in the 'race to the top'. They should also inform Government policy development and ways of driving change. However, these assessments may be using criteria which the reporting entity is unaware of at the time of writing their statements. The criteria are different in different assessments. In the words of one reporting entity, *'this amounts to needing to answer an exam paper without knowing the course content'*.

Regular and accessible guidance should be produced responding to the most pressing needs of reporting entities, to help improve compliance with reporting standards. An example of this occurring has been the advisory to business during COVID.<sup>40</sup>

Section 23A of the Act stipulates that the Government must report annually on its actions to implement the legislation. It would be helpful to the sector for this report to have a consistent release date which is within six months of the conclusion of the reporting period. This allows for the information contained to be up-to-date and for the same requirements apply to government as they do to business.

<sup>39</sup> Australian Government (Last accessed 9 November 2022) *Workplace Gender Equality Agency* Available at: <https://www.wgea.gov.au>

<sup>40</sup> Australian Border Force (Last accessed 18 November 2022) *Modern Slavery Act Information Sheet: Coronavirus*. Available at: <https://www.homeaffairs.gov.au/criminal-justice/files/modern-slavery-covid-19.pdf>

To date, Government reporting has been largely descriptive. The implementation of the Act is also part of the Government's National Action Plan, which also is yet to have a publicly available monitoring and evaluation framework, despite being over halfway through the period of implementation of the plan.

Developing a monitoring and evaluation framework, which progress is reported on annually, is essential for a revised Act.

## ACCESS TO REMEDY

### 8. National compensation scheme

In 2013, the Joint Standing Committee on Foreign Affairs, Defence and Trade tabled its report on the inquiry into Slavery, Slavery-like Conditions and People Trafficking entitled, *Trading Lives: Modern Day Human Trafficking*, and recommended:

*"The Committee recommends that the Australian Government further investigate the establishment of a federal compensation scheme for proven victims of slavery and people trafficking. The compensation fund should be funded by persons convicted of these crimes. The Committee also recommends that the Australian Government review the current rates of compensation. (Recommendation 6)."*<sup>41</sup>

Since this time there have been four further recommendations from inquiries and reports to the Parliament concerning the establishment of a national compensation scheme.

Reliance on voluntary remediation processes for exploited workers by business is inadequate and often ineffective. Whilst company-based compensation schemes should also be encouraged, it is strongly recommended that a national compensation scheme be established to provide some redress to people subjected to labour exploitation where companies have failed to implement appropriate due diligence to prevent modern slavery in their operations and supply chain.

Additionally, by enforcing a due diligence approach the Act may enable more people to have greater access to compensation through business-level schemes, as it would encourage action to be taken on individual complaints and claims.

We are in support of the proposal for a national compensation scheme developed by Anti-Slavery Australia.<sup>42</sup>

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<sup>41</sup> Parliament of Australia (24 June 2013) *Trading Lives: Modern Day Human Trafficking*. Available at: [https://www.aph.gov.au/parliamentary\\_business/committees/house\\_of\\_representatives\\_committees?url=jfad/slavery\\_people\\_trafficking/report.htm](https://www.aph.gov.au/parliamentary_business/committees/house_of_representatives_committees?url=jfad/slavery_people_trafficking/report.htm)

<sup>42</sup> Anti-Slavery Australia (7 July 2022) *Justice For All: Establishing a National Compensation Scheme for Survivors of Modern Slavery*. Available at: <https://antislavery.org.au/justice-for-all/>

## 9. Reporting on modern slavery occurrences

When companies find incidences of modern slavery at any point in their supply chain, assessed against published common benchmark indicators – and not just in the first tier – they should be required to report on it within a set period and submit evidence to the recommended Anti-Slavery Commissioner. Reports must at minimum include:

- How they became aware of the issue.
- Where modern slavery was found within their supply chain.
- Whether they had previously identified this as an area of risk – and if so, what preventative, risk mitigation actions were being taken.
- What they have done and are doing to in order to address and remedy it.
- What changes will be made and what ongoing actions will be taken.

The required report should include standardised questions to improve data collection, and aggregated results should be published publicly on an annual basis. Doing so would serve to increase transparency and more swiftly mobilise entities and Government to help rectify the issue and mitigate future risk.

## 10. Funding for civil society

Civil society organisations provide several programs in response to modern slavery. Each organisation is active in one or more of prevention, early intervention, response and recovery activities as well as advocacy and campaigning. These include domestic community programs addressing forced marriage, labour exploitation, slavery-awareness in migrant, regional and vulnerable communities, advice to business, the development of web platforms, training toolkits, legal advice, services for victims and survivors, community mapping resources, schools programs, participating in and making submissions to inquiries, participating in offering advice both formally and informally to the Government and members of Parliament, and actively engaging in the work of Government round-tables, consultations and committees.

In addition to offering subject matter expertise in the development of public policy and engagement with the wider community in advocacy actions, importantly, this also includes organisations providing professional social work, counselling or legal services that are not otherwise provided through direct government services. Most of these organisations provide services to a specifically identified cohort, or cohorts, of people who do not receive equivalent services through mainstream organisations, and/or, these organisations provide services at an intersection between areas such as family violence and trafficking, that is unique and valuable in understanding emerging risks.

An amount of \$7.8 million was provided to non-government organisations between 2008-22 to deliver work. The funding models after 2015 were fundamentally changed to remove all service-based funding and revert to wholly competitive grant models. This funding was usually project-based, on a year-by-year basis. The programs needed to be 'innovative' rather than recognising the business-as-usual work done by charities as essential in the response to slavery, and with no longer term plans around evaluation and the potential scaling of the activities funded, or transparent assessment of the risk of not funding other activities.

This approach to funding does not allow for long-term planning or development, or recognise the accumulated skill and knowledge held by these organisations. Organisations are then required to remain operating through donations from supporters, frequent application for grants in the hope of attracting support, limited support from State governments, or time offered gratis by the staff or volunteers involved over and above their existing jobs or roles. This reduces the ability to retain professional staff and support the high level of vicarious trauma and burnout experienced by people working in this field, or to devoting resources to outcomes measurement that would provide a better assessment of the efficacy of programs and the response to need. There is also a negative impact of the loss of victim-survivor voice, including being able to provide alerts to emerging risks. The voices of those impacted by modern slavery must be heard and validated. Lived experience must inform policy, laws and service delivery. Often people are personally paying for the costs of participating in Government processes and meetings. Those involved do this gladly as a service for the common good we all seek to build. However, it is somewhat counter-intuitive that the Government's anti-slavery and anti-exploitation responses would expect pro-bono contributions from civil society staff.

It is also difficult to understand how the Government's action plans can so strongly rely on the input of civil society organisations who are not receiving any ongoing funding from the Federal Government.

Since 2008, numerous civil society organisations have closed due to funding issues. The sector loses experience and competence. Without any opportunities for funding ongoing operations, more will close.

We are of the opinion that National Action Plan could not be achieved without the support of civil society.

The current Government budget contains no funding for this work. Nor is there a clear and transparent plan that identifies specific marginalised cohorts, how services are expected to be

provided to these people, and with what funding – to mitigate the risks of not reaching these people at all.

	2021-22 Estimated actual \$'000	2022-23 Budget \$'000	2023-24 Forward estimate \$'000	2024-25 Forward estimate \$'000	2025-26 Forward estimate \$'000
<b>Program 1.6: Criminal Justice</b>					
<b>Administered expenses (d)</b>					
Ordinary annual services (Appropriation Bill No.1)					
Justice Reinvestment	–	9,500	19,500	20,000	20,000
Modern Slavery - Community Crime Prevention Program	–	1,399	900	900	900

The current Government budget does provide for crime prevention in the area of modern slavery, but tackling modern slavery is much wider than crime prevention. See the strategic priorities of the Nation Action Plan.

	Program	2021-22 \$'000	2022-23 \$'000	2023-24 \$'000	2024-25 \$'000	2025-26 \$'000
Tackling Modern Slavery	1.2					
Administered payment		-	-	-	-	-
Departmental payment		-	-	-	-	-
<b>Total</b>		-	-	-	-	-



## SUMMARY RECOMMENDATIONS

In summary, it is recommended that:

**Recommendation 1:** That the review of the Act also include a review of previous inquiries and reports with a view to implementing recommendations with ongoing saliency.

**Recommendation 2:** The Act be amended to uphold a duty to prevent modern slavery, by applying a due diligence approach and enforcing and monitoring reporting aligned to international principles, standards, conventions, and laws, that are appropriate to the size, scale, sector and risk-profile of the reporting entity.

**Recommendation 3:** The role of an independent Anti-Slavery Commissioner be legislated, and the office of such Commissioner be resourced to oversee, investigate, and respond to allegations of modern slavery, as well as provide support and encourage sector collaboration (see Appendix B for a full listing of responsibilities). The role will also:

- (a) Include publishing an annual list of countries, regions, industries, and products with a high risk of modern slavery, including forced labour and child labour.
- (b) Oversee the establishment and implementation of mechanisms that ensure victims of modern slavery, including children, have access to appropriate support services and compensation.
- (c) Provide education and awareness to seek to prevent modern slavery crimes in the first place.

**Recommendation 4:** That resources for the office of the Ambassador for People Smuggling and Human Trafficking in the Department of Foreign Affairs and Trade be increased to work with partners in our region to build awareness and help countries strengthen their responses to modern slavery.

**Recommendation 5:** The Act enforces penalties for non-compliance, negligence, or falsifying reporting.

**Recommendation 6:** There should be provision for civil liability which would allow harmed individuals to bring actions to seek damages where the harm was caused by the entity's failure to take reasonable and proportionate action, or failure to comply with its due diligence obligations.

**Recommendation 7:** The Act should enforce a ban on importing high-risk products from countries and regions (including Australia) at high-risk of modern slavery. The ban would extend to those jurisdictions, industries and products noted in the annual list published by the recommended Anti-Slavery Commissioner (see recommendation 3). Should companies want to import or source domestically high-risk products, there should be a duty to provide evidence of due diligence and in some cases to positively prove goods are not made with modern slavery.

**Recommendation 8:** A repository which enables harvesting of data and includes a framework which enables some benchmarking/assessment framework for various industries/products – especially those at high risk.

**Recommendation 9:** A national compensation scheme is implemented to provide appropriate remedy to people subjected to exploitation through an Australian company's operations or supply chain.

**Recommendation 10:** Timely and transparent reporting on modern slavery incidences is required to uphold accountability, support subsequent investigations, and improve data collection on modern slavery in Australian supply chains.

**Recommendation 11:** Funding is sustainably delivered and increased for civil society organisations that are performing duties required to support the delivery of the National Action Plan, Modern Slavery Act or other government mechanisms on slavery.

## SIGNED BY:

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## APPENDICES

### Appendix 1: Summary of recommendations from past inquiries

Recommendations	Inquiries						
	Hidden in Plain Sight <sup>43</sup>	An inquiry into human trafficking, slavery and slavery-like practices <sup>44</sup>	Select Committee on Temporary Migration <sup>45</sup>	An Inquiry into Human Organ Trafficking and Organ Transplant Tourism <sup>46</sup>	Legal and Constitutional Affairs Legislation Committee, Modern Slavery Bill 2018 <sup>47</sup>	Inquiry into the Customs Amendment Bill 2020 <sup>48</sup>	Third interim report: Labour hire and contracting <sup>49</sup>
Independent Anti-Slavery Commissioner	Rec 1, Rec 6	Rec 9			Rec 3	Rec 12	
National compensation scheme	Rec 1, Rec 23, Rec 48	Rec 7					
Labour hire licensing scheme	Rec 1, Rec 48	Rec 12	Rec 24				Rec 2
Support research and monitoring program to better understand the prevalence of modern slavery in Australia	Rec 5						
Mandatory reporting under Modern Slavery Act to be set at \$50 million revenue	Rec 11						

<sup>43</sup> Parliament of the Commonwealth of Australian (December 2017) *Hidden in Plain Sight: An inquiry into establishing a Modern Slavery Act in Australia*. Available at: [https://parlinfo.aph.gov.au/parlInfo/download/committees/reporting/024102/toc\\_pdf/HiddeninPlainSight.pdf;fileType=application/pdf](https://parlinfo.aph.gov.au/parlInfo/download/committees/reporting/024102/toc_pdf/HiddeninPlainSight.pdf;fileType=application/pdf)

<sup>44</sup> Parliament of Australia (18 July 2017) *An inquiry into human trafficking, slavery and slavery-like practices*. Available at: [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Law\\_Enforcement/Humantrafficking45/Report](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Law_Enforcement/Humantrafficking45/Report)

<sup>45</sup> Parliament of Australia (Last accessed 9 November 2022) *Select Committee on Temporary Migration*. Available at: [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Temporary\\_Migration](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Temporary_Migration)

<sup>46</sup> Parliament of Australia (2015) *inquiry into Human Organ Trafficking Report*. Available at: [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Foreign\\_Affairs\\_Defence\\_and\\_Trade/HumanOrganTrafficking?Tabled\\_Reports](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Foreign_Affairs_Defence_and_Trade/HumanOrganTrafficking?Tabled_Reports)

<sup>47</sup> Parliament of Australia (2018) *Modern Slavery Bill 2018 Recommendations*. Available at: [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Legal\\_and\\_Constitutional\\_Affairs/ModernSlavery/Report/b01](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/ModernSlavery/Report/b01)

<sup>48</sup> Parliament of Australia (2022) *Uyghur Forced Labour Bill 2020*. Available at: [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Foreign\\_Affairs\\_Defence\\_and\\_Trade/UyghurForcedLabourBill](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Foreign_Affairs_Defence_and_Trade/UyghurForcedLabourBill)

<sup>49</sup> Parliament of Australia (November 2021) *Third interim report: labour hire and contracting*. Available at: [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Job\\_Security/JobSecurity/Third\\_Interim\\_Report](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Job_Security/JobSecurity/Third_Interim_Report)

Recommendations	Inquiries						
	Hidden in Plain Sight <sup>43</sup>	An inquiry into human trafficking, slavery and slavery-like practices <sup>44</sup>	Select Committee on Temporary Migration <sup>45</sup>	An Inquiry into Human Organ Trafficking and Organ Transplant Tourism <sup>46</sup>	Legal and Constitutional Affairs Legislation Committee, Modern Slavery Bill 2018 <sup>47</sup>	Inquiry into the Customs Amendment Bill 2020 <sup>48</sup>	Third interim report: Labour hire and contracting <sup>49</sup>
Fund independent civil society NGO/s to run & administer central repository of Modern Slavery Statements, undertake benchmarking and analysis of statements	Rec 17						
Penalties and compliance measures for entities that fail to report under Modern Slavery Act	Rec 19				Rec 4		
Consider trade mechanisms to address modern slavery risks in supply chains entering Australia	Rec 20					Rec 1 (banning of goods made with forced labor)	
Amendment to Human Trafficking Visa Framework to facilitate and expedite family reunification for victims of slavery	Rec 21	Rec 6					
Continue to fund NGOs and civil society to support victims of modern slavery, and increase this funding where deemed appropriate	Rec 24						
Strengthen coordination of Interdepartmental Committee on Human Trafficking and Slavery strengthen their coordination and Commonwealth agencies strengthen existing relationships with state and territory frontline agencies. This should include establishing multi-disciplinary taskforces	Rec 26	Rec 1					
Increase number of Australian Federal Police officers with specialised modern slavery training in all states and territories	Rec 26	Rec 3					

Recommendations	Inquiries						
	Hidden in Plain Sight <sup>43</sup>	An inquiry into human trafficking, slavery and slavery-like practices <sup>44</sup>	Select Committee on Temporary Migration <sup>45</sup>	An Inquiry into Human Organ Trafficking and Organ Transplant Tourism <sup>46</sup>	Legal and Constitutional Affairs Legislation Committee, Modern Slavery Bill 2018 <sup>47</sup>	Inquiry into the Customs Amendment Bill 2020 <sup>48</sup>	Third interim report: Labour hire and contracting <sup>49</sup>
Expand training for frontline staff employed by the Australian Federal Police, the Department of Immigration and Border Protection and the Fair Work Ombudsman with respect to offences at Divisions 270 and 271 of the Criminal Code Act 1995	Rec 26	Rec 4					
Continue to fund overseas aid programs to combat modern slavery and increase this funding as deemed appropriate	Rec 28	Rec 5					
Implement recommendations 13, 14 and 15 of the Parliamentary Joint Committee on Law Enforcement's Inquiry into human trafficking, slavery and slavery-like practices regarding sex trafficking	Rec 29	Rec 13, Rec 14, Rec 15					
Implement recommendations 17, 18, 19 and 20 of the Parliamentary Joint Standing Committee on Law Enforcement's Inquiry into human trafficking, slavery and slavery-like practices regarding forced marriage	Rec 30	Rec 17, Rec 18, Rec 19					
Review Australia's visa framework for migrants to replace or eliminate 'tied' visa conditions, such as employer sponsorship and signoff requirements, that often create conditions of vulnerability to exploitation and modern slavery	Rec 45			Rec 8, Rec 9			
Review and expand pre-departure briefings and information on Australian	Rec 46	Rec 10	Rec 21				

Recommendations	Inquiries						
	Hidden in Plain Sight <sup>43</sup>	An inquiry into human trafficking, slavery and slavery-like practices <sup>44</sup>	Select Committee on Temporary Migration <sup>45</sup>	An Inquiry into Human Organ Trafficking and Organ Transplant Tourism <sup>46</sup>	Legal and Constitutional Affairs Legislation Committee, Modern Slavery Bill 2018 <sup>47</sup>	Inquiry into the Customs Amendment Bill 2020 <sup>48</sup>	Third interim report: Labour hire and contracting <sup>49</sup>
employment rights and responsibilities currently available to all visa holders eligible to work in Australia							
Introduce post-arrival briefings to ensure migrant workers are provided with relevant information	Rec 47						
Fair Work Ombudsman works in a formal partnership with registered organisations in the shared mission of combating temporary visa worker exploitations in Australian workplaces			Rec 39				
Commission of inquiry to thoroughly investigate organ trafficking in countries where it is alleged to occur on a large scale				Rec 1			
Establish a comprehensive organ donation data collection repository				Rec 3			
Sign and ratify the Council of Europe Convention against Trafficking in Human Organs				Rec 6			
Resumption of human rights dialogues with China				Rec 2			
Strengthen visa protections where visa holder has been subject to trafficking, slavery and slavery-like offences		Rec 11					
Commission balanced and constructive research into the prevalence of sex trafficking into and within Australia		Rec 13					



Recommendations	Inquiries						
	Hidden in Plain Sight <sup>43</sup>	An inquiry into human trafficking, slavery and slavery-like practices <sup>44</sup>	Select Committee on Temporary Migration <sup>45</sup>	An Inquiry into Human Organ Trafficking and Organ Transplant Tourism <sup>46</sup>	Legal and Constitutional Affairs Legislation Committee, Modern Slavery Bill 2018 <sup>47</sup>	Inquiry into the Customs Amendment Bill 2020 <sup>48</sup>	Third interim report: Labour hire and contracting <sup>49</sup>
Strengthen visa systems to prevent involuntary human trafficking into the sex industry in Australia		Rec 14					
Support and fund initiatives to inform migrant sex workers about their legal rights and obligations both pre-departure and post-arrival in Australia		Rec 15					
Prohibit any goods made wholly or in part with forced labour, regardless of geographic origin						Rec 1	
Empower the Australian Border Force to be able to issue rebuttable presumptions for specific goods, companies and/or regions with particularly high risk of being associated with forced labour						Rec 2	
Amend the Commonwealth Procurement Rules to include a requirement on due diligence with regards to the possibility of exposure to forced labour						Rec 3	
Establish working group to examine the role emerging technologies can play in tracing the geographical origin of products and raw materials						Rec 5	
Establish and maintain a list of products or companies considered to be at high-risk of being produced by forced labour						Rec 6	
Coordinate closely with counterparts in like-minded countries, in particular Canada, the United Kingdom and the						Rec 8	

Recommendations	Inquiries						
	Hidden in Plain Sight <sup>43</sup>	An inquiry into human trafficking, slavery and slavery-like practices <sup>44</sup>	Select Committee on Temporary Migration <sup>45</sup>	An Inquiry into Human Organ Trafficking and Organ Transplant Tourism <sup>46</sup>	Legal and Constitutional Affairs Legislation Committee, Modern Slavery Bill 2018 <sup>47</sup>	Inquiry into the Customs Amendment Bill 2020 <sup>48</sup>	Third interim report: Labour hire and contracting <sup>49</sup>
United States, both to ensure policy consistency and to ensure Australia can benefit from the practical implementation lessons learned by those countries							
Explore with like-minded States the possibility of introducing a resolution condemning the situation in Xinjiang at the 76th session of the Third Committee of the General Assembly in 2021						Rec 9	
Strengthening and broadening provisions of Modern Slavery Act						Rec 12	
Introduce guidelines to assist Australian businesses to avoid sourcing products from forced labour						Rec 14	
Provide a listing of entities required to report under the Act							
Examination of the STTP program with a view to expanding the program and delinking from criminal cooperation							
Introduction of a National Hotline							

## Appendix 2: Proposed duties of the independent Commissioner

The duties of the Commissioner would include but not be limited to:

- Coordinating an all-of-government response to modern slavery, and working across government and industry, with input from civil society and academia, to eliminate modern slavery in Australia and in global supply chains.
- Collating and analysing data on modern slavery in Australia – and in Australian supply chains.
- Providing independent oversight of the response to combatting modern slavery across all sectors and identifying gaps and solutions.
- Encouraging collaboration and alignment of modern slavery responses across Commonwealth, State and Territory governments.
- Overseeing the implementation of national mechanisms to combat modern slavery, including the National Action Plan to Combat Human Trafficking and Slavery.
- Monitoring the effectiveness of all federal and state institutions working to tackle modern slavery.
- Providing education, guidance and awareness training for government agencies and reporting entities about modern slavery issues – including, publishing an annual list of countries, regions, industries, and products with a high risk of modern slavery, including forced labour.
- Raising community awareness of modern slavery.
- Ensuring compliance with the Act and other relevant regulations and legislation, by monitoring and thoroughly investigating allegations of modern slavery in business operations and supply chains and making recommendations (including on the implementation of penalties for non-compliance) to the appropriate Government department or Minister.
- Overseeing the establishment and implementation of mechanisms that ensure victims of modern slavery, including children, have access to appropriate support services and compensation.
- Improving coordination between criminal justice agencies in identifying and prosecuting modern slavery cases.

- Working with various agencies to increase the identification and reporting of modern slavery crimes, and to bolster the prosecution rates for modern slavery offences.
- Collaborating with the Ambassador for People Smuggling and Human Trafficking to align domestic and regional responses to eliminating modern slavery.
- Providing advice on improvements to the Modern Slavery Act and undertaking legislated reviews at least every three years.