

Attorney-General's Department

Modern Slavery in Supply Chains Reporting Requirement Public Consultation

Submission from Fairtrade Australia & New Zealand Ltd

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Introduction

Fairtrade Australia & New Zealand (Fairtrade ANZ) welcomes this opportunity to participate in the development of an Australian *Modern Slavery Act* and to consult on the proposed reporting requirement.¹

Australia can learn a lot from the UK *Modern Slavery Act* and California's *Transparency in Supply Chains Act 2010*. These represent important advances, not just in criminal law approaches to slavery but in integrating slavery risk assessments into core business practice. While the Californian model was a good initial step, the UK approach has been much more effective, delivering stronger participation and exceptional results in terms of victim identification and prosecutions for modern slavery offences.

Australia can add considerable capacity to global efforts to end modern slavery by implementing a new legislative and regulatory approach that integrates effectively with, and improves on, the UK model. This is an important statement and demonstration of Australia's position domestically, regionally and globally.

Fairtrade ANZ's submission will focus on Questions 3, 7–9 and 12–13 as outlined in the Attorney General Department's Public Consultation Paper, as these are areas in which we have expertise and experience.

Consultation Questions

Question 3: How should the Australian Government define an entity's revenue for the reporting requirement? Is \$100 million total annual revenue an appropriate threshold for the reporting requirement?

Modern Slavery is pervasive and fundamentally a criminal human rights violation, therefore efforts to eradicate it must be as inclusive as possible. Working in global supply chains with companies of all sizes, from local businesses to large multinationals, all Fairtrade Standards including those on forced labour and human trafficking apply to all operators equally. In three decades of this work we have not found that small businesses have any more difficulty than large companies in adhering to the Fairtrade Standards. Indeed, in our experience, large organisations with the risk of reputational consequences are often more likely to have due diligence procedures in place. We therefore do not see the need for a turnover threshold level below which companies are exempt from a *Modern Slavery Act*.

However, recognising the need for consistency across international jurisdictions, should a threshold be introduced in the Australian legislation, it will be most effective if it is in line with the UK model of \$60 million annual turnover. Any model implemented should invite companies of all sizes to report from the outset, and should clearly articulate a plan with specific timelines for lowering the threshold, so that all businesses are ultimately included.

¹ For more information on our position and an overview of Fairtrade ANZ we refer you to our submission to the current Inquiry into establishing a Modern Slavery Act in Australia by Joint Standing Committee on Foreign Affairs, Defence and Trade, Foreign Affairs and Aid Sub-Committee.

Question 7. *Are the proposed four mandatory criteria for entities to report against appropriate? Should other criteria be included, including a requirement to report on the number and nature of any incidences of modern slavery detected during the reporting period?*

Fairtrade ANZ broadly supports the listed mandatory criteria for reporting under the proposed *Modern Slavery Act* and the requirement of board level approval. However, in order to ensure reporting has a real impact - the ultimate test of any such legislation - clear metrics must be included.

A key deficiency in the UK regime is the absence of key performance indicators (KPIs) or metrics. The Australian Government should explicitly require companies to report using agreed performance metrics. The criteria spelt out by CORE, a coalition of leading British and international NGOs for corporate responsibility, in their authoritative document *Beyond Compliance: Effective Reporting Under the Modern Slavery Act*, should form the basis of KPIs used by Australian companies, and therefore the Government's advice to them.² Metrics include:

- Actions taken to understand the risks of modern slavery occurring in business operations.
- Comprehensive risk management policies and process to inform business decisions.
- Extent of engagement with internal and external stakeholders
- Extent of integration of policies with standard quality control and other aspects of core business.
- Extent of human rights due diligence in the supply chain and actions to address risks, including action plans to prevent and mitigate modern slavery.
- Inclusion of clauses on modern slavery and risk factors in supplier contracts.
- Extent of monitoring of suppliers.
- Extent of implementation and use of procedures for reporting concerns over modern slavery.

Furthermore, analysis highlights that while UK companies are covering supply chains reasonably well, "contractor relationships are extremely—and surprisingly—poorly covered, with 84% of statements addressing them minimally or not at all".³ Successful prosecutions under the UK *Modern Slavery Act* demonstrate that slavery risks often reside in domestic

² CORE, *Beyond Compliance: Effective reporting under the Modern Slavery Act* (London: CORE Coalition, February 2016), http://corporate-responsibility.org/wp-content/uploads/2016/03/CSO_TISC_guidance_final_digitalversion_16.03.16.pdf, accessed 3 October, 2017.

³ Ergon Associates Ltd, *Modern slavery statements: One year on* (Ergon Associates Ltd, April 2017), http://ergonassociates.net/wp-content/uploads/2016/03/MSA_One_year_on_April_2017.pdf?x74739, accessed 29 September, 2017.

service providers, cleaners, caterers and warehouses.⁴ Therefore, Australia's model must cover domestic operations and subcontractors, as well as international supply chains.

Question 8. *How should a central repository for Modern Slavery Statements be established and what functions should it include? Should the repository be run by the Government or a third party?*

Fairtrade ANZ recommends that a central repository for Modern Slavery Statements is essential for success, and will be most effective if maintained by the Independent Anti-Slavery Commissioner's Office. This would keep the repository separate from the direct regulatory role of government. This is an important distinction since the role of the repository is not to regulate *per se* but to benchmark and track company progress, enabling government, other businesses and civil society to effect social regulation and support implementation of this important legislation. Situating the repository within the function of the IASC's office would also give the repository the visibility and credibility required. The repository should be allocated long-term, secure public funding sufficient to ensure optimal performance.

The repository should be accessible to the public, regularly updated and easily searchable, taking into account a wide array of users. The repository should include all entities covered under the *Modern Slavery Act*, including those who had failed to file a timely statement. The repository data must also be segmented in such a way that comparison of relevant entities can be done.

Question 9. *Noting the Government does not propose to provide for penalties for non-compliance, how can Government and civil society most effectively support entities to comply with the reporting requirement?*

In order for the Australian *Modern Slavery Act* to be effective there needs to be substantial support and action from all actors. There are three key ways to support compliance and to bring about positive change: clear guidance, the establishment of an Independent Anti-Slavery Commissioner role, and government leadership.

Clear Guidance

The provision of clear guidance and explanatory materials will assist entities to understand their risks and responsibilities and facilitate compliance. The expertise of civil society actors can be drawn upon by the government and industry bodies, as they seek to create supporting materials and training for staff and board members.

Companies should be encouraged to seek independent third party auditing and independent verification of their supply chains. This would encourage companies to engage with existing systems and draw on the expertise of operators already engaging in this sector.

⁴ Ergon Associates Ltd, *Is modern slavery reporting working?* (Ergon Associates Ltd, June 2017), <http://ergonassociates.net/modern-slavery-reporting-working/>, accessed 3 October, 2017.

An Independent Anti-Slavery Commissioner

The establishment of an Independent Anti-Slavery Commissioner (IASC) position is critical to the effectiveness of an Australian *Modern Slavery Act*. The IASC's role would be to help promote compliance through information sharing, public advocacy, convening dialogue, and cross-sectoral partnership and learning. The Commissioner could champion the best operators; those companies and government agencies that are leading the way. Publicly acknowledging their work and acts to incentivise others. Additionally, the IASC could support and advise those entities who are failing in their responsibilities.

Fairtrade ANZ also recommends a bi-annual roundtable discussion between key business, government, and civil society leaders, led by the IASC. This would enable key stakeholders to come together to share learnings between sectors, identify positive case studies and identify challenges, as well as solutions.

Government Leadership: Public Procurement

Fairtrade ANZ strongly recommends the inclusion of government procurement under the Australian *Modern Slavery Act*. Government has a pivotal role as a leader in ending modern slavery. The establishment of an Australian *Modern Slavery Act* is a very important element of this. However, so is the economic power of government. Public spending is a substantial component of our economy and government has led on ethical procurement for many years.

The Australian Government currently provides guidance for procurement officers⁵ on human trafficking and has established ethical procurement requirements under the Commonwealth Procurement Rules.⁶ There now exists good advice on requirements for tenders for public contracts under the UK *Modern Slavery Act* and similar steps should be adopted by the Australian Government.⁷

Ultimately, the *Modern Slavery Act* is about much more than legislation and compliance, it is about creating the conditions for broad behaviour change. Establishing itself as a model purchaser should be central to the Commonwealth's efforts to end modern slavery.

Question 12. *How can the Australian Government best monitor and evaluate the effectiveness of the reporting requirement? How should Government allow for the*

⁵ Australian Government, *Human trafficking guidelines and fact sheets* (Attorney-General's Department), <https://www.ag.gov.au/CrimeAndCorruption/HumanTrafficking/Pages/Human-trafficking-guidelines-and-fact-sheets.aspx>, accessed October 7, 2017.

⁶ Australian Government, *Commonwealth Procurement Rules* (Department of Finance, 1 March 2017), <https://www.finance.gov.au/sites/default/files/commonwealth-procurement-rules.pdf>, accessed October 7, 2017.

⁷ Osborne Clarke, *Public Procurement: what do contractors need to know about the Modern Slavery Act?* <http://www.osborneclarke.com/insights/public-procurement-what-do-contractors-need-to-know-about-the-modern-slavery-act/>, accessed October 4, 2017.

business community and civil society to provide feedback on the effectiveness of the reporting requirement?

Without effective self-evaluation, remedial action is ineffective. Fairtrade ANZ recommends three-year cycles of independent review of the Australian *Modern Slavery Act*. This allows clear evaluation of success and the opportunity for remedial changes if required. In addition, the Government should consider investing in relevant civil society organisations to enable them to publish independent reviews and reports periodically.

Question 13. Is an independent oversight mechanism required, or could this oversight be provided by Government and civil society? If so, what functions should the oversight mechanism perform?

As the proposed model does not include penalties for non-compliance there is a strong need for mechanisms that encourage active participation and external oversight. Independent oversight mechanisms are crucial to ensuring the reporting requirements function properly and do not become a tick-box exercise. A strong IASC will play a key role in drawing attention to the issue of Modern Slavery and encouraging best practice. The broad engagement of this role and the insights they would have provides a unique broad lensed oversight mechanism. Crucially, this role connects businesses, government, civil society and the broader public and rallies them around the common cause of Modern Slavery to create positive change through collaboration. In order to fulfil this role the IASC will need to be fully and appropriately resourced.

Civil society also has an important role to play. Transparency, clear government support for advocacy, and the proposed repository will give civil society the basis from which to critique business and government performance, as well as give credit where due. However, oversight cannot simply be outsourced to non-governmental or philanthropic organisations without recognising the resource needs. If government expects civil society to take on a proactive regulatory or oversight role then it should make funds available for this purpose.

We thank you for the opportunity to contribute this submission and would be happy to discuss aspects of our submission with you further.