
Submission to the Australian Joint Standing Committee on Foreign Affairs, Defence and Trade

Inquiry into Adopting an Australian Modern Slavery Act

18 May 2017

Introduction

The **Institute for Human Rights and Business (IHRB)** is grateful to have the opportunity to make a submission to the Australian Joint Standing Committee on Foreign Affairs, Defence and Trade regarding its inquiry into establishing a Modern Slavery Act in Australia. As an international organisation, IHRB commends the Committee for welcoming submissions from a diversity of stakeholder at home and globally.

IHRB fully supports the establishment of an Australian Modern Slavery Act and hopes that it will play a significant part in preventing forced labour and trafficking within Australia and abroad. In particular, it will help to protect vulnerable workers, particularly women and migrant workers, along with those who may face discrimination due to ethnicity or caste. As well as protecting workers, the Act would also assist law abiding businesses and reward companies who seek to ensure and promote responsible practices.

About IHRB

Founded in 2009, IHRB is the leading international think tank on business and human rights. IHRB's mission is to shape policy, advance practice, and strengthen accountability in order to make respect for human rights part of everyday business.

IHRB's programmes are organised around key 'flows' fundamental to social and economic development, namely: flows of workers, flows of finance, flows of commodities and flows of information. These underpin IHRB's work on **migrant workers** and the **financial**, **extractives** and **ICT** sectors respectively. In addition, IHRB serves as the secretariat for the **Mega-Sporting Events Platform for Human Rights** and is a founding partner

in the first wide-scale **benchmark on corporate human rights performance**. IHRB works across its programmes with public and private sector partners in both developing and developed countries. In particular, IHRB has founded centres for responsible business in **Myanmar** and **Colombia** that mirror its mission and activities at a local level, and has undertaken extensive research on the extractives sector in **Kenya**.

Preventing Modern Slavery – The Importance of Responsible Recruitment

We would like to initially offer some contextual information on a particular driver of modern slavery and human trafficking, in line with the Terms of Reference of the Committee’s inquiry calling for information on:

- *“The nature and extent of modern slavery (including slavery, forced labour and wage exploitation, involuntary servitude, debt bondage, human trafficking, forced marriage and other slavery-like exploitation) both in Australia and globally;”*
- *“Identifying international best practice employed by governments, companies, businesses and organisations to prevent modern slavery in domestic and global supply chains, with a view to strengthening Australian legislation;”*

The vulnerability of migrant workers in global supply chains has long been a key focus area for IHRB. In 2011 we launched the **Dhaka Principles on Migration with Dignity**, and in 2014 a **sector guide** for the European Commission on the global employment and recruitment industry, both products of years-long multistakeholder consultation processes. In all our work we have observed how third party labour provision is one of the key risk areas for exploitation, which in its worst form can amount to forced labour or human trafficking.

Recruitment of workers was expressly referenced as a potential area of risk in the **2014 ILO Protocol** to the Forced Labour Convention (1930). IHRB’s research highlights that flawed recruitment processes are one of the most significant factors in allowing or engendering modern slavery. In particular, the payment of large recruitment fees by many migrant workers to secure employment abroad is itself exploitative, but also frequently creates situations of debt bondage. Unable to assert their own rights, migrant workers are made more vulnerable to further exploitation and abuse, including forced labour.

A prohibition on workers paying recruitment fees is therefore an important component in preventing modern slavery.

In the United States for example the **2012 US Executive Order** Strengthening Protections to Prevent Trafficking in Persons in Federal Contracts expressly prohibits the charging of recruitment fees to workers.

The issue of recruitment fees being paid by workers is also very much on the operational agendas of international companies. The **Electronic Industry Citizenship Coalition** have prohibited charging recruitment fees to workers in their Code of Conduct and are working with their members to implement this across electronics supply chains. IHRB has led the development of a business initiative – the **Leadership Group for Responsible Recruitment** – a group of companies committing to the ‘Employer Pays Principle’ that: no worker should pay for a job - the costs of recruitment should be borne not by the worker but by the employer. More recently the **Consumer Goods Forum** included a prohibition on recruitment fees as one of their Priority

Industry Principles to Prevent Forced Labour. Traditionally the participation of Australian companies in these initiatives has been low despite the positive work we are aware is being undertaken in practice, leading to potential missed opportunities to share important perspectives from the Australian context.

Learning from the UK's Modern Slavery Act

The following information is offered in line with the inquiry's terms of reference requesting information on:

- *"Provisions in the United Kingdom's legislation which have proven effective in addressing modern slavery, and whether similar or improved measures should be introduced in Australia;"*

In the United Kingdom, the UK Modern Slavery Act 2015 (UK MSA) greatly increased awareness and catalysed action by both business and government to prevent forced labour and trafficking. The UK MSA has been instrumental in delivering significant change in company practice and has seen anti-slavery initiatives being undertaken by companies individually and collectively in a range of sectors. In particular it has encouraged engagement and action from companies and industry sectors not normally exposed to market-based pressure through consumer-facing reputational risk.

In our opinion, the most impactful aspects of the transparency reporting provision of the UK MSA include:

- Its breadth. The threshold of £36 million turnover captures many companies (in the region of 12,000 - 20,000), many hundreds of which are headquartered abroad. Covering a wide breadth of companies raises many positive aspects: greater transparency of company performance will encourage both deeper and broader efforts by companies to prevent slavery, satisfying rising customer and client expectations, increasing the sharing of best practice within and across sectors, catalysing new alliances, working groups and initiatives, and ensuring constantly evolving pro-active responses in addressing the issue.
- The requirement for annual Board level sign off has given the issue of modern day slavery and global supply chains particular prominence at the highest levels within companies and elevating the issue beyond "discretionary CSR".
- The fact that the legislation is supported by the mandate of the UK Anti-Slavery Commissioner as well as other important initiatives such as the Gangmasters and Labour Abuse Authority.

A key piece of international law – the 2014 ILO Protocol to the Forced Labour Convention (1930) – requires members states to support supply chain due diligence by both the public and private sector, but does not indicate exactly how this should be done nor make such due diligence mandatory. As such, key pieces of national legislation, such as those which already exist in the US and UK, set the precedent for how business should respond to issues such as forced labour and human trafficking.

It is important to note however that it is highly likely that the UK legislation will be augmented in due course, and commitment from bodies such as the G20 to align domestic standards is likely in the future, meaning expectation setting in this agenda will continue to evolve.

We therefore recommend that the Australian Government is not constrained by what has already been achieved in the US and UK, and instead builds and improves on these early experiences whilst ensuring consistency for companies caught under both the UK and Australian Acts. This would also demonstrate continuous improvement in government approaches to fulfilling the duty to protect.

Recommendations

Clear Alignment with International Standards

Many businesses covered under the UK MSA have indicated they would be grateful for greater clarity from Government about what steps the due diligence should entail and what some of the most salient issues might be (or how to go about identifying them). The recent report of the **UK Parliament's Joint Committee on Human Rights** for example, to which IHRB gave evidence, concluded that it should not just be the act of disclosure that is a legal requirement, but that businesses should demonstrate how they have taken reasonable steps to mitigate and prevent modern day slavery in their own operations and in domestic and international business relationships.

At a minimum, any Australian requirements should be in close alignment with international standards on business and human rights. Australia was one of the co-sponsors of the 2011 **UN Guiding Principles on Business & Human Rights** (UNGPs), and has shown its continued support including through recently announcing consultations around the implementation of the UNGPs in the Australian context. Accordingly, any efforts around modern slavery should be consistent with the UNGPs, and in particular aligned with the corporate responsibility to respect human rights requiring:

- A public human rights policy commitment;
- Human rights due diligence: the set of ongoing processes through which the company “knows and shows” that it is respecting human rights in practice;
- Active engagement in the remediation of impacts the company has identified it has caused or contributed to.

These steps are particularly pertinent in addressing forced labour and trafficking, and any company seeking to prevent forced labour and trafficking in its operations should be able to demonstrate and communicate them externally. Indeed, ensuring companies are able to assess their risks and impacts, integrate and act on those findings, track their actions, and communicate on their effectiveness (referred to as “knowing and showing” in the UN Guiding Principles) is crucial in effectively preventing and mitigating harm.

Company Size and Scope

IHRB would recommend that all large and medium-sized companies undertaking business in Australia, even if not headquartered there, at a revenue level to be determined ideally at or below the £36 million threshold set by the UK should be required to produce annually a Modern Slavery Statement. Such a revenue threshold is recommended both in order to ensure consistency in government approaches globally and ensure that the threshold does not arbitrarily exclude smaller businesses with nonetheless high human

rights risks (e.g. those with a high amount of contracted labour that would be excluded were a threshold by employee count to be adopted).

IHRB would also support a provision enabling businesses below the relevant threshold be able to voluntarily 'opt in' and produce a modern slavery statement.

Including Coverage of Government Supply Chains

The requirement to report on efforts to address forced labour and trafficking in supply chains should apply not only to businesses, but also to public bodies procuring goods and services, including excluding from public tender opportunities applicable companies that do not produce a statement.

We hear on many occasions from business how favourably they would look on government if it could lead by example, not least because many smaller companies sit in the supply chain of government, meaning such a measure would significantly increase the impact of the legislation. With central and local government supply chains representing about 20% of GDP for most developed economies, not requiring public bodies themselves to provide a statement creates a key gap in coverage and effectiveness of such legislation.

The Government of Australia purchases goods and services from a range of suppliers at both national and regional level. This provides an opportunity to set high standards and an opportunity to demonstrate that government supply chains are neither complicit in forced labour or trafficking nor exempt from the need for ongoing human rights due diligence. We are aware that in 2013 a government-wide initiative was announced to assist in identifying and eliminating slavery and human trafficking in public procurement and supply chains. Such a requirement would therefore be well placed to build on existing Government initiatives to assist in identifying and eliminating forced labour and trafficking in public procurement.

Content

Company statements under the Australian Act should be approved by the Board of Directors (or equivalent) and signed at Director level (or equivalent). The statement should include details of the efforts being made by the company to prevent forced labour and trafficking occurring in both its direct operations and business relationships. The Australian Government should also set a clear expectation for demonstration of continuous year-on-year improvement in addressing risks and impacts.

IHRB would also encourage consideration of the following additional key components when crafting the scope of the requirements:

Grievance Mechanisms

Remedy should be part of the legislation and an expected part of transparency reporting. Ensuring access to effective remedy is a key component of the corporate responsibility to respect, including in preventing forced labour and trafficking. The success of the proposed Act is therefore contingent on ensuring effective state-based judicial and non judicial mechanisms through which the victims of forced labour and trafficking may be supported and their grievances remediated, as well as adequate reference to business having in place appropriate grievance mechanisms or participation in external mechanisms to ensure access to effective remedy. As such, any act should set a clear expectation that company statements should have to

include a description of their efforts and performance on remediation.

Responsible Recruitment

We hope that the Australian Modern Slavery Act will include explicit reference to migrant worker recruitment and that the Australian Government will encourage companies to undertake due diligence specifically in relation to worker recruitment. Expectations of the Act should include company commitments to: i) a prohibition on recruitment fees being paid by workers in the company and in all company supply chains; and ii) a prohibition on document retention in the company and in all company supply chains.

Expanding the Focus to Business Relationships

The UK MSA focuses on a company's own business and supply chains, as does the 2014 ILO Protocol, but the UN Guiding Principles on Business and Human Rights require governments and businesses to consider human rights risks arising from all their business relationships – such as those relating to customers, consumers, joint venture partners and investors. For some business sectors, the largest risk of modern day slavery sits further “downstream” and not “upstream” – such as, for example, an extractive company that sells or trades commodities to new refineries or smelters in regions where forced labour is an endemic risk. As such, we recommend companies focus on assessing risks of modern day slavery arising in any type of business relationship, rather than limiting coverage to supply chains exclusively, in order to ensure companies prioritise their efforts where the risk is greatest.

Independent Anti-Slavery Commissioner

The establishment of the position of an independent Anti-Slavery Commissioner in the United Kingdom has been an important factor in the success of the UK MSA. The Commissioner has a UK-wide remit to encourage good practice in the prevention, detection, investigation, and prosecution of modern slavery offences and the identification of victims.

In both the UK and abroad the Commissioner has served to champion the UK MSA and the wider modern slavery agenda to a wide variety of stakeholders, overseeing and coordinating the response to the Act by government, business, and civil society. Through IHRB's work with business we have seen how this has catalysed engagement and change within a number of industry sectors. In particular, the role the UK Commissioner has played in engaging with the private sector – either directly or connecting them with other stakeholders – has played a key role in encouraging greater supply chain transparency.

The establishment of an equivalent position in Australia would be a crucial factor in the success of an Australian Act. An Australian Commissioner would also form the basis of an international network of commissioners to ensure coherence in policy and enforcement activity across borders.

Company Websites

As with the UK MSA, it should be a requirement that company statements under the Act should be easily accessed from the home page of company websites.

A Central List of Companies and Registry of Statements

If the reporting requirements on companies above a certain turnover are to be effective, and companies held accountable through public and government scrutiny, this information also needs to be easily accessible to all stakeholders including business, academia, investors, trade unions, NGOs and government procurement teams. Two requirements to aid this scrutiny should be:

- A central list of all companies captured by the reporting requirements of the legislation, i.e. above the agreed turnover threshold; and
- An online register of company modern slavery statements. In the UK, the Government chose not to establish such a resource, though agreed such a registry would be useful. A group of civil society organisations has since stepped in to fill this void, creating www.modernslaveryregistry.org.

As such, it is important to learn from the UK experience. The civil society led registry is despite best efforts incomplete, given the difficulties in knowing when and where companies are posting their statements, and this undermines the ability of stakeholders to access and assess statements. We would recommend and welcome the Australian Government taking a leadership position in establishing a central list and registry that supports the aims of the legislation through visibility and accessibility of companies covered and all company statements.

Companies that are conglomerates, holding companies or have subsidiary brands should be required to submit details of their prominent brands, and search filters should include ways to easily identify the key brands owned by companies. The repository should also feature access to all company statements over a given time period. This may mean that companies need to provide archive access to previous statements, ideally for a minimum of the last three years to ensure sight of any change over time. The repository operator should produce a monthly list of newly registered statements supplied directly to an Anti-slavery Commissioner and also made available to the general public.

Enforcement of Legislation

The Government of Australia must take appropriate steps to prevent, investigate, punish, and redress abuse through effective policies, legislation, regulations, and adjudication. In accordance with the [Australia National Action Plan to Combat Human Trafficking and Slavery 2015 - 19](#), it is important that labour and workplace regulations in Australia adequately protect workers from exploitation or abuse including forced labour and trafficking.

Successful regulation is dependent on effective enforcement. This not only protects workers from possible exploitation but also delivers the level playing field law abiding business requires to operate fairly and thrive in a competitive marketplace, without being undercut by companies able to dodge their obligations without fear of penalty. The government must ensure adequate resources are invested in enforcement activities.

The effectiveness of transparency reporting is similarly contingent on there being robust monitoring and enforcement mechanisms to ensure compliance. Government and civil society scrutiny of company statements will help improve company engagement with the issue, but should also be matched by clear sanctions on companies who fail to comply with the reporting requirements of the act.

Conclusion

It is important to emphasise that the focus of any such Australian legislation should not constrain or distract from the Australian Government's current activities and consultations into implementation of the UN Guiding Principles, including the exploration of other policy and regulatory responses. For example, anti-slavery measures should be an integral component of all trade agreements and memoranda of understanding between the Government of Australia and other nations.

We nonetheless believe that such an Act would be a significant development in the protection of workers from forced labour and trafficking, supporting responsible business and preventing criminality.

An Act could provide a clear legal framework within which companies may operate whilst also setting out the Australian Government's expectations on business. It would showcase the Governments' own role in preventing forced labour and trafficking through effective adoption and enforcement of appropriate legislation, a key part of its duty to protect under the UN Guiding Principles. It would also encourage and enable civil society to better scrutinise company activities and take action to support good practice.

In addition, development of an Australian Act would be a complement to Australia's current position as Co-Chair of the **Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime** and its other efforts regionally and globally to prevent forced labour and trafficking. This and other efforts to complement international commitments and standards would establish Australia as a global leader in the field, and as an additional input we have briefly outlined in an Appendix to this submission some of the key points of cross-over this agenda has with the UN Sustainable Development Goals.

Contact:

John Morrison
Chief Executive
Institute for Human Rights and Business
john.morrison@ihrb.org
+44 (0)20 3411 4333

IHRB resources relevant to this consultation:

- [The Dhaka Principles for Migration With Dignity](#)
- [Forced Labour Briefing](#)
- [Recruitment Fees Briefing](#)
- [Fees and IDs – Tackling Recruitment Fees and Retention of Workers Passports](#)

Appendix: The Sustainable Development Goals

The Sustainable Development Goals (SDG's) are a set of targets developed through the United Nations to develop a collective, global vision for a safe, just and sustainable future for both the planet and for humankind.

Of particular relevance to this consultation is **SDG 8**, which seeks to promote decent work and economic growth and makes explicit reference to modern slavery, noting the imperative to:

- *Take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking, and secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025 end child labour in all its forms;*
- *Protect labour rights and promote safe and secure working environments for all workers, including migrant workers, in particular women migrants, and those in precarious employment*

Preventing Modern Slavery would also have significant impacts on many of the other Goals, including in particular:

- **SDG 1** – No Poverty
- **SDG 9** – Industry. Innovation. Infrastructure
- **SDG 10** – Reduced Inequalities
- **SDG 16** – Peace. Justice and Strong Institutions