



Submission to the Parliamentary Inquiry of the Joint Standing Committee on
Foreign Affairs, Defence and Trade on Establishing a Modern Slavery Act in
Australia

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Human Rights Law Centre

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Executive Summary

The Human Rights Law Centre (**HRLC**) welcomes this opportunity to provide a submission to the Joint Standing Committee on Foreign Affairs, Defence and Trade inquiry into modern slavery (**Inquiry**).

The HRLC seeks to ensure that Australian businesses are held accountable for the human rights impacts of their operations and that the Australian Government protects against corporate human rights abuses in accordance with its obligations under international and domestic law.

Forced labour continues to affect millions of workers worldwide, including many in the supply chains of Australian companies. This Inquiry is a critical opportunity for the Australian Government to consider legislative action to help address an urgent global problem and show leadership on this issue within our region.

This submission considers:

1. Evidence of modern slavery in the supply chains of Australian companies and the need for legislative oversight to address this;
2. International best practice models for regulation of supply chains in the UK, US, France and other parts of Europe;
3. Core features that should be incorporated in any Australian Modern Slavery Act; and
4. Additional measures Australia should take to prevent forced labour and other serious human rights abuses in companies' supply chains.

Recommendations:

1. **Consistent with its obligations under the UN Guiding Principles on Business and Human Rights (UNGPs), Australia should introduce a Modern Slavery Act.**
2. **Australia should build on, rather than replicating, the Modern Slavery Act UK (MSA UK) and should also draw on elements of other international best practice models;**
3. **Any Modern Slavery legislation adopted in Australia should have the following features:**
 - (a) **broad reach;**
 - (b) **mandatory human rights due diligence and reporting obligations;**
 - (c) **penalties for non-compliance;**
 - (d) **a central repository for due diligence statements; and**
 - (e) **a civil remedy for victims of forced labour and trafficking.**

4. That the Australian government should also take additional measures to combat forced labour and strengthen its business and human rights framework including:
- (a) restricting the importation of goods produced through forced labour;
 - (b) strengthening its existing Commonwealth Procurement framework;
 - (c) ratifying the Protocol to the Forced Labour Convention; and
 - (d) implementing a National Action Plan on Business and Human Rights.

1. Evidence of modern slavery in the supply chains of Australian companies and the need for legislative oversight

Questions 1 and 2 of the Inquiry terms of reference

1.2 Modern slavery in the supply chains of Australian companies

“Modern slavery” is a common umbrella term used to describe a range of extreme labour rights abuses encompassing slavery, servitude, human trafficking and forced or compulsory labour. These distinct violations are defined in a variety of international law instruments as follows:

- **Slavery** is defined under the United Nations Slavery Convention (1926) as “*the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised*”.¹
- **Forced labour** is defined under the ILO Forced Labour Convention (No. 29) (1930) as “*all work or service which is exacted from any person under the threat of a penalty and for which the person has not offered himself or herself voluntarily*.”²
- **Human trafficking** is defined under the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime (2000), as the “*recruitment, transportation, transfer, harbouring, or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation*”.³

¹ United Nations Slavery Convention (1926), Art 1.1.

² ILO Forced Labour Convention, No. 29 (1930), Art 2.1. The ILO Forced Labour Protocol (Art 1(3)) explicitly reaffirms this definition.

³ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (2000), Art 3. The Protocol further notes that “*Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other*

The International Labour Organisation (ILO) estimates that worldwide around 21 million people (11.4 million women and girls and 9.5 million men and boys) are currently victims of forced labour. The vast majority (90%) of workers subjected to forced labour are exploited in the private economy, with the remaining 10% exploited by States or their armed forces.⁴

The Global Slavery Index compiled by the organisation Walk Free estimates that as at 2016, as many as 45.8 million people worldwide were subject to some form of modern slavery, including human trafficking and forced labour.⁵

The types of coercion and penalties applied to compel people to work against their will vary from deception and false promises, the retention of identity documents or valuable personal possessions, induced indebtedness through inflated prices or excessive interest charges, the withholding or non-payment of wages, physical confinement or abduction.

Domestic work, agriculture, forestry, fishing, mining, construction, transportation, manufacturing, garment and textile work, hospitality and catering and sex work and prostitution are among the sectors identified as at particular risk of reliance on forced labour.⁶ Certain workers, such as migrant and indigenous workers, unskilled workers or those employed in informal enterprises and in geographically remote areas, are also at higher risk.⁷

Accurate figures of the precise extent of modern slavery within Australia are hard to come by, due to under-reporting by victims and the challenges of dealing with unlawful activity. Walk Free estimates that in 2016, around 4,300 people in Australia were in some form of modern slavery.⁸ Most reported cases of slavery within Australia have involved migrants and the sex trafficking of migrant women still accounts for the majority of prosecutions.

Recently, there have also been an increasing number of cases reported to the AFP involving suspected victims on a range of different visas, including tourist, student and temporary work visas.⁹

forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”.

⁴ ILO, *Forced labour, modern slavery and human trafficking- facts and figures* <http://www.ilo.org/global/topics/forced-labour/lang--en/index.htm>. See also ILO, *Combatting Forced Labour: A Handbook for Employers and Business* (2015) http://ilo.org/global/topics/forced-labour/publications/WCMS_101171/lang--en/index.htm

⁵ Walk Free, *The Global Slavery Index* (2016) <http://www.globalslaveryindex.org/>

⁶ ILO, *Forced labour, modern slavery and human trafficking- facts and figures* <http://www.ilo.org/global/topics/forced-labour/lang--en/index.htm>

⁷ ILO, *Combatting Forced Labour: A Handbook for Employers and Business* (2015) pp 11-12 http://ilo.org/global/topics/forced-labour/publications/WCMS_101171/lang--en/index.htm

⁸ Walk Free, *The Global Slavery Index* (2016) <http://www.globalslaveryindex.org/region/asia-pacific/>

⁹ The Freedom Partnership End Modern Slavery, *Submission to the Joint Committee on Law Enforcement- Inquiry into Human Trafficking* (February 2016) pp 8 -10.

Contractors supplying Australia's major supermarkets, for instance, have been found to have been complicit in the serious exploitation of migrant labour which has in some cases included slave-like conditions, with workers reporting gross underpayment over many months, assaults and harassment and some female workers being propositioned for sexual favours in exchange for visas.¹⁰

The more common scenario in which Australian companies are likely to be implicated in relying on forced labour, however, is through second or third-tier suppliers and contractors overseas. The globalisation and fragmentation of production in recent decades means that Australian companies are increasingly reliant on labour from countries where labour standards are poor or poorly enforced and where violations such as excessive working hours, insufficient wages, and restrictions on freedom of association, discrimination and occupational health and safety risks are rife.

Lead buyers in countries like Australia often impose short lead times and tight margins, applying pressure back through their supply chains to deliver products quickly and keep costs low. In this context, the risk that companies become not only reliant on but contribute to forced labour through their sourcing practices is significant.

The collapse of the Rana Plaza factory in 2013 in which 1,130 workers were killed shone a spotlight on the extent of Australian fashion industry's reliance on labour in "sweatshop" conditions in Bangladesh.¹¹ More recently, Australian fashion labels Quicksilver and Rip Curl have been linked to sourcing from factories in North Korea that use forced labour¹² and other Australian clothing retailers to factories that rely on bonded and forced labour in Southern India.¹³

Australian seafood retailers have also been linked to modern slavery in the Vietnamese and Thai fishing industries. Investigations in 2014 and 2015 revealed that CP Foods, which has an office in Melbourne and supplies prawns to Woolworths, Costco, 7-Eleven and certain IGAs in Australia, relied on fish-feed sourced from suppliers that own and operate fishing vessels manned by migrant workers

¹⁰ See e.g. Nick McKenzie, "Slavery claims as seasonal workers from Vanuatu paid nothing for months' work" *Sydney Morning Herald* (online) 27 March 2017, <http://www.smh.com.au/national/investigations/slavery-claims-as-seasonal-workers-from-vanuatu-paid-nothing-for-months-work-20170327-gv7k99.html>. See also Four Corners "Slaving Away" *Four Corners* (online) 4 May 2015) <http://www.abc.net.au/4corners/stories/2015/05/04/4227055.htm>

¹¹ Four Corners, "Australian retailers Rivers, Coles, Target, Kmart linked to Bangladesh factory worker abuse", *ABC News* (online), 24 June 2013, <http://www.abc.net.au/news/2013-06-24/australian-retailers-linked-to-sweatshop-abuse/4773738>

¹² Nick McKenzie & Richard Baker, "Surf clothing label Rip Curl using 'slave labour' to manufacture clothes in North Korea", *The Sydney Morning Herald* (online), 21 February 2016, <http://www.smh.com.au/business/surf-clothing-label-rip-curl-using-slave-labour-to-manufacture-clothes-in-north-korea-20160219-gmz375.html>

¹³ See Kate McDonald et al, *Redress for Transnational Business-Related Human Rights Abuses in Australia* (2016), p 17, accessible at <http://corporateaccountabilityresearch.net/njm-report-iii-redress-in-australia>

abducted or compelled through debt-bondage to work as slaves, in many cases for up to 20 hours a day.¹⁴

Australian mining companies have also been linked to forced labour. Western Australian mining company Danakali Ltd (formerly South Boulder Mines) for instance, has been accused of benefiting from forced labour in the construction of a road to service its new potash mine in Danakali, which it runs as a joint venture with the Eritrean government, a regime notorious for its use of forced, conscripted labour.¹⁵

These examples demonstrate just some of the myriad ways in which Australian companies may rely on forms of modern slavery in their supply chains.

1.3 Existing regulation in Australia

The approach taken to supply chain regulation in Australia to date has been piecemeal and has tended to focus only on specific problems in particular industries. Since the early 2000s, in response to a sustained civil society campaign about the rights of “outworkers”, the clothing, textile and footwear sector for instance, has been subject to mandatory state-based codes requiring companies to investigate and report on certain things about their supply chains relating to conditions and location of work, pay and workplace safety.¹⁶ Likewise, at a Commonwealth level, the *Illegal Logging Prohibition Act 2012* (Cth) (discussed further below) incorporates due diligence obligations requiring importers and processors of timber to initiate verification and certification processes to ensure the timber is not illegally logged.¹⁷

Australia currently lacks a coherent framework for promoting transparency in companies’ supply chains and ensuring that serious human rights abuses like modern slavery are exposed and addressed. In 2014, the then Minister for Justice, the Hon Michael Keenan, established a Working Group on Slavery in Supply Chains, with the explicit objective of seeking expert input on the best ways

¹⁴ The Guardian, “Prawns sold in Australia linked to alleged slavery in Thai fishing industry” *Guardian* (online), 12 June 2014, <https://www.theguardian.com/global-development/2014/jun/12/prawns-sold-in-australia-linked-to-alleged-slavery-in-thai-fishing-industry>

¹⁵ Anthony Lowenstein, “How Foreign Mining Companies Breach Human Rights in Africa” *Guardian* online, (27 July 2015, <http://antonyloewenstein.com/2015/07/27/how-foreign-mining-companies-breach-human-rights-in-africa/> . See also Human Rights Watch, *Hear No Evil: Forced Labor and Corporate Responsibility in Eritrea’s Mining Sector* (2013).

¹⁶ See discussion in Brynn O’Brien and Martijn Boersma, *Human Rights in the Supply Chains of Australian Businesses: Opportunities for Legislative Reform* (2016) http://catalyst.org.au/documents/Human_Rights_in_the_Supply_Chains_of_Australian_Businesses_-_Opportunities_for_Legislative_Reform_FINAL.pdf

¹⁷ *Illegal Logging Prohibition Act 2012* (Cth), s 7.

to deal with slavery and human trafficking in the supply chains of Australian companies. The Working Group's report, however, was not made public and its findings were never implemented.

1.4 Australia's obligations under the UN Guiding Principles on Business and Human Rights

The United Nations Guiding Principles on Business and Human Rights (**UNGPs**) provide a global 'best practice' framework for preventing and addressing the risk of adverse impacts on human rights linked to business activity, including abuses within companies' global supply chains. The UNGPs include guidance on supply chain human rights due diligence and reporting by companies – the so-called "know and show" elements of the UNGPs - as well as imposing obligations on States to ensure these obligations by business enterprises are met.

In particular, Guiding Principle 1 provides that "*States must protect against human rights abuses within their territory and/or jurisdiction by third parties, including business enterprises*" and must therefore take steps to "*prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication*". This obligation extends to the so-called state-business nexus, where the State itself is acting as a commercial actor whether through procurement or the contracting out of public services.¹⁸

Guiding Principles 2 and 3 likewise set out obligations for the State to clearly set out the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights "*throughout their operations*" and "*encourage and where appropriate require, business enterprises to communicate how they address their human rights impacts*" [emphasis added]. The UNGPs thus require States to look at how companies report on their compliance with human rights obligations, including with respect to their overseas operations and global supply chains.

Pillar 2 of the UNGPs likewise imposes clear obligations on companies to "*identify, prevent, mitigate and account for*" how they address their adverse human rights impacts, including assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses and communicating how impacts are addressed.¹⁹ Where businesses whose operations or operating contexts pose risks of severe human rights impacts, they should report formally on how they address them to enable evaluation of the adequacy of their response.²⁰

¹⁸ Guiding Principle 6 likewise provides that "*States should promote respect for human rights by business enterprises with which they conduct commercial transactions*".

¹⁹ See Guiding Principles 17-21.

²⁰ Guiding Principle 21.

The UNGPs provide that business enterprises have a responsibility to respect a broad range of human rights, which should include, at a minimum, the internationally recognised rights enumerated in the International Bill of Rights and the International Labour Organization’s Declaration on Fundamental Principles and Rights at Work.²¹ The UNGPs therefore recognise that companies have a responsibility to respect a broader range of human rights than combatting modern slavery.

Despite having co-sponsored the resolution endorsing the UNGPs in June 2011, Australia’s implementation of these obligations has thus far been slow and ad hoc. Unlike many other countries, Australia has yet to commit to the adoption of a National Action Plan on Business and Human Rights, setting out a coherent whole-of-government policy approach to translate the UNGP standards into concrete action.

Introducing a Modern Slavery Act, or other legislation aimed at regulating serious human rights abuses within the supply chains of Australian companies, would represent a positive step towards implementing Australia’s obligations under the UNGPs. Putting clear legislative frameworks in place with strong compliance mechanisms will assist in setting standards for corporate responsibility.

Recommendation 1:

Consistent with its obligations under the UN Guiding Principles on Business and Human Rights, Australia should adopt a Modern Slavery Act.

2. Best practice models for regulating abuses in supply chains

Questions 3, 5 and 6 of the Inquiry Terms of Reference

There are a number of different ways in which supply chains can be regulated to address corporate human rights abuses. It has been noted that effective measures taken by other states so far fall into four categories: mandatory transparency, mandatory due diligence, incentives for action and access to

²¹ The “International Bill of Rights” comprises the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. See John Ruggie, *UN Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy Framework*, commentary to Guiding Principle 12, p 11.

remedies.²² The MSA UK focuses on supply chain transparency and represents a significant step towards holding companies accountable for supply chain issues by requiring them to publically state whether they have adopted appropriate due diligence measures. However, the United Kingdom's transparency model is by no means a comprehensive approach to combating modern slavery or improving human rights due diligence in supply chains and Australia should look to build on this and other best practice models when considering how to structure its own legislative framework.

2.1 United Kingdom legislation

The MSA UK has a number of core functions, including the consolidation of existing slavery and trafficking offences in the UK and the establishment of the office of an independent Anti-Slavery Commissioner to provide oversight on anti-slavery and trafficking initiatives. In terms of addressing abuses in supply chains, the key mechanism is the transparency requirement in section 54 for "commercial organisations" with a turnover of more than £36 million to publish an annual "slavery and human trafficking statement".

Pursuant to s 54(4) of the MSA UK, a company's slavery and human trafficking statement lists the steps the organisation has taken during the financial year to ensure that slavery and human trafficking is not taking place in any of its own supply chains. S 54 (5) provides some additional guidance on what an organisation's statement "may" include, such as information about:

- the organisation's structure;
- its policies on slavery and human trafficking;
- its due diligence processes in relation to slavery and human trafficking in its business and supply chains;
- the parts of its business/supply chains where there is a risk of slavery and human trafficking and the steps it has taken to assess and manage that risk;
- its effectiveness in ensuring slavery and human trafficking is not taking place in its business or supply chains, measured against such performance indicators as it considers appropriate; and
- the training about slavery and human trafficking available to its staff.

The UK Government has also produced official guidance on the supply chain provisions in the MSA UK and what it expects organisations to include in their statements.²³

²² See e.g. Phil Bloomer, "A year after the UK Modern Slavery Act, time for a Global Modern Slavery Agreement?" *Thomson Reuters Foundation News* (online) 31 March 2017 <http://news.trust.org/item/20170331091619-akvgh>

²³ UK Home Office, *Transparency in supply chains etc: a practical guide* (29 October 2016) accessible at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/471996/Transparency_in_Supply_Chains_etc__A_practical_guide__final_.pdf

The MSA UK's transparency provision undoubtedly represents an important step towards more effective regulation of supply chain abuses and has been considered by many as a best practice model.²⁴ A year after its adoption, over 1700 statements have been submitted detailing how companies are conducting due diligence and how they are seeking to address modern slavery in their supply chains.

However, the transparency provision has also been criticised on a number of bases.

1. *Weak reporting requirements:* The permissive language in s 54(5) means that there are no strict obligations on what information companies need to seek or disclose in relation to their supply chains. Moreover there is no definition in the Act of "supply chain", which causes further uncertainty in terms of what companies need to disclose.²⁵ In practice, this has meant statements have rarely disclosed all the information recommended by the law and guidance and have tended to be general and repetitive. Two studies undertaken on statements disclosed under s 54 found that only a fraction of them covered all the core areas and many evidenced "suspicious uniformity", suggesting they may have been drafted on the basis of template models.²⁶
2. *Lack of an effective enforcement mechanism:* There are no penalties for non-compliance with the legislation.²⁷ Section 54(11) provides that the disclosure obligation is enforceable by the Secretary of State, but aside from this injunctive relief (and the reputational and

²⁴ Phil Bloomer, "A year after the UK Modern Slavery Act, time for a Global Modern Slavery Agreement?" *Thomson Reuters Foundation News* (online) 31 March 2017 <http://news.trust.org/item/20170331091619-akvgh>.

²⁵ See e.g. International Trade Union Confederation, *Closing the Loopholes- how legislators can build on the UK Modern Slavery Act* (2016) accessible at https://www.ituc-csi.org/IMG/pdf/uk_modern_slavery_act.pdf; Ryan J Turner, "Transnational supply chain regulation: extraterritorial regulation as corporate law's new frontier" (2016) 17(3) *Melbourne Journal of International Law* 1.

²⁶ An early study of the first 75 statements published showed only 29% complied with the procedural requirements set out in the Act and only 9 statements covered each of the core areas listed in s54. See CORE Coalition and the Business and Human Rights Resource Centre, *Register of Slavery & Human Trafficking Corporate Statements Released to Date to Comply with UK Modern Slavery Act* (2016) accessible at https://www.business-humanrights.org/sites/default/files/documents/CORE%20BHRRC%20Analysis%20of%20Modern%20Slavery%20Statements%20FINAL_March2016.pdf. A second study, which analysed over 230 statements, found that 35% of the statements said nothing about risk assessment processes and two-thirds did not identify priority risks, whether in terms of countries, supply chains or business areas. See Ergon Associates, *Reporting on Modern Slavery: The current state of disclosure* (May 2016) <http://www.ergonassociates.net/images/stories/articles/ergonmsastatement2.pdf>.

²⁷ See discussion in International Trade Union Confederation, *Closing the Loopholes- how legislators can build on the UK Modern Slavery Act* (2016), p 7 accessible at https://www.ituc-csi.org/IMG/pdf/uk_modern_slavery_act.pdf

market consequences of non-compliance) no penalties apply. The weak reporting requirements and enforcement mechanisms under s 54 were recently criticised by the UK's Parliamentary Committee on Human Rights as making it very difficult to properly hold companies to account.²⁸

3. *No extra-territorial application.* While the MSA does capture foreign companies which operate even part of their business in the UK, wholly-owned subsidiaries of UK companies which operate extraterritorially appear to fall outside the scope of s 54.²⁹ The disclosure obligation is also framed so that it is focused on individual entities rather than the group or enterprise of which the entity forms part.³⁰ Given that it is often the subsidiary businesses operating on the ground overseas that are at greatest risk of reliance on forced labour, this is a significant omission.³¹
4. *No central repository for company statements.* This makes it difficult for interested persons to access those statements and compare them with those of other companies. One of the key benefits of the transparency provision – the ability to compare and rank companies in their performance under the legislation – is thus lost. In the UK, NGOs like the Business and Human Rights Resource Centre and Corporate Responsibility Coalition (CORE) have had to step in to try to fill this gap by creating their own registries.³² The UK parliament is currently considering a proposed legislative amendment to publish a list of all commercial organisations required to publish a statement but the amendment does not go so far as to require compilation of each of the statements.³³
5. *No obligations on public bodies:* While the MSA UK imposes transparency obligations on companies, it does not require the same of public bodies. There is currently a bill before the UK Parliament seeking amendment of the MSA to extend its operation to public entities and

²⁸ House of Lords & House of Commons Joint Committee on Human Rights, *Human Rights and Business 2017: Promoting responsibility and ensuring accountability* (29 March 2017) [92]-97]; [112].

²⁹ See discussion in International Trade Union Confederation, *Closing the Loopholes- how legislators can build on the UK Modern Slavery Act* (2016) p 6 accessible at https://www.ituc-csi.org/IMG/pdf/uk_modern_slavery_act.pdf

³⁰ Ryan J Turner, "Transnational supply chain regulation: extraterritorial regulation as corporate law's new frontier" (2016) 17(3) *Melbourne Journal of International Law* 1, 6.

³¹ International Trade Union Confederation, *Closing the Loopholes- how legislators can build on the UK Modern Slavery Act* (2016) p 6 accessible at https://www.ituc-csi.org/IMG/pdf/uk_modern_slavery_act.pdf

³² International Trade Union Confederation, *Closing the Loopholes- how legislators can build on the UK Modern Slavery Act* (2016) p 7 accessible at https://www.ituc-csi.org/IMG/pdf/uk_modern_slavery_act.pdf

³³ *Modern Slavery (Transparency in Supply Chains) Bill* [HL] accessible at <https://www.publications.parliament.uk/pa/bills/lbill/2016-2017/0006/17006.pdf>

to create a mechanism for excluding entities that do not comply with the disclosure obligations from participation in public procurement procedures.³⁴

2.2 United States legislation

The United States has also introduced a number of legislative and executive schemes to address supply chain abuses. In 2012, California introduced the *California Transparency in Supply Chains Act*, Ca. Civ.Code 1714.43 (**Californian Act**) which became the model for the MSA UK and has similar transparency provisions, though extending only to “direct supply chains for tangible goods offered for sale”.³⁵

The *Dodd- Frank Wall Street Reform and Consumer Protection Act* 2010 (**Dodd-Frank Act**), likewise contains transparency provisions aimed at preventing US companies’ complicity in the conflict in the Democratic Republic of the Congo through the mineral trade activities. Under the Dodd-Frank Act companies are required to undertake due diligence processes and publicly report on the level of traceability of their supply chains where minerals originate in the DRC or adjacent states.³⁶

More recently, the Obama administration also introduced additional federal measures to address modern slavery issues, including the 2016 *Trade Facilitation and Trade Enforcement Act* (HR 644). This Act effectively strengthens restrictions on the import of goods into the United States produced with forced labour, closing a loophole which existed in previous legislation which would have allowed the import of such goods if the product was not made in high enough quantities domestically to meet US demand.

Section 307 of the *Tariff Act 1930* now provides that (without exception) “*all goods, wares, articles and merchandise mined, produced or manufactured wholly or in part in any foreign country by convict*

³⁴ *Modern Slavery (Transparency in Supply Chains) Bill* [HL] accessible at <https://www.publications.parliament.uk/pa/bills/lbill/2016-2017/0006/17006.pdf>

³⁵ *California Transparency in Supply Chains Act*, s 1714.43(a)(1). The Californian Act imposes requirements on large retailers and manufacturers doing business in California to disclose on their websites the extent to which the company verifies its product supply chains to address risks of slavery, forced labour and human trafficking. The specific matters that companies must disclose include whether they verify their supply chains, conduct audits of their suppliers, require direct suppliers to certify materials incorporated into its products comply with laws regarding slavery and trafficking and maintain internal accountability standards and procedures for employees or contractors who fail to meet company standards on slavery and trafficking, and provide company training on human trafficking and slavery.

³⁶ See e.g. Brynn O’Brien and Martijn Boersma, *Human Rights in the Supply Chains of Australian Businesses: Opportunities for Legislative Reform* (2016)
[4.http://catalyst.org.au/documents/Human_Rights_in_the_Supply_Chains_of_Australian_Businesses_-_Opportunities_for_Legislative_Reform_FINAL.pdf](http://catalyst.org.au/documents/Human_Rights_in_the_Supply_Chains_of_Australian_Businesses_-_Opportunities_for_Legislative_Reform_FINAL.pdf)

labor or/and forced labor or/and indentured labor under penal sanctions shall not be entitled to entry at any of the ports of the United States, and the importation thereof is hereby prohibited, and the Secretary of the Treasurer is authorised and directed to prescribe such regulations as may be necessary for the enforcement of this provision". The term "forced labor" is defined as any work extracted from a person under menace of a penalty for which the worker does not volunteer, and includes forced child labour.

Enforcement of the forced labour prohibition is still a significant challenge.³⁷ Customs and Border Protection rely largely on public petitions and information from Immigration and Customs Enforcement to conduct its investigations into forced labour occurrences. However, since the Trade Enforcement Act came into force the US Customs Authorities have already enforced the prohibition on several occasions by issuing orders prohibiting the import of soda ash, calcium chloride, caustic soda and potassium goods manufactured by a Chinese company believed to have been using forced or convict labour to mine and manufacture those goods.³⁸ The Trade Enforcement Act also provides that the Commissioner of US Customs and Border Protection must provide annual reports to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives detailing the number of times on which merchandise was denied entry into the United States, a description of the merchandise and any other such information the Commissioner deems appropriate.³⁹

Another important US initiative is the Executive Order introduced by President Obama in 2012 which requires US Federal government contractors to take measures to ensure that their supply chains are free of human trafficking and slavery.⁴⁰ US officials are charged with the responsibility of monitoring and enforcing the order and commercial sanctions may be imposed on companies that fail to

³⁷ See e.g. "Obama revives anti-slavery law to target Thailand's seafood exports" *The Guardian* (online) 26 February 2016 <https://www.theguardian.com/world/2016/feb/26/obama-revives-anti-slavery-law-to-target-thailands-seafood-export>. See also David Abramowitz, Humanity United, "One step closer to stopping the import of goods made with forced labour" *Thomson Reuters Foundation News* (online) 28 February 2016 <http://news.trust.org/item/20160228062758-du6n5/?source=gep>

³⁸ Roel Nieuwenkamp, "The Game Changing Trade Regulations in US Shake Up Corporate Supply Chain Responsibility" *OECD Insights* (online) 31 May 2016 <http://oecdinsights.org/2016/05/31/game-changing-trade-regulations-in-us-shake-up-corporate-supply-chain-responsibility/>

³⁹ *Trade Facilitation and Enforcement Act* (HR 644) s 910.

⁴⁰ White House, *Executive Order- Strengthening Protections Against Trafficking in Persons in Federal Contracts* (25 September 2012) accessible at <https://obamawhitehouse.archives.gov/the-press-office/2012/09/25/executive-order-strengthening-protections-against-trafficking-persons-fe>.

comply.⁴¹ This measure has been described as being best practice in regards to governmental self-regulation.⁴²

2.3 French legislation

On 23 March 2017, the French Constitutional Council approved legislation which introduces a corporate duty of vigilance or corporate duty of care (**French Law**).⁴³ The law makes it compulsory for large French companies to *"establish and implement a diligence plan which should state the measures taken to identify and prevent the occurrence of human rights and environmental risks resulting from their activities, the activities of companies they control and the activities of sub-contractors and suppliers on whom they have a significant influence."*⁴⁴

The French Law essentially builds on the standard due diligence requirements as set out in the UNGPs. It applies only to French companies that employ over 5,000 staff in France or 10,000 staff from their combined French and foreign offices. This means that only around 150 companies will be affected in contrast to the 13,000 companies affected by the MSA UK, a significant limitation to the legislation.

However, the scope of the obligations the French Law imposes on those companies it covers is much broader. It is not limited to slavery and human trafficking, but covers the full spectrum of human rights as set out in the UNGPs as well as protection of the environment.⁴⁵ The law also specifically applies to a company's activities as well as that of its "business relationships", and therefore applies to parent companies, companies controlled directly or indirectly by the parent company and subcontractors and suppliers with whom the parent company has an established business relationship (as defined by French company laws).⁴⁶

⁴¹ See discussion in See e.g. Brynn O'Brien and Martijn Boersma, *Human Rights in the Supply Chains of Australian Businesses: Opportunities for Legislative Reform* (2016) 5

http://catalyst.org.au/documents/Human_Rights_in_the_Supply_Chains_of_Australian_Businesses_-_Opportunities_for_Legislative_Reform_FINAL.pdf

⁴² Ashley Feasley, 'Deploying Disclosure Laws to Eliminate Forced Labour: Supply Chain Transparency Efforts of Brazil and the United States of America' (2015) (5) *Anti-Trafficking Review* 1, 10 accessible at <http://www.antitraffickingreview.org/index.php/atrjournal/article/view/135/127>

⁴³ Devoir de vigilance des entreprises d'ordre, accessible at accessible at <https://www.legifrance.gouv.fr/eli/loi/2017/3/27/ECFX1509096L/jo>

⁴⁴ Jane Mayo, "France adopts new corporate "duty of care" law" *Ethical Trading Initiative* (online) 1 March 2017 <http://www.ethicaltrade.org/blog/france-adopts-new-corporate-duty-care-law>

⁴⁵ See e.g. European Coalition for Corporate Justice, *French Corporate Duty of Vigilance Law- Frequently Asked Questions* (2016) [2] accessible at <http://corporatejustice.org/documents/publications/french-corporate-duty-of-vigilance-law-faq.pdf>

⁴⁶ Ibid [4].

Pursuant to Article 1 of the French Law, a company's vigilance plan must include:⁴⁷

- a mapping that identifies, analyses and ranks risks;
- procedures to regularly assess, in accordance with the risk mapping, the situation of subsidiaries, subcontractors or suppliers with whom the company has an established commercial relationship;
- appropriate actions to mitigate risks or prevent serious violations;
- an alert mechanism that collects potential or actual risks, developed in working partnership with the trade union organisations representatives of the company concerned; and
- a monitoring scheme to follow up on the measures implemented and assess their efficiency.

The French Law provides that if a company fails to meet its obligations to develop and publish a vigilance plan within three months of receiving formal notice, "any person with a legitimate interest" may make an application to the court seeking interlocutory relief to compel the company to comply. There is also a mechanism for persons with a legitimate interest to take civil action against a company for failing to comply with its due diligence obligations. A company that is found to fail to comply with these obligations will be obliged to pay compensation for any harm caused that establishing a vigilance plan would have avoided.⁴⁸

Liability for 'fault' by a corporate entity is triggered by a failure to implement an effective vigilance plan. Provided a corporate entity takes this step, it will not be held liable even if abuses subsequently occur in its supply chains.⁴⁹ The legislation thus provides a significant incentive for companies to take their due diligence obligations seriously.

Under the original Bill, companies that failed to comply with their obligations to set up a due diligence plan faced a penalty of up to \$10 million euros. The French Constitutional Council recently removed this penalty mechanism, finding that the broadness of the wording of the duty of care made imposing such a penalty unconstitutional, and introducing a provision to enable injunctive relief instead.⁵⁰

⁴⁷ Ibid [5].

⁴⁸ Ibid [7].

⁴⁹ Ibid [7].

⁵⁰ See e.g. Charles Dauthier, Sabine Smith-Vidal, "French companies must show duty of care for human and environmental rights" *JD Supra Business Advisor Blog*, 4 April 2017 <http://www.jdsupra.com/legalnews/french-companies-must-show-duty-of-care-56981/>

The French model nonetheless provides a useful contrast to the approach taken to supply chain regulation under the MSA UK and aspects of this legislation should be considered as a possible model for Australian legislation. In particular, the mandatory human rights due diligence and reporting obligations, the far more specific requirements about what information companies need to disclose and the linking of liability to the effectiveness of a company's due diligence plan appear likely to result in a far more considered and rigorous approach to due diligence and reporting by companies than has been the case to date in the UK.

2.4 Dutch Legislation

On 7 February 2017 the Dutch Parliament adopted the *Child Labour Due Diligence Law (Wet Zorplicht Kinderarbeid)* (**Dutch Law**).

If approved by the Dutch Senate the new law will apply to companies that are registered in the Netherlands as well as companies that systematically provide goods or services to Dutch customers. The government may grant exemptions for certain categories of companies from complying with the law where the risk of child labour is low.

There are two phases to the due diligence obligation. First, companies must make an assessment of whether it can be reasonably presumed that child labour has contributed to their products or services. Companies should be guided in this assessment by the Child Labour Guidance for Business produced by the ILO and the International Organisation of Employers. If companies can reasonably presume that child labour has contributed to their products or services, they will be required to develop a plan of action to prevent the use of child labour. The plan should comply with international guidelines such as the UNGPs and OECD guidelines.

The law also provides that government can determine some criteria for the plan of action. It may also approve a joint plan of action drawn up by the company organisation and civil society organisations.

The law also has a disclosure mechanism that requires companies to declare it has conducted due diligence on child labour and to send this declaration to a centralised supervisory body 6 months following the entry into force of the law. The declarations will be published on a publicly available website.

As to enforcement, a maximum fine of 4100 euros applies for not providing a declaration. If a company fails to send in their declaration for a five year period they are liable to a term of imprisonment. Any person or legal entity may file also file a complaint if they consider the company is involved in child labour. The complaint must first be filed with the company but if not dealt with satisfactorily by the company within 6 months can be referred to the supervisory body. If it appears that the company has not enacted due diligence in line with the legislation the company may be issued with a binding order

to take action, a fine, and ultimately a term of imprisonment if the company continues not to comply with its obligations.⁵¹

The Dutch Law is another example of legislation which (if passed) will impose mandatory due diligence obligations on companies rather than limiting its scope to transparency obligations. In addition, the Dutch Law imposes penalties on companies that fail to comply with their obligations.

2.5 Other European legislation

A number of other steps to regulate supply chains have been taken throughout Europe. Legislation similar to the French Law is currently also being considered in Switzerland.⁵² Denmark's *Danish Financial Statements Act* incorporates requirements for companies to disclose their corporate social responsibility policies including human rights policies.⁵³ Several European countries have also taken steps to require the conduct of due diligence for specific issues or industries.⁵⁴

At a regional level, the European Union has also taken steps to introduce legislative regulation of companies. In addition to industry-specific regulations in relation to timber regulation and conflict minerals,⁵⁵ the EU Non-Financial Reporting Directive requires over 8,000 EU companies and financial corporations to report on the principal impacts and risks of their business regarding human rights, environmental social and labour, and anti-corruption matters, including the due diligence processes implemented to address these issues. Companies will be required to provide this

⁵¹ For an overview of the Dutch Law see Liesbeth Unger, "Due Diligence on child labour in the Netherlands; a new law" *Human Rights@Work* (Linkedin 13 February 2017 <https://www.linkedin.com/pulse/due-diligence-child-labour-netherlands-new-law-liesbeth-unger>); Gerard Oonk, 'Child Labour Due Diligence law for companies adopted by Dutch Parliament' *India Committee of the Netherlands* (online) 8 February 2017 <http://www.indianet.nl/170208e.html>

⁵² European Coalition for Corporate Justice, *French Corporate Duty of Vigilance Law- Frequently Asked Questions* (2016) accessible at <http://corporatejustice.org/documents/french-corporate-duty-of-vigilance-law-faq.pdf>

⁵³ Introduced by the *Act Amending the Danish Financial Statement Act (Accounting for CSR in large businesses) 2008*, discussed in Brynn O'Brien and Martijn Boersma, *Human Rights in the Supply Chains of Australian Businesses: Opportunities for Legislative Reform* (2016) 5.

⁵⁴ European Coalition for Corporate Justice, *French Corporate Duty of Vigilance Law- Frequently Asked Questions* (2016) accessible at <http://corporatejustice.org/documents/publications/french-corporate-duty-of-vigilance-law-faq.pdf> [8].

⁵⁵ *Ibid.*

information as part of their annual reports from 2017 onwards.⁵⁶ In 2016 8 national parliaments also called upon the EU to take action to introduce due diligence requirements for EU-based companies.⁵⁷

2.6 Other Australian legislation

As noted above, the *Illegal Logging Prohibition Act 2012* (Cth) (**ILPA**), while dealing with different subject matter, also provides a possible model for the regulation of forced labour in company supply chains. The ILPA combines due diligence requirements with civil and criminal penalties and a certification process to ensure imported timber is not logged illegally. The accompanying regulations set out a specific four-stage due diligence process that companies must undertake in relation to imported timber, which involves a) gathering as much of the prescribed information as is “reasonably practicable” for the importer to obtain, b) identifying risks against a specified framework or country specific guidelines (where these exist) c) assessing those risks and d) mitigating those risks by (for example) requesting further information about the product, reassessing risk against any new information obtained and, if adequate information cannot be obtained, not importing the product.⁵⁸ Non-compliance with each of these steps incurs a civil penalty, but the Act also provides for criminal penalties in certain circumstances.⁵⁹

Legislation like the ILPA, as well as that adopted in the United States, United Kingdom and France assists in setting legal and social standards for how companies should act.⁶⁰ National legislation on this issue would be a significant step forwards in regulating the activities of Australian supply chains, and would also represent a step towards implementing the UNGPs, which emphasise the important role states have in regulating companies through corporate accountability legislation.

⁵⁶ Ibid.

⁵⁷ Amnesty International, European Coalition for Corporate Justice, CIDSE “NGOs welcome 8 EU parliaments’ initiative to ensure corporate accountability for human rights abuses” (2016) https://business-humanrights.org/en/8-eu-parliaments-launch-initiative-calling-on-eu-to-ensure-corporate-accountability-for-human-rights-abuses?utm_source=Business+%26+human+rights+-+Weekly+Update&utm_campaign=2ebf1504e7-Weekly_Update_25_May_20165_24_2016&utm_medium=email&utm_term=0_3a0b8cd0d0-2ebf1504e7-&utm_source=Business+%26+human+rights+-+Weekly+Update&utm_campaign=2ebf1504e7-Weekly_Update_25_May_20165_24_2016&utm_medium=email&utm_term=0_3a0b8cd0d0-2ebf1504e7-175079909

⁵⁸ *Illegal Logging Prohibition Amendment Regulation 2013*

⁵⁹ *Illegal Logging Prohibition Act 2012* (Cth), s 69. See further Ryan J Turner, “Transnational supply chain regulation: extraterritorial regulation as corporate law’s new frontier” (2016) 17(3) *Melbourne Journal of International Law* 1, 18.

⁶⁰ See e.g. discussion on the difficulties of international regulation in Ryan J Turner, “Transnational supply chain regulation: extraterritorial regulation as corporate law’s new frontier” (2016) 17(3) *Melbourne Journal of International Law* 1

The HRLC considers that Australia should introduce federal legislation to combat abuses in corporate supply chains, but suggests that the United Kingdom model can be significantly improved to incorporate more concrete obligations and enforcement mechanisms, and that elements of other international best practice models should be incorporated into federal legislation in this area. Leaving it to companies to decide what constitutes effective reporting on their supply chains is insufficient, as evidenced by the patchy nature of the statements produced under the MSA UK to date.

If Australia is serious about tackling modern slavery in companies' supply chains, it must ensure that reporting does not simply become an exercise in "box ticking". The French and Dutch models and the Australian ILPA all provide stronger regulatory models with far more specific due diligence obligations and penalties for non-compliance which are likely to be far more effective. The US requirements with respect to due diligence by Federal government contractors also demonstrate how the state can lead by example in setting standards for company behaviour.

Recommendation 2:

That Australia should build on, rather than replicating, the UK Modern Slavery Act and should draw on elements of other best practice models internationally in formulating its legislation.

3. Key features of a Modern Slavery Act for Australia

Drawing on key elements of the best practice models discussed above, the HRLC considers that any Modern Slavery Act adopted in Australia should have the following features.

3.1 Broad coverage

The threshold on the applicability of the legislation should be set to ensure it has broad application, and does not cover only a handful of the largest Australian multinationals. This could be done either on the basis of annual turnover (as in the UK model) or on the basis of total numbers of staff employed (as in the French model), but whichever model is chosen, the minimum threshold set should ensure that the net is cast wide enough to capture all large Australian businesses, without affecting small businesses not engaged in international trade. Provision should also be made to ensure that adjustments to broaden the scope of coverage over time can be made through a simple regulatory

process.⁶¹ Consideration should be given to whether a different threshold should apply to certain industries at particularly high risk of reliance on forced labour.

The legislation should also extend to cover public bodies, as proposed in the legislative amendment to the MSA UK currently before the UK parliament. The combined purchasing power of government bodies has the potential to contribute to a real shift in behaviour by commercial operators and the state should lead by example in ensuring its own supply chains are free of forced labour.

3.2 Mandatory human rights due diligence and reporting obligations

Companies should be required to develop and disclose specific due diligence plans outlining the steps they are taking to ensure their supply chains do not rely on forced labour. The UN Guiding Principles describe the process of conducting human rights due diligence as “*an ongoing risk management process...to identify, prevent, mitigate and account for how a company addresses its adverse human rights impacts. It includes four key steps: assessing actual and potential human rights impacts; integrating and acting on the findings; tracking responses; and communicating about how impacts are addressed*”. This process is already effectively integrated into Australia’s *Illegal Logging Prohibition Act*, discussed above, and similar due diligence requirements should form part of any new legislation enacted to combat modern slavery.

At a minimum, any modern slavery legislation adopted in Australia should require companies to develop and submit annual due diligence plans reporting on the six categories listed under s54(5) of the MSA UK. Clear, detailed guidance should also be given, however, as to both the due diligence steps to be undertaken and the type of information which must be disclosed under each category. The UK NGO CORE in its report *Beyond Compliance* sets of a useful list of the type of information that companies should be required to disclose in each of these areas, which could be incorporated into any Australian legislation or regulations under the legislation.⁶² Such an approach would create greater certainty for companies reporting under the Act, as well as ensuring more comprehensive statements are produced and making it easier to assess the effectiveness of the legislation by comparing companies’ performance.

The HRLC considers, however, that Australia should consider implementing a broader human rights due diligence regime which goes beyond just modern slavery. The Rana Plaza factory collapse in 2013 is a case which demonstrates the problems of an overly narrow focus on slavery and trafficking alone. There, the abuses which led to the tragedy were not forced labour per se (although the low pay

⁶¹ See e.g. See discussion in International Trade Union Confederation, *Closing the Loopholes- how legislators can build on the UK Modern Slavery Act* (2016), p 7 accessible at https://www.ituc-csi.org/IMG/pdf/uk_modern_slavery_act.pdf

⁶² See of CORE, *Beyond Compliance: Effective Reporting under the Modern Slavery Act* (February 2016), 21-22,(CORE Coalition, London).

of the factory workers in question had been the subject of multiple disputes) but notoriously unsafe factory conditions which had continued unchecked for decades in the context of a highly repressive industrial landscape in which workers had no freedom of association or independent mechanisms (ie. unions) through which to raise concerns about those conditions. If Australia does not put in place a reporting regime that would in future expose the types of serious human rights abuses that allowed the Rana Plaza disaster to happen, then the value of the legislation will be questionable.

The HRLC therefore considers that any due diligence regime enacted under a Modern Slavery Act should focus on compliance with the internationally recognised rights enumerated in the International Bill of Rights and the International Labour Organization's Declaration on Fundamental Principles and Rights at Work. This would bring the legislation into line with Australia's obligations under the UNGPs.⁶³ The recently adopted French Law which imposes an obligation on companies to adopt due diligence plans that identify the risks to fundamental human rights and liberties, health and security of persons and is a good model for how such a proposal could operate in practice.⁶⁴

In addition, it is critical to ensure that any reporting obligations extend beyond first-tier suppliers to cover companies' complete supply chains from the sourcing of the raw material to the final product, including all Australian or overseas sub-contractors, subsidiaries and suppliers. The OECD Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas for instance, defines a company's supply chain as "all the activities, organisations, actors, technology, information, resources and services involved in moving the mineral from the extraction site downstream to its incorporation in the final product for end consumers". A similarly comprehensive definition should be included in Australian legislation.

3.3 Penalties for non-compliance

Any Australian legislation enacted should include a strong enforcement mechanism imposing penalties on companies that do not comply with due diligence and reporting requirements. At a minimum, there should be a financial penalty for companies that fail to undertake appropriate due diligence and publish a statement as required, or that publish incomplete or fraudulent statements. However it would be preferable for any legislation to include a range of civil and criminal penalties applicable to both the corporate entities and to senior executives, with the possibility of escalating consequences for repeat offenders or companies that deliberately turn a blind eye to forced labour in

⁶³ The "International Bill of Rights" comprises the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. See John Ruggie, *UN Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy Framework"*, commentary on Guiding Principle 12, p 11.

⁶⁴ Loi no 2017-399 du 27 mars 2017 relative au devoir de vigilance accessible at <https://www.legifrance.gouv.fr/eli/loi/2017/3/27/ECFX1509096L/jo>

their supply chains. The enforcement measures set out in the *Illegal Logging Prohibition Act 2012* and the Dutch Child Labour Due Diligence Law, discussed above, provide a useful model of the type of sanctions that could be considered for any Modern Slavery Act in Australia.

3.4 A central repository of company statements

Australian legislation should provide for a central government repository of published statements so the information shared by companies can be easily accessed and compared, as has been recommended in the UK and enacted in the Netherlands.⁶⁵ This will ensure that companies are held to account by a truly transparent and public process and that those seeking to access information on companies' supply chains do not have to expend needless resources trawling through hundreds of individual company websites. The logical place for such a repository to sit would be with either the Australian Securities and Investment Commission or the Department of Foreign Affairs or Trade. The government should also publish an annual list of the companies required to report under the legislation, to ensure greater transparency and more effective monitoring of compliance rates.

3.5 A civil remedy for victims

Finally, any modern slavery legislation should create a distinct civil cause of action so that victims of serious human rights abuses like modern slavery can pursue remedies directly against companies in Australia that exercise significant leverage or control over a supplier or contractor and fail to put in place systems to prevent such violations from occurring.⁶⁶ As has been done in France, a legislative defence to such a cause of action could be built-in for companies who can demonstrate that they have undertaken thorough due diligence and put in place adequate systems to prevent such violations. Such a measure would both provide an incentive for companies to take their due diligence and reporting obligations seriously and provide access to remedy for victims where they do not, in line with Australia's obligations under the UNGPs to facilitate access to remedy for corporate human rights abuses.

⁶⁵ See e.g. discussion in International Trade Union Confederation, "Closing the Loopholes- how legislators can build on the UK Modern Slavery Act" (2016), 7 accessible at https://www.ituc-csi.org/IMG/pdf/uk_modern_slavery_act.pdf

⁶⁶ See e.g. discussion in International Trade Union Confederation, "Closing the Loopholes- how legislators can build on the UK Modern Slavery Act" (2016), 7 accessible at https://www.ituc-csi.org/IMG/pdf/uk_modern_slavery_act.pdf.

Recommendation 3:

That any Modern Slavery Act adopted in Australia should incorporate the following features:

- (a) broad coverage;**
- (b) mandatory human rights due diligence and reporting obligations;**
- (c) penalties for non-compliance;**
- (d) a central government repository of statements made under the Act; and**
- (e) a civil remedy for victims.**

4. Additional measures for combatting modern slavery in company supply chains

Supply chain due diligence and transparency is not the sole regulatory method available to the Australian Government to improve labour practices in supply chains.⁶⁷ The HRLC encourages the Australian Government to adopt other complementary measures to incentivise good corporate behaviour and help eradicate modern slavery, including the following.

4.1 Restricting importation of goods produced through forced labour

Australia should impose restrictions on the importation of goods produced through forced labour, as has already been done with some success in the US under the *Trade Facilitation and Trade Enforcement Act*, discussed above. In this regard, Australia already has a good workable model in the *Illegal Logging Prohibition Act* for how a strong downstream enforcement model of this kind might operate in practice.

4.2 Strengthening the Commonwealth Procurement Rules and guidance

Australia should also strengthen its existing procurement framework to ensure that it is leading by example and using its purchasing power as leverage to combat modern slavery and other serious human rights abuses, as has been done in the US. Currently the Commonwealth Procurement rules

⁶⁷ See discussion in Ryan J Turner, "Transnational supply chain regulation: extraterritorial regulation as corporate law's new frontier" (2016) 17(3) *Melbourne Journal of International Law* 1, 21.

only require officials to “act ethically” and make “reasonable enquiries” that procurement is carried out considering matters including but not limited to tenders’ practices regarding labour regulations, occupational health and safety and environmental impacts.⁶⁸ Both the rules and accompanying guidance should be strengthened to ensure appropriate human rights standards and due diligence are incorporated throughout the procurement process.⁶⁹

4.3 Ratifying the Protocol to the Forced Labour Convention

Australia should ratify the Protocol to the ILO Forced Labour Convention No. 29 (1930), which was adopted in 2014 to give practical effect to the Forced Labour Convention by requiring states to take additional measures to prevent and combat forced labour, such as strengthening labour inspection and other services responsible for the implementation of these laws, protecting victims of forced labour from punishment for unlawful activities they were compelled to commit and ensuring they have access to appropriate remedies like compensation, addressing factors that heighten the risks of forced labour and cooperating with other states to prevent it.⁷⁰ Thirteen states, including the UK, have so far ratified the Protocol, with more set to follow.⁷¹

4.4 Implementing a National Action Plan on business and human rights

Australia should ensure that any Modern Slavery legislation is consistent with and forms a coherent part of the implementation of its broader human rights obligations under the UNGPs by implementing a National Action Plan (**NAP**) on Business and Human Rights, as has been done in the US, UK and many other countries. The implementation of a NAP would complement and enhance the Government’s efforts to combat modern slavery and other serious human rights abuses by identifying,

⁶⁸ *2017 Commonwealth Procurement Rules* <http://www.finance.gov.au/procurement/procurement-policy-and-guidance/commonwealth-procurement-rules/>. See in particular para 10.18.

⁶⁹ For further detail on how the rules and guidance should be strengthened, see the joint submission recently made by the HRLC and others to the Inquiry into the Commonwealth Procurement Framework: *Submission 29: Joint Academic and Civil Society Group to the Inquiry into the Commonwealth Procurement Framework* (March 2017) accessible at http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Government_Procurement/CommProcurementFramework/Submissions

⁷⁰ See discussion in International Trade Union Confederation, *Closing the Loopholes- how legislators can build on the UK Modern Slavery Act* (2016), pp 9 -10 accessible at https://www.ituc-csi.org/IMG/pdf/uk_modern_slavery_act.pdf

⁷¹ For list of ratifications, see ILO, *Ratifications of PO29-Protocol of 2014 to the Forced Labour Convention 1930* http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:3174672:NO

prioritising and coordinating the Government's regulatory and policy actions across the spectrum of business and human rights issues and providing a platform for ongoing dialogue between government, business and civil society in this area.

Recommendation 4:

Australia should take additional steps to combat forced labour and implement its obligations under the UNGPs, including:

- a) restricting the importation of goods produced through forced labour;**
- b) strengthening the Commonwealth Procurement framework;**
- c) ratifying the Protocol to the Forced Labour Convention; and**
- d) implementing a National Action Plan on Business and Human Rights**