

## **Submission to the Joint Standing Committee on Foreign Affairs, Defence and Trade for the Inquiry into Establishing a Modern Slavery Act in Australia**

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### **A. Introduction**

The International Corporate Accountability Roundtable (ICAR) and the Corporate Responsibility Coalition (CORE) appreciate the opportunity to submit written input to the Joint Standing Committee on Foreign Affairs, Defence and Trade’s Inquiry into Establishing a Modern Slavery Act in Australia.

ICAR harnesses the collective power of progressive organizations to push governments to create and enforce rules over corporations that promote human rights and reduce inequality.

CORE is the U.K. civil society coalition on corporate accountability. We work with our partner organisations to advance the protection of human rights and the environment with regard to the global operations of U.K. companies, by promoting a stronger regulatory framework, higher standards of conduct, compliance with the law, and improved access to remedy for those harmed by the activities of U.K. companies.

This submission will address the following queries listed in the terms of reference:

- Whether a Modern Slavery Act should be introduced in Australia;
- 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; and
- 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;

ICAR and CORE urge Australia to enact a modern slavery act. In doing so, ICAR and CORE strongly recommend that the Australian government draw on provisions from the U.K. Modern Slavery Act (U.K. MSA) that have proven effective by:

- 1) Requiring companies to publish annual modern slavery statements;

- 2) Ensuring that the reporting requirement covers a company's full operations including supply chains;
- 3) Requiring high-level approval of modern slavery statements and publication on companies' homepages;
- 6) Producing government guidance;

ICAR and CORE further urge the Australian government to be a leader in addressing modern slavery by drawing on the successes and integrating lessons learned from international best practice to prevent modern slavery by:

- 1) Requiring companies to conduct due diligence;
- 2) Requiring reporting on specific topics;
- 3) Requiring due diligence and reporting to be eligible for public contracts;
- 4) Expanding coverage to include public bodies;
- 5) Creating a government operated central registry of statements;
- 6) Publishing a list of companies required to report;
- 7) Providing access to remedy; and
- 8) Implementing monitoring and enforcement mechanisms.

These recommendations are laid out in more detail below.

## **B. Should a modern slavery act be introduced in Australia?**

Australia should demonstrate leadership and enact a Modern Slavery Act that draws on the successes and integrates lessons learned from other existing transparency and due diligence legislation and developments, including the U.K. MSA.

The UN Guiding Principles on Business and Human Rights (UNGPs) affirm that companies have a responsibility to respect human rights. GP 15 and its commentary state that this responsibility includes having certain policies and procedures in place that enable companies to both know and show that they respect human rights. These policies and procedures (elaborated more fully in GPs 16-24) should include a policy commitment, conducting human rights due diligence, and having a process in place to remedy adverse human rights impacts. GP 21 and its commentary provide that companies must *show* that they respect human rights in practice, which should include disclosing their activities to address human rights risks in their operations and in their supply chains.<sup>1</sup>

The UNGPs also set out the state duty to protect human rights. GP 3 articulates that in meeting this duty, states should “[e]nforce laws that are aimed at, or have the effect of requiring business enterprises to respect human rights, and periodically to assess the adequacy of such law and address any gaps.”<sup>2</sup> States should also “[e]ncourage, and where appropriate require,

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<sup>1</sup> Special Representative on Business and Human Rights, United Nations Guiding Principles on Business and Human

<sup>2</sup> *Id.* at 4-6.

business enterprises to communicate how they address their human rights impacts.”<sup>3</sup> The Commentary to this GP makes it clear that “States should not assume that businesses invariably prefer, or benefit from, State inaction, and they should consider a smart mix of measures – national and international, mandatory and voluntary – to foster business respect for human rights.”<sup>4</sup>

Modern slavery legislation that mandates human rights due diligence and requires supply chain reporting is an obvious means by which States can fulfil the duty to protect.

Beyond the UNGPs, stakeholders including civil society, consumers, investors, and business leaders are increasingly calling for companies to report on their activities to address modern slavery.<sup>5</sup> Consumers and investors often seek to make their purchasing and investment decisions based on the extent to which a company is addressing human rights risks, including risks of modern slavery, in their operations and supply chains. For consumers this is usually due to ethical and moral considerations. For investors, in addition to ethical and moral considerations, modern slavery and human rights risks more broadly constitute material business risks. Reporting serves a vital role in enabling investors to incorporate into their own due diligence information about the extent to which a company is addressing that risk, and it enables consumers to make informed purchasing decisions.<sup>6</sup> Additionally, companies themselves can benefit from these mandatory reporting requirements that allow for peer learning, permitting them to see good examples that they can draw on to improve their own practices.

Mandatory reporting, especially when it includes a requirement for board or equivalent-level sign off, can serve to bring senior individuals in the company into conversations around addressing modern slavery. The buy-in of these individuals is key as it sends a message to the rest of the company that the issue should be taken seriously, making it more likely that the company’s policies and procedures will be implemented throughout the company’s functions.<sup>7</sup>

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<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> See e.g., QUENTIN LAKE ET AL., ETHICAL TRADING INITIATIVE, CORPORATE APPROACHES TO ADDRESSING MODERN SLAVERY IN SUPPLY CHAINS: A SNAPSHOT OF CURRENT PRACTICE 28 (2015) available at <https://www.ashridge.org.uk/getattachment/Faculty-Research/Research/Current-Research/Research-Projects/Corporate-approaches-to-addressing-modern-slavery/Modern-Slavery-v3-named.pdf>; CYNTHIA WILLIAMS, KNOWING AND SHOWING: USING U.S. SECURITIES LAWS TO COMPEL HUMAN RIGHTS DISCLOSURE 28 – 29 (Oct. 2013), available at <https://www.icar.ngo/publications/2017/1/4/knowning-and-showing-using-us-securities-laws-to-compel-human-rights-disclosure>; Anna Triponel, *The Rising Tide of Human Rights Reporting Requirements*, <https://www.shiftproject.org/resources/viewpoints/rising-tide-human-rights-reporting-requirements/> (last visited May 2, 2017).

<sup>6</sup> See e.g., CYNTHIA WILLIAMS, KNOWING AND SHOWING: USING U.S. SECURITIES LAWS TO COMPEL HUMAN RIGHTS DISCLOSURE 28 – 29 (Oct. 2013), available at <https://www.icar.ngo/publications/2017/1/4/knowning-and-showing-using-us-securities-laws-to-compel-human-rights-disclosure>.

<sup>7</sup> See e.g., INSTITUTE FOR HUMAN RIGHTS AND BUSINESS, THE “STATE OF PLAY” OF HUMAN RIGHTS DUE DILIGENCE: ANTICIPATING THE NEXT FIVE YEARS 27 (2011), available at [https://www.ihrb.org/pdf/The\\_State\\_of\\_Play\\_of\\_Human\\_Rights\\_Due\\_Diligence.pdf](https://www.ihrb.org/pdf/The_State_of_Play_of_Human_Rights_Due_Diligence.pdf).

Requiring companies to disclose their efforts to address modern slavery in their supply chains is only a first step in the right direction. Beyond this, governments should make due diligence mandatory for companies across their operations, including their supply chains. Furthermore, to truly address modern slavery and other human rights issues in supply chains, companies must be required to disclose their supply chains, the impacts of their due diligence activities, and their efforts to remediate identified abuses (e.g. audit reports and compliance action plans). These additional transparency measures enable stakeholders to play a monitoring role in relation to the implementation of company policies and practices and their effectiveness in addressing human rights impacts on the ground.

While ICAR and CORE recognize the opportunity to promote modern slavery legislation in Australia, we do also note that there are a range of human rights harms that companies can be linked to. As such, while we believe that modern slavery reporting is a positive first step, ultimately reporting requirements must be expanded to include other salient human rights risks and impacts. For a model of reporting, we would point to the UNGPs Reporting Framework.

### **C. What provisions in the U.K. MSA have proven effective in addressing modern slavery, and should similar or improved measures be adopted in Australia?**

The Section 54 supply chain provision in the U.K. MSA is a welcome development, and there are several positive aspects of the U.K. MSA that ICAR and CORE believe should be included in an Australian MSA. However, the legislation should not be merely replicated, as there is significant room for further development to address some of the gaps that have become apparent since the U.K. MSA entered into force.

#### ***1) Require Annual Modern Slavery Statements***

Section 54 of the U.K. MSA requires certain companies to publish annual modern slavery statements outlining their activities to address modern slavery both in their own operations and in their supply chains. This type of transparency can help stakeholders, such as consumers and investors, assess companies' efforts to address modern slavery in their supply chains. Requiring this disclosure annually is key as it enables comparison from one year to the next, which allows stakeholders to identify companies that are improving their practices and those that are not. With this information, stakeholders can reward good actors and punish or reprimand bad actors through their purchasing and investment decisions. As such, Australia should include such a reporting requirement in its own MSA.

#### ***2) Ensure that the Reporting Requirement Covers a Company's full Operations including Supply Chains***

Australia should also follow Section 54 of the U.K. MSA, and require covered companies to report on how they address modern slavery in their supply chains, and not only within their own operations. Modern slavery is a risk throughout global supply chains, and having to report

on this may stimulate companies to use their leverage on their suppliers to address impacts on human rights.

### **3) Require High Level Approval and Publication on Homepage**

Under the U.K. MSA, statements must be approved by the company's board of directors or equivalent body, signed by a director or equivalent, and must be publicly posted on the homepage of the company's website. These requirements should be included in an Australian MSA as board (or equivalent) approval and signature demonstrate buy-in and a commitment from the top, while requiring companies to post these statements on their webpages allows easy access for stakeholders. The homepage requirement in particular ensures that companies will not attempt to hide their statements in obscure locations, which would make them relatively inaccessible.

### **4) Ensure the Reporting Requirement Covers Large and Medium Sized Companies**

Section 54 of the U.K. MSA applies to all companies with an annual turnover of more than £36 million (about \$61.6 million AUD) that operate in the U.K., regardless of where they are headquartered. In contrast, the California Transparency in Supply Chains Act (CTSCA, discussed further below) only covers companies with an annual turnover of \$100 million USD (about £79 million and about \$133 million AUD). In practical terms, this means that the California reporting requirement only applies to large companies, while the U.K. reporting requirement covers both large *and* medium sized companies. The risk of modern slavery exists for all companies, regardless of size. Thus, an Australian MSA should follow the example of the U.K. MSA and ensure that its reporting requirement covers medium sized companies as well as large ones.

### **5) Produce Government Guidance**

In October 2015 the U.K. Government published practical guidance for companies on how to report under the U.K. MSA. The Australian Government should follow the U.K.'s example and issue reporting guidance for companies covered by the legislation. This guidance should be created in consultation with experts on labour, trafficking, and corporate responsibility.

## **D. What are examples of international best practice to prevent modern slavery in domestic and global supply chains?**

By implementing a MSA, Australia would join other governments that have, or are in the process of, adopting legislation mandating transparency and/or due diligence. Australia should be a leader on addressing modern slavery and build upon these initiatives through adopting a best practice approach to tackling modern slavery.

### **1) California Transparency in Supply Chains Act**

The CTSCA requires manufacturers and retailers doing business in California with annual worldwide gross receipts above \$100 million (about \$133 million AUD) to disclose their efforts, if any, to address human trafficking and slavery in their product supply chains. The Act *requires* covered companies to disclose the extent to which they: 1) verify their product supply chains;

2) audit suppliers for compliance with company standards on human trafficking and slavery; 3) require direct suppliers to certify compliance with relevant laws; 4) have internal procedures to determine compliance with company standards; and 5) provide training for those responsible for supply chain management. As with the U.K. MSA, the report must be posted on the company's homepage. Where corporations do not meet their obligations, the only enforcement mechanism is an injunction by the California Attorney General.

While the CTSCA is a step in the right direction, it has a number of weaknesses. First, California has not published a list of companies covered by the law, nor is such a list mandated.<sup>8</sup> This hinders the ability of civil society and other stakeholders to identify non-compliant companies, preventing targeted advocacy. Second, the California Attorney General has not actively enforced the Act. For instance, of 500 companies KnowTheChain believed to be covered by the law, only 31 per cent were found to be reporting in compliance with the Act.<sup>9</sup>

## **2) Dodd Frank Section 1502**

Section 1502 of the Dodd Frank Act and its implementing regulation requires companies that use gold, tin, tungsten, or tantalum in the production of their manufactured goods and that file reports with the U.S. Securities and Exchange Commission to make reasonable efforts to determine if they are sourcing their minerals from the Democratic Republic of Congo (DRC) or surrounding countries (i.e. country of origin inquiry). If a company finds that it is sourcing from these countries, and if the minerals are "necessary to the functionality or production" of its product(s), the company is required to conduct due diligence on the source and chain of custody of the minerals to determine whether its purchase of these minerals is directly or indirectly funding armed groups in the DRC.

Covered companies are required to submit annual reports to the SEC describing the country of origin inquiry undertaken and the results. Companies that are required to conduct due diligence must also submit a Conflict Minerals Report, which must include a description of their due diligence measures. The description and results of the country of origin inquiry and the Conflict Minerals Report (if applicable) must also be publicly posted on the company's website.<sup>10</sup>

## **3) EU Non-Financial Reporting Requirement**

In 2014, the EU issued its Directive on non-financial reporting. This Directive requires large public interest entities (e.g. listed companies) with over 500 employees to include information about their policies, risks, due diligence, and outcomes related to human rights, the

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<sup>8</sup> KNOW THE CHAIN, FIVE YEARS OF THE CALIFORNIA TRANSPARENCY IN SUPPLY CHAINS ACT (Sept. 2015), *available at* [https://kctcdevlab.wpengine.com/wp-content/uploads/2015/10/KnowTheChain\\_InsightsBrief\\_093015.pdf](https://kctcdevlab.wpengine.com/wp-content/uploads/2015/10/KnowTheChain_InsightsBrief_093015.pdf).

<sup>9</sup> *Id.*

<sup>10</sup> U.S. Securities and Exchange Commission, *Fact Sheet: Disclosing the Use of Conflict Minerals*, <https://www.sec.gov/opa/Article/2012-2012-163htm---related-materials.html> (last visited May 12, 2017); U.S. Securities and Exchange Commission, *Statement on the Effect of the Recent Court of Appeals Decision on the Conflict Minerals Rule*, <https://www.sec.gov/news/public-statement/2014-spch042914kfh> (last visited May 12, 2017).

environment, diversity, social and employee related issues, and anti-corruption and bribery in their management reports. In practice, this requirement applies to about 6,000 companies. Member States were required to transpose the Directive into national legislation by December 6, 2016, and the first reports must be published in 2018.<sup>11</sup>

#### **4) U.S. Import Ban**

U.S. law has banned the import of goods made with forced labour into the United States since 1930. However, this ban was rarely enforced due to an exception for goods where domestic production was insufficient to meet domestic demand (i.e. consumptive demand loophole). In 2016, President Obama signed the Trade Facilitation and Trade Enforcement Act, closing the consumptive demand loophole.

Any person can submit a report to U.S. Customs and Border Protection (CBP) when they have reason to believe that goods made with forced labour are being, or are likely to be, imported into the United States. If the CBP believes that the report could be true, an investigation is initiated. If, based on that investigation, the CBP Commissioner finds that available information “reasonably but not conclusively” indicates the goods have been produced with forced labour, CBP will issue a withhold release order and detain the goods. Alternatively, if the Commissioner determines that there is probable cause that the goods have been produced with forced labour, the Commissioner will issue a formal finding to that effect.

If a withhold release order is issued, the importer has two options: 1) choose to re-export the goods; or 2) demonstrate “by satisfactory evidence” that the goods were not produced using forced labour. Under the second option, if the importer provides satisfactory evidence, the goods are released, but if the evidence is not satisfactory the shipment is excluded. In contrast, if the Commissioner issues a formal finding, the importer does not have the option of re-exporting the goods, and the goods will be seized if the importer is unable to demonstrate that they were not made with forced labour.<sup>12</sup>

#### **5) Human Trafficking Requirements for U.S. Contractors**

Under U.S. procurement law, all federal contractors and subcontractors are prohibited from engaging in human trafficking, which includes specific activities such as charging recruitment fees and providing inadequate housing, among others. Additionally, for any portion of the contract that exceeds \$500,000 and is performed outside of the United States (excluding

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<sup>11</sup> European Commission, *Non-financial Reporting*, [http://ec.europa.eu/finance/company-reporting/non-financial-reporting/index\\_en.htm](http://ec.europa.eu/finance/company-reporting/non-financial-reporting/index_en.htm) (last visited May 12, 2017).

<sup>12</sup> See, e.g., U.S. CUSTOMS AND BORDER PATROL, FACT SHEET: FORCED LABOR ENFORCEMENT, WITHHOLD RELEASE ORDERS, FINDINGS, AND DETENTION PROCEDURES, available at <https://www.cbp.gov/sites/default/files/assets/documents/2016-Aug/Fact%20Sheet%20-%20Forced%20Labor%20Procedures.pdf>; *Forced Labor*, U.S. CUSTOMS AND BORDER PATROL, <https://www.cbp.gov/trade/trade-community/programs-outreach/convict-importations> (last visited May 2, 2017); Claire Reade & Samuel Witten, *Understanding the U.S. Ban on Importing Forced Labor Goods*, <http://www.apks.com/en/perspectives/publications/2017/04/understanding-the-us-ban-on-importing> (last visited May 2, 2017).

commercially available off the shelf items), contractors must create a compliance plan that meets certain minimum standards, and must submit an annual certification providing that 1) the plan has been implemented; 2) after conducting due diligence neither the contractor nor its subcontractors or agents engage in human trafficking to the best of their knowledge; and 3) if human trafficking has been identified, remedial action has been taken.<sup>13</sup>

### **6) French Duty of Diligence Law**

The French Duty of Diligence Law requires the largest French companies to assess and address the adverse impacts of their activities on people and the planet by having them publish annual, public ‘vigilance plans.’ This includes impacts linked to their own activities, those of companies under their control, and those of suppliers and subcontractors with whom they have an established commercial relationship.<sup>14</sup>

If a company defaults on these obligations, the law empowers those affected by the non-compliance to bring a civil action against the company. Additionally, under the law any interested party can send a formal notice to a non-compliant company, and if the non-compliance is not addressed within three months the interested party can apply for a periodic penalty payment order against the company.<sup>15</sup>

### **7) Swiss Responsible Business Initiative**

A broad coalition of Swiss civil society organisations working in human rights, development, and environmental protection launched the ‘Responsible Business Initiative’, a call for the Swiss Constitution to be amended to create a legal obligation for companies to incorporate respect for human rights and the environment in all their business activities. Less than a year after the launch, the Initiative had gathered the signatures of more than 140,000 Swiss citizens, enabling it to be declared valid.

The proposed mandatory due diligence instrument is based on the UNGPs and would be applied to Swiss based companies’ domestic and international activities. It would require that companies first review all their business relationships and activities with a view to identifying potential risks to people and the environment. They would then have to take effective measures to address the potentially negative impacts identified. As a third step, companies

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<sup>13</sup> See E.g., Sarah Altschuller, *Human Trafficking and Government Procurement: New Requirements for U.S. Federal Contractors*, <http://www.csrandthelaw.com/2015/02/02/human-trafficking-and-government-procurement-new-requirements-for-u-s-federal-contractors/> (last visited May 12, 2017).

<sup>14</sup> EUROPEAN COALITION FOR CORPORATE JUSTICE, FRENCH CORPORATE DUTY OF VIGILANCE LAW – FREQUENTLY ASKED QUESTIONS (Feb. 23, 2017), available at <http://corporatejustice.org/news/405-french-corporate-duty-of-vigilance-law-frequently-asked-questions>.

<sup>15</sup> Assent Webinar, *A Historic Step in Supply Chain Due Diligence: The French Duty of Vigilance Law* (May 2017), available at [http://assentcompliance-1.hs-sites.com/webinar-recap-french-due-diligence?utm\\_campaign=Anti-Human%20Trafficking&utm\\_source=hs\\_email&utm\\_medium=email&utm\\_content=51944126&hsenc=p2ANqtz-9zP1np3pt-1CGQg0xMwll5x4ZP\\_wqw6xRj1yAHP-b\\_3etyELBr3wNcQ23VzPM003IfuiKGvZdWlkJNrrYPu1FeGtVmiQ&hsmi=51944126](http://assentcompliance-1.hs-sites.com/webinar-recap-french-due-diligence?utm_campaign=Anti-Human%20Trafficking&utm_source=hs_email&utm_medium=email&utm_content=51944126&hsenc=p2ANqtz-9zP1np3pt-1CGQg0xMwll5x4ZP_wqw6xRj1yAHP-b_3etyELBr3wNcQ23VzPM003IfuiKGvZdWlkJNrrYPu1FeGtVmiQ&hsmi=51944126)



would be required to report in a transparent manner on the violations identified, as well as on the related measures taken.<sup>16</sup>

### **8) Dutch Child Labour Due Diligence Law**

Companies covered by this law are required to submit a statement to a regulatory authority (likely to be the Dutch Consumer and Market Authority, although this has yet to be determined) declaring that they have carried out due diligence related to child labour throughout their entire supply chains. The law was adopted by Dutch Parliament on February 7, 2017 and enters into force on January 1, 2020. Under the law, companies are required to submit their statements to the selected regulator within six months of the law coming into force (i.e. by 1 July 2020). Companies wishing to send in their statements before the deadline can do so as early as 2018.

Failure to submit a statement may result in a fine. If the regulatory authority determines that a company has not conducted due diligence in accordance with the legislation, the regulator will provide the company with legally binding instructions and a time frame for execution. If these instructions are not followed, the company can be fined. If a company is fined twice within five years, the next violation can lead to imprisonment of the responsible director. At its most serious, failing to follow the law can lead to imprisonment and fines of € 750,000 (about \$1.1 million AUD) or 10 per cent of the company's annual turnover.<sup>17</sup>

## **E. How should Australia draw from these international best practices to strengthen Australian legislation?**

As noted above, Australia should draw from the successes of existing transparency and due diligence legislation and developments, including the U.K. MSA, but should also build on them and integrate lessons learned. In particular, ICAR and CORE strongly recommend that Australia incorporate the following recommendations into its MSA.

### **1) Mandatory Due Diligence**

An Australian MSA should not only require covered companies to disclose their activities to address modern slavery in their operations and supply chains, but should also require companies to conduct due diligence. Neither the U.K. MSA nor the CTSCA include a due diligence requirement, which is a considerable weakness in both laws. By requiring mandatory due diligence, an Australian MSA would be in line with recent developments such as the French Duty of Vigilance Law and the Dutch Child Labour Due Diligence Law.

### **2) Require Reporting on Specific Topics**

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<sup>16</sup> Swiss Coalition for Corporate Justice, *The responsible business initiative: protecting human rights and the environment*, <http://konzern-initiative.ch/?lang=en> (last visited May 10, 2017).

<sup>17</sup> *Frequently Asked Questions about the new Dutch Child Labour Due Diligence Law*, MVO PLATFORM, <https://www.mvoplatform.nl/news-en/frequently-asked-questions-about-the-new-dutch-child-labour-due-diligence-law> (last visited May 2, 2017).

Unlike the CTSCA, the U.K. MSA does not require companies to report on specific topics, but rather provides that organisations' statements "may include information about:

- a) the organisation's structure, its business and its supply chains;
- b) its policies in relation to slavery and human trafficking;
- c) its due diligence processes in relation to slavery and human trafficking in its business and supply chains;
- d) the parts of its business and supply chains where there is a risk of slavery and human trafficking taking place, and the steps it has taken to assess and manage that risk;
- e) its effectiveness in ensuring that slavery and human trafficking is not taking place in its business or supply chains, measured against such performance indicators as it considers appropriate;
- f) the training about slavery and human trafficking available to its staff."<sup>18</sup>

At present, there is no data available on how many company reports cover all six topics, but it is likely to be very low given that only an estimated 14 per cent of the 1800 statements available on the Business and Human Rights Resource Centre's Modern Slavery Registry comply with the three basic legal requirements of the Act (statement signed by a director, on behalf of the board and available on the homepage of the company's website).<sup>19</sup>

A company's statement is supposed to cover "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 supply chains and in any part of its own business." A statement that does not cover the six areas set out in the legislation is indicative of what is likely to be an ineffective response to tackling modern slavery. Additionally, requiring companies to report against the same list of topics allows for better comparison between companies. Australia should therefore follow the California model, requiring companies to report on a consistent set of specific topics in their annual modern slavery statements.

### **3) Reporting and Mandatory Due Diligence as a Requirement for Public Contracts**

The Australian government should use the leverage it has through its public procurement to incentivize companies to publish compliant statements. Specifically, the government should make it clear that companies that do not comply with either the reporting requirement or the mandatory due diligence requirement will not be eligible to bid for public contracts.

### **4) Expand Coverage to Include Public Bodies**

Requirements placed on companies under an Australian MSA should be extended to cover public bodies as well. The risk of modern slavery in supply chains does not disappear when the consumer is a government, and governments have an obligation to address slavery and trafficking-related risks in their supply chains. UNGPs 5 and 6 clarify that the State duty to

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<sup>18</sup> U.K. Modern Slavery Act 2015, Section 54(5) available at <http://www.legislation.gov.uk/ukpga/2015/30/section/54/enacted>.

<sup>19</sup> Research conducted by the Business and Human Rights Resource Centre and on file with authors.

protect extends to situations where governments enter into commercial relationships with businesses, including through public procurement.<sup>20</sup> Separate and apart from the duty to protect against these abuses, the Australian government should lead by example by addressing the risk of modern slavery in its own supply chains.

### **5) Government Operated Central Registry of Statements**

While the requirement for companies to post their statements on their homepages should be maintained, the Australian government should also create and maintain a central registry of all statements. This will facilitate efficient monitoring and enforcement and will ensure that stakeholders can easily access all submitted statements. Without this registry, stakeholders will have to visit the websites of each covered company and collect the statements in order to compare and analyse them. This analysis is particularly challenging in the context of the U.K. MSA and CTSCA, as there is no publicly available list of companies that are required to report. By creating a government operated central registry, Australia would make assessing compliance with the reporting requirement much easier.

### **6) Publish a List of Companies Required to Report**

Neither the U.K. nor California has published a list of companies required to report under their respective Acts, which has made it difficult for stakeholders to hold companies accountable. Specifically, without such a list it is difficult for interested parties to determine whether a company that has not disclosed is in violation of the law or if it is not within the law's scope and therefore not required to disclose. For this reason, it is key that the Australian government publishes a full list of companies required to report under its MSA.

### **7) Provide Access to Remedy**

Australia should ensure that victims of modern slavery have access to remedy in Australia. The Trafficking Victims Protection Act (18 U.S. Code § 1595 - Civil remedy) enables victims of human trafficking or forced labour to bring a civil action against whomever "knowingly benefits, financially or by receiving anything of value, from participation in a venture which that person knew or should have known" was engaged in peonage, forced labour, involuntary servitude, unlawful conduct with respect to documents, and human trafficking. Given that victims of human trafficking have difficulty accessing remedy, Australia should consider providing a civil cause of action similar to that in the TVPA.

### **8) Monitoring and Enforcement by Government**

Merely having an MSA that creates requirements for business is not enough. Australia must also engage in effective monitoring and enforcement of compliance. Absent consequences for non-compliance, companies are not likely to take the reporting requirement seriously and may either submit inadequate statements or simply fail to report at all. Therefore, Australia should create and employ sanctions for: 1) failing to report; 2) submitting an inadequate report (e.g. one that is not signed and/or approved or posted on the company's homepage); 3) failure to report on mandatory due diligence measures; and 4) failure to conduct mandatory due diligence measures.

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<sup>20</sup> Guiding Principles, *supra* note 1, at 8.