



**Advisory Committee of the Modern Slavery Registry
Submission to the Senate Legal and Constitutional Affairs Legislation
Committee
Inquiry into the provisions of the Modern Slavery Bill 2018**

(Business & Human Rights Resource Centre, Humanity United, Freedom Fund, Anti-Slavery International, Trades Union Congress, Ethical Trading Initiative, Unicef UK, Focus on Labour Exploitation (FLEX), Freedom United, CORE Coalition, and Principles of Responsible Investment (PRI))

We refer to the [Submission by the Advisory Committee of the Modern Slavery Registry](#) to the Joint Standing Committee on Foreign Affairs, Defence and Trade for the Inquiry into Establishing a Modern Slavery Act in Australia and to the [Response by the Advisory Committee of the Modern Slavery Registry to the Department of Home Affairs' Public Consultation Questions](#). These responses are supplemental to that Submission and Response.

We recognise that the subject of the current inquiry is proposed provisions of a [Modern Slavery Reporting Requirement](#). We support the proposed reporting requirement as an important step by the Australian Government to address modern slavery in supply chains.

In this submission, we provide information and insights on the key provisions we consider necessary for a robust and effective Modern Slavery Reporting Requirement and which relate directly to our organisations' experience and expertise. Some of these features were included in the [Fact Sheet: Modern Slavery Reporting Requirement](#), and some are additional features to further strengthen the legislation.

Key features of the Modern Slavery Reporting Requirement

1. A public list of companies required to report under the Modern Slavery Reporting Requirement

Under the proposed legislation, as currently framed, there will not be a public list of companies required to report. A [list of companies is vital](#) to facilitate effective monitoring and to encourage compliance with the Modern Slavery Reporting Requirement. Effective monitoring of compliance by investors, consumers and civil society is not possible in the absence of clarity about which companies are required to report.

There is an assumption that the Modern Slavery Reporting Requirement will create transparency which will drive greater accountability. However, in the absence of public information about which entities are required to report, the efficacy of the Modern Slavery Reporting Requirement as a transparency measure is curtailed. A public list is critical because it will enable the Government, companies, investors, civil society, consumers and the public at large to be aware of non-compliant



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companies. A public list will also incentivise companies to comply with the reporting requirement and drive higher legislative compliance levels.

In the UK, the absence of a list has proven to be a serious legislative weakness. The UK Government estimates that at least 9,000 companies are required to publish modern slavery statements (the higher estimate is 11,000). Yet, the Modern Slavery Registry operated by Business & Human Rights Resource Centre currently only holds statements for around 5,500 companies. The lack of a list of companies required to report has undermined our ability to monitor compliance with the legislation. From a government perspective, this is serious because it undermines the value and impact of its own legislation.

The current UK legislation is light-touch: it does not require companies to act to address modern slavery challenges – merely to report on steps taken – yet it has had a significant impact. Many companies are taking meaningful steps to address modern slavery such as online retailer, [ASOS plc](#), and construction materials company, [Marshalls plc](#). The greatest challenge, however, lies with companies that are failing to report or meet their responsibilities to address modern slavery risks in their operations and supply chains.

Unless legislation creates a level playing field for the private sector without exception, unscrupulous companies will compete unfairly with responsible companies and, over time, responsible businesses will question the value of their actions if there is no penalty for companies that fail to take responsibility for their actions and impacts. The drivers and interrupters of modern slavery are often systemic and so require collective, rather than individual, company action to effect meaningful and lasting change. In the absence of a public list of reporting entities, laggards cannot be identified and pressed into action. The unintended consequence is that unfair emphasis is placed on consumer-facing companies, or those with name recognition, while smaller to medium-sized suppliers escape scrutiny.

Stakeholders in the UK have repeatedly raised this issue in relation to poor compliance with the UK Modern Slavery Act and lack of enforcement by the UK Government. The [Independent Anti-Slavery Commissioner](#) called for a list of companies saying, “Whilst the ‘transparency in supply chains’ clause of the Act was landmark legislation, it failed to make provision for a list of all the companies...This



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makes it problematic to identify non-compliant companies and engage with them to ensure they play their part.” In its 2017 report, the UK [Joint Committee on Human Rights](#) highlighted the absence of a central list of companies as a shortcoming of the UK Modern Slavery Act. The UK House of Commons [Committee of Public Accounts](#) recommended in its 2018 report, ‘Reducing Modern Slavery’, that the Government “should consider publishing itself a list of companies who have complied and not complied with the legislation, rather than relying on NGOs to police the system.”

The UK Government has recently committed to obtain a list of entities required to report under the UK Modern Slavery Act, recognising that this is of paramount importance. Given this trajectory in the UK, **the Australian Government should leverage these learnings and provide a public list of reporting entities to accompany the Modern Slavery Reporting Requirement from commencement.** This would significantly strengthen the efficacy of the Modern Slavery Reporting Requirement.

2. Modern Slavery Statements to be published on company websites

We recommend that companies be required to publish Modern Slavery Statements issued under the Modern Slavery Reporting Requirement on their company website, ideally on their homepage. This step would ensure that statements are accessed by a wider audience of interested parties. This in turn would enhance the ability of the legislation to generate transparency of information about corporate measures to address modern slavery. A homepage publication requirement would also ensure that the process of preparing a company’s Modern Slavery Statement attracts greater attention internally. This should assist in generating higher quality and more detailed statements.

3. Mandatory criteria

We note that section 16(d) of the Modern Slavery Reporting Requirement requires a reporting entity to describe any actions taken to assess and address risks of modern slavery practices in its operations and supply chains. We further recommend that reporting entities be required to describe the actions taken to *identify* such risks and that this be included in section 16(d) of the Modern Slavery Reporting Requirement.



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Modern Slavery Statements should:

- define the company’s workforce;
- set out what due diligence procedures are in place to identify risks of human trafficking and forced labour;
- explain what is being done to monitor such risks;
- describe what is done to address human trafficking and forced labour;
- state what has been the outcome of these activities for workers or how, and at what point, this will be measured;
- state explicitly where there have been cases of labour exploitation, forced labour or human trafficking in the company’s supply chain and the outcomes for affected workers; and
- describe what is being done to reduce the risk of recurrence.

We recommend that the parameters for reporting against the mandatory criteria for Modern Slavery Statements are explained in detail in the Government’s Guidance to the Modern Slavery Reporting Requirement and that such parameters should cover the reporting areas suggested above.

4. Registration of Modern Slavery Statements

We note that section 19 of the Modern Slavery Reporting Requirement permits the Minister to either (a) register non-compliant statements or (b) not register non-compliant statements.

In the event that the Minister elects to publish a non-compliant statement, we recommend that an explanatory statement accompany the publication of such a statement on the register, stating that it is deemed non-compliant. Where the Minister elects not to register a statement, for reason of non-compliance, we recommend that a statement to this effect be recorded on the register.

In either case, it must be apparent to interested parties accessing the register when the statement of a reporting entity has been deemed to be non-compliant, whether registered or not.



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5. Public procurement incentives for compliance

The Modern Slavery Reporting Requirement would be strengthened by including a provision that **prohibits suppliers who fail to comply with the reporting requirement from participating in public tender processes**. Any reporting entity, subject to the Modern Slavery Reporting Requirement, that fails to produce a compliant Modern Slavery Statement should be excluded from public procurement contracts. We welcome the position that an opt-in provision for voluntary reporting is available for smaller operators that are below the reporting threshold of the Modern Slavery Reporting Requirement. This should drive improved practice and will help to ensure that smaller operators are not disadvantaged in public tender situations.

In the UK, Baroness Young’s Private Members Bill – [‘Modern Slavery \(Transparency in Supply Chains\) Bill’](#) seeks to amend the Modern Slavery Act 2015, in part, to exclude companies that fail to report under the UK Modern Slavery Act. The UK [Joint Committee on Human Rights](#) urged the UK Government to facilitate the passage of Baroness Young’s Bill, or bring forward its own legislation, in the next session to achieve a similar objective.

6. Modern Slavery Statements Register

We support the Modern Slavery Statements Register being a government-operated register as this will establish it as the official and legitimate location for accessing statements. We further support the fact that the proposed register for modern slavery statements will be **free and publicly accessible**.

The register should be a resource that is useful across different stakeholder groups. To be effective, it will require functionality that allows users to search and collate statements according to a user’s specifications, such as by company name, country of headquarters, sector/industry and stock exchange (if applicable). It could also provide access to additional resources such as guidance, analysis or commentary published by the Government and civil society. To determine which functionality and features would be most useful for stakeholders, the Government should collaborate in the design of the registry with external experts.



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For the central register to operate effectively, a **list** of the companies required to comply with the reporting provision is critical for the reasons set forth in point #1 above.

We recommend that the register for modern slavery statements should meet the following **criteria**:

- free, open and publicly accessible;
- reliably and consistently funded;
- continuously updated;
- historical to facilitate year-on-year progress to be tracked;
- single, central location;
- user-friendly;
- easily searchable to facilitate analysis and comparison; and
- well-publicised.

7. Clear and comprehensive guidance for business and awareness-raising

We note that the Government intends to provide **guidance** for the business community and we fully support this. We recommend that clear, comprehensive and detailed guidance for business on how to comply with the Modern Slavery Reporting Requirement, and which reflects existing corporate responsibilities under the UN Guiding Principles on Business and Human Rights (and Interpretive Guide), be prepared in consultation with external stakeholder groups. We further recommend that the guidance is launched and publicised ahead of enactment.

The introduction of Modern Slavery Reporting Requirement should also be supported by a **public awareness campaign**. A successful public campaign would increase engagement by businesses, investors and consumers with the Modern Slavery Reporting Requirement. Such a campaign should aim to raise awareness amongst both business and the wider community about the new legislative requirement as well as, more broadly, the human rights risks associated with supply chain sourcing. The impact of the Modern Slavery Reporting Requirement relies largely on the power of public scrutiny, particularly by investors and civil society, to induce companies to comply. A comprehensive public awareness campaign is essential to generate public awareness about the new reporting



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requirement and to ensure that the power of public scrutiny is adequately harnessed so as to achieve greater legislative impact and, ultimately, effectiveness.

8. Financial penalties for non-compliant companies

We are disappointed that financial **penalties** for non-compliance by qualifying entities are not included in the draft bill. We recommend that financial penalties should apply where entities:

- fail to produce a modern slavery statement;
- produce statements that fail to meet the minimum requirements of being signed and approved by the appropriate person(s) and body, respectively;
- produce statements that omit mandatory criteria; or
- produce statements that include false or misleading information.

We recommend that, should low reporting levels or poor reporting standards warrant it, penalties be phased-in after an initial three-year grace period post enactment following the first legislative review.

We consider financial penalties for non-compliant entities to be critical for an effective reporting requirement. Regulatory regimes that do include strict financial penalties have resulted in much higher compliance levels. For example, the Gender Pay Gap reporting regime in the UK requires certain entities with more than 250 employees to report on, among other data, the difference in average hourly pay between men and women. Entities that fail to report face an unlimited fine, determined by the courts. It was anticipated that 9,000 entities would be subject to this reporting requirement and, according to the UK Government’s Gender Pay Gap registry, over 10,000 entities have reported.

Penalties make governments’ intentions to enforce legislation clear and have also proved to be effective in raising awareness about legislative requirements. For example, the EU General Data Protection Regulation (GDPR), which introduces obligations on companies in respect of the handling and processing of personal data, includes financial penalties of up to 20 million Euros or 4% of a company’s annual global turnover, whichever is highest. Consequently, there was a high degree of consultation and discussion amongst businesses and other organisations on how to comply with GDPR, before it came into effect, and a high degree of compliance subsequently.



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9. Concluding observations

The global community of stakeholders committed to ending modern slavery – particularly in the private sector – has learned important lessons and has gained valuable experience and insights from current legislative initiatives to address the challenges of modern slavery. The UK Modern Slavery Act represents a strengthened version of the California Transparency in Supply Chains Act. Other legislation in France and the EU, as well as anticipated legislative measures in Canada, and the Netherlands – also seek to improve upon existing efforts.

The introduction of an Australian Modern Slavery Reporting Requirement presents an excellent opportunity to further advance modern slavery transparency in supply chain legislation and address global modern slavery challenges. The Australian Government’s leadership in introducing this measure will be felt not only in Australia but will also significantly enhance the global effort to meet SDG 8.7.

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