

Modern Slavery in Supply Chains Reporting Requirement

Submission to Attorney-General's Department

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Your details

Name/organisation If you are providing a submission on behalf of an organisation, please provide the name of a contact person.	Baptist World Aid Australia Contact: Gershon Nimbalker
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Publication of submissions

Please email submissions to slavery.consultations@ag.gov.au by 11:00PM (AEST), 20 October 2017.

Electronic submissions will be published on the [modern slavery consultation page](#) of the Attorney-General's Department website. In meeting the Australian Government's commitment to enhancing the accessibility of published material, the Attorney-General's Department will only publish submissions to this website that have been submitted electronically. The following formats are preferred:

- Microsoft Word
- Rich Text Format (RTF)
- txt format.

Please limit individual file size to less than 5MB. The department may create PDF documents from the above formats.

Hardcopy submissions received by mail or fax will still be considered by the Australian Government, however they will not be published on the Attorney-General's Department website.

Confidentiality

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Your submission

The Australian Government welcomes feedback on any aspect of the *Modern Slavery in Supply Chains Reporting Requirement – Public Consultation Paper and Regulation Impact Statement*.

The Australian Government is particularly interested in submissions that address any or all of the consultation questions set out on pages 17-18 of the consultation paper.

Insert your text here and submit it as an electronic Word document to

slavery.consultations@ag.gov.au.

Australian Government Modern Slavery in Supply Chains Reporting Requirement: Response to Public Consultation Questions

Is the proposed definition of Modern Slavery appropriate and simple to understand?

The proposed definition of Modern Slavery, which incorporates conduct that would constitute an offence of human trafficking, slavery and slavery-like offences under Divisions 270 and 271 of the Commonwealth Criminal Code is appropriate for the purposes of reporting requirements.

The Government should consider expanding the reporting requirement to include child labour. It is our belief that most of the due diligence elements required to identify modern slavery are the same for child labour, and this would add little additional burden to companies that already have adequate processes to address and remediate modern slavery.

How should the Australian Government define a reporting 'entity' for the purposes of the reporting requirement? Should this definition include 'groups of entities' which may have aggregate revenue that exceeds the threshold?

We believe that the definition for reporting entities should encompass 'groups of entities' that carry on business in Australia. The entity definition should include businesses, companies, partnerships, companies limited by guarantee, franchisors, federal and state governments and not for profit organisations.

We believe that it is counterproductive to exclude government entities from the reporting requirements, particularly the federal government, given the share of government procurement as a proportion of national economic activity and the Government's former commitments to ensure that its purchasing practises address slavery risks.

It is our belief that government should be taking a leadership role and modelling best practice back to the business community.

We are aware that the 'groups of entities' concept may mean that in some instances global entities may find themselves being required to report if a subsidiary or partner undertakes limited transactions in Australia (e.g. provides legal advice, brokers a business transaction, etcetera). We would not object to there being a low minimum revenue threshold for operations in Australia (say \$5 million), that below which, the trigger to report does not activate.

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

For the purposes of the reporting requirement, an entity's revenue should be defined as the aggregated annual global gross revenue, for both the entity and its group.

Baptist World Aid is of the view that there should be tiered reporting thresholds based on the known risks to the industry. The proposed \$100m total annual revenue threshold is appropriate for companies not operating in high risk environments. For instance, companies that have the majority of their operations in Australia and operate in low risk sectors such as professional service firms (accountants, graphic designers, mortgage brokers etc..).

However, it is our belief that the threshold should be significantly lower for known high risk industries. These industries at a start could include any industries regularly importing goods identified as high risk by the United States' Department of Labor's (US DOL) 'List of Goods Produced by Child and Forced Labor.' In 2016, this list included textiles, clothing and footwear from countries such as China, India and Vietnam.¹

The identification of high risk industries could be bolstered by specific Australian Government research into high risk sectors that builds upon the research undertaken by the US DOL.

Beyond these identified industries, all organisations that wish to employ migrant workers should also be tested under a lower threshold, given the known risks in migrant recruitment.

As to what this lower threshold should be, one option, already being called for by civil society and NGO groups, is for the Government to adopt the threshold used in the Corporations Act for a large proprietary company. In the *Corporations Act 2001 (Cth)* a large company is any company that satisfies two of the following three criteria (including in their controlled entities):

- a consolidated revenue of \$25m or more
- consolidated gross assets of \$12.5m or more and/or
- 50 or more employees at the end of the financial year

Our research into the fashion industry suggests that companies of this size, operating in high risk industries, understand the need for supply chain due diligence, and are able to find the resources to undertake this task.

How should the Australian Government define an entity's 'operations' and 'supply chains' for the purposes of the reporting requirement?

The Australian Government should define 'supply chains' as all activities required to produce, transport and sell products. An adequate due diligence process will identify those areas of risk within these operations and focus prevention and remediation efforts on these activities.

For example, a fashion company may reasonably conclude that its Australian retail outlets do not need additional systems to prevent the risks of slavery. Further down the supply chain, however, at the inputs or raw materials stage of production, they would likely find that significant measures are needed.

It should be clear that the definition of supply chains goes beyond the first tier of production (final stage manufacturing) and does not distinguish between vertically integrated companies and those that outsource different stages of production.

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

For ease of comparison between company efforts, the Government should consider industry-specific standardised reporting templates for high risk industries. The surveys used by Baptist World Aid in our fashion and electronics research may provide a helpful starting point in developing such templates.

¹ United States Department of Labor, 'List of Goods Produced by Child Labor and Forced Labor' (2017)

Baptist World Aid would be happy to help craft these templates, having already developed significant expertise in corporate supply chain due diligence for industries with high risk supply chains. Our research has identified that for companies operating in high risk industries, there are some basic practices that are necessary for any adequate due diligence practice (strong policies, traceability and transparency of suppliers, adequate monitoring and relationship building, and systems for worker voice and remediation).

Standardised reporting would also make industry analysis and benchmarking far easier.

Reporting incidences of modern slavery will greatly improve public awareness about the problem in production processes and help drive energy to address it. We understand that many businesses will be nervous about reporting known instances of slavery, fearing negative media. This risk can be mitigated by a supportive civil society community that praises organisations for their capacity to find and address slavery, particularly where reporting entities have adequate due diligence processes; and by making the reporting of such issues common practice for the business sector.

How should a central repository for Modern Slavery statements be established and what functions should be included? Should the repository be run by the Government or by a third party?

We strongly advocate for a legislated central repository that is publicly accessible, searchable, and continuously updated and monitored by the Government. The primary function of this central repository should be to enable monitoring of compliance, tracking of progress, and benchmarking of performance.

To function effectively, the central repository must:

- Include a list of companies required to comply with the reporting provision. The UK Modern Slavery Act has been criticised for failing to publicly disclose which companies are required to report, making it difficult for government and civil society to hold companies to account.
- Hold all company statements in one place, to streamline the process of reporting, and enable civil society to easily access this information.
- Be continuously updated, to allow for ease of comparison between statements, and progress tracking.

We note that the establishment of industry specific standardised reporting templates, would also allow elements of a central repository to be searchable, and make the generation of aggregated data far easier.

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

Baptist World Aid Australia is firmly of the view that a Modern Slavery Act in Australia must include penalties for non-compliance and for false or misleading information.

Lack of penalties has been recognised as a significant weakness of the UK Act. In September this year, the Chartered Institute of Procurement and Supply (CIPS) found that over a third of businesses covered by the UK Modern Slavery Act have failed to comply.

“Those working in the procurement and supply chain profession have told us that without stricter penalties and harsher punishments for those who are not compliant with the Act, little will change.”² – Cath Hill, CIPS Director

² Chartered Institute of Procurement & Supply, ‘One in three businesses are flouting Modern Slavery Legislation – and getting away with it’ (6 September 2017) <<https://www.cips.org/en-gb/news/news/one-in-three-businesses-are-flouting-modern-slavery-legislation--and-getting-away-with-it/>>

Penalties for non-compliance and for false or misleading information will be critical to the effectiveness of this reporting requirement. The scale of these penalties should consider variables such as the size of the organisation, and the nature of the breach. (e.g. higher penalties for intentionally misleading information) and be commensurate with other non-disclosure penalties in Australian corporate legislation, such as those outlined in the continuous disclosure obligations of the Corporations Act.

In the absence of penalties, it is imperative that the Government incorporates some form of compliance mechanism into the Act. For example, the inclusion of public procurement incentives; companies that are undertaking best practice in addressing slavery and exploitation in their supply chains should be rewarded by Government contracting and applications for government grants.

Is the five-month deadline for entities to publish modern slavery statements appropriate? Should this deadline be linked to the end of the financial year or to the end of entities' financial years?

Linking the deadline to the end of the financial year will mean that all companies required to report will do so in the same period. This will make the task of comparing companies' statements easier, year on year.

We find offering a set deadline for all companies in our labour rights benchmarking research creates transparency and allows companies to coordinate their workflow, liaise with peers and engage with civil society in refining their due diligence efforts year on year.

Should the reporting requirement be phased-in by allowing entities an initial grace period before they are required to publish modern slavery statements?

We believe that an initial grace period for low risk industries of up to two years from the introduction of the act is appropriate.

High risk industries should be required to publish a statement within the first year of the act being introduced. In most instances, companies operating in these industries have known about slavery risks in production for a long time and have likely already given some thought to their due diligence practices. Of the companies we surveyed in the 2017 Ethical Fashion Report 84% of companies were sharing information about their due diligence practices, either directly with us or through public disclosures. The corresponding number for our 2016 Electronics Industry Trends report was 94%.

How can the Australian Government best monitor and evaluate the effectiveness of the reporting requirement? How should Government allow for the business community and civil society to provide feedback on the effectiveness of the reporting requirement.

As discussed above, standardised reporting templates would allow the Government to track the efforts of high risk industries and make assessments on whether due diligence systems are adequate or at least progressing at a reasonable rate.

It would also make assessments by civil-society far easier, and provide common understanding and language around areas where feedback can be provided.

A review mechanism could use this feedback to determine whether additional efforts are needed, such as an escalation from mandatory reporting to mandatory due diligence for either specific companies or specific industries.

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

A resourced, respected body with specific responsibilities focused on addressing slavery in corporate supply chains would serve to strengthen the effectiveness of the legislation and provide additional clarity and assistance for companies.

This body could be in the form of an Australian anti-slavery commissioner, or an ombudsman, and perform functions such as:

- Facilitating industry dialogue
- Reporting on non-compliant companies
- Engaging directly with corporates on their due-diligence practices.
- Providing a knowledge hub for business with best practice due diligence resources
- Engaging with civil society
- Increasing public awareness

How will affected entities likely respond to the reporting requirement? As this is how the regulatory impact is calculated, do Government's preliminary cost estimates require adjustment?

For most organisations in high risk industries, the regulatory impact will be muted. Our engagement with high risk industries demonstrates that given the increased public awareness of labour rights abuses, most already have some level of supply chain due diligence in place that they can report on (albeit at varying levels of adequacy).

About 85% of companies assessed in the 2017 Ethical Fashion Report, and 94% of companies assessed in the 2016 Electronics Industry Trends Report have given some consideration to their supply chain due diligence.

Given this, in most industries the additional effort will be in collating and reporting their current efforts in an appropriate form.

There will of course be additional costs in improving due-diligence processes, but this is a necessary and expected imposition for companies that have supply chains that may include slavery and other form of exploitation.