



Australian
Retailers
Association

Joint Standing Committee on Foreign Affairs, Defence and Trade
PO Box 6021, Parliament House
Canberra ACT 2600

jscfadt@aph.gov.au

To whom it may concern,

Establishing a Modern Slavery Act in Australia

Friday 12 May 2017

Introduction

The Australian Retailers Association (ARA) essentially agrees with the Committee on Foreign Affairs, Defence and Trade's inquiry into establishing a *Modern Slavery Act* in Australia however we want to ensure this *Act* is very carefully worked through with broader and more comprehensive consultation, both with the Government and key industry bodies.

Identifying international best practice employed by governments, companies, businesses and organisations to prevent Modern Slavery in domestic and global supply chains is a priority for retailers across Australia. The ARA are very happy to facilitate further discussions with our members and the overall retail industry to mitigate the risk of unethical practices occurring in supply chains.

Many Australian retailers already apply an ethical sourcing audit program to ensure any unethical procedures are reported. If a *Modern Slavery Act* should be introduced in Australia, the ARA would be supportive of an appropriately drafted measure which takes into account the current measures retailers already follow and ensure that any new measures in the *Act* are reasonable.

Following discussions with the Australian Chamber of Commerce and Industry (ACCI) of which we are a member, we broadly support the below approach.

MODERN SLAVERY PRINCIPLES:

1. Voluntarism:

Anti-slavery reporting should be encouraged rather than compelled, and consideration should be given to a voluntary reporting model for Australia's largest businesses, in which companies are encouraged to report and publicly acknowledged for doing so.

2. Scope:

Any Modern Slavery reporting obligations in Australia should apply only to the 100 – 150 largest businesses.

- a. Using annual turnover (the UK approach) this would be achieved by setting a threshold set into the tens of millions of dollars.



**Australian
Retailers
Association**

- b. This threshold should be based on turnover in Australia. Many MNEs are subject to ILO and OECD guidelines, and Australia should be seeking to understand and encourage redress of any forced labour in the supply chains of Australian companies and those substantially doing business here.

3. Mutual recognition of reporting:

Cross national companies, or businesses already reporting under other comparable systems on a global basis, should be required to do no more than link to or replicate their global reports to satisfy the requirements of any Australian reporting system.

4. Definition of slavery:

- a. To enjoy the support of employers, any anti-slavery measures must be confined to addressing actual slavery.
- b. Slavery must be forced labour or compulsory labour only, as per ILO Convention 29 which was confirmed in the 2014 Protocol.
- c. What constitutes slavery, and therefore what should be the object of any board reporting obligation should be defined in the same terms as the UK legislation.
- d. Domestic labour law compliance, dealt with by the Fair Work Ombudsman may accompany or be associated with genuine forced labour in some cases, but does not of itself constitute slavery unless accompanied by violence, theft, force or menaces etc.

5. International suppliers only:

The most effective address of modern slavery / forced labour should focus on overseas employment, and the risk of forced labour in goods supplied, manufactured, transported etc or services generated outside Australia. Reporting should be focussed on / restricted to:

- a. A reporting entity's suppliers based outside Australia.
- b. Goods manufactured in whole or part outside Australia.
- c. Compliance with the *Fair Work Act 2009* for employment in Australia should be excluded from any matters a reporting business is obliged to report upon (and upon which it is obliged to assess those it does business with).

6. Practicality and focus:

Large companies often deal with thousands of individual suppliers. Reporting is only going to be practical and worth undertaking in relation to the most significant strata of suppliers to any major company. Any *Modern Slavery Act* in Australia will need a threshold to ensure reporting obligations only apply:

- a. To large, significant or repeated supply relationships, and to suppliers that are themselves capable of researching and reporting on the considerations at hand. This might be achieved, for example by reporting only on the top several dozen suppliers, or on those over a particular value (and at least initially, the reporting business should determine this).
- b. Where it is practical to seek such information, and it is able to be discerned.



**Australian
Retailers
Association**

- c. To ongoing or regular supply relationships that are not episodic, incidental or trivial, and that would fall within the sphere of control and knowledge the community would expect of a major Australian corporation. (ie. Ensuring this transcends the 'where do you buy the milk?' question)
- 7. Best endeavours:**

A business needs to be able to report of its best endeavours to understand and address any risks of forced labour in its supply chains.
- 8. Risk based:**

Any measures need to support and encourage businesses taking a risk based approach to their diligence and measures to find and eliminate modern slavery in their supply chains. Risk factors to guide monitoring and measures could include: the nature of the product or service and the country it comes from.
- 9. Promotion not compliance focus:**

Any measures should not have the effect of driving purely compliance behaviours (filling in returns) at the expense of creativity and innovation in how companies seek to understand how goods and services are produced, and to minimise risks of forced labour in their supply chains.
- 10. Transparency:**

Subject to capacity to protect any commercially sensitive or private information, reporting should be public and posted to a searchable repository.
- 11. Commissioner:**

It would be premature to appoint a Modern Slavery Commissioner in Australia. Any need for a Commissioner should be reviewed based on the first three years of experience.
- 12. Review:**

Any Modern Slavery legislation should be introduced subject to a requirement / statutory intention to review it after three years of operation (or three reporting cycles). This is not a recommendation to sunset any future Australian *Modern Slavery Act*, but a requirement for a review being built in from the start of any legislation.
- 13. UK and Australia are different:**

Were Australia to pursue mandatory reporting the UK legislation will be an important source from a comparable business and legal system. However, caution and discernment also needs to be exercised, taking into account:

 - a. Porous borders and unique EU challenges motivated the UK legislation. Australia's border, extent and nature of domestic slavery, along with Australia's region, and its region's slavery problems are very different.
 - b. Australia's domestic workplace regulatory structure is significantly more developed and established than was (or is) to the UK's.
 - c. Australian law has to be right for Australia.

Therefore, the ARA seek further consultation from the committee to understand the nature and extent of Modern Slavery (including slavery, forced labour and wage exploitation, involuntary servitude and



Australian
Retailers
Association

other slavery-like exploitation) both in Australia and globally. The ARA would require much broader consultation on the prevalence of Modern Slavery in the domestic and global supply chains of companies, businesses and organisations operating in Australia.

The ARA believe we need more time to consult with our members on this new legislation, as we have only had limited discussion with some of our major retailers to date. Allowing further consultation with our members on this legislation will allow us to give the Government insightful feedback on the current issues affecting the sector and how the retail can assist in drafting this Modern Slavery legislation.

Kind regards,

Russell Zimmerman
Executive Director
Australian Retailers Association

Heath Michael
Director of Policy, Government & Corporate Relations
Australian Retailers Association