Eliminating Modern Slavery

Submission to the Inquiry into Establishing a Modern Slavery Act in Australia

APRIL 2017
About Oxfam Australia

Oxfam Australia is an independent, not-for-profit, secular development agency whose vision is of a just world without poverty. Oxfam Australia:

- undertakes long-term development programs;
- provides emergency response during disaster and conflict;
- undertakes research, advocacy and campaigns to advance the rights of poor and marginalised people, including women and works with them to achieve equality; and
- promotes fair trade, supporting local artisans and producers throughout shops and Fairtrade foo brand.

We are a long-term Australian Government development partner. In the 2015-16 financial year, Oxfam Australia directly reached more than 2.5 million people: 1.3 million through our long-term development work, and more than 1.2 million affected by disaster. Through our advocacy and policy work, we have reached millions more. Oxfam Shops also support hundreds of producer partners and artisans in countries around the world, including Indigenous Australian producers and businesses.

More than half a million Australians annually support Oxfam Australia by contributing skills, time and financial support to advance our work.

Oxfam Australia is a member of Oxfam International, a global confederation of organisations that work together, last year collectively reaching more than tens of millions of people around the world.

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1. Executive Summary

The International Labour Organisation (ILO) estimates that 21 million people around the world are victims of modern slavery.\(^1\) The elimination of modern slavery is critical to effective human rights protection and sustainable development. This imperative is reflected in target 8.7 of the Sustainable Development Goals, which requires:

immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour…

Australia has also committed to strengthen domestic implementation of the UN Guiding Principles on Business and Human Rights (UNGPs) in the context of its bid for a seat on the UN Human Rights Council. The introduction of effective regulatory measures to address modern slavery is consistent with Australia’s obligation to protect against corporate human rights abuses under the UNGPs.

One of a range of measures that has been adopted as part of global efforts to tackle trafficking and modern slavery is the UK’s *Modern Slavery Act 2015*, which obliges businesses that are incorporated or carry on business in the UK to disclose the steps they have taken in order to combat slavery and human trafficking in their operations and supply chains, or to disclose that they have taken no such steps.

The UK’s experience under the *Modern Slavery Act 2015* can usefully inform Australia’s efforts to eliminate modern slavery. While the UK Act has been a positive development, it has some clear limitations. Rather than simply transplating the UK’s *Modern Slavery Act*, Australia should introduce a best practice approach that incorporates additional reporting requirements and monitoring and compliance mechanisms to ensure effectiveness.

Oxfam Australia makes the following recommendations:

- **Recommendation 1:** Australia should enact a Modern Slavery Act that builds on the UK model through additional reporting requirements and monitoring and compliance mechanisms to ensure effectiveness
- **Recommendation 2:** An Australian Modern Slavery Act should be consistent with and seek to strengthen implementation of the UN Guiding Principles on Business and Human Rights.
- **Recommendation 3:** An Australian Modern Slavery Act should require companies to conduct human rights due diligence in their business operations and throughout their value chains.
- **Recommendation 4:** An Australian Modern Slavery Act should include mandatory disclosure of key information, including:
  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;

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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; and
f) the training about slavery and human trafficking available to its staff.

• Recommendation 5: The Australian Government should manage a repository of
statements made under the Act.
• Recommendation 6: An Australian Modern Slavery Act should include penalties for
non-compliance.

2. Background

Human trafficking, slavery and slavery-like practices are criminalised under the Australian
Criminal Code. These offences have extraterritorial application and can be attributed to
companies. Additional protections are contained in the Fair Work Act 2009 (Cth). However,
this regulatory regime has been insufficient to address and eliminate modern slavery,
particularly in the international supply and finance and investment chains of Australian
companies.

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<th>The impact of modern slavery on women and girls</th>
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| Women and girls constitute approximately 55% of the 21 million victims of modern slavery,2
and the vast majority of the 4.5 million victims of forced sexual exploitation.3 Poverty, gender
inequality, discriminatory practices and the oppression of women in many societies, along
with the vulnerability of children, leads to the overrepresentation of women and girls as
victims of forced labour.4 With fewer resources, less power, less information and less
influence in decision making when compared to men, women and girls are exposed to
various forms of violence and exploitation and experience further inequality because of
their ethnicity, age, race, class, marital status, sexual orientation and disability. |

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<th>Wage exploitation in the garment industry</th>
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| The garment industry is one of Asia’s major employers – and the source of over 90% of the
garments sold by retailers in Australia. A recent publication by the ILO shows that a large
proportion of workers in the garment, footwear, and textiles sector in seven garment-
exporting countries in Asia are paid below local legal minimum wages, which are often
already set at extremely low levels. Non-compliance rates in the sector range from 6.6% of

2 International Labour Organisation, ILO 2012 Global estimate of forced labour executive summary
3 International Labour Organisation, ILO, Forced Labour, Modern Slavery and Human Trafficking, Facts and
workers in Vietnam to 53.3% in the Philippines. In each of the countries, women are more likely than men to be paid below the minimum wage. Workers with lower levels of education are also more likely to receive a wage below the minimum wage. In several countries, deep non-compliance is widespread, with a significant proportion of garment workers being paid less than 80% of the minimum wage.  

Oxfam’s own studies of work for women in garment factories across Myanmar uncovered many women garment workers doing regular overtime and being underpaid. Once worker told Oxfam: *I don’t want to keep working at the factory because the base wage is so low and we are pressured to do long hours of overtime. If any of the workers say no to working Sunday overtime, then the next day they are called into the office and scolded. We are always being told to work faster. They think that we are like animals. I know I have no rights to make a complaint, so I have to bear it. I have been working here so many years and we try our best to meet the production targets so that we won’t be told off, but sometimes it [the shouting] is unbearable.*  

2.1. UK Modern Slavery Act

The UK Modern Slavery Act requires businesses with an annual turnover of £36 million that are incorporated, or carry on business in the UK to disclose the steps they have taken to combat slavery and human trafficking in their operations and supply chains, or to disclose that they have taken no such steps. Annual “slavery and human trafficking statements” should be approved by the board or its equivalent and where a company has a website, it must publish the statement on its website.

The Act recommends (but does not require) that slavery and human trafficking statement 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; and
- f) the training about slavery and human trafficking available to its staff.

Commentary on the operation of the UK’s Modern Slavery Act has noted that, while the Act has yielded some promising results, it has significant limitations that impede its ability to

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5 ILO research note on weak minimum wage compliance in Asia’s garment industry: http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_509532.pdf  
effectively eliminate modern slavery. These limitations, and the ways in which an Australian Modern Slavery Act could seek to address them, are discussed in detail below.

**Recommendation 1: Australia should enact a Modern Slavery Act that builds on the UK model through additional reporting requirements and monitoring and compliance mechanisms to ensure effectiveness**

## 2.2. UN Guiding Principles on Business and Human Rights

The UN Guiding Principles on Business and Human Rights were unanimously adopted by the UN Human Rights Council in 2011 and are the authoritative global standard on business and human rights.

Australia has recently recommitted to strengthening domestic implementation of the UNGPs as part of its bid for a seat on the Human Rights Council. The Department of Foreign Affairs and Trade is also conducting an ongoing national consultation on the implementation of the UNGPs.

Rather than proceeding along parallel tracks, consideration of the merit and ambit of an Australian Modern Slavery Act should be informed by relevant responsibilities contained in the UNGPs, in particular:

- States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication (Guiding Principle 1)
- Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved (Guiding Principle 11)
- In order to meet their responsibility to respect human rights, business enterprises should have in place policies and processes appropriate to their size and circumstances, including:
  - a policy commitment to meet their responsibility to respect human rights;
  - a human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights; and
  - processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute (Guiding Principle 15)
- In order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, business enterprises should carry out human rights due diligence. The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed (Guiding Principle 17)
- As part of their duty to protect against business-related human rights abuse, States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy (Guiding Principle 25)

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7 See, for example, International Trade Union Confederation, “Closing the Loopholes: how legislators can build on the UK Modern Slavery Act” (January 2017).
Recommendation 2: An Australian Modern Slavery Act should be consistent with and seek to strengthen implementation of the UN Guiding Principles on Business and Human Rights.

3. Australian Modern Slavery Act

3.1. Human rights due diligence

Human rights due diligence is at the core of the corporate responsibility to respect rights. Business enterprises have a responsibility to carry out human rights due diligence throughout their value chains, noting that due diligence will “vary in complexity with the size of the business enterprise, the risk of severe human rights impacts, and the nature and context of its operations”.

The due diligence responsibility applies to all internationally recognised human rights (Guiding Principle 12) in recognition of the fact that businesses can impact upon the full range of human rights. The UNGPs also recognise that “in practice, some human rights may be at greater risk than others in particular industries or contexts, and therefore will be the focus of heightened attention”.

The UK’s Modern Slavery Act recommends that companies report on due diligence processes in relation to slavery and human trafficking in its business and supply chains. However, slavery and trafficking are inextricably linked to a range of human rights, such as the rights to freedom of association, the right to safe and healthy conditions at work and the rights of vulnerable groups (including women, children and migrants). If companies do not conduct due diligence across all relevant human rights, they will not be effective in identifying and addressing instances of modern slavery.

Consistent with due diligence obligations in the UNGPs, Australian companies should conduct due diligence in relation to the full range of human rights across their businesses and supply chains.

Financial institutions

Like all business enterprises, financial institutions have a responsibility to respect human rights. Financial institutions can contribute to, or be linked with human rights abuses (including modern slavery) through their clients and other business relationships. For example, if a bank provides a general corporate loan to a company, it has a responsibility to use its leverage to prevent or mitigate that company’s adverse human rights impacts. Due diligence and transparency obligations in the Modern Slavery Act should therefore extend to the financial sector in respect of their project and project-related lending decisions and investment holdings.

French Vigilance Law

In February 2017 the French Parliament adopted a Corporate Duty of Vigilance Law, which requires large companies carrying out all or part of their operations in France to publish and
implement a public “vigilance plan”. The plan must include measures to identity and prevent human rights violations and environmental damage in their operations and supply chains. Fines up to €10 million may be imposed when companies fail to publish plans, or up to €30 million if the failure resulted in damages that would otherwise have been preventable.

Recommendation 3: An Australian Modern Slavery Act should require companies to conduct human rights due diligence in their business operations and throughout their value chains.

3.2. Mandatory disclosure

The UK Modern Slavery Act does not impose any requirements on the content of slavery and trafficking statements and as a result the vast majority of statements issued have lacked substance.

Notably, only 9 of the first 75 statements to be issued under the Act met the six areas of recommended reporting.8 Statements that do not cover these areas make a negligible contribution to efforts to eliminate modern slavery.

Mandatory disclosure of relevant information would significant increase the efficacy of the Act. It would also be advisable for Government to publish guidance around expectations in relation to disclosure items. The UK civil society coalition, CORE, has published authoritative guidance on suggested content for statements in accordance with recommended areas of disclosure in the UK Act.9

Australian garment retailers publishing supplier names

For years Oxfam Australia has been calling on brands to publish the names and addresses of all their factory suppliers. Making this information publicly available is vital to ensuring claims about worker safety and other conditions can be independently verified. In the last few years a range major of Australian brands, including K-Mart, Target and Coles from the Wesfarmers Group, as well as Woolworths, Cotton On, Bonds, the Specialty Fashion Group, Forever New and Jeans West have started to reveal the names and locations of their supplier factories around the globe. This level of transparency and disclosure is best practice, allowing problems to be easily raised up the supply chain and solved.

Recommendation 4: An Australian Modern Slavery Act should require disclosure of key information, including:

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;

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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; and

f) the training about slavery and human trafficking available to its staff.

3.3. Monitoring and compliance

The UK has not established a government-run database of statements, and until non-government organisations stepped in to set up central repository consumers, investors and other interested parties had to search the internet to find company statements.

Effective monitoring of the operation of an Australian Modern Slavery Act would be enhanced if the Government were to take responsibility for collecting and publishing statements.

Recommendation 5: An Australian Modern Slavery Act should provide for a Government-run database to which companies upload their statements.

While companies that fail to publish a statement are acting unlawfully under the UK Modern Slavery Act, there are no penalties for non-compliance. This omission significantly limits the implementation and impact of the law.

There are a range of ways in which the Australian Government could introduce sanctions for non-compliance, for example through fines and/or exclusions from Commonwealth procurement processes.

Further, transparency and reporting do not, in and of themselves, lead to accountability for companies or remedies for victims. Additional measures should be considered to ensure that Australian companies are not complicit in modern slavery. Such measures may include customs restrictions such as those employed under the USA’s Tariff Act 1930 or Australia’s Illegal Logging Prohibition Act 2012, and legal remedies for victims, consistent with the right to an effective remedy under the UNGPs.

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<th>Trade Facilitation and Trade Enforcement Act 2015 (USA)</th>
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| Section 307 of the Tariff Act of 1930, which was strengthened by the Trade Facilitation and Trade Enforcement Act 2015, prohibits the importation into the US of any goods mined, produced or manufactured with the use of forced labour. US Customs and Border Protection has advised that such goods are “subject to exclusion and/or seizure, and may lead to criminal investigation of the importer(s)”.

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<th>Illegal Logging Prohibition Act 2012 (Cth)</th>
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| The Illegal Logging Prohibition Act requires importers and processors of timber to verify and certify that imported timber is not illegally logged. Importers that or processors intentionally,
knowingly or recklessly import or process illegally logged timber face significant penalties, including up to five years imprisonment and/or fines.

Recommendation 6: An Australian Modern Slavery Act should include penalties for non-compliance.