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Committee Secretary
Joint Standing Committee on Foreign Affairs, Defence and Trade
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Submission to the Inquiry into establishing a Modern Slavery Act in Australia

Introduction – RIAA and international action

The Responsible Investment Association Australasia (RIAA) welcomes the opportunity to make this submission in response to the Joint Standing Committee on Foreign Affairs, Defence and Trade of the Parliament of Australia Inquiry into establishing a Modern Slavery Act in Australia.

RIAA is the industry body representing responsible, ethical and impact investors across Australia and New Zealand. RIAA has 170 members who manage well in excess of \$1 trillion AUM globally. Our membership comprises superannuation funds, asset consultants, fund managers, financial advisers, dealer groups, researchers and analysts, and others involved in the industry, across the full value chain of institutional to retail investors.

RIAA works to shift more capital into sustainable assets and enterprises, and shape responsible financial markets to underpin strong investment returns and a healthier economy, society and environment. Our members are primarily long term investors focused on creating long term value in companies. Modern slavery (forced labour, debt bondage etc.) is a subset of human rights violations and is symptomatic of a range of human rights principles not being observed. Investors view human rights violations and their management as social and governance risks that may impact on the long-term value of companies.

Aside from doing the right thing and upholding the UN Guiding Principles for Business and Human Rights (alongside several other international conventions and norms), eradicating modern slavery in Australian companies and their supply chains is fundamental to well-performing companies and stable economies. As such, managing modern slavery is also important for Australian investors to achieve strong, long-term investment returns.

Furthermore RIAA, whose work is increasingly focussed at unlocking demand for responsible investing by retail investors, has learned [from polling in Australia](#), that a majority of retail investors expect that their savings be invested in companies and assets that are “doing good” (36%) or avoid “doing harm” (33%). In RIAA-commissioned polling undertaken [in New Zealand in October 2016](#) results showed that the top two environment, social and governance (ESG) issues of importance to people when their pension savings were being invested, were slavery and child labour (above the environment).

Accordingly, as owners of these companies, it's in the interest of RIAA members that the Australian Government acts in creating both clear expectations of business with respect to addressing this significant issue, and a level playing-field on which Australian companies in their supply chains can operate.

Australian investors operate in a truly global market-place and so activities to combat modern slavery in Australia should be considered in the context of efforts being made in other key markets. The following jurisdiction-specific laws, regulations and initiatives emerge from a backdrop of sector-specific and international norms and conventions such as the ILO core labour standards, OECD Guidelines for Multinational Enterprises and the UN Guiding Principles for Business and Human Rights (which also assists business to prioritise actions to address human rights abuse risks in the work-place and supply chains). Investors expect that companies with high exposure to supply chain risks would consider these in their corporate policies and management systems.

RIAA notes the following non-exhaustive list of activities seeking to address human rights issues in supply chains:

United Kingdom

- Business Supply Chain Transparency on Trafficking and Slavery Act of 2015
- Modern Slavery Act 2015 requiring companies (global annual turnover exceeding GBP36m) to publish an annual "slavery and human trafficking statement" outlining steps taken to ensure that slavery and human trafficking are not taking place anywhere in the business or supply chain

United States of America

- (Dodd-Frank Act) on conflict minerals
- California Transparency in Supply Chains Act, 2010 for 2012 requiring companies to report on their action to eradicate slavery and human trafficking in their supply chains; applied to mid-size and large retailers and manufacturing companies with global annual revenues over USD100m
- Federal Acquisition Registry related to President Obama's Executive Order 13627, requiring all companies with government contracts to certify that they have done their due diligence in remediating modern slavery in their extended supply chains

European Union

- Directive 2014/95 - non-Financial Reporting Directive
- Advanced discussion about Conflict Minerals Regulation

Netherlands

- Child Labour Due Diligence Law passed February 2017

Switzerland

- Forthcoming referendum on mandatory human rights due diligence as part of its Responsible Business Initiative

France

- Corporate Duty of Vigilance Act, requires large companies (French headquartered business with 5,000+ employees or 10,000+ employees when headquartered outside of France) to establish and effectively implement a vigilance plan, which shall include reasonable vigilance measures seeking to identify and prevent human rights violations, breaches of fundamental freedoms, violations of health and safety rights of people, as well as environmental damages. The plan should cover the parent company, companies under its control, as well as the suppliers and subcontractors with whom the parent company or any of its subsidiaries have established a commercial relationship.

The national laws being created abroad fall into two main categories: laws encouraging better transparency via reporting (i.e. California, UK.) and laws requiring improved management practices (i.e. France).

Early evidence shows that both the California and the UK laws are improving availability of information for investors, while increasing senior level corporate engagement and transparency in modern slavery. It is too early to have results from the French-style legislation (only being passed in February 2017) but **RIAA supports due consideration being given to the elements of this law that aims at improving not just reporting on risk but the mapping and management of human rights risks in supply chains.**

Regarding the Inquiry's terms of reference, the scope of RIAA's submission covers:

1. 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;
2. Whether a Modern Slavery Act should be introduced in Australia; and
3. Any other related matters.

Context – Fiduciary Duty, better data and why modern slavery matters for investors

The consideration of ESG risk — which includes human rights and modern slavery risks — in investment decision-making, is now generally accepted as being integral to investment Trustees' fiduciary duty and modern investment leading practice. There is a growing expectation and increasing legal requirement for fiduciaries to assess material ESG risks where the latter could adversely impact on the underlying performance of individual assets and investment portfolios.

This is strongly supported by the Australian Human Rights Commission in its [joint report](#) with EY (April 2017). The Commission asserts that asset owners and managers not only can, but should consider human rights risks in their investments. The Commission then goes to list five areas in Australian law (i.e. Corporations Act, SIS Act, SPG 530, ASIC RG65 and the forthcoming Improving Superannuation Transparency measures) that give rise to Fiduciaries' duties considering human rights, among other extra-financial factors in their investment decision-making processes.

The UN [Guiding Principles on Human Rights and Business](#), particularly Principles 13 and 17, are complex, however there is an expectation that investors, including minority shareholders (page 14):

seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.

Despite it being a fiduciary duty to consider human rights risks, a lack of transparency about the state and extent of modern slavery practices makes informed investing riskier. Failure by some companies to manage human rights issues may pose significant risks to investments. Modern slavery may directly or indirectly impact the value of an underlying asset or the individuals and funds whose savings are invested

in these in the following ways (and most often via the operation of unregulated third parties within supply chains):

- Operational inefficiency
- Increased risk of significant supply chain disruption leading to business interruption
- Increased legal risk from lawsuits
- Damage to brand and reputation from negative publicity and protests, which in turn can lead to higher costs in accessing capital, licence to operate etc.

Investors need accurate, reliable and accessible data to assist them with analysing a company's management of human rights issues within their supply chains; they also need to be able to compare companies operating in the same or similar sectors. Examples of how the investment industry is attempting to grapple with these challenges are numerous. As way of illustration, RIAA commends the [Corporate Human Rights Benchmark](#) to the Committee, which ranks 98 of the world's largest publicly traded companies (from three at-risk-sectors), on human rights performance.

Recommendations - aspects to consider in proposed legislation

Requiring data disclosures will start to address modern slavery in Australian companies and supply chains, however this relies very strongly on the civil society and investor groups that hold these companies and their boards to account. Furthermore, the accuracy and reliability of disclosures across companies will take some time, whilst companies and professional services firms that advise them become more skilled, systemised and sophisticated in responding. Implementing the [Protect, Respect and Remedy Framework](#) which translates the UN Principles for Business and Human Rights for the Australian context shows that truly dealing with modern slavery will require more than self-declared disclosure.

[UK-based Ergon Associates](#) researched 150 modern slavery statements published throughout March 2017, 12 months on from when the statements were first published. The firm found that many statements had improved descriptions of corporate structures, operations, supply chains and modern slavery policies; statements were also generally longer and slightly more thorough. However, they also found that most statements (58%) only address risk assessment processes minimally and do not identify priorities for action based on the assessment. Very few statements disclosed the outcomes in terms of where modern slavery risks lie – the specific countries, supply chain tiers or business areas at risk. Contactor relationships were also reported to be extremely poorly covered.

Likewise, the Business and Human Rights Resource Centre found that even though the UK legislation covers some 13,000 companies fewer than 12 are meeting the standards required to observe human rights consistent with UN Conventions.

Accordingly, **RIAA supports the concept of enhancing the scope and remit** of an Australian Modern Slavery Act **beyond that of the UK to include aspects of the French legislation which require a broader scope of human rights management** alongside transparency measures (*see particularly RIAA recommendations 2 and 7*).

Australia's Illegal Logging Prohibition Act of 2012 sets a precedent for Australian companies undertaking due diligence in their supply chains and making this process public. The law relates to Australian domiciled companies importing or processing logging products. The legislation works because it clearly outlines what it expects in terms of due diligence parameters – a benefit also to investors to value the comparability of companies, within industries. The law also provides sanctions for non-compliant companies as well as an out for companies who can use due diligence as a defence if they are found to have illegal logging in their supply chains but have reasonable due diligence processes, especially where those processes have been independently verified.

We commend to you also the [Joint Investor Statement](#) in support of establishing a Modern Slavery Act in Australia convened by the UN endorsed Principles for Responsible Investment that lists a similar set of attributes that the Modern Slavery Act should include. The attributes RIAA recommends are listed below in 15 recommendations covered by three categories: (1) aspects of the law consistent with the PRI supported Joint Investor Statement (recommendations 1–5); (2) aspects of the law additional to Joint Investor Statement (recommendations 6–11) and (3) complementary initiatives to support an Australian Modern Slavery Act (recommendations 12–14).

RIAA recommendations that are consistent with the content of the PRI supported Joint Investor Statement are:

1. Include evidence of a **suitable policy or statement** that is authorised by the board, and signed in a manner that binds the organisation **in accordance with Australian corporate law** (i.e. company commitments linked with *Corporations Act 2001*);
2. Provide **clear guidance about what is required to be disclosed** including the **process of identifying**:
 - a. supply chains
 - b. supply chain risk
 - c. parties involved in risk assessments
 - d. range of actions taken to address those risks (controls and treatments);
3. Require that **data appears as part of annual reporting processes** to shareholders and broader stakeholders (such as on a company's website) allowing investors and other stakeholders to make year-on-year comparisons of companies' efforts and progress (at least for listed companies);
4. Include a **central repository (public register)** to which companies are required to submit their statements to enable investors, civil society groups and other stakeholders to easily access and compare companies' disclosures (i.e. as per the Clean Energy Act [Liable Entities Public Information Database](#) and the Clean Energy Regulator's registry for [Corporate Emissions and Energy Data](#)); and
5. Establish an **anti-slavery commissioner** whose terms of reference at least cover those of the UK (victim identification and care, law enforcement evaluation, partnerships, private sector engagement and international collaboration).

RIAA recommends the following also be considered as elements of a Modern Slavery Act for Australia (additional to those included in with the PRI supported Joint Investor Statement):

6. **Extend the reach to cover extra-territorial supply chains** and their companies of significant risk;
7. **Make penalty provisions for non-compliance at a scale that is effective** to drive companies towards compliance, and away from paying penalties;
8. **Require** as a minimum that **companies set up grievance procedures** at all levels and report on remedies for identified occurrences (along the lines of Workplace Health and Safety incidences); this measure could also consider measures for protecting whistleblowers.
9. **Provide guidance on the parameters of collaborative activities** for both companies and the relevant regulators that encourage and enable collaborative action and circumvent the potential for tension to exist between these and concerns of anti-competitive behaviour;
10. **Adopt a tiered approach to rolling out the new requirements** starting with more able and better resourced companies in the first instance (as well as any companies working with higher risk supply chains); with the provisions rolled out to smaller companies over time (i.e. consider approach taken under the National Greenhouse and Energy Reporting Act 2007);
11. **Consider a broader range of factors that may influence coverage** - the UK and most other initiatives base their thresholds on *annual turnover* (this is a reasonable measure to apply in the Australian context) however size of annual expenditure could be better measure of exposure to modern slavery risks.

Business should be given a clear role in identifying, managing, mitigating and reporting on human rights; the government should also be given a role to support business in their efforts to deliver on this very important initiative to transition people out of bonded labour and modern slavery (such as for example by regulation, co and quasi regulation, economic instruments, voluntary instruments and awareness raising).

RIAA recommends that the following measures be considered to complement an Australian Modern Slavery Act:

12. **Police and other law enforcement capabilities, resourcing** and remit both in Australia and extended to Australian business operating in non-Australian territories (i.e. via slavery offence in the Criminal Code);
13. **Programs for victims** of modern slavery and **resources for institutions** that provide support for the transition of victims out of slavery; and
14. **Government leading on good practice** against incoming guidelines and placing a priority on government procurement.

Government should also consider how its efforts link with broader activities in place that impact diplomatic relations, industry assistance programs and the enforcement of appropriate corporate behaviour (e.g. via ASIC).

Likely impact of new requirements on companies

We acknowledge that for some smaller companies, new laws and regulations may provide an additional administrative cost to their governance functions but we believe for most companies who already understand the risks of operating in the ever-increasing complexity of global supply chains, this is simply a formalisation of what is already being done. Many leading companies (as listed on the Dow Jones Sustainability Index Industry Group Leaders – i.e. Westpac and Stockland and others including Brambles and David Jones) have dedicated resources to the task of sustainable supply chain management which includes the identification and management of human rights issues in supply chains. According to the Walk Free Foundation, almost 10% of the ASX 100 already report under equivalent UK laws.

It is also possible that the additional cost of data collection and reporting may be passed directly down supply chains to direct suppliers. For the most part, the next tier suppliers are sizeable and sophisticated businesses that should have a range of quality systems (i.e. ISO 26000 social responsibility guidelines for supply chain management, ISO 28000 supply chain security management systems, ISO 20400 sustainable procurement standard) to facilitate in data collection and reporting. Where this function is further pushed down supply chains to small and medium enterprises it is a possibility that these suppliers need only do this once and their data can be provided to all clients. Most sectors already have platforms for registering and sharing human rights and environmental supply chain data, as in the case of [SEDEX](#), the world's largest collaborative platform for sharing responsible sourcing data on supply chains.

With respect to the additional requirement of undertaking supply chain mapping and management, investors would expect that companies operating in higher risk industries, regions and supply chains, would do this as a matter of course. Therefore, the main additional burden is the sign-off by senior management to make this due diligence data available for investor and other stakeholder scrutiny.

Conclusion

The management of human rights is a critical investment risk. Trustees need, and investors want to better understand their exposure in the companies within which they invest. Companies that can identify and manage human rights risks make better long-term investments.

The introduction of modern slavery laws and complementary measures as outlined in this submission, are supported by RIAA as being worthy of consideration and adoption by the Australian Government. Enacted these would assist Trustees meet their fiduciary duties, enable investors to make better-informed decisions and aid in delivering superior returns to Australian investors.

RIAA welcomes the opportunity to present in person at the Hearing.

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