

Submission to the Review of Australia's Modern Slavery Act 2018

This submission was prepared by Associate Professor Erin O'Brien, PhD Candidate Justine Coneybeer, Professor Ellie Chapple, PhD Candidate Shakoor Ahmed, PhD Candidate Adriana Bora, Dr Bronwyn McCredie, Associate Professor Rowena Maguire, Professor Alice Payne, Associate Professor Bree Hurst, and Associate Professor Deanna Grant-Smith.

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Executive Summary

Globally, human rights due diligence (HRDD) legislation is rapidly growing, with new HRDD legislation introduced or passed in multiple jurisdictions over the past 8 years. This legislative trend has seen countries adopt increasingly stringent requirements and penalties, and demands for precision in addressing specific human rights abuses (e.g., United States Uyghur Forced Labor Prevention Act (2021)). If Australia is to keep pace with these global trends and strive to act as a world leader in combatting modern slavery, the *Modern Slavery Act 2018* should be strengthened.

This submission draws on our expertise on modern slavery across policy, business management, accounting, law and data science. Our research informs our answers to specific consultation questions (detailed below) and our recommendations.

This submission refers to upstream and downstream due diligence which is used to describe obligations flowing upstream (i.e., responsibility being placed upon producers of raw products who sell into global value chains) as well as downstream due diligence (obligations upon retailers procuring products from global supply chains). Capturing both upstream and downstream due diligence is essential to reforming the supply chain across the entirety and creates obligations for all within various value chains.

In summary, we urge an approach to modern slavery that moves beyond a transparency framework towards a regime requiring upstream *and* downstream due diligence, with effective accountability and enforcement mechanisms. Our core recommendations to achieve this, and a full list of recommendations in response to consultation questions, are contained below.

Core Recommendations

Core Recommendation 1: Establish an Independent Anti-Slavery Commissioner, introduce penalties for lack of compliance, and impose three distinct categories of enforcement, to ensure that reporting entities build on transparency and undertake real action.

Core Recommendation 2: Revise the revenue threshold through a tiered model of compliance.

Core Recommendation 3: Outline due diligence steps that align with internationally recognised practices such as the United Nations Guiding Principles and the OECD Guidelines for Multinational Enterprises, and include supply chain activities both upstream and downstream.

Core Recommendation 4: Further clarify and strengthen the accountability mechanism for the Modern Slavery Act by resourcing civil society organisations to inform and mobilise consumers and investors, and requiring companies to report on progress against commitments made in their previous year's reports.

Core Recommendation 5: Strengthen efforts to achieve compliance by publishing a list of all companies required to submit reports under the Act, and improving the transparency and accessibility of the information contained within the online registry.

This submission has been compiled by the QUT Centre for Decent Work and Industry with contributors from QUT Centre for Justice, QUT Modern Slavery Research Group, QUT TextileR Research Group, and QUT Accounting for Social Change Research Group. Details on contributors and a list of relevant research publications from contributions are provided in Appendix A, and a description of each research collective is provided in Appendix B.

Detailed responses to consultation questions

This submission provides evidence-based responses to specific consultation questions where our research can directly inform policy. A summary of recommendations based on the consultation questions is provided here, with detailed evidence and discussion below:

Consultation question	Recommendation
<p>2. Is the 'transparency framework' approach of the Modern Slavery Act an effective strategy for confronting and addressing modern slavery threats, including the drivers for modern slavery?</p>	<p>Recommendation: Establish an Independent Anti-Slavery Commissioner, and consider introducing penalties for lack of compliance, to ensure that reporting entities build on transparency and undertake real action.</p>
<p>4. Should the Modern Slavery Act spell out more explicitly the due diligence steps required of entities to identify and address modern slavery risks?</p>	<p>Recommendation: The Act should outline due diligence steps that align with internationally recognised practices such as the United Nations Guiding Principles and the OECD Guidelines for Multinational Enterprises. Due diligence efforts should consider activities both upstream and downstream in the value chain.</p>
<p>5. Has the Modern Slavery Act been adequately supported and promoted by government, business and civil society?</p>	<p>Recommendation: Clarify and strengthen the accountability mechanism for the Modern Slavery Act by resourcing civil society organisations to inform and mobilise consumers and investors, establishing an Independent Anti-Slavery Commissioner, and introducing penalties for non-compliant companies.</p>
<p>6. Is AU\$100m consolidated annual revenue an appropriate threshold to determine which entities are required to submit an annual statement under the Modern Slavery Act? Does the Act impose an appropriate revenue test for ascertaining the \$100m threshold?</p>	<p>Recommendation: The Government should revise the revenue threshold through a tiered model of compliance, and scale requirements to business size.</p>
<p>7. Should the Modern Slavery Act require annual submission of a modern slavery statement? Does the Act contain appropriate rules for ascertaining the annual reporting timeline for entities?</p>	<p>Recommendation: The Modern Slavery Act should retain the current requirement for annual submission.</p>

<p>9. Is further clarification required of the phrase 'operations and supply chains', either in the Modern Slavery Act or in administrative guidelines?</p>	<p>Recommendation: Revise in accordance with the following: In the administrative guideline, regulators can differentiate separate modern slavery risk detection tools for different industry sectors. Research shows that particular attention can be focused on financial products and services due to the connection, contribution, and cause of modern slavery in customer businesses' supply chains. Regulators and financial services entities can utilise the resource of published toolkits to detect and deter these risks.</p>
<p>10. Are the mandatory reporting criteria in the Modern Slavery Act appropriate – both substantively and in how they are framed?</p>	<p>Recommendation: Section 16 of the Modern Slavery Act 2018 should be reviewed to include victim support, remediation processes, and grievance redress mechanisms as mandatory criteria. This procedure can be initiated in accordance with the United Nations Guiding Principle 31 (Effectiveness standards for non-judicial grievance processes).</p>
<p>11. Should more be done to harmonise reporting requirements under the Australian Modern Slavery Act with reporting requirements in other jurisdictions, such as the United Kingdom? How should harmonisation be progressed?</p>	<p>Recommendation: Any efforts to harmonise reporting across jurisdictions must not dilute or weaken the requirements mandated by Australia's <i>Modern Slavery Act 2018</i>.</p>
<p>13. Should other reporting features of the Modern Slavery Act be revised – such as the provisions relating to joint statements, or voluntary reporting?</p>	<p>Recommendation: Companies should be required to report on their progress in relation to commitments made in the previous years' statements, to encourage sustained action and constant improvement.</p>
<p>14. Has there been an adequate – or inadequate – business compliance ethic as regards the Modern Slavery Act reporting requirements?</p>	<p>Recommendation: Section 16, (1e) of the Modern Slavery Act should be amended to define the effectiveness of actions as the reduction of risk.</p>
<p>15. Has government administrative action been effective in fostering a positive compliance ethic? What other administrative steps could be taken to improve compliance?</p>	<p>Recommendation: The government should publicly report on the registry website, a list of entities (and their associated business names) that are required to comply with the Act.</p>

<p>16. Should the Modern Slavery Act contain additional enforcement measures – such as the publication of regulatory standards for modern slavery reporting?</p>	<p>Recommendation: We propose three distinct categories of enforcement mechanisms with the establishment of an Independent Anti-Slavery Commissioner to serve as a competent authority to implement the enforcement mechanisms.</p>
<p>17. Should the Modern Slavery Act impose civil penalties or sanctions for failure to comply with the reporting requirements? If so, when should a penalty or sanction apply?</p>	<p>Recommendation: Yes, the Modern Slavery Act should entail civil penalties for failure to comply with reporting requirements specified in regulatory standards. Penalties and sanctions should be determined and levied by the Independent Anti-Slavery Commissioner.</p>
<p>21. Does the Register provide a valuable service? 22. Could improvements be made to the Register to facilitate accessibility, searchability and transparency?</p>	<p>Recommendation: The Register is a valuable resource that the government should seek to further strengthen. Several improvements can be made to improve the accessibility, searchability and transparency of the Register, as detailed in this submission.</p>
<p>23. What role should an Anti-Slavery Commissioner play in administering and enforcing the reporting requirements in the Modern Slavery Act? What functions and powers should the Commissioner have for that role?</p>	<p>Recommendation: We recommend reviewing the Act and introducing a provision for an Independent Anti-Slavery Commissioner with specific enforcement power to detect, deter, and disrupt modern slavery risks in operations and supply chains. The Commissioner's office needs a sufficient budget to function autonomously, free from political interference, and to make its own decisions regarding the prevention and mitigation of modern slavery.</p>
<p>27. Is there any other issue falling within the Terms of Reference for this review that you would like to raise?</p>	<p>Recommendation: Where an industry is at particularly high-risk of involving modern slavery or exploitative labour, the government should consider the implementation of the industry-specific requirements within the Modern Slavery Act.</p>

Impact of the Modern Slavery Act

Consultation Question 2. Is the 'transparency framework' approach of the Modern Slavery Act an effective strategy for confronting and addressing modern slavery threats, including the drivers for modern slavery?

Answer: The transparency framework is a good starting point, but not effective long term.

Evidence & rationale: The introduction of Australia's Modern Slavery Act has undoubtedly had a positive impact in raising awareness of the problem of modern slavery in supply chains. However, we urge consideration of the long-term detrimental effects of remaining heavily focused on transparency alone. A transparency framework assists with raising awareness and promoting increased investigation and risk assessments within corporations. However, our current research indicates that Australia's anti-slavery movement is concerned about the potential for the Act to prioritise transparency at the expense of action and remediation (Note: research in progress)¹. Research participants from the anti-slavery civil society sector have indicated that responses to the Act seem to be primarily about 'showing, not doing'. There is a concern that a focus on transparency alone means that action on modern slavery may stagnate as companies adopt measures that ask for transparency from their suppliers without much scrutiny or due diligence.

For example, research into living wage initiatives in the garment industry shows that fashion companies are able to appear as if they are acting on poverty wages through memberships with industry initiatives, however, these initiatives largely fail to provide evidence they have improved garment workers' wages. This means companies are able to use membership disclosure as a tool to appear responsible, whilst actually evading genuine accountability for poverty wages in their supply chains².

Further, evidence from a comparable framework, the Tax Transparency Code, suggests that transparency alone, particularly if unregulated or devoid of standards, is unlikely to have any impact on the practices of large companies³. This evidence suggests that a 'transparency framework' approach to the Modern Slavery Act is not an effective strategy in the long term for confronting and addressing modern slavery threats (Note: confirmatory research in progress)⁴. As such, additional mechanisms should be put in place to ensure robust, verifiable, and comparable information is provided to provoke real action.

There is also a danger that a transparency framework may have an unintended consequence of discouraging efforts to find modern slavery in supply chains, as companies may fear resulting

¹ Please contact Erin O'Brien (erin.obrien@qut.edu.au) for more information

² Coneybeer, Justine, and Rowena Maguire. "Evading Responsibility: A Structural Critique of Living Wage Initiatives and Methodologies." *International Journal for Crime, Justice and Social Democracy* 11, no. 2 (2022): 15-29.

³ McCredie, Bronwyn, Kerrie Sadiq, and Richard Krever. "The Effectiveness of Voluntary Corporate Tax Disclosures: An Australian Case Study." *Australian Tax Forum* 36, no. 4 (2021): 573-595.

⁴ Please contact Bronwyn McCredie (Bronwyn.mccredie@qut.edu.au) for more information

consumer or investor backlash following disclosure of modern slavery found in supply chains. If the emphasis is on actively searching for, and addressing, modern slavery, this will help to normalise the reality that labour exploitation is widespread in supply chains. Finding and fixing the problem can become the benchmark for success. The transparency framework provides an excellent basis for the Act; however, we recommend the establishment of an Independent Anti-Slavery Commissioner and the introduction of penalties for failure to comply in order to move beyond the transparency, or 'showing', phase, and to encourage corporations to take real action.

Recommendation: Establish an Independent Anti-Slavery Commissioner, and introduce penalties for lack of compliance, to ensure that reporting entities build on transparency and undertake real action.

Consultation Question 4. Should the Modern Slavery Act spell out more explicitly the due diligence steps required of entities to identify and address modern slavery risks?

Answer: Yes, the Act should outline due diligence steps that align with internationally recognised practices.

Evidence & rationale: The United Nations Guiding Principles (UNGPs) and the OECD Guidelines for Multinational Enterprises expect businesses to address issues where they are found to cause, contribute to, or directly impact human rights. They define these connections as follows:

- **'causes'**: human rights harm through their own acts or omissions, will cease or prevent the harm, and provide remediation
- **'contributes to'** human rights harm through their own acts or omissions, will cease or prevent its contribution, use its leverage to mitigate any remaining harm and contribute to remediation
- is **'directly linked'** to human rights harm through their operations, products or services by a business relationship, will use its leverage to prevent or mitigate the harm, increase leverage where it is lacking and consider playing a role in providing remediation.

This means that companies should be reflective of their own operations, business models, and the pressures they exert in the market. For example, the negotiation tactics and purchasing practices of fashion companies have been known to cause cost pressures on garment suppliers, contributing to poverty wages and the exploitation of children and migrant workers⁵. However, through our research to date, we have found that few fashion companies acknowledge how their own practices contribute to the risk of labour exploitation in their upstream supply chain (Note: research in progress)⁶.

⁵ Human Rights Watch. *"Paying for a Bus Ticket and Expecting to Fly": How Apparel Brand Purchasing Practices Drive Labor Abuses*. Human Rights Watch IFO and ILO (2019); Anner, Mark, Jennifer Bair, and Jeremy Blasi.

"Toward Joint Liability in Global Supply Chains: Addressing the Root Causes of Labor Violations in International Subcontracting Networks." *Comparative Labor Law & Policy Journal* 35 (2013): 1-44.

⁶ Please contact Justine Coneybeer (j.coneybeer@qut.edu.au) for more information

In addition, due diligence is predominately exercised upon upstream supply chains, meaning due diligence on where products or services are procured. Our research shows there is potential to mitigate human rights violations by also adopting a 'downstream due diligence' approach, meaning due diligence on where products or services are sold⁷. *The EU Proposal for Directive on Corporate Sustainability Due Diligence* specifically refers to downstream due diligence noting that for due diligence to have a meaningful impact it should cover human rights and environmental adverse impacts generated throughout the life-cycle of production, use, and disposal of a product or provision of services, at the level of own operations, subsidiaries and in value chains.⁸ Paragraph 18 of the proposal provides that the production of a good or provision of a service by a company should encompass both

"*upstream* established direct and indirect business relationships that design, extract, manufacture, transport, store and supply raw material, products, parts of products, or provide services to the company that are necessary to carry out the company's activities, and also *downstream* relationships, including established direct and indirect business relationships, that use or receive products, parts of products or services from the company up to the end of life of the product"

Recommendation: The Act should outline due diligence steps that align with internationally recognised practices such as the United Nations Guiding Principles and the OECD Guidelines for Multinational Enterprises and refer to activities both upstream and downstream.

Consultation Question 5. Has the Modern Slavery Act been adequately supported and promoted by government, business and civil society?

Answer: Improvements are required to ensure that the *Modern Slavery Act* has a functioning accountability mechanism.

Evidence & rationale: The *Modern Slavery Act 2018* adopts a disclosure regulation approach to addressing modern slavery. Disclosure regulations have been criticised as largely ineffectual unless they include a strong enforcement mechanism⁹. As the Modern Slavery Act currently contains no penalties for non-compliance, the expectation has been that 'the market' will serve as the accountability mechanism for the Act. The creation of an open-access digital repository was to

⁷ Boersma, Martijn, Emmanuel Josserand, Sarah Kaine, and Alice Payne. 2022. "Making sense of downstream labour risk in global value chains: The case of the Australian cotton industry." *Journal of Industrial Relations* 64, no. 2: 200-222; Payne, Alice, Martijn Boersma, Timo Rissanen, Emmanuel Josserand, Sarah Kaine, Erin O'Brien, Rowena Maguire, Sarah Bolder, Justine Coneybeer, Katie Johns, Monika Holgar, Zoe Nay, Karina Kallio. 2021. *Critical labour conditions in the cotton value chain*. Cotton Research and Development Corporation

⁸ European Commission. *Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and Amending Directive (Eu) 2019/1937*: European Commission, 2022.

⁹ Fung, Archon, Mary Graham, and David Weil. *Full Disclosure: The Perils and Promise of Transparency*. Cambridge University Press, 2007.

facilitate 'scrutiny by NGOs, investors and consumers'¹⁰.

Consumers and investors can play a key role in holding corporate actors accountable, by rewarding or punishing them through acts of political consumerism¹¹ (like boycotts and buycotts), or political investorism¹² (like shareholder resolutions and divestment). However, consumers and investors require support to be able to act on the information disclosed through annual modern slavery reports. There is a persistent disconnect between the provision of reports, and consumers and investors being able to understand and act on those reports. In some instances, Australian civil society organisations have sought to enable consumers and investors to serve this accountability function. For example, Be Slavery Free produce an annual scorecard evaluating the labour conditions behind the products of different chocolate brands. Baptist World Aid also produces an Ethical Fashion Guide, scoring fashion companies on their labour conditions.

These efforts are understandably limited to specific industries that are consumer-facing. Notably, both initiatives pre-date the establishment of the Modern Slavery Act and are not heavily reliant on the modern slavery statements produced in compliance with the Act. In addition, since the introduction of the Modern Slavery Act, no new consumer mobilisations on modern slavery have emerged within Australia. This suggests that we cannot rely heavily on ethical, or political, consumerism as an accountability mechanism.

Investors may be able to play a greater role, as they are connected to a broader range of industries. Again, civil society organisations have played a key role in raising awareness of modern slavery among investors. The Australasian Centre for Corporate Responsibility (ACCR) has engaged with Australian businesses about labour conditions for workers in their supply chains. ACCR led the world's first shareholder resolution on modern slavery, filed at the Coles Ltd Annual General Meeting in 2019¹³. This led to Coles' greater engagement with unions on labour conditions in their horticulture supply chain, though more action is required. The Australian Council of Superannuation Investors and the Responsible Investment Association of Australasia have also sought to inform investors of modern slavery risks in supply chains by producing a best practice guide¹⁴. The establishment of the Investors Against Slavery and Trafficking Asia-Pacific (IAST APAC) initiative also highlights the increased awareness of investors to the problem of modern slavery.

¹⁰ See page 33. Parliament of Australia. *Modern Slavery and Global Supply Chains: Interim Report*. Canberra, 2017

¹¹ Micheletti, Michele. *Political Virtue and Shopping: Individuals, Consumerism and Collective Action*. 2 ed. Basingstoke: Palgrave, 2010.

¹² O'Brien, Erin, Justine Coneybeer, Martijn Boersma, and Alice Payne. "Political Investorism: Conceptualising the Political Participation of Shareholders and Investors." *International Political Science Review* (2022). <https://doi.org/https://doi.org/10.1177/01925121221098863>.

¹³ Australasian Centre for Corporate Responsibility, "ACCR Files Worker Exploitation Resolution with Coles." *Australasian Centre for Corporate Responsibility*, 9 September, 2019, <https://www.accr.org.au/news/accr-files-worker-exploitation-resolution-with-coles/>.

¹⁴ Australian Council of Superannuation Investors, "Investors Launch Best-Practice Guide on Combatting Modern Slavery." *ACSI*, 11 November, 2019, <https://acsi.org.au/media-releases/media-release-investors-launch-best-practice-guide-on-combatting-modern-slavery/>.

Efforts to mobilise consumers and investors are promising, but patchy and limited. Civil society organisations are not adequately resourced to undertake the detailed analysis and benchmarking of modern slavery statements, in addition to the mobilisation of consumers and investors to act on this analysis.

To ensure that there is an accountability mechanism for the Modern Slavery Act, three elements are required:

1. Civil society organisations must be resourced to undertake the scrutiny of the modern slavery statements required to inform consumers and investors. They must be further supported to mobilise consumer and investor action based on this analysis.
2. An Independent Anti-Slavery Commissioner must be established to enable further scrutiny and investigation of actions taken by companies on modern slavery, to provide an additional layer of accountability.
3. The Government should introduce penalties for failure to comply with the reporting requirements of the Act, as it is challenging to hold businesses accountable if they are not participating in the process.

Recommendation: Clarify and strengthen the accountability mechanism for the Modern Slavery Act by resourcing civil society organisations to inform and mobilise consumers and investors, establishing an Independent Anti-Slavery Commissioner, and introducing penalties for non-compliant companies.

Modern slavery reporting requirements

Consultation Question 6. Is AU\$100m consolidated annual revenue an appropriate threshold to determine which entities are required to submit an annual statement under the Modern Slavery Act? Does the Act impose an appropriate revenue test for ascertaining the \$100m threshold?

Answer: No, the Modern Slavery Act should lower the threshold and scale requirements to business size.

Evidence & rationale: Modern slavery is undoubtedly connected to businesses under the \$100 million threshold. Businesses should be aware of the risk of modern slavery in their own activities and their suppliers. To address these risks, there are reasonable steps that smaller businesses can take. This duty is also outlined in section IV (5) of the OECD Guidelines, which states that enterprises should:

“Carry out human rights due diligence as appropriate to their size, the nature and context of operations and the severity of the risks of adverse human rights impacts”¹⁵.

In Aotearoa New Zealand they are considering legislation that is tiered according to the revenue of a

¹⁵ OECD. *OECD Guidelines for Multinational Enterprises*. (2011). <http://www.oecd.org/daf/inv/mne/48004323.pdf>

firm¹⁶. Smaller companies (below \$20 million in revenue) would be obliged to undertake due diligence and act if they become aware of modern slavery in **their own company**. Medium companies (\$20-\$50 million in revenue) will be required to do the above in addition to public disclosure, while large companies (above \$50 million) will be required to undertake due diligence and act on modern slavery in their own business **and in their supply chains**, in addition to publicly disclosing their actions. Additionally, the New South Wales Government have already implemented a Modern Slavery Act with a lower threshold at \$50 million.

A tiered system of enforcement whereby compliance requirements are scaled according to a company's revenue ensures compliance is not overburdensome and reflects the resources of the company. A tiered model further acknowledges the power and influence a company enjoys as they grow larger, which in turn represents their greater responsibility to society.

Recommendation: The Government should revise the revenue threshold through a tiered model of compliance. We recommend the following tiered system and requirements:

- Small companies (below \$20 million):
 - required to take due diligence steps in line with OECD and UNGP guidelines
- Medium companies (\$20 - \$50 million):
 - required to take due diligence steps in line with OECD and UNGP guidelines
 - disclose these steps via a public statement on a public registry, and on their website
 - liable for failing to comply or providing false/misleading information
- Large companies (over \$50 million):
 - required to take due diligence steps in line with OECD and UNGP guidelines
 - disclose these steps via a public statement on a public registry, and on their website
 - liable for failing to comply or providing false/misleading information
 - liable for human rights violations unless they can adequately prove they took reasonable steps to mitigate the risk

Consultation Question 7. Should the Modern Slavery Act require annual submission of a modern slavery statement? Does the Act contain appropriate rules for ascertaining the annual reporting timeline for entities?

Answer: Yes, the Modern Slavery Act should require the annual submission of a modern slavery statement.

¹⁶ New Zealand Government. *A Legislative Response to Modern Slavery and Worker Exploitation: Towards Freedom, Fairness and Dignity in Operations and Supply Chains*, 2022.

Evidence & rationale: Our research shows that many of the companies that responded to the first-round requirement under the Australian Modern Slavery Act 2018 had prior experience in responding to the UK Modern Slavery Act 2015. The COVID-19 pandemic demonstrates that issues in global supply chains can be very susceptible to a range of natural disasters and geo-political unrest. The impact of modern slavery practices on people impacted should be treated as a matter of priority.

Recommendation: The Modern Slavery Act should retain the current requirement for annual submission.

Consultation Question 9. Is further clarification required of the phrase 'operations and supply chains', either in the Modern Slavery Act or in administrative guidelines?

Answer: Yes, further clarification is required of the phrase 'operations and supply chains', either in the Modern Slavery Act or administrative guidelines.

Evidence & rationale: 'Operations and supply chains' can be differentiated based on industry classification. As we have seen, some industry sectors such as apparel, agriculture, mining, and construction have higher prevalence of modern slavery.¹⁷ There are some other industries, such as the financial services industry where in the first instance, it seems that the connection, contribution and cause of modern slavery with the finance industry is remote. Our recent research found that financial services entities are connected with and contribute to modern slavery practices through both their direct procurement of services and their financing operations of borrowers.¹⁸ The financial services sector is uniquely positioned to protect human rights and prevent modern slavery.¹⁹ As the products and services differ from other industries, the risks are also different in nature from the other industry sectors. Several modern slavery risk factors align with the business operation and supply chains, including high-risk industries, high-risk geographical locations and high-risk business models.²⁰

Recommendation: In the administrative guideline, regulators can differentiate separate modern

¹⁷ Islam, Muhammad Azizul, and Chris J Van Staden. "Social Movement Ngos and the Comprehensiveness of Conflict Mineral Disclosures: Evidence from Global Companies." *Accounting, Organizations and Society* 65 (2018): 1-19; Gutierrez-Huerter O, Gabriela, Stefan Gold, and Alexander Trautrim. "Change in Rhetoric but Not in Action? Framing of the Ethical Issue of Modern Slavery in a Uk Sector at High Risk of Labor Exploitation." *Journal of business ethics* (2021): 1-24; Maher, Rajiv, Moritz Neumann, and Mette Slot Lykke. "Extracting Legitimacy: An Analysis of Corporate Responses to Accusations of Human Rights Abuses." *Journal of Business Ethics* 176, no. 4 (2022): 609-28; Elayan, Faye A, Kareen Brown, Jennifer Li, and Yijia Chen. "The Market Response to Mandatory Conflict Mineral Disclosures." *Journal of Business Ethics* 169, no. 1 (2021): 13-42.

¹⁸ United Nations University Centre for Policy Research. "Unlocking Potential: A Blueprint for Mobilizing Finance against Slavery and Trafficking." United Nations University Centre for Policy Research New York, 2019; Van Dijk, Maria Anne, DE Marijn, and Ruben Zandvliet. "Banks and Human Trafficking: Rethinking Human Rights Due Diligence." *Business and Human Rights Journal* 3, no. 1 (2018): 105-11; Dean, Olivia, and Shelley Marshall. "A Race to the Middle of the Pack: An Analysis of Slavery and Human Trafficking Statements Submitted by Australian Banks under the UK Modern Slavery Act." *Australian Journal of Human Rights* 26, no. 1 (2020): 46-73

¹⁹ BankTrack, "The Banktrack Human Rights Benchmark 2019," (2019); Kinley, David and Kym Sheehan, "Financial Services Human Rights Benchmark: Summary Reports for 22 ASX-Listed Financial Services Entities " (2021); Missbach, A. "Human Rights Are Banking Risks." *BankTrack at the consultation on human rights and the financial sector* (2007).

²⁰ Ahmed, Shako, Ellie Chapple, and Katherine Christ, "Modern Slavery Reporting Practices in Australian Financial Services: An Early Assessment " in *European Accounting Association Annual Congress* (2022).

slavery risk detection tools for different industry sectors. Research shows that particular attention can be focused on financial products and services due to the connection, contribution, and cause of modern slavery in customer businesses' supply chains. Regulators and financial services entities can utilise the resource of published toolkits to detect and deter these risks.²¹

Consultation Question 10. Are the mandatory reporting criteria in the Modern Slavery Act appropriate – both substantively and in how they are framed?

Answer: Yes, the Modern Slavery Act includes victim support, a remediation process and grievance redress mechanisms in their Modern Slavery Statement.

Evidence & rationale: 49% of respondents of the Modern Slavery Act Review in the United Kingdom also recommended mandating the remediation process in the reporting statement.²² Several authoritative guidelines make specific reference to the grievance redress mechanisms and remediation process;²³ for instance, the UNGPs include state-based judicial mechanisms (Principal 26 and commentary) and state-based non-judicial grievance mechanisms (Principal 27 and commentary).²⁴ It is unsurprising that reporting organisations do not disclose this crucial step in detecting, deterring and disrupting modern slavery practises in their operations and supply chains in the absence of a mandatory requirement for victim support, remediation processes, and grievance redress mechanisms. Recent research on early assessment of the Modern Slavery Statement found that only 11% (27 entities) of the 255 entities mention the grievance redress mechanism.²⁵

Recommendation: Section 16 of the Modern Slavery Act 2018 should be reviewed to include victim support, remediation processes, and grievance redress mechanisms as a mandatory criterion. This procedure can be initiated in accordance with the United Nations Guiding Principle 31 (Effectiveness standards for non-judicial grievance processes)²⁶.

²¹ Kinley, David and Kym Sheehan, "The Financial Services Human Rights Benchmark: Methodology," (2020); Kinley, David and Kym Sheehan, "Financial Services Human Rights Benchmark: Summary Reports for 22 ASX-Listed Financial Services Entities " (2021); United Nations University Centre for Policy Research. "Unlocking Potential: A Blueprint for Mobilizing Finance against Slavery and Trafficking." United Nations University Centre for Policy Research New York, 2019; KPMG, and AHRC. *Financial Services and Modern Slavery: Practical Responses for Managing Risk to People*. (Australian Human Rights Commission and KPMG Australia, 2021); Themis International Services, "Preventing Modern Slavery and Human Trafficking: An Agenda for Action across the Financial Services Sector," (2021).

²² Secretary of State for the Home Department United Kingdom, "Independent Review of the Modern Slavery Act 2015: Final Report," ed. Home Department (United Kingdom Parliament, 2019).

²³ Ahmed, Shakoor, Larelle Ellie Chapple, Katherine Christ, and Sarah Osborne. "Modern Slavery Risk Disclosures in Business Operations and Supply Chains." In *Environmental Sustainability and Agenda 2030*: Emerald Publishing Limited, 2022.

²⁴ United Nations Human Rights Commission, "Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework," in *Geneva — GE.11-46529 — January 2012 — 4 951 — HR/PUB/11/4*, ed. UNHR (Geneva: Publishing Service, United Nations, 2011).

²⁵ Christ, Katherine L, and Roger L Burritt. "Exploring Effectiveness of Entity Actions to Eliminate Modern Slavery Risk—Early Australian Evidence." *The British Accounting Review* (2021)

²⁶ United Nations Human Rights Commission. *Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework*. (Geneva: United Nations, 2012).

Consultation Question 11. Should more be done to harmonise reporting requirements under the Australian Modern Slavery Act with reporting requirements in other jurisdictions, such as the United Kingdom? How should harmonisation be progressed?

Answer: Yes, more should be done to harmonise reporting requirements with other jurisdictions.

Evidence & rationale: New policies and regulations governing corporations' efforts in relation to modern slavery and other forms of labour exploitation are emerging in several different jurisdictions. These include the European Union's move towards a mandatory human rights due diligence approach²⁷, and the potential adoption of a Modern Slavery Act in New Zealand²⁸, in addition to the existing *Modern Slavery Act 2015* in the United Kingdom. This demonstrates the positive trend towards promoting increased corporate responsibility for addressing modern slavery²⁹. Some harmonisation may be beneficial for reporting entities, and also to enable comparative analysis across jurisdictions. This harmonisation could involve seeking a uniform approach to a reporting template across those jurisdictions with a disclosure regulation similar to the Modern Slavery Act. However, we would caution against any harmonisation that effectively weakens or dilutes what is currently mandated in Australia's *Modern Slavery Act*.

Recommendation: Any efforts to harmonise reporting across jurisdictions must not dilute or weaken the requirements mandated by Australia's *Modern Slavery Act 2018*.

Consultation Question 13. Should other reporting features of the Modern Slavery Act be revised – such as the provisions relating to joint statements, or voluntary reporting?

Answer: Yes. A new requirement to report on progress against previous commitments should be included.

Evidence & rationale: Australia's *Modern Slavery Act 2018* does not include penalties for failure to comply, nor does it include a qualitative assessment of corporations' performance addressing modern slavery in supply chains. The bar for compliance with the legislation is quite low, with corporations simply required to report against key criteria. As noted earlier, this transparency framework is beneficial to raise awareness and catalyse some changes in corporate risk assessment. However, for real and long-term impact, it is necessary to move beyond transparency and towards action and remediation.

Our research shows while voluntary disclosure may be a positive option for small and medium-sized enterprises, the option for voluntary disclosure is unlikely to have any impact on the practices of large

²⁷ European Commission. "Just and Sustainable Economy: Commission Lays Down Rules for Companies to Respect Human Rights and Environment in Global Value Chains." news release, 23 February, 2022.

²⁸ New Zealand Government. *A Legislative Response to Modern Slavery and Worker Exploitation: Towards Freedom, Fairness and Dignity in Operations and Supply Chains*, 2022.

²⁹ O'Brien, Erin, Justine Coneybeer, Martijn Boersma, and Alice Payne. "Political Investorism: Conceptualising the Political Participation of Shareholders and Investors." *International Political Science Review* (2022). <https://doi.org/https://doi.org/10.1177/01925121221098863>.

companies. Instead, we support a mandatory regulated framework that provides robust, verifiable, and comparable information³⁰.

Further, our research shows that statements submitted in compliance with the Act frequently include declarations of actions to be taken, or plans to be implemented in the future. To encourage corporations to deliver on these promises, and to enable assessment of corporate action on modern slavery, a new reporting requirement should require companies to report against commitments made in the previous year's annual statement.

Recommendation: Companies should be required to report on progress in relation to commitments made in the previous years' statements, to encourage sustained action and constant improvement.

Enforcement of the Modern Slavery Act reporting obligations

Consultation Question 14. Has there been an adequate – or inadequate – business compliance ethic as regards the Modern Slavery Act reporting requirements?

Answer: No, there has been inadequate compliance with the Act.

Evidence & rationale: Our research has shown that information disclosure can be utilised to deceive stakeholders and create the appearance of corporate accountability³¹. Fashion companies have largely failed to disclose how their actions to combat modern slavery have impacted working conditions or adequately reduced the risk of modern slavery (NOTE: research in progress)³². This failure of disclosure represents a 'box-ticking' approach to the legislation, by meeting the minimum requirements of publishing a modern slavery statement though lacking substantive disclosure.

For example, in the 57 modern slavery statements analysed within the 'fashion, textiles, apparel and luxury goods' category, companies referred to assessing the effectiveness of their actions via quantitative measures such as the number of audits conducted or the number of employees who received modern slavery training. Such measures do not indicate the effectiveness of mitigating modern slavery.

Furthermore, our current research indicates that companies in the apparel industry are able to strategically implement anti-slavery tools that push responsibility for modern slavery to their suppliers and other actors in the supply chain (NOTE: research in progress)³³. For example, the most common tool utilised by fashion companies is supplier factory audits (96% of statements analysed), which frame

³⁰ McCredie, Bronwyn, Kerrie Sadiq, and Richard Krever. "The Effectiveness of Voluntary Corporate Tax Disclosures: An Australian Case Study." *Australian Tax Forum* 36, no. 4 (2021): 573-95

³¹ See also Richards, Harriette. "Risk, Reporting and Responsibility: Modern Slavery, Colonial Power and Fashion's Transparency Industry." *International Journal for Crime, Justice and Social Democracy* 11, no. 2 (2022): 47-60.

³² Please contact Justine Coneybeer (j.coneybeer@qut.edu.au) for more information

³³ Please contact Justine Coneybeer (j.coneybeer@qut.edu.au) for more information

suppliers as the problem³⁴. Meanwhile, only 12% of statements disclosed they reviewed/offered training on company purchasing practices which are known to have an impact on labour conditions and with a company's direct power to change. This means Australian companies see their responsibility as telling suppliers what to do, rather than adequately reflecting on their practices and taking on an active role in mitigating risk beyond monitoring practices (audits) and paper-based tools (codes of conduct).

Recommendation: The government should amend Section 16, (1e) of the Modern Slavery Act to define the effectiveness of actions as the reduction of risk.

Consultation Question 15. Has government administrative action been effective in fostering a positive compliance ethic? What other administrative steps could be taken to improve compliance?

Answer: No, more can be done in this area.

Evidence & rationale: Other administrative steps that could be taken to improve compliance is the production of a report, similar to the Report of Entity Tax Information (ROETI), that is prepared by the Australian Taxation Office annually³⁵. This report outlines certain tax information for entities with an annual total income equal to or above \$100 million or with a petroleum resource rent tax (PRRT) payable. Historical records of this report are updated, maintained and publicly available at data.gov.au. This approach could be replicated for annual Modern Slavery Statements, denoting details of the companies who are required to comply with the Modern Slavery Act, links to their annual reports in the Modern Slavery Statements Register, and progress towards their commitments as outlined in consultation question 13.

Recommendation: The government should publicly report on the registry website, a list of companies (and their associated business names) who are required to comply to with the Act.

Consultation Question 16. Should the Modern Slavery Act contain additional enforcement measures – such as the publication of regulatory standards for modern slavery reporting? **AND**

Consultation Question 17. Consultation question Should the Modern Slavery Act impose civil penalties or sanctions for failure to comply with the reporting requirements? If so, when should a penalty or sanction apply?

Answer: Yes, the Modern Slavery Act should entail civil and administrative penalties and consequences for failing to comply with the reporting requirements specified in regulatory standards.

Evidence & rationale: Previous studies conducted on assessing the modern slavery statement found that most of the entities are far behind in compliance with the mandatory legislation; for instance, a

³⁴ See also Nolan, Justine. "Chasing the Next Shiny Thing: Can Human Rights Due Diligence Effectively Address Labour Exploitation in Global Fashion Supply Chains?." *International Journal for Crime, Justice and Social Democracy* 11, no. 2 (2022): 1-14.

³⁵ See: <https://www.ato.gov.au/Business/Large-business/Corporate-Tax-Transparency/Report-of-entity-tax-information/>

recent study found that COVID-19 increases the risk of modern slavery in Australia, and the reporting entities provided fewer modern slavery-related disclosures pertaining to the COVID-19 circumstances.³⁶ In the case of the effectiveness of modern slavery prevention, Christ et al. analysed 255 Australian entities where 38 entities (15%) made no mention of effectiveness, 69 (27%) mentioned aspects of effectiveness in the general text of their MSS, while 148 (58%) address effectiveness in a separate sub-section³⁷. It is also supported by another study by Christ et al., where they observed the low quality of modern slavery reporting of ASX 100 companies before the Act.³⁸ In the case of remediation process and effectiveness, research conducted by Monash University found that the remediation process is receiving less importance, only 68% reported on remediation, and only 17% provided specific KPIs for effectiveness assessment.³⁹

Several Acts on modern slavery define modern slavery practices in terms of illegal and criminal activities. For example, the *Modern Slavery Act 2018* (Cth) defines 'modern slavery' based on the *Criminal Code Act 1995* (Cth), where slavery and slavery-like offences (Division 270) and trafficking in persons (Division 271) are criminal offences.⁴⁰

In the UK, s5 and s6 of the *Modern Slavery Act 2015* also criminalise modern slavery and mention the penalties for these illegal activities, s6 states (p. 4),

- (1) A person guilty of an offence under section 1 or 2 is liable— (a) on conviction on indictment, to imprisonment for life;
- (b) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine or both.
- (2) A person guilty of an offence under section 4 is liable (unless subsection (3) applies)— (a) on conviction on indictment, to imprisonment for a term not exceeding 10 years;
- (b) on summary conviction, to imprisonment for a term not exceeding 12 months or a fine or both.

In the USA, the *California Transparency Supply Chains Act 2010* also recognises human trafficking is a crime and "existing state law also allows a victim of human trafficking to bring a civil action for actual damages, compensatory damages, punitive damages, injunctive relief, any combination of those, or any other appropriate relief."⁴¹

³⁶ Ahmed, Shakoor and Larelle Chapple, "Corporate Response to Modern Slavery Risks Induced by Covid-19: Business as Usual?," *Australian Journal of Corporate Law* 37, no. 3 (2022).

³⁷ Christ, Katherine L, and Roger L Burritt. "Exploring Effectiveness of Entity Actions to Eliminate Modern Slavery Risk—Early Australian Evidence." *The British Accounting Review* (2021).

³⁸ Christ, Katherine Leanne, Kathyayini Kathy Rao, and Roger Leonard Burritt. "Accounting for Modern Slavery: An Analysis of Australian Listed Company Disclosures." *Accounting, Auditing & Accountability Journal* 32, no. 3 (2019).

³⁹ Nga Pham, Bei Cui, and Ummul Ruthbah, "Modern Slavery Statement Disclosure Quality: ASX 100 Companies," (Melbourne: Monash University 2021).

⁴⁰ *Modern Slavery Act 2018* (Cth), "*Modern Slavery Act 2018* (Cth)," in *No. 153, 2018*, ed. Australian Government (Australia: Australian Government).

⁴¹ California Transparency in Supply Chains Act, "California Transparency in Supply Chains Act," in *Section 1714.43*, ed. State of California Department of Justice (2010), 93.

Recommendation: We propose three distinct categories of enforcement mechanisms. Depending on the severity and intensity of human rights breaches and violations in corporate operations and supply chains, either discrete categories of enforcement methods or a mix of enforcement mechanisms could be implemented. A competent authority must determine the seriousness and magnitude of the violations. Thus, we propose the establishment of an Independent Anti-Slavery Commissioner as the competent authority. The enforcement mechanisms are implemented gradually based on the types, nature, and severity of the entities' breaches and violations. Regardless of the nature of the non-compliance, breaches and violations, reporting entities can be classified according to three levels and colours.

Category 1 (Yellow): This category could include entities that have not submitted modern slavery statements and have not complied with the Act. Entities in this category will be formally notified to comply with the Modern Slavery Act and will be required to submit a modern slavery prevention plan containing reasonable but sufficient steps to detect, deter, and disrupt modern slavery risks in operations and supply chains. Continual noncompliance may result in relegation to Category 2 (Orange) for the entity.

Category 2 (Orange): This category includes entities that consistently violate the law and frequently fail to address compliance issues with substantial improvement. These non-compliant entities should be penalised with monetary fines and are required to compensate victims and their survivors. For this category, the *Modern Slavery Act 2018* (Cth) should incorporate the following enforcement mechanisms:

Enforceable undertakings (EU) can be imposed under this category. EU can be used by the entities for their suppliers as well as the authority that regulates the legislation. The entities may start with mitigation or deterrence measures, such as suppliers' and service holders' undertakings, comparable to the Enforceable Undertakings⁴² of the Australian Securities and Investments Commission (ASIC).⁴³ The Hayne Royal Commission (2019) determined that ASIC's Enforcement Undertakings paired with other guidance were an alternative to court proceedings, debarment, or suspension.

Injunctive relief is a request to the competent court for compliance orders, such as compelling a company to publish a modern slavery statement or to do due diligence if it has not already done so or if the entity's due diligence has been found to be insufficient. An injunction may include a potential periodic penalty payment. Enforcement penalties might be determined based on the proportional size and earnings of the breaching entity.

Category 3 (Red): This category includes entities that have excessively or deliberately violated human rights in their operations and supply chains. At this level, non-compliant entities with a lack of initiatives for establishing a plan or monitoring processes, wilful misrepresentation of the plan for the prevention of modern slavery practises, and a failure to rectify themselves within a reasonable period of time are classified as non-compliant. Courts also accuse and sentence entities for their wrongdoings,

⁴² Enforceable undertakings are form of administrative action instead of court proceedings rather than debarment or suspension.

⁴³ McGaughey, Fiona, Rebecca Faugno, Elise Bant, and Holly Cullen. "Public Procurement for Protecting Human Rights." *Alternative Law Journal* (2022).

notably acts related to modern slavery in any legislation in the world. In this situation, entities may be subject to punitive enforcement measures, such as criminal charges and sanctions. Article 9 of the 2019 Dutch Child Labour Due Diligence Act (Wet Zorgplicht Kinderarbeid) stipulates that if a company is determined to have committed the same contravention within five years and is managed by the same director, that director is subject to criminal prosecution and sanctions.

The categories of enforcement outlined above can be utilised as a potential approach to persuade entities to comply more. Based on these categories, the "dirty list" may include all categories of non-compliant companies. Government and private financial services may restrict Orange and Red-listed entities financing. The financing expenses of entities may be increased. On the entities listed at the secondary and final levels, it is possible to adopt a higher tax rate. If an entity fails to comply with mandatory requirements on many occurrences, the regulator should be allowed to exclude it from government procurement processes and contracts. If a business is found guilty of violating the Act, its licence to conduct business shall be suspended temporarily in addition to monetary penalties.

Public sector reporting requirements under the Modern Slavery Act

We are supportive of the ongoing application of the *Modern Slavery Act* to government agencies.

Modern slavery statements register

Consultation Question 21. Does the Register provide a valuable service?

Answer: Yes, the Modern Slavery Statements Register plays a crucial role in creating a single repository for all reporters.

Evidence & rationale: The Modern Slavery Register provides a valuable service for stakeholders interested in monitoring businesses' responses to the Modern Slavery Act. The database allows for the centralization of the information needed to monitor compliance, assess business accountability for modern slavery, and foster a culture of transparency and disclosure.

The current version of the Australian Register is a valuable resource to allow for the development of large-scale research and analysis projects aimed at unlocking the data from the businesses' statements. One such project is the open-source Project AIMS (AI against Modern Slavery),⁴⁴. The first phase of this project was developed by The Future Society in partnership with Walk Free and WikiRate. They produced initial experiments to develop artificial intelligence solutions to analyze at scale the statements published in response to the Modern Slavery Act of the UK. The second phase of this project is now being developed at QUT Queensland University of Technology, Centre for Data Science, looking at the statement published by Australian companies in response to this Act.

⁴⁴ [GitHub - the-future-society/Project-AIMS-AI-against-Modern-Slavery](https://github.com/the-future-society/Project-AIMS-AI-against-Modern-Slavery)

Through the development of Project AIMS, recommendations for how the statements should be managed in order to facilitate those types of projects, were collected and summarized in the "Digital Insights into Modern Slavery Reporting - Challenges and Opportunities" paper (Weinberg et. al,2020)⁴⁵.

The Australian Modern Slavery Register already incorporates some of those recommendations as it is a centralized, single registry where companies must submit their statements with consistent formatting, ensuring easy retrieval. Moreover, the Register also houses historical statements, facilitating the monitoring of progress.

The reporting format on the Register allows companies to list their subsidiaries, which could facilitate the government keeping an up-to-date, comprehensive list of all companies and their subsidiaries subject to reporting. Also, the fact that the statements are disclosing the reporting period, are timestamped and include relevant metadata, assists interoperability with other data sources.

Consultation Question 22. *Could improvements be made to the Register to facilitate accessibility, searchability and transparency?*

Answer: Yes, improvements can be made to ensure accessibility, searchability, and transparency

Evidence & rationale: While being a useful resource, the Register should be improved to ensure that all the data can be easily accessed, searched, and transparent, to allow for a comprehensive and timely analysis of all the statements.

Several issues have been identified with the database including:

- inconsistencies with industry classification
 - We observed that the industry classification was not consistently maintained, unlike other databases that maintain a uniform industry classification code. Industry classification codes are a valuable first-order tool to identify likely modern-slavery risks. There are various industry classifications supplied by the recognised database, including FTSE Industry Classification Benchmark, Forbes Industry classification, Fama–French 12 group industry classification, and Standard Industry Classification.
- non-machine-readable formatting
 - Where companies have uploaded PDF documents or scanned copies of a paper documents, these formats create a barrier to assessing the statements via machine reading.
- gaps in metadata information
 - Some statements exclude relevant data such as company address and reporting period
- and barriers to assessing and comparing modern slavery statements.
 - For example, the industry classification issue mentioned above.

⁴⁵ Weinberg, Nyasha, Adriana Bora, Francisca Sasseti, Katharine Bryant, Edgar Rootalu, Karyna Bikziantieieva, Laureen van Breen, Patricia Carrier, Yolanda Lannquist, and Nicolas Mialhe. "AI against Modern Slavery: Digital Insights into Modern Slavery Reporting-Challenges and Opportunities." (2020).

Recommendation:

In order to improve **accessibility**, the Register should ensure that:

- All documents are available in machine-readable formats instead of PDFs. This would allow for all the information from the documents to be fully extracted and processed automatically, accelerating the analysis of the statements.
- All the data is available through a free API (Application Programming Interface), to be easily incorporated into the pipeline of data-driven projects such as Project AIMS.

In order to improve **searchability**, the Register should ensure that:

- All the supporting documents that a company sends to the Registry are accessible in a structured format in the existing .csv that can already be downloaded from the Register. This could take the format of a new column 'M' that links the supporting documents to each statement.
- Nonetheless, all the supporting documents should also be available in machine-readable formats and through the API.
- The government should ensure that all statements are required to disclose the reporting period, are timestamped, and include **more relevant metadata, such as the address of company headquarters**, that assist interoperability with other data sources.
- The Modern Slavery Statements Register should contain **industry-specific classifications such as Global Industry Classification Standards (GICS)**. Industry classification will enhance data comparability, credibility, and corroboration with other databases.

In order to improve **transparency**, the Register should ensure that:

- It publishes an up-to-date, comprehensive list of all companies and their subsidiaries subject to report. This will ensure that each year it is clear what companies are covered by the legislation, which one of them complied with it and which ones are still to report.
 - It shows what companies are fully compliant, with all the mandatory criteria as listed in the legislation, and what areas the companies that are not compliant need to improve. This process could be facilitated by machine learning models, that could assist the government by speeding up the process of analysis, achieving transparency and accountability at scale.
 - In light of the increasing number of statements, full comparability and transparency could only be achieved if the statements are published in machine-readable formats.
- Administration and Compliance Monitoring of the Modern Slavery Act

Consultation Questions 23. What role should an Anti-Slavery Commissioner play in administering and enforcing the reporting requirements in the Modern Slavery Act? What functions and powers should the Commissioner have for that role?

Consultation Question 24. Responsibility within government for administering the Modern Slavery Act?

Answer: The current review should lead to the establishment of an Independent Anti-Slavery Commissioner for administering, monitoring and enforcing the reporting requirements in the Modern Slavery Act.

Evidence & rationale: The primary concern of the Commissioner is to oversee the reporting practices of eligible entities and how the reporting practices could be improved. Several Modern Slavery Acts have stated the functions and activities of an Independent Anti-Slavery Commissioner for overseeing the different activities for identifying, preventing and mitigating modern slavery practices in business operations and supply chains.⁴⁶ However, we have found that the Commissioner plays a central role in other modern slavery legislation; the Commissioner works as an advocate and a promoter of good practice⁴⁷ in the identification, prevention, investigation and prosecution of offences involving modern slavery (s9, *Modern Slavery Act 2018* (NSW) and s41, *Modern Slavery Act 2015* (UK)). Surprisingly, the *Modern Slavery Act 2018* (Cth) omitted any provision for an Independent Anti-Slavery Commissioner.

Recommendation: We recommend reviewing the Act and introducing a provision for an Independent Anti-Slavery Commissioner with specific enforcement power to detect, deter, and disrupt modern slavery risks in operations and supply chains. The Commissioner's office needs a sufficient budget to function autonomously, free from political interference, and to make its own decisions regarding the prevention and mitigation of modern slavery.⁴⁸

Review of the Modern Slavery Act

Consultation Question 25. Is a further statutory review (or reviews) of the Modern Slavery Act desirable? If so, when? And by whom?

Answer: Yes.

Recommendation: The Modern Slavery Act should be reviewed every three years. An Independent Anti-Slavery Commissioner can lead a review process, or appoint an external reviewer.

⁴⁶ *Modern Slavery Act 2015* (UK), "Modern Slavery Act 2015 (UK)."; *Modern Slavery Act 2018* No 30, "Modern Slavery Act 2018 (NSW)."

⁴⁷ *Modern Slavery Act 2015* (UK), "Modern Slavery Act 2015 (UK)."

⁴⁸ Hyland, Kevin, interview by Home Affairs Committee Oral evidence: Modern Slavery, 2018, interview HC 1460, Q38 – 42 & Q44; Secretary of State for the Home Department United Kingdom, "Independent Review of the Modern Slavery Act 2015: Final Report."

Other Issues

Consultation Question 27. Is there any other issue falling within the Terms of Reference for this review that you would like to raise?

Answer: Yes, future legislation should consider industry-specific risks and align with evolving regulations in other jurisdictions.

Evidence & rationale: There are important contextual factors that shape vulnerability to modern slavery. For example, migrant and refugee workers in garment supply chains are particularly vulnerable to labour exploitation, restrictions on their freedom of movement, and their ability to collectively bargain⁴⁹. Increasingly, legislation in other jurisdictions is being adapted to the unique contextual circumstances and associated risks within an industry. In 2022, the United States has seen two separate proposals specific to the garment industry, 1) the Fashioning Accountability and Building Real Institutional Change Act (FABRIC Act), and 2) the New York Fashion Sustainability and Social Accountability Act (the Fashion Act). The FABRIC Act seeks to combat poverty wages in US-based garment factories by outlawing payment by piece rate. The Fashion Act specifically targets fashion companies' environmental and social issues and requires companies to publicly disclose their suppliers, uniquely addressing the complex and opaque webs of apparel supply chains to facilitate collective action.

Recommendation: Where an industry is at particularly high-risk of involving modern slavery or exploitative labour, the government should consider the implementation of the industry-specific requirements with the Modern Slavery Act. As one part of our area of expertise, legislation specific to the apparel industry might take shape in the form of:

- The outlining of due diligence processes specific to the human right issues experienced in the apparel and textile industry including gendered considerations (gender-based violence and sexual abuse), vulnerable workers (migrants, refugees, and children), and labour violations (freedom of association, freedom of movement, poverty wages, discrimination).
- Mandatory disclosure of supply chain partners (requiring 100% of tier 1 mapped, and 50% of tier 2 mapped etc. where increasing expectation for full supply chain transparency in expected overtime).
- Fines and penalties paid into a community fund that redistributes these funds to victims of modern slavery in the garment industry

⁴⁹ Erdoğan, Seyhan. "Syrian refugees in Turkey and trade union responses." *Globalizations* 15, no. 6 (2018): 838-853; Maher, Sam. "False promises: migrant workers in the global garment industry (discussion paper)." (2009). Clean Clothes Campaign.

APPENDIX A - Contributors

Associate Professor Erin O'Brien

Dr Erin O'Brien is an Associate Professor and Australian Research Council DECRA Fellow. She is a Chief Investigator in the QUT Centre for Decent Work and Industry, and QUT Centre for Justice. Her research examines policy-making, and political advocacy and participation, with a focus on market-based activism including political consumerism and investorism. Dr O'Brien's Australian Research Council Fellowship project examines the role of civil society organisation in mobilising ethical consumerism and shareholder activism on modern slavery, and the shifting responsibilities of the state, civil society and corporate actors in addressing complex multi-jurisdictional issues. Dr O'Brien is the author of numerous journal articles on the topic of modern slavery and human trafficking, and two books: *Challenging the Human Trafficking Narrative: Victims, Villains and Heroes* (Routledge 2019), and *The Politics of Sex Trafficking: A Moral Geography* (Palgrave 2013).

Ms Justine Coneybeer

Justine is a PhD Candidate in the Centre for Justice researching fashion companies' responses to the Modern Slavery Act. Justine has worked on several projects investigating opportunities to improve working conditions in cotton value chains, co-developing a model of investor activism in Australia, and beginning her PhD on the Modern Slavery Act. Her PhD research focusses on responsibility for modern slavery in apparel global value chains through a structural injustice lens. She seeks to understand how fashion companies frame their responsibility for modern slavery in their modern slavery statements and their drivers for taking responsibility. She hopes that her findings will inform improved regulation in Australia, in addition to more effective interventions that leverage the power, wealth, and influence of fashion companies so that responsibility for labour issues might be shared.

Professor Ellie Chapple

Ellie is a Professor at the QUT Business School and she is a solicitor admitted to legal practice in the Supreme Court of Queensland and a graduate member of the Australian Institute of Company Directors. Ellie has over 30 years' experience as a teaching and research academic in Australian business and law schools, primarily focusing on corporate regulation as it applies to accounting students and commercial transactions. She has taught and researched in the areas of insolvency, commercial law, corporate law, corporate governance, CSR, diversity, forensic accounting and auditing and has supervised over 30 research students in these areas. She has published the results of her research in journal articles in top ranked regional journals in accounting, auditing, finance and commercial law. Her research approach favours "cross disciplinary" research, that is, combining skills and methodologies from the accounting and commercial law disciplines to inform corporate disclosure, reporting regulation and policy, and fraud control. Ellie is active in several academic professional associations including the American Accounting Association, the Society of Corporate Law Academics, the Financial Research Network and the Accounting and Finance Association of Australia and New Zealand. She is deputy-editor in chief of *Accounting and Finance* and assessor for the Australian Research Council's various Research Grant programmes.

Mr Shakoor Ahmed

Shakoor Ahmed is pursuing his PhD at QUT School of Accountancy, Queensland University of Technology, Australia. The title of his PhD thesis is "A Textual and Visual Analysis of Reporting Practices of Modern Slavery Risks in Business Operations and Supply Chains". His research on modern slavery risks was published in ranked journals and presented at a number of national and international conferences. Shakoor has developed an extensive network of researchers and policymakers involved in combatting modern slavery practices, particularly through using the power of social media to encourage debate and discussion. The University of Bath has listed him on #ThinklistNext21, and he is the Social Media Editor for Business and Human Rights Journal, published by Cambridge University Press. Before joining QUT, he worked as an assistant professor of Accounting at the Ministry of Education, Bangladesh. He holds a Master of Business Research from the University of Southern Queensland, Australia and a Master of Accounting and Information Systems from the University of Dhaka, Bangladesh. He is a member of the Accounting and Finance Association of Australia and New Zealand and European Accounting Association.

Ms Adriana Eufrosina Bora

Adriana Eufrosina Bora is the Project Lead of Project AIMS (AI against Modern Slavery) at Mila, AI for Humanity and a Ph.D. Candidate in the School of Mathematical Sciences at the Queensland University of Technology. Adriana is listed as one of the 20 Rising Stars in AI Ethics 2022 and won the UNESCO International Research Centre in Artificial Intelligence (IRCAI)'s AI Award 2021 for her efforts to develop AI solutions to combat modern slavery, contributing to SDG 8, Target 8.7. Adriana's main area of expertise is in using technology against modern slavery. Her research focuses on applying machine learning in analysing and benchmarking the businesses' reports published following the Modern Slavery Acts from the UK and Australia. Adriana holds a Master's Degree in International Public Management from Sciences Po Paris School of International Affairs (PSIA). She has also studied at the University of Hong Kong and holds a diploma in International Relations and Advanced Quantitative Methods from the University of Essex in the U.K.

Dr Bronwyn McCredie

Bronwyn McCredie is a senior lecturer and the postgraduate subject area co-ordinator in the School of Accountancy at the QUT Business School. She holds a PhD in Finance and the University medal from the University of Newcastle, and a Postgraduate Certificate in Academic Practice from Queensland University of Technology. She is also a Chartered Accountant (CA), a fellow of the Higher Education Academy (HEA), an affiliate of the Financial Planners Association (FPA), and a member of AFAANZ, ATTA and FIRN. Dr McCredie researches in financial law, taxation and regulation which has been published in Australian and international journals and edited books. Her current research focuses on identifying and measuring tax aggressive behaviour, the OECD BEPS program and resultant tax transparency legislation, and the efficacy of director trading legislation.

Associate Professor Rowena Maguire

Dr Rowena Maguire is an Associate Professor in the School of Law at QUT and the Program Leader of the Environmental and Social Governance Research Group at QUT. Rowena's research interests, publications and projects focus on climate and environmental regulation informed by feminist and regulatory theory. Rowena is currently working on two research programs: one stream focuses on

climate and disaster governance and examines the structural injustices arising in the implementation of the Paris Agreement funded by the Australian Centre for International Agricultural Research and the Centre for Justice, QUT. The second programme of work focuses on the social and environmental issues associated with the fashion industry with projects funded by the Cotton Research Development Corporation, Australian Retailers Association and the Department of Agriculture, Water, and the Environment.

Professor Alice Payne

Dr Alice Payne is a Professor in Fashion in the School of Design, Queensland University of Technology and co-lead of the research group TextileR: Future Textile Industries. Her research focuses on environmental and social sustainability issues throughout the life cycle of clothing. Recent work has examined labour issues in the cotton value chain, as well as technologies to address the problem of textile waste. Alice is part of the Australian Fashion Council-led consortium designing the National Clothing Product Stewardship Scheme. She is author of the book *Designing Fashion's Future*, co-editor of *Global Perspectives on Sustainable Fashion*, and is an award-winning designer and educator.

Associate Professor Bree Hurst

Dr Bree Hurst is an Associate Professor at the QUT Business School and holds a PhD in corporate social responsibility and organisational communication. Bree is the subject area coordinator for Public Relations at QUT, the Program Lead of the Responsible Governance research program within the QUT Centre for Decent Work and Industry, and is part of the Subject Management Team for the Governance Institute of Australia. Her ongoing research is situated within the areas of corporate responsibility, social licence to operate, social impact, and stakeholder engagement. Bree has secured over \$1.08 million in research funding and had her work published in a number of academic journals and books, including the *Journal of Business Ethics* (Financial Times Top 50 journal) and awarding winning handbooks, *Handbook of Communication and Corporate Social Responsibility* and *Handbook of Communication Engagement*.

Associate Professor Deanna Grant-Smith

Dr Deanna Grant-Smith is an Associate Professor in the School of Management at QUT. She is Deputy Director of the QUT Centre for Decent Work and Industry and Leader of the Technologies of Justice Program in the QUT Centre for Justice. Deanna's research focusses on the intersection of sustainability, social justice and exploitative work practices.

APPENDIX B

Related research published by contributors

- Ahmed S & Chapple E** (2022) Corporate response to modern slavery risks induced by COVID-19: Business as usual? *Australian Journal of Corporate Law*, 37(3), 203-229.
- Ahmed S & Chapple E** (2022) *Modern Slavery Disclosure Practices: Risks induced by COVID-19 in business operations and supply chains*. QUT Centre for Justice Briefing Paper No. 32, November 2022.
- Ahmed S & Chapple E**, Christ K & Osborne S (2022) Modern slavery risk disclosures in business operations and supply Chains. In V Taurigana & O Moses (Eds.) *Environmental Sustainability and Agenda 2030* (Vol. 10, pp. 67-104): Emerald Publishing Limited.
- Ahmed S Chapple E** & Christ K (2022) "Seeing is believing?": Visual disclosure analysis of inaugural Modern Slavery Statements in Australia. AFAANZ Conference 2022, Melbourne, Australia.
- Ahmed S Chapple E** Christ, K & Osborne, S (2022) *Corporate reporting: Cover art as impression management in Modern Statements*. International Congress on Social & Environmental Accounting Research 2022, St Andrews, Scotland.
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APPENDIX C

QUT Centre for Decent Work & Industry

<https://research.qut.edu.au/centre-for-decent-work-and-industry/>

QUT Centre for Decent Work & Industry directly addresses pressing current and future challenges for just work and responsible industry. Our transdisciplinary research elucidates experiences and systems of work and industry governance to advance social and economic inclusion and equality for the benefit of individual workers, communities, organisations, and employers, and for Australia's social and economic wellbeing. We investigate workers, organisations and industries at the local, national, and global level across a continuum of research programs.

QUT Centre for Justice

<https://research.qut.edu.au/centre-for-justice/>

QUT Centre for Justice is a think tank for social justice that aims to empower and enable citizens, consumers and communities through solutions-oriented research. Our vision is to democratise justice by improving opportunities for health and well-being and enhancing the inclusiveness of work and education while widening access to justice.

QUT Modern Slavery Research Group

<https://research.qut.edu.au/centre-for-justice/modern-slavery-research-group/>

The QUT Modern Slavery Research Group is a multi-disciplinary group of researchers seeking to improve knowledge and understanding of the issue of modern slavery and labour exploitation to combat this grave and complex global problem.

QUT Accounting for Social Change Research Group

<https://research.qut.edu.au/accounting-for-social-change/>

The Accounting for Social Change research group seeks to establish and advance real-world solutions to progress reporting, disclosure and transparency practices. Members research best practice responses by businesses and regulators to social change through governance and disclosure and advance knowledge on managing stakeholder expectations for accountability, economic efficiency and social responsibility.

QUT TextileR: Future Textile Industries

<https://research.qut.edu.au/textiler/>

TextileR researchers seek to develop the cultural, technical, business, and social change needed to transform the way we produce and live with textiles. TextileR researchers work with SMEs, industry and community groups focussing on solving critical sustainability issues faced by the textile and fashion industries globally.