



WALK FREE FOUNDATION

ATTORNEY-GENERAL'S CONSULTATION: MODERN SLAVERY IN SUPPLY CHAINS REPORTING REQUIREMENT

SUBMISSION: WALK FREE FOUNDATION
DATE: 20 OCTOBER 2017

BY EMAIL (slavery.consultations@ag.gov.au)

Transnational Crime Branch
Attorney-General's Department

20 October 2017

Dear Sir,

Public Consultation – Modern Slavery in Supply Chains Reporting Requirement

We refer to the consultation questions raised by the Attorney-General's Department ("**AG Consultation**"). We further refer to the submission filed by the Walk Free Foundation to the Joint Standing Committee on Foreign Affairs, Defence and Trade for the Inquiry into an Australian Modern Slavery Act ("**Inquiry**"), dated 28 April 2017 ("**WFF Submission**"). Finally, we refer to the comments made by Walk Free Foundation during the public consultation meeting in Perth on Friday 13 October 2017 ("**Perth Consultation**").

As outlined in the Perth Consultation, the views outlined in the WFF Submission contains our responses to the questions raised in the AG Consultation paper. We would like to respond to three particular questions in further detail, as outlined in this letter.

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

In principle, the four mandatory criteria are broadly appropriate categories, streamlined from the six recommended categories of guidance outlined in Section 54(5) of the Modern Slavery Act (UK). However, when streamlining these categories it is important not to lose some important nuances captured in the UK legislation.

For example, the current language proposed in the AG Consultation paper requires organisations to comment on risks, policies and procedures together with a subjective analysis of whether they are effective. We recommend that the Australian Government consider encouraging businesses to take an active rather than passive approach to reporting. For example in the UK Modern Slavery Act, businesses must report on "steps it has taken to assess and manage risks". This additional step is important to show that businesses do not have idle policies and procedures, but focus on what active steps are being taken to address the risks.

Secondly, the AG Consultation paper relies on the entity to comment on their (subjective) analysis of effectiveness of the policies and processes in place. We appreciate introducing objective measure of effectiveness may not be possible at this stage, requiring businesses to refer to measurable performance indicators (such as numbers of staff being trained) are helpful in terms to promote an independent comparison of progress and whether policies, procedures and steps taken are effective.

As outlined in the WFF Submission (para 4.4.11 - 4.4.12) our view is that mandated content is appropriate as it provides clarity for business on what is required to be covered when reporting. Mandated content also helps with analysis and benchmarking of reporting progress by companies. Mandated content will help to level the playing field for businesses doing the right thing and develop a minimum standard of corporate conduct.

Given the diverse range of companies who will be reporting, some areas of mandated content may not be relevant or applicable for a particular business. We recommend that the Australian Government follow the "Comply or Explain" principle used for the EU

Directive 2014/95/EU on disclosure of non-financial and diversity information. If a company does not pursue policies or take action in respect of a recommended mandated content, it must explain why in the statement.

It is appropriate that incidences of modern slavery detected within supply chains during the reporting period be disclosed by businesses for several reasons:

- (a) **No liability** - Division 12 of the Criminal Code (Cth) is clear that the criminal corporate liability provisions only apply to offences engaged by the business itself, not by its suppliers (who are not said to represent the body corporate as per an employee, agent or officer). The “spirit” of transparency reporting is that companies will not be named and shamed for disclosing incidences of modern slavery identified within their supply chain. There should be no penalties for searching, and then finding, modern slavery within supply chains. Rather a business should be encouraged to look to find modern slavery, and transparently report any incidences found, without fear of liability (whether reputational or legal). In recent years we have noticed a considerable shift away from the traditional “naming and shaming” approach. Instead civil society organisations are working with and partnering with businesses and governments to tackle these complex transnational crimes.
- (b) **Shared interest** – disclosing risks and identification of supply chain abuses is important information to share on a pre-competitive basis. Many lower tier suppliers (where the risks of slavery are highest) are shared suppliers. Businesses have a shared interest in clean supply chains. In order to ensure that reporting laws have impact in addressing these crimes and protecting victims, transparency should be encouraged, and where possible facilitated by clear laws.

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

Walk Free is concerned at the development of some confusion around the function of independent oversight of anti-slavery efforts in Australia.

The Federal Inquiry’s terms of reference and considerations, and the broader debate over the need for an Australian Modern Slavery Act, have focussed both on supply chain transparency and the strengthening of Australia’s domestic responses to modern slavery. The remit of this Attorney General’s consultation has a narrower focus, which is limited to the Government’s proposed ‘Modern Slavery in Supply Chains Reporting Requirement’.

The submissions of both Walk Free and many others to the Inquiry argued for an Australian Modern Slavery Act to include the creation of an office of an Independent Anti-Slavery Commissioner based on the UK Act’s provision. The focus of those submissions was on the proposed Commissioner’s role in encouraging good practise and the oversight of government stakeholders with responsibilities in combatting the crime of modern slavery. Under the current consultation terms of reference there is no consideration of the role of an Independent Anti-Slavery Commissioner as envisaged by Walk Free or as established in the UK Act.

Oversight and management of the processes by which businesses meet their obligations under the legislation to report on modern slavery in their supply chains is integral to the operation of the legislation. It is fundamentally important, if this legislation is to be effective, that all reports are publicly available, free and easily accessible. In that way civil society, the private sector and others will be able to have the requisite oversight to assess, review and rate performance and impact.

Walk Free expect that management of the reporting requirement and repository would be the responsibility of the relevant government department, the Attorney General’s

Department. Oversight would be through the department's reporting responsibilities to the Minister, and to the Parliament. Walk Free has not given detailed consideration as to whether or not further official independent oversight over the reporting requirement and repository would be required in these circumstances.

Walk Free continues to strongly advocate for a more comprehensive response from the Government which has, as part of a new Australian Modern Slavery Act, both business supply chain reporting and an enhanced Australian domestic response that includes the creation of an office of an Independent Anti-Slavery Commissioner.

If that were to occur we consider that the UK Act provides an excellent model for Australia to follow in establishing an Australian office of an Independent Anti-Slavery Commissioner. The UK Office of an Independent Anti-Slavery Commissioner has the general functions of encouraging good practice in the prevention, detection, investigation and prosecution of slavery and human trafficking offences, and identifying the victims (section 41 of the UK Act). The UK Commissioner has oversight over the range of government stakeholders who are involved in combatting the crimes of modern slavery. Under section 43 of the UK Act public authorities are under a duty to co-operate with the UK Commissioner. Section 44 of the UK Act expressly provides the UK Commissioner cannot exercise any function in relation to an individual case.

Commissioner Hyland's top 5 priorities (as outlined in the recent Annual Report for period 1 October 2016 to 30 September 2017) are (i) victim identification and care, (ii) driving an improved law enforcement and criminal justice response, (iii) promoting best practice in partnership working, (iv) private sector engagement to encourage supply chain transparency and combat labour exploitation and (v) international collaboration.

3. *"How should a central repository for Modern Slavery Statements be established and what functions should it include? Should the repository be run by the Government or a third party?"*

In the WFF Submission (para 4.5.4 - 4.5.5) we considered whether the office of an Independent Anti-Slavery Commissioner would be the appropriate home for the repository. Whilst the Office of a Commissioner could provide independence needed to have oversight of the registry, we have concerns whether the Commissioner's role could be undermined by a perception of the role as being the "policeman" of the statements and registry.

The current UK Anti-Slavery Commissioner, Mr Kevin Hyland, has strongly asserted that the office should not maintain nor manage the repository as it would risk him becoming the adjudicator of statements (para 3.91 of the Interim Report of the Inquiry, August 2017). We are sympathetic to his concerns and suggest it may be preferable that the Attorney-General's Department should maintain, manage and have oversight of any central repository for modern slavery statements.

If you have any questions, please do not hesitate to contact [REDACTED] or [REDACTED].

Yours faithfully,

WALK FREE FOUNDATION