

Submission to the Australian Government from Unseen UK

With reference to the United Kingdom's Modern Slavery Act 2015 and to relevant findings from the Joint Standing Committee on Foreign Affairs, Defence and Trade's report, Trading Lives: Modern Day Human Trafficking, the Committee shall examine whether Australia should adopt a comparable Modern Slavery Act.

The Committee shall have particular regard to:

- 1. The nature and extent of modern slavery (including slavery, forced labour and wage exploitation, involuntary servitude, debt bondage, human trafficking, forced marriage and other slavery-like exploitation) both in Australia and globally;*
- 2. The prevalence of modern slavery in the domestic and global supply chains of companies, businesses and organisations operating in Australia;*
- 3. Identifying international best practice employed by governments, companies, businesses and organisations to prevent modern slavery in domestic and global supply chains, with a view to strengthening Australian legislation;*
- 4. The implications for Australia's visa regime, and conformity with the Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children regarding federal compensation for victims of modern slavery;*
- 5. 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;*
- 6. Whether a Modern Slavery Act should be introduced in Australia; and*

Any other related matters.

About Unseen

Unseen, an award-winning UK modern slavery charity, is working towards a world without slavery by providing direct survivor support services, equipping stakeholders and influencing systemic change. The charity provides a unique perspective on supply chain transparency. CEO Andrew Wallis OBE and Executive Director Justine Currell both played a major role in influencing and developing the Modern Slavery Act, including Section 54 'Transparency in Supply Chains etc.'. As editor of the Centre for Social Justice report 'It Happens Here', Andrew helped to instigate a step change in the Government's approach to tackling this horrendous crime. He lobbied tirelessly to ensure the UK Government considered this issue and factored it into their thinking. Justine was the senior policy lead at the Home Office, responsible for developing the Modern Slavery Act, including the transparency provision and guidance. Justine pressed Ministers internally to maximise the opportunities afforded by the Modern Slavery Act to ensure the private sector took ownership and responsibility of tackling this horrendous human rights issue. Both are ideally placed to provide international businesses, stakeholders and partners with an inside and in-depth understanding of why and how the Modern Slavery Act was established; how other jurisdictions can work collaboratively to benefit both business and those in exploitative situations; and what businesses can do to effectively comply with the

requirements and strengthen their approach over time. Our consultation submission is based on our collective understanding of how the legislation was developed, the discussions had with key stakeholders, NGOs and business, and the initial impact of the legislation on the enforcement and business community.

The nature and extent of modern slavery (including slavery, forced labour and wage exploitation, involuntary servitude, debt bondage, human trafficking, forced marriage and other slavery-like exploitation) both in Australia and globally

Modern Slavery is a truly international crime that knows no boundaries. It is prevalent in all countries across the globe. The International Labour Organisation (ILO) estimates there are approximately 21m in forced labour globally and the Global Slavery Index estimates that there could be more than 45m people in slavery across the world, with 4,300 estimated in Australia (with a population of circa 24m). The ILO conservatively estimate that the annual profit from modern slavery is \$150Bn per annum. Modern Slavery takes many forms and encompasses sexual exploitation, labour exploitation, criminal exploitation, forced or compulsory labour, slavery, organ trafficking and domestic servitude. Our insatiable demand for cheap goods, labour, sex, organs and services drives this criminal activity.

It is a crime often orchestrated by clever criminal gangs who prey on the vulnerable to make a profit, having no regard for the people they exploit. Our own experience and understanding of the issue in the UK has highlighted the complexity and diversity of this crime. In 2014, the UK Government estimated that there were between 10,000-13,000 victims of modern slavery in the UK at any one time. We believe this estimate is very conservative and could be up to five or ten times greater. It is likely that any new assessment of the issue of modern slavery in Australia would also be limited and potentially under-estimated. This is because modern slavery is a hidden crime. It happens under the radar, in domestic settings, factories, in fields and can be difficult to detect. The victims are fearful, often have encountered or been threatened with violence, and various control methods are used to ensure they do not report their circumstances to the authorities.

The prevalence of modern slavery in the domestic and global supply chains of companies, businesses and organisations operating in Australia

Numerous Australian companies have been caught up in some of the most preeminent global supply chain issues involving forced and child labour – two of many examples are highlighted.

International supply chains of Aldi, Coles, IGA and Woolworths were all implicated in the Thai Prawn slave trade.¹

¹ <http://www.dailymail.co.uk/news/article-3359910/Inside-prawn-slave-trade-Child-labour-abuses-uncovered-Thai-seafood-supplier-stocks-Australian-supermarkets-Aldi-Coles-Woolworths-IGA.html>

Australian farms and factories supplying Woolworths, Coles, Aldi, IGA and Costco and fast food outlets KFC, Red Rooster and Subway were all implicated in labour exploitation².

Identifying international best practice employed by governments, companies, businesses and organisations to prevent modern slavery in domestic and global supply chains, with a view to strengthening Australian legislation

Modern slavery permeates supply chains across the world, including in Australia. Modern slavery is based on a low risk, high profit operating model where individuals are exploited repeatedly for the benefit of others. Within complex global supply chains the opportunities for criminals to exploit others increases the higher the number supply chain tiers. Those at the top of the chain often do not have a firm grip on the operating practices of those sub-contracting beneath them. Sectors employing a low skilled, low paid workforce are often predicated on temporary and short term labour, provided through recruitment agencies, often charging recruitment fees. Each step in this recruitment process increases the risk of modern slavery further down the supply chain.

Since its introduction, the UK's Transparency in Supply Chains provision in Section 54 of the Modern Slavery Act 2015 has generated much interest from businesses and Governments from around the globe. The provision requires any organisation carrying on a business in the UK, providing goods or services, and with a total worldwide turnover of £36m or more to publish an annual statement. The annual statement must set out the steps an organisation has taken, whether positive or negative, be approved by the board and signed by a director, and published on the organisation's website with a link in a prominent place on the home page.

Some in the UK have argued that the legislation is not strong enough because it doesn't clearly prescribe what actions a business must take. However, business has come out strongly to support the legislation, citing the need for legislation that allows for differing operational practices and encourages a race to the top. The legislation is both ambitious and innovative – ambitious because it has such a wide reach and innovative because it can be applied effectively across all sectors without being overly prescriptive or burdensome. The key is to enable the right behavioural change and allow business to drive the agenda, rather than creating another tick box exercise that provides room for a minimalistic response. It is about cultural shift and not mere compliance.

The fact is that modern slavery has the potential to infiltrate any supply chain and any organisation, regardless of location or sector. The important factor is how business deals with that risk, by having the right policies and procedures in place, applying due diligence and assessing where the risk is greatest. Taking a proportionate and iterative response will allow business to build and strengthen their approach over time. Engaging positively with the issue (through policy as well as any potential legislation) and being as transparent as possible will place business in the best position possible. The fact that a transparency statement must be approved by the Board and signed by

² <http://www.abc.net.au/news/2015-05-04/supermarkets-food-outlets-exploit-black-market-migrant-workers/6441496>

a director has pushed the issue of modern slavery and forced labour into the Board room as a key aspect of a business's corporate response.

As more countries around the world consider introducing transparency legislation the key will be consistency, to avoid business complying with wildly different non-financial reporting requirements across a range of jurisdictions. It is vital that businesses get their voices heard internationally to ensure that, as other countries consider introducing transparency requirements, they are aligned to make it easier for businesses working across international boundaries to comply.

Counterparts in California, where transparency legislation was passed in 2010 and came into effect in 2012, and Washington where a Federal Bill was introduced in 2015 (but not passed), have been intrigued at how the UK has worked collaboratively with business to introduce Section 54. The UK Government worked with, and heard business on this issue recognising the potential for real and sustained change. Unseen's Executive Director, Justine Currell, led these discussions as she was the Senior Policy Adviser in the Home Office at the time. If other countries take a wildly different approach the uniqueness of the UK legislation will be lost and we will be faced with another onerous tick-box exercise that does nothing more than keep legal counsel busy advising businesses to do the bare minimum. Business needs to prove that overly prescriptive requirements do not drive the right behaviour and the UK's approach of adopting a race to the top can work. The UK's approach attempts to show that less prescription does not necessarily mean less action.

Through our work with businesses we seek to drive best practice both in the UK and internationally. Unseen recognises the importance of sector collaboration to ensure that businesses working in the same sector, potentially using the same suppliers, maximise their resources to mitigate risks and tackle supply chain issues. Auditing suppliers, sub-contractors and factories can play an important part in ensuring supply chains are free from slavery, but it is important that businesses do not solely rely on a strategy based on limited, time-bound audits but focus on developing policies, protocols and procedures designed to mitigate risk and provide effective remediation.

The implications for Australia's visa regime, and conformity with the Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children regarding federal compensation for victims of modern slavery

Regardless of a country's visa regime the potential for modern slavery to occur still exists. Although many victims of modern slavery are foreign nationals, statistics show that victims from indigenous populations are also prevalent. Any solution to tackling modern slavery needs to take account of this. The visa regime in Australia is similar to the UK in that a 45-day reflection period is initially afforded to any victim regardless of status. Following the 45 days, a further visa may be awarded where a potential victim is supporting a police investigation.

Unseen believes that compensation must be made available for confirmed victims of modern slavery. The UK approach is to provide compensation by way of a reparation order – this provides a focus for compensating victims but is only available where

assets have been identified and seized in a criminal case. Compensation outside of this is limited and not available based on the financial loss of the individual victim. So, in effect, victims may be exploited, providing a huge profit for the exploiters but little or no income for themselves, and likely no compensation for their loss or trauma, once the exploitation ends.

Victims of modern slavery, however, may apply to the Criminal Injuries Compensation Authority (CICA), a government-funded scheme that provides victims of violent crimes committed within England, Scotland or Wales, with compensation for the physical or psychological injuries sustained as a result of the crime. Access to CICA is important in those cases in which compensation from the perpetrator is not possible, for example because the exploiter cannot be identified, has left the UK, or has no assets. For many victims of modern slavery, CICA is the only avenue available for obtaining compensation for the exploitation they have suffered. However, access to the CICA scheme can prove troublesome for victims of modern slavery as the scheme is only available to victims of violent crimes. Many victims of forced labour and labour exploitation are subjected to psychological control, such as coercion, deception or debt bondage, but may not be subject to actual physical violence.

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

The UK's Modern Slavery Act was designed providing a focus on tackling human trafficking and modern slavery by cracking down on the criminals and protecting the victims of this horrendous crime. The UK Government wanted to send a strong signal to those involved in this despicable practice that the UK will not tolerate such human rights abuses. The Act has strengthened the UK's approach to tackling the criminals but it has failed to provide effective protections for victims. One of the primary goals of the Act was to bring together the disparate but relevant offences relating to these crimes. This has resulted in a much greater focus and understanding of the crimes and the offences being committed. The introduction of potential life sentences for all modern slavery crimes means that criminals are under no illusion that these types of crimes are some of the most serious on the statute book. Coupled with training and awareness-raising – vital for legislation to be fully effective – we expect to see more prosecutions and convictions and lengthier sentences handed out by judges.

The Act also introduced Slavery and Trafficking Risk and Prevention Orders designed to restrict the activities of those at risk of offending and those who have been convicted of modern slavery offences. To date around 25 risk and prevention orders have been applied effectively preventing individuals from undertaking activities consistent with their criminal activities. Law enforcement agencies recognise these orders as providing an important way of preventing criminals from continuing their criminal behaviour whilst under investigation and also upon release from prison.

Recognising the primary reason why criminals perpetrate, for financial gain, the Modern Slavery Act also made all offences in the Act lifestyle offences for the purpose of asset seizure. This ensures that where a criminal is proven to have built a lifestyle on modern slavery offences the court can remove **all** of their assets, not just those directly relevant to their criminal activity. This sends out a strong signal that modern

slavery will not be tolerated in the UK and criminals will be stripped of their resources. The challenge here is to identify and seize the assets of perpetrators quickly to avoid them being moved or lost. We would therefore strongly advocate for police investigations to always begin with parallel financial investigations, as a priority, into the perpetrators.

The Act also introduced the role of an Independent Anti-Slavery Commissioner to promote good practice in the prevention, detection, investigation and prosecution of modern slavery offences and in the effective identification of potential victims. This is a key role and requires an individual who is both a strategic thinker and an effective collaborator, rather than an operational tactician. The UK appointed a Commissioner in November 2014 and so our assessment of the effectiveness of this role is limited. However, Australia would certainly benefit from such a role if the right individual was appointed and had the required strategic skills to change the landscape by working with and through others.

Section 54 of the Modern Slavery Act was developed in consultation with business to ensure that the provision resulted in a positive change in corporate behaviour. It has been hailed as a world-leading piece of legislation. The lack of prescription in Section 54 of the Act means that businesses can tailor their response based on their operations and the sector they work in. Since the introduction of Section 54, many businesses have started to have conversations and take action for the first time. This is very encouraging but it will take some time before we start to see a real step change in the way corporates approach this issue. Unseen's view is to support businesses to understand and address the issues through this transitional period rather than beating business with a stick before they have had an opportunity to show how the legislation has changed attitudes and behaviour. Many businesses have reported to us that the legislation is ground breaking and delivering a seismic change in how businesses approach modern slavery and transparency in general.

Although the Act introduced several victims provisions these have been viewed as less effective than the law enforcement-focused provisions. However, the Act includes three important victim-focused provisions: special measures in court – allowing victims to give evidence via video-link or from behind a screen; presumption about age – ensuring that where the age of a victim is unknown but they appear to be under 18 they will be treated as a child for the purposes of receiving care and support; and reparation orders for victims to ensure that where assets are seized payment of compensation to the victim is prioritised.

However, the Act failed to set out the care and support required to ensure victims get the help they need and deserve. This has been viewed by many NGOs, including Unseen as a missed opportunity. Currently, victims' provisions are provided through an administrative framework rather than a legislative one, based on the requirements of the Council of Europe Convention and the EU Directive on Combatting Trafficking in Human Beings. At the time the Act was introduced, the UK Government was still considering changes to its identification and support mechanism (called the National Referral Mechanism). This resulted in an enabling power being introduced to allow for secondary legislation to be developed at a later date. It remains to be seen whether the UK Government use this legislation to strengthen the basis of victims' provisions and put them onto a statutory footing. A further provision was included to provide

statutory guidance on the effective identification of potential victims – this has yet to be used, although guidance is currently being drafted by the UK Home Office.

As the UK Government failed to include a clear message on the importance of protecting victims they have failed to maximise the opportunity to show how vital it is to support the victim to prevent further crime. If we don't look after the victims they will not be able to recover well and feel confident to come forward to the police and give evidence. One of the downsides to the UK approach is victim care – lack of support at the front end and equally a cliff edge once a person is confirmed as a victim of modern slavery. This increases their plight and makes them more susceptible to re-trafficking. Although any action to remove a potential victim from the UK is halted for a minimum period of 45 days and a temporary visa may be given where a victim is required to support an investigation, the UK does not offer visas to confirmed victims of modern slavery unless they successfully claim asylum. On the subject of Overseas Domestic Workers we support the findings of the James Ewins QC review and recommendations³.

Whether a Modern Slavery Act should be introduced in Australia

The UK's Modern Slavery Act 2015 has transformed the way in which the issue of human trafficking and slavery is viewed by the UK Government, law enforcement agencies, businesses and, increasingly the public. From the perspective of business, the landscape has changed dramatically with more businesses focusing on the issue and taking steps to mitigate risks in their supply chains.

Unseen set up and now runs the UK-wide Modern Slavery Helpline and Resource Centre. The Helpline is confidential and available 27/7, 365 days a year for anyone wanting help, information or support regarding any modern slavery issue. The Helpline is a vital tool in the fight against modern slavery. All four UK Governments support the helpline which is used by potential victims, statutory agencies, businesses and the public. The helpline, on average receives 75 calls per week⁴ and has worked hard with police forces the National Crime Agency, the Gangmasters Labour Abuse Authority, Border Force and NGOs to raise awareness of the issue and ensure that people know what to do if they suspect a situation of modern slavery. Having practical, effective channels available to provide advice and guidance, such as a helpline – independent from, but supported by the Government – is a very effective way of raising awareness and helps to implement the intentions of legislation which, in isolation, can have limited effect. As a resource, the Helpline not only provides support and guidance but is also a fundamental part of the UK's prevention strategy. The Helpline does this by sharing as much information as possible with law enforcement agencies to prevent further people from becoming victims or from being re-trafficked.

³ <https://www.gov.uk/government/publications/overseas-domestic-workers-visa-independent-review>

⁴ First six months figures from UK Helpline

1047 calls

125 online reports

14% self-report on Modern Slavery cases

46% direct contact on Modern Slavery cases

Total cases - 866

Modern Slavery cases - 372

No of Potential Victims of Modern Slavery indicated - 1368

In conclusion, a modern slavery act in Australia would ensure that the issue of slavery and trafficking is better understood as an international crime that has consequences for the people of Australia. It will provide the Australian Government with the opportunity to demonstrate that Australia views such abuse and exploitation as unacceptable and it sends out a strong signal that the Australian government will not tolerate such abuse. Unseen recommends that, alongside effective legislation, the Australian government should also consider practical solutions such as a national helpline, awareness-raising campaigns, and effective training for all front-line personnel who may come into contact with a potential victim. Streamlining and strengthening domestic legislation is certainly important but it requires effective operational understanding and implementation to maximise its impact.

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