

Submission by the Ethical Trading Initiative to the Australian Parliament's Joint Standing Committee on Foreign Affairs, Defence and Trade Inquiry into establishing a Modern Slavery Act in Australia

Summary

This submission includes:

- A short description of the Ethical Trading Initiative. This will provide a context for our submission. It highlights ETI's 20 years of expertise and experience in relation to tackling modern slavery in global supply chains.
- A summary of our engagement in the UK Modern Slavery Act, lessons learnt and analysis of its effectiveness
- ETI's recommendations on establishing legislation in Australia on modern slavery
- Background research and evidence from leading companies on their policies, practices and analysis one year after the UK Modern Slavery Act was enacted.

Information about the Ethical Trading Initiative

1. The [Ethical Trading Initiative](#) (ETI) is a leading multi-stakeholder alliance of companies, trades unions and NGOs focused on improving labour rights and working conditions in global supply chains. ETI's 90 corporate members include major brands and retailers based in the UK and abroad, with a combined turnover of more than £180 billion. Its union members include global union federations such as the IUF and IndustriALL as well as the ITUC that represents workers worldwide at the ILO tripartite forums. ETI's NGO members include large international civil society organisations Oxfam and specialised agencies such as Anti Slavery International. .
2. Companies that join ETI have an obligation to demonstrate their commitment and actions to improve labour rights on a continuous improvement cycle. The ETI Base Code is a globally recognised voluntary code of practice based on nine key ILO Conventions that include forced labour, child labour, freedom of association and collective bargaining. Many of our members are at the forefront of both voluntary and mandatory initiatives to eradicate slavery in global supply chains
3. ETI works to promote the implementation of the UN Guiding Principles on Business and Human Rights (the UNGPs) in relation to labour rights. Its primary emphasis is on the corporate responsibility to RESPECT human rights, using a multi-stakeholder engagement model and building capacity for robust due diligence processes.
4. ETI also provides an important platform for advancing the PROTECT pillar of the UNGPs through collective advocacy by companies, trades unions, NGOs and other key stakeholders. Our policy advocacy efforts are premised on the requirement for governments to play their part in protecting human rights and to create an enabling environment for workers to be protected from exploitation and abuse, and that they have appropriate access to remedy through the judicial system.

5. ETI and its members and partner organisations played a significant role in advocating for the inclusion and strengthening of Section 54 the UK Modern Slavery Act 2015 focusing on Transparency in Supply Chains. This advocacy was based on the strong assertion by our members and other key stakeholders belief that smart legislation on transparency will help drive stronger and broader efforts to end abuse and exploitation of workers in supply chains and their own operations. The legislation requires companies with a turnover of £36m to make a public statement about the steps they are taking to address modern slavery and child labour in their supply chains and their own operations, covering goods as well as services. The fact that it has to be signed by Directors or the Board and published on the home page of their website is an important signal for businesses that they need to recognise modern slavery as a business-critical risk. Companies argued strongly that government should create a level playing field through the legislation. Without this, they argued, it would be very difficult for those committed to acting responsibly and ethically if they are facing unfair competition by unscrupulous businesses who don't play by the same rules.
6. A letter drafted by ETI to the Prime Minister signed by major high-street brands and retailers, trade unions, NGOs, the British Retail Consortium and other key civil society stakeholders was widely recognised as critical in persuading Ministers of the value of the TISC in the legislation.
7. We believe that engaging with a diverse set of stakeholders in agreeing a common position was, and remains extremely important for the success of the legislation. ETI together with others, engaged actively with parliamentarians, government officials in ongoing dialogue and consultation in the stages before the legislation was adopted. This process ensured that all the key stakeholders with a vested interest in eradicating modern slavery had a voice at the table, and that their own expertise informed both the policy advocacy messaging as well as the shape and content of the legislation itself. Whilst the Act does not go as far as many would have liked, it is an important starting point and has been catalytic – hailed by many as a 'game-changer'.

Response to the Inquiry's Terms of Reference

8. ETI strongly supports the Australian government in considering adoption of a Modern Slavery Act that includes a transparency in supply chain requirement. Our research, the highlights of which are captured below, demonstrates the extent to which the UK Modern Slavery Act has served as a catalyst for public advocacy and senior-level engagement with companies to address these issues. We believe that transparency is a strong driver to prompt companies to report on their actions. Leading companies in our membership recognise that they need to take a systematic approach to responsible business practice, and by so doing, the risks of modern slavery will be significantly reduced. Transparency drives a virtuous cycle of improvement as leading companies that are competitors are likely to engage in a race to the top, or at the very least, do not want to be exposed for failing to step up to the plate. This is particularly critical as modern slavery is a crime and companies need a social license to operate, as well as be held liable for perpetuating the problem or failing to act.
9. We believe the Australian government has an opportunity to build on the successes of the UK Modern Slavery Act's Section 54, and to show global leadership in strengthening the provisions of this legislation. Below we set out some ways in which we believe this could be strengthened.

10. The threshold in the UK of £36m turnover was felt to be an appropriate starting point for companies caught by the legislation requirement. But within the next few years, we hope this will be reviewed and lowered. Many of our member companies are increasingly calling for the threshold to be lower, as they feel that the risk of slavery is as great, if not greater, with smaller companies, and that a level playing field is needed for companies of all sizes up and down the supply chain.
11. ETI encourages the Australian Government to establish and maintain a register of modern slavery statements, and to require all companies to post their statements in this repository as well as on their own websites. A central register is critical for government and legislators to hold companies to account if they fail to comply with the law, to track the effectiveness of the legislation in driving change, and to monitor year-on-year progress. This register should be freely available, accessible and searchable by company size and sector. This would facilitate greater scrutiny of companies' statements, and expose those who fail to comply with the requirements of the Act.
12. The theory of change for a register is that by making statements readily available, civil society organisations, investors, parliamentarians, as well as government will be able to monitor compliance with the law, assess the quality of statements, and compare statements between companies operating in similar sectors and of similar sizes. This will encourage companies to act responsibly, to learn from each other and encourage better practice. It should also educate key stakeholders to distinguish between those statements that demonstrate serious intent and action on modern slavery from those that say and do as little as possible.
13. ETI therefore agrees with stakeholders such as the ACTU (submission to this Inquiry dated 04/05/17) who have called for a central register of statements to be hosted by a Government agency. This would allow Australian trade unions, civil society organisations, investors, the public at large, as well as all levels of government to monitor whether companies that are meant to report have done so, and to assess the quality of their reporting. They have called for sufficient resources are required to conduct appropriate monitoring and evaluation around the enforcement of and compliance. This echoes ETI's own position when we advocated with government on the UK Modern Slavery Act.
14. ETI also strongly encourages the Australian government to publish a list of companies required to report under a Transparency and Supply Chain clause of a new Modern Slavery Act to be enacted. Civil society organisations, investors and the public at large can only hold companies to account if they know which companies are failing to comply with the law. However, there is currently no list of companies required to report under the legislation in the UK, and no mechanism to check who is reporting and who is not. The absence of these in the UK is regrettable, and it has meant that civil society actors have had to step into the breach. The UK's admirable commitment to global leadership on modern slavery could have had greater impact if it was able to monitor and report on how its own legislation was working in practice.
15. ETI is a founding member of the Business and Human Rights Resource Centre's Modern Slavery Registry Advisory Committee, and provides oversight and advice on its operation. ETI helped define the criteria for the Modern Slavery Registry, and has encouraged its members to voluntarily post their statements on this website. We believe it is a robust, independent civil-society initiative that credibility with and the support of critical stakeholders that have been engaged in modern slavery work over many years. Company statements will be posted on the site even if they do not give

consent, and we believe this element is essential to the spirit of public transparency enshrined in the legislation. ETI is also part of the submission to the Joint Committee's enquiry through the Business and Human Rights Resource Centre's Central Registry Advisory Committee.

16. ETI would also encourage the Australian Government to introduce legislation requiring corporate human rights due diligence. This would take the legislation further than the UK Modern Slavery Act, and could significantly strengthen the application and relevance of the legislation. It would effectively require companies not only to report, but also to act. Regulation relating to the conduct of businesses with regards to human rights due diligence requiring mitigation of risks around labour rights abuses and exploitation would contribute to international efforts to promote human rights in business supply chains. It would also demonstrate leadership in government's role to PROTECT and companies responsibility to RESPECT human rights, as set out in the UN Guiding Principles on Business and Human Rights.
17. ETI has been supporting Baroness Young of Hornsey in advocating for the Private Members' Bill which she first introduced in the UK House of Lords in June 2016 to strengthen and broaden the application of the transparency in supply chains provision of the Modern Slavery Act. In relation to public procurement processes, the Bill called for new requirements for government agencies to produce modern slavery reports, and for the introduction of mandatory due diligence in government contracts, similar to the US presidential order aimed at prevention of trafficking in federal contracts. ETI therefore supports the Advisory Committee's call for Australian legislation to include a provision requiring companies bidding for public sector contracts, or seeking export credit guarantees, to publish a compliant modern slavery statement as a means to incentivise better performance from business on modern slavery. ETI also echoes the recommendations set out by the Advisory Committee that the Australian government should consider including in the modern slavery act provisions that would enable victims of modern slavery to access civil and criminal remedy in Australia.
18. ETI has registered significant interest in the provisions of the UK Modern Slavery Act in various supply chains in which it is working. For example, in Tamil Nadu, southern India, which is the powerhouse of India's garment and textile export sector, its mainly female workforce has been subject to severe labour exploitation, including bonded labour. The Act has resulted in greater attention, focus and resources being dedicated to tackling forced labour in cotton mills in Tamil Nadu. Any legislation developed by the Australian Government should apply trans-nationally, and Australian companies operating abroad should also have to disclose specific risks both in their domestic supply chains and overseas.
19. ETI and its membership take the view that improved regulation and transparency around modern slavery is helping to create a level playing field and is slowly rooting out businesses that derive competitive advantage from modern slavery. Without a level playing field, there is a risk that the responsible businesses that have helped to drive this agenda may become less engaged if they feel their concerns are not being addressed.
20. The ETI believes that improved measures could be introduced in Australia that would strengthen the application of an equivalent Act. ETI and its members supported the TISC requirement in part to ensure that responsible businesses were not at an unfair disadvantage to less scrupulous companies.

Background evidence:

ETI research into corporate practices and leadership on modern slavery

21. In 2016, ETI and Hult International Business School conducted a second joint research study following the legislation to investigate corporate attitudes and responses to modern slavery. The report, entitled [Corporate Leadership on Modern Slavery](#), was published at the first anniversary of the Act. The research involved 71 prominent brands and retailers and included in-depth interviews and a survey. The research highlighted the impact of the Modern Slavery Act on companies operating in the UK. This research is highly relevant to this inquiry, in particular, TOR 2 on the prevalence of modern slavery in the domestic and global supply chains of companies, and TOR 5 on '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'.
22. The research indicated that CEO and senior executive engagement on issues around modern slavery doubled in the year after the Act was passed. The engagement of senior leaders is seen by all companies as crucial in driving effective responses and overcoming critical challenges, and most companies have made training and awareness-raising for senior leaders a priority. Senior leaders were most engaged – and allocated more resources – when they encountered an issue for themselves. Culture change in companies was also cited as extremely important.
23. 77% of companies felt that there is a likelihood of modern slavery occurring at some stage in their supply chains – particularly in high-risk countries or sectors and at the lower stages of the chain. However, the complexity of supply chains, as well as the often hidden nature of the modern slavery, makes it difficult to identify and address. This presents reputational and strategic risks for the business, not to mention the human rights risks to workers themselves.
24. The research indicated that the Modern Slavery Act is having a galvanising effect; addressing modern slavery is now becoming a business-critical issue – for credibility with customers, investors, NGOs, and the general public. The biggest driver for company action is reputational risk (97%), but the human rights case (86%), customer engagement (85%), and investor concerns (25%) were also cited as important.
25. The research also found that companies are making significant progress in addressing modern slavery. More companies know what they need to do, but find some activities harder to put into practice. 90% of respondents saw due diligence on core labour standards as crucial to tackling modern slavery. Leading companies are increasingly conducting human rights risk analyses by country, sector or type of labour and prioritizing their salient risks accordingly. 71% now have these processes formalized and embedded in their operations.
26. Within leading ETI member companies, the conversation has now shifted since the Act was passed from a sense that the problem is “out there”, to “this is our problem”. Companies also recognise that addressing modern slavery is not about short-term risk management, but about changing the way the business thinks about human rights, and what systems need to be place to change practice in the long term.
27. The ETI recognises that the Modern Slavery Act has prompted action, but that the legislation alone will not bring about significant reductions in modern slavery. Also, the issue of modern slavery has been an important entry-point for wider discussions

around business and human rights and about labour standards more generally. ETI does not only focus on slavery and the very worst forms of corporate abuses. It lies at the extreme end of a spectrum of abuse, exploitation and discrimination against workers, but the incidence of modern slavery is also directly related to wages, working hours, health and safety, freedom of association and collective bargaining rights and other core labour standards. ETI is working to promote human rights due diligence approaches that will enable companies to identify and mitigate risks to workers and other stakeholders in line with the UNGPs.

28. The research found that responsibility for conducting ethical trade within companies escalated in the year after the Act was passed. Communication between companies and their suppliers increased by 58%, and companies are now collaborating 50% more with peers, NGOs and multi-stakeholder initiatives (MSIs) on issues relating to modern slavery. In addition, 50% more companies were seeking external advice and expertise since the Act was passed.

Should you require further information about the research or programmatic work that ETI is conducting around modern slavery, or on our tripartite, multi-stakeholder approach to advocacy relating to the Modern Slavery Act, we would be very happy to assist.

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