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JOINT STANDING COMMITTEE ON FOREIGN AFFAIRS, DEFENCE AND  
TRADE: INQUIRY INTO ESTABLISHING A MODERN SLAVERY ACT IN  
AUSTRALIA

The Australian National University Corporate Accountability Project (ANU CAP) welcomes the opportunity to provide a submission to the Inquiry into Establishing a Modern Slavery Act in Australia.

The ANU Law Reform and Social Justice (LRSJ) is a program at the ANU College of Law that supports the integration of law reform and principles of social justice into teaching, research and study across the College. Members of the group are ANU law students, who are engaged with a broad range of projects with the aim of exploring law's complex role in society, and the part that lawyers play in using and improving law to promote both social justice and social stability.

ANU CAP is a student research group formed within the LRSJ program that aims to increase access to information and raise awareness on issues of corporate accountability. Our submission will explore the sixth, and the fifth term of reference of this inquiry. This submission will only focus on the Transparency in Supply Chains Provision (s 54) of the United Kingdom *Modern Slavery Act 2015*.<sup>1</sup>

**We make the following recommendations:**

- I. A Modern Slavery Act similar to the United Kingdom *Modern Slavery Act 2015* (hereafter, *UKMSA*) should be enacted in Australia because:

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<sup>1</sup> *Modern Slavery Act 2015* (UK) ("*UKMSA*").

- a. The *Criminal Code Act 1995*<sup>2</sup> does not adequately address modern slavery in corporate supply chains;
  - b. The *UKMSA* has achieved several positive results; and
  - c. Australia should take the initiative to be a leader in the elimination of modern slavery in the Asia-Pacific Region.
- II. If a Modern Slavery Act similar to the *UKMSA* is enacted in Australia, ANU CAP recommends that the following amendments be made:
- a. Mandatory minimum disclosure requirements be included (page 9);
  - b. A government-managed central repository of disclosure statements be established, and made available to the public (page 11); and
  - c. An Independent Anti-Slavery Commissioner be created (page 13).

If we can provide further information, please do not hesitate to contact us at:

On behalf of *ANU Corporate Accountability Project*,  
Angela Chen, Sophia Collins, and Maddalena Easterbrook

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<sup>2</sup> *Criminal Code Act 1995* (Cth) (“*Criminal Code*”).

## I INTRODUCTION

Modern slavery<sup>3</sup> is an issue that affects Australians directly, and as consumers and investors. The investigation, detection, prosecution and prevention<sup>4</sup> of modern slavery in complex global supply chains is increasingly difficult. In response, there is a growing global trend, evidenced in jurisdictions such as the United Kingdom, France, and California, to adopt “soft” and “hard” laws to encourage corporations to be more transparent and accountable for modern slavery in their supply chains.

Australian law prohibits modern slavery. However, there are gaps in the current laws, which could be better addressed by introducing a Modern Slavery Act in Australia, similar to the *UKMSA*.

### A *Modern Slavery in Australia*

Modern slavery unquestionably impacts the lives of enslaved individuals. However, this immoral practice also impacts the Australian community broadly. As consumers of and investors in products created or tainted by modern slavery, Australians are complicit in funding slavery. The 2016 Global Slavery Index stated that Australia had an estimated 0.018% of the population or approximately 4,300 individuals who are subject to some form of modern slavery.<sup>5</sup> These individuals are mostly “migrant workers on temporary work visas especially within retail, cleaning services, construction and agriculture.”<sup>6</sup> While this is a small percentage of the population, any

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<sup>3</sup> Modern Slavery is not expressly defined in the *UKMSA* or the *Criminal Code*. In the context of our submission, modern slavery encompasses the broad definitions stated in Article 4 of the *Convention for the Protection of Human Rights and Fundamental Freedoms* (*Convention for the Protection of Human Rights and Fundamental Freedoms*, opened for signature on 4 November 1950, 213 UNTS 221 (entered into force 3 September 1953) as amended by Protocol No 14bis to the Convention for the Protection of Human Rights and Fundamental Freedoms, opened for signature 27 May 2009, CETS No 204 (entered into force 1 September 2009)) and Division 270 and 271 of the *Criminal Code*.

<sup>4</sup> Joint Standing Committee on Foreign Affairs, Defence and Trade, The Parliament of the Commonwealth of Australia, *Trading Lives: Modern Day Human Trafficking Inquiry of the Human Rights Sub-Committee* (2013), 31, 4.2 (“Trading Lives: Modern Day Human Trafficking”).

<sup>5</sup> Global Slavery Index, *Global Findings* (2016) Global Slavery index <<http://www.globalslaveryindex.org/findings/?gclid=CJvfwLjNz9ECFRVvvAodiMkMUA>>.

<sup>6</sup> Leon Olsen, “Are your directors ready for the transparency provision of the UK Modern Slavery Act?” (2016) *Governance Directions*, 312.

element of modern slavery in Australia, or in the supply chains of companies doing business in Australia, should not be tolerated.

The Department of Foreign Affairs *Trading Lives: Modern Day Human Trafficking* report highlights that Australian companies are perpetuating modern slavery overseas by importing goods such as footwear, cocoa, bricks, and rubber which were produced with a “high risk of forced labour or child labour”.<sup>7</sup> Enacting legislation similar to the *UKMSA* would allow Australian consumers and investors to make ethical, informed choices about the business practices they want to support. It would also deter Australian companies from doing business with suppliers who do not prohibit forced labour. In this way, such legislation would ensure that Australia takes a strong stand against these practices.

## B      *Current Provisions in Australia That Address Modern Slavery*

In Australia, modern slavery is a criminal offence, although the legislation does not refer to in these terms. It is mainly regulated under Division 270 and 271 of the *Criminal Code Act 1995*. Penalties for offences within both divisions range from 4<sup>8</sup> to 25<sup>9</sup> years of imprisonment. Division 270 criminalises “slavery<sup>10</sup> and slavery-like conditions”<sup>11</sup> such as servitude,<sup>12</sup> forced labour,<sup>13</sup> deceptive recruiting for labour or services<sup>14</sup> and forced marriage.<sup>15</sup> Division 271 criminalises “offences relating to trafficking in persons”<sup>16</sup> such as human trafficking,<sup>17</sup> organ trafficking,<sup>18</sup> harbouring victims,<sup>19</sup> and debt bondage.<sup>20</sup>

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<sup>7</sup> Joint Standing Committee on Foreign Affairs, Defence and Trade, above n 3 137, Appendix J.

<sup>8</sup> *Criminal Code Act 1995* (Cth) s 271.7F, 271.8.

<sup>9</sup> *Ibid* s 270.3, s 271.4, s 271.7.

<sup>10</sup> *Ibid* Division 270, Subdivision B.

<sup>11</sup> *Ibid* Division 270, Subdivision C.

<sup>12</sup> *Ibid* s 270.4.

<sup>13</sup> *Ibid* s 270.6.

<sup>14</sup> *Ibid* s 270.7.

<sup>15</sup> *Ibid* s 270.7A.

<sup>16</sup> *Ibid* Division 271, Subdivision B.

<sup>17</sup> *Ibid* s 271.2.

<sup>18</sup> *Ibid* s 271.7A-271.7E.

<sup>19</sup> *Ibid* s 271.7F.

<sup>20</sup> *Ibid* s 271.8.

## C      *The ‘Transparency in Supply Chains’ Provision in the UKMSA*

The Transparency in Supply Chains (hereafter, *TISC*) provisions of the *UKMSA* reflect a global trend towards increased corporate social responsibility.<sup>21</sup> The *TISC* provisions aim to ‘increase transparency’<sup>22</sup> about forced labour and human trafficking in corporate supply chains and create ‘competition to drive up standards’ amongst commercial organisations.<sup>23</sup> The provisions require commercial organisations to publish on their website,<sup>24</sup> and give to anyone who requires access to a copy,<sup>25</sup> an annual ‘slavery and human trafficking statement’ detailing the steps taken ‘to ensure that slavery and human trafficking is not taking place’<sup>26</sup> either ‘in any part of...[the organisation’s] own business’<sup>27</sup> or ‘in any of its supply chains.’<sup>28</sup> Even if an organisation has not taken such steps, it still must publish a statement.<sup>29</sup> A ‘director, designated member or partner’ must sign the statement before it is published.<sup>30</sup> These provisions are globally significant because of their broad application, applying to any commercial organisation supplying goods or services in the United Kingdom with a total annual turnover greater than £36 million.<sup>31</sup>

## II      **WHY A MODERN SLAVERY ACT SHOULD BE ESTABLISHED IN AUSTRALIA**

### A      *Inadequacy of the Criminal Code in Addressing Modern Slavery in Supply Chains*

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<sup>21</sup> *Business Supply Chain Transparency on Trafficking and Slavery Act of 2015*, HR 3226, 114 Congress (2015); *Transparency in Supply Chains Act of 2010*, Cal Civ Code § 1714.43 (Steinberg 2010); *Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups Text with EEA relevance* [2014] OJ L 330/1, art 19a (1); *Mandate of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises* HRC Res 8/7, 28<sup>th</sup> meeting, 18 June 2008.

<sup>22</sup> Home Office, *Transparency in Supply Chains: A Practical Guide* (29 October 2015) gov.uk, 3, <<https://www.gov.uk/government/publications/transparency-in-supply-chains-a-practical-guide>>.

<sup>23</sup> *Ibid*, 5.

<sup>24</sup> *Modern Slavery Act 2015* (UK), s 54(7)(a).

<sup>25</sup> *Ibid* s 54 (8).

<sup>26</sup> *Ibid* s 54 (1).

<sup>27</sup> *Ibid* s 54 (4)(a)(i).

<sup>28</sup> *Ibid* s 54 (4)(a)(ii).

<sup>29</sup> *Ibid* s 54(4)(b).

<sup>30</sup> Paul Henty and Simon Holdsworth, ‘Big Businesses and Modern Slavery’ (2015) 4 *Compliance and Risk* 11, 13.

<sup>31</sup> Home Office, above n 22, 7.

The current *Criminal Code Act 1995* is insufficient to address modern slavery, particularly in corporate supply chains. Statistics from the Australian Federal Police (AFP) highlight that, since 2004, there has been a gradual increase of slavery and trafficking related referrals.<sup>32</sup> However, during this time there has been comparatively low participation in support programs and prosecution rates.<sup>33</sup> The gap between the potential number of cases of modern slavery and the level of enforcement and prevention actions is indicative of the need for Australia to take action in this area immediately.

A total of 691 referrals were made to the AFP during the 12-year period from 2004 to 2016.<sup>34</sup> However, comparing these figures to the estimated 4300 individuals in Australia currently enslaved<sup>35</sup> highlights the reality that many individuals do not (or cannot) report modern slavery practices.

If Australia implemented an Act similar to the *UKMSA*, it could change the dialogue about modern slavery in Australia, and encourage greater awareness of the issue and a culture of improved corporate accountability for the problem. Furthermore, by increasing dialogue about modern slavery, it is hoped that the barriers of ‘fear, shame, (and) unawareness of rights’<sup>36</sup> that many victims experience when deciding whether to report their working conditions could be overcome.

Reform could also help resolve some of the practical challenges in investigating and changing modern slavery in other jurisdictions.<sup>37</sup> The recommendations in s 54 (5) of the *UKMSA* provide corporations with guidelines to identify, confront and tackle the problem of modern slavery in their supply chains. It also invites corporations to draw

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<sup>32</sup> The Interdepartmental Committee on Human Trafficking and Slavery, Australian Government, *TRAFFICKING IN PERSONS The Australian Government Response 1 July 2015 – 30 June 2016* (2016) 20.

<sup>33</sup> Ibid 34.

<sup>34</sup> Ibid 20.

<sup>35</sup> Global Slavery Index (2016), above n 4.

<sup>36</sup> Fiona David, “Modern Slavery - an Issue for Australia?” (25 January 2017) Huffington Post <[http://www.huffingtonpost.com/entry/modern-slavery-an-issue-for-australia\\_us\\_5888398ee4b0a53ed60c6a7d](http://www.huffingtonpost.com/entry/modern-slavery-an-issue-for-australia_us_5888398ee4b0a53ed60c6a7d)>.

<sup>37</sup> The Interdepartmental Committee on Human Trafficking and Slavery, above 32, 21.

up a strategy customised to their organisation and to be proactive in the resolution process.

B      *The UKMSA Has Achieved Some Positive Results (So Far)*

When considering what type of a Modern Slavery Act Australia should implement, it is important to consider the benefits and disadvantages of the largely “soft” nature of s 54 of the *UKMSA*. The advantage of s 54 being mostly voluntary is that it encourages affected companies to be transparent about the risk of modern slavery in their supply chains, without the risk of legal or financial sanctions.<sup>38</sup> It also provides consumers, shareholders, and other stakeholders with a framework to hold corporations to account.

The *Hult and Ethical Trading Initiative (ETHI) Report: Corporate Leadership in Modern Slavery* (hereafter, *the Hult and ETHI Report*)<sup>39</sup> found that the establishment of the *UKMSA* has resulted in a 58% increase of communication between companies to which the *UKMSA* applies and their suppliers about workplace expectations. There has also been a 50% increase in companies seeking collaboration and advice from external organisations.<sup>40</sup> Even though reputational risk is a factor critics fear will lead to companies opting out of publishing statements, 97% of companies surveyed cited reputational risk as one of the biggest drivers of corporate action on this issue.<sup>41</sup>

Importantly, engagement from senior levels of leadership (such as CEOs, COOs and CFOs) on this issue has more than doubled since the introduction of the *UKMSA*.<sup>42</sup> This improvement is significant because senior executives have the power to influence a corporation’s attitude, approach and commitment to the issue by

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<sup>38</sup> Evidence to the UK Human Rights Committee (HRB0057), UK Parliament, UK, March 2017 (Office of the Independent Anti-Slavery Commissioner)  
<<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/human-rights-committee/human-rights-and-business-2017-promoting-responsibility-and-ensuring-accountability/written/48548.html>>.

<sup>39</sup> Quintin Lake et al, ‘Corporate Leadership in Modern Slavery’ (Research Report, Hult Research and Ethical Trading Initiative, November 2016) (*“Hult and ETHI Report”*).

<sup>40</sup> Ibid 9.

<sup>41</sup> Ibid 9.

<sup>42</sup> Ibid.

increasing staff engagement and providing training sessions that seek to address and raise awareness about modern slavery. From the *Hult and ETHI Report*, activities that are most popular include specialised training for the board and employees (s 54 (5)(f)), risk assessment (s 54 (5)(d)) and reviewing of effectiveness of management of modern slavery risks (s 54(5)(e)).<sup>43</sup> Due diligence process (s 54(5)(c)), business statements on modern slavery (s 54(5)(a)) and introducing policies (s 54(5)(b)) that allow victims to report modern slavery incidents and remediate their grievances were the least popular.<sup>44</sup> Clearly engagement in all the initiatives is desirable, but some commentators have suggested that *UKMSA* does not go far enough to encourage structural change. However, given that the legislation has only been in place since 2015, its shortfalls are not necessarily indicative of legislative failure. The legislation's preliminary impact may reflect the early stages in a process of changing corporate culture. Furthermore, legislation like this would have been unimaginable a decade ago, and in this way the *UKMSA* may be viewed as the beginning of a wider regulatory approach to this complex problem.

### C      *Australia Should Take the Initiative to be a Leader in Modern Slavery Elimination in the Asia-Pacific Region*

Whilst Australia is ranked alongside the United Kingdom, United States, France and many European Union countries as having the lowest percentage of its population involved in modern slavery, we believe that the establishment of a Modern Slavery Act will strengthen Australia's position as a strong global leader committed to the elimination of modern slavery, particularly in the Asia-Pacific. Two-thirds of the estimated 45.8 million people in modern slavery are thought to be in the Asia-Pacific Region,<sup>45</sup> with 11.5 million of those thought to be in forced labour.<sup>46</sup> Moreover, 12 out of 15 of Australia's top trading partners in the 2015-16 financial year were nations

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<sup>43</sup> Ibid 15.

<sup>44</sup> Ibid.

<sup>45</sup> The Global Slavery Index 2016, Region Analysis: Asia-Pacific, <<http://www.globalslaveryindex.org/region/asia-pacific/>>.

<sup>46</sup> Mark Sneddon and Pete Mulherin, *Exposing Complicity in the Global Slave Trade: Is it Time for a Modern Slavery Act in Australia?* ABC Opinion <<http://www.abc.net.au/religion/articles/2017/03/20/4639425.htm>>.



within the Asia-Pacific Region.<sup>47</sup> Thus, the introduction of an Australian Modern Slavery Act will allow Australia to take a leading role in stopping the proliferation of modern slavery within the region.

### III RECOMMENDATIONS

#### A *Mandatory Minimum Disclosure Requirements*

A key concern with Part 6 of the *UKMSA* is that ‘the Government has not been prescriptive about the layout or specific content’<sup>48</sup> of transparency statements. This is problematic for several reasons. First, it means that affected companies may publish statements that lack the requisite detail to effectively report on their policies and practices on slavery and human trafficking. It is also problematic because companies may choose to focus their statements solely on those areas in which they have implemented policies, and fail to discuss areas where they have no policies in place. Affected companies may therefore appear to be acting more ethically than they are, and doing little to combat human trafficking and slavery throughout their operations. This undermines the ability of consumers and investors to use this information to make informed choices or to hold corporations to account. It also makes it difficult to understand how large companies compare to one another in terms of their policies and practices.

The California *Transparency in Supply Chains Act* (hereafter, ‘*TiSCA*’)<sup>49</sup> provides an example of legislation that overcomes these issues. The *TiSCA* came into effect in 2012,<sup>50</sup> and has similar aims to Part 6 of the *UKMSA*. The *TiSCA* is far less extensive in application than the *UKMSA* as it only applies to retailers and manufacturers who

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<sup>47</sup> Department of Foreign Affairs and Trade, Australia's trade in goods and services 2015-16 (17 February 2017) Department of Foreign Affairs and Trade <<http://dfat.gov.au/about-us/publications/trade-investment/australias-trade-in-goods-and-services/Pages/australias-trade-in-goods-and-services-2015-16.aspx>>.

<sup>48</sup> Home Office, *Transparency in Supply Chains: A Practical Guide* (29 October 2015) gov.uk, 9, <<https://www.gov.uk/government/publications/transparency-in-supply-chains-a-practical-guide>>.

<sup>49</sup> *Transparency in Supply Chains Act of 2010*, 556 Cal Civ Code, § 1714.43(a)(1) (Steinberg 2010), <[http://www.leginfo.ca.gov/pub/09-10/bill/sen/sb\\_0651-0700/sb\\_657\\_bill\\_20100930\\_chaptered.pdf](http://www.leginfo.ca.gov/pub/09-10/bill/sen/sb_0651-0700/sb_657_bill_20100930_chaptered.pdf)>.

<sup>50</sup> *Ibid*, § 1714.43(2)(e).

conduct business in California with annual gross receipts in excess of \$100,000,000.<sup>51</sup> However, the *TiSCA* is superior in terms of its minimum reporting requirements in that it requires five areas of disclosure: verification, audit, certification, internal accountability, and training.<sup>52</sup> Companies affected by the legislation must, at a minimum, disclose ‘to what extent, if any’, policies and practices exist in these areas.<sup>53</sup> This ensures organisations produce statements that refer to activities within these important areas. It also means consumers and investors can more easily compare corporate action on this issue, and use this information to make ethical choices and to hold large companies to account.

The inclusion of minimum reporting requirements would improve the effectiveness of the transparency provisions in the *UKMSA*, and should be considered for any Modern Slavery Act implemented in Australia. The lack of mandatory minimum disclosure requirements has been criticised since the enactment of the *UKMSA*, and commentators have encouraged amending the Act to ‘require the disclosure of the information which is now merely permissive’<sup>54</sup>. The areas listed in s 54 (5) of the *UKMSA* may act as a guide for the minimum requirements that would be suitable to include in Australian legislation. The areas of information listed in this section are:

- a) ‘The organisation’s structure, its business and its supply chains;
- b) Its policies in relation to slavery and human trafficking;
- c) Its due diligence processes in relation to slavery and human trafficking in its business and supply chains;
- d) The parts of its business and supply chains where there is a risk of slavery and human trafficking taking place, and the steps it has taken to assess and manage that risk;
- e) Its effectiveness in ensuring that slavery and human trafficking is not taking place in its business or supply chains, measured against such performance indicators as it considers appropriate; and

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<sup>51</sup> Ibid, § 1714.43(a)(1).

<sup>52</sup> Ibid, § 1714.43(2)(c)(1)-(5).

<sup>53</sup> Ibid, § 1714.43(2)(c).

<sup>54</sup> International Trade Union Confederation, *Closing the Loopholes: How Legislators can Build on the UK Modern Slavery Act* <[http://www.ituc-csi.org/IMG/pdf/uk\\_modern\\_slavery\\_act.pdf](http://www.ituc-csi.org/IMG/pdf/uk_modern_slavery_act.pdf)>.

- f) The training about slavery and human trafficking available to its staff.<sup>55</sup>

Australia should take this opportunity to be a leader in the implementation of legislation that not only applies broadly, but also stipulates minimum disclosure requirements.

**Recommendation 1:**

*Australia should include minimum reporting requirements in any modern slavery legislation, requiring companies over a prescribed threshold to publish their efforts to eradicate slavery and human trafficking in key areas of their activities.*

**B Central Repository of Disclosure Statements**

Not only are the mandatory minimum disclosure requirements outlined in the *UKMSA* lacking in stringency, but also many affected companies do not comply with the legislative requirements when releasing statements. It was found by the Business and Human Rights Centre that only 22 out of the first 75 statements released by companies under the *UKMSA* were approved and signed by a director,<sup>56</sup> and published on the home page of the organisation's website.<sup>57</sup> Moreover only 19 companies adopted all 6 suggestions provided by the *UKMSA* under s 54 (5) in their statements and only 9 statements sufficiently "met the minimum requirements".<sup>58</sup>

It is clear that a major issue with s 54 (5) of the *UKMSA* is that corporations are not making an active effort, or any effort at all, to meet the minimum requirements and produce an analysis of their supply chains or corporate structures and strategy to resolve any risks of modern slavery. As demonstrated by the statistics stated above,

<sup>55</sup> *Modern Slavery Act 2015* (UK), s 54. (5).

<sup>56</sup> *Modern Slavery Act 2015* (UK) s 54(6)(a).

<sup>57</sup> *Ibid* s 54(7)(b).

<sup>58</sup> Evidence to UK Human Rights Committee (*HRB0047*), UK Parliament, UK, March 2017, (Law Society of England Wales)  
<<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/human-rights-committee/human-rights-and-business-2017-promoting-responsibility-and-ensuring-accountability/written/48548.html>>.

even if the corporations do make an effort to publish a statement, this does not necessarily translate to effective and detailed reporting.<sup>59</sup>

The provisions in the *UKMSA* are designed for use by civil society in order to place pressure on businesses to take action on modern slavery. It therefore frustrates the intention of the *UKMSA* where the media, shareholders, investors, and consumers, cannot monitor which companies are proactively addressing modern slavery. This is particularly difficult when many companies subject to the law:

- 1) Do not publish disclosure statements, or
- 2) Publish statements but do not properly comply with reporting requirements, or
- 3) Publish and comply with reporting requirements, but their statements do not show the true extent of their policies and practices to eradicate slavery.

Without a central repository or register mandated by the government that shows which companies are required to publish a statement, and are doing so, stakeholders will struggle to hold companies to account. This situation also imposes unfair costs on companies that are fulfilling their obligations under the legislation. A central repository would increase the ease with which consumers, investors and other stakeholders could access information, and therefore increase the likelihood that they act upon such information in making decisions or holding corporate management to account. The absence of a central repository also undermines the creation of a level playing field for business,<sup>60</sup> which may ultimately render the legislation ineffective.

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<sup>59</sup> Evidence to the UK Human Rights Committee (*HRB0057*), UK Parliament, UK, March 2017 (Office of the Independent Anti-Slavery Commissioner)  
<<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/human-rights-committee/human-rights-and-business-2017-promoting-responsibility-and-ensuring-accountability/written/48548.html>>.

<sup>60</sup> Evidence to the UK Human Rights Committee (*HRB0019*), UK Parliament, UK, March 2017 (Business & Human Rights Resource Centre)  
<<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/human-rights-committee/human-rights-and-business/written/34977.html>>.

**Recommendation 2:**

*Australia should establish a central repository that lists the corporations that are required to submit a disclosure statement under any modern slavery legislation. These corporations should be required to upload their disclosure statement to this repository annually or in a shorter period where changes to the statement are made.*

**Recommendation 3:**

*The central repository should be managed directly by the government to maximise legitimacy and prevent the appearance of bias.*

**Recommendation 4:**

*The central repository should be online and publically available for the convenience of civil society.*

**C     *Introduce an Independent Anti-Slavery Commissioner in Australia***

The introduction of an Independent Anti-Slavery Commissioner (Part 4 of the *UKMSA*) in Australia would also complement and add to the effectiveness and accountability of the legislation. Currently, Australia has implemented ‘whole-of-government strategies and joint government and non-government activities’<sup>61</sup> through an Interdepartmental Committee (IDC) to address ‘human trafficking, slavery and slavery-like practices’<sup>62</sup>. This committee encompasses many areas of responsibility of the Independent Anti-Slavery Commissioner as outlined in s 41(3)(a)-(f) of the *UKMSA*. Adopting such an arrangement would not require Australia to do much more than it has already committed to, but would improve the impartiality and efficacy of these policies. In particular, the Australian government has:

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<sup>61</sup> Joint Standing Committee on Foreign Affairs, Defence and Trade, above n 3, 31, 4.3.

<sup>62</sup> Ibid 36, 4.16.

- Funded the investigation and legislation of slavery and human trafficking matters led by the AFP and the Courts,<sup>63</sup> which fulfils the ‘investigation’ and ‘prosecution’ part of s 41(1)(a) of the *UKMSA*;
- Funded IDCs to undertake research<sup>64</sup> on slavery and ‘trafficking trends in Australia and our region’<sup>65</sup>;
- Funded the ‘provision of information, education or training’<sup>66</sup> led by many IDCs, civil society groups and governmental programs such as the Support for Trafficked People Program,<sup>67</sup> Australian Red Cross,<sup>68</sup> Australia-Asia Program to Combat Trafficking in Persons,<sup>69</sup> AFP,<sup>70</sup> Australian Criminal Intelligence Database<sup>71</sup> and more;
- Established the National Roundtable on People Trafficking as a ‘consultative mechanism between the Government and NGOs on trafficking issues’<sup>72</sup> which fulfils s 41(3)(e) of the *UKMSA* and;
- Worked in partnership with public IDC authorities, NGOs, civil society groups and more on the anti-slavery issue as mentioned above, which fulfils most of s 41(3)(f) of the *UKMSA*.

Despite these programs and the provisions in the *Criminal Code Act* 1995 that aim to prevent, detect, investigate, prosecute and provide victim support,<sup>73</sup> there is still a lack of opportunity and independence for groups to scrutinise government and civil society policy and the implementation of the Commonwealth legislation on modern slavery. It is not ideal that the responsibility of reporting to Parliament on the IDC’s effectiveness in implementing the anti-slavery and trafficking strategy lies with the IDC itself, especially since there is no expert central body or commissioner to give advice, make recommendations and empower the IDC to resolve the gaps and

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<sup>63</sup> Ibid 33, 4.6.

<sup>64</sup> *Modern Slavery Act 2015* (UK) s 41(3)(c).

<sup>65</sup> Joint Standing Committee on Foreign Affairs, Defence and Trade, above n 3, 33, 4.16.

<sup>66</sup> *Modern Slavery Act 2015* (UK) s 41(3)(d).

<sup>67</sup> Joint Standing Committee on Foreign Affairs, Defence and Trade, above n 3, 33, 4.16.

<sup>68</sup> Ibid, 35, 4.12.

<sup>69</sup> Ibid 39, 4.33.

<sup>70</sup> Ibid 35, 4.12.

<sup>71</sup> Ibid 35, 4.14.

<sup>72</sup> Ibid 34, 4.7.

<sup>73</sup> Ibid 31, 4.2.

duplicity across agencies.<sup>74</sup> The introduction of an Independent Anti-Slavery Commissioner would increase the impartiality and efficacy of government authorities and ‘strengthen collaboration’ between IDC agencies, NGOs and individuals working on modern slavery in Australia.<sup>75</sup>

**Recommendation 5:**

*Australia should include an Independent Anti-Slavery Commissioner in any modern slavery legislation to foster a stronger, more efficient and impartial collaboration between Commonwealth anti-slavery and anti-trafficking enforcement agencies.*

#### IV CONCLUSION

There has been criticism of the *UKMSA*. However, this is perhaps inevitable for a relatively new and innovative mechanism addressing a complex transnational problem-set, and seeking to preserve the cooperation of business. Moreover, this criticism should not deter Australia from adopting a Modern Slavery Act of its own. Australia has much to gain from introducing similar legislation, which draws on the strengths and improves on the weaknesses of legislation in the United Kingdom and California. We believe that Australia should develop a Modern Slavery Act that is suited to the Australian context and consistent with present international standards and efforts to combat modern slavery. It will represent a significant omission by the Australian government if it does not take proactive steps to tackle this global problem.

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<sup>74</sup> Jennifer Burn, “Comment: We need an Anti-Slavery Commissioner”, *SBS Insight* (26 July 2016) <<http://www.sbs.com.au/news/insight/article/2016/07/26/comment-we-need-anti-slavery-commissioner>>.

<sup>75</sup> *Ibid.*