



Submission to the

**Parliamentary Joint Standing Committee on Foreign
Affairs, Defence and Trade inquiry into Modern Slavery Act
in Australia**

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Submitted by

Amnesty International Australia

About Amnesty International

Amnesty International is the world's largest independent human rights organization with over seven million supporters in more than 160 countries around the world, and has over 500,000 supporters in Australia.

Amnesty International is a worldwide movement to promote and defend all human rights enshrined in the *Universal Declaration of Human Rights* (UDHR) and other international human rights instruments. Amnesty International undertakes research focused on preventing and ending abuses of these rights.

Amnesty International is impartial and independent of any government, political persuasion or religious belief. Amnesty International Australia does not receive funding from governments or political parties.

1. Summary

- 1.1 Amnesty International welcomes the opportunity to provide this submission to the Modern Slavery Act inquiry referred to the Parliamentary Joint Standing Committee on Foreign Affairs, Defence and Trade by the Attorney-General on 21 February 2017.
- 1.2 With estimates as high as 45.8 million individuals in modern slavery worldwide, modern slavery affects almost every sector, region and company.¹ Modern slavery covers a wide spectrum of crimes, but includes human trafficking, slavery and slavery like practices such as servitude, forced labour, forced or servile marriage, the sale and exploitation of children and debt bondage.
- 1.3 Modern slavery is often hidden across a number of supply chains. This fact alone makes addressing and reducing its incidence difficult. The global demand for cheap labour and the exploitation of vulnerable individuals to provide this labour, compounded by governance gaps in developing markets means that slavery continues to flourish.
- 1.4 The Global Slavery Index of Walk Free Foundation estimates there are about 4,300 slaves in Australia.² The US Department of State notes that some migrant workers from Asia and several Pacific Islands, recruited to work temporarily in Australia in agriculture, construction, hospitality, and domestic service were found to be in forced labour. Further, Australian companies may be implicated in using forced labour in their supply chains through sourcing goods and services domestically and internationally.³
- 1.5 The Australian Government has a chance to be a leader in the Pacific region in addressing modern slavery by establishing a legislative framework to eradicate it. This legislation should be underpinned by a thorough inquiry into the extent to which slavery is part of Australian supply chains and business practices.
- 1.6 Transparency, accountability, harm minimization and due diligence processes should be a central focus of any regime to address this complex issue.

¹ See The Global Slavery Index Report 2016 page 4 accessed at <https://www.globallslaveryindex.org/index/> (downloaded document) on 27 April 2017.

² Ibid page 29.

³ United States of America Department of State *Trafficking in Persons Report* June 2016 page 81 <https://www.state.gov/documents/organization/258876.pdf> accessed on 4 May 2016.

2. Inquiry Terms of Reference

The following section responds to those items to which the Joint Standing Committee on Foreign Affairs, Defence and Trade will have particular regard.

2.1 Modern Slavery Globally and in Australia – item 1 of the Terms of Reference

- 2.1.1 Slavery is a global problem. Industries most connected to modern slavery include agriculture, domestic work and factories. Debt bondage, also called bonded labour or debt slavery, is the most common form of modern slavery.⁴
- 2.1.2 Human trafficking is a key feature and enabler of modern slavery. It involves recruitment, harbouring or transporting people into a situation of exploitation through the use of violence, deception or coercion and forced to work against their will. People can be trafficked for many different forms of exploitation such as forced prostitution, forced labour, forced begging, forced criminality, domestic servitude, forced marriage, and forced organ removal.
- 2.1.3 Forced labour is an extreme form of people exploitation. According to Anti-Slavery International, migrant workers tend to be the most vulnerable, as they often do not speak the local language, have few contacts, have limited rights and depend on their employers for survival.⁵
- 2.1.4 The International Labour Organisation (ILO) in their 2012 global estimate of forced labour, found that women and girls comprise 55% of the total number estimated victims of forced labour. Adults make up 74% of forced labourers with 90% of people exploited in the private economy.⁶

⁴ Anti-Slavery International, 'What is debt bondage', accessed at <https://www.antislavery.org/slavery-today/debt-bondage/> on 27 April 2017

⁵ Anti-Slavery International, 'What is forced labour', accessed at <https://www.antislavery.org/slavery-today/forced-labour/> on 27 April 2017.

⁶ International Labour Organization 'ILO 2012 Global estimate of forced labour' page 1 accessed at http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_181953.pdf on 27 April 2017

2.1.5 Child slavery is an aggravated form of child labour exploitation and includes children being trafficked, forced to become soldiers, enter into illegal marriages, and/or forced to work as slaves. The ILO estimated in 2012 that close to 5.5 million children globally are victims of slavery, trafficking, debt bondage or in other forms of forced labour, recruitment, armed conflict, prostitution and pornography.⁷

AMNESTY INTERNATIONAL'S PALM OIL REPORT 2016

Palm oil is a commodity in high demand for its use in a wide range of basic products from ice-cream and chocolate to shampoo and toothpaste. Most companies claim that the palm oil they use is "sustainable" – meaning that it is environmentally friendly and the workers are treated fairly. But an Amnesty International investigation revealed that some of the world's biggest companies - including Colgate, Nestlé and Unilever - are contributing to child labour and horrific conditions for other workers on palm oil plantations.

Abuses are also taking place on plantations run by companies who are certified as "sustainable", meaning even brands you buy marked as made with "sustainable" or "certified palm oil" could be tainted by human rights abuses.

Statistics

- 50% of common food and consumer products contain palm oil
- 61 million tonnes of palm oil consumed in 2015
- €3.4 billion value of palm oil imports by the EU, the world's 2nd biggest consumer
- 45% of the world's palm oil comes from Indonesia
- 3 million palm oil workers in Indonesia
- US\$2.50 daily wage for workers

Foods that contain palm oil: some chocolates, Ben & Jerry's Ice Cream, Maggi cooking stock, Cheerios cereal, Kellogs cereals & Pop Tarts.

Household Items and brands with palm oil: Colgate toothpaste, Dove, Pantene, Palmolive, Head & Shoulders, Lynx deodorant, Vaseline & Clearasil.

Singapore-based agribusiness Wilmar controls more than 43% of the global palm oil trade. During interviews with workers on Wilmar-linked plantations, it was discovered that workers were suffering severe injuries from paraquat – a toxic chemical banned in the EU and by Wilmar itself, women paid below minimum wages in insecure employments, and workers, including children, forced to meet unreasonable targets.

The report concludes that Wilmar and its suppliers are committing a number of offences under the *Manpower Act* and other Indonesian laws, some of which amount to criminal offences. Wilmar, and those companies that buy from it, do not have adequate due diligence processes in place to identify, prevent, mitigate and account for adverse human rights impacts linked to their business operations. Amnesty International found that all the companies investigated are benefiting from, and contributing to, severe labour abuses in their palm oil supply chain.

⁷ Ibid.

The report documents how children aged from eight to 14 years old are carrying out hazardous work on plantations owned and operated by Wilmar's subsidiaries and suppliers. They work without safety equipment on plantations where toxic pesticides are used, carrying heavy sacks of palm fruit that can weigh from 12 to 25kg. Some have dropped out of school to work with their parents for all or most of the day. Others work in the afternoon after attending school, and on weekends and holidays.

The report highlights a discriminatory pattern of hiring women as casual daily labourers, denying them permanent employment and social security benefits such as health insurance and pensions. Amnesty International also documented cases of forced labour and of foremen threatening women workers with not being paid or having their pay deducted in order to exact work from them.

Amnesty International spoke to 120 workers who work on palm plantations owned by two Wilmar subsidiaries and three Wilmar suppliers in Kalimantan and Sumatra in Indonesia. The investigation exposed a wide range of abuses including:

- Women forced to work long hours under the threat of having their pay cut, paid below minimum wage - earning as little as US\$2.50 a day in extreme cases - and kept in insecure employment without superannuation or health insurance,
- Children as young as eight doing hazardous, hard physical work, sometimes dropping out of school to help their parents on the plantation,
- Workers suffering severe injuries from paraquat, an acutely toxic chemical still used in the plantations despite being banned in the EU and by Wilmar itself,
- Workers being made to work outdoors without adequate safety equipment despite the risks of respiratory damage from hazardous levels of pollution caused by forest fires during August to October 2015,
- Workers having to work long hours to meet ridiculously high targets, some of which involve highly physically demanding tasks such as operating heavy manual equipment to cut fruit from trees 20 meters tall. Attempting to meet targets can leave workers in significant physical pain, and they also face a range of penalties for things like not picking up palm fruits on the ground and picking unripe fruit.

[Access](#) the full report.

- 2.1.6 In March 2016 Amnesty International released its report into the abuse of migrant workers building the Khalifa International Stadium in Qatar for the World Cup 2022.⁸ The report states:

Exploitation of migrant workers in Qatar, particularly in the construction sector, has been widely reported by human rights and trades union groups and the international media, particularly since 2010. Amongst the most frequently-reported problems facing migrant workers are: deceptive recruitment practices which see migrant workers promised more favourable conditions of work by recruiters in their home country than they are given on arrival in Qatar; employers compelling workers to live in squalid conditions; employers confiscating workers' passports and denying them the exit visa they need to leave Qatar; late or non-payment of wages; and employers not giving workers proper identity documents, which leaves them exposed to arrest. In extreme, but not exceptional, cases migrants are subjected to forced labour.⁹

- 2.1.7 In March 2017, the government of Qatar announced they would be 'repealing' the sponsorship law which effectively placed migrant workers under the control of their employers, making them vulnerable to exploitation, amongst other things. However, Amnesty International believes that the labour reforms did not go far enough to comply with international labour standards.¹⁰
- 2.1.8 As mentioned above, Australia is also a host country for modern slavery. Whilst it is predominantly a 'destination country' for trafficking and forced labour¹¹, a number of recent cases highlighted in the media¹² indicate that Australian firms are involved in exploitative work practices.

The US Department of State notes that:

Unscrupulous employers and labor agencies subject some men and women from Asia and several Pacific Islands, recruited to work temporarily in

⁸ Amnesty International *The Ugly Side of the Beautiful Game: Exploitation of Migrant Workers on a Qatar 2022 World Cup Site* 30 March 2016 <https://www.amnesty.org/en/documents/mde22/3548/2016/en/>

⁹ Ibid page 5.

¹⁰ Amnesty International *UN agency must keep up pressure on Qatar as government's migrant labor reforms fall short* 17 March 2017 <https://www.amnesty.org/en/latest/news/2017/03/un-agency-must-keep-up-pressure-on-qatar/>

¹¹ US Department of State n3 above page 80.

¹² See for example the ABC Four Corners programme 'Slaving Away' aired 6 May 2015 : <http://www.abc.net.au/4corners/stories/2015/05/04/4227055.htm>

*Australia, to forced labor in agriculture, construction, hospitality and domestic service.*¹³

2.2 International best practice to prevent modern slavery in supply chains – items 3 and 5 of the Terms of Reference

- 2.2.1 Several jurisdictions have legislation to address and prevent modern slavery.
- 2.2.2 France recently enacted laws requiring companies to assess, identify and prevent human rights abuses – including in their supply chains - resulting from their own activities and those under their effective control.¹⁴ Companies must publish a ‘vigilance plan’ which outlines measures to identify and prevent risks of serious human rights abuses. While applicable only to large French companies, the new laws impose a positive duty to conduct human rights due diligence, in accordance with the United Nations Guiding Principles on Business and Human Rights (UNGPs). Further, it establishes processes for victims and interested parties to hold companies to account for any adverse human rights impacts.
- 2.2.3 In California, the *California Transparency in Supply Chains Act*¹⁵ requires large retailers and manufacturing companies, either based or operating in California, to disclose initiatives to eliminate slavery and human trafficking. This is designed to inform consumers on which companies are responsibly managing their supply chains. The Act applies only to companies with an annual revenue of US\$100 million.
- 2.2.4 The Dutch Parliament is currently looking to introduce a law directed at eradicating child labour. If passed it would apply to companies registered in the Netherlands or who provide goods to Dutch consumers. The law seeks to impose due diligence obligations on those companies to report on whether child labour has been used in

¹³ US Department of State n 3 above page 80.

¹⁴ See the European Coalition for Corporate Justice Frequently Asked Questions on the French corporate duty of vigilance law available at <http://corporatejustice.org/documents/publications/french-corporate-duty-of-vigilance-law-faq.pdf>

¹⁵ See commentary on this Act by the US Department of Labor here: <https://www.dol.gov/ilab/child-forced-labor/California-Transparency-in-Supply-Chains-Act.htm>

their supply chains, and if so, what the company's plan to address it is. The plan would be published publicly.¹⁶

2.2.5 The United Kingdom has of course passed its Modern Slavery Act 2015. This law applies to commercial organisations with an annual turnover of £36M British pounds and requires them to produce an annual slavery and human trafficking statement.

2.2.6 It is noted that the Advisory Committee of the Modern Slavery Registry has made a submission to this Inquiry¹⁷ on the effective provisions of the UK Act, as well as recommendations for strengthening a similar law in Australia. Amnesty International is a member of CORE, which in turn is a member of the Advisory Committee. Amnesty International Australia supports the Advisory Committee's submission to this Inquiry.

2.3 Should Australia introduce a Modern Slavery Act – item 6 of the Terms of Reference

2.3.1 Australia is not immune to modern slavery, as mentioned above. Further, it is in close proximity to the region identified by the ILO as accounting for the vast majority of forced labourers globally.¹⁸

RECOMMENDATION ONE:

2.3.2 Amnesty International Australia recommends Australia adopt a Modern Slavery Act similar to that of the UK. However, the Australian Modern Slavery Act can be greatly strengthened in the ways set out below.

¹⁶ For further information see <https://business-humanrights.org/en/netherlands-parliament-adopts-child-labour-due-diligence-law-for-companies-senate-approval-pending>

¹⁷ See submission number 9.

¹⁸ International Labour Organization 'ILO 2012 Global estimate of forced labour' page 4 accessed at http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_181953.pdf on 27 April 2017

3. Specific Recommendations

RECOMMENDATION TWO:

3.1 Prevention

All companies¹⁹ should be required by law to take steps to identify, prevent and address human rights abuses through a due diligence process as set out in the UNGPs.²⁰

3.1.1 Such due diligence should include the following:²¹

- (1) Human resources encompass ILO standards
- (2) Conduct an impact assessment of exploitation in supply chains and operations
- (3) Examine internal procedures
- (4) Consult internally and externally, with key stakeholders, including people who are, or could be affected by modern slavery, and those organisations representing them
- (5) Develop clear action plans to prevent and mitigate modern slavery
- (6) Include clauses on modern slavery and risk factors in contracts with suppliers, and closely monitor supplies
- (7) Put in place procedures for reporting concerns over modern slavery within the company's operations and communicate these effectively.

¹⁹ While it may be onerous for small companies (as defined by the *Corporations Act 2001* (Cth) Section 45A-45B) to undertake such procedures to tackle modern slavery, they are also at an advantage of easily verifying that all their operations, procedures, products, contractors and suppliers are free of the exploitation of workers.

It is valuable to note that the United Nations Guiding Principles on Business and Human Rights, Principle 15 states:

*"In order to meet their responsibility to respect human rights, business enterprises should have in place policies and processes **appropriate to their size and circumstances**, including:*

- (a) A policy commitment to meet their responsibility to respect human rights;*
- (b) A human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights;*
- (c) Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute."*

²⁰ United Nations Office of the High Commissioner for Human Rights, available at http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

²¹ See for example the submission by CORE to the UK Joint Committee on Human Rights dated 27 August 2014 found https://www.parliament.uk/documents/joint-committees/human-rights/CORE_submission_270814.pdf accessed 26 April 2017.

- (8) Grievance mechanisms and remedy processes should be clear, transparent and accessible, and incidents should be reported and monitored.,

RECOMMENDATION THREE:

3.1.2 The Act can be strengthened by the Anti-Slavery Commissioner's commitment to assess the labour market conditions that create the demand for modern forms of slavery, focussing on certain areas of industry and using specific indicators.

3.1.3 Additionally, a focus should be placed on mapping existing policies to identify greatest areas of risk and specify expectations. Specific measures to prevent or address modern slavery should be included in developing comprehensive policies and all relevant policies including:²²

- (1) Migrant labour policies
- (2) Procurement policy
- (3) Child labour policy
- (4) Child protection policy
- (5) Supplier code of conduct
- (6) Recruitment policy
- (7) Employee code of conduct
- (8) Awareness-raising policies
- (9) Policies relating to access to justice, remedy and compensation

3.1.4 Ensure new business policies are signed off at the highest level of business, with consultation with internal and external stakeholders, and subsequently made available to all workers, business partners and other parties.²³

3.1.5 The legislation should include provisions requiring companies to include information in their annual statements on Due Diligence policies and processes they undertake to identify and address the risks and incidences of slavery and forced labour in their supply chains, and the effectiveness and outcomes of those policies.

- (1) This would be consistent with commitment to implement the UNGPs
- (2) If the company's report does not contain information on Due Diligence policies and processes, it would state which kinds of information it did not contain and why

²² Ibid.

²³ UNGPs, Principle 18.

- (3) Disclosure would help to prevent the continuation of modern slavery by enabling companies to assess and address the risk that their practices drive demand for cheap, easily exploitable labour
- (4) The availability of such information to stakeholders including consumers, investors and civil society groups would create greater accountability for company practices.

3.2 Accountability

RECOMMENDATION FOUR:

Companies must be held to account for abuses that they commit.

- 3.2.1 Amnesty International Australia supports and endorses Walk Free Foundation's top three priorities for reform on the issue of modern slavery in supply chains, being:²⁴
 - (1) The appointment of an independent Anti-Slavery Commissioner to provide independent oversight, with powers to monitor laws and hold business and the Government accountable to ensure the protection of the rights of those in Australia that might otherwise be exploited.
 - (2) The requirement for large organisations doing business in Australia to annually report in a "modern slavery statement" steps taken to eradicate modern slavery within their organisation and supply chains, consistent with the UNGP obligations referred to above.
 - (3) The creation and maintenance of a publicly accessible central repository of all modern slavery statements filed each year.
- 3.2.2 Australia must adopt legislation that ensures supply chains of Australian businesses are transparent and free of unethical exploitation or slavery like practices. Australians must be assured that the goods they consume and the services they use are not produced on the back of slave labour.
- 3.2.3 The scope of the companies covered by the Act must be widespread, requiring all companies operating in Australia to abide.
- 3.2.4 The government should provide tools and resources to companies to manage the risk of modern slavery within their supply chains.

²⁴ See the Walk Free Foundation, 'The Case for an Australian Modern Slavery Act', 16 March 2017, available at <http://www.walkfreefoundation.org/news/case-australian-modern-slavery-act/>.

- 3.2.5 The government should stipulate in all procurement processes that qualifying firms provide a compliant modern slavery statement.
- 3.2.6 The government should release an annual list of companies not in compliance with provisions, identifying them and their product to the public.
- 3.2.7 A specific minimum criteria must be specified by the Act for effective reporting, transparency and a level playing field between businesses. These terms can include:
- (1) Labour risks identified throughout supply chains and measures taken to eliminate those risks
 - (2) Monitoring and verification systems
 - (3) Procurement systems and processes for working with suppliers
 - (4) Training and guidance for individuals responsible for managing supply chains
 - (5) The recruitment practice of suppliers
 - (6) Action to assist and support victims
- 3.2.8 The Act must clearly set out the measures taken against companies which fail to comply with the legislation, in the form of economic sanctions, criminal and civil proceedings and/or financial penalties, in accordance or extension to current legislation.²⁵

3.3 Remedy

RECOMMENDATION FIVE:

People whose rights have been abused by companies must be able to access justice and effective remedy.

- 3.3.1 Annual statements produced by companies not only should identify risks of forced labour and slavery but also identify the following:
- (1) Current abuses in supply chains
 - (2) Vulnerable groups of workers
 - (3) Areas of concern
 - (4) Actions to remedy harm
 - (5) Victim rehabilitation programs

²⁵ *Criminal Code Act 1995* (Commonwealth), *Fair Work Act 2009* (Commonwealth)

- (6) Mechanisms to report abuse by employers
- (7) Witness protection
- (8) Compensatory schemes

3.3.2 Companies' annual statements year on year should show progress, rather than routine and maintenance. Companies failing to show progress must be further advised, if not acted against.

RECOMMENDATION SIX

3.3.3 On the issue of victims of exploitation, on working visas, being returned home without adequate pay, compensation and/or the opportunity to initiate civil or criminal proceedings, Amnesty International Australia recommends special arrangements under the current Human Trafficking Visa Framework in Australia. Foreign nationals who do not hold a valid visa and are suspected victims of modern slavery and exploitation should be enabled to remain lawfully in Australia until the matter is legally resolved, and be given access to adequate support. These protectionist and remedial measures should also be extended to witnesses.

3.4 Rights Beyond Borders

- 3.4.1 Companies operate across borders and the law must do so also.
- 3.4.2 A legally binding obligation should be placed on Australian companies to identify and prevent adverse human rights and environmental impacts resulting from their own activities, the companies they control, subcontractors and suppliers, and with whom they have an established commercial relationship extraterritorially.
- 3.4.3 As mentioned in 2.2.2 above France recently enacted laws requiring companies to assess, identify and prevent human rights abuses resulting from their own activities and those under their effective control.²⁶ Australian legislation should consider incorporating similar provisions regarding modern slavery.
- 3.4.4 Australian companies must be held liable for abuses in overseas supply chains even if the goods produced as a result of the abuse is not distributed in Australia.

²⁶ See the European Coalition for Corporate Justice Frequently Asked Questions on the French corporate duty of vigilance law available at <http://corporatejustice.org/documents/publications/french-corporate-duty-of-vigilance-law-faq.pdf>

3.5 Other

- 3.5.1 Amnesty International Australia recommends a thorough investigation be conducted into the prevalence, nature and extent of modern slavery, and its existence within Australia and the supply chains of Australian companies. Therefore, the Act should pertain and directly respond to the results of this investigation, unique to Australia.
- 3.5.2 Additionally, an evidence-based approach must be taken in developing the Act and with regards to international best practice.
- 3.5.3 The Act and its impact should be reviewed in three years to evaluate its effectiveness and specific areas requiring improvement.

4. Conclusion

- 4.1 Australia should introduce a Modern Slavery Act.

RECOMMENDATION SEVEN

- 4.2 The Act should draw from the best practices in other jurisdictions, but should also be based on thorough research into the incidence modern slavery in Australia to ensure that any regime is appropriate to the Australian context.

- 4.3 Introducing a Modern Slavery Act will act to bring the issue to the attention of Australians potentially resulting in individual consumer decisions which reject organisations that do not meet the obligations in the Act. It will also ensure that Australian firms have effective policies and processes in place to ensure that slavery does not form any part of its operations either at home or abroad.

- 4.4 Australia has the opportunity to lead on modern slavery in our region – a region which produces two thirds of the total number of people in modern slavery. As such, there is an enormous potential to have a significant impact on the practice and to improve the lives of millions of people around the world.