

Submission to the Forced Labour in UK Supply Chain Inquiry

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Griffith University and the University of South Australia acknowledge the people who are the traditional custodians of the land and pay respect to Elders, past and present, and extend that respect to all Aboriginal and Torres Strait Islander peoples.

Executive Summary

Business and human rights legislation is rapidly evolving, with new legislation introduced or passed in multiple jurisdictions over the past 15 years. This legislative trend has seen countries adopt increasingly stringent requirements and penalties, including most notably the European Union's move towards mandatory human rights due diligence under the Corporate Sustainability Due Diligence Directive, and specific measures to address forced labour such as the United States Uyghur Forced Labor Prevention Act 2021. While the United Kingdom was once a leader in anti-slavery policymaking with the introduction of the world first *Modern Slavery Act* in 2015, failure to keep pace with these global trends will undermine the UK's status as a world leader in combatting forced labour.

This submission draws on our expertise on policy approaches to modern slavery, and civil society efforts to mobilise consumers and investors to combat modern slavery (see Appendix A for details of our expertise on this topic). Our research, and long-term involvement in anti-slavery efforts, provides evidence to inform answers to three of the consultation questions – 6, 14, and 15.

Specifically, this submission draws on the findings of three core research projects: Dr O'Brien's Australian Research Council funded Fellowship project mapping civil society organisations' efforts to mobilise consumers and investors to combat modern slavery, and interviews with Australian and UK anti-slavery advocates; Dr Coneybeer's PhD research examining Australian fashion companies' modern slavery statements and anti-slavery strategies; and Ms Raby's PhD research examining the role of the consumer in legislative efforts to eradicate modern slavery, and additional research on the support needs of survivors of human trafficking.

Overall, we urge an approach to addressing forced labour that moves beyond a transparency framework reliant on consumers as an accountability mechanism, and towards a regime with effective accountability and enforcement mechanisms. Our key points and list of recommendations in response to consultation questions 6, 14, and 15, are summarised below. Detailed evidence-based answers to the consultation questions follow.

Key Points and Recommendations

Q6 Where should the responsibility lie for preventing products linked to forced labour from entering the British market? E.g. government, regulation, business, consumers, others?

Key Points

- Responsibility must be shared between government, corporations, consumers and investors, however the weight of responsibility should be borne by government and corporations.
- Existing self-regulation approaches fail to catalyse sufficient responsibility-taking by corporations.
- Consumers and investors can play a role in combatting modern slavery, but need to be better enabled through resourced civil society initiatives. Consumers and investors should not, however, be the sole or primary accountability mechanism for preventing forced labour in corporate supply chains.

Recommendations

- The accountability mechanism for the Modern Slavery Act must be clarified and strengthened. Civil society organisations must be resourced to undertake scrutiny of the modern slavery statements, to inform and mobilise consumers and investors.
- Penalties for failure to comply with the reporting requirements of the Modern Slavery Act should be introduced, as it is challenging to hold businesses accountable if they are not participating in the process.
- The UK government should strongly consider moving away from corporate self-regulation to greater corporate responsibility-taking through mandatory human rights due diligence regulations.

See pages 5-8 for detailed evidence-based response.

Q14 If it becomes known that a company is using or at high risk of exposure to forced labour, what impact does this have on consumer attitudes or profits? Are consumers incentivised to avoid buying products that are likely to be linked to forced labour?

Key Points

- There is little evidence to suggest that consumers are incentivised to avoid buying products that are likely to have been made with exploited labour.
- Instead, evidence suggests that when consumers are made aware of the risk of modern slavery within a company's supply chain, they will continue to purchase from the implicated company.
- Competing consumer priorities, and consumers' difficulties in relating to the issue of worker-welfare and general acceptance of that exploitation, are contributing factors.

Recommendations

- Changes in consumer behaviour cannot be relied upon to hold corporate entities to account through reputational risk and reward approaches which are commonly integral in transparency measures. Stronger enforcement mechanisms to regulate corporate behaviour are required.
- Government focus should shift from consumers to investors as potentially powerful partners in the market to combat modern slavery.

See pages 9-10 for detailed evidence-based response.

Q15 To what extent do existing transparency measures translate to accurate awareness of risk in customers?

Key Points

- There is little to no evidence which indicates that transparency measures result in the public having any increase in general awareness, or accurate understanding of risk.
- A key issue with existing transparency measures is that company disclosures are not reliable therefore cannot be trusted to translate to accurate awareness of risk in customers.
- For many businesses, fear of a bad reputation is more powerful than a desire for a good one, and a fear of being linked to modern slavery can drive a ‘cover up’ culture.
- Consumers feel it is difficult to identify which products and services are ethical. The expectation that consumers have the time and/or expertise to understand the nuances of effective and ineffective anti-slavery actions disclosed in corporate reporting is flawed and unrealistic and can lead to increased ‘social washing’.

Recommendations

- Transparency measures cannot be relied upon to develop an accurate understanding of risks in customers. Long-term and widespread public information campaigns are required to help the public develop such an understanding.
- To improve the reliability of corporate disclosures, significant penalties for inaccurate and misleading reporting are required.

See pages 11-13 for detailed evidence-based response.

Detailed responses to consultation questions

6. Where should the responsibility lie for preventing products linked to forced labour from entering the British market? E.g. government, regulation, business, consumers, others?

Key Points:

- Responsibility must be shared between government, corporations, consumers and investors, however the weight of responsibility should be borne by government and corporations.
- Existing self-regulation approaches fail to catalyse sufficient responsibility-taking by corporations.
- Consumers and investors can play a role in combatting modern slavery, but need to be better enabled through resourced civil society initiatives, and should not be the sole or primary accountability mechanism for preventing forced labour in corporate supply chains.

Forced labour is a systemic problem caused by a multitude of factors. To address exploitative labour conditions including modern slavery and forced labour, multiple actors are required to enact their responsibility to address the issue. However, different actors have varying duties according to their power and capacity to address the problem. We adopt an approach to responsibility distribution that considers both ‘cause’ and ‘treatment’ responsibility¹ i.e. those actors who are responsible due to their role in ‘causing’ the problem, and those who may not be liable for the cause but have the capacity to ‘treat’ the problem. In assigning responsibility for modern slavery, we advocate for a ‘Social Connection Model’² approach that requires multiple actors working together to address structurally unjust systems that lead to severe labour exploitation and other forms of modern slavery.

Government responsibility

Ms Raby’s research – on consumer responses to modern slavery in the Australian context – has found that most Australians see that the government is responsible for ensuring products and services sold to them are not made using exploited workers, whereas only 3% see that consumers and everyday people hold this responsibility. A consumer survey respondent expressed their view that “*strict laws should be made against those people who exploit their workers*”. Four out of five consumers also believe that Australian businesses should be legally required to ensure they know what they sell is not made from slave or child labour. This conflicts with the expectation placed on consumers within the Act to utilise information disclosed by businesses to try to establish this. As explained by a survivor, “*I believe that it's more about the law enforcement on the business rather than on the people themselves like us*”. Perhaps due to a lack of trust in the business reporting

¹ Iyengar, S. 1996. ‘Framing Responsibility for Political Issues’, *Annals of the American Academy of Political and Social Science* 546(1): 59-70.

² Young, I.M. 2008. Responsibility and global justice: a social connection model. In *Handbook of Research on Global Corporate Citizenship*, ed. A. Scherer and G. Palazzo. Cheltenham: Edward Elgar.

mandated under legislation such as the Australian and UK Modern Slavery Acts, the survey also found that 84% of consumers believe that Australian businesses should be held responsible for misleading the public about their ethical behaviour, including their use of slave or child labour. These perspectives indicate that the community has a much higher expectation for the role government should play in regulating business and ensuring corporate accountability for modern slavery in global supply chains, than is currently achieved through the implementation of the Act.

Corporations' responsibility

To date, much of the legislation in countries seeking to incentivise or mandate corporate action on modern slavery has been self-regulatory in nature. The UK *Modern Slavery Act 2015* and Australian *Modern Slavery Act 2018* both require large companies (with over £36 million or \$100 million AUD in annual revenue) to publicly disclose statements describing the risk of modern slavery in their supply chains and their actions taken to address the issues.

However, Dr Coneybeer's research – analysing Australian fashion companies' responses to modern slavery – has found that this self-regulation approach is insufficient to catalyse responsibility-taking by corporations. For instance, in analysing fashion companies' statements submitted in compliance to Australia's *Modern Slavery Act*, we found that companies' anti-slavery actions predominantly fail to reflect on how the company's own actions might contribute to modern slavery risks.³ Instead, responsibility to address the problem is delegated to their suppliers. This delegation of responsibility is highly problematic, as fashion companies contribute to the risk of modern slavery through their actions, specifically their purchasing practices which are known to place time and price pressures on suppliers – leading to underpaid and unpaid employees, unauthorised subcontracting, verbal and physical abuse of workers, and more.⁴

Following a responsibility approach though a Social Connection Model allocates a significant proportion of responsibility to large companies who have significant power, influence, and collective ability to address modern slavery. Fashion companies are often the wealthiest actors in the fashion supply chain. For example, in 2024 Zara (Inditex) earned more than €5 billion in annual profit. Such wealth and control of global supply chains enable significant power to improve working conditions for the most vulnerable. Yet, many large companies have deliberately designed their product supply chains to maximise their profits and minimise their risk exposure. For example, companies have opted into extremely complex and expansive supply chains that enable them to use cheap labour with limited legal accountability for workers. Fashion companies (like many other companies sourcing from the Global South) benefit from extremely low minimum wages, wages that cannot sustain basic human necessities for a family yet are technically legal. Companies could act both unilaterally and collectively to improve garment worker wages simply by calculating a living wage into their purchase prices, yet some have argued that such efforts

³ Coneybeer, J. *et al.* (2023) 'Assessing the self-regulation strategies and reflexive capacity of fashion companies' anti-slavery tools', *Australian Journal of Human Rights*, 29(2), pp. 215–238. doi: 10.1080/1323238X.2023.2290770.

⁴ Anner, M., Bair, J. and Blasi, J., 2013. Toward joint liability in global supply chains: Addressing the root causes of labor violations in international subcontracting networks. *Comp. Lab. L. & Pol'y J.*, 35, p.1.

would unfairly disadvantage those voluntarily paying higher prices or claim that suppliers could not be trusted to pass on the wage increase.⁵

While the establishment of Modern Slavery Acts in Australia and the UK has contributed to greater corporate awareness of the problem, and some initial efforts to introduce practices including audits, codes of conduct, and employee training for suppliers, these efforts typically focus on only the first tier of suppliers, and the cost to implement these measures often falls to suppliers further down the chain.⁶

Consumers and Investor responsibility

While much policy attention has speculated on the role of consumers, investors arguably have more significant capacity to leverage immense capital to combat modern slavery. As such, in this submission, we will intentionally focus on the role of both consumers and investors to combat modern slavery.

Dr O'Brien's research – mapping consumer and investor initiatives on modern slavery in Australia and the UK, and interviewing key stakeholders about the role of consumers and investors – has found that consumers and investors can contribute to efforts to combat modern slavery, however current efforts are limited and under-resourced. Consumers and investors can play a key role in holding corporate actors accountable, by rewarding or punishing them through acts of political consumerism⁷ (for example, boycotts and buycotts), or political investorism⁸ (for example, shareholder resolutions and divestment). However, consumers and investors require support to be able to act on the information disclosed through annual modern slavery statements. There is a persistent disconnect between the provision of modern slavery statements, and consumers and investors being able to understand and act on the information contained within those statements.

In some instances, civil society organisations have sought to enable consumers and investors to serve this accountability function. In the Australian context, civil society organisation Be Slavery Free produces an annual scorecard evaluating the labour conditions behind the products of different chocolate brands. Baptist World Aid also produces an Ethical Fashion Guide, scoring fashion companies on their labour conditions.

These efforts are understandably limited to specific industries that are consumer-facing. Notably, both initiatives pre-date the establishment of the Modern Slavery Act and are not heavily reliant on the modern slavery statements produced in compliance with the Act. In addition, since the introduction of the Modern Slavery Act, no new consumer mobilisations on modern slavery have

⁵ Coneybeer J & Maguire R (2022) Evading responsibility: A structural critique of living wage initiatives and methodologies. *International Journal for Crime, Justice & Social Democracy*, 11(2), 15-29.

⁶ This research is currently under review for publication. Please email j.coneybeer@griffith.edu.au for further information.

⁷ Micheletti, Michele. *Political Virtue and Shopping: Individuals, Consumerism and Collective Action*. 2 ed. Basingstoke: Palgrave, 2010.

⁸ O'Brien, Erin, Justine Coneybeer, Martijn Boersma, and Alice Payne. "Political Investorism: Conceptualising the Political Participation of Shareholders and Investors." *International Political Science Review* (2022). <https://doi.org/https://doi.org/10.1177/01925121221098863>.

emerged within Australia. This suggests that we cannot rely heavily on consumers to serve as an accountability mechanism for the *Modern Slavery Act*.

Investors may be able to play a greater role, as they are connected to a broader range of industries. Again, civil society organisations have played a key role in raising awareness of modern slavery among investors. The Australasian Centre for Corporate Responsibility (ACCR) has engaged with Australian businesses about labour conditions for workers in their supply chains. For example, ACCR led the world's first shareholder resolution on modern slavery, filed at the 2019 Annual General Meeting for supermarket giant Coles Ltd⁹. This led to Coles' greater engagement with unions on labour conditions in their horticulture supply chain, though more action is required. The Australian Council of Superannuation Investors and the Responsible Investment Association of Australasia have also sought to inform investors of modern slavery risks in supply chains by producing a best practice guide¹⁰. The Business and Human Rights Resource Centre operates across several jurisdictions, seeking to draw investor attention to benchmarking data provided in their Know the Chain initiative. The establishment of the Investors Against Slavery and Trafficking Asia-Pacific (IAST APAC) initiative also highlights the increased awareness of investors to the problem of modern slavery.

Efforts to mobilise consumers and investors are promising, but patchy and limited. Civil society organisations are not adequately resourced to undertake the detailed analysis and benchmarking of modern slavery statements, in addition to the mobilisation of consumers and investors to act on this analysis.

Recommendations:

- The accountability mechanism for the Modern Slavery Act must be clarified and strengthened. Civil society organisations must be resourced to undertake scrutiny of the modern slavery statements, to inform and mobilise consumers and investors.
- Penalties for failure to comply with the reporting requirements of the Modern Slavery Act should be introduced, as it is challenging to hold businesses accountable if they are not participating in the process.
- The UK government should strongly consider moving away from corporate self-regulation to stricter mandatory human rights due diligence regulations.

⁹Australasian Centre for Corporate Responsibility, "ACCR Files Worker Exploitation Resolution with Coles." *Australasian Centre for Corporate Responsibility*, 9 September, 2019, <https://www.accr.org.au/news/accr-files-worker-exploitation-resolution-with-coles/>.

¹⁰ Australian Council of Superannuation Investors, "Investors Launch Best-Practice Guide on Combatting Modern Slavery." ACSI, 11 November, 2019, <https://acsi.org.au/media-releases/media-release-investors-launch-best-practice-guide-on-combatting-modern-slavery/>.

14. If it becomes known that a company is using or at high risk of exposure to forced labour, what impact does this have on consumer attitudes or profits? Are consumers incentivised to avoid buying products that are likely to be linked to forced labour?

Key points:

- There is little evidence to suggest that consumers are incentivised to avoid buying products that are likely to have been made with exploited labour.
- Instead, evidence suggests that when consumers are made aware of the risk of modern slavery within a company's supply chain, they will continue to purchase from the implicated company.
- Competing consumer priorities, consumers difficulties in relating to the issue of worker-welfare and general acceptance of that exploitation are all contributing factors.

It is commonly assumed that consumers will avoid buying products that are likely to be linked to forced labour if they become aware of this, however there is little evidence to support this. Instead, there is evidence to suggest the opposite, and when consumers are made aware of the risk of modern slavery within a company's supply chain, they will continue to buy from the implicated company or the implicated product. The Boohoo Leicester scandal demonstrates this. In mid-2020, media outlets widely circulated allegations that Boohoo, an ultra-fast-fashion online retailer, was sourcing their orders from Leicester factories who were underpaying their staff and working in extremely unsafe conditions. These garment workers were working in conditions that reportedly amounted to modern slavery.⁵ Later in September 2020 an independent review, led by Alison Levitt QC, found that many of the allegations against Boohoo were "substantially true".⁶ However, despite the widespread reporting of the scandal, in the same year Boohoo sales rose substantially and exceeded projected expectations by £68.1 million. The Boohoo Leicester scandal provides essential evidence that forced labour legislation cannot heavily rely upon consumers boycotting products as an accountability or penalty mechanism.

Furthermore, even when consumers do indicate a willingness or intent to change their purchasing behaviour and avoid buying products linked to forced labour, this change is generally only temporary because of competing consumer motivations. For example, in our research on consumer and community responses to the introduction of the Australian Modern Slavery Act, survivors of modern slavery indicated that even though they had experienced exploitation themselves, any boycott behaviour they undertook in relation to a company linked with modern slavery would generally only be temporary as more pressing factors, such as ensuring they can meet their basic needs, would soon prevail. As explained by a survivor, "*when it just pops up on media, I will stop buying the product for a while*", however "*when the scandal is gone, I might go back with that because I need to live*".⁷

Ms Raby's research⁸, as well as others⁹, has found that Australian consumers are predominately motivated by value for money when choosing which products and services they purchase. As explained by a consumer, "*I choose the product with best bang for buck and most longevity*". Over one third of Australian consumers have never considered whether slave or child labour has been

used in an item they have purchased or sought out information about the most ethical purchase option. Even consumers with lived experience of modern slavery don't choose what they buy based on how a business may treat their workers, as they need to consider their own basic needs first and therefore prioritise other factors such as quality, convenience, and price. As explained by a survivor *"when we buy food it's more about, you know, if the food is fresh, if the location is convenient for you for your lifestyle, if the price is reasonable"*.¹⁰

Research published in 2021 found that despite awareness of exploitative practices within fashion production, consumers struggled with relating to the issue of worker-welfare and accepted that exploitation was a necessary part of access to cheap clothing.¹¹ Therefore, fashion consumers generally viewed worker welfare as a less salient issue of concern.

Our research has found that investors, on the other hand, are much better positioned to be able to make decisions that take account of labour conditions in supply chains. Investors are not locked into structural arrangements in the way that consumers must meet certain basic needs from a limited number of options. Investors are also more heavily implicated in the problem of modern slavery, as they profit directly from the exploitation of labour in supply chains, while consumers profit indirectly and inconsistently, through partially reduced costs for consumption items. There is greater scope for pension funds, state and private investment funds to insist on greater due diligence by corporations to find, fix, and prevent instances of modern slavery in their supply chains, and to remediate cases in instances where it does occur.

Recommendations:

- Changes in consumer behaviour cannot be relied upon to hold corporate entities to account through reputational risk and reward approaches which are commonly integral in transparency measures. Stronger enforcement mechanisms to regulate corporate behaviour are required.
- Government focus should shift from consumers to investors as potentially powerful partners in the market to combat modern slavery.

15. To what extent do existing transparency measures translate to accurate awareness of risk in customers?

Key Points:

- There is little to no evidence which indicates that transparency measures result in the public having any increase in general awareness, or accurate understanding of risk.
- A key issue with existing transparency measures is that company disclosures are not reliable therefore cannot be trusted to translate to accurate awareness of risk in customers.
- For many businesses, fear of a bad reputation is more powerful than a desire for a good one, and a fear of being linked to modern slavery can drive a 'cover up' culture.
- Consumers feel it is difficult to identify which products and services are ethical. The expectation that consumers have the time and/or expertise to understand the nuances of effective and ineffective anti-slavery actions disclosed in corporate reporting is flawed and unrealistic and can lead to increased 'social washing'.

Awareness and accurate understanding of risk

There is a general lack of awareness of modern slavery, and related transparency legislation, which limits the role that the public can play in helping to prevent modern slavery as both community members and consumers. For example, despite Australia's transparency measure being in place since 2019, our research has found that many Australian consumers are still unaware of the presence of modern slavery both domestically and in supply chains, or the measures that have been implemented to address it. For example, approximately 1 in 4 Australian consumers believe slavery does not exist in Australia and almost 80% of Australians have never heard of the Modern Slavery Act.¹¹

However, Ms Raby's research also found that consumers have a much greater awareness of the existence of worker exploitation within traditional consumer facing industries such as textiles and electronics than in non-traditional consumer facing industries such as renewable energy. For example, 69% of consumers identified clothing as a product that came to mind when they thought of worker exploitation, whereas only 1% identified solar panels as coming to mind. This is despite the widespread reporting of global production of solar panels using forced labour from China's Uyghur Muslims in Xinjiang province. These findings suggest that even those consumers who are aware of the presence of modern slavery, they do not have an accurate understanding of risk. This may be due to several factors including difficulty in determining business and product/service ethics, as well as a lack of reliability of corporate disclosures, including inaccurate, misleading, or easily misinterpreted reporting.

As noted above (Section: Consumer and Investor Responsibility) there is a disconnect between the information provided in modern slavery statements, and consumers' ability to act on that

¹¹ Consumer Survey conducted by Kyla Raby with Choice, 2022.

information. While some benchmarking initiatives (e.g. Be Slavery Free's Chocolate Scorecard, and Baptist World Aid's Ethical Fashion Guide) attempt to translate transparency-focused disclosure statements by corporations into information accessible to consumers, this work requires significant resourcing.

Unreliability of disclosures

Our research has found that a sole reliance on self-reporting within Australia's Modern Slavery Act has meant that the quality and accuracy of the information disclosed by reporting entities is unreliable, and often questionable. One research participant summarised this point through their comment that *"I've read a lot of modern slavery statements of organizations and they are works of fiction"*. Expanding on these concerns, participants explained they felt *"there's a lot of information gathering and not necessarily any verification happening"*. As Modern Slavery Statements are produced by businesses themselves, they are generally not seen by third parties as trustworthy sources of information. For example, our research found that almost half of Australian consumers do not trust businesses to make sure the products and services they sell are ethical. This lack of trust was also expressed by a survivor who, after viewing two entities modern slavery statement, said *"not everything what they say, it's true"*. Consumers feel that businesses are not likely to self-report instances of modern slavery, or to honestly disclose the ways in which they may cause or contribute to modern slavery because of how doing so may damage their reputation.

Fear of reputation driving a cover up culture

The transparency framework intends to instigate a 'race to the top', by leveraging businesses desire for a good reputation to attract consumer and investor support. However, the fear of a bad reputation can be a stronger incentive for business than a desire for a good one. Survivors felt that when businesses publicly state that they treat their workers well and are then found to have exploited them, they break a promise with the public and this can hurt their reputation and can lead to a loss of income. As explained by a survivor, when a situation of exploitation is brought to light by the media *"people go back to what they promise and that hurts them most"*. Therefore, it is believed that the fear of being found to be exploiting workers is what businesses are most concerned about, rather than competing to be seen as the most ethical. However, this fear of being linked to modern slavery can drive a 'cover up' culture within businesses. As explained by a survivor *"there is a lot of things hiding under the carpet"*. It was felt that businesses are not likely to report instances of modern slavery publicly because as well as risking their public reputation, they may also risk losing workers and in turn, productivity. For transparency to triumph over such a 'cover up' culture, there must be mechanisms for verifying and ensuring accountability for information that is collected and made 'transparent'.

Dr O'Brien's research has found that relying too heavily on media and consumer backlash as a punishment for corporate inaction on modern slavery can be counter-productive. Civil society organisations working to engage consumers and investors on modern slavery report that some corporations are reluctant to scrutinise their supply chains closely, for fear of uncovering instances of modern slavery that could spark press, consumer, and shareholder backlash. Instead, transparency measures should start with the expectation that corporations will find

instances of forced labour in their supply chains. Efforts to mobilise consumers should support greater transparency and due diligence by emphasising a reward-based, or ‘buycott’ approach to support corporations that are open about the issues in their supply chains, and are seeking to remediate existing cases, and prevent future exploitation.

Unrealistic expectations of consumers, and concerns over social washing

The expectation that consumers possess the required knowledge to assess company disclosures of anti-slavery policies and actions overlooks the unique complexity of modern slavery conditions. Ms Raby’s research found that 3 out of 4 Australians feel it is difficult to identify which products and services are ethical. As explained by a survey respondent, “*as a consumer it is difficult to determine whether products are ethically produced*”.¹² A survivor further explained that as there are risks to modern slavery in the supply chains of all major companies, it’s very difficult for consumers to decide which ones are “better”.¹³ The information contained in modern slavery statements is generally not seen as being of value to consumers as it cannot be used to ascertain the degree in which a business causes or contributes to modern slavery. Modern slavery statements are too long, and the information they contain is too complex, to have meaning for the average person.

The unrealistic expectation placed on consumers through transparency mechanisms also overlooks companies’ capacity for ‘social washing’. Social washing is the practice of providing “a false or misleading impression of a company’s commitment to social responsibility or ethical practices”.¹⁴ For example, research into living wage initiatives in the garment industry shows that fashion companies are able to appear as if they are acting on poverty wages through memberships with industry initiatives, however, these initiatives largely fail to provide evidence they have improved garment workers’ wages. This means companies are able to use membership disclosure as a tool to appear responsible, whilst actually evading genuine accountability for poverty wages in their supply chains.¹⁵

Recommendations:

- Transparency measures cannot be relied upon to develop an accurate understanding of risks in customers Long-term and widespread public information campaigns are required to help the public develop such an understanding.
- To improve the reliability of corporate disclosures, significant penalties for inaccurate and misleading reporting are required.

¹² Consumer Survey conducted by Kyla Raby with Choice, 2022.

¹³ Survivor Focus Group Discussion, conducted by Kyla Raby, 2022.

¹⁴ Grima, S., Sood, K., Ozen, E. and Dalli Gonzi, R. (eds) 2024. Greening Our Economy for a Sustainable Future, Elsevier, Amsterdam, Netherlands.

¹⁵ Coneybeer, Justine, and Rowena Maguire. "Evading Responsibility: A Structural Critique of Living Wage Initiatives and Methodologies." International Journal for Crime, Justice and Social Democracy 11, no. 2 (2022): 15-29.

Other information not directly in response to consultation questions

Key points:

- A transparency framework approach to regulating forced labour and modern slavery in supply chains involves an overreliance on disclosure, not substantive action.
- Disclosure regulations have been criticised as largely ineffectual unless they include a strong enforcement mechanism.¹⁶

Over-reliance on disclosure not substantive action

The introduction of modern slavery disclosures laws has undoubtedly had a positive impact in raising awareness of the problem of modern slavery in supply chains within businesses themselves. However, we urge consideration of the long-term detrimental effects of remaining heavily focused on transparency alone. A transparency framework assists with raising awareness and promoting increased investigation and risk assessments within corporations. However, our current research indicates that Australia's anti-slavery movement is concerned about the potential for the Act to prioritise transparency at the expense of action and remediation (Note: research in progress)¹⁷. Associate Professor O'Brien's research with participants from the anti-slavery civil society sector has found that there is a sense that Modern Slavery Act statements seem to be primarily about 'showing, not doing'. There is a concern that a focus on transparency alone means that action on modern slavery may stagnate as companies adopt measures that ask for transparency from their suppliers without much scrutiny or due diligence.

There is also a danger that a transparency framework may have an unintended consequence of discouraging efforts to find modern slavery in supply chains, as companies may fear resulting consumer or investor backlash following disclosure of modern slavery found in supply chains. If the emphasis is on actively searching for, and addressing, modern slavery, this will help to normalise the reality that labour exploitation is widespread in supply chains. Finding and fixing the problem can become the benchmark for success.

The need for stronger enforcement mechanisms

Both Australia's Modern Slavery Act and the UK's Modern Slavery Act rely on the idea that information disclosed by entities will be assessed by stakeholders and used to reward entities 'doing the right thing' and punish those that are not. Indeed, being inspired by the language used in justifying the transparency approach taken in the UK Act, the Australian Act was developed in order to 'drive a race to the top' by enabling businesses to compete for 'market funding' and investor and consumer support¹⁸. In justifying this objective, the Government's rationale is that 'the market will reward entities that adopt a best-practice approach to compliance', giving the example that consumers may use modern slavery statements to inform their purchasing

¹⁶ Fung, Archon, Mary Graham, and David Weil. Full Disclosure: The Perils and Promise of Transparency. Cambridge University Press, 2007.

¹⁷ Please contact Erin O'Brien (erin.obrien@griffith.edu.au) for more information.

¹⁸ Modern Slavery Bill 2018, *Explanatory Memorandum*, p. 2

decisions^{19[OBJ]20} or utilising consumer power to regulate business. As discussed earlier, there is no evidence to suggest that this is occurring or is likely to occur, and instead there are many barriers which prevent consumers from fulfilling this role expected of them. Therefore, relying on increased consumer support to incentivise business compliance with the Act is not effective and much stronger enforcement mechanisms are required.

Ms Raby's research examining civil society and community responses to Australia's Modern Slavery Act Research found that participants generally felt that the transparency framework approach is not an effective strategy. This was because it does not require any action to specifically address, stop or reverse the drivers of modern slavery, many of which are structurally embedded within the functioning of the global economy and systems of global migration. NFP reporting entities all agreed that there was no evidence to suggest the approach has proved to be an effective strategy so far. One participant summarised the group sentiment by saying "*it's difficult to see where the effectiveness of transparency comes from*". They also felt it was unlikely it would prove to be effective in future since the drivers of modern slavery are complex and "*structurally embedded in cultures and economies and frameworks of different countries and jurisdictions and regions*". Root causes of modern slavery such as poverty and inequality mean workers who migrate to secure economic opportunities not available to them in their country are highly vulnerable to being exploited. As explained by a survivor, "*A farmer who is on the farm in a third world country like where I'm from, I know their life was not easy. They don't have much income, so... I believe if they could come here to work, even the worst condition, [they would] make this decision to come here*". Immigration systems and labour migration programs can also increase the vulnerability of migrants to exploitation. As explained by a survivor, "*where you need to have a visa to be in Australia you are going to do whatever is required*" and as shared by another survivor, "*sometimes you're afraid to report, because you might going to lose the job, you might be going to lose your visa*". The Act does not address such well-known and evidenced root causes of modern slavery or factors which can increase a worker's vulnerability to experiencing exploitation. It is also well established that workers who are most at risk of experiencing exploitation are usually employed with entities operating multiple tiers deep within the supply chains of western businesses. The Act however does not require businesses to explicitly engage with these tiers.

The transparency framework approach is built upon an assumption that reputation is important to businesses and leveraging this reputation by mandating transparency will lead to more ethical behaviour. The importance of public reputation was generally accepted by research participants as being true for large entities. As one survivor explained, "*the big firm always try to protect their face*". However, survivors spoke of the importance of also recognising the role of small businesses in the exploitation of workers. "*Small businesses like the family businesses, they do a lot of things which are not acceptable as well. It's not just in the large organization.*" They felt that this

¹⁹ Department of Home Affairs 2018, Submission 79 - Submission to the Senate Legal and Constitutional Affairs Legislation Committee Inquiry into the Modern Slavery Bill 2018, p. 6

reputational incentive wasn't the same for small businesses. As explained by a survivor, *"for the large organization they intend to keep what they stay on the statement because of their name as well. But I'm not sure if this will work for this small organization, you know, and because when you are small, not everybody pay attention to you"*. NFP reporting entities also raised concerns with the Acts over-reliance on reputation as a compliance incentive and the absence of any communication from government as to which entities are responding well and which ones are not. One participant explained that *"there are lots of academic papers and other organizations reviewing statements but nothing that's actually come out to formally rebuke or make clear who there is or isn't meeting those obligations"*. Participants agreed that a lack of criminal, civil or financial penalties or alternative enforcement mechanisms meant that the act essentially had *"no governmental teeth behind it"*, and therefore relied entirely on good faith of businesses to voluntarily do the work, which as a result, they felt many are not.

Appendix A – Contributors

Associate Professor Erin O’Brien, Griffith University

Dr Erin O'Brien is an Australian Research Council DECRA Fellow and Associate Professor in the School of Government and International Relations within the Griffith Business School (GBS). Her research examines political advocacy, and participation, studying the interplay between activists, market actors, and the state in the construction of knowledge and formation of policy to combat global problems including modern slavery and environmental degradation. Dr O'Brien's current research investigates political consumerism and investorism – the mobilisation of consumers and investors for political causes. Dr O'Brien's Australian Research Council DECRA Fellowship (2021-2024) titled 'Australian civil society combating modern slavery with ethical consumerism' examines the adoption of ethical consumerism as a solution to complex multi-jurisdictional issues. She is the author of two books on the politics of human trafficking and modern slavery - *Challenging the Human Trafficking Narrative: Victims, Villains, and Heroes* (2019) and *The Politics of Sex Trafficking: A Moral Geography* (2013). Dr O'Brien is currently an Elected Executive Director of the Australian Political Studies Association.

Dr Justine Coneybeer, Griffith University

Dr Justine Coneybeer is a Researcher at the School of International Relations and Government at Griffith University in Australia. She recently completed her PhD thesis entitled “Taking Responsibility? A Critical Analysis of Fashion Companies’ Responses to the Australian Modern Slavery Act”. Justine examines how fashion companies perceive their responsibility for modern slavery and whether legislation is promoting effective action against exploitative labour. Justine has also worked on several projects investigating opportunities to improve working conditions in cotton value chains, co-developing a model of investor activism in Australia, and analysing legislative protections for Australian garment workers. Justine is also a Research Associate at the University of Sydney investigating the intersection between modern slavery and climate change

Ms Kyla Raby, University of South Australia

Kyla Raby is an anti-slavery researcher, practitioner and educator, currently undertaking her PhD at the University of South Australia researching the role of the consumer in state legislative efforts to eradicate modern slavery in supply chains. Her research has been published in international modern slavery and human trafficking focused journals and Kyla is a co-author of the book, *Modern Slavery in Australia* (2024). Kyla is a delegate with the International Red Cross and Red Crescent Movement which has seen her deployed to migration crisis’ in Cox’s Bazar, Bangladesh, and Northern Greece. Kyla is a sessional academic with several Australian Universities and had written, designed and delivered courses on human trafficking and modern slavery. Kyla holds a Master in Public and International Law, a BA in International Relations and a Bachelor of Journalism. Kyla is a board member of the antislavery coalition Be Slavery Free and was an inaugural member of the New South Wales Anti-Slavery Commissioners Advisory board. Kyla is the founder and facilitator of Everyday Slavery, an education-based initiative funded by the Australian Government which aims to enable the public to play a greater role in preventing and addressing modern slavery, both in global supply chains and the Australian community.

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