

Independent Review of the Modern Slavery Act

Second interim report:
Transparency in supply chains

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The Rt Hon Maria Miller MP
The Rt Hon Baroness Butler-Sloss GBE

Contents

Introduction to the Review	5
1. Introduction	7
2. Findings	9
2.1 <i>Clarifying which companies are in scope</i>	9
2.2 <i>Improving the quality of statements</i>	10
2.3 <i>Embedding modern slavery reporting into business culture</i>	11
2.4 <i>Increasing transparency</i>	12
2.5 <i>Monitoring and enforcing compliance</i>	12
2.6 <i>Government and the public sector</i>	13
2.7 <i>Other issues</i>	15
3. Summary of recommendations	16
4. Annexes	19
<i>Annex A: Terms of reference for the Independent Review of the Modern Slavery Act</i>	19
<i>Annex B: Section 54 of the Modern Slavery Act 2015</i>	22
<i>Annex C: Australian Modern Slavery Act 2018</i>	25
<i>Annex D: US Federal Acquisition Regulation, Subpart 22.17 – Combating Trafficking in Persons</i>	43
<i>Annex E: Full list of Contributors</i>	51

Introduction to the Review

- i. In July 2018, the Home Secretary, at the request of the Prime Minister, announced a review of the Modern Slavery Act 2015 (the Act). The members of the Review are Frank Field MP (chairman), Maria Miller MP and the Baroness Butler-Sloss. The Review's terms of reference are set out at **Annex A**.
- ii. We have been provided with a secretariat seconded from the Home Office to support us, and we are very grateful to them for their hard work, efficient research, and for providing us with the relevant information we need to formulate and substantiate our conclusions and recommendations. We have also secured the services of a former House of Commons Clerk who has provided independent support and advice on the drafting of our report. Although we have been set up by the Home Office, we have made it very plain to Government that we are carrying out an entirely independent review of the working of the Act. As such, the conclusions and recommendations set out in this interim report and all other reports are entirely our own.
- iii. We have set up an independent website that can be found at <https://independentmsareview.co.uk>.
- iv. We were asked to focus on four areas of the Act and produce a final report for the Home Secretary with our recommendations by the end of March 2019. These four areas are:
 - The Independent Anti-Slavery Commissioner (sections 40 – 44)
 - Transparency in supply chains (section 54)
 - Independent Child Trafficking Advocates (section 48)
 - The legal application of the Act, comprising:
 - The definition of exploitation (section 3)
 - Reparation orders (sections 8-10)
 - The statutory defence (section 45)

Of these areas, we were invited to give our views on the Independent Anti-Slavery Commissioner and transparency in supply chains before the end of 2018. We have therefore decided to prioritise interim reports on these two issues, and this is the second such report. In accordance with our terms of reference, this report principally addresses the question: “how to ensure compliance and drive up the quality of [slavery and human trafficking] statements produced by eligible companies”.

v. In order to achieve the maximum information on the areas under review in a limited time, we invited nine Expert Advisers to gather and collate evidence for us from a range of sectors and interest groups. The Expert Advisers we appointed were:

- Vernon Coaker MP (Parliamentarians)
- Bishop Alastair Redfern (Faith Groups)
- Baroness Young and John Studzinski (Business)
- Anthony Steen (Civil Society)
- Christian Guy (Commonwealth and International)
- Professor Ravi Kohli (Child Trafficking)
- Peter Carter QC and Caroline Haughey QC (Criminal Justice System).

We are very grateful to the Expert Advisers, as well as all the individuals and organisations that provided evidence to them. We have drawn on their evidence and recommendations in this interim report on transparency in supply chains and will continue to do so for the other themes under review.

vi. The Home Affairs Select Committee (HASC), chaired by Yvette Cooper MP, is currently undertaking a wide-ranging inquiry into policy and implementation issues relating to modern slavery. It has conducted an open call for evidence, as well as holding a series of evidence sessions. We have analysed this evidence in full and have taken it into account where it is particularly relevant to the Review's terms of reference as part of our own evidence base. The work of the inquiry will complement the deep dive that our Review is conducting into specific provisions of our modern slavery legislation. The HASC inquiry is also dealing with a range of non-legislative issues that this Review will not specifically cover.

Transparency in supply chains (Section 54 of the Act)

1. Introduction

- 1.1 It is clear that the Act is an innovative piece of legislation that has influenced parliaments across the world in efforts to combat the global evil of modern slavery. Other countries are following our lead, so it is of the utmost importance that we get this legislation right and properly implemented. Increasing transparency in supply chains is an essential step towards addressing human trafficking and modern slavery in organisations' supply chains in the UK and overseas.
- 1.2 The transparency in supply chains provisions are set out in section 54 of the Act (see **Annex B**), which requires large commercial organisations supplying good or services, and carrying on a business in the UK, to prepare a slavery and human trafficking statement for each financial year. The company must state the steps it has taken to ensure that slavery and human trafficking is not taking place in its business or its supply chains, or it must state it has taken no such steps.
- 1.3 Section 54 was intended to encourage the private sector to increase transparency. Government wanted to create a level playing field between companies that were already acting responsibly and companies that still needed to change their policies and practices. Although section 54(11) introduced the possibility for the Secretary of State to seek an injunction against non-compliant companies, Government was clear that it would be for consumers, investors and Non-Governmental Organisations (NGOs) to monitor compliance and apply pressure on businesses.¹
- 1.4 As the first national legislation on this matter, Section 54 of the Modern Slavery Act was ground-breaking legislation. It has contributed to raising awareness of slavery and human trafficking in supply chains and has encouraged many companies to start considering and addressing the issue. However, the impact of the section has been limited to date. Evidence gathered by our Expert Advisers shows that there is a general agreement between businesses and civil society that a lack of enforcement and penalties, as well as confusion surrounding

¹ Home Office, *Transparency in supply chains: a practical guide* (p.6), 2015.

reporting obligations, are core reasons for poor-quality statements and the estimated lack of compliance from over a third of eligible firms.²

- 1.5 It is clear the current approach, while a step forward, is not sufficient and it is time for the Government to take tougher action to ensure companies are taking seriously their responsibilities to eradicate modern slavery from their supply chains. The Australian Federal Parliament, which has just passed its own Modern Slavery Act, has gone much further in respect of transparency of supply chains than the provisions established in section 54.
- 1.6 The reports from our Expert Advisers on transparency in supply chains will be made available on our website. We also received input from a number of Government departments and agencies. Finally, we undertook some comparative research that looked at similar provisions overseas, namely the Australian Modern Slavery Act and the US Federal Acquisition Regulation. This evidence can be found at **Annex C and D**.

² <https://www.gov.uk/government/news/home-office-tells-business-open-up-on-modern-slavery-or-face-further-action>

2. Findings

2.1 Clarifying which companies are in scope

2.1.1 Most stakeholders have reported that there is a lack of clarity over which companies are in scope of section 54. Under the Act, and related secondary legislation, an organisation is in scope if it meets all of the following requirements:

- It is a commercial organisation (corporate body or partnership).
- It supplies goods or services.
- It carries on all or part of its business in the UK.
- It has an annual turnover of at least £36 million.³

The broad nature of the requirements and the lack of a specific definition for “carrying on a business” have resulted in ambiguity over which companies are in scope. This makes it difficult for external observers (NGOs or consumers) to identify which companies are expected to comply. We are aware of the difficulty of producing a comprehensive list of companies in scope of section 54, including the fact that the extraterritorial capacity of the Act makes it difficult to capture foreign companies.

2.1.2 Government could usefully look at the work done to identify employers required to comply with gender pay gap reporting. The Government Equalities Office identified a list of employers in scope of gender pay gap legislation by crosschecking UK business population estimates published by the Department for Business, Energy & Industrial Strategy with data from a commercial provider to determine legal entities. They then wrote to all the companies identified asking them to confirm whether they were in scope of the legislation.

2.1.3 We believe that **Government should establish an internal list of companies in scope of section 54 and check with companies whether they are covered by the legislation.** To avoid companies’ non-compliance, **individual companies should remain responsible for determining if they need to produce a slavery and human trafficking statement.⁴ Non-inclusion in the list should not be an excuse for non-compliance.**

³ The Modern Slavery Act 2015 (Transparency in Supply Chains) Regulations 2015

⁴ Henceforward in this report “modern slavery statement”

2.2 Improving the quality of statements

2.2.1 As well as setting a scope that is not entirely clear, the current legislation also leaves ample room for businesses to determine the contents, and therefore the quality, of statements. A company can state that it has taken no steps and still be compliant with the legislation.

Section 54(4)(b), which allows companies to report they have taken no steps to address modern slavery in their supply chains, should be removed.

2.2.2 Section 54 currently indicates six areas that a company statement *may* cover:

- the organisation's structure, its business and its supply chains;
- its policies in relation to slavery and human trafficking;
- its due diligence processes in relation to slavery and human trafficking in its business and supply chains;
- 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;
- 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;
- the training about slavery and human trafficking available to its staff.

The statutory guidance was revised in March 2018 to clarify that government would *expect* companies to cover these six areas.

2.2.3 We have heard strong calls to make it mandatory to report under each of these areas. While we have also heard that they might not be applicable to all sectors or businesses, we are of the view that the six headings are high-level enough to be applicable to all. ***In section 54(5) 'may' should be changed to 'must' or 'shall', with the effect that the six areas set out as areas that an organisation's statement may cover will become mandatory. If a company determines that one of the headings is not applicable to their business, it should be required to explain why.***

2.2.4 We have heard evidence both from the business sector and from civil society that better guidance is needed on the content of the statements. We recommend that ***the statutory guidance should be strengthened to include a template of the information organisations are expected to provide on each of the six areas.*** This would increase uniformity and consistency between companies'

statements, making it easier for Government, civil society and consumers to analyse and compare statements. ***We also believe that guidance should make clear that reporting should include not only how businesses have carried out due diligence but also the steps that they intend to take in the future. The Independent Anti-Slavery Commissioner should oversee the guidance available to companies.***

- 2.2.5 There is currently no requirement for companies to disclose how far down their supply chains they have considered. We are of the view that ***the legislation should be amended to clarify that companies are required to consider the entirety of their supply chains. If a company has not done so, it should be required to explain why it has not and what steps it is going to take in the future.*** This would address the issue of companies offloading their responsibilities at the first tier in their supply chain or by using agency staff.

2.3 Embedding modern slavery reporting into business culture

- 2.3.1 A number of expert advisers have reported that in order for not just the quality of reporting to improve, but more importantly the resulting action to prevent modern slavery to be taken seriously, modern slavery reporting needs to move from being perceived as a Corporate Social Responsibility “tick-box” exercise to being regarded alongside other serious regulatory and governance obligations. Companies need to feel an equal pressure to report slavery as they do on equality and human rights. There is not yet equal pressure on companies to report their efforts to beat slavery in their supply chains. Failure to comply with modern slavery obligations should be viewed as on the same level as failure to file accurate accounts or prevent bribery and corruption. Conversely, companies that are transparent and report taking actions when instances of modern slavery are uncovered in their supply chains should be commended by the Independent Anti-Slavery Commissioner.
- 2.3.2 Including modern slavery reporting in companies’ annual reports would contribute to the issue being considered by businesses alongside other regulatory and human rights reporting obligations. We recommend that ***the Companies Act 2006 should be amended to include a requirement for companies to refer in their annual reports to their modern slavery statement. Section 54 should be amended to impose a similar duty on non-listed companies that meet the £36 million threshold but would not be captured by the Companies Act 2006 reporting requirements.***

- 2.3.3 To embed modern slavery reporting further into company culture, we strongly believe that ***businesses should be required to have a named, designated board member who is personally accountable for the production of the statement. Failure to fulfil modern slavery statement reporting requirements or to act when instances of slavery are found should be an offence under the Company Directors Disqualification Act 1986.***
- 2.3.4 We do not recommend mandating a single deadline for businesses to publish their modern slavery statements. Instead, reporting should be in line with the end of a company's financial year, again aligning it with other core regulatory obligations.

2.4 Increasing transparency

- 2.4.1 Section 54 requires companies to publish a link to their modern slavery statements on a prominent place of their main page if they have a website. There is no obligation to upload the statements anywhere else. Two NGOs have set up repositories: TISCreport.org and Modern Slavery Registry. The majority of stakeholders reported that the existence of two different repositories was confusing and that the creation of a central government-run repository would bring clarity and consistency.
- 2.4.2 The Australian Modern Slavery Act 2018 requires the creation of a government-run repository known as the Modern Slavery Statements Register. Statements on the register may be accessed by the public, free of charge, on the internet. All the expert advisers recommend that there should be a similar repository in the UK. We agree. ***There should be a central government-run repository to which companies are required to upload their statements and which should be easily accessible to the public, free of charge.***
- 2.4.3 We recommend that ***statements should be dated and clearly state over which 12-month period they apply*** so as to monitor progress. ***The website hosting the repository should also clearly outline the minimum statutory reporting requirements.***

2.5 Monitoring and enforcing compliance

- 2.5.1 There is no public body in charge of monitoring compliance with section 54, as government intended the public, investors and NGOs to take that role. We have heard that monitoring would carry more weight if it was conducted by a public organisation. This should include both compliance in terms of reporting standards and quality of the statement

based on the six mandated areas. **We recommend that the Independent Anti-Slavery Commissioner should monitor compliance and report annually.** This recommendation is supported by a number of stakeholders, providing that the office of the Independent Anti-Slavery Commissioner is resourced accordingly.

- 2.5.2 Almost all the expert advisers agree that a more robust and systematic approach to tackling non-compliance is necessary. Section 54 enables the Secretary of State to issue injunctions to non-compliant companies, but this provision has never been used. **Government should make the necessary legislative provisions to strengthen its approach to tackling non-compliance, adopting a gradual approach: initial warnings, fines (as a percentage of turnover), court summons and directors' disqualification. Sanctions should be introduced gradually over the next few years so as to give companies time to adapt to changes in the legislative requirements.**
- 2.5.3 **Government should bring forward proposals to set up or assign an enforcement body to impose sanctions on non-compliant companies. Fines levied for non-compliance could be used to fund the enforcement body.**

2.6 Government and the public sector

- 2.6.1 There was a general agreement among expert advisers and stakeholders consulted that government should lead by example and be covered by section 54. Some Local Authorities, NHS trusts and police forces are already publishing modern slavery statements. They are doing so on a voluntary basis as there is currently no requirement in the legislation for the public sector to report.
- 2.6.2 The Australian Modern Slavery Act 2018 includes reporting obligations for the public sector. This will cover the federal government and public companies that have a consolidated revenue of at least \$100 million. (see annex C). The UK Prime Minister's announcement on 3 December 2018 to publish Government's first modern slavery statement next year is a welcome first step in the right direction. We support Baroness Young's Private Member's Modern Slavery (Transparency in Supply Chains) Bill, which seeks to extend the reporting requirements in section 54 to include all public authorities.
- 2.6.3 We agree that **section 54 should be extended to the public sector. Government departments should publish a statement at the end of the financial year, approved by the Department's board and signed by the Permanent Secretary as Accounting Officer. Local**

government, agencies and other public authorities should publish a statement if their annual budget exceeds £36 million.

- 2.6.4 In 2017, the UK government awarded contracts and frameworks to private companies worth £220 billion in lifetime value.⁵ Public procurement is therefore a powerful tool to influence business practices. There have been some positive initiatives. The Welsh Government has established a Code of Practice, which encourages public authorities to ensure that employment practices are considered as part of the procurement process. We also welcome the procurement tool that the Home Office has developed and piloted for Government suppliers to help them identify potential risks in their supply chains. **Government should further strengthen its public procurement processes to make sure that non-compliant companies in scope of section 54 are not eligible for public contracts.** The US Federal Acquisition Regulation has often been mentioned as an example of best practice (see annex D). Companies with federal contracts for goods and services to be acquired outside the US with an estimated value of more than \$500,000 are required to produce a compliance plan. They must also submit annual certifications regarding the implementation of the plan and associated due diligence activities. This plan should include a human trafficking policy, an employee awareness programme, an employee reporting or grievance process, a recruitment and wage plan, a housing plan (if applicable) and a violation monitoring and remediation mechanism.
- 2.6.5 The Federal Acquisition Regulation also requires that contractor performance information be collected in the Contractor Performance Assessment Reporting System (CPARS). The information collected also includes compliance with important terms and conditions (including preventing trafficking in persons). The CPARS database is used by agency source selection officials and contracting officers from across the US Government in making award decision. Public bodies in the UK voluntarily including modern slavery checks as part of their procurement process have told us it is time consuming to check manually whether bidders are in scope of section 54 and if they are, whether they have published a statement that is compliant with the legislation. **The Crown Commercial Service should keep a database of public contractors and details of compliance checks and due diligence on all relevant aspects of corporate governance carried out by public authorities. The database should be easily accessible to public authorities for use during the procurement purposes.**

⁵ Sancroft, The Sancroft-Tussel Report: Eliminating Modern Slavery in Public Procurement, 2018.

2.7 Other issues

2.7.1 The power of consumers is a critical tool in influencing business behaviour in relation to modern slavery. Consumers are viewed as playing an essential role in eradicating modern slavery in the UK, yet research reviewed on consumer attitudes to modern slavery revealed that consumers are often unaware of the critical role they play.⁶ The attitudes of consumers regarding modern slavery, and how they can be changed, remains severely under-researched. ***The Independent Anti-Slavery Commissioner should commission research into how consumer attitudes to modern slavery can be influenced. The aim of this should be for business, in partnership with civil society, to leverage purchasing power to eradicate modern slavery in supply chains. The research should feed into the Commissioner's annual report, with recommendations for Government action as appropriate.***

2.7.2 On the issue of the turnover threshold for determining which companies are in scope of section 54, we did not hear many calls for it to be changed at present. Government should primarily focus on improving compliance, quality and enforcement of obligations at the current threshold. However, Government should keep the threshold of £36 million turnover under review, with the possibility of reducing the threshold over time. Specific guidance could also be addressed to companies with an annual turnover under £36 million, following the example of the Scottish Government.

2.7.3 We heard examples of best practice from business on how they are working proactively to identify and address modern slavery. This included training staff on identifying and reporting modern slavery and making it part of the new joiner training so that all front-line staff know the signs of modern slavery. This is a very sensible approach and we encourage business to take it up.

⁶ [Consuming Modern Slavery report](#) (2018) by Dr Michal Carrington, Prof Andreas Chatzidakis and Prof Deirdre Shaw.

3. Summary of recommendations

1. Clarifying the companies in scope:

- a. Government should establish an internal list of companies in scope of section 54 and check with companies whether they are covered by the legislation.
- b. Individual companies should remain responsible for determining if they need to produce a slavery and human trafficking statement. Non-inclusion in the list should not be an excuse for non-compliance.

2. Improving the quality of statements:

- a. Section 54(4)(b), which allows companies to report they have taken no steps to address modern slavery in their supply chains, should be removed.
- b. In section 54(5) 'may' should be changed to 'must' or 'shall', with the effect that the six areas set out as areas that an organisation's statement may cover will become mandatory. If a company determines that one of the headings is not applicable to their business, it should be required to explain why.
- c. The statutory guidance should be strengthened to include a template of the information organisations are expected to provide on each of the six areas.
- d. Guidance should make clear that reporting should include not only how businesses have carried out due diligence but also the steps that they intend to take in the future.
- e. The Independent Anti-Slavery Commissioner should oversee the guidance available to companies.
- f. The legislation should be amended to require companies to consider the entirety of their supply chains. If a company has not done so, it should be required to explain why it has not and what steps it is going to take in the future.

3. Embedding modern slavery reporting into business culture:

- a. The Companies Act 2006 should be amended to include a requirement for companies to refer in their annual reports to their modern slavery statement. Section 54 should be amended to impose a similar duty on non-listed companies that meet the £36 million threshold but would not be captured by the Companies Act 2006 reporting requirements.
- b. Businesses should be required to have a named, designated board member who is personally accountable for the production of the statement.

- c. Failure to fulfil modern slavery statement reporting requirements or to act when instances of slavery are found should be an offence under the Company Directors Disqualification Act 1986.

4. Increasing transparency:

- a. There should be a central government-run repository to which companies are required to upload their statements and which should be easily accessible to the public, free of charge.
- b. Statements should be dated and clearly state over which 12-month period they apply.
- c. The website hosting the repository should also clearly outline the minimum statutory reporting requirements.

5. Monitoring and enforcing compliance:

- a. The Independent Anti-Slavery Commissioner should monitor compliance.
- b. Government should make the necessary legislative provisions to strengthen its approach to tackling non-compliance, adopting a gradual approach: initial warnings, fines (as a percentage of turnover), court summons and directors' disqualification. Sanctions should be introduced gradually over the next few years so as to give companies time to adapt to changes in the legislative requirements.
- c. Government should bring forward proposals to set up or assign an enforcement body to impose sanctions on non-compliant companies. Fines levied for non-compliance could be used to fund the enforcement body.

6. Government and the public sector:

- a. Section 54 should be extended to the public sector. Government departments should publish a statement at the end of the financial year, approved by the Department's board and signed by the Permanent Secretary as Accounting Officer. Local government, agencies and other public authorities should publish a statement if their annual budget exceeds £36 million.
- b. Government should strengthen its public procurement processes to make sure that non-compliant companies in scope of section 54 are not eligible for public contracts.
- c. The Crown Commercial Service should keep a database of public contractors and details of compliance checks and due diligence carried out by public authorities. The database should be easily accessible to public authorities for use during the procurement purposes.

7. **Consumer attitudes:** The Independent Anti-Slavery Commissioner should commission research into how consumer attitudes to modern slavery can be influenced. The aim of this should be for business, in partnership with civil society, to leverage purchasing power to eradicate modern slavery in supply chains. The research should feed into the Commissioner's annual report, with recommendations for Government action as appropriate.

4. Annexes

Annex A: Terms of reference for the Independent Review of the Modern Slavery Act

1. Background

The introduction of the Modern Slavery Act 2015, the first legislation of its kind in the world, has helped to transform the UK's response to modern slavery. More victims are being identified and supported; more offenders are being prosecuted; and thousands of companies have published statements setting out the steps they have taken to tackle modern slavery in their supply chains.

The UK is determined to lead global efforts to tackle this barbaric crime and as the methods used by criminals to exploit vulnerable people evolve, and our understanding of this crime evolves, it is important to consider our legislative approach.

2. Aim of the review

The aim of the review is to report on the operation and effectiveness of, and potential improvements to, provisions in the Modern Slavery Act 2015, which provides the legal framework for tackling modern slavery.

3. Structure of the review

The review will gather evidence and seek views from relevant stakeholders. This process could include a call for written submissions, evidence sessions on particular aspects of the legislation, and interviews with representatives from civil society, business, law enforcement and other interested bodies.

The review will be independent; the findings and recommendations of the review will represent the views of the reviewers. The reviewers will be supported by a secretariat which will be seconded from the Home Office, and sponsored by the Director for Tackling Slavery and Exploitation.

The review will aim to report to the Home Secretary before the end of March 2019. On completion, the review is to be compiled into a report, including recommendations, to be presented to the Home Secretary for approval.

Following approval, the Home Secretary will lay the report in Parliament.

4. Scope of the review

This review aims to understand how the 2015 act is operating in practice, how effective it is, and whether the legal framework for tackling modern slavery is fit for purpose now and in the future. In doing so, the review will need to take into account any significant political, economic, social and technological changes since the 2015 act was passed.

The following provisions of the act must be considered in the review:

- section 3 on the meaning of exploitation
- sections 8-10 on reparation orders
- sections 40 to 44 on the Independent Anti-Slavery Commissioner
- section 45 on the statutory defence
- section 48 on independent child trafficking advocates
- section 54 on transparency in supply chains

In particular, the review should consider the following questions which have been brought to the attention of the government by the sector and others as issues requiring consideration:

- in relation to section 3, how to ensure the act is ‘future-proof’ given our evolving understanding of the nature of modern slavery offences, for example the recent and emerging issues of county lines and orphanage trafficking
- in relation to sections 8 to 10, how to ensure access to legal remedies and compensation for victims and would a specific civil wrong improve access to compensation for victims
- in relation to sections 40 to 44, how to ensure the independence of the Anti-Slavery Commissioner
- in relation to section 45, how to ensure an appropriate balance between the need to protect victims from criminal prosecution and preventing criminals from abusing this protection to avoid justice
- in relation to section 48, how to ensure the right support for child victims given the changing profile of child victims
- in relation to section 54, how to ensure compliance and drive up the quality of statements produced by eligible companies

The review should take into account the following principles:

- recommendations should only relate to the legal framework provided by the act and its implementation
- recommendations must be sustainable and take into account the financial and practical impact of implementation

- the review may consider other matters in relation to modern slavery subject to the agreement of the Home Secretary
- purdah guidelines should be adhered to where appropriate

Annex B: Section 54 of the Modern Slavery Act 2015

54 Transparency in supply chains etc

- (1) A commercial organisation within subsection (2) must prepare a slavery and human trafficking statement for each financial year of the organisation.
- (2) A commercial organisation is within this subsection if it—
 - (a) supplies goods or services, and
 - (b) has a total turnover of not less than an amount prescribed by regulations made by the Secretary of State.
- (3) For the purposes of subsection (2)(b), an organisation's total turnover is to be determined in accordance with regulations made by the Secretary of State.
- (4) A slavery and human trafficking statement for a financial year is—
 - (a) a statement of the steps the organisation has taken during the financial year to ensure that slavery and human trafficking is not taking place—
 - (i) in any of its supply chains, and
 - (ii) in any part of its own business, or
 - (b) a statement that the organisation has taken no such steps.
- (5) An organisation's slavery and human trafficking statement may include information about—
 - (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;
 - (f) the training about slavery and human trafficking available to its staff.
- (6) A slavery and human trafficking statement—
 - (a) if the organisation is a body corporate other than a limited liability partnership, must be approved by the board of directors (or equivalent management body) and signed by a director (or equivalent);

- (b) if the organisation is a limited liability partnership, must be approved by the members and signed by a designated member;
- (c) if the organisation is a limited partnership registered under the Limited Partnerships Act 1907, must be signed by a general partner;
- (d) if the organisation is any other kind of partnership, must be signed by a partner.

(7) If the organisation has a website, it must—

- (a) publish the slavery and human trafficking statement on that website, and
- (b) include a link to the slavery and human trafficking statement in a prominent place on that website's homepage.

(8) If the organisation does not have a website, it must provide a copy of the slavery and human trafficking statement to anyone who makes a written request for one, and must do so before the end of the period of 30 days beginning with the day on which the request is received.

(9) The Secretary of State—

- (a) may issue guidance about the duties imposed on commercial organisations by this section;
- (b) must publish any such guidance in a way the Secretary of State considers appropriate.

(10) The guidance may in particular include further provision about the kind of information which may be included in a slavery and human trafficking statement.

(11) The duties imposed on commercial organisations by this section are enforceable by the Secretary of State bringing civil proceedings in the High Court for an injunction or, in Scotland, for specific performance of a statutory duty under section 45 of the Court of Session Act 1988.

(12) For the purposes of this section—

“commercial organisation” means—

- (a) a body corporate (wherever incorporated) which carries on a business, or part of a business, in any part of the United Kingdom, or
- (b) a partnership (wherever formed) which carries on a business, or part of a business, in any part of the United Kingdom,

and for this purpose “business” includes a trade or profession;

“partnership” means—

- (a) a partnership within the Partnership Act 1890,

(b) a limited partnership registered under the Limited Partnerships Act 1907, or

(c) a firm, or an entity of a similar character, formed under the law of a country outside the United Kingdom;

“slavery and human trafficking” means—

(a) conduct which constitutes an offence under any of the following—

(i) section 1, 2 or 4 of this Act,

(ii) section 1, 2 or 4 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 (c. 2 (N.I.)) (equivalent offences in Northern Ireland),

(iii) section 22 of the Criminal Justice (Scotland) Act 2003 (asp 7) (traffic in prostitution etc),

(iv) section 4 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (trafficking for exploitation),

(v) section 47 of the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13) (slavery, servitude and forced or compulsory labour), or

(b) conduct which would constitute an offence in a part of the United Kingdom under any of those provisions if the conduct took place in that part of the United Kingdom.

Annex C: Australian Modern Slavery Act 2018

Modern Slavery Act 2018

No. 153, 2018

An Act to require some entities to report on the risks of modern slavery in their operations and supply chains and actions to address those risks, and for related purposes

[Assented to 10 December 2018]

The Parliament of Australia enacts:

Part 1—Preliminary

1 Short title

This Act is the *Modern Slavery Act 2018*.

2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	10 December 2018
2. Sections 3 to 10 and Parts 2 to 4	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent,	1 January 2019 (F2018N00189)

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
	they commence on the day after the end of that period.	

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

(2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Simplified outline of this Act

This Act requires entities based, or operating, in Australia, which have an annual consolidated revenue of more than \$100 million, to report annually on the risks of modern slavery in their operations and supply chains, and actions to address those risks. Other entities based, or operating, in Australia may report voluntarily.

The Commonwealth is required to report on behalf of non-corporate Commonwealth entities, and the reporting requirements also apply to Commonwealth corporate entities and companies with an annual consolidated revenue of more than \$100 million.

Reports are kept by the Minister in a public repository known as the Modern Slavery Statements Register. Statements on the register may be accessed by the public, free of charge, on the internet.

4 Definitions

In this Act:

accounting standards has the same meaning as in the *Corporations Act 2001*.

Australia, when used in a geographical sense, includes the external Territories.

Australian entity means:

(a) a company which is a resident within the meaning of subsection 6(1) of the *Income Tax Assessment Act 1936*; or

(b) a trust, if the trust estate is a resident trust estate within the meaning of Division 6 of Part III of the *Income Tax Assessment Act 1936*; or

(c) a corporate limited partnership which is a resident within the meaning of section 94T of the *Income Tax Assessment Act 1936*; or

(d) any other partnership, or other entity, whether incorporated or unincorporated, if:

(i) the entity is formed or incorporated within Australia; or

(ii) the central management or control of the entity is in Australia.

carries on business in Australia: see section 5 (meaning of **reporting entity**).

consolidated revenue, of an entity, means:

(a) the total revenue of the entity, for a reporting period; or

(b) if the entity controls another entity or entities—the total revenue of the entity and all of the controlled entities, considered as a group, for a reporting period of the controlling entity;

worked out in accordance with the accounting standards, even if those standards do not otherwise apply to such an entity (including a controlling entity) or group.

control, of an entity by another entity, means control of the entity within the meaning of the accounting standards.

entity has the same meaning as in the *Income Tax Assessment Act 1997*.

Note: See section 960-100 of that Act.

modern slavery means conduct which would constitute:

(a) an offence under Division 270 or 271 of the *Criminal Code*; or

(b) an offence under either of those Divisions if the conduct took place in Australia; or

(c) trafficking in persons, as defined in Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational

Organized Crime, done at New York on 15 November 2000 ([2005] ATS 27);
or

(d) the worst forms of child labour, as defined in Article 3 of the ILO Convention (No. 182) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, done at Geneva on 17 June 1999 ([2007] ATS 38).

Note: In 2018, the text of international agreements in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

modern slavery statement: see section 12.

principal governing body, of an entity, means:

(a) the body, or group of members of the entity, with primary responsibility for the governance of the entity; or

(b) if the entity is of a kind prescribed by rules made for the purposes of this paragraph—a prescribed body within the entity, or a prescribed member or members of the entity.

Example: Examples of principal governing bodies are as follows:

(a) for a company—the company’s board of directors;

(b) for a superannuation fund—the fund’s board of trustees.

register means the Modern Slavery Statements Register established under section 18.

reporting entity: see section 5.

reporting period, of an entity, means a financial year, or another annual accounting period applicable to the entity, which starts after the commencement of this section.

Example: For a company’s reporting period, see section 319 of the *Income Tax Assessment Act 1936*.

responsible member, of an entity, means:

(a) an individual member of the entity’s principal governing body who is authorised to sign modern slavery statements for the purposes of this Act; or

- (b) if the entity is a trust administered by a sole trustee—that trustee; or
- (c) if the entity is a corporation sole—the individual constituting the corporation; or
- (d) if the entity is under administration within the meaning of the *Corporations Act 2001*—the administrator; or
- (e) if the entity is of a kind prescribed by rules made for the purposes of this paragraph—a prescribed member of the entity.

rules means rules made by the Minister under section 25.

5 Meaning of reporting entity

(1) Each of the following is a **reporting entity** in relation to a reporting period:

- (a) an entity which has a consolidated revenue of at least \$100 million for the reporting period, if the entity:
 - (i) is an Australian entity at any time in that reporting period; or
 - (ii) carries on business in Australia at any time in that reporting period;
- (b) the Commonwealth;
- (c) a corporate Commonwealth entity, or a Commonwealth company, within the meaning of the *Public Governance, Performance and Accountability Act 2013*, which has a consolidated revenue of at least \$100 million for the reporting period;
- (d) an entity which has volunteered to comply with the requirements of this Act under section 6 for that period.

Note: The Commonwealth is required to report on behalf of non-corporate Commonwealth entities within the meaning of the *Public Governance, Performance and Accountability Act 2013*: see section 15 of this Act.

(2) An entity **carries on business in Australia** if the entity:

- (a) in the case of a body corporate—carries on business in Australia, a State or a Territory within the meaning of the *Corporations Act 2001* (see section 21 of that Act); or

(b) in any other case—would be taken to do so within the meaning of that Act if the entity were a body corporate.

6 Voluntary modern slavery statements

How an entity may volunteer

(1) An entity covered by subsection (2) may volunteer to comply with the requirements of this Act for a reporting period, or reporting periods, by giving written notice to the Minister accordingly before the end of the reporting period (or the earliest of the reporting periods), in a manner and form approved by the Minister.

Note: An entity can volunteer under this section in relation to a reporting period and all later reporting periods.

(2) An entity is covered by this subsection for a reporting period if the entity, at any time in the reporting period:

- (a) is an Australian entity; or
- (b) carries on business in Australia.

Revoking a notice

(3) An entity may revoke a notice given under subsection (1), to the extent that it applies in relation to a reporting period or periods, by giving written notice accordingly to the Minister before the start of the reporting period, or the earliest of the reporting periods.

7 Constitutional basis

(1) Without limitation, this Act relies on:

(a) the Commonwealth's legislative powers under the following provisions of the Constitution:

- (i) paragraph 51(i) (trade and commerce);
- (ii) paragraph 51(xi) (census and statistics);
- (iii) paragraph 51(xix) (aliens);
- (iv) paragraph 51(xx) (corporations);
- (v) paragraph 51(xxi) (marriage);

- (vi) paragraph 51(xxvii) (immigration);
 - (vii) paragraph 51(xxix) (external affairs);
 - (viii) paragraph 51(xxxix) (incidental matters);
 - (ix) section 61 (the executive power); and
- (b) any implied legislative powers of the Commonwealth.

(2) Without limiting subparagraph (1)(a)(vii), this Act's reliance on the Commonwealth's legislative powers under paragraph 51(xxix) of the Constitution is based on purposes including giving effect to the following international agreements, as amended and in force for Australia from time to time:

- (a) the International Convention to Suppress the Slave Trade and Slavery, done at Geneva on 25 September 1926 ([1927] ATS 11);
- (b) the ILO Convention (No. 29) concerning Forced or Compulsory Labour, done at Geneva on 28 June 1930 ([1933] ATS 21);
- (c) the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices similar to Slavery, done at Geneva on 7 September 1956 ([1958] ATS 3);
- (d) the International Covenant on Civil and Political Rights, done at New York on 16 December 1966 ([1980] ATS 23);
- (e) the Convention on the Elimination of All Forms of Discrimination Against Women, done at New York on 18 December 1979 ([1983] ATS 9);
- (f) the Convention on the Rights of the Child, done at New York on 20 November 1989 ([1991] ATS 4);
- (g) the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, done at New York on 15 November 2000 ([2005] ATS 27);
- (h) the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, done at New York on 25 May 2000 ([2007] ATS 6);

(i) the ILO Convention (No. 182) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, done at Geneva on 17 June 1999 ([2007] ATS 38).

Note: In 2018, the text of international agreements in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

8 Act binds the Crown

This Act binds the Crown in right of the Commonwealth. However, it does not bind the Crown in right of a State, the Australian Capital Territory or the Northern Territory.

9 Extension to external Territories

This Act extends to every external Territory.

10 Extra-territorial application

This Act extends to acts, omissions, matters and things outside Australia.

Part 2—Modern slavery statements

11 Simplified outline of this Part

This Part requires modern slavery statements to be given annually to the Minister, describing the risks of modern slavery in the operations and supply chains of reporting entities and entities owned or controlled by those entities.

The statements must also include information about actions taken to address those risks.

Joint modern slavery statements may be given on behalf of one or more reporting entities.

The Minister must prepare an annual modern slavery statement on behalf of all non-corporate Commonwealth entities.

The Minister may request an explanation from an entity about the entity's failure to comply with a requirement in relation to modern slavery statements, and may also request that the entity undertake remedial action in relation to that requirement. If the entity fails to comply with the request, the Minister may

publish information about the failure to comply on the register or elsewhere, including the identity of the entity.

12 Meaning of *modern slavery statement*

A ***modern slavery statement*** is a statement prepared for the purposes of any of the following:

- (a) section 13 (modern slavery statements for single reporting entities);
- (b) section 14 (joint modern slavery statements);
- (c) section 15 (Commonwealth modern slavery statements).

13 Modern slavery statements for single reporting entities

(1) A reporting entity must give the Minister a modern slavery statement for the entity, for a reporting period, unless a modern slavery statement has been given covering the entity for that period under section 14 (joint modern slavery statements) or 15 (Commonwealth modern slavery statements).

(2) The reporting entity must ensure that the statement:

- (a) complies with section 16; and
- (b) is prepared in a form approved by the Minister; and
- (c) is approved by the principal governing body of the entity; and
- (d) is signed by a responsible member of the entity; and
- (e) is given to the Minister within 6 months after the end of the reporting period for the entity, in a manner approved by the Minister.

Note: The statement may be signed electronically: see section 10 of the *Electronic Transactions Act 1999*.

14 Joint modern slavery statements

(1) An entity, other than the Commonwealth, may give the Minister a modern slavery statement covering one or more reporting entities (which may include the entity giving the statement), for a reporting period for those reporting entities.

(2) The entity giving the statement must ensure that it:

- (a) complies with section 16; and
- (b) is prepared in a form approved by the Minister; and
- (c) is prepared in consultation with each reporting entity covered by the statement; and
- (d) is approved by the principal governing body of:
 - (i) each reporting entity covered by the statement; or
 - (ii) an entity (the **higher entity**) which is in a position, directly or indirectly, to influence or control each reporting entity covered by the statement, whether or not the higher entity is itself covered by the statement; or
 - (iii) if it is not practicable to comply with subparagraph (i) or (ii)—at least one reporting entity covered by the statement; and
- (e) is signed by a responsible member of:
 - (i) if subparagraph (d)(i) applies—each reporting entity covered by the statement; or
 - (ii) if subparagraph (d)(ii) applies—the higher entity; or
 - (iii) if subparagraph (d)(iii) applies—each reporting entity to which the subparagraph applies; and
- (f) is given to the Minister:
 - (i) within 6 months after the end of the reporting period for the entities covered by the statement, in a manner approved by the Minister; or
 - (ii) within a period prescribed by rules made for the purposes of this subparagraph.

Note 1: The statement may be signed electronically: see section 10 of the *Electronic Transactions Act 1999*.

Note 2: If subparagraph (d)(iii) applies, the statement must include an explanation: see subsection 16(2).

15 Commonwealth modern slavery statements

(1) The Minister must prepare a modern slavery statement for the Commonwealth, for a reporting period, covering all non-corporate Commonwealth entities within the meaning of the *Public Governance, Performance and Accountability Act 2013*.

(2) The Minister must ensure that the statement:

(a) complies with section 16; and

(b) is prepared within 6 months after the end of the reporting period.

16 Mandatory criteria for modern slavery statements

(1) A modern slavery statement must, in relation to each reporting entity covered by the statement:

(a) identify the reporting entity; and

(b) describe the structure, operations and supply chains of the reporting entity; and

(c) describe the risks of modern slavery practices in the operations and supply chains of the reporting entity, and any entities that the reporting entity owns or controls; and

(d) describe the actions taken by the reporting entity and any entity that the reporting entity owns or controls, to assess and address those risks, including due diligence and remediation processes; and

(e) describe how the reporting entity assesses the effectiveness of such actions; and

(f) describe the process of consultation with:

(i) any entities that the reporting entity owns or controls; and

(ii) in the case of a reporting entity covered by a statement under section 14—the entity giving the statement; and

(g) include any other information that the reporting entity, or the entity giving the statement, considers relevant.

Example: For paragraph (d), actions taken by an entity may include the development of policies and processes to address modern slavery risks, and providing training for staff about modern slavery.

(2) A modern slavery statement, other than a statement to be given under section 15 (Commonwealth modern slavery statements), must include:

(a) for a statement to be given under section 13 (modern slavery statements for single reporting entities)—details of approval by the principal governing body of the reporting entity; or

(b) for a statement to be given under section 14 (joint modern slavery statements):

(i) details of approval by the relevant principal governing body or bodies; and

(ii) if subparagraph 14(2)(d)(iii) applies—an explanation of why it is not practicable to comply with subparagraph 14(2)(d)(i) or (ii).

16A Explanations for failure to comply etc.

Request for explanation or remedial action

(1) If the Minister is reasonably satisfied that an entity has failed to comply with a requirement under section 13 or 14 (which deal with requirements to give modern slavery statements), the Minister may give a written request to the entity to do either or both of the following:

(a) provide an explanation for the failure to comply within a specified period of 28 days or longer after the request is given;

(b) undertake specified remedial action in relation to that requirement in accordance with the request within a specified period of 28 days or longer after the request is given.

Example: For a request relating to a failure to give a modern slavery statement to the Minister within the period required by section 13, remedial action specified under paragraph (b) of this subsection may be to give a modern slavery statement to the Minister within a further period specified in the request.

(2) The Minister may extend, or further extend, a period specified in a request under subsection (1) by written notice given to the entity. The

extension may be given before or after the end of the specified period (or that period as previously extended).

(3) A request under subsection (1) must include a statement of the effect of subsections (2) and (4) to (6).

Publication of information about failure to comply with request

(4) If the Minister is reasonably satisfied that an entity has failed to comply with a request under subsection (1), the Minister may publish the following information on the register, or in any other way the Minister considers appropriate:

(a) the identity of the entity;

(b) if the request relates to the entity's failure to comply with subsection 14(2) (joint modern slavery statements) in relation to a modern slavery statement—the identities of the reporting entities covered by the statement;

(c) the date the request was given, and details of any extension given under subsection (2);

(d) details of the explanation or remedial action requested, and the period or periods specified in the request;

(e) the reasons why the Minister is satisfied that the entity has failed to comply with the request.

(5) An entity ***fails to comply*** with a request if, and only if:

(a) no explanation is given in response to the request within the period specified in the request under paragraph (1)(a) (as extended, if at all, under subsection (2)); or

(b) no remedial action is undertaken in response to the request within the period specified in the request under paragraph (1)(b) (as extended, if at all, under subsection (2)).

Review of decisions

(6) Applications may be made to the Administrative Appeals Tribunal for review of the Minister's decision under subsection (4) to publish information about an entity's failure to comply with a request under subsection (1).

Part 3—Access to modern slavery statements

17 Simplified outline of this Part

This Part establishes the Modern Slavery Statements Register.

The register is made available to the public on the internet.

Modern slavery statements are registered by the Minister.

Revised versions of registered modern slavery statements can be registered in some circumstances.

18 Modern Slavery Statements Register

(1) The Minister must maintain a register of modern slavery statements, to be known as the Modern Slavery Statements Register.

(2) The register must be made available for public inspection, without charge, on the internet.

19 Registration of modern slavery statements

(1) The Minister must register a modern slavery statement:

(a) given in accordance with section 13 (modern slavery statements for single reporting entities) or 14 (joint modern slavery statements); or

(b) prepared in accordance with section 15 (Commonwealth modern slavery statements).

(2) The Minister may register a statement given for the purposes of compliance with section 13 or 14 (including a statement given in response to a request under section 16A) even if the entity giving the statement does not comply with the requirements of subsection 13(2) or 14(2).

Note: However, the Minister may elect not to register a modern slavery statement if the entity does not comply with those requirements.

20 Registration of revised modern slavery statements

(1) An entity (other than the Commonwealth) may, by written notice to the Minister, accompanied by a revised version of a registered modern slavery statement given by the entity, request the Minister to register the revised version.

(2) The revised version of the modern slavery statement must indicate the date of the revision and include a description of the changes made to the registered statement (or to the most recently registered revised version of the statement).

(3) The Minister must register the revised version of the modern slavery statement, if the revised version complies with the requirements mentioned in the following provisions:

(a) if the original statement was given under section 13—paragraphs 13(2)(a) to (d);

(b) if the original statement was given under section 14—paragraphs 14(2)(a) to (e).

(4) The Minister may register a revised version of a modern slavery statement even if it does not comply with the requirements mentioned in paragraph (3)(a) or (b).

Note: However, the Minister may elect not to register a revised version of a modern slavery statement which does not comply with those requirements.

(5) For a modern slavery statement registered under section 15 (Commonwealth modern slavery statements), the Minister may register a revised version of the statement that complies with section 16 and subsection (2) of this section.

Part 4—Miscellaneous

21 Simplified outline of this Part

This Part deals with the following miscellaneous matters:

- (a) things done by an unincorporated entity;
- (b) the Minister’s capacity to delegate powers and functions under this Act;
- (ba) annual reports about the implementation of this Act;
- (c) the 3-year review of this Act;
- (d) the power to make rules.

22 Unincorporated entities

(1) This section applies if this Act requires or allows a thing to be done by an entity that is an unincorporated body.

(2) The thing must, or may, be done by a responsible member of the entity on the entity's behalf.

23 Delegation

(1) The Minister may, by writing, delegate all or any of the Minister's powers and functions under this Act to an SES employee, or acting SES employee, in the Department.

Note: The expressions **SES employee** and **acting SES employee** are defined in the *Acts Interpretation Act 1901*.

(2) In exercising powers or functions under a delegation, the delegate must comply with any directions of the Minister.

(3) Subsection (1) does not apply to a power to make, vary or revoke the rules.

23A Annual reports about implementation

(1) The Minister must cause a report to be prepared for each calendar year (including the year in which this section commences) about the implementation of this Act during the year, including the following (without limitation):

(a) an overview of compliance by entities with this Act during the year;

(b) the identification of best practice modern slavery reporting under this Act during the year.

(2) The report must be:

(a) started as soon as practicable after the end of the calendar year for which it is prepared; and

(b) completed before the end of the calendar year in which it is started.

(3) The Minister must cause copies of the report to be tabled in each House of the Parliament within 15 sitting days of that House after the completion of the report.

24 Three-year review

(1) The Minister must cause a report to be prepared reviewing:

(a) the operation of this Act and any rules over the period of 3 years after this section commences; and

(aa) compliance with this Act and any rules over that period; and

(ab) whether additional measures to improve compliance with this Act and any rules are necessary or desirable, such as civil penalties for failure to comply with the requirements of this Act; and

(ac) whether a further review of this Act and any rules should be undertaken, and if so, when; and

(ad) whether it is necessary or desirable to do anything else to improve the operation of this Act and any rules; and

(b) whether this Act or any rules should be amended to implement review recommendations.

(2) The review must be:

(a) started as soon as practicable after the end of the period of 3 years after this section commences; and

(b) completed within 12 months after it starts.

(3) The Minister must cause copies of the report to be tabled in each House of the Parliament within 15 sitting days of that House after the completion of the report.

25 Rules

(1) The Minister may, by legislative instrument, make rules prescribing matters:

(a) required or permitted by this Act to be prescribed by the rules; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) To avoid doubt, the rules may not do the following:

(a) create an offence or civil penalty;

(b) provide powers of:

(i) arrest or detention; or

(ii) entry, search or seizure;

(c) impose a tax;

(d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;

(e) directly amend the text of this Act.

[Minister's second reading speech made in—

House of Representatives on 28 June 2018

Senate on 18 September 2018]

(134/18)

Annex D: US Federal Acquisition Regulation, Subpart 22.17 – Combating Trafficking in Persons

22.1700 Scope of subpart.

This subpart prescribes policy for implementing 22 U.S.C. chapter 78 and Executive Order 13627, Strengthening Protections Against Trafficking in Persons in Federal Contracts, dated September 25, 2012.

22.1701 Applicability.

(a) This subpart applies to all acquisitions.

(b) The requirement at 22.1703(c) for a certification and compliance plan applies only to any portion of a contract or subcontract that—

(1) Is for supplies, other than commercially available off-the-shelf (COTS) items, to be acquired outside the United States, or services to be performed outside the United States; and

(2) Has an estimated value that exceeds \$500,000.

22.1702 Definitions.

As used in this subpart—

“Agent” means any individual, including a director, an officer, an employee, or an independent contractor, authorized to act on behalf of the organization.

“Coercion” means—

(1) Threats of serious harm to or physical restraint against any person;

(2) Any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or

(3) The abuse or threatened abuse of the legal process.

“Commercial sex act” means any sex act on account of which anything of value is given to or received by any person.

“Debt bondage” means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

“Employee” means an employee of the Contractor directly engaged in the performance of work under the contract who has other than a minimal impact or involvement in contract performance.

“Forced labor” means knowingly providing or obtaining the labor or services of a person—

(1) By threats of serious harm to, or physical restraint against, that person or another person;

(2) By means of any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint; or

(3) By means of the abuse or threatened abuse of law or the legal process.

“Involuntary servitude” includes a condition of servitude induced by means of—

(1) Any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such conditions, that person or another person would suffer serious harm or physical restraint; or

(2) The abuse or threatened abuse of the legal process.

“Severe forms of trafficking in persons” means—

(1) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or

(2) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

“Sex trafficking” means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

“Subcontract” means any contract entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract.

“Subcontractor” means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime contractor or another subcontractor.

“United States” means the 50 States, the District of Columbia, and outlying areas.

22.1703 Policy.

The United States Government has adopted a policy prohibiting trafficking in persons, including the trafficking-related activities below. Additional information about trafficking in persons may be found at the website for the Department of State’s Office to Monitor and Combat Trafficking in Persons at <http://www.state.gov/g/tip>. Government solicitations and contracts shall—

(a) Prohibit contractors, contractor employees, subcontractors, subcontractor employees, and their agents from—

(1) Engaging in severe forms of trafficking in persons during the period of performance of the contract;

(2) Procuring commercial sex acts during the period of performance of the contract;

(3) Using forced labor in the performance of the contract;

(4) Destroying, concealing, confiscating, or otherwise denying access by an employee to the employee's identity or immigration documents, such as passports or drivers' licenses, regardless of issuing authority;

(5)(i) Using misleading or fraudulent practices during the recruitment of employees or offering of employment, such as failing to disclose, in a format and language accessible to the worker, basic information or making material misrepresentations during the recruitment of employees regarding the key terms and conditions of employment, including wages and fringe benefits, the location of work, the living conditions, housing and associated costs (if employer or agent provided or arranged), any significant costs to be charged to the employee, and, if applicable, the hazardous nature of the work;

(ii) Using recruiters that do not comply with local labor laws of the country in which the recruiting takes place;

(6) Charging employees recruitment fees;

(7)

(i)(A) Failing to provide return transportation or pay for the cost of return transportation upon the end of employment, for an employee who is not a national of the country in which the work is taking place and who was brought into that country for the purpose of working on a U.S. Government contract or subcontract, for portions of contracts and subcontracts performed outside the United States; or

(B) Failing to provide return transportation or pay for the cost of return transportation upon the end of employment, for an employee who is not a United States national and who was brought into the United States for the purpose of working on a U.S. Government contract or subcontract, if the payment of such costs is required under existing temporary worker programs or pursuant to a written agreement with the employee for portions of contracts and subcontracts performed inside the United States; except that—

(ii) The requirements of paragraph (a)(7)(i) of this section do not apply to an employee who is—

(A) Legally permitted to remain in the country of employment and who chooses to do so; or

(B) Exempted by an authorized official of the contracting agency, designated by the agency head in accordance with agency procedures, from the requirement to provide return transportation or pay for the cost of return transportation;

(iii) The requirements of paragraph (a)(7)(i) of this section are modified for a victim of trafficking in persons who is seeking victim services or legal redress in the country of employment, or for a witness in an enforcement action related to trafficking in persons. The contractor shall provide the return transportation or pay the cost of return transportation in a way that does not obstruct the victim services, legal redress, or witness activity. For example, the contractor shall also offer return transportation to a witness at a time that supports the witness' need to testify. This paragraph does not apply when the exemptions at paragraph (a)(7)(ii) of this section apply.

(8) Providing or arranging housing that fails to meet the host country housing and safety standards; or

(9) If required by law or contract, failing to provide an employment contract, recruitment agreement, or other required work document in writing. Such written document shall be in a language the employee understands. If the employee must relocate to perform the work, the work document shall be provided to the employee at least five days prior to the employee relocating. The employee's work document shall include, but is not limited to, details about work description, wages, prohibition on charging recruitment fees, work location(s), living accommodations and associated costs, time off, roundtrip transportation arrangements, grievance process, and the content of applicable laws and regulations that prohibit trafficking in persons. The contracting officer shall consider the risk that the contract or subcontract will involve services or supplies susceptible to trafficking in persons, and the number of non-U.S. citizens expected to be employed, when deciding whether to require work documents in the contract;

(b) Require contractors and subcontractors to notify employees of the prohibited activities described in paragraph (a) of this section and the actions that may be taken against them for violations;

(c) With regard to certification and a compliance plan—

(1)(i) Require the apparent successful offeror to provide, before contract award, a certification (see 52.222-56) that the offeror has a compliance plan if any portion of the contract or subcontract—

(A) Is for supplies, other than COTS items (see 2.101), to be acquired outside the United States, or services to be performed outside the United States; and

(B) The estimated value exceeds \$500,000.

(ii) The certification must state that—

(A) The offeror has implemented the plan and has implemented procedures to prevent any prohibited activities and to monitor, detect, and terminate the contract with a subcontractor or agent engaging in prohibited activities; and

(B) After having conducted due diligence, either—

(1) To the best of the offeror's knowledge and belief, neither it nor any of its agents, proposed subcontractors, or their agents, has engaged in any such activities; or

(2) If abuses relating to any of the prohibited activities identified in 52.222-50(b) have been found, the offeror or proposed subcontractor has taken the appropriate remedial and referral actions;

(2) Require annual certifications (see 52.222-50(h)(5)) during performance of the contract, when a compliance plan was required at award;

(3)(i) Require the contractor to obtain a certification from each subcontractor, prior to award of a subcontract, if any portion of the subcontract—

(A) Is for supplies, other than COTS items (see 2.101), to be acquired outside the United States, or services to be performed outside the United States; and

(B) The estimated value exceeds \$500,000.

(ii) The certification must state that—

(A) The subcontractor has implemented a compliance plan; and

(B) After having conducted due diligence, either—

(1) To the best of the subcontractor's knowledge and belief, neither it nor any of its agents, subcontractors, or their agents, has engaged in any such activities; or

(2) If abuses relating to any of the prohibited activities identified in 52.222-50(b) have been found, the subcontractor has taken the appropriate remedial and referral actions;

(4) Require the contractor to obtain annual certifications from subcontractors during performance of the contract, when a compliance plan was required at the time of subcontract award; and

(5) Require that any compliance plan or procedures shall be appropriate to the size and complexity of the contract and the nature and scope of its activities, including the number of non-U.S. citizens expected to be employed and the risk that the contract or subcontract will involve services or supplies

susceptible to trafficking in persons. The minimum elements of the plan are specified at 52.222-50(h);

(d) Require the contractor and subcontractors to—

(1) Disclose to the contracting officer and the agency Inspector General information sufficient to identify the nature and extent of an offense and the individuals responsible for the conduct;

(2) Provide timely and complete responses to Government auditors' and investigators' requests for documents;

(3) Cooperate fully in providing reasonable access to their facilities and staff (both inside and outside the U.S.) to allow contracting agencies and other responsible Federal agencies to conduct audits, investigations, or other actions to ascertain compliance with the Trafficking Victims Protection Act (22 U.S.C. chapter 78), Executive Order 13627, or any other applicable law or regulation establishing restrictions on trafficking in persons, the procurement of commercial sex acts, or the use of forced labor; and

(4) Protect all employees suspected of being victims of or witnesses to prohibited activities, prior to returning to the country from which the employee was recruited, and shall not prevent or hinder the ability of these employees from cooperating fully with Government authorities; and

(e) Provide suitable remedies, including termination, to be imposed on contractors that fail to comply with the requirements of paragraphs (a) through (d) of this section.

22.1704 Violations and remedies.

(a) Violations. It is a violation of the Trafficking Victims Protection Act of 2000, as amended, (22 U.S.C. chapter 78), E.O. 13627, or the policies of this subpart if—

(1) The contractor, contractor employee, subcontractor, subcontractor employee, or agent engages in severe forms of trafficking in persons during the period of performance of the contract;

(2) The contractor, contractor employee, subcontractor, subcontractor employee, or agent procures a commercial sex act during the period of performance of the contract;

(3) The contractor, contractor employee, subcontractor, subcontractor employee, or agent uses forced labor in the performance of the contract; or

(4) The contractor fails to comply with the requirements of the clause at 52.222-50, Combating Trafficking in Persons.

(b) Credible information. Upon receipt of credible information regarding a violation listed in paragraph (a) of this section, the contracting officer—

(1) Shall promptly notify, in accordance with agency procedures, the agency Inspector General, the agency debarring and suspending official, and if appropriate, law enforcement officials with jurisdiction over the alleged offense; and

(2) May direct the contractor to take specific steps to abate the alleged violation or enforce the requirements of its compliance plan.

(c) Receipt of agency Inspector General report.

(1) The head of an executive agency shall ensure that the contracting officer is provided a copy of the agency Inspector General report of an investigation of a violation of the trafficking in persons prohibitions in 22.1703(a) and 52.222-50(b).

(2)(i) Upon receipt of a report from the agency Inspector General that provides support for the allegations, the head of the executive agency, in accordance with agency procedures, shall delegate to an authorized agency official, such as the agency suspending or debarring official, the responsibility to—

(A) Expeditiously conduct an administrative proceeding, allowing the contractor the opportunity to respond to the report;

(B) Make a final determination as to whether the allegations are substantiated; and

(C) Notify the contracting officer of the determination.

(ii) Whether or not the official authorized to conduct the administrative proceeding is the suspending and debarring official, the suspending and debarring official has the authority, at any time before or after the final determination as to whether the allegations are substantiated, to use the suspension and debarment procedures in subpart 9.4 to suspend, propose for debarment, or debar the contractor, if appropriate, also considering the factors at 22.1704(d)(2).

(d) Remedies. After a final determination in accordance with paragraph (c)(2)(ii) of this section that the allegations of a trafficking in persons violation are substantiated, the contracting officer shall—

(1) Enter the violation in FAPIIS (see 42.1503(h)); and

(2) Consider taking any of the remedies specified in paragraph (e) of the clause at 52.222-50, Combating Trafficking in Persons. These remedies are in addition to any other remedies available to the United States Government. When determining the appropriate remedies, the contracting officer may consider the following factors:

(i) Mitigating factors. The contractor had a Trafficking in Persons compliance plan or awareness program at the time of the violation, was in

compliance with the plan at the time of the violation, and has taken appropriate remedial actions for the violations, that may include reparation to victims for such violations.

(ii) Aggravating factors. The contractor failed to abate an alleged violation or enforce the requirements of a compliance plan, when directed by a contracting officer to do so.

22.1705 Solicitation provision and contract clause.

(a)(1) Insert the clause at 52.222-50, Combating Trafficking in Persons, in all solicitations and contracts.

(2) Use the clause with its Alternate I when the contract will be performed outside the United States (as defined at 22.1702) and the contracting officer has been notified of specific U.S. directives or notices regarding combating trafficking in persons (such as general orders or military listings of “off-limits” local establishments) that apply to contractor employees at the contract place of performance.

(b) Insert the provision at 52.222-56, Certification Regarding Trafficking in Persons Compliance Plan, in solicitations if

(1) It is possible that at least \$500,000 of the value of the contract may be performed outside the United States; and

(2) The acquisition is not entirely for commercially available off-the-shelf items.

Annex E: Full list of Contributors

Contributors	Interest Group
Accenture	Business
Advanced Procurement for Universities and Colleges Scotland	Business
Anglo American	Business
Argos	Business
Asos	Business
Associated British Foods	Business
Aviva	Business
Barclays	Business
Bonmarche	Business
BP International	Business
BRE Group	Business
British Medical Association	Business
British Retail Consortium	Business
BT	Business
Chartered Institute of Business	Business
Chartered Institute of Procurement & Supply	Business
City of London	Business
Clifford Chance	Business
Construction News	Business
Coty	Business
ERM	Business

Ethical Trading Initiative	Business
Freshfields Bruckhaus Deringer	Business
G4S	Business
GLAA	Business
GoodCorporation	Business
GSK	Business
Hitachi Europe	Business
HSBC	Business
Institute of Environmental Management & Assessment (IEMA)	Business
Intercontinental Hotel Group	Business
International Tourism Partnership	Business
Li & Fung	Business
Local Government Association	Business
London University Purchasing Consortium	Business
Manor Fresh	Business
Marks and Spencer	Business
Marshalls	Business
Meltemi	Business
Missguided	Business
N Brown Group	Business
National Grid	Business
NEC Europe	Business
Nestle	Business
New Look	Business

Next	Business
Old Mutual	Business
Pentland Group	Business
RELX Group	Business
River Island	Business
Royal College of Midwives	Business
Shiva Foundation	Business
Shoosmiths	Business
Shop Direct	Business
Sky	Business
TFG Brands	Business
TFL	Business
The Coop	Business
The White Company	Business
Trade Union Congress	Business
Traidcraft Exchange	Business
UK Hospitality	Business
Unison	Business
Unite	Business
Verisio Ltd	Business
Vodafone	Business
Westminster Local Authority	Business
Amnesty International UK	Civil Society
Anti-Slavery International	Civil Society

Ardea International	Civil Society
Beulah London	Civil Society
Business and Human Rights Resource Centre	Civil Society
CORE Coalition	Civil Society
Fairtrade Foundation	Civil Society
Fashion Revolution	Civil Society
Flex	Civil Society
Freedom United	Civil Society
Goodweave	Civil Society
Oxfam	Civil Society
Royal Holloway, University of London	Civil Society
Safer Jobs	Civil Society
ShareAction	Civil Society
Sophie Hayes Foundation	Civil Society
TISCreport.org	Civil Society
Unicef	Civil Society
University of Glasgow	Civil Society
University of Liverpool	Civil Society
University of Manchester	Civil Society
University of Melbourne	Civil Society
University of Sheffield	Civil Society
University of Newcastle-upon-Tyne	Civil Society
Unseen	Civil Society
Commonwealth Parliamentary Association	Commonwealth and International

Freedom Fund	Commonwealth and International
International Labour Organisation	Commonwealth and International
People Smuggling and Human Trafficking Team at the Department of Home Affairs, Australia	Commonwealth and International
Trafficking in Persons Office, United States of America	Commonwealth and International
Co-editors and authors of <i>Human Trafficking and Modern Slavery: Law and Practice</i> (Ben Douglas-Jones qc, Michelle Brewer and Philippa Southwell)	Criminal Justice System
Mark Burns-Williamson, Police and Crime Commissioner for West Yorkshire	Criminal Justice System
National Crime Agency	Criminal Justice System
Office of the Police and Crime Commissioner for Bedfordshire	Criminal Justice System
Office of the Police and Crime Commissioner for Lancashire	Criminal Justice System
The Law Society	Criminal Justice System
Kevin Hyland, Independent Anti-Slavery Commissioner (2014 - 2018)	Cross-cutting
Arise Foundation	Faith Groups
Church Investors Group Secretariat	Faith Groups
Clewer Initiative	Faith Groups
DeMontford University	Faith Groups
Jesuit Refugee Service UK	Faith Groups
Medaille Trust	Faith Groups

Peter Talibart, Seyfarth Shaw (UK) LLP	Faith Groups
Santa Marta Group	Faith Groups
STN Trust	Faith Groups
STOP THE TRAFFIK	Faith Groups
The Passage	Faith Groups
University of Derby	Faith Groups
Department for International Development	Government/public authority
Department for Work and Pensions	Government/public authority
Foreign and Commonwealth Office	Government/public authority
Gangmasters and Labour Abuse Authority	Government/public authority
HM Revenue & Customs	Government/public authority
Northern Ireland Executive	Government/public authority
Scottish Government	Government/public authority
Welsh Government	Government/public authority
Anne Marie Morris MP	Parliamentarians
Baroness Kennedy	Parliamentarians
Darren Jones MP	Parliamentarians
John McNally MP	Parliamentarians
Lord Alton	Parliamentarians
Mary Creagh MP	Parliamentarians

