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Modern Slavery Act Review Secretariat
Attorney-General's Department
Via email: ModernSlaveryActReview@ag.gov.au

Issue Paper: Review of Australia's Modern Slavery Act 2018

Consumers expect businesses operating in Australia to take responsibility for ensuring their products and services are free from modern slavery at every stage of the supply chain.

CHOICE welcomes the opportunity to comment on the Review of the *Australian Modern Slavery Act 2018 (Cth)* ('**the Act**'). The current transparency framework places an unreasonable responsibility on consumers to find, read and compare modern slavery statements in order to drive market transformation.

Many consumers care about making ethical purchasing decisions. 58% of people said addressing worker exploitation and slavery is an extremely or very important issue to be addressed in Australia today.¹ However, CHOICE's analysis found that it takes an average of 43 minutes to read a modern slavery statement from a leading Australian retailer.² Consumers do not have time to read modern slavery statements every time they want to buy something.

Businesses are in the best position to ensure that they comply with the Act and eradicate modern slavery from their supply chains, not consumers. Nationally representative research commissioned by CHOICE shows a widespread community expectation that businesses should be responsible for acting ethically.³ Four out of five (80%) consumers said that businesses that operate in Australia should be legally required to ensure they know what they sell is not made from forced or child labour.

Consumers should be able to choose and purchase products free from forced or child labour at every stage of the supply chain. In order to make this possible, CHOICE supports the following improvements to the modern slavery framework.

Recommendations

The Review should recommend that:

¹ This survey is based on a survey of 1,086 Australian aged 18 years+. Quotas were applied for representations in each age group as well as genders and location to ensure coverage in each state and territory across metropolitan and regional areas. Fieldwork was conducted from 7th to 19th of September 2022.

² In October 2022, CHOICE replicated this analysis from the "Privacy policy comparison" analysis. Please note that the sample size was smaller. CHOICE used the Grammarly app, a free online writing assistant, to analyse read time, number of words, readability score and education-level reading skills.

³ CHOICE survey, September 2022.

1. The Federal Government introduce strong monetary penalties for non-compliant, negligent or falsified modern slavery reporting.
2. The Federal Government establish and adequately resource a Federal Anti-slavery Commissioner to ensure business compliance with the Modern Slavery Act.
3. The Federal Government consider establishing mandatory due diligence obligations on businesses to investigate and address modern slavery in their supply chains.

Consumer experience of the transparency-based framework

In September 2022, CHOICE conducted nationally representative research into consumer attitudes towards modern slavery prevention in the goods and services they use. This research revealed:

- 80% of people believe that businesses operating in Australia should be legally required to ensure they know what they sell is not made from slave or child labour.
- 75% of people find it difficult to identify which services and products are ethical.
- Only 50% of people trust businesses to ensure that the products and services they sell are ethical.⁴

When asked about the Modern Slavery Act, CHOICE's research found that consumers have a limited understanding of the framework. The majority of people (78%) said they have not heard of the Act, and of those who have heard of it, 66% have a limited understanding of it or what their role as a consumer might be.⁵

Consumers should not be responsible for verifying the modern slavery claims of businesses

Alongside this nationally representative data, CHOICE asked over 8,000 CHOICE members and supporters about their experience of ethical shopping, and who should be responsible for modern slavery in the supply chains of products and services.⁶ This is a small sample of reflections shared by consumers:

"I buy dozens, if not hundreds of items every week. If I was to try to find the history of everything that I buy (including every part of every component in the items that I buy), I wouldn't ever have time to do anything else in my life."

"Like many, I am time-poor. It's too much for every person to have to think of every little thing and look into every product they are purchasing. These things should just be mandatory, it's a basic human right."

⁴ CHOICE survey, September 2022.

⁵ CHOICE survey, September 2022.

⁶ In September 2022, CHOICE asked 8964 of its supporters about their thoughts on the slave labour in supply chains.

“It is difficult for each consumer to research whether a brand or a product is produced ethically. It is easier for big businesses to do that for their own products; they have more money and resources. They should also take responsibility for the products they produce and not merely seek economic gain at the cost of others' hardship. They need to act justly.”

Consumers want to have a choice to purchase products that are free from slave labour

There is an engaged cohort of consumers who want to purchase products that are free from slave labour. CHOICE research found that 68% of Australians avoided purchasing something due to ethical concerns.⁷ Further, 25% of people said they choose a product or service “most of the time or always” based on ethical sourcing and manufacturing. 19% of people make purchases “most of the time or always” based on the welfare of employees that make the product or service.

When asked about their perspective, CHOICE members shared their thoughts on ethical purchasing:

“If you name and shame companies using slave labour or child labour, I will not buy their products. If companies have an accreditation proving they are ethical employers (not just saying they are) I will always choose their products over [their] competitors. Make it easy for consumers to choose right and we will.”

“All consumers have a right to choose not to participate in child labour.”

“It's 2022 and businesses have sufficient technological means to audit their supply chains for child labour. In the age of Smartphones and global travel, there is no way they can reasonably claim either ignorance or that it's too hard to audit the supply chain.”

“Businesses should be held accountable for how they source their products. the consumer should know if the product they are purchasing has been made ethically and sustainably.”

Modern slavery statements are lengthy and complex documents

Modern slavery statements can be an important measure of corporate accountability and disclosure. However, relying on consumers to proactively find, read and interpret these documents to make each purchasing decision is unrealistic in modern life.

For this submission, CHOICE analysed modern slavery statements from 10 leading retailers and found them to be lengthy and in some cases, unreadable.⁸ The average length of a modern slavery statement was around 10,769 words with an average read time of 43 minutes. If a consumer was planning to buy 10 items from different retailers, they would need to spend on average seven hours and eleven minutes reading modern slavery statements before shopping.

⁷ CHOICE survey, September 2022.

⁸ CHOICE analysis, October 2022.

The complexity of modern slavery statements also limits their accessibility and usefulness for everyday consumers. CHOICE analysis found that the average readability score is 24.8 out of 100, meaning that these statements are likely to require university-level reading skills and many may find it challenging to read.⁹

A policy framework that requires consumers to proactively uncover, read and make critical purchasing decisions based on complex information will not eradicate modern slavery from consumer markets.

Businesses must be subject to strong penalties for breaching the Act

Strong, robust penalties play a crucial role in compliance and deterrence. Businesses should not attempt to gain an unfair advantage by being negligent in their reporting or falsifying information about the risks of slave labour in their supply chains. CHOICE supports the Government in creating a penalty provision for businesses that engage in non-compliant, negligent or falsified reporting. This is in line with community expectations: CHOICE's nationally representative survey found that 84% of people agree that businesses that operate in Australia should be held responsible for misleading the public about their ethical behaviour, including their use of forced or child labour.¹⁰

CHOICE recommends that strong monetary penalties align with the newly-legislated penalties regime of the Australian Consumer Law ('**ACL**'). Under this regime, businesses are penalised per breach of the ACL including unconscionable conduct, making false or misleading representations, and supplying consumer goods or certain services that do not comply with safety standards or which are banned. For corporations, this will be a maximum of the greater of:

- \$50 million;
- if the court can determine the value of the benefit obtained—three times the value of that benefit; or
- if the court cannot determine the value of the benefit obtained—30% of the body corporate's adjusted turnover during the breach turnover period for the offence, act or omission.¹¹

When asked for CHOICE members' reflections on the role of penalties on this issue, they stated:

"I do not believe that businesses should simply be trusted to do the right thing. I believe that the severity of penalties is an important signal to send to businesses as to how seriously the government and the public take issues of forced labour."

⁹ CHOICE analysis, October 2022.

¹⁰ CHOICE survey, September 2022.

¹¹ Treasury Laws Amendment (More Competition, Better Prices) Bill 2022, accessed on 15 November 2022, https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r6923

“Without penalties, nothing will change. It’s all about the bottom line. They would have to be stiff penalties because if the fine is less than the profit from using slave labour, nothing will change.”

“The absence of any sanction for not providing such information severely compromises the effectiveness of such measures and public confidence in them.”

Recommendation 1

1. The Federal Government introduce strong monetary penalties for non-compliant, negligent or falsified modern slavery reporting.

Measures for compliance should be considered

CHOICE welcomes the Government’s commitment in the October 2022 Budget to establish a new unit within the Attorney-General’s Department to scope options to establish an Anti-Slavery Commissioner to support compliance with the law.¹² A Federal Anti-slavery Commissioner will improve industry practices and help to ensure consumer decisions in this market meaningfully eliminate modern slavery from supply chains. A Federal Anti-slavery Commissioner could be modelled on the Anti-slavery Commissioner for New South Wales, which would require additional powers and resourcing. In addition to these responsibilities, the Commissioner should also have powers to penalise businesses for non-compliant, negligent or falsified modern slavery reporting.

Recommendation 2

The Federal Government should establish and adequately resource a Federal Anti-slavery Commissioner to ensure business compliance with the Modern Slavery Act.

The Government should consider strengthening the modern slavery framework

The Government should consider moving beyond a transparency-based framework that relies on consumers, and require businesses to have mandatory due diligence obligations to investigate and address modern slavery in their supply chains. Businesses are best placed to effectively eradicate the use of slave labour in their supply chains.

Large businesses that operate in Australia should be required to conduct mandatory due diligence to ensure their supply chains are free of modern slavery. The United Nation’s Guiding Principles on Business and Human Rights states that businesses should have a *“due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights.”*¹³

¹² Federal Government, Budget October 2022-23, Budget Paper No. 2, p.54.

¹³ United Nations Human Rights, 2011 ‘Implementing the United Nations “Protect, Respect and Remedy” Framework, Office of the High Commissioner, https://www.ohchr.org/sites/default/files/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

Despite this obligation, research by the World Benchmarking Alliance found that 46.2% of companies assessed failed to conduct any human rights due diligence.¹⁴ The Business & Human Rights Resource Centre has documented a rise in mandatory due-diligence human rights legislation, including in France, Germany and Norway.¹⁵ This legal requirement ensures businesses have active measures to address modern slavery.

The Act's overreliance on transparency and imperfect consumer decision-making is not delivering on its intended purposes. For example, Ansell, a company that makes disposable gloves, received one of the best transparency scores of 74% in the Human Rights Law Centre's Paper Promises report.¹⁶ Despite this score, Ansell has recently been taken to court in the United States by victims for knowingly profiting from slave labour.¹⁷ Large businesses should be responsible to ensure the products they sell do not involve slave labour at any stage of their supply chain.

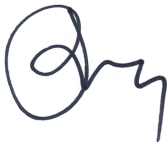
CHOICE supports this obligation applying to businesses already complying with the Act, which have an annual consolidated revenue of more than \$100 million.

Recommendation 3

The Federal Government should consider establishing mandatory due diligence on businesses to investigate and address modern slavery in their supply chains.

For further information, please contact CHOICE's policy team at yname@choice.com.au

Yours sincerely,



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¹⁴ World Benchmarking Alliance, 2020, Corporate Human Rights Benchmark, <https://assets.worldbenchmarkingalliance.org/app/uploads/2020/11/WBA-2020-CHRB-Key-Findings-Report.pdf>

¹⁵ Business & Human Rights Resource Centre, 2022, Mandatory Due Diligence, <https://www.business-humanrights.org/en/big-issues/mandatory-due-diligence/>

¹⁶ Sinclair, A. and Dinshaw, F 2022, Paper Promises, Human Rights Law Centre, 2022, <https://www.hrlc.org.au/reports/2022/2/3/paper-promises-evaluating-the-early-impact-of-australias-modern-slavery-act>

¹⁷ Terzon, E 2022, Ansell is accused of 'knowingly profiting' off the labour of slaves. Shuvo is one of them, ABC, 24 August 2022, accessed on 13 October 2022, <https://www.abc.net.au/news/2022-08-24/ansell-slave-labour-brightway/101362990>