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*Modern Slavery in Supply Chains  
Reporting Requirement: Submission by  
the Catholic Archdiocese of Sydney to  
the Australian Attorney-General's  
Department's Public Consultation*

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# Catholic Archdiocese of Sydney Submission

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# Modern Slavery in Supply Chains: Response by the Archdiocese of Sydney

## 1 Introduction

1.01 The Catholic Archdiocese of Sydney (henceforth Archdiocese of Sydney) commends the Attorney-General's Department (ADG) for conducting this public consultation regarding modern slavery in supply chains. It is an important initiative by the Australian government.

1.02 We note that, as a prominent signatory to the Sustainable Development Goals adopted unanimously by the United Nations in the presence of the Holy Father Pope Francis on 25 September 2015, the Australian government has thereby endorsed Section 8.7. Thus, the Australian government has committed our country to

[t]ake immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025 end child labour in all its forms.<sup>1</sup>

As these Sustainable Development Goals continue until 2030, the Australian government has committed Australia to the eradication of modern slavery in the present generation. The Archdiocese of Sydney commends and applauds the Australian government for proclaiming such a momentous objective. We therefore assess all anti-slavery proposals by the Australian government in light of this objective.

1.03 The Archdiocese of Sydney notes that this consultation is timely as it occurs in the context of increasing global awareness and alarm as to the persistent and pervasive manifestation of slavery and slavery-like practices in supply chains. This global awareness is generating concerted efforts by a number of countries within the international community to draft effective home-state legislation to eradicate these crimes by supply chain regulation.

1.04 We further note that Australia has also ratified various international instruments of relevance to modern slavery. These include:

- the Universal Declaration of Human Rights, 1948
- the Convention on the Rights of the Child, 1989
- the Forced Labour Convention, 1930
- the Abolition of Forced Labour Convention, 1957
- the Worst Forms of Child Labour Convention, 1999

We also support Australia's ratification of the Protocol of 2014 to the Forced Labour Convention, 1930 (P029) which is currently under consideration. Moreover, the Australian government is committed to promoting the use and implementation of the OECD Guidelines for Multinational Enterprises.<sup>2</sup>

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<sup>1</sup> UN General Assembly (2015), *Transforming our world: The 2030 Agenda for Sustainable Development* A/RES/70/1.

<sup>2</sup> AUSNCP, "THE OECD GUIDELINES for Multinational Enterprises," Commonwealth of Australia, 2017, <http://www.ausncp.gov.au/content/content.aspx?doc=home.htm>.

1.05 The Archdiocese of Sydney appreciates that this consultation process occurs within a wider Australian government review of government-led responses to modern slavery, and the promotion of human rights in business. We recognise and have participated in parliamentary processes at federal and state level which are of vital relevance to this consultation. This includes inquiries into public procurement (federal) and human trafficking (state) as well as the establishment of a Modern Slavery Act in Australia (federal).

1.06 The Archdiocese of Sydney welcomes this further opportunity to contribute to this consultation on modern slavery in supply chains. Representatives of the Archdiocese of Sydney have this month participated in a Roundtable Discussion and further conferences in Canberra with the senior ministerial and AGD personnel overseeing this public consultation. We contribute as an undertaken with an annual operating income in excess of AUD 1 billion.

## 2 The Sydney Archdiocesan position on modern slavery in supply chains

2.01 The Archdiocese of Sydney's position on modern slavery in supply chains is shaped by our belief that all persons have inherent dignity and worth and that each one of us bears the image of God. We also note that the Holy Father Pope Francis is a powerful and eloquent advocate for the eradication of modern slavery and human trafficking. He was a key proponent of the decision to include an anti-slavery provision (Section 8.7) in the Sustainable Development Goals<sup>3</sup> and, under his leadership, the Holy See has announced that it will seek to 'slavery-proof' its supply chains.<sup>4</sup>

2.02 In consequence, on 28 March 2017 the Archdiocese of Sydney publicly committed to 'a program directed to the eradication of human trafficking [and modern slavery].'<sup>5</sup> This includes 'as far as possible only purchas[ing] slave-proofed products and services, and as far as possible only contract[ing] with firms who certify that their goods and services are not tainted by human trafficking [and modern slavery].'<sup>6</sup> To this end the Archbishop of Sydney, the Most Rev. Anthony Fisher OP, used his authority to appoint an Anti-Slavery Taskforce which brings together key organisational stakeholders. Represented on the Taskforce are senior decision-makers in the Archdiocese and in national affiliate organisations which have operations in the Archdiocese. National affiliates represented on the Taskforce are drawn from the health, tertiary education and finance sectors. Other members of the Taskforce include anti-slavery and social justice specialists and service providers.

2.03 The position of the Archdiocese of Sydney as regards modern slavery in supply chains builds on the extensive work being performed by John McCarthy QC (Chair) and Katherine Moloney (Director of Research and Executive Officer) of the Sydney Archdiocesan Anti-Slavery Taskforce. They are working in close consultation with senior decision-makers in the church, its agencies and affiliates and with other Taskforce members.

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<sup>3</sup> See, for example, Anti-Slavery International (2015), *Slavery included in UN development goals: Great news for people in slavery and good victory for Anti-Slavery International* at <https://www.antislavery.org/slavery-included-un-development-goals/>.

<sup>4</sup> George Pell, "Cardinal Pell: Vatican will 'slave-proof' supply chain," Vatican Radio, January 19, 2016, [http://en.radiovaticana.va/news/2016/01/19/cardinal\\_pell\\_vatican\\_will\\_slave-proof\\_supply\\_chain/1202111](http://en.radiovaticana.va/news/2016/01/19/cardinal_pell_vatican_will_slave-proof_supply_chain/1202111).

<sup>5</sup> NSW Legislative Council, "Opening Statement by Anthony Fisher, AO, Archbishop of Sydney, Catholic Church" (report on Proceedings before Select Committee on Human Trafficking in New South Wales, Sydney, NSW, March 28, 2017), 14, <https://www.parliament.nsw.gov.au/committees/DBAssets/InquiryEventTranscript/Transcript/9907/Transcript%20-%2028%20March%202017%20-%20Corrected.pdf>.

<sup>6</sup> *Ibid.*

2.04 There has been a comprehensive review on supply chain legislation and regulation regarding modern slavery.<sup>7</sup> The position and approach of the Archdiocese of Sydney is consistent with international best practice.

### 3 The Sydney Archdiocesan approach to modern slavery in supply chains

3.01 The Archdiocese of Sydney is taking a proactive approach to addressing modern slavery. We are committed to a process of ‘slavery-proofing’ our own supply chains.<sup>8</sup> This is independent of any legislative proposals of the Australian government and parliament with regard to modern slavery in supply chains. This approach is first and foremost with the aim of eradicating modern slavery. In this regard our supply chains project is exemplary for other large entities to follow, including governments, businesses and the faith community.

3.02 To undertake the process of ‘slavery-proofing’ our supply chains, the Archdiocese of Sydney intends to mainstream human rights due diligence in accordance with the Australian Model of supply chain regulation. For an overview of the core components of the Australian Model, see Annex.

3.03 The groundwork for this anti-slavery regulatory programme is well underway, in advance of a planned process of implementation beginning in early 2018. A case in point is Sydney Catholic Schools (SCS) which represents the single largest procurer of goods and services in the Archdiocese of Sydney. SCS has had extensive consultation and conferencing with the Taskforce Chair and Director of Research. As a result, they propose to mainstream human rights due diligence throughout their supply chains in a staged implementation process commencing in 2018. Specifically, they propose to regulate their supply chains by means of their contracting arrangements as per the Australian Model of supply chain regulation.

3.04 The Archdiocese of Sydney also notes that Catholic entities outside of Sydney have also committed to or expressed an interest in ‘slavery-proofing’ their supply chains. For example, St Vincent’s Health Australia, the country’s largest non-profit health and aged care provider, has announced its commitment to ‘slavery-proofing’ its supply chains at a national level.<sup>9</sup> With regard to dioceses throughout the country,

Australia’s Catholic bishops will look to the Archdiocese of Sydney to model how slavery free supply chains can be achieved. A number of other dioceses are more actively considering slavery-proofing their supply chains.<sup>10</sup>

3.05 The Archdiocese of Sydney strongly recommends that the Australian government, in accordance with international best practice,<sup>11</sup> enact modern slavery supply chain legislation with mandatory and enforceable human rights due diligence provisions.

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<sup>7</sup> This review stems from the doctoral research and supply chains experience of Katherine Moloney regarding human rights due diligence in global supply chains.

<sup>8</sup> This refers to the process of slavery-proofing as intended by Archbishop Fisher (NSW Legislative Council (2017)) and the Vatican (Pell (2016)).

<sup>9</sup> Paul Andrews, “Groundbreaking anti-slavery project a first for Australia’s health and aged care sector,” St Vincent’s Health Australia, June 2017, <https://svha.org.au/home/newsroom/announcements/groundbreaking-anti-slavery-project-a-first-for-australias-health-and-aged-care-sector>.

<sup>10</sup> BCPL, *Public consultation into modern slavery in supply chains* (Submission: ACBC, in press).

<sup>11</sup> See, for example, the French Law on the duty of oversight of parent companies and commissioning enterprises (2017), the proposed Swiss Amendment to the Federal Constitution to introduce Article 101a, the proposed Dutch Child Labour Due Diligence Law and the proposed German Human Rights Due Diligence Act.

3.06 In this regard, the Archdiocese of Sydney notes that the Interim Report of the Joint Standing Committee on Foreign Affairs, Defence and Trade’s inquiry into establishing a Modern Slavery Act in Australia recommends that the

final report should consider other measures to combat modern slavery in global supply chains, such as regulating the importation of goods that have been produced using modern slavery, similar to the US *Trade Enforcement and Facilitation Act of 2015* [sic].<sup>12</sup>

Section 910 of the Trade Facilitation and Trade Enforcement Act of 2015 is an example of legislating for due diligence liabilities in global supply chains. As such, the Committee is recommending that the Australian government consider due diligence liabilities in drafting the modern slavery supply chains legislation.

## 4 The Sydney Archdiocesan material interests and impact on industry culture

4.01 The Catholic Church, as well as its agencies and affiliates in Sydney have extensive supply chains and a significant procurement spend. It is worth noting that Catholic entities in Australia constitute the single-largest non-government providers of education and health throughout the country and have billions of dollars in combined revenue. Indeed, nation-wide 1 in 5 school children attend a Catholic primary or secondary school,<sup>13</sup> while Australia is served by two Catholic universities. As regards health and wellbeing, Catholic Health Australia represents the largest non-government provider grouping of health, community and aged care services in the country.<sup>14</sup> This amounts to 1 in 10 hospital patients and aged care residents receiving care in a Catholic hospital or aged care facility.<sup>15</sup>

4.02 The Archdiocese of Sydney has a material interest in this consultation with the AGD. We are a major purchaser (and provider) of goods and services and an entity which is likely to be regulated by any modern slavery supply chain legislation in Australia (page 15). In addition, as a recipient of public funds to support the delivery of service provision such as education and healthcare, we take seriously our stewardship of government and tax-payer money. We seek never to compromise this stewardship.

4.03 The Archdiocese of Sydney notes that the public sector is the largest procurer of goods and services in Australia and yet the proposed model of modern slavery supply chain legislation excludes the public sector (page 15). We further note that a failure to include public sector procurement may lead to the highly undesirable outcome whereby unethical first tier suppliers are able to avoid appropriate transparency and accountability provisions by trading with the public sector. This is of particular concern to the Archdiocese of Sydney as regards the education and health sectors. In both sectors the public sector is the largest service provider, followed by the Catholic Church. We strongly recommend that federal and state government supply chains are covered under the modern slavery supply chain legislation and that the public sector move

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<sup>12</sup> Parliament of the Commonwealth of Australia (2017). *Modern slavery and global supply chains*. Interim report of the Joint Standing Committee on Foreign Affairs, Defence and Trade’s inquiry into establishing a Modern Slavery Act in Australia. ACT: Commonwealth of Australia.

<sup>13</sup> Australian Bureau of Statistics (2017), *4221.0 Schools, Australia 2016* at <http://www.abs.gov.au/ausstats/abs@.nsf/mf/4221.0>.

<sup>14</sup> Catholic Health Australia (2016), *The Sector* at <http://cha.org.au/about>.

<sup>15</sup> Catholic Health Australia (2016), *Home* at <http://cha.org.au>.

to establish effective supply chain due diligence obligations through public procurement regulatory instruments.

4.04 Moreover, the Archdiocese of Sydney notes that any attempt by the Archdiocese of Sydney to engender positive change in industry culture among suppliers and further sub-suppliers as regards modern slavery may be substantially compromised by regulatory failure. Such a failure would arise in the event that entities at the apex of supply chains, whether in the private sector or among public procurers, do not undertake due diligence and are thus able to benefit from slavery in their supply chains. We therefore strongly recommend that the modern slavery supply chain legislation covers all entities including both the public and private sectors and mandates them to undertake human rights due diligence in their supply chains.

4.05 As a large entity committed to anti-slavery supply chain due diligence we submit that the Australian government enact effective modern slavery supply chain legislation. Specifically, we submit that this legislation should protect the commercial interests of those entities seeking to safeguard their supply chains from slavery. This legislation should ensure a level playing field such that these entities are not placed at a competitive disadvantage by other entities that continue to operate without regard to slavery in their supply chains.

## 5 Summary and recommendations

5.01 *The Archdiocese of Sydney is committed to a process of ‘slavery-proofing’ our own supply chains. We strongly support the implementation of effective modern slavery supply chain regulation based on international best practice. In this regard, we are seeking to lead by example.*

5.02 *We believe that this public consultation by the AGD affords the Australian government with an excellent opportunity to enact effective modern slavery supply chain legislation based on international best practice. The extent to which the government does so will be the extent to which they take effective steps to eradicating slavery in the operations and supply chains of entities operating in Australia. This will move towards the fulfilment of their commitment to Section 8.7 of the Sustainable Development Goals.*

5.03 *In respect of modern slavery supply chain legislation, the Archdiocese of Sydney submits:*

- i. To be effective modern slavery supply chain legislation must seek to protect all workers in all tiers of the supply chain from slavery and slavery-like practices.*
- ii. It must further seek to protect those businesses and other entities which are pursuing human rights due diligence from being undercut by unscrupulous entities benefiting from slavery in their operations or supply chains. Effective legislation must therefore create a level playing field for all entities operating in Australia which have supply chains. This necessarily includes regulation of the public, private and financial sectors.*
- iii. International best practice in modern slavery supply chain legislation mandates and enforces human rights due diligence. If the Australian government wishes to enact legislation which reflects international best practice (pages 8 and 14) its provisions must mandate due diligence liabilities.*
- iv. The Modern Slavery in Supply Chains Reporting Requirement being proposed by the AGD does not require entities to undertake due diligence nor does it hold entities liable for slavery in their supply chains. **Regrettably this falls far short of current international best practice.***

- v. *Rather, the proposed model is based on Section 54 of the UK Modern Slavery Act which has been heavily criticised as a weak instrument of limited value in changing business policies and practices and in holding them to account for slavery in their supply chains.<sup>16</sup>*
- vi. *Moreover, the proposed model would impose a public reporting requirement on certain entities. This process is external (and additional) to the regular operating practices of entities and does not build upon existing (and internal) supply chain governance, namely contracting arrangements. Conversely, the Australian Model of supply chain regulation governs commercial contracting so as to mandate due diligence liabilities. It has been successfully operating in certain sectors in Australia for over a decade and is recognised as an international best practice model<sup>17</sup> with potential for effectively regulating global supply chains.<sup>18</sup>*
- vii. *The Archdiocese of Sydney strongly commends the Australian Model of supply chain regulation to the Australian government and recommends that this form the basis of Australia's effective modern slavery supply chain legislation.*

5.04 *The principle submissions of the Archdiocese of Sydney in relation to modern slavery supply chain legislation are as follows.*

- i. ***We strongly recommend that federal and state government supply chains are covered under the modern slavery supply chain legislation and that the public sector move to establish effective supply chain due diligence obligations through public procurement regulatory instruments.***
- ii. ***We strongly recommend that the modern slavery supply chain legislation covers all entities including both the public and private sectors and mandates them to undertake due diligence in their supply chains.***
- iii. ***The Archdiocese of Sydney strongly recommends that the Australian government, in accordance with international best practice, enact modern slavery supply chain legislation with mandatory and enforceable due diligence provisions.***

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<sup>16</sup> See, for example, H.L. H.C. Joint Committee on Human Rights (2017). *Human Rights and Business 2017: Promoting responsibility and ensuring accountability*. 6th Report of Sess. 2016-17, H.L. Paper 153/H.C. 443; Genevieve LeBaron & Andreas Rühmkorf, "Steering CSR Through Home State Regulation: A Comparison of the Impact of the UK Bribery Act and Modern Slavery Act on Global Supply Chain Governance," *Global Policy* 8, no. S3 (2017): 15-28.

<sup>17</sup> Catelene Passchier, "General Discussion On Decent Work in Global Supply Chains: Workers' Statement (Point 3)" (paper presented to the 105th Session of the International Labour Conference, Geneva, May 30- June 10, 2016).

<sup>18</sup> See, for example, Michael Rawling, "Legislative regulation of global value chains to protect workers: A preliminary assessment," *The Economic and Labour Relations Review* 26, no. 4 (2015): 660-77.



## Responses to the consultation questions

*In the Public Consultation Paper and Regulation Impact Statement, the AGD proffers three options to address modern slavery in supply chains, ranging from inaction (Option One), non-regulatory action (Option Two) and reporting requirements (Option Three). The AGD proposes to legislate for Option Three (henceforth the proposed model).*

*The Archdiocese of Sydney submits that the proposed model, while the best of the three proffered options put forward by the AGD, is vastly inadequate. It neither redresses slavery in supply chains nor does it constitute an international model of best practice in anti-slavery supply chain regulation. As a model, modern slavery reporting requirements such as Section 54 of the UK Modern Slavery Act, is less rigorous and effective than a range of contemporary home-state legislation for supply chain governance.<sup>19</sup> The most rigorous and effective legislative model is one which mandates due diligence liabilities.<sup>20</sup>*

*Additionally, the Archdiocese of Sydney notes and draws to the attention of the AGD, the reference in the Public Consultation Paper and Regulation Impact Statement to **the NSW Ethical Clothing Trades Extended Responsibility Scheme** (page 9). This legislative instrument represents a key component of one application of the Australian Model of supply chain regulation, a model which has been recognised as an international example of best practice.<sup>21</sup> The Archdiocese of Sydney submits that, given their reference to this supply chain regulatory regime, the AGD reconsider the Australian Model for incorporation into the modern slavery supply chain legislation.*

*All responses to the AGD's consultation questions should thus be read with reference to this perspective.*

What follows are the Sydney Archdiocesan responses to the questions posed at the AGD roundtable consultations.<sup>22</sup>

### 1. Is the proposed definition of 'modern slavery' appropriate and simple to understand?

The AGD proposes to define 'modern slavery' in accordance with Divisions 270 and 271 of the Commonwealth Criminal Code (page 14). As such, the term will encompass slavery, servitude, forced labour, debt bondage and deceptive recruiting for labour or services as defined within the Code. The definition being proposed for use within the modern slavery supply chains legislation does not directly reference either human trafficking or forced marriage.

The Archdiocese of Sydney submits that 'modern slavery' be defined in accordance with Divisions 270 and 271. We recommend that the definition of 'modern slavery' include human trafficking and also

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<sup>19</sup> LeBaron & Rühmkorf, (2017).

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

<sup>21</sup> Passchier (2016).

<sup>22</sup> Note that this differs slightly from the consultation questions listed in the Public Consultation Paper and Regulation Impact Statement.

make explicit and specific reference to and be consistent with the relevant United Nations and International Labour Organization instruments on slavery, forced labour and human trafficking.

2. How should the Australian Government define a reporting 'entity' for the purposes of the reporting requirement? Should this definition include 'groups of entities' which may have aggregate revenue that exceeds the threshold?

The AGD proposes to define a reporting 'entity' broadly, and include a range of entities such as bodies corporate, unincorporated associations or bodies of persons, superannuation funds and approved deposit funds (page 15). For the purposes of the reporting requirement, entities will include large businesses and other entities operating in Australia, excluding the public sector (page 15). It appears likely that the definition of 'entity' will be at least consistent with Section 50 of the Corporations Act.

The Archdiocese of Sydney notes that the Interim Report of the Joint Standing Committee on Foreign Affairs, Defence and Trade's inquiry into establishing a Modern Slavery Act in Australia

gives in-principle support for mandatory annual modern slavery supply chain reporting requirements to apply, above a particular threshold, to companies, businesses, organisations (including religious organisations) and governments operating in Australia.<sup>23</sup>

The Archdiocese of Sydney further notes that the UK House of Lords and House of Commons Joint Committee on Human Rights concludes that **the UK Modern Slavery Act is deficient to the extent that the public sector is excluded from the legislation.**

If the Government expects businesses to take human rights issues in their supply chains seriously, it must demonstrate at least the same level of commitment in its own procurement supply chains.<sup>24</sup>

Moreover, they assert that the government should take the lead **by ensuring human rights due diligence is mainstreamed throughout public sector procurement.**

The Government should exclude companies that have not undertaken appropriate and effective human rights due diligence from all public sector contracts ... Companies that have been found to have been responsible for abuses ... should also be excluded from public sector contracts for a defined and meaningful period.<sup>25</sup>

Enhancing human rights due diligence in public procurement is likewise a recommendation made by both the Australian government's Joint Committee on Government Procurement<sup>26</sup> and, more recently, the NSW Legislative Council's Select Committee on Human Trafficking in New South Wales.<sup>27</sup>

**In response to the NSW inquiry into human trafficking, a NSW Finance Department spokesperson stated that the NSW government has zero-tolerance for slavery and that 'All government agencies**

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<sup>23</sup> Parliament of the Commonwealth of Australia (2017). *Modern slavery and global supply chains*. Interim report of the Joint Standing Committee on Foreign Affairs, Defence and Trade's inquiry into establishing a Modern Slavery Act in Australia. ACT: Commonwealth of Australia, xvii.

<sup>24</sup> H.L. H.C. Joint Committee on Human Rights (2017), 36. See also, pages 40-43.

<sup>25</sup> *Ibid.*

<sup>26</sup> Parliament of the Commonwealth of Australia (2017). *Buying into our Future: Review of amendments to the Commonwealth Procurement Rules*. Report of the Joint Select Committee on Government Procurement. Canberra, ACT: Commonwealth of Australia.

<sup>27</sup> Parliament of New South Wales (2017). *Human Trafficking in New South Wales*. Report of the Select Committee on Human Trafficking in New South Wales. Sydney, NSW: NSW Legislative Council.

**must work with their suppliers to ensure that businesses are taking sufficient action to keep slavery and exploitation out of its operations.’<sup>28</sup>**

**The Archdiocese of Sydney submits that the scope of the definition proposed must be enhanced to include all entities operating in Australia which have supply chains.** This must include the public, private and financial sectors. The Archdiocese of Sydney is fully prepared to comply with legislation regarding modern slavery in supply chains and notes its extensive procurement budget and its use of public money to fund service provision.

The Archdiocese of Sydney notes that the UK Modern Slavery Act fails to compel reporting by all parent companies<sup>29</sup> and recommends that the proposed model compel reporting by all (ultimate) parent companies and groups of entities.

3. How should the Australian Government define an entity’s revenue for the reporting requirement? Is \$100 million total annual revenue an appropriate threshold for the reporting requirement?

The AGD proposes to establish a total annual revenue threshold of AUD 100 million for the reporting requirement.

The Archdiocese of Sydney notes that this figure is significantly higher than the threshold specified by the current UK regulation and by other similar legislative instruments outside the US. These legislative instruments include Directive 2014/95/EU, Regulation (EU) 2017/821, Section 1502 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010), the French Law on the duty of oversight of parent companies and commissioning enterprises (2017),<sup>30</sup> the proposed Swiss Amendment to the Federal Constitution to introduce Article 101a, the proposed Dutch Child Labour Due Diligence Law<sup>31</sup> and the proposed German Human Rights Due Diligence Act.

**We further note that many of the recently revealed instances of slavery and slavery-like practices within Australian supply chains have occurred within entities which would not be required to issue a report under the proposed model.** Moreover, we note that the NSW Legislative Council’s Select Committee on Human Trafficking in New South Wales recommends that the NSW Government actually assist small and medium-sized enterprises (SMEs) ‘to identify modern slavery within their supply chain[s] and assist them in remediating and monitoring identified risks.’<sup>32</sup> This exceeds reporting requirements by facilitating supply chain due diligence by SMEs.

**The Archdiocese of Sydney does not support the establishment of a total annual revenue threshold of AUD 100 million, believing this figure to be unacceptably high.** We suggest that determinations as

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<sup>28</sup> James Robertson, “185 years later, inquiry finds slavery untracked in NSW,” The Sydney Morning Herald, October 19, 2017, <http://www.smh.com.au/nsw/185-years-later-inquiry-finds-slavery-untracked-in-nsw-20171019-gz4eyj.html>.

<sup>29</sup> Ryan J. Turner, “Transnational Supply Chain Regulation: Extraterritorial Regulation as Corporate Law’s New Frontier,” Melbourne Journal of International Law 17, no. 1 (2016): 188-209.

<sup>30</sup> French title: Loi n° 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d’ordre.

<sup>31</sup> Dutch title: Wet zorgplicht kinderarbeid.

<sup>32</sup> Parliament of New South Wales (2017). *Human Trafficking in New South Wales*. Report of the Select Committee on Human Trafficking in New South Wales. Sydney, NSW: NSW Legislative Council, 31.

to which entities have reporting requirements be made based on factors associated with risk. This may include supply chain factors<sup>33</sup> such as length and complexity (page 6) as well as the extent of an entity's non-standard work arrangements such as casualised and contracted work (page 6),<sup>34</sup> labour hire<sup>35</sup> and franchising.<sup>36</sup> Such a risk-based approach to determining which entities are covered by the legislation would entail applying common standardised criteria to all entities across-the-board without variance by sector.

4. How should the Australian Government define an entity's 'operations' and 'supply chains' for the purposes of the reporting requirement?

The AGD proposes that the reporting requirements encompasses both an entity's operations and supply chains. For the purposes of the reporting requirement, the definition of supply chains will extend beyond tier 1 (page 15).

The Archdiocese of Sydney supports this proposal and recommends that **the definition of 'operations' and 'supply chains' encompass all work performed for the entity and all work performed in all tiers of the supply chain, regardless of jurisdiction.** The definition should cover online entities and not be restricted by worker employment status.

5. What regulatory impact will this reporting requirement have on entities? Can this regulatory impact be further reduced without limiting the effectiveness of the reporting requirement?

The AGD states its intention to limit undue and unnecessary regulatory impacts for entities (pages 13, 18 and 21). As such, the AGD intends that the proposed model 'will have a proportionate, targeted and light touch regulatory impact and only apply to large businesses' (page 21).

The Archdiocese of Sydney notes that to the extent that the reporting requirements of the proposed model fall outside of regular business operations they represent a regulatory impact to entities. Where reporting requirements can be incorporated into regular business operations, this will ease regulatory impact.

Moreover, the Archdiocese of Sydney notes that the Australian Model of supply chain regulation actually builds upon regular business operations (i.e. contracting arrangements). As it works within the framework of existing supply chain governance architecture, the Australian Model is preferable to

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<sup>33</sup> See, for example, Parliament of the Commonwealth of Australia (2017). *Buying into our Future*; AHRC, ACCSR & GCNA (2015). *Human Rights in Supply Chains: Promoting Positive Practice*. Melbourne: Australian Human Rights Commission.

<sup>34</sup> See, for example, Richard Johnstone et al. (2012), *Beyond Employment: The Legal Regulation of Work Relationships*. Sydney: Federation Press.

<sup>35</sup> See, for example, Parliament of the Commonwealth of Australia (2017). *An inquiry into human trafficking, slavery and slavery-like practices – Report, incorporating a dissenting report*. Report of the Joint Committee on Law Enforcement. ACT: Commonwealth of Australia; Parliament of the Commonwealth of Australia (2016). *Seasonal change: Inquiry into the Seasonal Worker Programme*. Report of the Joint Standing Committee on Migration. ACT: Commonwealth of Australia; Industrial Relations Victoria (2016). *Victorian Inquiry into the Labour Hire Industry and Insecure Work*. Final Report. Melbourne: Government of Victoria.

<sup>36</sup> See, for example, Senate of the Australian Federal Parliament (2016). *A National Disgrace: The Exploitation of Temporary Work Visa Holders*. Report of the Senate Standing Committee on Education and Employment. ACT: Commonwealth of Australia.

the proposed model which would impose an external process upon entities. **It is also a more effective strategy to redress slavery in supply chains.**

6. Are the proposed four mandatory criteria for entities to report against appropriate? Should other criteria be included, including a requirement to report on the number and nature of any incidences of modern slavery detected during the reporting period?

The AGD proposes to require entities to report on four criteria in their Modern Slavery Statements, namely,

- (i) an entity's structure, operations and supply chains,
- (ii) risks,
- (iii) policies and processes, and
- (iv) due diligence processes.

**While the proposed AGD criteria are purportedly mandatory (page 19), this is effectively negated by the statement on page 16 that '[e]ntities will also have the flexibility to determine what, if any, information they provide against each of the four criteria.'**

The Archdiocese of Sydney observes that the proposed reporting criteria is congruent with the criteria provided within the UK Modern Slavery Act. We note that this is less vigorous than the reporting criteria used by the California Transparency in Supply Chains Act which requires that entities report on anti-slavery verification, audits, certification, internal accountability and training.

Moreover, the Archdiocese of Sydney notes that the reporting criteria of the UK Modern Slavery Act, on which the proposed model is based, lacks standardisation and specificity. Indeed, the UK House of Lords and House of Commons Joint Committee on Human Rights concludes that the reporting requirements in the UK Modern Slavery Act are 'weak.'<sup>37</sup> They conclude that this, subsequently, makes it '**very difficult to hold companies to account.**'<sup>38</sup> The Committee recommends that this be rectified through legislation and, also

**that the Government bring forward legislative proposals to make reporting on due diligence ... compulsory for large businesses, with a monitoring mechanism and an enforcement procedure.**<sup>39</sup>

**This recommendation is supported by academic research which concludes that legislation based on due diligence liability has been much more efficacious in effecting change in company supply chain policies and practices than the UK Modern Slavery Act.**

Within the [UK] Modern Slavery Act, the substitution of a vague reporting requirement over a more stringent model of public governance appears to have undermined its effectiveness in 'steering' corporate behaviour.<sup>40</sup>

**The Archdiocese of Sydney notes that by contrast the proposed model does not require entities to undertake due diligence in their operations or supply chains, nor to be transparent about the instances of and responses to slavery uncovered by such processes.** The proposed model only

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<sup>37</sup> H.L. H.C. Joint Committee on Human Rights (2017), 42.

<sup>38</sup> *Ibid.* Bold font added.

<sup>39</sup> *Ibid.* Bold font added.

<sup>40</sup> LeBaron & Rühmkorf (2017), 26.

requires that entities provide information about any due diligence processes that may exist. The recent British parliamentary criticisms of the UK Modern Slavery Act appear to have been given no credence in the preparation of the AGD's Public Consultation Paper.

We note that international best practice in modern slavery supply chain legislation (e.g. the French Law on the duty of oversight of parent companies and commissioning enterprises) mandates due diligence in supply chains and enacts compliance due diligence and enforceability. We also note that, according to the Interim Report of the Joint Standing Committee on Foreign Affairs, Defence and Trade's inquiry into establishing a Modern Slavery Act in Australia, 'submitters and witnesses, particularly NGOs, suggested that the prescriptive reporting requirements should include mandatory due diligence.'<sup>41</sup> Due diligence would appear to reflect community expectations (page 5). The consultation process should seek to ascertain if this is the case.

As such, the Archdiocese of Sydney calls on the AGD to adopt modern slavery supply chain legislation which enacts current international best practice. This entails mandatory due diligence. We strongly reject the lack of standardisation and specificity of the proposed reporting requirements and reiterate the conclusion that this weakens the effectiveness of anti-slavery efforts. Thus, **we submit that the Australian government should avoid enacting reporting criteria that has been consistently criticised as weak and ineffectual.**

The Archdiocese of Sydney therefore strongly recommends that **the Australian government enact modern slavery supply chain legislation which incorporates mandatory transparency (reporting) and due diligence criteria which are standardised and specific.** This legislation should incorporate mandatory compliance due diligence and enforceability provisions. Moreover, we submit that the Australian government take a lead globally through the implementation of the Australian Model of supply chain regulation.

7. How should a central repository for Modern Slavery Statements be established and what functions should it include? Should the repository be run by the Government or a third party?

The AGD proposes that the reporting requirement will require entities to publish on their websites their Modern Slavery Statements. The AGD further proposes to establish a free, searchable and publicly accessible central repository, subject to positive feedback from the public consultation (page 17).

The Archdiocese of Sydney supports this proposal for a central repository. We recommend that such a repository be user-friendly and administered by an agency or collaborative body which has as its principal interest, human and/or labour rights rather than business or trade. In this way it will minimise conflict of interest and be consistent with community expectations of impartiality and fairness. Current UK Independent Anti-Slavery Commissioner, Kevin Hyland OBE, has 'suggested that a repository could be funded by government and administered by NGOs or universities to encourage innovation, drive change and raise awareness.'<sup>42</sup>

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<sup>41</sup> Parliament of the Commonwealth of Australia (2017). *Modern slavery and global supply chains*, 40.

<sup>42</sup> *Ibid*, 34.

The Archdiocese of Sydney recommends that the central repository contain lists of entities with mandatory reporting duties as well as lists of entities that are compliant and not compliant with the reporting requirements<sup>43</sup> (and the due diligence requirements in the event that this is legislated).<sup>44</sup> We also recommend that the central repository contain independent third-party publications of relevance to human rights in supply chains, including reports by academic, civil society or journalistic sources. These publications may, for example, document human rights abuses in the supply chains of specific entities or sectors and may be of value in informing consumer and investor choices (pages 5 and 10).

The Archdiocese of Sydney further recommends that the central repository be organised by sector as well as by revenue and risk. It should be fully searchable by sector, revenue and risk and also by the names and logos of entities, including the formal and trading names and logos of entities, groups of entities, parent companies and subsidiaries. Company control, ownership and organisational structures should be readily available (and searchable) in standardised tabular or graphic form.

The Archdiocese of Sydney also recommends that entities list on all their websites (including parent, groups of entities and subsidiary websites) a link to the relevant webpage(s) on the central repository website. Additionally, that they also list on all their websites all search criteria of use by the central repository to locate their Statement(s).

8. Noting the Government does not propose to provide for penalties for non-compliance, how can Government and civil society most effectively support entities to comply with the reporting requirement? What issues need to be covered in guidance material?

The AGD proposes not to include penalties for non-compliance with the reporting requirements, as is the case in the UK (page 17). They hold that non-compliance with the reporting requirements ‘may be subject to public criticism’ (page 17).

The Archdiocese of Sydney notes that this is at variance with the Interim Report of the Joint Standing Committee on Foreign Affairs, Defence and Trade’s inquiry into establishing a Modern Slavery Act in Australia.

The Committee gives in-principle support for the Australia Government to mandate reporting ... with penalties applying for those that do not report or do not report in compliance with the Modern Slavery Act reporting requirements.<sup>45</sup>

In addition, the Committee gives in-principle support for the Australian government to publish lists of entities that do and do not comply with the reporting requirements of the proposed model and a list of entities who voluntarily submitted Statements.<sup>46</sup>

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<sup>43</sup> Parliament of the Commonwealth of Australia (2017). *Modern slavery and global supply chains*. Interim report of the Joint Standing Committee on Foreign Affairs, Defence and Trade’s inquiry into establishing a Modern Slavery Act in Australia. ACT: Commonwealth of Australia.

<sup>44</sup> Cf. *Balance de Responsabilidad Social y Ambiental [Law on the Balancing of Social and Environmental Responsibilities]* Law No. 2594, Jan. 16, 2008, C.A.B.A.

<sup>45</sup> Parliament of the Commonwealth of Australia (2017). *Modern slavery and global supply chains*, xix-xx.

<sup>46</sup> *Ibid.*

The Archdiocese of Sydney also notes that **compliance with the reporting requirements of both the UK Modern Slavery Act and the California Transparency in Supply Chains Act is generally low.**<sup>47</sup> Compliance with the reporting requirements includes submission of a report on the company website (UK and US), appropriate sign-off (UK) and correctly addressing reporting criteria (US). **Moreover, quality of reporting is also low.**<sup>48</sup>

The Archdiocese of Sydney further notes that public criticism (page 17) and consumer and investor action (pages 5 and 10) as a result of reporting regimes such as the UK Modern Slavery Act has been shown incapable of effecting change in business practices.<sup>49</sup> Lastly, we note that the AGD does not propose to implement penalties for failure by entities to take any action on slavery in their operations or supply chains.

In answer to this consultation question, the Archdiocese of Sydney believes that neither the government nor civil society can ‘effectively support entities to comply with the reporting requirements’ where there are no prescribed penalties for non-compliance. We thus strongly recommend that transparency (reporting) and due diligence be mandatory and enforceable in any modern slavery supply chain legislation.

9. Is the five month deadline for entities to publish Modern Slavery Statements appropriate? Should this deadline be linked to the end of the Australian financial year or to the end of entities’ financial years?

The AGD proposes to implement a five month deadline for entities to publish their annual Modern Slavery Statement after the end of the Australian financial year (pages 14 and 15).

The Archdiocese of Sydney supports this proposal.

10. Are the requirements for statements to be approved by boards and signed by directors?

The AGD proposes that the reporting requirements will require that an entity’s Modern Slavery Statement be approved at the equivalent of board level and that these Statements also be signed by a director.

The Archdiocese of Sydney supports this proposal.

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<sup>47</sup> See, for example, Ergon (2017). *Modern Slavery Statements: One Year On* at [http://ergonassociates.net/wp-content/uploads/2016/03/MSA\\_One\\_year\\_on\\_April\\_2017.pdf?x74739](http://ergonassociates.net/wp-content/uploads/2016/03/MSA_One_year_on_April_2017.pdf?x74739); KnowTheChain (2015). *Insights Brief: Five years of the California Transparency in Supply Chains Act* at [https://knowthechain.org/wp-content/uploads/2015/10/KnowTheChain\\_InsightsBrief\\_093015.pdf](https://knowthechain.org/wp-content/uploads/2015/10/KnowTheChain_InsightsBrief_093015.pdf).

<sup>48</sup> *Ibid.*

<sup>49</sup> See, for example, Turner (2016).



11. Is an independent oversight mechanism required, or could this oversight be provided by Government and civil society? If so, what functions should the oversight mechanism perform?

The AGD proposes possible oversight of the reporting requirement which could perform functions such as maintaining the central repository, raising awareness about risk and providing advice and assistance to businesses (page 17). This oversight may or may not be independent (page 17).

The Archdiocese of Sydney supports this proposal for oversight of the reporting requirement and recommends that independent oversight be provided by an agency or collaborative body which has, as its principal interest, human and/or labour rights rather than business or trade. We note that the Department of Treasury currently hosts the Australian National Contact Point (NCP) for reporting under the OECD Guidelines for Multinational Enterprises. As Treasury has economic analysis and policy as its principal focus we would not support oversight being provided by the current Australian OECD NCP despite the potential overlap in redressing slavery in the operations or supply chains of Australian companies. We further note that the current UK Independent Anti-Slavery Commissioner, Kevin Hyland OBE, has indicated that he would not support his office exercising oversight for monitoring and enforcing supply chains reporting through maintaining a repository.<sup>50</sup>

With regard to the functions performed by the oversight mechanism, the Archdiocese of Sydney notes that the AGD proposes that the legislative provisions will be structured so as to support the capacity to compare statements (page 16). The generation of meaningful and useful comparative analyses may therefore be another function of the oversight mechanism (over and above those suggested on page 17). The means by which the proposed comparisons will be undertaken will need to be determined. Similarly, clearly defined analytics tools and benchmarking methods will need to be established. The Archdiocese of Sydney supports the concept that statements be consistent and comparable. Notwithstanding, we recommend that neither reporting nor oversight be reduced to a 'tick box' exercise but retain the level of reporting detail required for readers to understand the actions taken by entities to address modern slavery in both their operations and supply chains as this is the focus of reporting (page 16).

The Archdiocese of Sydney also notes that legislation on modern slavery in supply chains which has been enacted in other jurisdictions is useful in understanding additional functions which may be performed by the oversight mechanism. For example, the Buenos Aires Law on the Balancing of Social and Environmental Responsibilities enables an oversight authority to determine and evaluate compliance with both reporting requirements and due diligence. We recommend that the oversight mechanism likewise determine and evaluate compliance with both reporting requirements and due diligence. We further recommend that the oversight mechanism contribute to the development of guidance documents and regulation regarding reporting and due diligence which will accompany the legislation.

**The Archdiocese of Sydney submits that independent, non-profit third-party oversight must be provided for transparency (reporting) and due diligence in any modern slavery supply chain legislation.**

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<sup>50</sup> Parliament of the Commonwealth of Australia (2017). *Modern slavery and global supply chains*, 46.

## Annex: The Australian Model of supply chain regulation

While the Public Consultation Paper and Regulation Impact Statement mentions the New South Wales Ethical Clothing Trades Extended Responsibility Scheme (page 9), it does not provide any analysis as to its efficacy nor does it place it in the wider context of the Australian Model of supply chain regulation. The Australian Model is recognised as an example of international best practice<sup>51</sup> and, as such, the Archdiocese of Sydney believes that it is worthy of consideration by the AGD. Moreover, we endorse The Australian Model as an effective model of anti-slavery supply chain regulation.

The following excerpt provides a basic overview of the parameters underpinning the Australian Model.<sup>52</sup>

### What is the Australian model?

The core characteristics of the Australian model can be summarised as follows.

**Transparency and traceability through all tiers of the supply chain:** The Australian model addresses human rights due diligence by mapping the flow of work and the associated transfers of money and goods in order to monitor contractual arrangements.

**Contractual arrangements and cross-jurisdictional coverage:** The Australian model conceptualises contemporary supply chains as a series of commercial contracts which govern the entire supply chain. Commercial influence is typically concentrated at or near the apex of the supply chain and exerted through complex, pyramidal contracting arrangements, often spanning legislative jurisdictions. Lead firms exercise commercial influence to ensure their commercial interests, notably in terms of price, time and quality. The capacity for commercial leverage is often incrementally curtailed with each successive tier down. Working within existing supply chain structures, the model therefore seeks to embed human rights due diligence protections and provisions in contractual arrangements. In this manner, businesses operating in a jurisdiction, as well as all subsequent tiers of the supply chain - even those outside that jurisdiction - are governed by mandatory legal obligations, including compliance mechanisms and commercial remedies.

**Mandatory legal obligations and mutual cooperation:** The model establishes robust minimum standards of human rights due diligence throughout the supply chain, ideally through compulsory statutory regulation [or else embedded into procurement policies and practices]. It therefore ensures a level playing field for all business entities so that ethical businesses are not commercially disadvantaged by unscrupulous businesses able to undercut their prices. The model concurrently enables constructive and collaborative tripartite partnerships based on commonality of purpose and continued improvement. It emphasises the complementary and crucial contribution of government, businesses and unions, as well as academia and the community sector, to proactively and innovatively advance probity.

**The right of all workers in the supply chain to inclusion in human rights due diligence protections and provisions:** The model safeguards comprehensive protections, including fair pay and working conditions, health and safety, and entitlements for all workers regardless of their formal employment

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<sup>51</sup> See, for example, Passchier (2016).

<sup>52</sup> Katherine Moloney, "The Australian Model of Cross-Jurisdictional Supply Chain Regulation," *Global Labour Column* no. 264 (February 2017): 1, [http://www.global-labour-university.org/fileadmin/GLU\\_Column/papers/no\\_264\\_Moloney.pdf](http://www.global-labour-university.org/fileadmin/GLU_Column/papers/no_264_Moloney.pdf).

status or geographical location. This includes the most vulnerable workers at the bottom of the supply chain, such as clothing outworkers in the textile sector and owner-drivers in the transport sector, who are often considered independent contractors. A written contract is prescribed for all workers, and precarious working arrangements such as zero-hour contracts are proscribed.

The responsibility of all business entities in the supply chain to ensure human rights due diligence through protections and provisions: The model holds businesses accountable for protecting the rights of workers in that business and in each subsequent tier of the supply chain, in what is known as a chain of responsibility. This includes the most powerful businesses at the top of the supply chain, such as retailers in textile supply chains, and, supermarkets and financial institutions in transport supply chains (which are often considered external to industry regulation). Contractual arrangements must contain provisions and protections - including adequate payments and timeframes - which do not prevent the rights of any worker from being upheld.

Enforceable, proactive and responsive legal obligations and authorisation of unions to undertake compliance: The model emphasises harm prevention and accountability. Legal obligations are fully enforceable. The model requires proactive reporting from businesses rather than relying on reactive or retrospective actions. It also gives workers' representatives a pivotal role in regulatory oversight. Thus, business entities are required to inform the relevant union of all contracting arrangements and allow them to verify the location of worksites, the conditions of work and the identity of workers throughout supply chains. The model also provides workers and other business entities with an avenue for effective and timely commercial remedy in the event of workers' rights breaches.

The Australian model of supply chain regulation is dynamic because it can be applied in myriad ways, according to context, and can augment existing legislation. The most established manifestation of the model is in the TCF sector.

## The application of the Australian model

... The TCF industrial relations legislation contains innovative provisions such as the 'deemed employee' status of all outworkers and the 'deemed employer' status of almost all business entities. The deemed employee provisions ensure that contract outworkers have the same rights and obligations as do employees, and can only be given work on a full-time or regular part-time basis, not casual. Moreover, presumptive legal obligations are placed on deemed employers which invert the burden of proof for civil law recovery. Business entities in any preceding tier of the supply chain, right up to the principal supplier, can be held liable for unpaid wages and workers' compensation claims.<sup>53</sup>

In addition, national industrial relations legislation anticipated mandatory supply chain regulation. For example, the TCF Industrial Award requires proactive reporting from business entities. Regulators must be provided with quarterly access to details of all external work arrangements, including up-to-date, standardised Work Records. Work Records contain the name and contact details of trading partners, the physical location of all worksites and the 'value and volume' – that is, unit pricing details (value), number of units (volume), timeframe, and production time - of all work orders. This enables the regulator to cross-check sewing times and to establish the equivalent number of full-time workers required to carry out the work. It thus helps to avoid a hidden workforce, protect all workers, and produce greater supply chain transparency and traceability.

The efficacy of the regulatory package, however, rests on enforceable legislation which encompasses all business entities, including lead firms. The mandatory retailer code at state level applies to all retailers who sell Australian-made clothing within the legislating state, and to all suppliers of these

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<sup>53</sup> Igor Nossar, Richard Johnstone, Anna Macklin & Michael Rawling, "Protective legal regulation for home-based workers in Australian textile, clothing and footwear supply chains," *Journal of Industrial Relations* 57, no. 4 (2015): 585-603.

products throughout the supply chain, even where subcontractors are outside the state jurisdiction. The only exception is retailers and manufacturers who are accredited and compliant with the nationwide voluntary code, which is a less rigorous regime administered by an independent tripartite authority, and characterised by collaborative partnership.

The mandatory code regulates retailer contracting arrangements and oversight.<sup>54</sup> At the apex of the TCF supply chain are retailers. Thus, prescribed contracting provisions are embedded into all retailer commercial contracts. These legally binding contractual terms for subcontractors specify that conditions for all workers throughout the supply chain are to be at least as favourable as the Industrial Award. Similarly, retailer contracts must contain compulsory, inbuilt human rights due diligence compliance mechanisms and commercial remedies.

Retailer contracts must also authorise external regulatory oversight by government inspectorates and unions. Australian unions have historically occupied a central role in monitoring and compliance and have been shown to enhance effectiveness and responsiveness of regulatory enforcement (Landau et al., 2014).<sup>55</sup> The TCF union exercises contractual oversight, right of inspection of all production sites and records, and enforcement. It also uses cutting edge strategies to support compliance. For example, the 'minute rate' is a calculation to determine the required payment at the Award rate.

The Australian model of cross-jurisdictional supply chain regulation harnesses existing governance architecture for human rights due diligence. Binding upon all business entities for the protection of all workers, this enforceable mandatory model is robust and readily adaptable for the regulation of cross-jurisdictional supply chains. It offers significant potential for global supply chain regulation.

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<sup>54</sup> Michael Rawling, "Cross-jurisdictional and other implications of mandatory clothing retailer obligations," *Australian Journal of Labour Law* 27, no. 3 (2014): 191-215.

<sup>55</sup> Ingrid Landau, Sean Cooney, Tess Hardy & John Howe (2014). *Trade Unions and the Enforcement of Minimum Employment Standards in Australia*. Melbourne: Melbourne Law School.