



BE SLAVERY FREE

Interim Report on Vulnerable Supply Chains

Submission from Be Slavery Free

Introduction

1. Be Slavery Free Australia welcomes the Productivity Commission's interim report on Supply Chain Vulnerability. Supply Chain Vulnerability is a growing risk to the economy, national security and the wellbeing of Australians.
2. Our interest in this issue is where it intersects with the causes and symptoms of modern slavery, which is also a growing risk, to the wellbeing of Australians and to citizens globally. Devastatingly, the cancer of slavery is growing, not least in the economic downturn that is occurring during the Covid crisis. Estimates of the number of people in slavery were over 40 million (including 24.6 million in forced labour) in 2016¹. This equates to one in every 200 people worldwide. In 2019 the United Nations reported that these figures were only likely to increase, with current environmental, conflict and economic circumstances². Supply chains using slave labour are vulnerable to disruption.

Slavery and Forced Labour Puts Supply at Risk

3. As supply chains get longer and longer across industries, while many economic benefits are realised, risks to supply diversify and multiply. The recent Ever Given crisis in the Suez Canal demonstrates how diverse the causes of supply chain vulnerability are becoming.
4. One such cohort of risks to supply, not addressed in the interim report, are the risks created by modern slavery. These risks include those to companies who have used goods or services relying on slavery (including when they seek to cease this reliance), to governments that introduce legislative responses to encourage slavery free supply chains and to consumers in countries who rely on goods from either of the above.

Economic sanctions

5. Recent reports have surfaced of nations delivering economic sanctions to companies who have decided to attempt to cleanse their supply chains of slavery³. As consumer awareness grows of the realities of the continuance of slavery in today's global market, companies are becoming more aware of their own responsibilities to ensure they are not a party to it. However, as has recently been experienced by H&M, Nike, and others who have recently attempted to cease reliance on goods from factories suspected of using slavery, the penalties exacted by the

¹ *Global Estimates of Modern Slavery: FORCED LABOUR AND FORCED MARRIAGE*, 8.7 Alliance

https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/publication/wcms_575479.pdf

² *Scourge of slavery still claims 40 million victims worldwide, 'must serve as a wakeup call'* UN News, September 2019.

<https://news.un.org/en/story/2019/09/1045972>

³ <https://www.theaustralian.com.au/world/beijing-unleashes-netizens-on-hm-over-boycott-of-slave-labour/news-story/108b1879d1e105957242b34af09ad741> , <https://www.abc.net.au/news/2021-03-25/china-attacks-foreign-clothing-shoe-brands-over-xinjiang/100029766> , <https://www.abc.net.au/radio/newsradio/h&m-and-nike-face-china-wrath-over-xinjiang-cotton/13276494>

perpetrators can also have market consequences⁴. This illustrates the very real and growing risk to Australian companies, and companies supplying goods to the Australian market when they comply with market expectations and also with legal requirements to provide transparency around their supply chain for example, with the *Criminal Code Act 1995* relating to slavery, the *Modern Slavery Act 2018* (Cwlth) and their equivalents across the developed World.

6. Similarly, the implications for governments taking responsible legislative decisions to protect human rights are obvious and similar retribution can be anticipated where state-sponsored slavery is targeted, putting vulnerable supply chains at risk.

Modern slavery and forced labour is wide spread

7. The examples cited in paragraph 5 above relate mainly to the widely reported exploitation of the Uyghur minority in Xinjiang province, China⁵, but it is also reported that forced labour of Uyghurs is now used in another nine provinces across China⁶, demonstrating the complexity in achieving supply chain transparency. Further, slavery is rife across a diverse range of industries including agriculture, textiles, mining, construction, car and phone manufacturing, across most countries in the World, with an estimated 40.3 million subjected to slavery, making all supply chains for complex goods at risk of exposure to slavery.

Illegality

8. It is illegal to import goods which are the product of slave labour. Division 270 of the Commonwealth *Criminal Code Act 1995*⁷ defines and criminalises slavery, servitude, forced labour, deceptive recruiting and forced marriage.
9. Division 270.6 defines 'forced labour' as:
 - the condition of a person (the victim) who provides labour or services if, because of the use of coercion, threat or deception, a reasonable person in the position of the victim would not consider himself or herself to be free:
 - (a) to cease providing the labour or services; or
 - (b) to leave the place or area where the victim provides the labour or services.
10. In terms of forced labour (section 270.6A):
 - a person commits an offence if:
 - (a) the person conducts any business; and
 - (b) the business involves the forced labour of another person (or persons).
11. The offence described in 270.6A carries a penalty of between 9-12 years' imprisonment.

On this basis, any person conducting business in Australia, shown through investigative processes to be involved in forced labour, could potentially be charged and convicted of a forced labour offence. This potentially puts at risk the importation of a vast range of goods or components by Australian

⁴ Ibid.

⁵ For example: <https://www.aspi.org.au/report/uyghurs-sale>, <https://www.theguardian.com/commentisfree/2021/apr/09/cotton-slave-labor-uyghur-region-china>, <https://www.forbes.com/sites/loracecere/2020/12/14/preventing-uyghur-slave-labor-products-under-the-tree-maybe-next-year/?sh=34deea0466f2>, <https://foreignpolicy.com/2019/12/11/cotton-china-uyghur-labor-xinjiang-new-slavery/>, <https://publications.parliament.uk/pa/cm5801/cmselect/cmbeis/1272/127204.htm> etc.

⁶ <https://www.aspi.org.au/report/uyghurs-sale>

⁷ <https://www.legislation.gov.au/Series/C2004A04868>

businesses, particularly in those key industries known to have more exposure to slavery (paragraph 7 above refers).

Slavery makes companies vulnerable to consumer boycotts, investment withdrawal, prosecution and lawsuits

12. There is evidence to suggest that companies relying on slavery in their supply chain are more vulnerable and less resilient than those without⁸. While the sentiment benefits from using ethical labour such as avoidance of consumer boycotts and preferential investment are well known, there are emerging risks to supply chains for using slave labour. These include public investigations and prosecutions (for example Vinci construction⁹), and private lawsuits (for example, Nevsun mining company¹⁰, Costco¹¹, and more recently; Mars, Nestle and Hershey¹²).

Slavery and forced labour in supply chains can be hard to trace

13. As noted in Finding 5.2 of the report:

Governments have responsibility, like any firm, to manage risks in supply chains for which they purchase and/or deliver goods and services directly, particularly when these are essential goods and services.

14. However, at this point in time, Government entities are likely to have difficulty identifying their exposure to slavery and the risks it creates for their supply chains.

15. Identifying the essential products with supply chains that are vulnerable to slavery is a very difficult task, notwithstanding the introduction of the *Modern Slavery Act*, which requires entities with consolidated revenue of \$100 million or more per financial year to report annually on the risks of modern slavery in their operations and supply chains, and the steps taken to address those risks. This is company-focussed legislation, rather than product focussed, so will not be able to identify whether effected products are essential, and the threshold of \$100 million may be too high to capture some of the relevant products. Refinement to reporting requirements could be used to allow this legislation to be leveraged to achieve better transparency on essential products.

Case Study 1: Personal Protective Equipment supply at risk due to forced labour

16. During the first six months of the COVID-19 pandemic, worldwide demand for personal protective equipment (PPE) increased significantly. At the same time, a number of countries with major PPE manufacturing capabilities introduced export bans to protect their own supply¹³. The Australian Bureau of Statistics described 'a notable increase in the import of... PPE' from April

⁸ https://www.ifc.org/wps/wcm/connect/5e5238a6-98b3-445e-a2d6-efe44260b7f8/GPN_Managing-Risks-Associated-with-Modern-Slavery.pdf?MOD=AJPERES&CVID=mR5Bx5h, <https://www.saiglobal.com/hub/blog/human-trafficking-breaking-the-chain-of-control>, <https://www.pendalgroup.com/education-and-resources/why-is-modern-slavery-relevant-to-esg/>

⁹ <https://www.espn.com.au/football/world-cup-soccer/story/2364553/qatar-construction-giant-vinci-sued-over-modern-slavery>

¹⁰ <https://www.cbc.ca/news/canada/british-columbia/settlement-amnesty-scc-africa-mine-nevsun-1.5774910#:~:text=The%20trio%20of%20Eritrean%20refugees%20alleged%20that%20Nevsun,of%20its%20copper%20and%20gold%20mine%20in%20Eritrea.>

¹¹ <https://www.theguardian.com/global-development/2015/aug/19/costco-cp-foods-lawsuit-alleged-slavery-prawn-supply-chain>

¹² <https://www.theguardian.com/global-development/2021/feb/12/mars-nestle-and-hershey-to-face-landmark-child-slavery-lawsuit-in-us>

¹³ <https://www.ansell.com/au/en/medical/services/ansellcares/intouch-quarterly-newsletter>

2020, in line with efforts to build the National Medical Stockpile¹⁴. The lockdown in supply could have proved difficult for Australia, if not for local companies such as Ansell, which reported sales of \$1.2 billion in the first half of the year, a 24.5 percent increase on the previous result¹⁵. Its capacity to support Australia at this vulnerable time as a leading supplier of a number of PPE products could have been jeopardised, however, due to supply chain vulnerability created by its reported exposure to forced labour practices of a number of its suppliers.

17. In the preceding years, working conditions for some of Ansell's manufacturing facilities and those of some of its suppliers (in Malaysia), had been under scrutiny for reported forced labour practices, since at least 2018, and possibly as early as 2014¹⁶, which, in January 2019, Ansell had committed to investigate¹⁷. The abuses reported included migrant workers recruited from countries including Nepal and Bangladesh being forced into debt bondage by requiring them to pay back hefty 'recruitment fees', working 30 consecutive days without a day off, up to 150 hours per month of unpaid overtime, passports withheld and being required to live in crowded living conditions, away from family¹⁸.
18. In October 2019, the United States Customs and Border Protection Department (CBP) blocked the import of goods suspected to have been made with forced labour including surgical gloves sold by Ansell and made by WRP Asia Pacific¹⁹. Later, in July 2020, the United States CPB banned importation from another of Ansell's major suppliers, Top Glove for similar suspected forced labour practices²⁰.
19. Following international pressure, Top Glove has improved its labour conditions markedly and, in a statement issued this week, claimed to have resolved the 11 International Labour Organisation's (ILO) forced labour indicators²¹. However, it should be noted that there remain claims that financial remediation for some entitlements are still outstanding²².
20. Should manufacturers have failed to remediate practices, more manufacturers been found to have been in breach and been forced out of business through sanction, or other countries had imposed sanctions, the consequences for the viability of companies sourcing from them, such as Ansell, may have been bleak, and the supply issues created for Australia could have had major impacts on the health sector at a critical time.

Case Study 2: Australia's Cotton dependence

21. While clothing and other textiles may not appear at first glance to be critical or vulnerable, due to regional concentration of supply of components to Australia such as cotton, there may be a risk. China, India and the US together account for over 70 per cent of the World's cotton supply²³. While China produces around a fifth of the World's cotton, almost two thirds of clothing sold in Australia

¹⁴ <https://www.abs.gov.au/articles/imports-personal-protective-equipment-ppe>

¹⁵ <https://www.aufacturing.com.au/massive-covid-boost-for-ansell>

¹⁶ <https://www.abc.net.au/news/2018-12-10/labour-rights-experts-call-on-ansell-to-protect-workers/10598672>

¹⁷ <https://www.business-humanrights.org/en/latest-news/australia-ansell-says-investigation-into-alleged-top-glove-labour-abuses-is-underway/>

¹⁸ <https://www.abc.net.au/news/2018-12-10/labour-rights-experts-call-on-ansell-to-protect-workers/10598672>,
<https://www.accr.org.au/news/ansell-rakes-in-cash-but-no-assurances-against-modern-slavery/>

¹⁹ <https://www.abc.net.au/news/2019-10-14/australia-urged-to-ban-import-of-gloves-from-ansell-supplier-wrp/11594690>

²⁰ <https://www.forbes.com/sites/palashghosh/2021/03/30/us-customs-bans-worlds-top-latex-glove-maker-over-forced-labor-issues--but-vital-ppe-supplies-wont-be-affected/?sh=3a36f7bc5568>

²¹ <https://www.theedgemarkets.com/article/top-glove-resolves-all-11-ilo-forced-labour-indicators>

²² <https://focusmalaysia.my/featured/top-glove-begins-a-new-chapter-but-past-scars-cannot-be-easily-erased/>

²³ <https://www.statista.com/statistics/263055/cotton-production-worldwide-by-top-countries/>

is manufactured in China²⁴. Recently, China's cotton production has come under scrutiny for suspected forced labour practices in Xinjiang province, where more than 80 per cent of China's cotton is grown²⁵. Reports suggest that over half a million people are subjected to coercive or forced labour in the region during the cotton harvesting season.²⁶

22. For many Australians, this issue first became apparent in the recent publicity surrounding Asics, the Australian Olympic team uniform supplier, after its China office released a statement saying it would continue to source cotton from Xinjiang, in contrast to the companies noted in paragraph 5 above, which sought to cease their reliance on this source²⁷. It should be noted that Asics stated that the statement released was unauthorised²⁸.
23. Most Australian grown cotton is spun and woven overseas. Up until last year 70 percent of the crop was exported to China, until the Chinese government placed informal bans on Australian cotton²⁹.
24. Noting the illegality of importing goods produced using slavery, and that Australia's clothing industry relies so heavily on cotton that may be from this region, it could be seen that Australia's clothing supply chains are vulnerable.

Existing Government commitment to support transparency in supply chains

25. In 2017 the *Hidden in Plain Sight, An inquiry into establishing a Modern Slavery Act in Australia*³⁰ report by the Joint Standing Committee on Foreign Affairs, Defence and Trade recommended (Recommendation 15):
 - ...publishing a list of products or services, people groups, areas and industries with a high -risk of modern slavery, both within Australia and internationally.
26. In the Government's response to the *Hidden in Plain Sight* report, this recommendation was accepted in full³¹. The urgent delivery of this commitment is needed to enable Australian companies to ensure their supply chains are free from this vulnerability.

Conclusion

27. Supply chain vulnerability is a growing threat in Australia. Slavery and forced labour create risks to supply chains, notwithstanding existing legislation such as the *Modern Slavery Act* and the *Criminal Code Act*. These practices can expose companies to economic sanctions, lawsuits and prosecutions.
28. Assisting companies to trace their supply chains more effectively, in line with their existing legislative obligations, would support the mitigation of these risks. To this end, we urge the Productivity Commission to take steps to mitigate business exposure to modern slavery crimes by recommending to the Department of Home Affairs that it prioritise the publishing of the list 'of products or services, people groups, areas and industries with a high -risk of modern slavery,

²⁴ <https://www.aspistrategist.org.au/untangling-from-xinjiang-cotton-will-be-easier-said-than-done/>

²⁵ <https://www.theguardian.com/world/2020/dec/15/xinjiang-china-more-than-half-a-million-forced-to-pick-cotton-report-finds>

²⁶ <http://newlinesinstitute.org/wp-content/uploads/20201214-PB-China-Cotton-NISAP-2.pdf>

²⁷ <https://www.abc.net.au/news/2021-03-29/asics-olympic-uniform-supplier-cotton-controversy-china/100034698>

²⁸ Ibid.

²⁹ <https://www.aspistrategist.org.au/untangling-from-xinjiang-cotton-will-be-easier-said-than-done/>

³⁰ https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Foreign_Affairs_Defence_and_Trade/ModernSlavery/Final_report

³¹ <https://www.homeaffairs.gov.au/reports-and-pubs/files/government-response-iscfadt-report.pdf>

both within Australia and internationally' as already committed at the earliest opportunity (paragraph 26 above refers).

29. Further, we suggest that the Productivity Commission consider whether any amendments to reporting requirements for the Modern Slavery Act could be used to allow this legislation to be leveraged to achieve better transparency on products deemed essential.

Be Slavery Free

Be Slavery Free is part of the global movement that aims to prevent, disrupt and abolish slavery. We work collaboratively with other organisations to effect change.

The organisations who make up the Coalition are diverse. We work in areas of:

- Consumer-driven campaigning and general community awareness, education on modern slavery and its prevention
- Working with business to increase traceability and transparency in their supply chains
- Introduce measures to illuminate human trafficking, slavery and slavery-like practices and highlight businesses that are making progress
- Convening and collaborating with other civil society groups for joint actions to abolish slavery and slavery-like practices
- International development work focused on poverty alleviation, economic dignity, after-care of survivors and re-integration programs
- Legal services and care for persons who have experienced slavery in Australia

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