

Australian Red Cross

REVIEW OF THE *MODERN SLAVERY ACT 2018* (Cth)

**Submission to Professor John McMillan, AO, supported
by the Attorney-General's Department.**

November 2022

About Red Cross

As a member of the Red Cross Red Crescent Movement, Red Cross responds to disasters, crises and humanitarian need in Australia, in the Asia Pacific region, and globally. As auxiliary to public authorities in the humanitarian field, Red Cross has a unique position in the humanitarian sector, which includes a specific mandate in times of war and other large-scale disasters and emergencies, to work with governments to achieve humanitarian goals and activities.

Given this unique role, we are often first responders. For migrants, including refugees and people seeking safety, we are often present at each stage of the journey – in the places people come from, the places they travel or flee to, and the places they settle in.

In Australia, Red Cross is embedded in communities across remote, rural, regional and urban Australia through 25,000 members, staff, and volunteers. At all times we are guided by seven Fundamental Principles: Humanity, Impartiality, Neutrality, Independence, Voluntary Service, Unity, and Universality. These principles are at the very core of our mission and ways of working. Through Humanity and Impartiality, Red Cross endeavours to prevent and alleviate human suffering guided solely by need and giving priority to the most urgent cases of distress. Red Cross does not discriminate as to an individual's nationality, race, culture, gender, sexual orientation, religious beliefs, social background, disability, family status, marital status, visa status, age, or political opinions.

As a trusted partner, we work directly with communities and authorities, as advocates and humanitarian diplomats, providing evidence-based insights and data that support decision makers and opinion leaders to act in the interests of people facing vulnerability.

Foreword

I write on behalf of Australian Red Cross (Red Cross) regarding the Review of the Modern Slavery Act 2018 (*Cth*).

Red Cross is one of 192 National Red Cross and Red Crescent Societies that, together with the International Committee of the Red Cross (ICRC) and International Federation of Red Cross and Red Crescent Societies (IFRC), make up the International Red Cross and Red Crescent Movement (the Movement); the world's largest and most experienced humanitarian network.

Globally, the Movement has direct experience working with victims/survivors of human trafficking and addressing the issue at a systems level through engagement in regional networks, the Bali Process, and the Global Compact on Migration. Red Cross National Societies are also involved in a range of work that includes: prevention and awareness raising activities; facilitating regional dialogues and networks; delivering support programs and assisting people who have experienced modern slavery; and undertaking advocacy through the principle of humanitarian diplomacy.

As well as contributing to the work of the Movement, we also have significant domestic expertise. Since 2009, Red Cross has supported more than 550 people subjected to modern slavery through the Australian Government's Support for Trafficked People Program (Support Program), as well as engaging in a range of initiatives that address some of the drivers of exploitation, such as employer awareness, training for front line sectors (including General Practitioners and police), and outreach and services to those at risk of exploitation.

Having worked directly with people in Australia impacted by all forms of modern slavery over the last decade, and being a reporting entity under the Act, Red Cross has developed unique insights into victims/survivors' needs and experiences and identified gaps and opportunities to improve the scope and effectiveness of the operation of the Act. Our submission is based on this direct experience and amplifies these insights to contribute to both a greater understanding of the issue of modern slavery and an increasing competence to work safely and ethically in meeting the needs of people experiencing vulnerability in Australia and globally.

We are committed to continuous improvement and to ensuring the voice of lived experience is at the heart of this submission. We conducted focus groups with survivors of modern slavery in Australia and not-for-profit reporting entities to inform this submission and the review of the Act.

We welcome the opportunity to share our insights in addressing modern slavery and ways to work with victims/survivors and high-risk groups in this review, and look forward to continuing our work in addressing and combatting modern slavery.

Yours sincerely,

Penny Harrison

Chief of Staff

Australian Red Cross

Acknowledgements

We pay our respects to Aboriginal and Torres Strait Islander peoples across this country and to Elders, past and present. We acknowledge the impact of modern slavery practices and intergenerational trauma experienced by Aboriginal and Torres Strait Islander peoples and walk alongside Aboriginal and Torres Strait Islander peoples and stand together in calls for systemic change.

We acknowledge the thousands of migrants, refugees, and people seeking asylum who have arrived in Australia from different countries, over many years, who have spoken to us about their experiences. We acknowledge that globally there are millions of people experiencing exploitative conditions, significant vulnerabilities due to migration and visa status, and complex circumstances. We acknowledge local and diaspora communities, especially those with lived experience of modern slavery, and thank those who have trusted us and shared their stories with us.

We also acknowledge the efforts of the Department of Social Services and the Australian Federal Police (AFP) to address and support the needs of victims/survivors of modern slavery. We also acknowledge the work done by the Modern Slavery Business Engagement Unit to support the Modern Slavery Act.

Abbreviations

Abbreviation	Descriptor
AFP	Australian Federal Police
FWO	Fair Work Ombudsman
IOM	International Organization for Migration
LEFG	Lived Experience Focus Group
the Movement	The Red Cross and Red Crescent Movement is composed of the International Committee of the Red Cross (ICRC), the International Federation of Red Cross and Red Crescent Societies (IFRC) and the 192 individual National Societies.
National Action Plan	National Action Plan to Combat Modern Slavery 2020-25
NFP	Not for Profit
NFPFG	Not for Profit Focus Group
Red Cross	Australian Red Cross
the Act	<i>Modern Slavery Act 2018 (Cth)</i>
Support Program	Support for Trafficked People Program
UK	United Kingdom
UNGPs	United Nations Guiding Principles on Business and Human Rights
UniSA	University of South Australia

Definitions

Definition	Descriptor
Entity	A reporting entity as defined by s5 of the Act
Statement	A modern slavery statement as defined by s12 of the Act and filed by a reporting entity.

Executive Summary

Voice of lived experience

“The employers [reporting entities] are doing the work. If they speak directly to the employees, they will be able to find out about a lot of things that are going around and then can take action”.

[Lived Experience focus group participant]

Red Cross welcomes the opportunity to comment on the review of Australia’s *Modern Slavery Act 2018* (Cth) (the Act). Red Cross is committed to working with public authorities to promote a whole-of-community approach to modern slavery¹ and enhancing the impact of the Act in addressing modern slavery.

This submission has been informed by Red Cross experience as a humanitarian organisation in delivering the Support Program and listening to the views of the survivors we support, and as a reporting entity. Additionally, it was also informed by:

1. **A Lived Experience Focus Group (LEFG) discussion:** A focus group discussion with individuals with lived experience of modern slavery, current or previous clients of the Support Program, facilitated in collaboration with UniSA.
2. **A Not-for-Profit focus group (NFPFG) discussion:** A focus group discussion with not-for-profit reporting entities, facilitated in collaboration with UniSA.

We recognised that the Act is one tool in a range of actions needed to address modern slavery in Australia and within Australian supply chains; the Act and the guidance can be strengthened, but they must also complement and support wider responses to address modern slavery.

The Act is a positive step towards addressing modern slavery

In our view, the Act has had some positive humanitarian impact in the first three years. By requiring large organisations operating in Australia to publish statements, the Act has directly impacted an estimated 6,293 entities from 42 different countries through the 4,399 statements published on the register (at the time of the publication of the Consultation paper). The Act has encouraged greater collaboration between government, civil society, academia, and business. It has motivated some reporting entities to ‘take action’ to address modern slavery.²

In doing so, the Act has raised awareness of modern slavery to some extent, particularly amongst reporting entities, by:³

- elevating the importance of considering modern slavery risks to senior business executives and directors;⁴
- prompting some collaboration between business and civil society;⁵
- encouraging, in some circumstances, discussion around grievance mechanisms and channels to raise concerns and disclose instances of modern slavery internally within business structures;

- incentivising the publication of several studies that have assessed modern slavery statements and contributed to the identification of steps to improve reporting and compliance; and
- influencing media reporting around modern slavery, potentially increasing oversight and visibility.

As a reporting entity ourselves, the Act has provided a platform for Red Cross to expand its awareness raising and capacity building activities in relation to modern slavery. The Act assisted to elevate the importance of modern slavery, and this was a key consideration in the development of a systematic program to assess and address modern slavery within the operations and supply chain of Red Cross. Red Cross has worked with staff to increase their capacity to identify and mitigate risks of modern slavery and engaged directly with suppliers (including some smaller organisations that form part of our supply chain) to understand and work collaboratively to address modern slavery risks.

The Act has also created the platform for increased awareness, capacity building and collaboration amongst reporting entities in the not-for-profit sector. As part of the not-for-profit focus group discussion, four of the six not-for-profit entities that participated felt the Act has had a positive impact.

"It has had a positive impact in terms of raising awareness, you know, organizations and other supplier organizations as well..." [not-for-profit focus group participant]

Most not-for-profit participants thought the Act had raised awareness of modern slavery across their organisation and had been the instrument for action to address modern slavery risks.

There remains need for greater action to prevent the risk of modern slavery.

In this submission, opportunities for strengthening the impact of the Act and the supporting Guidance are suggested, based on evidence of the ways in which the impact of the Act has been restricted. These fall across 10 areas:

1. While the Act provides a framework to consider modern slavery risks in supply chains, there is a lack of focus on victims/survivors. Failure to include a focus on victims/survivors can result in action that does not achieve the goal of reducing modern slavery.
2. A "transparency framework" can only ever be a partial solution; a multi-layered approach to addressing modern slavery is required with a focus on addressing the root causes and drivers of exploitation and gaps in the system that directly or indirectly contribute to it.
3. The Act does not require comprehensive responses and actions to identified risks. Under the current legislation, organisations can be compliant without having to take any specific action. This creates a focus on reporting rather than on taking meaningful action to address modern slavery resulting in opportunities for exploitation to remain.
4. The definition of modern slavery in the Act includes types of exploitation unlikely to be encountered in a commercial context. It also excludes the continuum of exploitation that can indicate, or lead to, modern slavery. This may lead to confusion amongst reporting entities and stakeholders and a failure to effectively identify instances of modern slavery.
5. The lack of detailed information in statements may suggest organisations find it challenging to move beyond identifying generic risks to identify specific risks and actions to address those risks. To address the humanitarian impacts of modern slavery there is a need to find a way to

support entities to identify, address and disclose specific risks in the entire supply chain and operations.

6. The Act does not have a strong focus on responses when modern slavery risks/incidents are identified. A lack of effective action may undermine the Act's purpose of mitigating modern slavery risk in the supply chain of goods and services in the Australian market. Because of this, entities may fail to address (or may even increase) risks to people exposed to modern slavery.
7. Smaller organisations are not covered by the Act. This means that there is not a whole-of-community approach where every organisation, regardless of size, has some responsibility. Recognising the importance of having different levels of reporting appropriate to scale would help this.
8. The Act relies on the support of civil society – but civil society could be better supported and guided to fulfil this role. Red Cross recognises that civil society organisations with experience in modern slavery have a crucial role in addressing modern slavery, particularly given the firsthand knowledge, and understanding, that civil society organisations can bring.
9. The Act has not had independent oversight or strategic-level championing. The appointment of an Anti-slavery commissioner could resolve this.
10. The Act does not incorporate continuous improvement and learning into its structures beyond this first review. Given the changing nature of the response globally, and opportunities to increase impact, agreeing on a further review process could strengthen the Act.

Red Cross, as auxiliary to the public authorities in the humanitarian field, provides this feedback to Professor John McMillian AO and the Attorney General's department in the hope that it will support the government in strengthening its humanitarian response to modern slavery.

Introduction

Modern slavery is a significant humanitarian issue. On any one day in 2021 an estimated 49.6 million people were subject to modern slavery globally, including 27.6 million in forced labour.⁶ The drivers of modern slavery are complex and often involve many interdependent factors. It is necessary to address the factors that make people vulnerable to modern slavery,⁷ the roles and supportive environments that facilitate it, and the factors that may incentivise it.

The transnational economy is unfortunately an environment where slavery is often commercially rewarding and challenging to identify. Demand for low-cost goods and services has created consumption patterns in some parts of the world which drive a constant search for cheaper labour and shorter lead times by companies.⁸ Global economic and technological integration means that companies are able to access the cheapest labour worldwide⁹ often through complex supply chains.¹⁰ Transnational corporations can operate across jurisdictions, whereas states govern within their borders, creating a regulatory gap.¹¹

The Act aims to encourage businesses operating in Australia to address the risk of modern slavery practices occurring in the supply chains of goods and services in the Australian market. It does so by requiring large organisations operating in Australia to report on their actions to address modern slavery, relying on disclosure and stakeholder pressure to encourage effective action. Other actions to address modern slavery are contained within the National Action Plan to Combat Modern Slavery 2020-2025 (National Action Plan).

Red Cross recognises the work of the Attorney-General's Department to critically examine how the Act can continue to improve to reduce modern slavery in Australia and in our supply chains. We provide the following recommendations to support the consultation and would welcome further discussion about the opportunities identified in this submission.

Red Cross recommends that:

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1. As a priority, the Australian Government ensure the lived experience views of victims/survivors and workers in high-risk groups are at the heart of further developments of the Act, associated Guidance, procedures, and reporting.
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2. The Australian government and civil society work collaboratively with business to ensure workers (particularly those in high-risk groups like migrants) understand their rights and have clear pathways to report concerns of labour exploitation, access to suitable supports and effective response.
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3. The Australian Government consider the potential humanitarian impact of only requiring entities to report rather than take proactive action to address modern slavery.
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4. To better support entities identify and address modern slavery, the Australian Government:
 - a) limit the definition of modern slavery in the Act to exploitation that occurs in a commercial setting, and
 - b) undertake further work with entities to ensure they recognise the continuum of exploitation that may indicate or lead to modern slavery.
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5. The Australian Government expand their support to entities to bring greater consistency and rigour to modern slavery due diligence, risk identification and response by:
 - a) Assisting entities to better assess, identify, disclose, and address specific risks of modern slavery and the impact they may have on people, both locally and outside of Australia.
 - b) Publishing a list of products, services, and regions at high risk of modern slavery to support reporting entities to be more specific in their risk assessments.
 - c) Increasing consistency between modern slavery statements to enable stakeholders to understand and compare the risks identified and actions taken to address modern slavery. For example, through publishing regulatory standards and a standardised set of indicators.

 6. The Australian Government provide guidance to support entities to respond to modern slavery risks and to remediate identified issues guided by the voice of lived experience (in Australia and overseas).

 7. The Australian Government consider the establishment of a national compensation scheme and the provision for civil liability where damage is caused by an entity's failure to take reasonable and proportionate steps to address risk, as previously recommended in the Hidden in Plain Sight report.

 8. The Australian Government create systems to support and encourage smaller entities to consider modern slavery risks in their operations and supply chain, such as an attestation process, for organisations operating in Australia that do not meet the reporting threshold to report on modern slavery.

 9. The Australian Government ensure that civil society organisations are resourced to work with victims/survivors, entities, and high-risk sectors to develop training, tools, and resources to increase their capacity to identify and respond to modern slavery risks and refer victims/survivors to appropriate supports.

 10. The Australian Government allow civil society organisations with expertise in modern slavery to have an active role in assessing and referring victims/survivors to support that is not contingent on their engagement with the Australian Federal Police. This will form an additional referral pathway to the Support for Trafficked People Program.

 11. The Australian Government establish an Anti-Slavery Commissioner function with a remit broader than overseeing the implementation of the Act.

 12. The Australian Government conduct regular reviews of the Act and its effectiveness with broad terms of reference that allow for a holistic approach and an ability to consider root cause analysis, interconnection with other laws and regulatory frameworks, and systems and processes to identify and support survivors.

Response to the consultation

1. Actions to address modern slavery should be driven and informed by victim/survivor voice

Incorporating the views of victims/survivors

Red Cross welcomes the inclusion of a Victim Engagement Strategy in the National Action Plan. Victims/survivors of modern slavery and workers (particularly workers who are vulnerable to exploitation such as migrant workers and those in high-risk groups), can make a valuable contribution to Australia's response to modern slavery, including the operation and function of the Act.

However, the perspectives of victims/survivors and people in high-risk groups have not yet been adequately incorporated in the review of the Act and associated Guidance for Reporting Entities (the Guidance). Through LEFG and other discussions Red Cross has engaged in with Support Program clients, migrants, temporary visa holders and people without a visa, it is clear that one of the biggest gaps of the Act is its lack of focus on victims/survivors of modern slavery.

If done effectively, involving victims/survivors in the development of policies and processes to address modern slavery can also assist survivors regain a sense of agency and empowerment. It can provide a platform to be heard and contribute to developing a more equitable system. This was demonstrated by the final remarks of participants of the LEFG:

"I joined the conversation to make a better future."

"This piece of legislation should be taken into so much consideration [...] people have done a lot of input sacrificing to have something to take back home – it should be reviewed. Thank you for the opportunity to have our voice heard through this program".

Red Cross recommends that:

- 1) As a priority, the Australian Government ensure the lived experience views of victims/survivors and workers in high-risk groups are at the heart of further developments of the Act, associated Guidance, procedures, and reporting.

Empowering workers to recognise and report instances of modern slavery

Victim/survivor engagement along with providing effective avenues to raise concerns is pivotal to addressing modern slavery. Participants of the LEFG advised that to effectively address modern slavery it was essential to create an environment where victims/survivors could raise concerns and call out what was really happening in workplaces and supply chains. LEFG participants suggested that unless victims/survivors could speak up, modern slavery was likely to continue undetected:

"it is hard to detect modern slavery unless victim-survivors come forward and speak out".

"They [reporting entity] should speak directly with the workers because they are the ones that are doing the work".

"The employees are doing the work. If they [reporting entity] speak directly to the employees, they will be able to find out about a lot of things that are going around and then can take action".

In Red Cross experience of working with migrants experiencing vulnerability, poor knowledge of Australian systems and work rights often prevent victims/survivors of modern slavery from reporting concerns. **Without an understanding of their rights, people may not realise they are being subject to exploitation.** This was confirmed by participants of the LEFG:

“They accept the exploitation and stay in an unfair job because they don’t know the social system in Australia. [...] It takes a long time for migrants to understand how to get help”.

Further, many workers are unclear on where, or how, to raise concerns. In a recent survey of migrant workers in Australia conducted by Red Cross¹²:

- 52% (n=40) of migrant workers indicated they do not know where and how to complain if they are experiencing modern slavery in their workplace; and
- 62% (n=47) of migrant workers indicated that they do not know who to contact for help or advice if they, or others they know, experience modern slavery.

Participants for the LEFG thought companies would be reluctant to acknowledge exploitative situations unless they were required to do so.

“Business are not likely to bring it up and report on it – if they report it they might lose workers and this may impact productivity”.

Participants of the LEFG felt victims/survivors of modern slavery and vulnerable workers would often be reluctant to speak to employers for fear of reprisals or lack of fair response.

They emphasised that victims/survivors of modern slavery and in high-risk groups workers **need trusted channels to raise concerns** and access to a speedy response to ensure protection. They suggested there needed to be an **independent third party to ensure workers had access to fair and transparent processes.**

“The organisation may be in the best position because they know their practises but need a third party to cross check and ensure fairness and obligations meet. However, enforcement from outside is challenging”.

“If employer being unfair employees won’t be comfortable going up to them and talking about the situation. If things get out of hand, they would be willing to speak to an organisation like Red Cross if things got really out of hand”.

Ensuring victims/survivors of modern slavery understand their rights and have effective mechanisms to enforce these rights is essential to addressing modern slavery. This need was also recognised by the Select Committee Report on Temporary Migration (2021) which identified the need for better support to be provided to people on temporary visas to understand their work rights.¹³

Supporting people to understand their work rights can involve reinforcing multilingual education and training for migrant workers, and stronger supports for trusted groups (such as trade unions, not-for-profit organisations with experience in modern slavery, and/or migrant representative groups) both in migrant workers’ countries of origin and in Australia. It also requires structural systemic reforms that ensure victims/survivors have the understanding and agency to enforce their rights.¹⁴ In supporting migrant workers in positions of vulnerability, Red Cross evidence base concludes that

the focus of any response needs to be on empowering workers to take control of their situations and make them part of the solution supported by a system that works in their favour.

Red Cross recommends that:

- 2) The Australian government and civil society work collaboratively with business to ensure workers (particularly those in high-risk groups like migrants) understand their rights and have clear pathways to report concerns of labour exploitation, access to suitable supports and effective response.

2. Recognising the limitations of a transparency framework

According to the Issues Paper, the Act and its associated guidance aims to have impact through *“increasing business awareness of modern slavery risks and drivers; encouraging government and business to shoulder greater responsibility for supply chain analysis and shielding vulnerable people against threats of enslavement; supporting and equipping business to take effective action; and initiating stronger collaboration between government, business, academia and the community.”*¹⁵

The Act has been effective in achieving part of this. By requiring large organisations operating in Australia to publish an annual statement on their actions to assess and address modern slavery, the Act relies on stakeholder pressure and reputational risk to encourage organisations to take action to address modern slavery.¹⁶

However, the effectiveness of the Act may be limited as stakeholders are not always aware of the critical role they play in impacting company behaviours around modern slavery. Even if they are aware, they may not be willing to change their own behaviour or have insufficient leverage to change an organisations behaviour.¹⁷

Participants of the LEFG who had been exposed to modern slavery suggested that risks of modern slavery associated with a company (generally identified by media reports rather than the company’s modern slavery statement) would likely only change their purchasing behaviour in the short-term. They suggested they would revert to previous purchasing behaviour because of lifestyle and convenience despite modern slavery risks.

“When I decided to buy things, it is more dependent on basic needs like convenience, product fresh etc [...] whenever a scandal happens, I will stop buying the product from that company for a while, but then I have to come back because it is convenient”.

Further, the reliance on a ‘transparency framework’ approach has resulted in an unintended over-reliance on businesses to address modern slavery, in circumstances when the broader maturity of modern slavery risk management strategies are very low.

Amendments to the Act and supporting guidance may enhance its impact, but at best, a transparency framework approach can only partly address modern slavery. Through the experience of Red Cross in working with victims/survivors and people in high-risk groups like migrants, **modern slavery can only fully be addressed by resolving the root cause factors that make people vulnerable, and the drivers of exploitation and gaps in the system that directly or indirectly contribute to it.**

3. Creating a requirement to act to address modern slavery risks

Requiring organisations to report on their actions to address modern slavery has raised awareness and consideration of modern slavery risks in some sectors. However, in creating a requirement to 'report' rather than a requirement to 'act' to address modern slavery, the impact of the Act is inherently limited. Organisations can meet the requirements of the Act while not taking action to understand or address modern slavery in their operations or supply chain.

As recognised by one participant of the NFPFG,

'I also find a little bit funny is that I mean the legal obligation is to do the statement right? But there's not actually a legal obligation. It's just to report on what steps we are taking.'
[Not-for-profit focus group participant]

Although the UK Modern Slavery Act is slightly different, it is similar enough to provide a point of comparison. A review of the UK Act after a similar time period found that while some organisations were making a genuine attempt to address modern slavery, others were approaching it primarily as a compliance exercise.¹⁸ Similar results have been seen in Australia with a recent report by the Human Rights Law Centre suggesting that "56% of commitments made by companies in the first year remain unfulfilled", and only "33% of companies seemed to be taking some form of effective action to address modern slavery risk."¹⁹

The intent of the Act is to encourage organisations to take action to eradicate modern slavery from their operations and supply chain, but by only creating a requirement to report it relies on stakeholders for enforcement. A more direct method – requiring organisations to act - may promote meaningful and effective action to address modern slavery amongst reporting entities.

Red Cross recommends that:

- 3) The Australian Government consider the potential humanitarian impact of only requiring entities to report rather than take proactive action to address modern slavery.

4. Defining Modern Slavery in the Act

Red Cross acknowledges that the Act is the first national legislation to define modern slavery and strongly recognises the value of defining this term. However, the definition of modern slavery in the Act in its current form **may be both too broad - as it considers all eight types of serious exploitation, and too narrow - as it does not consider the continuum of exploitation.**²⁰

Modern Slavery as a broad term

The Act defines modern slavery by reference to Divisions 270 and 271 of the *Criminal Code Act 1995* and relevant international standards. As such, it defines modern slavery as including eight types of serious exploitation including trafficking in persons, slavery, forced labour, debt bondage, deceptive recruiting for labour or services, the worst forms of child labour, servitude and forced marriage.

While the term modern slavery has been used by advocacy groups, international organisations and governments,²¹ it is still confusing for businesses, investors and the community more generally.

The confusion around the definition of modern slavery expressed by the participants of the LEFG reflects, in a way, what businesses and the general community understand about modern slavery:

“I heard about that. But I still quite confused because it is a lot, even in the definition [...] So I am not a hundred percent sure if I understand it correctly.”

“The term modern slavery is confusing to me [...] I came across it and I thought it was more about people who are exploited at work [...] but I did not think it related to human trafficking.”

From Red Cross experience, it is important that the definition is considered in the context of the Act’s primary objective of assisting businesses operating in Australia to take proactive and effective action to mitigate risks of modern slavery in supply chains of goods and services. Therefore, the definition could be focused on the types of exploitation that are likely to be present in a commercial setting to provide entities clarity around the types of exploitation that should be considered. This would exclude forced marriage as it is unlikely to occur in a commercial setting unless linked to another form of exploitation.

Labour exploitation and the continuum of exploitation / slavery

In the experience of Red Cross, exploitative situations that may not meet the threshold for modern slavery are often indicators or precursors to more serious abuse. Modern slavery often intersects with other forms of exploitation and people can in fact, move between situations that may meet the threshold to be defined as modern slavery and other exploitative practices in a dynamic manner. In the context of this continuum of exploitation, the Act may be too narrow.

Entities may fail to report on, or consider, exploitative practices that may indicate or lead to modern slavery. While there is an important distinction between labour exploitation and the more serious crime of modern slavery, these practices exist on the same spectrum of exploitation. Modern slavery only describes the most serious forms of exploitation that happen at the most extreme end of the spectrum and may therefore fail to encompass exploitative practices.

To effectively identify and address modern slavery, entities may need to be specifically encouraged to consider the continuum of exploitation.

Red Cross recommends that:

4) To better support entities identify and address modern slavery, the Australian Government:

- a) limit the definition of modern slavery in the Act to exploitation that occurs in a commercial setting, and
- b) undertake further work with entities to ensure they recognise the continuum of exploitation that may indicate or lead to modern slavery.

5. Enhancing due diligence

Opportunity to assist entities to advance the maturity of their modern slavery risk assessment and identify specific risks

Given the transparency framework approach, the impact of the Act relies heavily on the extent to which it encourages reporting entities to implement effective risk assessment processes, identifying specific risks and implementing effective strategies to address those risks. The mandatory reporting criterion in the Act and Guidance has encouraged some consistency in modern slavery statements and may have encouraged organisations to consider a range of issues in the process of reporting. However, to date, the information reported in statements suggests many organisations are finding it challenging to identify specific risks and consequently develop targeted action to address risks.²² Participants in the NFPFG noted the need to continually develop due diligence to move beyond a compliance exercise.

'The first step in change is raising awareness... And that's where we have had that impact where we've raised the profile, and it has seen that awareness raising...a little bit of it at the moment is still a bit of check boxing, and we now need to increase that.'

In Red Cross experience, moving beyond generic risk assessment and identifying specific risks is challenging. Red Cross has implemented a systematic due diligence program incorporating specific supplier risk assessment, public reports on modern slavery risks and lists of high-risk products and services, however it has still been difficult to identify specific risk areas. Participants of the NFPFG also noted that it was challenging to identify specific risks and to know how to respond to risks in an effective and safe manner.

'Having a firmer view on whether the risks or the threats are high'

'If we did identify this, we did push a bit harder and worked a bit harder to find the evidence, or enough that we thought this was actually a high risk then what can we do about it, anyway? So, I think that's driving some of the issues around transparency.'

More explicit guidance around due diligence including the steps required and example case studies may encourage reporting entities to be more specific in risk assessment processes and result in the identification and reporting of specific risks. Publication of a list of high-risk products, services, industries and/or regions could also support organisations be specific in their due diligence.

Increase clarity and support to assist entities respond to risks and instances of modern slavery

Responding to risk effectively, requires greater efforts to ensure entities are prepared to respond, particularly in a way that protects victims/survivors and provides effective remediation. Without clear pathways to respond, organisations may 'not look too hard' for fear of being penalised for identifying specific risks or reporting on incidents.

Red Cross experience in working with victims/survivors of modern slavery and developing the online platform for migrants at risk of exploitation (the Work Right Hub) confirms any guidance around response needs to prioritise victim/survivor safety and support. Guidance that supports entities on how to respond to incidents in Australia could include, among other things: (i) referral pathways; (ii) general response protocols; (iii) emergency protocols for high-risk cases; (iv) training, tools and resources for employees to better understand modern slavery and how to respond; (v) civil claims and other legal redress and access to immigration support while pursuing these claims; and (vi) response guidelines which ensure the safety and wellbeing of survivors of modern slavery.

Increase guidance and support to assist entities to respond to risks outside Australia

Effective response is particularly challenging for risks beyond Australian Borders. Specific consideration and support are necessary to assist entities identify and respond to modern slavery risks that occur outside Australia. Global estimates of modern slavery suggest entities are more likely to confront modern slavery risks as part of their transnational supply chains. Business acting in isolation may have limited ability to address factors that allow modern slavery to occur overseas, particularly when dealing with practices that may be entrenched in country or sector cultures, and where business has limited ability to understand the specific nature of the risks or address them in an extraterritorial jurisdiction. Greater guidance and support may assist reporting entities to identify and respond to modern slavery risks outside Australia.

Enhance reporting requirements to provide greater clarity to stakeholders

Stakeholders need to have access to relevant information which allows for comparison across entities and sectors. Despite the mandatory reporting criteria, there is significant variation in statements, and it is difficult to find relevant information to understand an organisation's risks, or their effectiveness in addressing any risk. As one of the participants of the LEFG said:

"They're very, very long, and the statements that are made in them are very complex".

By way of example, as outlined in the case study below, Red Cross attempted to utilise modern slavery statements to assess and compare potential supplier's modern slavery risk management processes. Red Cross was not able to compare the organisations to any degree of accuracy.

Case study – The experience of Red Cross procurement team in comparing modern slavery statements to make purchasing decisions

To inform a purchase decision, Red Cross attempted to use modern slavery statements to compare company actions. Of the five companies under consideration, four had published statements (one voluntarily), and two of the statements had been ranked by Monash Centre for Financial Studies ranking of Modern Slavery Statement Disclosure Quality of ASX100 Companies.²³

The Red Cross modern slavery adviser constructed a template to compare the actions of five companies in the same industry. The aim was to consider each organisation's risks, and the effectiveness of actions to identify and address risk, not whether the company's statement satisfied the mandatory reporting criteria of the Act.

The significant variation in each organisations modern slavery statement made it difficult and time consuming to understand and compare the modern slavery risks and actions to address risks. Each entity had a different approach to addressing the mandatory reporting criteria and specific information that identified risks and actions were often buried amongst more general information. Two of the companies identified specific risks, but Red Cross could not determine if the other companies did not identify similar risks (given the industry) because they were not exposed to similar risks or simply did not identify them. Some organisations reported on how they assessed the effectiveness of their actions as required by the Act, whereas others included some measures indicating the effectiveness of their actions. It was difficult to evaluate company's actions relative to their commitments because this information was not always included, and the statements were filed at different times and covered different time periods making year-on-year and like for like comparison challenging. Red Cross concluded that we could not use the statements for effective comparison and that the organisations would need to complete the Red Cross modern slavery self-assessment questionnaire, which asks companies about key indicators of modern slavery to compare organisations' actions in relation to modern slavery.

Developing regulatory standards that encourage detailed due diligence, the identification of specific risks and greater consistency in statements may enhance the impact of the Act. The standards could expand on the legislation to be more literal about transparency by requiring organisations to report against a 'standardised set of indicators',²⁴ where relevant to their operational settings, that reflect the underlying causes of modern slavery, and key metrics that reflect the organisation's actions to address modern slavery.

Red Cross recommends that:

- 5) The Australian Government expand their support to entities to bring greater consistency and rigour to modern slavery due diligence, risk identification and response by:
 - a) Assisting entities to better assess, identify, disclose, and address specific risks of modern slavery and the impact they may have on people, both locally and outside of Australia.
 - b) Publishing a list of products, services, and regions at high risk of modern slavery to support reporting entities to be more specific in their risk assessments.
 - c) Increasing consistency between modern slavery statements to enable stakeholders to understand and compare the risks identified and actions taken to address modern slavery. For example, through publishing regulatory standards and a standardised set of indicators.

6. Limited guidance on adequate and accessible remediation

Early evaluations of the Modern Slavery Act identified remediation as “one of the weakest areas in efforts to address modern slavery”. In an analysis of 102 company statements, only 4% were able to fully demonstrate they were ready to provide remediation if required.²⁵

Based on the experience of Red Cross in working with victims/survivors of modern slavery, effective remediation is an essential component of response to modern slavery. Effective remediation can contribute to empowering victims/survivors and supporting their recovery. Including an appropriate framework to provide remediation to victims/survivors would strengthen the response. Remediation processes should be individualised to survivor needs, but as a guide we suggest that they would:

- acknowledge the harm done;
- acknowledge the person's resilience;
- aim to compensate the person and support their rehabilitation and recovery;
- be accessible to all people impacted, without conditions; and
- are not driven by involvement in criminal prosecution.

Survivors often use compensatory payments to meet their practical and psychosocial needs and to build a sustainable future, for example, through paying for educational and training opportunities, developing a small business, or supporting family reunification.

Business cannot be primarily responsible for improving access to effective remedies for victims/survivors or to remediate for harm caused. Rather, there is a need for a coordinated national approach that focuses on ensuring safety, appropriate regulations, and better referral pathways for support, and recognising, among other things, a right to civil remedy against those who experienced modern slavery.

Red Cross recommends that:

- 6) The Australian Government provide guidance to support entities to respond to modern slavery risks and to remediate identified issues guided by the voice of lived experience (in Australia and overseas).
- 7) The Australian Government consider the establishment of a national compensation scheme and the provision for civil liability where damage is caused by an entity's failure to take reasonable and proportionate steps to address risk, as previously recommended in the Hidden in Plain Sight report.

7. Expanding the scope and application of the Act to smaller organisations

While the Act has increased awareness amongst large organisations that are reporting entities, the extent to which it has increased awareness amongst smaller organisations is unclear.

The nature of modern slavery means it is often hidden in complex supply chains, and will often involve smaller players unable to capture significant value from the supply chain²⁶ who resort to exploitative conditions to increase competitiveness and margins.²⁷ The lower the tier, the higher the likelihood of exploitation but the less likely to be identified.

Participants of the LEFG acknowledged the heightened risks of modern slavery amongst smaller organisations:

“when you are small not everyone pays attention to you [...] and there are lots of ways that businesses can get around it.”

They observed that small/family businesses often have fewer controls and may have less awareness of compliance:

“Small businesses like the family businesses, they do a lot of things which are not acceptable as well”.

Participants emphasised the importance of targeting smaller businesses and increasing their capacity to identify risks of modern slavery and address instances that may be detected.

The Act aims to have a cascading effect, with the due diligence processes of reporting entities cascading down the supply chain, encouraging smaller organisations that may not be covered by the Act to consider and address modern slavery risks. However, to date, modern slavery statements indicate that only a few organisations have managed to progress beyond tier one suppliers and remain within the early stages of their modern slavery risk management maturity pathways. Therefore, the impact of the Act on smaller entities may be limited. This is particularly so for complex supply chains that involve suppliers outside Australia.

While maturity in assessing and addressing risks of modern slavery develops, there is a need to consider other immediate controls or interventions to protect victims/survivors from harm. The Act could be expanded to include a requirement on smaller entities, that is considerate of their capacity and resources.

Smaller entities could be asked to submit an annual modern slavery attestation, for example, rather than a comprehensive modern slavery statement. The attestation could require smaller organisations to confirm, as a minimum, that workers within their organisations are given information about their rights in a form the workers can understand; are treated equitably and that they are able to access their rights (including payment and other entitlements); and that they have a realistic and safe channel to complain if they feel their rights are denied. A Support Program client said:

“from my experience small businesses don’t care unless someone makes a complaint about it. Or unless there are regular checks on what the companies are doing.”

A simple attestation process would not need to be a significant compliance cost for organisations but would contribute to raising awareness of modern slavery and the risk factors. It could work in a mutually reinforcing manner with the due diligence processes of large organisations as a complementary enforcement action and reinforce that everyone has a role to play in combating modern slavery.²⁸

It is important to note that smaller organisations are less likely to have leverage to influence behavioural changes beyond their own operations. They can, however, influence their own purchasing decisions, and if they have employees or subcontractors, their knowledge about their rights in the workplace.

Red Cross recommends that:

- 8) The Australian Government create systems to support and encourage smaller entities to consider modern slavery risks in their operations and supply chain, such as an attestation process, for organisations operating in Australia that do not meet the reporting threshold to report on modern slavery.

8. The role of civil-society organisations in supporting the Act

The effectiveness of the Act relies heavily on the engagement of stakeholders, including civil society organisations. Civil society organisations often have firsthand knowledge and understanding of the different situations on the ground when working with victims/survivors, high risk sectors and entities, and the Guidance encourages entities to engage with civil society to understand and address risks.

As an organisation with extensive experience delivering the Support Program, Red Cross receives increasing requests from entities for guidance on how to respond to modern slavery risks, as well as requests to train staff and volunteers from different sectors to better understand modern slavery.

However, civil society are often stretched in delivering their specific programs and have limited capacity and resources to engage effectively to support entities' response to modern slavery. To be effective, additional support is required to fulfil this need. The trust that victims/survivors often have of civil society organisations can assist with overcoming the barriers to reporting. As noted above, channels to speak up are essential to addressing modern slavery, yet many victims/survivors are reticent to report for fear of reprisals. To assist with overcoming this, civil society organisations with expertise in modern slavery could be able to refer victims/survivors of modern slavery to the Support Program as it has been previously recommended by the Additional Referral Working Group of the National Roundtable on Human Trafficking and Slavery. This would act as an addition to the existing referral pathway through the Australian Federal Police and may increase identification and access to appropriate support.

Red Cross suggests that additional resources are made available for specialist civil society organisations to develop training, tools, and resources with a humanitarian focus in order to support entities to appropriately equip their employees and improve their responses to modern slavery, as well as consider them as part of an additional referral pathway to the Support Program.

Red Cross recommends that:

- 9) The Australian Government ensure that civil society organisations are resourced to work with victims/survivors, entities, and high-risk sectors to develop training, tools, and resources to increase their capacity to identify and respond to modern slavery risks and refer victims/survivors to appropriate supports.
- 10) The Australian Government allow civil society organisations with expertise in modern slavery to have an active role in assessing and referring victims/survivors to support that is not contingent on their engagement with the Australian Federal Police. This will form an additional referral pathway to the Support for Trafficked People Program.

9. The role for an Anti-Slavery Commissioner

Red Cross supports the establishment of an Anti-Slavery Commissioner with broader functions that extend beyond simply monitoring and reporting on the implementation of the Act, including:

- a) examining whether entities have properly complied with modern slavery reporting requirements and enforcing compliance;
- b) developing a multi-layered approach to addressing modern slavery, identifying the connections and intersections between different regulations, systems and policies that can be contributing to modern slavery.

An Anti-Slavery Commissioner could play a key role in implementing an outcomes focussed model of co-regulation and overseeing a nationally consistent, joined-up and holistic regulatory response as has happened in alternative legislative enforcement frameworks such as foreign bribery and illegal logging.²⁹ Under these models, there is a recognition that businesses, investors, civil society organisations, workers and workers representatives, and a variety of other stakeholders share the regulatory burden with a public regulator (such as the Commissioner),³⁰ with a focus on liability and accountability.³¹

The Anti-Slavery Commissioner could also play a key role in examining whether entities have properly complied with modern slavery reporting requirements, with a focus on protecting workers and placing victims/survivors at the centre of any response. Participants of the LEFG recognised the importance of having a third party that oversees the reporting obligation and audits/cross check the information provided in the statements with the experiences of workers on the ground.

“Making sure that there is a check on what [businesses] are saying in a statement [is what] they're actually doing, every few years or even months”.

An emphasis was made on the importance of doing these quality control checks regularly:

“For WHS reasons, inspectors come every now and then. If it is to monitor exploitation and the wellbeing of workers, it really needs to be regular, every [...] at least three months”.

An Anti-Slavery Commissioner could have an active role in advising the Government on measures to tackle modern slavery; monitoring the effectiveness and influencing different regulations and governmental policies that may have a direct impact on the prevalence of modern slavery in Australia; scrutinising and holding Government and its agencies to account on their performance; and raising awareness and promoting cooperation between sectors and interest groups.

Red Cross recommends that:

11) The Australian Government establish an Anti-Slavery Commissioner function with a remit broader than overseeing the implementation of the Act.

10. Further review of the Act

The legal framework to address modern slavery is both complicated and fragmented. In our view, it would be beneficial for the operation and impact of the Act to be subject to regular reviews to promote continuous improvement. Based on the experience of Red Cross, any subsequent review should have terms of reference that allows for a holistic approach and an ability to consider the root causes, interactions with related laws, government policies, frameworks, systems and processes to identify survivors and support victims, this includes its connection with other action items of the National Action Plan to Combat Modern Slavery 2020-2025. Incorporating the voice of lived experience into the design of future reviews will also strengthen the impact of the review.

Red Cross recommends that:

12) The Australian Government conduct regular reviews of the Act and its effectiveness with broad terms of reference that allow for a holistic approach and an ability to consider root cause analysis, interconnection with other laws and regulatory frameworks, and systems and processes to identify and support survivors.

Further Information

Red Cross, as auxiliary to the public authorities in the humanitarian field, stands ready to support the government in strengthening its response to modern slavery and welcomes the opportunity to discuss our feedback on the review of the *Modern Slavery Act* (2018) (Cth) with the Department.

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Appendix A: Lived Experience Focus Group Discussion Summary

The purpose of the Lived Experience Focus Group discussion was to better understand the views of people who have experienced modern slavery, in the context of how the Act currently functions and how it can be improved, to better prevent and respond to modern slavery in Australia and internationally.

The facilitation of the Lived Experience Focus Group (LEFG) was divided into four components over a two-hour period, with an introduction and closing.

Five people participated in an online session on Sunday 2 October 2022. All were survivors of forced labour in Australia and were clients, or previous clients of the Support for Trafficked People Program. The LEFG was guided by an independent researcher from the University of South Australia with the support of Red Cross.

This document provides a summary of the key messages that came out of the focus group and some direct quotes from participants by way of example. The views expressed here are direct quotes of the participants and do not necessarily reflect the position of Red Cross.

Key feedback from participants

- **Limited awareness and understanding of the Modern Slavery Act and modern slavery as a concept**
- **Belief that the approach to addressing modern slavery was ineffective and modern slavery was often 'swept under the carpet'**
- **Exploitation often happens in smaller organisations and therefore need to do something to address risks amongst those organisations**
- **Workers understanding their rights and being empowered to speak up is essential to address modern slavery**
- **Statements are long and complex; participants were more likely to react to media reports than modern slavery statements**
- **Purchase decisions were made based on convenience, need and lifestyle**
- **Statements should include information about how the company treat their workers**
- **Need oversight to ensure organisations are following through on their statement commitments**
- **To identify modern slavery and labour exploitation it is crucial that workers have a safe and effective way to raise concerns with an organisation they trust**
- **Organisations should listen to workers if they want to know what is going on in their supply chains**
- **The role of policing agencies is important to responding to workers exposed to exploitative practices**
- **To be effective remediation should be overseen by an independent and trusted third party**

Part 1 - The Modern Slavery Act

Participants were presented with information regarding the intended operation of the *Modern Slavery Act*. The section was intended to elicit information from participants about their level of awareness and understanding of the Modern Slavery Act and to give them a basic overview of the legislation.

Participants were asked if they have heard about the Modern slavery Act (2018) before and what did they know about it.

Participants understanding of the term modern slavery:

4 out of 5 participants expressed they came across the term modern slavery when they started receiving support from Red Cross. Only one participant had heard about the Modern Slavery Act. Participants explained that the concept was confusing and broad.

"I heard about that. But I still quite confused because it is a lot, even in the definition [...] So I am not a hundred percent sure if I understand it correctly".

"The term modern slavery is confusing to me [...] I came across it and I thought it was more about people who are exploited at work [...] I did not think it related to human trafficking and organ donation".

Participants were then provided an explanation of the approach of the Modern Slavery Act, the objectives and the efforts of Government.

Participants recognised the importance of the government's approach, however, they all were of the view that this approach was not effective.

"It is not effective because modern slavery is still happening".

"There are some places where it has been swept under the carpet. [...] It is only when someone brought it up and it can be taken into account otherwise it just goes with the flow".

The approach taken in the Modern Slavery Act may not be covering small organisations:

Some participants recognised that the approach taken from the Act could be more relevant for large organisations as they are more visible and have a reputation to protect.

"It may help for Australian workers because big firms try to protect their face or image because when people raise voice then people attract attention so good approach".

However, as it was stated by one participant, "when you are small not everyone pays attention to you [...] and there are lots of ways that businesses can get around it".

"Small businesses like the family businesses, they do a lot of things which are not acceptable as well".

"From my experience small businesses don't care unless someone makes a complaint about it. Or unless there are regular checks on what the companies are doing. At this stage it is happening quite a lot".

Participants also recognised that small businesses are more likely to take advantage of migrant workers because of their visas.

"They promise visa for migrants and use these people to get more work from them"

"You are afraid to talk and in my scenario happened that one of us had to talk. The workers have to stop the situation. It is complex, hope you get what I am saying".

Participants recognised the importance of educating workers on their rights, referral pathways and avenues of support.

Part 2 - Scenario: Where to buy your groceries from?

Participants were presented with examples of modern slavery statements, media reporting resulting from modern slavery statements, the results of benchmarking exercises and media reporting not derived from modern slavery statements and asked to share how these things may impact their views.

Statements are long and complex. It is unlikely that this information is relevant for the general consumer:

Participants were in agreement that statements were long and complex. But it was also recognised that statements were comprehensive, well written and well presented.

“They're very, very long, and the statements that are made in them are very complex”.

Despite recognising that information was well presented, one participant made a clear distinction between the business presenting the information in a way that ‘looks nice’ and the trust that it may/may not generate to the worker of that business.

“It is well explained, but I don't know if I could just trust being employed by them”.

Information on the Statements that would be really meaningful is worker's rights, policies and conditions:

One participant also noted that information on the statements may only be relevant for other businesses or investors but not for consumers and workers. Two other participants suggested that what would be relevant for them is information about workers rights; workers policies and conditions.

“I don't really want to go through the statement that long, if it doesn't affect directly to my life. I won't pay attention to it if I am not an investor on it, I am not. You know. If I don't own a share in it. I won't pay attention because we need to move on with our life, not to pay attention to every single thing. It's a bit too much”.

“I think it would be helpful if the statement had information about worker conditions and entitlements – that would help me decide if I want to be a worker there”.

Regular checks on what is included in the Statements and what is happening in practice-quality control measure:

Participants also noted the importance of regular checks on what is stated on the statements to validate what has been said by the businesses and what workers are seeing on the ground. An emphasis was made on the importance of making these checks regularly.

“Actually, making sure that there is a check on what people are saying in a statement they're actually doing every few years”.

“So, every you know few years you just come across and make sure that they do what they promise”.

“For WHS reasons, inspectors come every now and then. If it is to monitor exploitation and the wellbeing of workers, it really needs to be regular, every [...] at least three months”.

Participants were shown media reporting resulting from modern slavery statements. Some participants suggested that media articles may influence their decisions on where to buy products, at least for a period.

Participants make their decisions on products based on convenience (price, freshness, and proximity), not thinking on whether it has been made with modern slavery:

Three Participants were emphatic on the element of **convenience** when determining where to buy their products from. Participants recognised that they do not go that far to think whether a specific product has been produced with modern slavery but where it is cheaper, closer, and fresh.

“When I decided to buy things, it is more dependent on basic needs like convenience, product fresh etc [...] whenever a scandal happens, I will stop buying the product from that company for a while, but then I have to come back because it is convenient”.

Part 3 – Scenario: What should businesses be required to do?

Participants were presented with a case study to demonstrate how companies can be directly linked to modern slavery caused by a third party and asked about the responses that both the company and the supplier could have to remediate harm caused.

Importance of listening the workers’ voice:

Participants were of the view that companies need to speak with the workers of the suppliers directly, instead of relying solely on the information provided by the supplier.

“They should speak directly with the workers because they are the ones that are doing the work”.

“The [business] should speak directly to the worker to have a view that the [supplier] is acting consistently with supermarket value”.

“The employers [reporting entities] are doing the work. If they speak directly to the employees, they will be able to find out about a lot of things that are going around and then can take action”.

“Some employees, they tend to just listen to the managers to the supervisors, and then just make the decision based on that. But they will not speak to the employee”.

Workers may not trust in the internal grievance and complaints mechanisms if it is a corporate-imposed measure and not a practice developed by workers themselves:

Participants also highlighted that in those circumstances where workers are being in a situation of exploitation by their employer, it is very unlikely that they complain internally.

“If employer being unfair employees won’t be comfortable going up to them and talking about the situation. If things get out of hand, they would be willing to speak to an organisation like Red Cross if things got really out of hand”.

The role of policing agencies is key to ensure compliance and expedite results:

Participants were presented with a hypothetical situation where a supermarket ascertains that one of the farms that supplies their berries have been exploiting their workers. Participants were asked about the role of the supermarket in prevent it from happening again. Participants recognised the role of the police and the importance of early reporting.

“I had a case where the Federal Police got involved. In that case you feel like protected, because they are that part of the government that makes you feel protected, you know, and so you can trust them reliably. You can tell everything that you are going through, and then maybe they can help you to get out of that situation and might get it a better live”.

Participants were then asked if they think they would have had a similar result (being protected, safe and supported) after reporting their situation to the Federal Police, if they had made the decision to report it internally to the workplace. Responses were focused on the power imbalance and the difficulty in providing the right level of evidence to make a legal case.

‘Reporting to the police will have a greater impact’.

“I will call for the police because they can overrule all of us”.

Remediation should be overseen by a third independent party:

When participants were asked about who should lead the remediation process, participants recognised that businesses may be in a better position than an external as they know their practises. However, it was also mentioned the importance of an impartial 3rd party trusted by workers that oversees grievance mechanisms, ensures that migrant workers can access independent advice and expertise as part of the process, enjoy equitable standing with their employers, and make sure there is third party monitoring on the realisation of remedies.

“The organisation may be in the best position because they know their practises but need 3rd party to cross check and ensure fairness and obligations meet. However, enforcement from outside is challenging”.

Part 4 – Looking to the future

“I joined the conversation to make a better future and you do such a great job”.

“This piece of legislation should be taken into so much consideration [...] people have done a lot of input sacrificing to have something to take back home – it should be reviewed. Thank you for the opportunity to have our voice heard through this program”.

Appendix B: Modern Slavery Act Not-for-Profit Focus Group Discussion

The purpose of the Not-for-Profit Focus Group discussion was to understand the views of not-for-profit reporting entities as to how the Act currently functions and discuss potential areas of improvement.

The facilitation of the Not-for-Profit Focus Group Discussion (NFPFG) was divided into four components over the two-hour period, with an introduction and closing.

Participants were asked:

1. their role in their organisations and in responding to the requirements of the Act;
2. their view on the impact of the Act and the effectiveness of the transparency framework;
3. what their organisations had done to meet the requirements of the Act; and
4. the challenges that they faced in delivering on the requirements of the Act.

Seven people participated in the session on 13 September 2022. All were working with not-for-profit/mutual reporting entities in Australia and had some involvement in the entities response to the Modern Slavery Act 2018 (Cth) (the Act). The NFPFG was guided by an independent researcher from the University of South Australia with the support of Red Cross.

This document provides a summary of the key messages that came out of the focus group and some direct quotes from participants by way of example. The views expressed here are direct quotes of the participants and do not necessarily reflect the position of Red Cross.

Key messages

- **The Act has raised awareness of modern slavery across the organisations.**
- **All participants reported that their entities had taken some action in response to the implementation of the Act.**
- **The Act is in early stages, but there is a need to move beyond compliance and ensure the organisational actions have a positive impact on victims/survivors.**
- **Responding to the Act takes time, commitment, and resources. This is difficult for not-for-profit entities that have significant constraints and expectations on compliance costs.**
- **Reporting entities are relying on information from suppliers but there is minimal verification of the information provided.**
- **Participants noted the need for greater support to respond to modern slavery risks/incidents.**
- **All participants reported that they had not received ‘stakeholder’ pressure to change processes or supply chain decisions because of the impact of modern slavery.**

Part 1 – Participants role in responding to the Act

Participants had a range of roles including procurement, legal, change management and one participant had been specifically focused on modern slavery. All participants were involved in their

organisations actions to respond to the requirements of the Act and the preparation of their organisation's modern slavery statement.

Part 2 – The Act & NRP reporting entities

Impact of the Act

Four participants thought the Act has had a positive impact in the first three years, whereas three participants were unsure. Those that thought the Act has had a positive impact suggested the Act had raised awareness of modern slavery amongst large organisations. Most participants acknowledged the Act was in the embryonic stage and questioned whether awareness had resulted in organisational change.

'It has had a positive impact in terms of raising awareness, you know, organisations and other supplier organisations as well, but have we prevented, or are we responding to it, I think we're embryonic in that, and we have a way to go.'

'I think it's done a bit to raise awareness. But if I think about positive impact, and I think impact for victims, I don't really think it's had an impact for victims or survivors of modern slavery.'

'The first step in change is raising awareness... And that's where we have had that impact where we've raised the profile, and it has seen that awareness raising...a little bit of it at the moment is still a bit of check boxing, and we now need to increase that.'

'I think it's fair to say that it's going to take some time to from the beginning of this process, for eventually it's to bleed right the way back to the victim.'

Meaningful changes NFP reporting entities have made as a result of the Act

All organisations reported implementing changes in their organisations as a result of the Act. The changes were different for each organisation but included training and capacity building, supplier risk assessment and changes to contractual/purchasing terms.

'When the Act was introduced, we approached it with the lens of this is an opportunity rather than this is a compliance piece...by infusing modern slavery as a human rights violation we were able to kind of bring that up in the organization and there was a lot of traction. And so, implementing training and increasing internal capabilities being huge for us.'

'Some of the changes that we implemented as a direct result of the Act was a tighter level of controls around supplier contracts in terms and conditions. We developed a code of conduct and linked that to our purchase orders as a condition of doing business.'

Transparency Framework approach

Only one participant thought the transparency framework approach was an effective strategy for addressing modern slavery and the drivers of modern slavery. Four participants were unsure, and two did not think the approach was effective.

Most participants felt it was difficult for a transparency framework approach to address the drivers of modern slavery.

'[the Act] is a good step and [has] nice intentions, but I don't really think it's going to be effective in addressing the drivers because they're so structurally embedded in cultures and economies and frameworks of different countries and jurisdictions and regions.'

One of the problems identified was the difficulty in reaching smaller players in the supply chain and the limited verification of information provided in statements.

'I'm not sure it's effective across the whole sort of supply chain model. You know we're as a reporting entity... but there's nothing at the other end of the supply chain. You know there's nothing about the size of the supplier.'

'there's a lot of that information gathering, and not necessarily any verification happening in there, and that gathering comes from us as businesses reaching out to our service providers our suppliers and they're reaching out to people who might provide to them...so, there's a chain of information [and] it's hard to track that back to have a surety of how it's something actually changing.'

'I think that's one of those challenges in this space. It can become a tick the box exercise and there's no actual holding anybody to account to verify info, because it's so hard to do.'

'You're again relying on information that comes through and minimal opportunity for you to actually verify with your service providers with your suppliers, because you're just trying to... get a report out so that we're not even able to do a huge amount of verification.'

Participants thought more was needed to be done to ensure organisations could identify and respond to modern slavery risks.

'Maybe taking more draconian steps, such as the US has done with the banning of exports unless you can actually prove the burden of proof resting on the organisation.'

'having a firmer view on whether the risks or the threats are high, and also, I think it also stems back to organisations influence...there are some very large organisations that have influence, but that's very small percentage.'

'If we did identify this, we did push a bit harder and worked a bit harder to find the evidence, or enough that we thought this was actually a high risk then what can we do about it, anyway? So, I think that's driving some of the issues around transparency.'

Support by government

Four participants felt there was an opportunity for government to enhance its support and promotion of the Act. Two participants felt it had been adequately supported by government and one participant neither agreed nor disagreed.

Some suggested that there is an opportunity for government to provide greater visibility around its own activities to reduce modern slavery within government supply chains.

'There's been a significant change and a focus on social procurement in terms of responding to tenders and winning bids, but it's really been around diversity and inclusion and not so much the supply chain. So, I don't think, from a Government supply point of view that there's been any suggestion that modern slavery has really made it through to that, to that chain.'

Challenges of due diligence

Participants noted some challenges in getting suppliers to complete self-assessment questionnaires.

'I can go on just from the responses when we first started communicating to our suppliers. Yeah, it was either - What's this? I've spoken to my accountant/ legal adviser. We don't comply, so we don't have to provide any information.'

'Going out with questionnaires to get a better understanding of our supply chain and just being sent back with, well, here's our modern slavery statement, just read that. Or just...look at this, or we've done this, or look at this statement, and really a lack of willingness to engage meaningfully with us'

On the other hand, one participant reported a good response to self-assessment questionnaires in terms of the response rate and the information provided.

'...eighty-five percent response rate, but not just volume, the quality of the responses was fairly good as well.'

Some participants thought there needed to be more support particularly for smaller businesses and not-for-profit entities.

'I just haven't really seen enough resources being provided to support so you actually... know how to properly assess modern slavery risks.'

'I think if this is being really properly supported and promoted, that they would be easy to find those resources of how we do all the steps, the assessment of risk assessment steps, and there should be subsidized, you know, for free ... so that businesses can actually do that.'

'...we're also wanting that to flow through to the smaller supply chains and not for profits that don't have the resources'

Challenges for Not-for-Profit Reporting entities

Participants also noted the challenge of addressing modern slavery effectively as a not-for-profit reporting entity.

'Ultimately the biggest challenge, I think, for not for profits is what level of resources we dedicate to it.'

'Within our world...in the not for profit, we know that we don't have funding typically from our big funding partners to actually help support the back-end processes. You know, we live on these two strings of ten and fifteen percent indirect cost recovery. But then we're asked to do so much in the compliance and the recording in the background'

'...the challenges... we've already talked a bit around that kind of resourcing in terms of how do you actually find the resourcing to do the amount of work that's in the space and to do it well, to risk assess all your supplies and all your service providers, and such forth and to then make decisions to adjust where you're spending your money based on that, particularly when there's so many other competing factors when it comes to making a decision.'

'But there are so many factors to consider when you're procuring, and they can really compete and offset against each other and every procurement you're trying to make that decision on what is most important today'

'there's certain things we could be considering in our customs and importation space that maybe might help everybody out'

Part 3 – NFP Reporting entities and the transparency framework approach

Participants were asked questions about whether the requirement to publish a statement acted as an incentive for their organisation to address modern slavery and whether they had experienced any pressure from stakeholders to address modern slavery.

Reputational incentive of publishing a statement

'I wonder how many people have ever read ours, because I think for us people wouldn't necessarily think it's the most important thing, but it's one of those things ...you have to be doing the right thing to be competitive with the clients or competitive with funding bodies.'

'I also wonder how many people actually read it, but I kind of think it is still is an incentive, because if we didn't have one, we didn't do one, or if someone did read it, and it was, you know, like saying, well, we're not doing anything then that's going to be, you know, that's going to have really big, it could have really big ramifications. So, there's still an incentive, a reputational incentive in there for not for profit.'

'From our perspective with it in terms of the trust of the brand and be an advocate for certain activities in the community.'

Does competition for market funding influence the way in which your organisation identifies and addresses risks to modern slavery

'With a lot of the Government contracts that we have to respond to there's been a significant clear shift over the last sort of twelve to eighteen months towards assessing us from a social procurement point of view, but more from a diversity and inclusion point of view, such as Indigenous suppliers and local suppliers, there hasn't been any significant change in in government bodies looking to understand how we're addressing modern slavery.'

'I've seen no evidence yet that consumers know or care about modern slavery when it comes to procuring services at the moment, so you know, it tends to be more kind of reputational with other companies and staying out of the media.'

'An expectation of the government agencies who fund our work, that we are doing what we say we're doing in the space, and ... if we say we're going to do something in a report that we've done it.'

Part 4 – Moving forward

What would help NFP reporting entities respond to modern slavery

Participants felt they needed more support to identify specific issues and respond.

'Providing frontline staff with the confidence to be able to identify, and then appropriately respond to situations of modern slavery, that they might uncover in their day-to-day work would be really helpful.'

'Actually, publishing a list of goods or services at a high risk of modern slavery.'

'The other thing that I think would be really helpful is civil society, and those organisations that do work with victims and survivors of one slavery helping us to...you know, in a very supportive way, talk about the experiences of victims survivors, so that we can bring those stories into organisations at the moment.'

Participants noted the challenge of responding to risks/incidents.

'Maybe there's a need for the Federal Government to manage, non-compliance ...maybe...I a bit of a whistle-blower sort of model... I'm thinking there's a model where we, as a reporting entity, can say, well, you know, we think there's this issue with this supplier or within this network of suppliers.'

Some participants suggested there should be an obligation to act, not just an obligation to report.

'I also find a little bit funny is that I mean the legal obligation is to do the statement right? But there's not actually a legal obligation. It's just to report on what steps we are taking.'

Participants also felt there was a need for greater accountability around statement commitments.

'You don't have to deliver on your promises at the moment, so you know the guidelines talk about what you're doing and what you plan to do, and what your intentions are, but there's no onus on you to say whether you did what you intended to do or not. So, there's not that kind of accountability step which is the did I deliver on what I promised.'

'The first step in it should be that what we talked about earlier about the beginning to name and shame at least make the public more aware of the modern slavery register of the statements that are held in there. Firstly, who is not actually complying with the reporting obligation.'

'The Government has to fund the resources to actually verify, and in an audit and responses.'

Participants also noted the opportunity to help each other.

'We can actually help each other out by not reinventing the wheel, and we can share what minimal resourcing we have to learn off each other.'

Finally, participants noted the opportunity for organisations actions to evolve and the benefits of a formal review.

'This all has to happen over time. Nothing happens in one year in any industry or sector, or whatever...I think that's an important part of learning and developing and growing, So you can then create impact down the line, so it's good to actually be having a review.'

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