REGULATING TRANSPARENCY AND DISCLOSURES ON MODERN SLAVERY IN GLOBAL SUPPLY CHAINS

A "CONVERSATION STARTER" OR A "TICK-BOX EXERCISE"?

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1. INTRODUCTION

The global economy relies on corporate sourcing and procurement practices along complex transnational supply chains. Some goods and services that find their way to the consumer public are sourced in contexts tainted by modern slavery, including forced labour and human trafficking. Mandatory reporting and disclosure schemes have long been used to manage risk and impact across various aspects of corporate and market activity. It is only more recently that some governments have begun to use such mechanisms in the context of human rights, including specifically to address modern slavery risks in supply chains. Based on experiences in other countries, Australia's Modern Slavery Act (2018) (Cth) is the most recent example of an emerging global regulatory initiative of using domestic legislative models to increase transparency and associated stakeholder engagement to address modern slavery risks in supply chains.

Evolving mandatory disclosure mechanisms in this context carry some promise in terms of addressing the most serious socially negative 'externalities' of global manufacturing supply chains, as well as narrowing the perennial national-level implementation gap in international human rights law. Such mechanisms have important implications for business and for the legal, accounting and assurance professions, which may be familiar with reporting requirements, but not in a human rights context. Yet more empirical research is needed, both on the assumptions underlying mandatory human rights reporting schemes and their intended purpose, as well as the drivers and patterns of corporate responses to such mechanisms. This report outlines the premises and principal findings of cross-disciplinary research – combining reviews of relevant documents with interviews and surveys of corporate and other actors – into how mandatory corporate reporting schemes such as Australia's might help to address the risk of modern slavery in business supply chains.

While many Australian firms, industry bodies and advocacy groups have engaged in public and on-record debate about the design of the Australian Modern Slavery Act, not enough is yet known about how firms (and others) are preparing to respond to this, nor how government and stakeholder groups (such as investors, customers, civil society groups) might engage with firms in awareness and transparency building exercises. Nor have scholars yet comprehensively unpacked some of the theoretical and conceptual assumptions upon which this debate has proceeded. This project offers – here through this briefing paper – an empirically-informed analysis of the existing and emerging issues, perceptions and concerns around the new Australian Act, studied in the context of the UK's experience (and lessons from other schemes).

2. METHODOLOGY

The findings of this report draw on desk-based study, surveys and interviews. We conducted 37 interviews between September 2018 and February 2019 including 15 interviews with companies, 11 with civil society organizations (CSOs), 2 government representatives and 9 professional or industry consultants. We also conducted a small survey, distributed by email to 100 companies (ASX 100) between August and October 2018.[1]

All interviews and survey responses were conducted on a confidential basis, thus the observations reflected below are not attributed to the specific person or their organisation.

[1]In sector terms: 25 per cent metals and mining sector, 25 per cent construction and real estate, 17 per cent branded consumer goods, remainder energy, financial services, industrial and telecommunications. Half those surveyed also report under the UK Act, and half do not report under any of the legislative schemes featured in the survey. Only 12 companies responded to the survey and we comment below on what interpretation one might put on this low response rate.

3. BACKGROUND

The global economy relies on corporate sourcing practices along complex global supply chains; transnational supply chains are now 'ubiquitous'.[2] The United Nations Conference on Trade and Development estimates that approximately 80 per cent of international trade can now be linked to the global production networks of multinational enterprises.[3] Industrial disasters and labour scandals have highlighted how leading 'first-world' brands now often rely on diverse suppliers with often high levels of human rights risk, from child labour to human trafficking.[4] For instance, the 1,134 garment workers killed in 2013's Rana Plaza disaster in Bangladesh worked for multiple garment supply factories contracted and sub-contracted to well-known fashion brands in the EU and North-America.[5]

MODERN SLAVERY

Recent estimates suggest that 40.3 million people are enslaved globally (5.4 victims of modern slavery for every 1,000 people in the world).[6] 30.4 million of these are in the Asia-Pacific region, 9.1 million in Africa, and 1.5 million people in developed economies. Of those enslaved, an estimated 21 million are workers enduring forced labour. It is estimated that there are at least 15,000 slaves in Australia.[7] The global profits of modern slavery are substantial: the International Labour Organisation estimates that US$ 150 billion (AU$ 208.5 billion) in illegal profits is generated annually through use of modern slaves.[8]

The governance of modern slavery risks in global supply chains is characterised by a mix of jurisdictions, norms, and actors, with approaches differing depending on national, industry and company factors. These complications are described as governance and enforcement gaps.[9] One mechanism proposed to address this is to harness the private contractual power of lead procuring firms, and the public regulatory power of their host regulatory states, to govern business and human rights standards abroad.

Legislative, policy, advocacy and other responses to the modern slavery phenomenon by states, businesses and civil society are not taking place in a normative vacuum. They build on decades of efforts to hold companies to account for human rights abuses. The most significant normative development in the last decade is the development of the UN Guiding Principles on Business and Human Rights 2011 ('UNGPs')[10] which confirm that while governments have a legal obligation to protect human rights (as set out in international laws and adopted by national governments), companies also have a parallel and complementary responsibility to respect human rights. The UNGPs (Principle 15) define this responsibility as evidenced by companies having in place:

a) a policy commitment to meet their responsibility to respect human rights;

b) a human rights due-diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights; and

c) processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute.

[2]Ruggie, J. G. (2013). Just Business: Multinational Corporations and Human Rights (Norton Global Ethics Series). WW Norton & Company.

[3]United Nations Conference on Trade and Development (Ed.). (2013). Global value chains: investment and trade for development. New York: United Nations.

[4]Anner, M., Bair, J. & Blasi, J., 2013. Toward joint liability in global supply chains: Addressing the root causes of labor violations in international subcontracting networks. Comparative Labour Law and Policy Journal, 35, 1.

[5]Odhikar (2013) Broken dreams: A report on the Rana Plaza collapse, http://odhikar.org/wp-content/uploads/2013/06/Fact-finding_RMG_Rana-Plaza_Eng.pdf

[6]International Labour Organization and Walk Free Foundation. (2017). Global Estimates of Modern Slavery: Forced Labour and Forced Marriage (Report). Retrieved from www.ilo.org/global/publications/books/WCMS_575479/lang--en/index.htm

[7]Global Slavery Index. (2018). Country Studies: Australia. Retrieved from www.globalslaveryindex.org/2018/findings/country-studies/australia/

[8]International Labour Organization. (2014, May 20). ILO says forced labour generates annual profits of US$150 billion [News]. Retrieved from www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_243201/lang--en/index.htm

[9]Crane, A., LeBaron, G., Allain, J., & Behbahani, L. (2017). Governance gaps in eradicating forced labor: From global to domestic supply chains. Regulation & Governance, Published Online, 1–21; Weil, D. (2018). Creating a strategic enforcement approach to address wage theft: One academic's journey in organizational change. Journal of Industrial Relations, 60(3), 437–460.

[10]Human Rights Council, Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework: Report of the Special Representative of the Secretary-General on the issue of Human Rights and Transnational Corporations and Other Business Enterprises, A/HRC/17/31 (21 March 2011) (Guiding Principles).

Prior to the Modern Slavery Act, over the last 30 years, there had been an emphasis on the development of 'soft law' aimed at regulating the impact of business practices on human rights, for instance, through multi-stakeholder initiatives, institutional declarations or guidelines, or industry codes of conduct. What this aims to do in practice is to harness the power of business to positively impact human rights by providing frameworks and guidance that assist companies in understanding what constitutes responsible business conduct.[11] The utility of these initiatives has not been so much their ability to act as a tool of legal accountability but rather, to engage with companies and enable them to better understand the contemporary responsibilities of business with respect to human rights. These soft expectations are now being transformed into legal requirements in some countries.

In the last decade, several countries – including for example, the United Kingdom, France, Denmark, India and China - have introduced mandatory corporate social responsibility reporting requirements which vary widely in their scope and function.[12] For the purpose of addressing modern slavery risks, the most notable legislative activity has revolved around requiring firms to report on measures they are taking to mitigate and address such risks in their operations and supply chains. The first modern slavery disclosure law, the Transparency in Supply Chains Act, passed in California in 2010. In 2015, the United Kingdom passed its Modern Slavery Act and Australia passed its own law in 2018. Others, such as the 'duty of vigilance' law passed in France in 2017,[13] are broader and incorporate human rights risks more generally and impose additional due diligence requirements on companies beyond simply reporting. Since 2010, at least 11 national or regional laws have been approved, or are under consideration that require companies to report on their supply chain practices.[14] What is less clear is whether these disclosure requirements are sufficient to generate real changes in supply chain working conditions.

[11]Ratner, S. Corporations and Human Rights: A Theory of Legal Responsibility 111 Yale Law Journal 443 2001-2002; Kinley, D. and Tadaki, J. From Talk to Walk: The Emergence of Human Rights Responsibilities for Corporations at International Law 44(4) Virginia Journal Of International Law p.931 2004; and Utting, P. Rethinking Business Regulation, From Self-Control to Social Control United Nations Research Institute for Social Development, Technology, Business and Society Programme Paper Number 15, September 2005, 1. Available at: www.unrisd.org/unrisd/website/document.nsf/462fc27bd1fce00880256b4a0060d2af/f02ac3db0ed406e0c12570a10029bec8/$FILE/utting.pdf

[12]Barnali C., Social Disclosure, 13 Berkeley Bus. L.J. 183, 189-195 (2016).

[13]LAW No 2017-399 of March 27, 2017 on the Duty of Vigilance of parent companies and instructing companies, JORF No 0074 of 28 March 2017, text No 1.

[14]US Tariff Act of 1930, US Federal Acquisitions Regulation (FAR) 22.17, Dutch Child Labour Due Diligence Law, UK Modern Slavery Act s54, French Duty of Vigilance Law, US Dodd-Frank Act s1502, California Transparency in Supply Chains Act, EU Conflict Minerals Regulation, Swiss Responsible Business Initiative, Australia Modern Slavery Act and the NSW Modern Slavery Act.

4. RESEARCH QUESTIONS

Working from a combination of disciplinary backgrounds (law and sustainability accounting) and in anticipation of the Australian federal legislation, our project's research had two primary aims:

- To evaluate the evolving model of legislative disclosure or reporting regimes focusing on modern slavery risks and to ask if, and how promoting statutory reporting requirements ('transparency' aim) might contribute to substantive human rights improvement ('accountability' aim).
- To conduct empirical research (through survey and interview) to examine emerging practices (in Australia and the UK) as to what might constitute best practice in addressing modern slavery risks in supply chains.

5. EMERGING PATTERNS IN AUSTRALIA AND BEYOND

What then are some insights about the assumptions, approaches, and activities of those involved, or preparing to be involved, in reporting under modern slavery regimes (and those who legislated for these or engage in monitoring reporting)? Our surveys and interviews were limited in scale but are not (we would argue) unrepresentative of the Australian business, policymaking and civil society landscape.

5.1 PERCEIVED PURPOSE OF THE ACT AND AWARENESS / RESPONSES BY CORPORATE AUSTRALIA

Interviews suggest a coherent sense of the Act's intended purpose, as well as of its inherent limits (being merely a reporting requirement). As one parliamentarian observed, the overall aim has been to reduce slavery across the world by using one of Australia's sources of influence externally: the procurement power of major Australian companies' supply chains. Yet this official saw other purposes, as did business interviewees, including creating a 'level playing field' for reporting on human rights risks, managing reputational risks, and driving internal organisational cultural and procedural / systems changes. As noted elsewhere in this report, these aims will in coming years be ripe for research.

Interviews revealed mixed responses around awareness, uptake and posture among companies in relation to modern slavery legislation, bearing in mind that many very large Australian firms already report into the UK scheme. Strategically placed interviewees in the finance and superannuation sectors perceived a fairly good level of awareness within corporate Australia. Another within a well-known retail giant noted that anyone working in food, fashion or (timber-made) furniture is probably "pretty well aware" of the Act and of modern slavery. However, the general perception was that suppliers (of Australian companies interviewed) have low levels of awareness, commensurate rather unsurprisingly with their size, sophistication and sector. Some reported that overseas suppliers to Australian businesses are very unlikely to be aware of the legislation. One well-informed retail respondent noted that the philosophy behind some firm's internal due diligence – "actually wanting to find slavery" to be able to deal with it, rather than not wanting to know – is a significant mind-set shift and cultural change for supplier businesses.

One Australian government official characterised all corporate reactions at this time in Australia into one of three categories: (a) ignorance, (b) deferring action on reporting to headquarters that are often overseas, and (c) over-confidence and related over-reliance on existing strategies and processes, many of which might not be appropriate and adapted to this risk or which might even be "tokenistic". Despite mixed levels of awareness, a common refrain in interviews was that the reporting requirement was a 'conversation starter' (including, importantly, within firms) even if not a 'conversation changer', although for some it had achieved the latter. One activist noted that 'slavery' is a "compelling, loaded and powerful term" which is difficult for business to opt out of and which in principle puts pressure on business to engage.

5.2 'OWNING' REPORTING OBLIGATIONS

A recurrent theme in corporate reporting and responsibility literatures is the question of who within a larger firm does (or should) have lead or joint responsibility for reporting (and for the due diligence and other activities, including follow up, implicit in a reporting requirement). Interviews revealed that firms find this a difficult and timely question, and some were very curious about how peers were organising themselves. This was particularly the case for financial institutions, who have both procurement and portfolio risks, managed by very different parts of their organisations.

Among interviewees there was some uncertainty about whether 'Legal' or 'Sustainability' or 'Compliance and Risk' or 'Human Resources' or 'External Affairs' teams would or should lead Act reporting. For some, a team (e.g. Sustainability) might be responsible for producing reports, but not for associated internal actions. Indeed, some of the more reflective responses noted that reporting is a very different activity from actually undertaking supplier auditing, education or 'regulation'. Hence, the management question of who ought to lead or coordinate matters may vary. Some firms plan to establish issue-specific working teams across different parts of the business, or experiment with 'shared accountability' across departments. The fact that ultimate sign-off must happen at director level was seen as something that would help ensure an answer to this dilemma is reached fairly promptly. One interviewee reported resisting having a specific department 'own' reporting because "it's everyone's responsibility".[15]

Those interviewed in the UK context with some years of experience of the Act responded that CEO engagement was crucial, with senior leaders needing to take an overt moral position to fully galvanise internal change. A senior official from a UK-based accounting professional body observed in an interview that since accountants and auditors usually are engaged in the production of organisational disclosures and assurance practices, the Modern Slavery Act regime has direct implications for their profession. The consensus among UK interviewees was that modern slavery is a cross-disciplinary (cross-profession) issue, so that intra-profession and inter-profession collaborations would be needed as well as a degree of 'shared accountability' across profession types (especially accountants/auditors and lawyers) involving business executives, consultants, trade unions and other civil society. In any event, a very common view among Australian interviewees (consistent with much of the prescriptive management literature) was that as with any compliance process, the imperative was to embed this as much as possible into existing business practices rather than creating new stand-alone processes, even for a signature issue such as slavery.

[15]One interviewee noted that much of the required due diligence was already being done, but the Act had increased awareness among other departments. For one, the Legal department had been "obstructionist at times on sustainability issues" whereas now the Act forces them "to think about law and sustainability as an integrated issue." One respondent noted that "we do notice that when lawyers are involved, they often suggest not to disclose."

5.3 RESPONDING TO THE ACT: INCIPIENT OR EXISTING ACTIONS

Noting that some Australian firms report into the UK Act, others reported having begun to prepare for Australian reporting or were proposing various activities. These include:

- working on the governance / process structures just discussed,
- developing policies and action plans (and sometimes updating or initiating supplier codes of conduct),
- looking at human rights issues in procurement processes, tender processes and contractual terms (including supplier pre-qualification processes),
- establishing targets and KPIs, internal awareness-raising in the firm and with key or high-risk suppliers (and revised supplier 'onboarding' activities), and so on.

Some noted a staged approach, from a desk-top audit of all suppliers to more targeted conversations with high risk suppliers.[16] Some were engaged in, or planning, partnerships externally or enhancing these, although external activities seemed less of a priority to internal organisational and supplier ones.

The survey attempted to gauge what firms consider emerging 'best practice'.[17] Respondents indicated that the clear priority activity is 'integrating modern slavery into corporate risk frameworks' and human rights impact risk assessments.[18] By contrast, engaging external or third-party audits or communicating externally about the risk were of lesser priority, though not markedly so.[19]

Almost all corporate respondents already undertake measures to identify and address modern slavery risks in the supply chain. Desk-top assessments of supplier risk are most prevalent activity (82 per cent), compared to activities such as third-party audits on supply chain due diligence (between about 40-60 per cent depending on how the question was framed), staff training (about 64 per cent), engagement with NGOs (64 per cent), regular verification of supplier commitments (below 30 per cent) or optional training for suppliers (less than 20 per cent). Only one surveyed firm engaged in data collection and analytics to engage directly with workers in its extended supply chain to monitor risk of human rights abuses.

Modern slavery risk is referenced in only about 60 per cent of company policies (and only 60 per cent had a policy action plan on modern slavery risk), but 73 per cent of firms included human rights (and modern slavery) in their risk management frameworks, while over 80 per cent responded that their supplier contracts include specific terms about modern slavery risk.

[16]See discussion below in section 5.4 in defining the scope of 'supply chain'.

[17]In the survey, 1 = best practice and 5 = not best practice. One might interpret 'best practice' to be not just an assessment of peer practice but a proxy for whether a practice is considered important to the surveyed firm. Survey responses were only received from 12 of the top 100 ASX companies. It is not clear what 'finding', beyond speculation, one might derive from this very low response rate, which contrasts with the responsiveness of corporate interviewees. A possible but speculative explanation is that many Australian firms have not necessarily resolved yet which internal unit or department 'owns' reporting under the Act, such that the survey did not reach an appropriate responder.

[18]These received a score of 1.08, with 92 per cent of respondents indicating these as best practices. Somewhat surprisingly, remedial measures were indicated as high priority (1.09) although it is far from obvious what mechanisms Australian firms have in this context. We could possibly interpret the responses to signify a perception that remedy is significant, rather than that there are (best) practices in place to effectuate it.

[19]None of the practices listed in the survey scored below 2, suggesting that firms consider all the following issues more or less 'best practice': integrating modern slavery policy into corporate risk frameworks; conducting risk assessments to identify human rights impacts; ethical recruitment of workers in supply chains; establishing grievance or remedial frameworks; board leadership and clear company policy; establishment of specific indicators on modern slavery; internal communication and awareness-raising; joining multi-stakeholder partnerships; mapping the supply chain and/or independent supply chain audits; external communications and collaborations with NGOs.

We asked interviewees what practices the impending Act requirements had already triggered. Some firms had gone so far as to create new roles, such as Responsible Sourcing Manager. Several respondents indicated that the Act (and the conversation around it) were causing a shift from a more generalised ESG approach to a far more refined human rights and modern slavery approach, and "pivoting" from looking at 'ethical trade' dimensions to human rights risks. Others highlighted greater cooperation and dialogue across parts of the same business. Some noted a shift in thinking to include reputational and financial perspectives in due diligence activities. Few firms reported having conducted human rights due diligence on suppliers prior to this legislation. Mostly respondents said that the Act had started a 'conversation' internally (and to some extent externally).[20] One interviewee noted an internal shift from treating modern slavery as a further compliance issue to relating it as a "broader change piece", at least in some sectors such as finance. It is possible that the Act's timing (with the corporate culture debate around the Australian Banking Royal Commission) will mean it has this broader catalytic effect. Again, this is an issue ripe for future research. One interesting response from a major Australian conglomerate was that the Act now creates "a safe space – because everybody's doing it, because it's required by law, because we're being applauded and not hounded by NGOs for [doing] due diligence and reporting".

Some in the advisory, legal and NGO sector have seen a steady increase in the flow of enquiries about modern slavery, with momentum increasing ('it is now a mainstream issue'), especially since the passage of the NSW legislation. One question we asked was whether firms were looking at peer practice, including under the UK Act, either to respond to the UK law or in preparing to respond to Australia's requirements.

Some firms have benchmarked all their peers and other leading firms, especially how they are framing and couching certain issues in reports or discourse. Bigger firms were also studying reviews by NGOs such as 'Know the Chain' to see what issues they critique in corporate reports, and to find summaries of good practice. This reinforces how the 'race to the top' concept will require Australian civil society to produce useful (and positive / best practice) contributions into corporate reporting and its study in future.

The UK experience is of interest in this regard. UK interviewees generally felt that UK companies are responding to the UK Act, but civil society (and even governmental) respondents observed that there is significant scope for improving the quality of modern slavery reports by UK companies. One sustainability manager from a top retail company (recognised by a human rights NGO for its best-practice reporting) commented that the quality of its reporting had improved because the 'tone at top' (CEO message and leadership) was driven by 'doing the right thing' and this has been transmitted effectively both to employees and to suppliers in developing countries. The CEO of an industry association commented that an ethics-based approach by a CEO can help change a firm's culture around modern slavery. Consensus also existed among civil society respondents about the need for corporations to collaborate with civil society on training and awareness around assessing and tackling modern slavery risks in the supply chains. Referring to the precedent of UK legislation on foreign bribery (allowing activists to trace, identify and even rank compliance and disclosure), UK civil society interviewees believe that the UK Modern Slavery Act does enhance the surveillance potential of civil society organisations over corporate behaviour.

[20]As one respondent said:
"The one piece that was really, really crucial was that the Statement has to go onto the public website. That forced a lot more conversation inside our business…as many more people had to get involved. This is a good thing as it got people talking about their responsible procurement practices and the need to make certain that we were living up to what we put in the public domain."

5.4 DEFINING 'SUPPLY CHAIN'

In terms of the scope of risk, from our limited survey one might venture that two-thirds (64 per cent) of representative listed Australian firms define 'supply chain' to mean 'Tier 1' (direct payment relationship) suppliers.

It seems firms are triaging their risk processes (as is not unreasonable, and indeed recommended by the UNGPs), with 80 per cent indicating that any measures relating to slavery are only deployed in relation to activities, relationships or geographies identified as higher risk. Interviewees reported some confusion around definitions of Tier 1 suppliers, and in some sectors (e.g. construction) other legal definitions around the term 'supplier' already exist.[21]

Most interviewees reported confining their Act-related activities to direct / Tier 1 suppliers (and in one case simply to those found in the company's procurement database), and taking a risk weighting approach to map suppliers and focus on 'higher-risk' or sometimes (but which is different) 'critical' suppliers. Most reported plans to look into the wider supply chain or, at least, discussions of this. Some fairly sophisticated firms admitted in interviews to very limited visibility of their supply chains, and that even where a contractual obligation had been put on suppliers (in relation to modern slavery risk), no verification activities had been done because of capacity and resourcing constraints, and perceived low priority.

5.5 REPUTATIONAL VERSUS REGULATORY RISK

As noted, while the government sponsoring the legislation highlighted both 'reputational risk' and a peer-driven 'race to the top' as envisaged crucial drivers of compliance, these are not obviously the most significant drivers for firms. Indeed, while the Act abstains from penalties for non-compliance, this factor was clearly foremost for firms. Asked what is most likely to influence company decisions to report externally on supply chain risks,[22] 100 per cent of survey respondents answered that 'legal requirement (penalty for not reporting)' was most likely, and this option scored a 'perfect' 1.0 as the most likely factor.[23] By contrast, the imperative to 'match competitor practices' (the 'race to the top' described by the Minister in the Second Reading Speech of the Modern Slavery Bill) scored noticeably lower at 2.27 out of 5, and ranked only 7th of 8 potential drivers. Factors such as customer expectations, reputational impact and adverse publicity, and civil society expectations were also less significant drivers than 'legal expectation', albeit not dramatically less so (scoring between 1.42 to 1.75, with advocacy pressure lower still at 2.00). Interestingly for the 'race to the top' narrative, the least likely perceived source of incentive to report was 'global recognition / awards / benchmarks' (scoring 2.92 and ranked least significant).

[21] See too Ford, J., 'Defining 'Supply Chain' for a Modern Slavery Act in Australia' Submission to the Government Consultation on a Modern Slavery Act, May 2018.

[22] Where a score of 1 is 'most likely' and 5 is 'least likely', from among 8 listed potential, non-exhaustive drivers of reporting.

[23] The next factors most likely to drive reporting were its importance to the market / investors, and it being a board-level requirement (both scoring 1.17, with 83 per cent of firms saying this was likely to influence reporting). Equal third most likely factors were shareholder expectations; social licence to operate; and 'the right thing to do' (all scoring 1.25, 75 per cent of respondents). The interviews and surveys did not focus on the NSW Modern Slavery Act which incorporates penalties of up to AUD$1.1million for failure to prepare and publish a statement, when required, or for giving false or misleading information.

If these responses are reasonably representative across the ASX 100, on the face of it this result suggests that there is something of a mismatch between the sponsoring government's perceived rationale for compliance, and what reporting entities perceive as important drivers. Yet more thorough and extensive empirical research is clearly needed here. This is because elsewhere in the survey we asked firms to rank what factors would constitute the most significant internal organisational barriers to compliance. The factor 'no penalties in place for not reporting' was ranked last (11th), that is, least relevant as a barrier (scoring 4.08 out of 5, where 5 is 'not relevant'). This sets up, we think, an intriguing and important research agenda. One might speculate (but no more) that in responding to the question about 'likely drivers', respondents (who because the survey reached them were likely to be involved in risk management or external affairs) were anticipating the challenge within corporate organisational life of getting an issue to receive appropriate attention.

Returning to internal organisational barriers to identifying and reporting risk,[24] firms' responses varied somewhat. The highest ranked barrier was lack of information about risks (2.08, 50 per cent of firms scoring this a '1' top-most relevancy), followed by competing priorities, and insufficient internal capacity or resources (2.25 and 2.50 respectively). Firms do not appear to consider 'lack of clarity about reporting requirements' (or about 'what constitutes the supply chain') or 'lack of government guidance and support' or 'lack of peer practice' being relevant as factors holding firms back.

5.6 DEFINING SUCCESS AND ANTICIPATING THE ACT'S TRAJECTORY

We asked whether the Act was viewed as a 'burden or a benefit' in general terms, within the company. The reply "a bit of both - - - depending on who you ask in the organisation" was common. Some said that it was a benefit (for a company still rationalising processes generally on risk), noting that this would not have been a priority without the legislation. Still, some significant concerns and uncertainties remain apparent within Australian businesses. These include resourcing requirements and compliance burden / capacity; the co-existence of two Modern Slavery Acts in Australia; how to handle communications especially on a slavery crisis if it arises; and 'unknowns' that might be described as follows: what if we find slavery in the supply chain, what then? What are the tolerance levels or thresholds? Where is the support? How can we influence change overseas? These are significant and very reasonable concerns, putting a premium on government, civil society, advisory firm and peer-peer support and guidance and learning in the 2019-2022 period.

Respondents (both in business and civil society, here and in our UK interviews) pointed to a range of other criticisms and concerns that require fuller treatment in our later outputs under this project, and in further research by others. Some recur in the literature to date on the UK Act, and on its predecessors. These concerns included:

- the lack of a clear long-term vision provided by Government (i.e. what it wants to achieve over the next decade, what counts as 'success' for the Act);
- the fear that reports might be very general due to lack of awareness, information, or a cut-and-paste approach;
- the risk that human rights issues other than modern slavery might be obscured;
- the fear that the reporting requirement would not be linked to other systems for audit and change ('what happens before and then after reporting?');
- concern in the finance sector that the Act applied to it yet seemed very much designed around a notional consumer goods manufacturing firm; and
- the enduring concern about the effect of the lack of penalty for non-compliance.

[24]Where 1 is 'relevant' and 5 is 'not relevant'.

As noted, for many interviewees the lack of penalties in the Australian Federal model is a significant problem. Yet, for others, starting with more collaborative approach has "struck the right tone with business" so that rather than generate business reaction by incorporating more 'sticks' than 'carrots' in relation to non-compliance, the approach has been "quite clever" in generating business engagement. As one advocate noted, it is now "almost impossible for businesses to come out against [the Act]" which is a reasonable scheme to begin with that "businesses would look awful for coming out against it."

A modest level of interviewing done with UK stakeholders produced responses that align with the literature to date evaluating that scheme. Thus, recurring themes to improve that scheme (and which are also relevant to the Australian context) include the availability of data and its quality, especially so as to be able to compare companies within and across different sectors. As one respondent noted, it is difficult even for sophisticated investors to compare company statements: "what does 'good' look like?" Several UK respondents noted that the focus appears often to be on producing the statement, whereas it is the activity prior to and behind the statement itself that matters. The UK experience suggests that firms are still looking at business risks rather than human rights impacts, although one interviewee conceded that if firms identify and acknowledge the risk from a business perspective "that is still something - - - it still gets to somewhere."

UK-based respondents pointed to various strengths and experiences under that scheme that hold promise in terms of both that scheme and Australia's. These include:

- the effect of the legislation on promoting wider discussions in the corporate and finance worlds around human rights commitment, and "moving in a positive direction" with no going back;
- a slow but steady increase in awareness;
- the perception of consistency across the UK and Australia and so the perception of a global regulatory movement;
- increased stimulation of civil society;
- engagement by firms because of the relatively undemanding and unthreatening nature of the Act; and
- the requirement for board-level sign-off.

LESSONS FROM THE UK MODERN SLAVERY ACT

On balance, the UK Act is important, but imperfect, legislation. Critically, there are no financial penalties for failure to comply with the reporting requirement and compliance with the disclosure requirements depends largely on the pressure exerted by external parties – consumers, investors, civil society – to induce compliance.[25] It is also missing key elements which limits its effectiveness as a transparency measure, namely, a government-run registry of statements and public list of reporting entities. The assessment of statements published pursuant to the UK Act is hindered by the fact that reporting criteria are permissive – companies may elect which, if any, of the suggested criteria they choose to report against. Various studies conducted on the corporate statements issued under the UK Act indicate mixed results. While select corporate statements have been praised, more generally the law has engendered a corporate response that falls short of any serious effort to address modern slavery in their supply chains.[26] The U.K. government initiated an independent review of the UK Act and the 2019 report makes clear that government must take steps to make businesses take this legislation more seriously. More specifically, the review suggested establishing a more ambitious enforcement model with four stages of government enforcement for non-compliance: "initial warnings, fines (as a percentage of turnover), court summons, and director disqualification."[27]

Respondents suggested that the Australian Act's strengths included:

- its overt attempts to drive best practice and create a level playing field;
- the requirement for engagement from the top of the organisation;
- the Act process or build-up having led to awareness of and conversations about modern slavery within and across organisations;
- the inclusion of mandatory criteria (unlike the UK Act) and the promise of detailed guidance; and
- the business mind-set effect of the debate in Australia moving things forward to a position where the "global citizenship factor comes in" whereby suppliers "are seen as an extension of brand" and something for which a firm has some responsibility.

[25]Whilst injunctive relief is available under the UK Act, this avenue of recourse remains untested.

[26]Ergon Associates, Reporting on Modern Slavery: The current state of disclosure, May 2016; Business & Human Rights Resource Centre, First Year of FTSE 100 Reports Under the UK Modern Slavery Act: Towards Elimination?, 2017; Ergon Associates, Modern slavery statements: One year on, 2017.

[27]Frank Field et al., Independent review of the Modern Slavery Act: Second Interim Report: Transparency in Supply Chains (Jan. 22, 2019) para 2.5.2.https://assets. publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/773372/FINAL_Independent_MSA_Review_Interim_Report_2_-_TISC.PDF.

5.7 ENGAGEMENT OF PROFESSIONS WITHIN THE MODERN SLAVERY SOCIAL MOVEMENT

The new Act is impacting business practices in ways that will necessarily affect related professional bodies. In particular, as with the legal profession,[28] the accounting profession is affected by the Act at least in two ways:

- Accounting firms that meet the revenue threshold are themselves expected to provide modern slavery statements under the Act. Our initial review in the UK finds that at least 22 accounting firms (including all big 4 firms) have so far published their own modern slavery statement on their own website. All those reporting firms met the revenue threshold in the UK. A senior official from a UK accounting body noted that big accounting firms will have 'huge stakes' and that their supply chains must deal with potential vulnerability to modern slavery risk. However, further research is needed on the quality and comparability of accounting firms' reporting, including now in the Australian context, where bigger professional services firms meet the threshold.
- Clients of accounting and auditing firms whose businesses meet the threshold will require expert advice and assistance in the process of producing compliant statements under the Act.[29] Whether a consultant, internal or external compliance auditor or finance officer, accountancy professionals in Australia will be expected to be able to manage modern slavery compliance issues, including working with legal and other professionals. Modern slavery is now a high-profile and integral part of social sustainability more generally, an area in which considerable scope exists for advisory, audit and assurance services for business by the accounting profession.

A question arises about how ready accountants and accounting firms are to address modern slavery effectively and meet business needs. As noted, the profession will need to work with others, and UK interviewees noted that some NGOs have begun working with a professional accounting body as a partner for change. One NGO participant in that partnering said "change cannot happen in isolation, it requires collaboration."

Member training on modern slavery is an important step for professional bodies. Some accounting professional bodies as well as individual accounting firms have started to provide training and awareness in this area. Asked about the motivation to work with a professional accounting body particularly on awareness-building exercises for accountants, the business development head of a UK anti-slavery alliance noted that anti-slavery is now part of a broader social movement, and the accounting profession seems interested in that movement: "we are all collaborators because it has implications for all of us, not just for accountants, just for lawyers, or just for NGO workers". A senior UK accounting body official responded that the Act is an opportunity for the accounting profession as it adds another disclosure requirement where the profession already deals with these sorts of schemes.

[28]Ryan, E. (2017), Why modern slavery is a business issue for Australian law firms, Lawyers Weekly, www.lawyersweekly.com.au/wig-chamber/21976-why-modern-slavery-is-a-business-issue-for-australian-law-firms.

[29]Islam, M. A. (2018), Tackling Modern Slavery: What Role Can Accountants Play?, Audit & Assurance, International Federation of Accountants (IFAC), see on this link: www.ifac.org/global-knowledge-gateway/audit-assurance/discussion/tackling-modern-slavery-what-role-can

6. CONCLUSION

This report reflects a limited research project that would need to be significantly scaled-up if we are to be confident in answering some of the research questions or reinforcing some of the patterns emerging from interviews. Those interviewed in Australia under this project in general expressed cautious optimism about the Act (and the NSW Act, although this arose infrequently in interviews) and its relevance, fitness-for-purpose, and profile. As noted, for many its significance seems to lie in it being a conversation starter, opening the door for greater discussion of and action on human rights issues in business. Several advocacy and consultancy actors observed that the Act is hardly a single solution and will not necessarily measurably reduce modern slavery but has a longer-term role to play including in raising awareness and driving changes in corporate behaviour. For others, the crucial factor will be whether the market and civic or consumer groups engage meaningfully with reports so as to drive change and continuous improvement in companies.[30]

Some interlocutors noted while 'modern slavery' is a compelling concept and term that might catalyse action, there remains some risk either that broader corporate responsibility and business-human rights issues are neglected, or that reporting becomes an end in itself without generating wider changes: "there's a danger that it [reporting annually] feels like 'the job is done' for companies." The latter 'tick-box' or 'compliance-think' risk is one noted across the literature on the supposed internal effects of external risk reporting requirements. Indeed, one parliamentarian closely involved in the Act process defined future success as when "businesses are taking it seriously and not treating it as a box-ticking exercise, and looking into their supply chains with real intent."

An important caveat remains around the claims possible in this kind of research, and indeed around the overall scheme exemplified by the 2018 Act. Corporate (as well as market and consumer) uptake of this agenda in more advanced regulatory states might reduce the risk that supply chains that reach consumers in those societies are tainted by modern slavery. However, while research might be able to measure or show things such as awareness, uptake, or activity, it is another thing to design research that might demonstrate that such schemes have in fact reduced the level of risk that any one supply chain is 'tainted' with traces of forced labour or trafficking. Moreover, and as some interviewees observed too, reduced risk prevalence in supply chains, even if it clearly results from the introduction of reporting schemes, may not necessarily reduce the net global prevalence or severity of modern slavery practices. This is another way of saying that legislating for mandatory reporting is only one instrument to address the profound challenge around modern slavery. As noted by the Australian Government, 'there is no silver bullet to end modern slavery. Government, business, and civil society all have a role to play, and we need to work collaboratively '.

[30]See too in relation to the significance of consumer and market responses Ford, J., BHRRC Blog Series (Australia), November 2018. As one respondent noted, the Act may rely too much on 'market solutions' and "too much on publicity and transparency solving things without people really understanding what that means."
Australian Government, Department of Home Affairs, 'Modern Slavery Supply Chains Reporting Requirement Public Consultation Paper', 2017 p3

Even with refinements, current modern slavery reporting regimes are inherently limited, requiring companies to report, rather than to act. The assumption that greater transparency and availability of information about companies' activities will translate into both improvements in practice and increased corporate accountability remains largely untested.

Governments are right and smart to act in ways that enroll corporate and financial actors (and the consumer public itself) in this undertaking. However, while business is rightly under pressure to show its human rights credentials and credibility, governments cannot entirely outsource the regulation of human rights. While the focus of the Act is on what companies do and report, this ought not obscure that it is public authorities in sourcing and consuming states that ultimately remain responsible for mitigating and remedying human rights risks associated with business actors and activities.

7. FURTHER RESEARCH

Along with the empirical findings above are conceptual insights stated in the form of questions for a future research agenda. This is not an exhaustive agenda. In particular, we did not seek to comprehensively analyse all the literature and lessons on corporate audit-and-report schemes or disclosure regimes generally. However, one observation relevant to future research in this area, including in Australia, is that much of the Business and Human Rights scholarly community has approached the Modern Slavery Act without a particularly fulsome appreciation that while reporting schemes are new to human rights lawyers, the potential and pitfalls of such models are hardly new to scholars of corporate governance or sustainability accounting. One subsidiary aim of this research was to enhance societal knowledge by helping in a small way to begin to bridge disciplinary divides.

What does analysis of the regulatory rationales of corporate human rights reporting models, in the context of the track record of earlier models in other settings, reveal by way of a research agenda into how we can properly conceptualise these schemes and so better understand their potential and limits?

Our research raised a number of further questions. These include:

- On what basis in established regulatory theory can non-punitive reporting regimes be defended as a legitimate response to grave human rights issues such as modern slavery? What does a meta-study of so-called 'new governance' approaches reveal about the longer-term compliance patterns and prospects of schemes that overtly rely on non-state (market and consumer) sources of 'regulatory' pressure?
- What is the relative significance of reputational risk and peer competition in driving compliance with a non-punitive corporate reporting requirement?
- How and under what conditions does an external reporting requirement trigger internal due diligence processes and changes in corporate awareness and culture around human rights risk?
- What is 'best practice' in reporting in this context, how can reporting be made comparable, how is continuous quality improvement engendered and sustained over time, and whose internal and external agency is important in this regard?