UNSW Law & Justice Research Series

Towards the Effective Regulation of Modern Slavery in Global Supply Chains: Lessons Learned from the UK and Australia and Future Directions

Justine Nolan and Samuel Pryde

[2024] *UNSWLRS* 37
(2024) *International Criminology*

UNSW Law & Justice
UNSW Sydney NSW 2052 Australia

E: LAW-Research@unsw.edu.au
W: http://www.law.unsw.edu.au/research/faculty-publications
AustLII: http://www.austlii.edu.au/au/journals/UNSWLRS/
SSRN: http://www.ssrn.com/link/UNSW-LEG.html

International Criminology
https://doi.org/10.1007/s43576-024-00144-2

Towards the Effective Regulation of Modern Slavery in Global Supply Chains: Lessons Learned from the UK and Australia and Future Directions

Justine Nolan[1] · **Samuel Pryde**[1]

Received: 10 February 2024 / Accepted: 28 October 2024

Abstract
Modern slavery in global supply chains is attracting increased attention from states, businesses and civil society including momentum to seek a "regulatory solution" to combatting it. In 2018, Australia introduced a *Modern Slavery Act* which was modelled on (in part) the UK *Modern Slavery Act* (2015). These laws emphasise corporate disclosure as the primary means of identifying and remedying modern slavery in supply chains. Whilst these disclosure-based laws harden the expectation that business will conduct itself responsibly, they are ultimately founded on a soft approach that assumes that the transparency gained from disclosure will incentivise corporate action to address human rights risks. Two independent reviews conducted in relation to the UK Act (in 2018) and the Australian law (in 2023) recommended significant changes to improve their regulatory effectiveness, including establishing a more ambitious enforcement model and a requirement to conduct human rights due diligence. This article considers the lessons learned since the establishment of the two modern slavery regimes, it explores the role of human rights due diligence in strengthening the current regulatory regimes and the efficacy of establishing a "failure to prevent" offence to enforce due diligence compliance. Finally, it discusses the utility of states adopting a forced labour import ban as a complementary regulatory strategy to contribute to a holistic regulatory framework to address modern slavery.

Keywords Modern slavery · Human rights due diligence · Supply chain · Forced labour · Australia · Import ban

Introduction

The global issue of modern slavery has been the subject of increased attention in the last decade, particularly concerning the risks that can and do occur in business transactions. In 2013, the non-profit organisation Walk Free published The Global Slavery Index which estimated that 29.8 million people were victims of modern slavery (Walk Free, 2013). Ten years later, the 2023 Global Slavery Index estimates that this number has increased to 50 million people including 28 million in forced labour and 22 million in forced marriage (Walk Free, 2013). Modern slavery is a pervasive issue that penetrates many aspects of the global economy and has a clear relationship with globalised purchasing and consumption behaviours (New, 2015; Nolan & Boersma, 2019). In 2014, the ILO estimated that forced labour in the private economy generated US$150 billion in illegal profits each year (ILO, 2014) and more recent figures indicate that US$468 billion of G20 imports are goods at risk of modern slavery (Walk Free, 2023). These figures indicate the enormity of the challenge faced by governments, business and other stakeholders in effectively regulating modern slavery in the context of its connection with business. Regular revelations about modern slavery show that this practice can reach into every aspect of a company's operations and supply chains, as well as into consumers' lives (Datta & Bales, 2013).

Reducing modern slavery is a global challenge (United Nations Department of Economic and Social Affairs Sustainable Development Goals, 2015, target 8.7) and there has been a litany of institutional, international, and national initiatives to address this problem. In 2005, the International Labour Organization (ILO) launched the Global Alliance Against Forced Labour; in 2007, the UN Human Rights

✉ Justine Nolan
Justine.nolan@unsw.edu.au

[1] Australian Human Rights Institute, UNSW Sydney, Sydney, Australia

Published online: 21 November 2024

Council established a Special Rapporteur on Contemporary Forms of Slavery; and, in the same year, the UN launched a Global Initiative to Fight Human Trafficking. International law addresses slavery through several treaties and mechanisms[1]; however, there is no single international treaty designed to tackle all activities that fit within the umbrella term of modern slavery.

Domestically, legislative efforts to address modern slavery in business transactions, emphasising the use of mandated social disclosures, have emanated from a variety of jurisdictions. As awareness of the prevalence of modern slavery and its interconnections with the corporate sector have grown, so too have efforts by some governments, including Australia and the United Kingdom (UK), to develop a targeted legislative response. In 2018, Australia adopted the *Modern Slavery Act 2018* (Cth) ('Australian MSA') which took effect on 1 January 2019. The Australian MSA requires specified business entities (and the Australian government) to report annually on the risks of modern slavery in their operations and supply chains and the actions taken to address these risks. It was widely welcomed as a critical first step by Australia towards tackling modern slavery on the premise that it would transform the way businesses would respond to modern slavery by prompting a business-led race to the top. The Australian legislation was modelled on Part 6, Sect. 54 of the UK *Modern Slavery Act 2015* ('UK MSA') which targets corporate behaviour by mandating increased transparency in supply chains. Section 54 requires specified commercial organisations which supply goods or services in the UK to disclose information about their response to modern slavery in their supply chains. When debating the adoption of legislative provisions in Australia, some stakeholders argued that the Australian MSA should not however just be a "copy and paste" of the UK MSA but should improve upon the UK's example by mitigating its weaknesses (Crewther, 2017).

Five years into the operation of the Australian MSA, over 10,000 statements have now been published on the Australian government's modern slavery register. Yet, the extent to which the legislation is transforming business practices or making a tangible difference to the lives of workers remains highly uncertain (Sinclair & Dinshaw, 2022). Critiques of the Australian and UK modern slavery laws, which rely primarily on mandated corporate disclosures to combat modern slavery in global supply chains, have consistently debated their effectiveness. An independent review of the UK MSA highlighted the shortcomings of the UK compliance framework and recommended establishing a more ambitious enforcement model (Field et al., 2019). Similar critiques are also reflected in the 2023 review of the Australian MSA which was tasked with considering the effectiveness of the law in its first three years of operation (McMillan, 2023). The review acknowledges widespread views that "there is no hard evidence that the Modern Slavery Act in its early years has yet caused meaningful change for people living in conditions of modern slavery" (McMillan, 2023).

This article analyses regulatory responses to addressing modern slavery in global supply chains (highlighting the Australian approach) and broadly considers the limitations of the mandatory social disclosure model. It begins by detailing the structure of Australia's legislative response and the lessons learned from the UK MSA. It then examines the limitations of a mandatory social disclosure model including critiques focused on the quality of the reporting, the lack of enforcement, and the limited focus on providing remedy to victim/survivors of modern slavery. The article then considers the role of human rights due diligence in preventing modern slavery in global supply chains and how its implementation might work to strengthen the current regulatory regime. In particular, it offers a mechanism to ensure the enforcement of such due diligence by proffering the establishment of an offence of a "failure to prevent" modern slavery. Finally, it concludes by noting the need for a complementary regulatory strategy that could be employed to support the Australian MSA—the adoption of a forced labour import ban to prevent goods tainted by modern slavery from entering the country—that would aid the development of a more holistic approach to addressing this issue.

Australia's Regulatory Response to Addressing Modern Slavery in Global Supply Chains

Modern slavery includes a variety of conduct where a person's freedom and ability to make choices for themselves has been very significantly undermined or entirely removed. The use of the term 'modern slavery' in public discourse and in this article constitutes a broad non-legal umbrella term that refers to a range of abusive practices. Considering the dramatic increase in public interest in the subject over the past

[1] For example, see League of Nations, *Convention to Suppress the Slave Trade and Slavery*, 25 September 1926, 60 LNTS 253, Registered No. 1414; *Universal Declaration on Human Rights,* GA Res 217A (III), UN GAOR, 3rd sess, 183rd plen mtg, UN Doc A/810 (10 Dec 1948); *International Covenant on Civil and Political Rights*, adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 (entry into force 23 March 1976); ILO *Forced Labour Convention*, 1930 (No. 29), adopted 28 June 1930 (entered into force 1 May 1932) art 1(1); *Protocol of 2014 to the Forced Labour Convention*, 1930; and the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*, art. 3, 15 November 2000, 2237 U.N.T.S. 319 [also known as the Palermo Protocol].

decade, it is remarkable that there is no globally recognised definition of modern slavery. It is questionable, however, whether this expression constitutes a suitable overarching term. It is an emotive expression that conjures up images of historical slavery, thereby making the practice seem unrelated to present times. Modern slavery also invokes images of severe exploitation, thereby neglecting cases that are less likely to make headlines. However, whether it is a suitable expression or not, the term 'modern slavery' has become commonplace in public discourse and more recently in legislation (Dottridge, 2017; Mende, 2019 and Nolan & Boersma, 2019).

The Australian MSA (Sect. 4) defines modern slavery as "conduct which would constitute an offence under Division 270 or 271 of the Criminal Code" (*Criminal Code Act 1995* (Cth)). This includes offences such as slavery, servitude, forced labour, deceptive recruiting, trafficking in persons, debt bondage, forced marriage, and organ trafficking. The Australian Criminal Code (Part 2.5) provides that corporations may be held responsible for these crimes but "despite the prevalence of modern slavery in transnational corporate operations, there has been no action brought against a corporate defendant for modern slavery-related offences in Australia" (Anderson & Harris, 2023). The criminal liability model established by the Australian Criminal Code has proved "ineffective to the complex realities of contemporary corporations, which are proactively structured to externalize risk and insulate liability" (Anderson & Harris, 2023). This is in part due to the complex and multi-jurisdictional nature of the modern corporation along with the historical development of the corporate regulatory framework in Australia (Redmond, 2012). As such, the Australian MSA and its approach of relying on mandated social disclosures, is now seen as the primary default mechanism for addressing modern slavery associated with companies operating in Australia.

This focus on using transparency as a mechanism to generate improved respect for human rights in supply chains first received prominence with the introduction of Sect. 1502 of the United States (US) *Dodd-Frank Wall Street Reform and Consumer Protection Act* (2010). With this mandatory reporting provision, US policy makers put business on notice that companies need to be more transparent about their sourcing strategies and mandated corporate social disclosure as a means of achieving this. This law creates a reporting requirement for publicly traded companies in the US with products containing specific conflict minerals. The purpose of this provision is to provide greater transparency about how the trade in minerals is potentially fueling and funding the armed struggle in the Democratic Republic of Congo; functionally, it relies on the adverse reputational impact of such a disclosure rather than mandating penalties for actually sourcing minerals from conflict-afflicted regions (Sarfaty, 2015). The rationale behind this type of reporting requirement is that the reputational implications of forced disclosure will compel companies to undertake human rights focused examination of their supply chain practices and thus improve respect for human rights in their business operations (Harris and Nolan, 2022; Mares, 2018). A significant limitation of this law is that it only requires companies to report on their sourcing and due diligence practices but does not require them to act on their findings or expressly conduct due diligence to facilitate such reporting on corporate souring practices (Sarfaty, 2015).

The establishment of the Australian MSA followed the adoption of mandatory social disclosure laws in the UK and California to specifically address the prevalence of modern slavery in global supply chains. California's *Transparency in Supply Chains Act (*2010, Cal. Civ. Code §1714.43*),* which came into effect in 2012, requires large retail and manufacturing firms to disclose efforts to eradicate slavery and human trafficking from their supply chains. Companies must report in compliance with a set of mandatory criteria and post their report on their website. The UK's MSA (adopted in 2015) was the first national law to use the term "modern slavery" and focused global attention on the problem (LeBaron & Ruhmkof, 2017). Section 54 of the UK MSA sets out the mandatory social disclosure framework which requires companies to be transparent about the risks of modern slavery in their supply chains.[2]

The Australian MSA (Sect. 16) employs this same approach and requires business entities with an annual consolidated revenue of more than AUD$100 million (including the Australian federal government), to report annually on the risks of modern slavery in their operations and supply chains and the actions taken to address these risks. The Australian MSA was developed following a lengthy period of stakeholder consultation and government reporting, including a 2017 parliamentary inquiry report (Commonwealth, 2017), a Federal Government Public Consultation Paper (Attorney General's Department, 2017), a Regulation Impact Statement (The Office of Impact Analysis, 2018) and a Senate Inquiry in 2018 (Senate Standing Committee, 2018). In developing the Australian MSA, legislators benefitted from the lessons learned in the UK and sought to address some of the shortcomings of the UK MSA, including allegations of 'box ticking' and the vagueness of corporate statements by including reporting obligations for the Australian government, mandatory reporting criteria and the establishment of government-funded and managed online repository

[2] Section 54 of the UK Act requires commercial entities with a total annual turnover of £36 million to publish an annual statement on steps taken to assess and manage the risk of slavery and human trafficking. The UK Act defines modern slavery to include slavery, servitude, and forced or compulsory labour and human trafficking.

for statements. However, as has become apparent in recent years, simply institutionalising transparency is unlikely to automatically lead to improvements in advancing corporate respect for human rights (Sarfarty, 2015). Reliance on corporate reporting as *the* model of regulation to tackle the complexities of the crime of modern slavery is proving to have significant limitations. The following section highlights three of these relating to the quality of statements submitted, the lack of enforcement and a limited focus on remedy.

Is a Reliance on Mandatory Disclosure an Effective Approach to Regulate Modern Slavery?

The introduction of mandatory disclosure legislation in both Australia and the UK to address modern slavery in global supply chains has been met with both academic criticism and empirical evidence procured (largely) by non-government organisations elucidating the ineffectiveness of such a regime. The core critiques of both laws can be summarised as follows. Firstly, the minimal mandatory reporting criteria do not yield sufficient detail to fully illustrate the modern slavery risks of corporations nor the actions they are undertaking to address such risks. Consequentially, corporations are approaching modern slavery reporting superficially; engaging with it as a "box-ticking" exercise (Rogerson et al., 2020) and failing to identify substantive modern slavery risks. Secondly, as there are no substantive state-based enforcement mechanisms, assessment of the quality of corporate modern slavery statements is implicitly outsourced to the civil society sector, which in turn is limited in its capacity to facilitate compliance. This enforcement-vacuum perpetuates the limitations of long existing self-regulatory arrangements in business and human rights and simply covers it with a new (mandatory) veneer that belies a sense of accountability. The 'increased level of reporting has not prompted the anticipated increased levels of accountability' (Dillard & Vannari, 2019). Finally, the focus of these two pieces of legislation on disclosure correlates with a relative lack of attention to the implementation and provision of remedial mechanisms by business (or government) to address the needs of victim/survivors. Absent any further requirements, simple disclosures of modern slavery risks do not translate to action and remedy. Overall, the laws encourage a move towards cosmetic compliance, rather than substantively acting to curb modern slavery in supply chains (Krawiec, 2003; Landau, 2019).

Quality of Reporting

Both the UK and the Australian MSAs proscribe that companies surpassing a certain annual turnover must prepare a modern slavery statement. However, as the issues paper preceding the review of Australian MSA highlights, there are important substantive distinctions that differentiate the obligations of reporting companies in each jurisdiction (Australian Attorney-General's Department, 2017). Section 54(5) of the UK MSA states that "[a]n organisation's slavery and human trafficking statement *may* include information about-…" policies pertaining to slavery, areas of risk in businesses and supply chains and the company's effectiveness in addressing modern slavery. The Australian Attorney-General's Department, 2017 suggests the UK MSA's criteria are "optional", predicated on the use of the term "may". This is contradicted by some scholars who state companies must include these criteria (Azizul Islam & Van Staden, 2022). To address the perceived minimal nature of meeting these requirements, there has been a push to introduce new provisions that "prohibit the falsification of slavery and human trafficking statements" (Modern Slavery (Amendment) Bill 2021 (UK)). However, to date this bill has not progressed in the UK and the above criteria still apply (United Kingdom House of Lords, 2021). Conversely, Sect. 16 of the Australian MSA does explicitly proscribe that the reporting criteria is mandatory. However, the degree of detail mandated by the Australian MSA is also comparatively limited (Australian Attorney-General's Department, 2017).

Common amongst both laws, is that the limited threshold to satisfy mandatory requirements incentivises reporting entities to embrace reporting as "a box-ticking approach" (Rogerson et al., 2020). The limited guidance provided on reporting in the two modern slavery laws facilitate a "pro forma" approach in which corporations include just enough information to satisfy any legal bare minimum. As Ford and Nolan (2020) highlight, a key tool in effectively tackling modern slavery—human rights due diligence—is at best implicit in the Australian MSA. The result is that the quality of reporting under both the Australian and UK laws is variable, inconsistent, and often limited in the degree to which they disclose steps taken to address modern slavery (BHRRC, 2021; Dinshaw et al., 2022; Sinclair & Dinshaw, 2022). Such variability does not facilitate, and may in fact impede, more holistic identification of modern slavery risks by sector and geography.

Without discrete criteria, corporations are also assimilating modern slavery reporting within a more generalist ESG approach, largely for efficiency reasons or because the specificities of modern slavery are not recognised. This point has been particularly emphasised by Stevenson and Cole (2018) in the context of the UK MSA. They highlight that when modern slavery statements refer to audits or "codes of conduct", the practices utilised are often general and not tailored to modern slavery issues. This may be attributed to cost saving measures by amalgamating audits or other processes, or due to unfamiliarity with the intended expectations

of (relatively) new legislation targeting a social issue (Stevenson & Cole, 2018). Audits are designed to focus on information gathering, often representing symptoms rather than the root cause of problems. They offer a snapshot in time are more typically focused on a buyer's direct or tier-one suppliers and are less commonly used in the lower tiers of supply chains, where workers who are more vulnerable to exploitation are likely to be (LeBaron et al., 2017).

This assessment is reflected in textual analysis of Australian statements, which are predominantly superficial and lacking any disclosure that may be considered "discretionary" (Sinclair & Dinshaw, 2022). Furthermore, the quality of the reporting and its "mandatory" nature is weakened by the absence of an effective enforcement mechanism. Longitudinal reviews of Australian modern slavery statements have found that even when topics are made mandatory, just 23% of reporting entities fully address all criteria (Sinclair & Dinshaw, 2022). These critiques are echoed by the independent review of the UK MSA, which noted that "a number of companies are approaching their obligations as a mere tick-box exercise, and it is estimated around 40 per cent of eligible companies are not complying with the legislation at all" (United Kingdom Government, 2019). Thus, the limitations of the reporting requirements transform what should be a deep engagement with risk into a superficial ESG task. Despite the above criticisms, Mai et al. (2023) identify that the quality of disclosures of FTSE 100 companies has improved since the introduction of the UK MSA in 2015 however overall the 'quality remains low …as symbolic disclosure is predominantly in evidence'. However, the causes of this improvement are not institutionalised and rely on individual corporate motivations to improve, and in Australia, these improvements between reporting rounds are marginal (Dinshaw et al., 2022).

Lack of Enforcement

Perhaps the most relevant limitation of these disclosure-based regimes is the absence of a strong enforcement mechanism or substantive administrative oversight. Both independent reviews for the UK and Australian MSAs highlight that the laws lack any form of criminal or civil penalty or monitoring body to ensure the veracity of the corporate statements or monitor compliance (McMillan, 2023; United Kingdom Government, 2019). In the UK, there are mechanisms in place "to seek an injunction or order of specific performance to enforce the obligation" of disclosure (Wen, 2016). However, such a disclosure can be a minimum statement of non-action (Wen, 2016). The Australian MSA does not contain such provisions. Both reviews make recommendations advocating for the introduction of penalisable offences with respect to the failure to submit compliant modern slavery statements (McMillan, 2023; United Kingdom Government, 2019). The academic literature also emphasises this limitation. Interviewees of Azizu Islam and Van Staden's study highlight a common criticism levied against the UK MSA is the lack of a mechanism to verify the information disclosed in statements (Azizul Islam & Van Staden, 2022).

Both the Australian and UK regulatory approaches are predicated on a market-based disclosure model. More generally disclosure has been critiqued for its inadequacy as a tool for regulating financial markets and products (Dalley, 2007; Davidoff Solomon & Hill, 2013) and voluntary disclosure by corporations regarding social and environmental impacts has also been the subject of significant criticism. (Chilton & Sarfaty, 2017; Dingweth & Eichinger, 2010). In both cases, the focus is on the disconnect between the assumption of the efficient market hypothesis and the reality of the marketplace where constraints are numerous and both freedom of choice and freedom of information are constrained (Craswell, 2013). These problems are amplified when the activity being regulated involves complex supply chains.

Both the Australian and the UK MSAs place the onus on consumers and other market actors to evaluate the substance of modern slavery statements and supply a form of "soft enforcement" (Harris & Nolan, 2021). Stakeholders, like civil society organisations and academics, have been operative in evaluating modern slavery statements (Dinshaw et al., 2022). However, they lack the institutional and long-term capacity to affect effective compliance, leaving companies largely to self-regulate. Reliance on self-regulation to improve corporate accountability for human rights has been long been criticised (Baccaro & Mele, 2011; Locke, 2013; Sobczak, 2006) and yet both the Australian and UK MSAs continue with this approach with regards to enforcement. The development of modern slavery laws followed decades of earlier initiatives in the business and human rights field claiming to address the impacts of the rapid pace of globalisation and its negative effects on working conditions in global supply chains. (Deva & Bilchitz, 2013). Many of these earlier initiatives relied heavily on corporate codes of conduct (voluntary standards that are often loosely based on international labour standards) to regulate corporate behaviour and improve respect for human rights (Locke, 2013). As it currently stands, in both jurisdictions, there is an enduring enforcement-vacuum and an assumption that a soft self-regulatory approach to enforcement, along with a reliance on civil society organisations to carry the burden as a verifier will suffice. This framework negates the important role that the State and its formalised enforcement mechanisms can play in more effectively monitoring and preventing modern slavery in global supply chains.

Limited Focus on Remedy

A final critical issue with the disclosure-based regime is, that whilst it does operate as a soft check on companies to promote the implementation of actions to address modern slavery, it does not compel any meaningful action to remediate modern slavery. Whilst both MSAs reference remedy to varying degrees, neither is effective in properly legislating a regime in which companies are communicated the importance of establishing robust remediation processes. In the UK MSA, in Sect. 54(5) outlining the information that may be included in a modern slavery statement, there is no direct reference to remedy. However, it does state that reporting entities' statements may include "its policies in relation to slavery and human trafficking" and "its due diligence processes in relation to slavery and human trafficking in its business and supply chains". In the Australian MSA, the Sect. 16(1) mandatory criteria include direct provisions to require reporting entities to "describe the actions taken by the reporting entity and any entity that the reporting entity owns or controls, to assess and address those risks, including due diligence and remediation processes", as well as to "describe how the reporting entity assesses the effectiveness of such actions". Whilst the Australian MSA is far more direct in conveying the importance of remedy, it is a descriptive provision. It facilitates only an obligation to report on existing practices, not an obligation to implement, and it does not require any determination on whether such practices are effective. Remedy and due diligence are intrinsically linked and access to remedy is a core component of the UN Guiding Principles on Business and Human Rights (discussed further below).

At a general level, remedy should "[s]eek to restore the affected person or persons to the situation they would be in had the adverse impact not occurred (where possible)" (OECD, 2018). The UN Working Group on Business and Human Rights (UN BHR Working Group) has acknowledged that "[r]ights holders affected by business-related human rights abuses should be able to seek, obtain, and enforce a 'bouquet of remedies' depending upon varied circumstances, including the nature of the abuses and the personal preferences of rights holders." (Pryde et al., 2024; UN General Assembly, 2017).

Beyond the obvious lack of clarity about what the specific parameters of the provision of remedy might amount to under the Australian MSA, the core of the issue regarding remedy in the UK MSA is that the reporting criteria does not include a direct reference to remedy at all. Section 54(5)(c) does cover due diligence and risk management, yet there is no guidance on disclosing procedures relevant to remediating identified cases of modern slavery, nor does the provision guide reporting entities to disclose any established identification procedures or instances of modern slavery. This focus on risk management may preclude substantive engagement with remedying existing instances of modern slavery. This is reflected in civil society appraisals of UK modern slavery statements. For example, WikiRate and Walk Free (2018) analysed the statements of 418 reporting companies and found that "46% do not disclose any remediation methods at all". A separate Walk Free review of hotel sector modern slavery statements found that of the corporations reviewed, none "described remediation plans for exploited workers" (Walk Free et al., 2019). This is even more damning in a 2021 report by the Business & Human Rights Resource Centre (BHRRC, 2021), which found that of the 16,000 statements reviewed over five years, only approximately 2700 included reference to remedy. These results speak to a failure of the regulatory system. As has been noted, "a company may publish a statement that says it has taken no steps to address modern slavery risks during the financial year and still be compliant with the law". (BHRRC, 2021; Wen, 2016).

Whilst Australia does have mandatory criteria pertaining to remedy, even with such provisions, evidence suggests that the current regime does not facilitate the adoption of remediation mechanisms. A 2022 business survey found that only 13% of respondents "reported actions taken to address actual or potential modern slavery risks" (Marshall et al., 2024). Similarly, a longitudinal study of 92 companies' modern slavery statements over two rounds of reporting found that only one in three statements bore reference to "effective action to tackle modern slavery risks" and "56% of commitments made by companies in the first year of reporting to improve their modern slavery response remain unfulfilled" (Dinshaw et al., 2022).

The UK MSA is now approaching nine years of operation and the Australian MSA, six years. Whilst both have demonstrated the potential of the laws to shape business awareness, this increased consciousness of modern slavery has not yet resulted in effective practices to identify and remediate it. Evidence indicates that the majority of corporate statements issued as a result of the mandatory disclosure regimes show only superficial action to effectively address modern slavery. This underscores an urgency to better equip the MSAs to steer business action. At a minimum, there needs to be greater oversight and enforcement. In addition, there should be a specific requirement to undertake mandatory human rights due diligence to identify and assess salient risks in corporate operations and supply chains that give rise to modern slavery and to take steps to mitigate and address them. Additional complementary regulatory strategies may also play a role in strengthening the current limited regulatory responses to addressing modern slavery.

The Role of Human Rights Due Diligence in Overcoming the Limitations of the Social Disclosure Model

Despite the inherent weakness of the current Australian and UK regulatory approaches to tackling modern slavery in global supply chains, the laws do reflect a growing consensus that both states and business have a role to play in addressing the human rights impacts of business. Whilst the co-regulatory disclosure-based approach in the MSAs hardens expectations around reporting on social issues, the in-built ambiguity around compliance softens its effectiveness. The role of the state in these regimes is essentially to act as the orchestrator of private actors to encourage compliance, rather than as a strong regulator. Critically, compliance here is linked simply to a failure to report, not a failure to implement (i.e., to prevent or remedy modern slavery). As noted above, the principal design assumption in the disclosure model is that companies will report information about their modern slavery risks that the market, consumers and other actors can use to evaluate and respond to. An equally important assumption is that the reporting obligations will stimulate internal processes, such as human rights due diligence, so that human rights risks become a "serious integral part" of corporate decision-making (Muchlinski, 2012).

The concept of human rights due diligence was introduced in the UN Guiding Principles on Business and Human Rights ('Guiding Principles') as a mechanism by which companies might discharge their responsibility to respect rights and go beyond reporting to ensure business engages more substantively in addressing its human rights impact. Human rights due diligence requires companies to assess actual and potential human rights impacts, integrate and act upon the findings, track the responses, and communicate how those impacts are addressed (UNGPs, 2011). Its design and implementation are shared responsibilities of both government and business. They benefit from the watchful eye and engagement with other stakeholders, such as workers and their representatives. As opposed to a more traditional corporate due diligence approach which focuses solely on the risks to a company, human rights due diligence instead centres on the human rights risks that a company may pose to others (Bonnitcha & McCorquodale, 2017; UN General Assembly, 2018). The Guiding Principles (No. 17) specifically state that such due diligence should extend beyond a company's direct impacts and include impacts which "may be directly linked to its operations, products or services by its business relationships", thus including its supply chain. However, it is not a legal obligation and there is no legal liability if a company does not conduct such activity either under the Guiding Principles or under the modern slavery disclosure laws discussed above.

Since the establishment of the Guiding Principles in 2011, there have been significant advances in further defining and refining the concept of human rights due diligence, including some states legally mandating companies to conduct such assessments. There is a "growing international conviction—a global norm—that due diligence processes must be the core strategy for addressing human rights abuses and modern slavery practices" (McMillan, 2023). To date, the development of mandatory due diligence requirements has largely stemmed from Europe and there are currently three pieces of national legislation in operation which mandate corporate human rights due diligence.[3] These are the French *Duty of Vigilance Act* 2017, the German *Corporate Due Diligence in Supply Chains Act* 2021 and the Norwegian *Transparency Act* 2021. In addition, the European Corporate Sustainability Due Diligence Directive ((EU) 2019/1937) which sets out mandatory human rights and environmental due diligence obligations for corporations, together with a civil liability regime to enforce compliance with the obligations to prevent, mitigate, and bring adverse impacts to an end, continues to be negotiated.

However, as noted above, the role of human rights due diligence is not an integral part of the Australian or UK MSA. Whilst Sect. 16(1)(d) of the Australian act mandates that reporting entities disclose their due diligence processes, it does not include an obligation to conduct such due diligence. The independent review of the Australian MSA acknowledged "support for a stronger due diligence framework" and recommends that companies should have a due diligence system in place (McMillan, 2023). However, "HRDD [human rights due diligence] by itself does not include liability or enforcement, and reporting or transparency without liability and enforcement is rarely effective as a means of changing conduct" (McCorquodale & Nolan, 2021). There are lessons to be learned here from other fields, including global regulatory efforts to tackle bribery in international business transactions (Harris & Nolan, 2021). Efforts to combat it have relied primarily on a criminal law framework to address

[3] There are other examples of mandatory due diligence laws; however, these tend to apply to specific sectors or issues. See for an example, Australia's *Illegal Logging Prohibition Act 2012* (Cth) which obligates the importers and processors of timber into Australia to initiate due diligence processes to ensure the imported timber was not illegally logged. The European Union (EU) also passed the EU *Timber Regulation* 2010 (EUTR) and the EU *Conflict Minerals Regulation* 2014, both of which require some aspects of human rights due diligence. Most recently, the EU *Deforestation Regulation* (2023/115/EU) will impose due diligence obligations from 30 December 2024. The Regulation will require companies dealing with in in-scope products to undertake due diligence into the source of a wide range of commodities, including cattle, cocoa, coffee, palm-oil, rubber, soya and wood, to ensure that they have not been obtained as a result of deforestation.

the issue and incorporate elements of human rights due diligence (though not defined as such) backed by strong regulatory penalties for non-compliance (Abbott & Snidal, 2002; Nichols, 1999).

As such, for human rights due diligence to be effective, it must be accompanied by an enforcement strategy that requires companies to implement practices, rather than just report on them. In this co-regulatory model, the state should assume the main preventative role so that enforcement is not left to the discretion of business. A key feature of imposing a stronger enforcement framework is that it acts not simply as a deterrent but also works to incentivise compliance of HRDD by business (Gilad, 2010). A state-mandated enforcement framework should require business to *act* (not just report) and penalise them if they do not.

The enforcement issues of the current mandatory social disclosure models of the UK and Australia are numerous and complex. Whilst there is no singular panacea that will compel a stronger implementation of human rights due diligence by reporting entities, there have been proposed reforms that seek to transition the regulatory approach from one of a "failure to report" model—with all its internal imperfections—to a "failure to implement". Human rights due diligence is considered a key element in improving risk identification and remediation of modern slavery. If designed and implemented effectively, it could facilitate a transition that raises the bar of corporate obligation from disclosure to implementation (Landau, 2019).

One such iterative step towards achieving this are suggestions to re-centre the role of the state as a regulator and key enforcer of modern slavery law by introducing a criminal offence of "failing to prevent modern slavery" (Human Rights Law Centre, 2022); in some cases, framed in the positive as a "duty to prevent" (Anderson & Harris, 2023). The two elements of this duty are interlinked: the introduction of a strict liability criminal offence against companies for which there is evidence of modern slavery within their operations or supply chains and a full defence if a company has engaged in an appropriate level of human rights due diligence (Anderson & Harris, 2023).

A more precise formulation of the offence is that corporations are guilty should they fail "to prevent another legal or natural person (an "associate") from causing or contributing to modern slavery" (Anderson & Harris, 2023). By the nature of the offence being strict liability, there would need to be no determination of intent on behalf of the corporation; the factual presence of modern slavery would—by its own presence—sufficiently make out the necessary elements of the crime. This strict liability aspect would operate to strongly condition companies to elevate their modern slavery compliance approaches beyond the superficiality of existing reporting practices to a focus on implementation of human rights due diligence. The duty would compel companies to engage in both the preventative and remedial aspects of human rights due diligence,

This "failure to prevent" offence does not depend on the fallacy that the introduction of human rights due diligence will eliminate any possibility of modern slavery arising in operations or supply chains. A necessary element of this proposal would be a full defence in which a company is not guilty if they can suitably demonstrate that they had institutional (not ad hoc) human rights due diligence procedures that, if operating as intended, would identify, prevent, or remediate potential modern slavery. Evidently, modern slavery is a complicated issue, particularly when embedded in descending tiers of transnational supply chains. Therefore, the contextual considerations and understanding of the complexity of the issue eschewed by the strict liability nature of the offence could be considered in the relevance of the due diligence defence. However, if a corporation has not even attempted to institute these measures to a reasonable level, it stands to reason that the presence of modern slavery could give rise to a criminal offence.

The introduction of such an offence should be considered given the growing empirical evidence that demonstrates reporting fails to adequately incentivise corporations to meaningfully engage in human rights due diligence (Dinshaw et al., 2022). In essence, a "failure to prevent" offence bypasses the directness of existing modern slavery criminal laws that are crucially limited by factors like establishing intent or transnational or cross-jurisdictional case facts (Campbell, 2018). As the offence concerns "indirect omissions" (Campbell, 2018) and its strict liability nature means any instance of modern slavery is sufficient to establish the factual element of the crime, there is much more potential for it to have an institutional impact on corporate behaviour.

The human rights due diligence defence operates as an incentive to implement due diligence measures. As a "reverse-burden defence" (Campbell, 2018), the accused corporation must establish that they have adequate human rights due diligence measures in place (Anderson & Harris, 2023). Firstly, this formulation of the offence reflects the resource capabilities of companies and the burden of responsibility for preventing modern slavery. Currently, modern slavery reporting entities are those with a "consolidated revenue of at least $100 million for the reporting period" in Australia (Sect. 5(1)(a)) or "have an annual turnover of £36 million or more" for the UK (United Kingdom Government, 2019). These are organisations that have the resource capacity to institute a sufficiently effective human rights due diligence system. The formulation of due diligence as a defence rather than a duty, and one in which the burden of proof rests with the defendant, sets a discursive tone that modern slavery should not be treated as "business as usual". It should be considered exceptional, particularly with the presence of a well-functioning system of due diligence.

Despite the strong positives of the "failure to prevent" model, there are some limitations or impacts adverse to the purpose of the UK and Australian modern slavery regimes to highlight. The success of the strict liability and defence approach will be conditional on the degree to which human rights due diligence is sufficiently defined and viewed as effective at all. Human rights due diligence is new concept, yet to be thoroughly tested. State-mandated human rights due diligence requires clear guidance to avoid superficial responses (McCorquodale & Nolan, 2021). Additionally, resource and capacity limitations are well recognised in regulatory literature as a limiting factor in enforcement (Tyler, 2011). Resource and capacity limitations are both practical and political. The relationship between political will and regulator funding may determine the viability of establishing a policy lever that is centred on the enforcement of a criminal offence. In some cases, it may prove more effective to advocate for the establishment of a civil "duty to prevent" (Human Rights Law Centre, 2022).

This proposal to establish a "failure to prevent" offence has been considered by multiple stakeholders in the UK and Australia. The need for such a focus on preventative obligations was vocalised by civil society actors—like the Human Rights Law Centre and Be Slavery Free—particularly in response to the Australian Attorney-General's Department request for submissions as part of their review of the Australian MSA (McMillan, 2023). However, many of these submissions abstained from recommending a criminal offence, but rather conversely formulated a civil "duty to prevent" penalised through fines and other penalties. Such recommendations were reflected in the outcomes of the review of the Australian MSA, with a recommendation that the Act require reporting entities implement a due diligence system, rather than have such a system serve as a defence in a "failure to prevent" criminal offence model. Academics have been more forthright in advocating for a criminal offence. For example, Anderson and Harris have provided the most thorough exploration of such a criminal offence in reference to the current modern slavery regimes of Australia and the UK (Anderson & Harris, 2023). More generally, Campbell (2018) has advocated for "indirect omissions corporate liability"—the type of offence proposed—as a solution for many of the complexities that beleaguer criminal accountability for transnational corporations. The concept of "indirect omissions" refers to the failure of a corporation "to prevent or report an offence, as opposed to liability for the offence itself" (Campbell, 2018).

Although the offence has been labelled "novel" (Anderson & Harris, 2023), this does not suggest that it is not without precedent; at least within the UK jurisdiction. There has been a recent trend towards introducing "indirect omissions corporate liability" (Campbell, 2018), presaged by the introduction of similar offences in the UK's *Bribery Act 2010* and *Criminal Finances Act 2017*. The former involved the introduction of an offences for corporations if they fail "to prevent bribery by a person associated with [the] commercial organisation" (Australian Law Reform Commission, 2020). There are numerous overlapping features shared between bribery and modern slavery (trans-nationality; opacity of business structures, international crimes). The same can be argued for the provision introduced in the *Criminal Finances Act* which introduced an offence for tax evasion (Australian Law Reform Commission, 2020). There has been speculation that such momentum could accelerate so that other economic crimes may have "failure to prevent" offences (Campbell, 2018)—or other corporate crimes like modern slavery (Harris & Nolan, 2021). Whilst such developments have occurred in the UK jurisdiction, Anderson and Harris (2023) emphasise that such types of offences could be introduced into Australia's modern slavery framework, particularly through cross-reference with the modern slavery provisions already introduced in Australia's *Criminal Code*. Therefore, the institutional state of play is by no means hostile to the introduction of such provisions.

Complementary Regulatory Strategy to Support Modern Slavery Laws: Forced Labour Import Ban

Whilst the current modern slavery legislation can, and should be strengthened, it is also critical that a broader regulatory framework be established that will provide a holistic approach to addressing modern slavery in global supply chains. The adoption of an import ban, that blocks the importation or sale of foreign goods that are suspected of involving modern slavery, is a useful complementary strategy to support the current modern slavery laws and anticipates the employment of due diligence practices for companies to avoid being penalised by the ban. The US, which does not have the equivalent of a national modern slavery act, does however have two strategies to prevent goods tainted by forced labour (a form of modern slavery) from entering the country. These provide useful examples of how complementary legislation can support and build on other regulatory approaches to addressing modern slavery, including the requirement to conduct due diligence.

Section 307 of the US *Tariff Act* 1930 (USC s307 (2010)) prohibits the importation of goods mined, produced or manufactured, wholly or in part in any foreign country by forced labour. The regulator, in this case, the US Customs Border Protection (CBP) office, can investigate allegations of forced labour and will detain imports under a Withhold Release Order (WRO) where there is reasonable evidence to indicates that they are produced or manufactured in whole or in part by forced labour. Importers have the ability to contest

the order and provide proof that they were not produced with forced labour: if so the goods are to be released. At the time of writing there are 20 active WROs and eight findings against 11 different countries listed on the US CBP register (US Customs and Border Protection, 2024). This regulatory approach has proven effective in capturing corporate attention and in some cases, generating behavioural change to address forced labour in global supply chains. For example, the attention generated by the WRO placed on a Malaysian manufacturer of rubber gloves during the Covid pandemic, resulted in the company, Top Glove, taking action to remediate workers who had been subject to the payment of excessive recruitment fees (Top Glove, 2020).

More recently, the US has enacted the *Uyghur Forced Labor Prevention Act* (UFLPA) (Public Law No. 117–78) which provides a presumption that goods imported from Xinjiang Uyghur Autonomous Region of the People's Republic of China (Xinjiang) or by an entity on the UFLPA Entity List are prohibited from the US. In establishing the UFLPA, the US government endorsed a co-regulatory approach to addressing forced labour whilst still ensuring the State played a strong enforcement role. The government recognised the ongoing need to support business in achieving compliance with the regulation and has committed significant resources to doing so. The US government strategy to support the implementation of the UFLPA includes the establishment of an inter-agency group (the Forced Labor Enforcement Task Force) to guide its development and the provision of extensive resources to business to delineate the requirements of adequate due diligence. This law provides clear direction on due diligence, and it is supported by government investment in resources to assist companies in supply chain management, such as the List of Products Produced by Forced or Indentured Child Labor and the US Department of State's Responsible Sourcing Tool. In the 2023 budget, the US committed $89,756,000 USD to support enforcement of this regime (Department of Homeland Security, 2023).

Conclusion

The modern slavery laws of Australia and the UK are now at a critical juncture. Analysis of their operation indicates that whilst they have been effective in raising awareness about the issue of modern slavery in global supply chains, they have not yet led to widespread improved corporate practices to better identify and remedy that risk. Evidence suggests that it is pertinent to consider a policy reset and incorporate reforms to strengthen the current regulatory regimes. The emergence and development of the concept of human rights due diligence in business and human rights in the last decade is advancing understanding of how governments shape and businesses can implement—both working in conjunction with stakeholders—better approaches to identify and communicate risk and impact around modern slavery. There remains incoherence between legislative approaches, business practices, and the demands of stakeholders. However, human rights due diligence retains the potential to reshape preventative approaches to mitigating modern slavery. Alongside this is a recognition that enforcement must move from a discretionary approach that relies on self-regulation by companies, to a formalised mechanism regulated by the state that can both incentivise and penalise companies which fail to take action to prevent modern slavery. Evidence for the urgent need to better empower state bodies responsible for the MSA, and to strengthen the laws regulating modern slavery, comes at a time of opportunity, as both the Australian and the UK MSAs remain under review. There are sound regulatory models to learn from for the improvement of addressing modern slavery in global supply chains, including the development of adjacent laws that can support a more holistic approach to preventing modern slavery that also deploy useful tactics, including human rights due diligence.

Funding No funding was received to assist with the preparation of this manuscript.

Data availability Not Applicable.

Declarations

Competing Interest The authors have no competing interests to declare that are relevant to the content of this article.

References

Abbott, K. W., & Snidal, D. (2002). Values and interests: International legalization in the fight against corruption. *The Journal of Legal Studies, 31*(S1), S141–S177.

Anderson, A., & Harris, H. (2023). The failure to prevent modern slavery: Proposing a novel legal approach in attributing corporate criminal liability for transnational human rights abuses. *Melbourne University Law Review, 47*(1), 1–62.

Attorney-General's Department. (2017). Modern slavery in supply chains reporting requirement public consultation paper (Austl.)

Australian Law Reform Commission. (2020, April). *Summary report: corporate criminal responsibility*. Australian Government. Retrieved 9 February 2024, from https://www.alrc.gov.au/wp-content/uploads/2020/05/ALRC-CCR-Summary-Report-web-1.pdf.

Azizul Islam, M., & Van Staden, C. J. (2022). Modern slavery disclosure regulation and global supply chains: Insights from stakeholder narratives on the UK modern slavery act. *Journal of Business Ethics, 180*, 455–479.

Baccaro, L., & Mele, V. (2011). For lack of anything better? International organizations and global corporate codes. *Public Administration, 89*(2), 451.

Bonnitcha, J., & McCorquodale, R. (2017). The concept of 'due diligence' in the UN guiding principles on business and human rights. *European Journal of International Law, 28*, 899.

Business and Human Rights Resource Centre. (2021, February). *Modern Slavery Act: Five years of reporting*. Business and Human Rights Resource Centre. Retrieved 9 February 2024, from https://media.business-humanrights.org/media/documents/Modern_Slavery_Act_2021.pdf.

Campbell, L. (2018). Corporate liability and the criminalisation of failure. *Law and Financial Markets Review, 12*(2), 57–70.

Chilton, A. S., & Sarfaty, G. A. (2017). The limitations of supply chain disclosure regimes. *Stanford Journal of International Law, 53*, 1–55.

Commonwealth of Australia. (2017). *Parliamentary Inquiry Report*, Hidden in Plain Sight. (Austl.)

Craswell, R. (2013). Static versus dynamic disclosures and how not to judge their success or failure. *Washington Law Review, 88*, 333.

Crewther C MP. (2017). Comments made at UN Global Compact Network Australia's *Modern Slavery Forum* held in Sydney on 6 April 2017

Dalley, P. J. (2007). The use and misuse of disclosure as a regulatory system. *Florida State University Law Review, 34*(4), 1089–1131.

Datta, M. N., & Bales, K. (2013). Slavery is bad for business: Analyzing the impact of slavery on national economies. *The Brown Journal of World Affairs, 19*(2), 205–223.

Davidoff Solomon, S., & Hill, C. (2013). Limits of disclosure. *Seattle University Law Review, 36*, 1–32.

Department of Homeland Security Appropriations Bill, 2023 (H. Rept 117–396). https://www.congress.gov/congressional-report/117th-congress/house-report/396/1

Deva, S., & Bilchitz, D. (Eds.). (2013). *Human Rights Obligations of Business*. Cambridge University Press.

Dillard, J., & Vinnari, E. (2019). Critical dialogical accountability: From accounting-based accountability to accountability-based accounting. *Critical Perspectives on Accounting, 62*, 16–38.

Dingweth, K., & Eichinger, M. (2010). Tamed transparency: How information disclosure under the global reporting initiative fails to empower. *Global Environmental Politics, 10*(3), 74–96.

Dinshaw F, Nolan J, Hill C, Sinclair A, Marshall S, McGaughey F, Boersma M, Bhakoo V, Goss J and Keegan P. (2022, 16 November) *Broken Promises: Two Years of Corporate Reporting under Australia's Modern Slavery Act.* Human Rights Law Centre. Retrieved 9 February 2024, from https://www.hrlc.org.au/reports-news-commentary/broken-promises.

Dottridge M. (2017, October 17). *Eight reasons why we shouldn't use the term 'modern slavery'*. openDemocracy. Retrieved 18 October 2024, from https://www.opendemocracy.net/en/beyond-trafficking-and-slavery/eight-reasons-why-we-shouldn-t-use-term-modern-slavery/.

Field F, Miller M and Baroness Butler-Sloss, Home Office (UK). *Independent Review of the Modern Slavery Act*, *Second Interim Report: Transparency in Supply Chains*, para. 2.5.2 (2019)

Ford, J., & Nolan, J. (2020). Regulating transparency on human rights and modern slavery in corporate supply chains: the discrepancy between human rights due diligence and the social audit. *Australian Journal of Human Rights*, *26*(1), 27–45.

Gilad, S. (2010). It runs in the family: Meta-regulation and its siblings. *Regulation & Governance, 4*(4), 485.

Harris, H., & Nolan, J. (2021). Learning from experience: Comparing legal approaches to foreign bribery and modern slavery. *Cardozo International and Comparative Law Review, 4*(2), 603–652.

Harris, H., & Nolan, J. (2022). Outsourcing the enforcement of modern slavery: Overcoming the limitations of a market-based disclosure model. *Journal of Industrial Relations, 64*, 223–247.

Human Rights Law Centre. (2022, 22 November). *Submission to Review of Australia's Modern Slavery Act 2018*. Human Rights Law Centre. Retrieved 9 February 2024, from https://www.hrlc.org.au/submissions/msa-2018-review.

International Labour Organization. (2014). *ILO says forced labour generates annual profits of US$150 billion*. International Labour Organization. Retrieved 9 February 2024, from www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_243201/lang--en/index.htm.

Krawiec, K. (2003). Cosmetic compliance and the failure of negotiated governance. *Washington University Law Quarterly, 81*, 487–544.

Landau, I. (2019). Human rights due diligence and the risk of cosmetic compliance. *Melbourne Journal of International Law, 20*, 222–247.

LeBaron, G., Lister, J., & Dauvergne, P. (2017). Governing global supply chain sustainability through the ethical audit regime. *Globalizations, 14*(6), 958–975.

LeBaron, G., & Ruhmkof, A. (2017). Steering CSR through home state regulation: A comparison of the impact of the UK bribery act and the modern slavery act on global supply chain governance. *Global Policy, 8*(SS3), 15–28.

Locke, R. (2013). *The Promise and Limits of Private Power: Promoting Labor Standards in a Global Economy*. Cambridge University Press.

Mai, N., Vourvachis, P., & Grubnic, S. (2023). The Impact of the UK's modern slavery act (2015) on the disclosure of FTSE 100 companies. *British Accounting Review, 55*(3), 1–28.

Mares, R. (2018). Corporate transparency laws: A 'hollow victory? *Netherlands Quarterly of Human Rights, 36*(3), 189–213.

Marshall S, Bhakoo V, Kach A, McGaughey F, Boersma M, Dinshaw F, Nolan J and Sinclair A. *Australia's Modern Slavery Act: Is it Fit for Purpose?* Australian Human Rights Institute. Retrieved 9 February 2024, from https://www.humanrights.unsw.edu.au/news/new-research-shows-companies-support-stronger-modern-slavery-laws.

McCorquodale, R., & Nolan, J. (2021). The effectiveness of human rights due diligence for preventing business human rights abuses. *Netherlands International Law Review, 68*, 455–478.

McMillan J. (2023) Report of the statutory review of the *Modern Slavery Act 2018* (Cth): The first three years. Commonwealth of Australia

Mende, J. (2019). The concept of modern slavery: Definition, critique, and the human rights frame. *Human Rights Review, 20*(2), 229–248.

Muchlinski, P. (2012). Implementing the new corporate human rights framework: Implications for corporate law, governance and regulation. *Business Ethics Quarterly, 22*(1), 145–177.

New, S. J. (2015). Modern slavery and the supply chain: The limits of corporate social responsibility? *Supply Chain Management: An International Journal, 20*(6), 697–707.

Nichols, P. (1999). Regulating transnational bribery in times of globalization and fragmentation. *Yale Journal of International Law, 24*(1), 257–303.

Nolan, J., & Boersma, M. (2019). *Addressing Modern Slavery*. UNSW Press.

Organisation for Economic Co-operation and Development (OECD). (2018). *OECD Due Diligence Guidance for Responsible Business Conduct*. Organisation for Economic Co-operation and Development. Retrieved 18 October 2024, from https://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf

Pryde, S., Nolan, J., Marshall, S., Kach, A., Boersma, M., McGaughey, F., & Bhakoo, V. (2024). Understanding remedy under the Australian modern slavery act: From conceptualization to provision of remedy. *Journal of Modern Slavery, 9*(1), 70–95.

Redmond, P. (2012). Directors duties and corporate social responsiveness. *University of New South Wales Law Journal, 35*(1), 317.

Rogerson, M., Crane, A., Soundararajan, V., Grosvold, J., & Cho, C. H. (2020). Organisational responses to mandatory modern slavery disclosure legislation: A failure of experimentalist

governance? *Accounting, Auditing & Accountability Journal, 33*(7), 1505–1534.
Sarfaty, G. (2015). Shining light on global supply chains. *Harvard International Law Journal, 56*(2), 419–463.
Senate Standing Committee on Legal and Constitutional Affairs. Modern Slavery Bill [Provisions] 2018 (Cth) (Austl.) https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/ModernSlavery (Senate Standing Committee)
Sinclair A and Dinshaw F. (2022, February 3). *Paper Promises? Evaluating the Early Impact of Australia's Modern Slavery Act*. Human Rights Law Centre. Retrieved 9 February 2024, from https://www.hrlc.org.au/reports-news-commentary/2022/2/3/paper-promises-evaluating-the-early-impact-of-australias-modern-slavery-act
Sobczak, A. (2006). Are codes of conduct in global supply chains really voluntary: From soft law regulation of labour relations to consumer law. *Business Ethics Quarterly, 16*(2), 167–184.
Stevenson, M., & Cole, R. (2018). Modern slavery in supply chains: A secondary data analysis of detection, remediation and disclosure. *Supply Chain Management, 12*(3), 81–99.
The Office of Impact Analysis. (2018). *Regulation Impact Statement*. Department of Home Affairs, Australian Government. Retrieved 9 February 2024, from https://ris.pmc.gov.au/2018/07/18/modern-slavery-reporting-requirement
Top Glove Press Release. (2020). Top Glove commences remediation payment to migrant workers & remains committed to continue improving worker welfare. Top Glove. Retrieved 9 February 2024, from https://www.topglove.com/single-press-release-en?id=96&title=top-glove-commences-remediation-payment-to-migrant-workers-and-remains-committed-to-continue-improving-worker-welfare
Tyler, A. (2011). Enforcing enforcement: Is the OECD anti-bribery convention's peer review effective? *George Washington International Law Review, 43*, 137.
UN General Assembly. (2017, July 18). Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises, 38, U.N. Doc. A/72/162
United Nations Human Rights Office of the High Commissioner. (2011). *Guiding Principles on Business and Human Rights ('UNGPs)*. United Nations Human Rights Office of the High Commissioner. Retrieved 9 February 2024, from https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf
United Nations General Assembly. (2018). Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises, 15, U.N. Doc. A/73/163
United Kingdom Government. (2019). Independent review of the Modern Slavery Act 2015: Final Report. UK Government, https://www.gov.uk/government/publications/independent-review-of-the-modern-slavery-act-final-report
United Kingdom House of Lords. (2021). Modern Slavery (Amendment) Bill [HL] (UK). UK Parliament. https://bills.parliament.uk/bills/2892
United Nations Department of Economic and Social Affairs. (2015). UN Sustainable Development Goals. https://sdgs.un.org/goals
US Customs and Border Protection. (2024). *Withhold Release Orders and Finding List*. US Customs and Border Protection. Retrieved 9 February 2024, from https://www.cbp.gov/trade/forced-labor/withhold-release-orders-and-findings
Walk Free, WikiRate, *Business & Human Rights Resource Centre and Australian National University. (2019). Beyond Compliance in the Hotel Sector: A Review of UK Modern Slavery Statements*. Walk Free. Retrieved 9 February 2024, from https://cdn.walkfree.org/content/uploads/2020/10/06163448/2632_MSA-statements.V8_FNL.pdf
Walk Free. (2013). *The Global Slavery Index.* Walk Free. Retrieved 9 February 2024, from https://www.walkfree.org/resources/
Walk Free. (2023). The Global Slavery Index. Walk Free. Retrieved 9 February 2024, from https://www.walkfree.org/resources/
Wen, S. (2016). The cogs and wheels of reflexive law—Business disclosure under the modern slavery act. *Journal of Law and Society, 43*(3), 327–359.
WikiRate and Walk Free. (2018). *Beyond Compliance: The Modern Slavery Act Research Project. Walk Free.* Retrieved 9 February 2024, from https://cdn.walkfree.org/content/uploads/2020/10/06165743/Wikirates_WFF_MSA-Analysis_180917_Digital.pdf