



Inquiry into the Commonwealth procurement framework

Submission to the Parliament of Australia
Joint Select Committee on Government Procurement

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Anti-Slavery Australia
Faculty of Law
University of Technology Sydney
PO Box 123, Broadway NSW 2007

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Acknowledgements

Indika Chandrasekera

Jennifer Burn, Director, Anti-Slavery Australia, University of Technology Sydney.

EXECUTIVE SUMMARY

This submission is made to the Parliament of Australia Joint Select Committee on Government Procurement (“the Committee”), in response to the Committee’s inquiry into the Commonwealth Procurement Framework. By reviewing the Commonwealth Procurement Framework, the Federal government has the opportunity to lead Australia’s response to slavery and trafficking in supply chains, shaping the future of ethical procurement policies within State and Territory governments, as well as influencing the private sector in respect of responsible business practices.

Established in 2003, Anti-Slavery Australia is a leading research, policy and legal centre at the University of Technology Sydney with the mission of abolishing human trafficking, slavery and slavery-like practices in Australia. Anti-Slavery Australia provides legal advice and representation to men, women and children who have experienced these forms of exploitation in Australia. While Anti-Slavery Australia recognises the broad scope of human rights due diligence legislation, the focus of this submission will be on the specific human rights abuses of human trafficking, slavery and slavery-like practices including forced labour, referred to in this submission as human trafficking and slavery.

Since 2012, Anti-Slavery Australia has recommended that the Australian government consider the issue of human trafficking and slavery in its supply chains and procurement policies. Effective policies in this area require engagement with business, trade-unions and non-government organisations, and must involve consultation with peak national bodies including the Australian Government National Roundtable on Human Trafficking and Slavery.

Recent years have seen a growth in public interest on human rights abuses that occur within supply chains. In Australia, this has been reflected in the formation of the Attorney-General’s Supply Chains Working Group in 2014, while there has been a simultaneous development of related legislation in overseas jurisdictions including the United Kingdom, the United States and throughout Europe. The introduction of a recent private member’s bill to amend the UK Modern Slavery Act,¹ highlights the role that government procurement plays in combatting human trafficking and slavery in the modern era.

¹ The *Modern Slavery (Transparency in Supply Chains) Bill* [HL] 2016-17, s1 contains provisions that extend existing transparency requirements to public bodies including bodies governed by public law, contracting authorities and central government authorities in relation to public contracts.

This submission draws upon Anti-Slavery Australia's research and publications, as well as advocacy and legal casework experience with survivors of human trafficking and slavery in Australia. This submission will address the following terms of reference:

- a. the Commonwealth procurement framework;
- b. consideration of the Commonwealth Procurement Rules to come into force on 1 March 2017 (CPR17) and, in particular:
 - i. clauses 10.10, 10.18, 10.30, 10.31 and 10.37 (the 'new clauses'),
 - ii. how the new clauses can most effectively be implemented,
 - iii. weighting and other mechanisms that should apply to any Commonwealth procurement decision making, taking into account CPR17, and
 - iv. its interaction with any other Government policies and programs (including grants), instruments, guidelines and documents relating to procurement, including the Department of Finance's Resource Management Guide No. 415;
- c. the extent to which CPR17 and any related instrument and rules can be affected by trade agreements and other World Trade Organization (WTO) agreements, including:
 - i. existing trade agreements Australia has entered into, and
 - ii. trade agreements that the Commonwealth Government is currently negotiating, including the WTO Agreement on Government Procurement; and
- d. any related matters.

Anti-Slavery Australia commends the introduction of new clauses into the Commonwealth Procurement Rules on 1 March 2017, demonstrating the Australian government's commitment to "support ethical supplier practices and recognise the contribution Australian businesses make to our economy".² These new clauses represent a step toward the eradication of human trafficking and slavery in Australian supply chains.

To further address these concerns, Anti-Slavery Australia makes the following recommendations:

- **To better articulate the link between clause 10.18 of the Commonwealth Procurement Rules (which outlines the requirement for officials to make reasonable enquiries to ensure that procurement is carried out in accordance with relevant regulations and regulatory frameworks) and Federal legislation on human trafficking and slavery set out in Divisions 270 and 271 of the *Criminal Code Act 1995 (Cth)*, clause 10.18 of the Commonwealth Procurement Rules should be amended to specifically address human trafficking and slavery.**

² Senator the Hon. Mathias Cormann, 'Australian businesses benefit from new Government purchasing rules' (Media Release, MC 57/16, 30 November 2016) <<http://www.financeminister.gov.au/media-release/2016/11/30/australian-businesses-benefit-new-government-purchasing-rules>>.

- **To assist procurement officers in the effective implementation of clause 10.18 of the Commonwealth Procurement Rules, the Department of Finance should make amendments to the Commonwealth Procurement Framework to include:**
 - **the creation of clear guidelines for all procurement officers to assist them to identify and respond to the risk of human trafficking and slavery in government supply chains, and to prevent any association with or contribution to such breaches by the Australian government; and**
 - **the provision of training to procurement officers on how to identify at-risk goods, services or industries, and the measures that should be taken to address identified instances of human trafficking and slavery in the supply chain.**
- **To clarify the Australian government’s expectations of contracting parties and their suppliers, the Commonwealth Procurement Framework should be amended to include:**
 - **mandatory requirements in government tenders and contracts if a contract is deemed to be at “high risk” of involving human trafficking and / or slavery in the supply chain; and**
 - **a Commonwealth “Suppliers’ Code of Conduct”, which requires suppliers to adhere to key principles regarding human rights in supply chains.**
- **To ensure that suppliers are held accountable for human rights abuses in the supply chain, the Australian government should create processes whereby the public and other interested persons can report concerns about suppliers of government contracts, and have these concerns addressed and resolved effectively.**

1. COMMONWEALTH PROCUREMENT FRAMEWORK IN CONTEXT

Human trafficking and slavery are severe forms of human rights abuse that occur around the world. The clandestine and complex nature of human trafficking and slavery means that its prevalence can only ever be estimated. However, the International Labour Organisation (“ILO”) estimates that globally, almost 21 million people are victims of forced labour. Of these, 19 million face exploitation by private individuals and enterprises, with state and rebel groups responsible for the exploitation of the remaining 2 million victims.³

Survivors of human trafficking and slavery are often faced with lasting physical and psychological trauma. They may also suffer from economic and social impacts such as unpaid wages, lost earning capacity, social, cultural and linguistic isolation, social stigma and rejection from the community. The prevention of human trafficking and slavery in supply chains requires a global response in recognition that these practices are not confined to any one country or region.

Australia has international obligations to address human rights abuses including human trafficking and slavery, which are found in a number of international agreements that include:

- *The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention Against Transnational Organised Crime;*
- *The International Covenant on Civil and Political Rights;*
- *The International Covenant on Economic, Social and Cultural Rights;*
- *The Convention on the Elimination of All forms of Discrimination against Women;*
- *The Convention on the Rights of the Child;*
- *The Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery;* and
- relevant ILO forced labour conventions.⁴

In line with these international obligations, Australia has introduced Commonwealth offences related to human trafficking and slavery, found in the *Criminal Code Act 1995* (Cth) (“Criminal Code”). These provisions include the offence of conducting a business involving servitude.⁵

³ International Labour Organization, *Forced labour, modern slavery and human trafficking*, <<http://www.ilo.org/global/topics/forced-labour/lang--en/index.htm>>.

⁴ These include the *Forced Labour Convention, 1930* (No. 29) and the *Worst Forms of Child Labour Convention, 1999* (No. 182).

⁵ Criminal Code Act 1995 (Cth) s270.5(2).

Another key international instrument is the United Nations *Guiding Principles on Business and Human Rights* (“UN Guiding Principles”), which outlines the state’s duty to protect human rights,⁶ the responsibility of corporations to respect human rights,⁷ and the necessity of ensuring remedies for victims of human rights abuses in the business context.⁸ The UN Guiding Principles are also reflected in Australia’s obligations under the Organisation for Economic Co-operation and Development (“OECD”) *Guidelines for Multinational Enterprises* (“OECD Guidelines”), which note that the application of the OECD Guidelines extends to entities that may be private, state or mixed.⁹

Australian government procurement expenditure accounts for a significant portion (33.9%) of Australia’s gross domestic product.¹⁰ In the 2015-16 financial years, Commonwealth government procurement contracts were reportedly valued at almost \$60 billion.¹¹ Of these, 15.2% were identified as contracts with entities that were primarily or entirely based outside of Australia.¹² Procurement contracts for healthcare services, building and construction, and defence and law enforcement equipment and supplies were amongst the top ten categories for government contracted goods and services.¹³

1.1 TRAFFICKING AND SLAVERY IN SUPPLY CHAINS (THE AUSTRALIAN CONNECTION)

Recently reported, high-profile cases of slavery, forced labour and bonded-labour demonstrate that certain industries have a high risk of human rights abuses, with a resulting global impact. Some well-publicised international examples have revealed conditions of slave labour in:¹⁴

- the West African cocoa industry;
- the Uzbek cotton industry; and
- the Spanish agricultural industry.

ILO estimates that global profits from non-domestic forced labour exploitation reach approximately US\$43.4 billion each year, or an average profit of US\$4,000 per victim,

⁶ United Nations Human Rights Office of the High Commissioner, *Guiding Principles on Business and Human Rights*, ch 1 <http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf>.

⁷ Ibid. ch 2.

⁸ Ibid. ch 3.

⁹ Organisation for Economic Co-operation and Development, *Guidelines for Multinational Enterprises*, ch 1, 3 <<http://www.oecd.org/corporate/mne/1922428.pdf>>.

¹⁰ Organization for Economic Cooperation and Development, *Government at a glance 2015: County Fact Sheet – Australia*, (2015) 3 <<https://www.oecd.org/gov/Australia.pdf>>.

¹¹ Department of Finance, *Statistics on Australian Government Procurement Contracts*, (7 December 2016) <<https://www.finance.gov.au/procurement/statistics-on-commonwealth-purchasing-contracts>>.

¹² Ibid.

¹³ Ibid.

¹⁴ Andrew Crane, ‘Modern Slavery as a Management Practice: Exploring the conditions and capabilities for human exploitation’, (2013) 38(1), *Academy of Management Review* 49, 49.

per year.¹⁵ These profits are estimated to result from the exploitation of workers in both agricultural and industrial sectors (including construction and manufacturing).¹⁶ The Attorney-General's Department *Information Sheet for Commonwealth Government procurement officers* lists the industries, services and sectors that have demonstrated higher levels of labour exploitation in their supply chains to include:¹⁷

- goods such as cotton, sugarcane, cattle, rice, fish, cocoa, bricks, garments, carpets, footwear, gold, diamonds and coal;
- services such as agriculture, cleaning, construction, hospitality and mining; and
- sectors that employ a high proportion of recently arrived immigrants or foreign workers, youth workers, workers with limited English skills, casual or temporary workers and workers in low-skilled or low-paid industries.

While the focus on supply chain exploitation is frequently discussed in the context of globally imported products and overseas industries, recent Australian case studies demonstrate that crimes such as slavery, forced labour and servitude also occur within Australia's borders and supply chains.¹⁸

1.1.1 Example One: Horticulture (Australia)

In 2015, a Four Corners investigation described severe forms of labour exploitation in the Australian agricultural industry, the products of which were said to be supplied to large supermarket and fast-food retailers throughout Australia.¹⁹ The report outlined the role of unscrupulous labour hire companies in recruiting migrant workers, and revealed extreme conditions of abuse, harassment, assaults and underpayment of wages.

More recently, in the matter of *Fair Work Ombudsman v Maroochy Sunshine Pty Ltd & Anor*,²⁰ Jarrett J described the "egregious" treatment of 22 workers from Vanuatu.²¹ The facts set out in the case detailed that the workers were engaged through the labour-hire company, Maroochy Sunshine Pty Ltd. The company facilitated the workers' travel to Australia, and organised work for them upon arrival. These "vulnerable foreign workers lured to work in Australia by false promises..."²² entered the country on the Department of Employment, Education and Workplace Relations' Seasonal Worker Program to work in fruit and vegetables farms in Queensland. The workers were

¹⁵ International Labour Office, *Profits and Poverty: The Economics of Forced Labor*, (2014) 21 <http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_243391.pdf>.

¹⁶ *Ibid.*

¹⁷ Commonwealth Government Attorney-General's Department, *Information Sheet for Commonwealth Government procurement officers*, 1 <<https://www.ag.gov.au/CrimeAndCorruption/HumanTrafficking/Documents/Human-Trafficking-Information-sheet-for-Commonwealth-Government-procurement-officers.pdf>>.

¹⁸ AHRC, ACCSR, GCNA *Human rights in the supply chains: Promoting positive practice* (2015) 6.

¹⁹ Caro Meldrum-Hanna, Ali Russell & Mario Christodoulo, 'Labour exploitation, slave-like conditions found on farms supplying biggest supermarkets', *Four Corners* (online), 7 May 2015 <<http://www.abc.net.au/news/2015-05-04/supermarkets-food-outlets-exploit-black-market-migrant-workers/6441496>>.

²⁰ [2017] FCCA 559.

²¹ *Fair Work Ombudsman v Maroochy Sunshine Pty Ltd & Anor* [2017] FCCA 559 [63] (Jarrett J).

²² *Fair Work Ombudsman v Maroochy Sunshine Pty Ltd & Anor* [2017] FCCA 559 [8] (Jarrett J).

reported to have limited education, were supplied with little food, and stayed in cramped living quarters.²³ The judgment outlines the circumstances in which the workers were exploited.²⁴

Indicators of exploitation (*Fair Work Ombudsman v Maroochy Sunshine Pty Ltd*):

- Immediately taken to isolated, rural accommodation described as “in the middle of nowhere”
- Not provided with any pocket money
- Not provided with sufficient food
- Not able to call their families
- Had limited understanding of Australian workplace law

Figure 1 These indicators of exploitation are common across all types of human trafficking and exploitation in Australia

In particular, the case notes the lasting and profound impact that this experience had on the employees:

[Mr Aru] is still very upset by his experience working for Maroochy Sunshine and Mr Bani... working for Maroochy Sunshine was like “slavery times”. He had never before experienced working a full day without even a cup of tea and only being fed tomatoes; and he will never forget how he was treated by Mr Bani.²⁵

Mr Arubuti gave evidence that... he earned no money, had very little food and no control over his life. He did not know what was happening or whether he would be working each day... he was not paid and was left in debt. He has continued to have to make repayments on his loan and has about A\$900 left to repay.²⁶

This case demonstrates the potential for human rights abuses and trafficking to occur within Australian supply chains.

1.1.2 Example Two: Clothing (International)

Apparel manufacturing is one of the largest export industries in the world, with 14 of the world’s top 15 exporters based developing countries.²⁷ The 2013 Rana Plaza collapse brought global attention to the exploitative working conditions of garment factory

²³ Nick McKenzie, ‘Slavery claims as seasonal workers from Vanuatu paid nothing for months’ work’, *Sydney Morning Herald* (online), 27 March 2017 <<http://www.smh.com.au/national/investigations/slavery-claims-as-seasonal-workers-from-vanuatu-paid-nothing-for-months-work-20170327-gv7k99.html>>.

²⁴ *Fair Work Ombudsman v Maroochy Sunshine Pty Ltd & Anor* [2017] FCCA 559 [29] to [45] (Jarrett J).

²⁵ *Ibid.* [53].

²⁶ *Ibid.* [55].

²⁷ World Bank Group, *Stitches to Riches* 23

workers in Bangladesh, a country that is one of the largest apparel exporters in the world, accounting for 6.4% of the global market.²⁸

Worldwide estimates of exploitation in the manufacturing industry vary. ILO figures suggest that in the Asia-Pacific region alone, there are 4.9 million victims of forced labour exploitation in the construction, manufacturing, mining and utilities sector.²⁹

The Australian government engages with the global garment industry through its Departments, including the Department of Defence in relation to the procurement of corporate uniforms. Indeed, the Department of Defence *Clothing Procurement Report* indicates that approximately \$63 million is spent on combat clothing each year, with approximately \$13 million spent on items produced overseas.³⁰

Given the high risk of labour exploitation present in the garment and manufacturing sector, particularly within the Asia-Pacific region, Australian government procurement practices should identify, address and mitigate the risk of human rights abuses such as human trafficking and slavery in the supply chain.

2. COMMONWEALTH PROCUREMENT RULES CLAUSE 10.18

Anti-Slavery Australia commends the introduction of new clauses within the Commonwealth Procurement Rules, in particular, the inclusion of clause 10.18 that states:

Officials must make reasonable enquiries that the procurement is carried out considering relevant regulations and/or regulatory frameworks, including but not limited to tenderers' practices regarding:

- labour regulations, including ethical employment practices;
- occupational, health and safety; and
- environmental impacts.

The Department of Finance guidance information, *Consideration of relevant regulations and/or frameworks* expands on this clause and directs procurement officers to the Attorney General's Department website. This website contains information on Commonwealth criminal law related to trafficking and slavery, and as noted above, identifies industries that are at high-risk of labour exploitation in their supply chains.

While this guidance is a useful resource tool for procurement officers, the existing material should be expanded. This could be achieved by amending clause 10.18 to include specific reference to "human rights abuses, including trafficking, slavery and slavery-like practices in the supply chain". This would more clearly articulate the link

²⁸ Ibid. 24.

²⁹ International Labour Office, above n 15, 18.

³⁰ Australian Government Department of Defence, Report of the Review of the Policy Framework for Clothing Procurement, [64].

between the new clause 10.18 of the Commonwealth Procurement Rules and Commonwealth offences related to trafficking and slavery.

Recommendation:

To better articulate the link between clause 10.18 of the Commonwealth Procurement Rules (which outlines the requirement for officials to make reasonable enquiries to ensure that procurement is carried out in accordance with relevant regulations and regulatory frameworks) and Federal legislation on human trafficking and slavery set out in Divisions 270 and 271 of the Criminal Code Act 1995 (Cth), clause 10.18 of the Commonwealth Procurement Rules should be amended to specifically address human trafficking and slavery.

3. THE EFFECTIVE IMPLEMENTATION OF CLAUSE 10.18

To further assist in the effective implementation of clause 10.18 of the Commonwealth Procurement Rules, Anti-Slavery Australia recommends that various measures should be introduced to ensure that trafficking and slavery are identified within Australian government supply chains.

These measures would reflect the Australian government's strong commitment to ending exploitation and would assist the government to address the issue of exploitation in supply chains, in accordance with *the National Action Plan to Combat Human Trafficking and Slavery 2015-19*.³¹

3.1 GUIDELINES FOR GOVERNMENT PROCUREMENT OFFICERS

Anti-Slavery Australia recommends that the Australian government create guidelines to assist procurement officers in the identification, prevention and mitigation of potential human rights abuses, including human trafficking and slavery, in government supply chains. These guidelines should be integrated into the existing materials that relate to 'Whole-of-Government Procurement' contracts, arrangements and initiatives. These guidelines should have a clear link to the Commonwealth Procurement Rules.

The guidelines should clearly articulate Australia's human rights obligations as enshrined in domestic and international law. The guidelines should also contain relevant resources to be used by procurement officers in identifying and quantifying the human rights risks associated with government tenders and procurement contracts.

³¹ See ch 4, para 4.4, "Key Areas of Focus".

3.1.1 Human Rights Risk Assessment Framework

Anti-Slavery Australia recommends that the Australian government encourage a human rights risk assessment framework that will assist procurement officials in identifying the industries, products and countries of origin that have a high risk of trafficking and slavery in their supply chains (“high risk contracts”). This will help procurement officers to quickly determine whether there is an increased potential for human rights abuses to be attached to a particularly project or tender, through a potential supplier’s organisation or supply chain.

3.2 TRAINING FOR GOVERNMENT PROCUREMENT OFFICERS

Anti-Slavery Australia recommends that government procurement officers receive training on human trafficking and slavery, identification of risk in supply chains and the appropriate measures to be taken where instances of human trafficking and slavery are identified. This would be supported by comprehensive procedures and policies that would assist procurement officers to perform their duties under clause 10.18 of the Commonwealth Procurement Rules.

Anti-Slavery Australia’s eLearning course is an online training program funded by the Australian government aimed at raising awareness and assisting frontline workers, including community and social workers, health care professions, government workers and teachers, to identify cases of human trafficking and slavery.

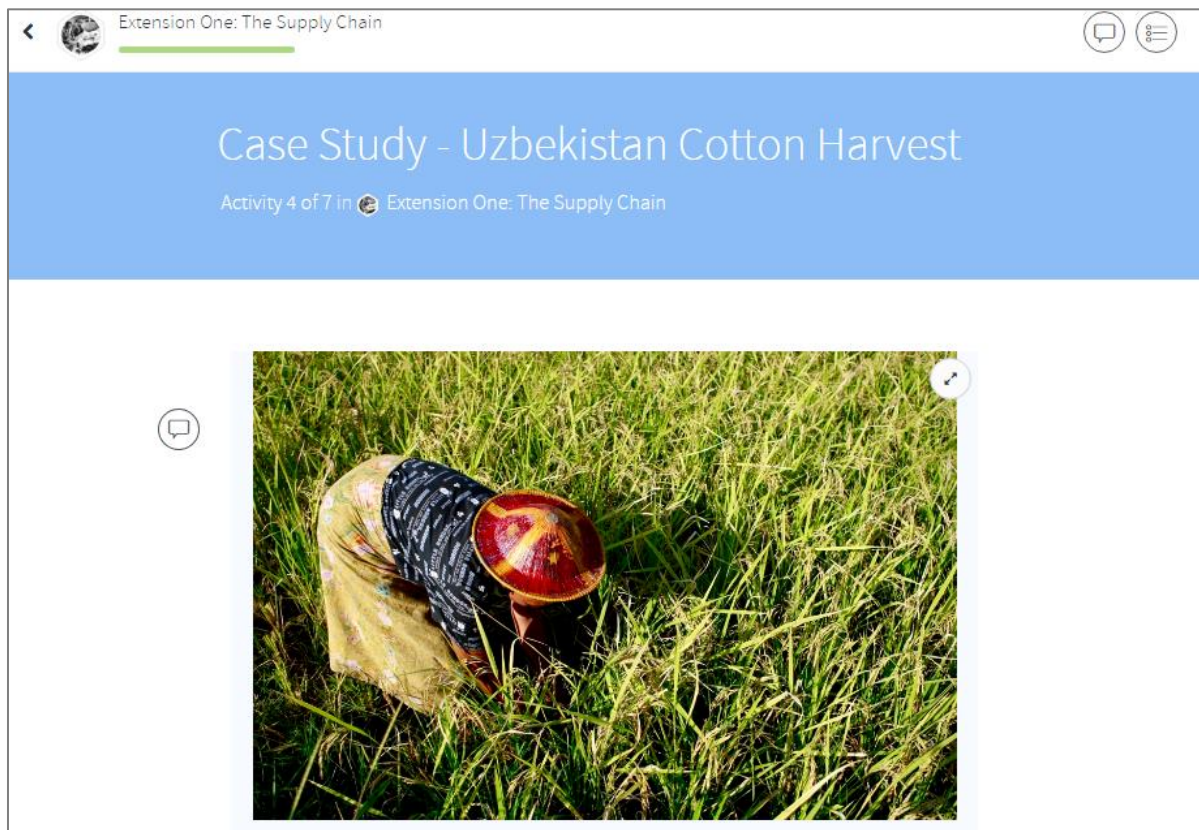


Figure 2: Material taken from Anti-Slavery Australia’s eLearning course, Extension One, The Supply Chain

This eLearning course could be expanded to include training modules on procurement practices that would assist government and private sector procurement officers to identify, prevent and mitigate the risk of human trafficking and slavery in their supply chains.

Recommendation:

To assist procurement officers in the effective implementation of clause 10.18 of the Commonwealth Procurement Rules, the Department of Finance should make amendments to the Commonwealth Procurement Framework to include:

- the creation of clear guidelines for all procurement officers to assist them to identify and respond to the risk of human trafficking and slavery in government supply chains, and to prevent any association with or contribution to such breaches by the Australian government; and
- the provision of training to procurement officers on how to identify at-risk goods, services or industries, and the measures that should be taken to address identified instances of human trafficking and slavery in the supply chain.

3.3 REQUIREMENTS ATTACHING TO HIGH RISK CONTRACTS

Anti-Slavery Australia recommends the introduction of certain mandatory requirements if a contract is deemed to be “high risk” in terms of its potential susceptibility to human rights abuses in the supply chain.

Commonwealth procurement officers already have the capacity to implement a variety of measures in the context of their enquiries into tenderers’ practices. These may include:³²

- requirements that potential suppliers certify their compliance with identified regulations or regulatory frameworks;
- requirements that suppliers provide assurance of their compliance, for example through an independent auditing report;
- capacity for procurement officers to undertake their own investigations; and
- requirements that suppliers demonstrate their sustainability credentials.

In light of this, Anti-Slavery Australia recommends the compulsory implementation of two key requirements where high risk contracts are concerned. These requirements

³² Department of Finance, *Consideration of relevant regulations and/or frameworks*, (16 February 2016) 2 [7] <<https://www.finance.gov.au/sites/default/files/guidance-new-rule-10-18-16.pdf>>.

should be implemented in accordance with Commonwealth Procurement Rules clauses 5.4 and 5.5, which relate to small and medium enterprises.

3.3.1 Requirements at tender

Anti-Slavery Australia recommends that where a procurement officer has identified a high risk contract, a condition for participation in a relevant government tender may be introduced, requiring potential suppliers to certify their compliance with Australian human trafficking and slavery laws and labour standards, in order to be considered for the tender. This certification may include a statement regarding the measures that the potential supplier has undertaken to prevent, address and mitigate human trafficking and slavery in the supply chain.

This requirement should be mandatory where the value of the high risk contract exceeds a specified amount. For example, procurements valued at greater than \$200,000³³ may trigger this mandatory selection criterion. Where a high risk contract has a value less than the specified amount, potential suppliers who provide similar certifications or statements at tender should be favoured by Commonwealth procurement decision-makers, in line with other Commonwealth Procurement Rules.³⁴

3.3.2 Additional contract terms containing annual reporting requirements

Anti-Slavery Australia further recommends that where a high risk contract is identified, a mandatory additional term should be inserted into the procurement contract. This term would require the supplier to complete an annual report outlining the measures that have been undertaken to prevent, address and mitigate human trafficking and slavery in the supply chain for the term of the contract. This would include any policies or procedures that have been implemented by the supplier within their own organisation.

Once again, this requirement should only apply to contracts that exceed a specified value.

Such reports would be completed by suppliers in line with international good practice. For example, reporting requirements may be created in accordance with the UN Guiding Principles, which requires business enterprises to carry out human rights due diligence, including:

...assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses and communicating how impacts are addressed.
Human rights due diligence:

³³ This figure is based on the mandatory requirements to use the Commonwealth Contracting Suite for procurements valued at under \$200,00.

³⁴ For example, Commonwealth Procurement Rules clauses 5.4 and 5.5 that deal with fair competition for small and medium enterprises.

- (a) Should cover adverse human rights impacts that the business enterprise may cause or contribute to through its own activities or which may be directly linked to its operations, products or services by business relationships;
- (b) Will vary in complexity with the size of the business enterprise, the risk of severe human rights impacts, and the nature and context of its operations;
- (c) Should be ongoing, recognizing that the human rights risks may change over time as the business enterprise's operations and operating context evolve.³⁵

The OECD Guidelines also contain provisions related to due diligence reporting, largely based upon the UN Guiding Principles, requiring states to:

Carry out human rights due diligence as appropriate to their size, the nature and context of operations and the severity of the risks of adverse human rights impacts.³⁶

The OECD Guidelines describe the process of due diligence as:

[A]ssessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses as well as communicating how impacts are addressed. Human rights due diligence can be included within broader enterprise risk management systems provided that it goes beyond simply identifying and managing material risks to the enterprise itself to include the risks to rights-holders. It is an on-going exercise, recognising that human rights risks may change over time as the enterprise's operations and operating context evolve.³⁷

Anti-Slavery Australia proposes that a breach of this reporting clause should prevent the contract from being renewed, and disqualify the relevant supplier from future contracts with the Australian government.

3.4 SUPPLIER CODE OF CONDUCT

Anti-Slavery Australia recommends that the Australian Government publish a supplier code of conduct, in order to communicate the government's expectations regarding human rights to actual and potential suppliers.

Such a code of conduct should contain an outline of the ethical practices and business principles that suppliers for Australian government procurement contracts must adhere to. This may include requirements that suppliers comply with Australian laws and regulations, and engage in socially responsible and sustainable practices.

This supplier code of conduct could specify certain expectations, that suppliers comply with international human rights laws, and may require suppliers to manage their

³⁵ United Nations Human Rights Office of the High Commissioner, above n 6, art 17.

³⁶ Organisation for Economic Cooperation and Development (OECD), *OECD Guidelines for Multinational Enterprises* (27 June 2000), 31 [5] <<http://mneguidelines.oecd.org/2011HumanRights.pdf>>.

³⁷ *Ibid.* 34 [45].

operations in accordance with the UN Guiding Principles. Reference could also be made to suppliers' labour practices, including expectations that suppliers will provide fair working conditions for employees.

Any such supplier code of conduct should include the expectation that suppliers will communicate the supplier code of conduct within their organisation, and to their supply chains.

Recommendation:

To clarify the Australian government's expectations of contracting parties and their suppliers, the Commonwealth Procurement Framework should be amended to include:

- mandatory requirements in government tenders and contracts if a contract is deemed to be at "high risk" of involving human trafficking and / or slavery in the supply chain; and
- a Commonwealth "Suppliers' Code of Conduct", which requires suppliers to adhere to key principles regarding human rights in supply chains.

3.5 GRIEVANCE MECHANISM

To further ensure that potential and existing suppliers comply with Australian laws relating to human trafficking, slavery and work place exploitation, the Australian government should create a mechanism to allow members of the public, and other relevant parties, to report instances of human rights abuses such as trafficking and slavery in Commonwealth supply chains. This mechanism should include avenues for suspected instances of human trafficking and slavery in supply chains to be investigated, assessed and addressed.

Recommendation:

To ensure that suppliers are held accountable for human rights abuses in the supply chain, the Australian government should create processes whereby the public and other interested persons can report concerns about suppliers of government contracts, and have these concerns addressed and resolved effectively.