



**Professor Annamarie Jagose**  
Provost & Deputy Vice-Chancellor

20 November 2022

Professor John McMillan AO  
c/- Modern Slavery Act Review Secretariat  
Attorney-General's Department

By email: [ModernSlaveryActReview@ag.gov.au](mailto:ModernSlaveryActReview@ag.gov.au)

Dear Professor McMillan,

The University of Sydney welcomes the Australian Government's review of the *Modern Slavery Act 2018* ("the Act") and is grateful for the opportunity to make the **attached** submission in response to the Issues Paper released in August 2022.

In preparing our submission, we have drawn on the two distinct roles the University plays in addressing modern slavery. First, our feedback is informed by our experience as a reporting entity under the Act, including lessons learnt from embedding awareness and respect for human rights across our policies, processes and governance. Second, we draw extensively on the expertise of our academic staff to convey their insights about modern slavery and human rights, and regarding the effectiveness of regulatory responses in Australia and abroad. A full list of academic contributors to our submission is included at **Attachment B**.

**Summary of key themes and recommendations:**

Our submission highlights the following key themes and recommendations, which we believe would benefit from careful consideration by the review:

- **Reporting entities are challenged by rapidly evolving human rights due diligence expectations abroad.** Australian entities, regardless of whether they operate in other jurisdictions, increasingly need to monitor emerging international human rights regulation (e.g. EU, Canada, US, Germany), to carry out due diligence on their business relationships and meet the expectations of partners.
  - **Our recommendation:** Harmonise the Modern Slavery Act with legislation and due diligence expectations in other jurisdictions to both strengthen compliance and reduce the regulatory burden on Australian-based entities (see Part 2: d).
- **The Act is not fit for purpose for non-corporate organisations, such as higher education institutions and large non-government organisations.** This was reflected in a recent review that found that many of the modern slavery statements lodged by 37 Australian universities were "too superficial" to tackle the root causes of severe exploitation.<sup>1</sup>

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<sup>1</sup> Carla Chan Unger, Ema Moolchand & Shelley Marshall, *Evaluating the Quality of Modern Slavery Reporting in the Australian University Sector*, RMIT Business and Human Rights Centre, 2022, 3.



- **Our recommendation:** Amend the mandatory reporting criteria to require entities to provide detail on *human rights due diligence* actions and amend the guidance to better support reporting entities to translate the United Nations Guiding Principles on Business and Human Rights (UNGPs) to their sector and identify context-specific, effective measures to address modern slavery (see Part 1: a).
- **The Act needs to keep pace with the changing regulatory landscape to ensure that Australia remains a partner of choice.** In line with the key principles of the federal government's 'National Action Plan to Combat Modern Slavery 2020-25', Australia has an opportunity to position itself as a leader in addressing modern slavery through strong, coordinated legislation, establishing the country as a location for ethically oriented business, investment and research.
  - **Our recommendation:** Appoint an independent federal Anti-Slavery Commissioner to provide a central source of risk information to better enable academics, civil society, consumers, and investors to assess modern slavery statements and provide recommendations on the effectiveness of the Act (see Part 4: a).
- **The Act, in its current form, is falling short of its potential to contribute to eradicating modern slavery.** Modern slavery reporting by Australia's largest companies<sup>2</sup> and entities in diverse sectors from seafood and horticulture to apparel and healthcare<sup>3</sup> largely reflects a lack of effective action on identifying and addressing modern slavery.
  - **Our recommendation:** Establish clear risk identification and reporting standards; extend the reporting requirements to an entity's "value chain" and provide sector-specific guidance to better enable reporting entities to identify and assess salient modern slavery risks specific to their sector (see Part 2: a, b, c).
  - This should be included in the remit of the Anti-Slavery Commissioner and should be informed by meaningful engagement with the university sector and academic experts on modern slavery risks, particularly in relation to modern slavery data, effective compliance measures, sector-specific risks, and risks related to vulnerable groups (including international students and temporary visa holders). This would enable both the development of evidence-based sector-specific guidance and strengthen compliance (see Part 1: a; Part 2: d; Part 3: a).

Overall, our experience as a reporting entity, combined with insights from academics across the University, strongly indicates that, in line with the UNGPs, meaningful action on modern slavery requires an approach that is evidence-based and context-specific. Our submission aims to provide a clear set of insights and recommendations on how this could be achieved.

A summary of our responses to the Issues Paper's questions is provided below, with our full submission included at **Attachment A**.

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<sup>2</sup> Alexander Coward, *Moving from paper to practice: ASX200 reporting under Australia's Modern Slavery Act*, Australian Council of Superannuation Investors, 2021; Nga Pham, Bei Cui & Ummu Ruthbah, *Measuring Disclosure Quality of Modern Slavery Statements: ASX300 Companies*, Monash University Centre for Financial Studies, 2021.

<sup>3</sup> Amy Sinclair & Freya Dinshaw, *Paper Promises? Evaluating the early impact of Australia's Modern Slavery Act*, Human Rights Law Centre, Uniting Church in Australia, UNSW Australian Human Rights Institute, The University of Melbourne, Baptist World Aid, RMIT Business and Human Rights Centre & University of Notre Dame Australia, 2022.



Consultation Questions	The University's Response	Page Reference
<b>PART 1: IMPACT OF THE MODERN SLAVERY ACT</b>		
a. Should the Modern Slavery Act spell out more explicitly the due diligence steps required of entities to identify and address modern slavery risks?	Yes. Section 16(1)(d) of the Act should require entities to explicitly report on human rights due diligence actions, in line with the UNGPs. Entities should be supported with guidance on sector-specific due diligence.	1, 2
<b>PART 2: MODERN SLAVERY REPORTING REQUIREMENTS</b>		
a. Does the Modern Slavery Act appropriately define 'modern slavery' for the purpose of the annual reporting obligation?	Yes. The definition of 'modern slavery' is appropriate. All eight types of modern slavery should remain included in the remit of the Act.	2
b. Is further clarification required of the phrase 'operations and supply chains', either in the Modern Slavery Act or in administrative guidelines?	Yes. The Act should provide further guidance on business relationships and require entities in section 16(1)(c) to describe modern slavery risks in their "value chain" which is consistent with emerging international approaches to addressing human rights risks.	2, 3, 4
c. Are the mandatory reporting criteria in the Modern Slavery Act appropriate – both substantively and in how they are framed?	Section 16(1)(c) of the Act should be strengthened to clearly set out standard risk identification and assessment requirements or steps to enable entities to more comprehensively report on risks most salient to their sector.	4, 5
d. Should more be done to harmonise reporting requirements under the Australian Modern Slavery Act with reporting requirements in other jurisdictions, such as the United Kingdom? How should harmonisation be progressed?	Yes. Informed by an evidence-based review, the Act should be streamlined with human rights reporting requirements and due diligence expectations in other jurisdictions to reduce the regulatory burden on reporting entities and ensure Australia remains a partner of choice.	5, 6
<b>PART 3: ENFORCEMENT OF THE MODERN SLAVERY ACT REPORTING OBLIGATIONS</b>		
a. Should the Modern Slavery Act impose civil penalties or sanctions for failure to comply with the reporting requirements? If so, when should a penalty or sanction apply?	Academic research shows significant levels of non-compliance with the Act, indicating the review should consider enforcement provisions, informed by an evidence-based review.	6, 7
<b>PART 4: ADMINISTRATION AND COMPLIANCE MONITORING OF THE MODERN SLAVERY ACT</b>		
a. What role should an Anti-Slavery Commissioner play, if any, in administering and/or enforcing the reporting requirements in the Modern Slavery Act? What functions and powers should the Commissioner have for that role?	A federal independent Anti-Slavery Commissioner should be appointed to provide a central, consistent, evidence-based source of risk information and guidance for reporting entities.	7



THE UNIVERSITY OF  
**SYDNEY**

We hope that our input has been helpful. If further information is required, please do not hesitate to contact us at [anti.slavery@sydney.edu.au](mailto:anti.slavery@sydney.edu.au).

We would, for example, be more than happy to explore arranging for a face-to-face or online meeting with representatives of our modern slavery team and some of the academic contributors to our submission.

Yours sincerely,

*Signature removed*

**Professor Annamarie Jagose**

#### **Attachments**

- A**      The University of Sydney submission to the Australian Government's review of the *Modern Slavery Act 2018* (Cth), November 2022
- B**      List of contributors to the University of Sydney's submission.

The University of Sydney submission to the Australian Government's review of the *Modern Slavery Act 2018* (Cth), November 2022

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**PART 1: Impact of the Modern Slavery Act**

- a) Should the Modern Slavery Act spell out more explicitly the due diligence steps required of entities to identify and address modern slavery risks?

***Recommendation: Amend section 16(1)(d) of the Act to align with the United Nations Guiding Principles on Business and Human Rights (UNGPs) and require entities to report on their 'human rights due diligence' (rather than 'due diligence') actions and explicitly set out standard due diligence steps for identifying and addressing modern slavery. This amendment should be supported by sector-specific due diligence guidance.***

**Our experience as a reporting entity**

- The Act and its accompanying guidance focus largely on standard corporate entities, such as large for-profit companies with significant supply chain risks. Compared to large corporations, however, universities face unique and complex modern slavery risks in their value chains, arising from the nature of their research activities, student placements and international student recruitment. In their current forms, both the Act and the accompanying guidance do not provide sufficient sector-specific guidance for not-for-profit entities, such as universities and large non-government organisations. In the absence of this guidance, the University of Sydney has had to translate the UNGPs to our sector context and develop our own framework, procedures and tools to comply with the Act.
- The higher education sector would benefit from more evidence-led, tailored guidance that provides advice on sector-specific human rights due diligence for non-standard corporate structures.
- The Review should look to develop sector-based human rights due diligence guides informed by the [OECD](#), [European Commission](#) and [Australian Human Rights Commission](#). These should be developed in consultation with academics, civil society, worker representatives, and people with lived experience of modern slavery.

**What the academic research shows**

- As the term 'human rights due diligence' is not defined in the Act, an analysis of published modern slavery statements found that reporting entities do not widely initiate and internalise due diligence, as set out by the UNGPs. The review identified "ad hoc" and "widely differing levels of effort" in entities' approach to human rights due diligence, highlighting the need for clear guidance.<sup>1</sup>
- A review of the ASX 100 modern slavery statements by the Sydney Law School's Master of Laws (Research) student Swagota Kotoky shows that most reporting entities "used their discretion to pick and choose" their definition of due diligence and corresponding actions, with few statements reflecting stakeholder consultation, integration of risk assessments into governance mechanisms or the use of leverage to mitigate adverse human rights impacts, key tenets of the UNGPs.<sup>2</sup>

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<sup>1</sup> Amy Sinclair & Freya Dinshaw, *Paper Promises? Evaluating the early impact of Australia's Modern Slavery Act*, Human Rights Law Centre, Uniting Church in Australia, UNSW Australian Human Rights Institute, The University of Melbourne, Baptist World Aid, RMIT Business and Human Rights Centre & University of Notre Dame Australia, 2022, 56;

<sup>2</sup> Kotoky, *An evaluation of the implementation of Australia's anti-modern slavery laws by the ASX 100 companies*, 155.

- Similarly, analysis of modern slavery reporting by the ASX 200 found only five per cent of companies were able to clearly articulate their exposure to modern slavery risks using the UNGPs and the Act's guidance on 'cause', 'contribute', and 'directly linked' continuum.<sup>3</sup>
- Forthcoming research by the University of Sydney's Business School<sup>4</sup> shows entities commonly use supplier questionnaires and audits, which are [limited in effectiveness](#) in identifying modern slavery, as proxies for human rights due diligence.

## **PART 2: Modern Slavery Act reporting requirements**

- a) **Does the Modern Slavery Act appropriately define 'modern slavery' for the purpose of the annual reporting obligation?**

***Recommendation: Enhance the Act's accompanying guidance to support reporting entities to identify which of the eight types of modern slavery are potentially linked to their business and most salient in their sector.***

The University believes 'modern slavery', as defined by the Act, is appropriate. The University is not supportive of excluding certain types of modern slavery - such as forced marriage - from the remit of the Act as raised in the Issues Paper. Sector-specific guidance would aid reporting entities to understand which of the eight types of modern slavery are more relevant to them, which would in turn inform more risk-based due diligence and targeted actions.

### **Our experience as a reporting entity**

- Our consultations with Anti-Slavery Australia and other civil society organisations have identified forced marriage as a risk that disproportionately affects young people, including university students.
- We recognise, as the Issues Paper notes, that it may be difficult to assess whether forced marriage is occurring. However, we believe universities are well placed to both identify the prevalence of forced marriage in Australia and provide referral to support services.
- For example, the University of Sydney's [Anti-slavery awareness training](#) (voluntarily completed by 8,700 students as of November 2022) provides information on identifying modern slavery and where to go for assistance.

- b) **Is further clarification required of the phrase 'operations and supply chains', either in the Modern Slavery Act or in administrative guidelines?**

***Recommendation: Amend section 16(1)(c) of the Act to require reporting entities to describe modern slavery risks in their "value chain", consistent with the UNGPs and emerging due diligence requirements in the European Union (EU). This amendment should be supported with guidance on defining and operationalising "value chain", including how to consider business relationships that are not clearly product or service based.***

### **Our experience as a reporting entity**

- As a research-intensive higher education provider, the University is potentially exposed to modern slavery risks through our diverse partnerships, collaborations, sponsorships (of University activities and by the University), donations, and other philanthropic arrangements that support our core operations: our research and educational functions. The Act does not provide sufficient guidance on these types of relationships.
- There is growing recognition of these risks across the sector. Several US universities, including [Yale](#) and [Stanford](#), are examining their business relationships with Chinese companies, following urging from the [US State Department](#). In Australia, [universities](#) have

<sup>3</sup> Alexander Coward, *Moving from paper to practice: ASX200 reporting under Australia's Modern Slavery Act*, Australian Council of Superannuation Investors, 2021, 6.

<sup>4</sup> Forthcoming, *An investigation of modern slavery risk mitigation in supply chains: A natural language processing approach*, Bhattacharjya J, Sydney Business School/Business School Pilot Research Grant.

been linked, through their research, to companies reportedly connected to human rights concerns (including forced labour) in the Xinjiang Uyghur Autonomous Region, China.

- The University conducts detailed due diligence processes and embedded decision making to identify these potential modern slavery risks early in the research pipeline process. Detailed data analysis is also currently underway to determine the level of counterparty risk (including the risk of contributing or being linked to human rights violations, such as modern slavery) through external partners (e.g., donors, research collaborators, grant providers, and other formal associations).
- In addition, the Act's exclusion of downstream risks (i.e. risks associated with how customers use an entity's products or services) disincentivises the higher education sector from reporting on risks to students.
- There have been well-documented reports of students experiencing severe forms of exploitation, for example, in the [United Kingdom](#) (UK) human trafficking victims were brought in on student visas and subjected to passport confiscation, overcrowded housing, excessive working hours and payments below a minimum wage, indicators of forced labour. Consequently, the UK government has highlighted the role of universities in monitoring student applications, attendance and payment of fees to identify signs of modern slavery.
- A recent [investigation](#) by *The Sydney Morning Herald*, *The Age* and *60 Minutes* similarly uncovered manipulation of Australia's student visa system to traffic young women into exploitative sex work in Australia. None of the risks and incidents mentioned above are adequately captured by the current definitions in the Act, or in the supporting guidance, further highlighting the need for a value chain approach to identifying and addressing risks.
- A 'value chain' approach is consistent with the UNGPs and the EU's draft [Directive on Corporate Sustainability Due Diligence](#), which highlights that an entity's downstream supply chain or diversity of direct and indirect business relationships may present its most severe risks to people.

### What the academic research shows

- Universities are well placed to both identify and address risks related to students. [Associate Professor Stephen Clibborn](#) highlights that education institutions have an important role in disrupting peer frames of reference which reinforce international students' tolerance of poor wages.<sup>5</sup>
- Academics at the University of Sydney, including [Dr Jyotirmoyee Bhattachariya](#) and [Dr Susan Banki](#), point to the lack of adequate employment opportunities and structural limitations on international students' (official) work hours allowed by their visa, which makes them more likely to be pressured to working additional (unrecognised) hours to mitigate high tuition and accommodation expenses.
- While the temporary suspension of the 20-hour work limit per week has been helpful in alleviating the risk of employers using this as leverage and forms of threats against international students, we note the Australian Government has committed to reintroducing restrictions on student visa holders' work entitlements from July 2023. In light of this, it will be critically important that the Assurance Protocol currently in place with the Fair Work Ombudsman to stay any visa cancellation and deportation orders continues to apply to student visa holders, who may be victims of exploitative work practices and, as a result, be in breach of their visa conditions.
- The University's [Associate Professor Chris F Wright](#), Associate Professor Clibborn and colleagues have also identified these challenges in the horticulture industry, where international students in breach of the work hour limits (set out by their visa conditions) were

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<sup>5</sup> Stephen Clibborn, "Multiple frames of reference: Why international student workers in Australia tolerate underpayment," *Economic and Industrial Democracy*, no. 42, 2018, 347-348.

unlikely to report exploitative work to the Fair Work Ombudsman due to their acute need for wages and fear of deportation.<sup>6</sup>

- A June 2020 survey of 2,472 international students identified the significant majority of students (77 per cent) were paid below the minimum casual hourly wage and several students also experienced sexual harassment, work health and safety issues, and excessive working hours. Students did not seek help because of fear of losing their job, concerns their visa would be impacted or a belief they had broken the law by agreeing to the underpayment. Only five per cent of students sought help from their education provider, highlighting the “unrealised opportunity” for universities to inform students of their workplace rights and provide access to support services.<sup>7</sup>
- Reporting entities commonly focus on supply chain risks at the exclusion of risks in their wider value chain. For example, research from the University of Sydney Law School<sup>8</sup> and others demonstrates that operational-level risks are not consistently acknowledged or reported in modern slavery statements, with close to 65 per cent of the ASX 200 identifying no risks in their operations.<sup>9</sup> Similarly, only a quarter of 37 universities assessed risks in their internal operations, based on a common “misconception that modern slavery is exclusively a supply chain issue”.<sup>10</sup>

**c) Are the mandatory reporting criteria in the Modern Slavery Act appropriate – both substantively and in how they are framed?**

***Recommendation: Amend section 16(1)(c) of the Act to require reporting entities to comprehensively report on risks in their operations and supply chains, including reporting on:***

- 1) The four risk indicators in the MSA Guidance: sector and industry risks, product and services risks, geographic risks and entity risks;***
- 2) Engagement with vulnerable populations; and***
- 3) Whether the risk assessment extended beyond Tier 1 of the supply chain.***

**Our experience as a reporting entity**

- Our recommendation is informed by our development of a Modern Slavery Risk Framework, which incorporates the Act’s Guidance’s four risk indicators, the level of risk posed, and our ability to influence change.
- This framework has helped us to pinpoint our most severe risks to people and prioritise our actions based on whether the risks are in our circle of control, our sphere of influence or circle of concern.<sup>11</sup> In our experience, comprehensive risk identification and reporting is an essential first step in implementing commensurate due diligence actions.
- The review should look to France’s *Corporate Duty of Vigilance Law* and Germany’s *Supply Chain Act*, which create obligations for entities to develop systematic and regularly updated risk assessment processes.
- The federal Anti-Slavery Commissioner could play a pivotal role in informing reporting entities on what good practice on risk assessment steps should include.

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<sup>6</sup> Joanna Howe, Stephen Clibborn, Alexander Reilly, Diane van den Broek & Chris F Wright, *Towards a durable future: Tackling labour challenges in the Australian horticulture industry*, The University of Adelaide & The University of Sydney, 2019, 13.

<sup>7</sup> Bassina Farbenblum & Laurie Berg, *International Students and Wage Theft in Australia*, Migrant Worker Justice Initiative, UNSW & University of Technology Sydney, 2020, 12.

<sup>8</sup> Kotoky, *An evaluation of the implementation of Australia’s anti-modern slavery laws by the ASX 100 companies*, 132.

<sup>9</sup> Coward, *Moving from paper to practice*, 6.

<sup>10</sup> Carla Chan Unger, Ema Moolchand & Shelley Marshall, *Evaluating the Quality of Modern Slavery Reporting in the Australian University Sector*, RMIT Business and Human Rights Centre, 2022, 15.

<sup>11</sup> See the University of Sydney’s [2021 Modern Slavery Statement](#) for more information.

## What the academic research shows

- Risk identification and disclosure by reporting entities is typically poor, as demonstrated by analysis of modern slavery statements by Australia's largest companies<sup>12</sup> and in high-risk sectors<sup>13</sup>.
- [Professor David Kinley](#) and Dr Kym Sheehan's 2020 [Financial Services Human Rights Benchmark](#) report found that of 22 ASX listed financial services entities, none identified human rights as a material risk.<sup>14</sup>
- Supply chain mapping, critical to an entity identifying and understanding their relationship to risks, is in its infancy in corporate Australia. More than 400 modern slavery statements, including by the ASX 100, show limited disclosure of critical details about reporting entities' supply chain, such as the number of suppliers or their distribution by country.<sup>15</sup>
- Risk identification is further limited beyond Tier 1 of the supply chain, as demonstrated by research from the University of Sydney's Law School and Business School. Swagata Kotoky's research<sup>16</sup> shows that only one of the ASX 100 specifically reported that they had commenced mapping some of their Tier 2 suppliers while initial analysis<sup>17</sup> of the second reporting cycle indicates the majority of reporting entities do not disclose actions to address risks beyond the first tier.
- An analysis of over 400 modern slavery statements shows a positive correlation between disclosure of extended supply chain risks and actions taken to address risks. Reporting entities that disclosed risks beyond Tier 1 were more likely to have due diligence and remediation measures in place, including having consulted with at least one potentially affected group in the risk assessment process.<sup>18</sup>

**d) Should more be done to harmonise reporting requirements under the Australian Modern Slavery Act with reporting requirements in other jurisdictions, such as the United Kingdom? How should harmonisation be progressed?**

***Recommendation: The review should consider the most effective course of action, through evidence-based analysis, to streamline the modern slavery and human rights regulatory requirements and due diligence expectations on Australian entities.***

## Our experience as a reporting entity

- While the University is not directly subject to modern slavery reporting requirements in other jurisdictions, we are required to comply with additional human rights due diligence obligations through our contractual relationships with partners, suppliers, donors and collaborators. This requires us to constantly monitor regulatory developments to meet our obligations and to carry out effective risk assessments on our international partners and suppliers. Given the globalised and interconnected nature of business relationships, other organisations are likely also facing similar challenges.
- We also anticipate there will be increasing expectations from international grant providers and donors on universities to keep pace with strong legislative models emerging abroad,

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<sup>12</sup> Coward, *Moving from paper to practice*, 6; Nga Pham, Bei Cui & Ummul Ruthbah, *Modern Slavery Disclosure Quality Ratings: ASX 100 Companies Update 2022*, Monash Centre for Financial Studies, 2022, 19.

<sup>13</sup> Sinclair & Dinshaw, *Paper Promises?* 2.

<sup>14</sup> Kym Sheehan & David Kinley, *The 2020 Financial Services Human Rights Benchmark Report*, The University of Sydney, (2020): 9.

<sup>15</sup> International Justice Mission, *Spot Fires in Supply Chains: An analysis of Australian corporate modern slavery statements and recommendations for extinguishing risk through protecting workers in South Asia*, 2022, 22; Pham, Cui & Ruthbah, *Modern Slavery Disclosure Quality Ratings*, 17.

<sup>16</sup> Kotoky, *An evaluation of the implementation of Australia's anti-modern slavery laws by the ASX 100 companies*, 128-129, 134-137.

<sup>17</sup> Forthcoming, *An investigation of modern slavery risk mitigation in supply chains: A natural language processing approach*, Bhattacharjya J, Sydney Business School/Business School Pilot Research Grant.

<sup>18</sup> International Justice Mission, *Spot Fires in Supply Chains*, 8.

including the EU's [Directive on Corporate Sustainability Due Diligence](#) and proposed modern slavery and worker exploitation laws in [New Zealand](#).

- To ensure Australia remains a partner of choice for research, partnerships and academic expertise, the government should better enable reporting entities to understand the implications of other jurisdictional requirements on their modern slavery due diligence, particularly concerning business relationships and human rights related sanctions and import controls.

#### What the academic research shows

- Entities are increasingly subject to multiple reporting requirements on ESG (environmental, social and governance) issues. Given the intersections between these systemic issues the review should consider options for harmonisation. For example, the University of Sydney's [Dr Joy Murray](#) recommends the review look to international frameworks on Green House Gas estimations to inform the development of guidance for measuring and reporting on modern slavery risks.<sup>19</sup>
- In addition, Professor Kinley recommends the review consider the intersection of the Act with other Australian government corporate accountability mechanisms. For example, the [Australian Securities and Investment Commission](#) and the [Australian Competition and Consumer Commission's](#) measures to address "greenwashing", the misrepresentation of sustainability-related claims, by companies, through pursuing such disclosures under "false, misleading and deceptive conduct" provisions in various corporations and competition statutes.

### PART 3: Enforcement of the Modern Slavery Act reporting obligations

- a) **Should the Modern Slavery Act impose civil penalties or sanctions for failure to comply with the reporting requirements? If so, when should a penalty or sanction apply?**

***Recommendation: The Government should engage with the academic community to ensure that further enforcement provisions of the Act are informed by an evidence-based review of the effectiveness of measures, including civil penalties, in improving compliance and triggering meaningful action to address modern slavery.***

#### What the academic research shows

- Research on Australia's largest companies, which arguably have the greatest resources to meet their legal obligations under the Act, shows high levels of non-compliance with various requirements of the legislation. In the first reporting cycle, one third of the ASX 200 were reportedly non-compliant with one or more of the Act's requirements, most commonly consultation with owned or controlled entities.<sup>20</sup>
- A wider review of over 400 modern slavery statements indicates just under a third (30.2 per cent) did not satisfy basic reporting obligations.<sup>21</sup> Similarly, analysis of statements in high-risk sectors found that less than one in four companies fully addressed the mandatory reporting criteria.<sup>22</sup>
- There is a strong call from academics with extensive experience in reviewing modern slavery reporting, including from the University of Sydney<sup>23</sup>, for the government to take a

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<sup>19</sup> Murray, J., Mora, C. J. & Malik, A., "Toward an Emissions and Modern Slavery Impact Accounting Mode," *Environmental Science & Technology*, no. 56 (2022): 11104.

<sup>20</sup> Coward, *Moving from paper to practice*, 10.

<sup>21</sup> International Justice Mission, *Spot Fires in Supply Chains*, 19.

<sup>22</sup> Sinclair & Dinshaw, *Paper Promises?*, 2.

<sup>23</sup> Dr Jyotirmoyee Bhattacharjya; Dr Cary DiLernia; Arda Gezdir; Paul Horodecki; Tarang Jain; Swagata Kotoky and Quynh Chi Luu.

more active role in compliance monitoring and implementing consequences for non-compliance.<sup>24</sup>

- Academics at the University of Sydney Business School<sup>25</sup> note that the lack of enforcement mechanisms is a risk for the quality of future reporting, as accountability relies on sustained pressure from civil society, investors and consumers.
- A review six years on from the implementation of the UK's *Modern Slavery Act* shows persistent non-compliance, with 40 per cent of 16,000 statements not meeting the minimum criteria of the legislation.<sup>26</sup> The review also found only around three in five of in-scope companies are reporting under the law. The UK government has [signalled](#) it will introduce financial penalties for entities who fail to meet their obligation to publish an annual modern slavery statement.

#### **PART 4: Administration and Compliance Monitoring of the Modern Slavery Act**

- a) What role should an Anti-Slavery Commissioner play, if any, in administering and/or enforcing the reporting requirements in the Modern Slavery Act? What functions and powers should the Commissioner have for that role?**

***Recommendation: Appoint an independent federal Anti-Slavery Commissioner to drive effective implementation and enforcement of the Act.***

##### **Our experience as a reporting entity**

- Through our academic research and our own due diligence on partners and suppliers, the University is a 'reader' of modern slavery statements, as well as a reporting entity. In the absence of a government identified list of non-compliant entities, we rely on sources from civil society or international governments to assess poor performance in modern slavery due diligence.
- The higher education sector would benefit from a central, consistent, evidence-based source of risk information. The Anti-Slavery Commissioner could provide this role through:
  - Publishing a list of entities that are non-compliant with the Act.
  - Establishing standardised indicators to assess modern slavery risks and identify good practice in modern slavery reporting and due diligence.
  - Maintaining an annual list of countries, regions, industries and products with a high risk of modern slavery.
  - Issuing guidance on the intersection between the *Modern Slavery Act* with other jurisdictional requirements both in Australia (e.g. state-based modern slavery legislation) and overseas.
- The Commissioner should also promote awareness and compliance with the Act in sectors, where good practice standards, guidance and collaboration are underdeveloped. For example, the UK's Independent Anti-Slavery Commissioner has provided [guidance](#) to the financial sector, through research, a cross sector roundtable and training. The higher education sector would benefit from similar sector-specific support.

##### **What the academic research shows**

- In the absence of enforcement mechanisms, the Act relies on the academic community, civil society, consumers, and investors to drive improvements in modern slavery reporting, through monitoring and acting on non-compliance. The University of Sydney Business School's [Dr Cary Di Lernia](#) and Swagata Kotoky's research point to the challenge of this task, given that most modern slavery statements lack the reliable and meaningful information needed for readers to make accurate assessments about modern slavery risks.

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<sup>24</sup> See also Pham, Cui & Ruthbah, *Modern Slavery Disclosure Quality Ratings*, 7.

<sup>25</sup> Dr Jyotirmoyee Bhattacharjya; Arda Gezduur; Paul Horodecki; Tarang Jain and Quynh Chi Luu.

<sup>26</sup> Patricia Carrier, *Modern Slavery Act: Five years of reporting*, Business & Human Rights Resource Centre, 2021, 2.

## Contributors to the University of Sydney's submission

Our submission was co-authored by the University's Modern Slavery Unit Director, Esty Marcu, and Policy and Stakeholder Engagement Manager, Clare Bartram, along with contributions from across the University, including Procurement Services, Higher Education Policy and the academic staff listed below.

The [Modern Slavery Unit](#) provides a University-wide strategic approach to identifying and addressing modern slavery risks, embedding respect for human rights across our governance, policy and operational settings. The Unit also connects academics with business, government and civil society, enabling opportunities for collaboration and innovation on business and human rights.

### Professor David Kinley

[David Kinley](#) holds the Chair in Human Rights Law at the University of Sydney Law School. He is also an Academic Panel member of Doughty Street Chambers in London, a member of the Australian Council for Human Rights, a member of the Human Rights Council of Australia and a board member of Cisarua, an Afghan refugee-led education centre located in Bogor, Indonesia. He is also a Fellow of the Academy of Social Sciences of Australia.

### Associate Professor Anna Boucher

[Anna Boucher](#) is a global migration expert as it intersects with public policy and comparative politics. Her research also covers gender diversity, inequality and labour market and regulatory change. She has written three books on migration and is a regular commentator in the media and consultant to domestic and global governments on migration issues. She holds six qualifications in law and political science and is an admitted solicitor of the Supreme Court of NSW.

### Associate Professor Stephen Clibborn

[Stephen Clibborn](#) is an Associate Professor in the Discipline of Work and Organisational Studies at the University of Sydney Business School. He is Co-Director of the Sydney Employment Relations Research Group (SERRG) and an Australian Research Council Discovery Early Career Research (DECRA) Fellow.

### Associate Professor Chris F Wright

[Chris F Wright](#) is an Associate Professor in the Discipline of Work and Organisational Studies at the University of Sydney Business School. He has a PhD from the University of Cambridge. Prior to joining the University of Sydney in 2014, Chris held positions at the University of Cambridge, Goldsmiths, University of London and Macquarie University.

### Dr Susan Banki

[Susan Banki's](#) interests lie in the political, institutional, and legal contexts that explain the roots of and solutions to international human rights violations. In particular, she is interested in the ways that questions of sovereignty, citizenship/membership and humanitarian principles have shaped our understanding of and reactions to various transnational phenomena, such as the international human rights regime, international migration and the provision of international aid.

### Dr Jyotirmoyee Bhattacharjya

[Jyotirmoyee Bhattacharjya's](#) research and PhD supervision projects focus on modern slavery risk management in global supply chains and circular supply chains for waste management. Her research on modern slavery risk management utilises natural language processing (NLP) and deep learning (DL) techniques.

### Dr Gareth Bryant

[Gareth Bryant](#) is an Australian Research Council DECRA Fellow at the University of Sydney. He works as a senior lecturer in the Department of Political Economy and as economist-in-residence with the Sydney Policy Lab.

**Dr Cary Di Lernia**

[Cary Di Lernia](#) is a Lecturer in the Discipline of Business Law at the University of Sydney Business School. Before commencing his academic career, Cary worked in a variety of roles in financial markets and in legal practice. Prior to his appointment to the University of Sydney, Cary was a member of faculty at Macquarie University in the Department of Accounting and Finance.

**Dr Joy Murray**

Joy Murray is an Honorary Senior Research Fellow in the School of Physics at the University of Sydney. She was previously a Senior Research Fellow with the Integrated Sustainability Analysis group in the School of Physics where she led the School's OAASIS project (Open Analysis to Address Slavery in Supply Chains). She has edited and co-authored seven books on supply chain analysis. Joy worked for over 25 years in education, pre-school to post-graduate.

**Arda Gezdur**

Arda Gezdur is a PhD candidate with the University of Sydney's Institute of Transport and Logistics Studies, focused on digitization and digitalization of supply chains. He holds a BSc in Chemical Engineering, MSc in Industrial Engineering and an Executive MBA. Arda has experience in the oil and gas industries in trading, shipping, transportation and project management.

**Paul Horodecki**

Paul Horodecki is a teaching assistant with the University of Sydney's Institute of Transport and Logistics Studies. Paul has worked for the Reserve Bank of Australia for 17 years. He has completed a Bachelor of Arts (Economics), a Bachelor of Commerce (Finance) and is a university medal holder for Master of Commerce (ITLS).

**Swagota Kotoky**

Swagota Kotoky's recent research focused on the implementation of the *Modern Slavery Act 2018* by the ASX 100 in their first year of reporting. She completed her Master in Laws (Research) within the Faculty of Law, University of Sydney and has more than 18 years of experience in law, including as a litigator as well as corporate counsel for large multinational corporations.

**Tarang Jain**

Tarang Jain is a PhD candidate with the University of Sydney's Institute of Transport and Logistics Studies, focused on modern slavery risk mitigation strategies for IT and telecommunications sector supply chains. He holds a Bachelor of Engineering in IT and a Master of Commerce in Information Systems. Tarang is a seasoned procurement practitioner with experience in retail, not-for-profits, consulting, and semi-conductors.

**Quynh Chi Luu**

Quynh Chi Luu is an early-stage academic researcher preparing for her PhD candidature at the University of Sydney, focusing on the field of logistics & supply chain management. Chi holds a Master of Logistics & Supply Chain Management from the University of Sydney. She has experience in business management, third-party logistics and e-commerce.