



Australian Government

Australian Government response to the Senate Foreign
Affairs, Defence and Trade Legislation Committee report:

Customs Amendment (Banning Goods Produced By
Uyghur Forced Labour) Bill 2020

April 2022

Introduction

The Australian Government appreciates the work of the committee on this important issue and welcomes the opportunity to respond to the report of the Senate Foreign Affairs, Defence and Trade Legislation Committee Inquiry into *Customs Amendment (Banning Goods Produced By Uyghur Forced Labour) Bill 2020*. The Government supports the overarching principle of the Report that forced labour is a fundamental breach of human rights and should be prevented where possible and called out where identified.

The Government is strongly committed to combatting modern slavery and forced labour, including in global supply chains and in the increasingly complex supply chains of businesses operating in Australia.

As the Committee is aware, following extensive consultation including the Parliamentary Inquiry into establishing a Modern Slavery Act in Australia and its report, *Hidden in Plain Sight*, a modern slavery transparency approach in the form of the *Modern Slavery Act 2018* (Modern Slavery Act) was passed by the Parliament in 2018 and came into force in January 2019.

After careful consideration, a transparency approach was considered to be the preferred model for government to work together with business, civil society and academia to address modern slavery, including forced labour in supply chains. Other jurisdictions have chosen to respond to these issues in different ways. The United Kingdom has also adopted a transparency-based approach.

The Modern Slavery Act delivers a public accountability and transparency framework aimed at driving business and government action to address modern slavery risks in Australian supply chains. By establishing a reporting requirement where entities must report annually on their actions to identify and address modern slavery risks, the Act aims to increase business awareness and supply chain knowledge and drive holistic assessment of supply chains to change business behaviours to reduce or remove modern slavery drivers in supply chains.

The Act also aims to increase public scrutiny and accountability of entities' responses to modern slavery by publishing all modern slavery statements on the Government's Online Register of Modern Slavery Statements (the Register). As at 30 June 2021, more than 2,300 modern slavery statements had been submitted to the Register on behalf of approximately 4,500 entities, providing an unprecedented window in the global supply chains of goods and services in Australia.

The Modern Slavery Act has completed its first reporting cycle and the legislated review of the Act will be undertaken in 2022. The review of the Modern Slavery Act will be comprehensive in scope and will consider whether additional measures might be required to improve the operation of the Act.

In consideration of the proposed legislation, the Committee has raised the question of whether a transparency approach such as the Modern Slavery Act, could be usefully complemented by other parallel import control measures.

The strength of a transparency framework such as the Modern Slavery Act is its emphasis on business working with partners to address forced labour issues, should they be found, as opposed to government-imposed banning of goods.

The Government is, however, seized of this issue and is committed to further exploring the merit and feasibility of import control measures and further transparency measures. Noting the recent passage of the *Uyghur Forced Labor Prevention Act* in the US, we will continue to consider this matter in close consultation with partner governments, drawing expertise from relevant Australian agencies and other stakeholders. Given the potential impact of the proposed legislation on business, it is notable that the hearings conducted by the Committee did not include business groups. Such consultation before options for government-imposed prohibitions are considered and implemented would be important. In addition, the Government is firmly of the view that business should put in place voluntary, rigorous due diligence policies and mechanisms to mitigate the potential of contracting with international firms responsible for, or involved in, forced labour.

In September 2018, Australia, Canada, New Zealand, United Kingdom and the United States launched the *Principles to guide government action to combat human trafficking in global supply chains* (the Principles). The Principles provide a framework on which all countries can build a strategy to take effective action to prevent and eradicate human trafficking from public and private sector supply chains.

Australia is also an adhering country to the OECD Guidelines for Multinational Enterprises. Paragraph 1 (d) of Chapter V of the Guidelines provides that Multinational Enterprises should contribute to the elimination of all forms of forced or compulsory labour and take adequate steps to ensure that forced or compulsory labour does not exist in their operations. Australia has established a National Contact Point (AusNCP) in the Treasury to promote the Guidelines in Australia and to manage complaints made against any enterprise operating in Australia, or Australian enterprises operating overseas, who fail to meet the Guidelines.

The Government has established a thematic autonomous sanctions regime in relation to serious human rights violations and abuses. The regime commenced on 21 December 2021, following amendments to the *Autonomous Sanctions Act 2011* and the *Autonomous Sanctions Regulations 2011*. The regime implements key elements of the Government's response, tabled on 5 August 2021, to the December 2020 report of the Joint Standing Committee on Foreign Affairs, Defence and Trade, *Criminality, corruption and impunity: Should Australia join the Global Magnitsky movement?* The Government's reform to the autonomous sanctions framework will enable the Government to take timely action to impose targeted sanctions on persons and entities responsible for slavery, servitude, or forced or compulsory labour, where it is in the national interest to do so.

The Government reiterates its commitment to providing a strong and effective policy response to address forced labour in Australia's supply chains.

Committee recommendations

Recommendation 1

The committee recommends that the *Customs Act 1901* and/or other relevant legislation be amended to prohibit the import of any goods made wholly or in part with forced labour, regardless of geographic origin.

Response: Agree in principle

The Australian Government agrees with the principle of mitigating the risk of forced labour practices occurring in the supply chains of goods and services in the Australian market.

The Australian Government acknowledges the policy intention of a prohibition on the import of goods made with forced labour and will work with domestic and international partners to further explore the merit and feasibility of an import prohibition to achieve this objective. However, the Government is aware of the significant practical, administration and enforcement challenges of achieving that intention through the proposed prohibited import control and further work is required.

To be effective, a border control on the importation of any good or class of goods into Australia should be practically actionable at the border and Australian Border Force (ABF) must be able to accurately identify the goods subject to the control. In the current legislative and policy framework, supported by intelligence, IT systems and operational activities this is not possible to the level for which any *Customs Act 1901* amendment would require.

Australia's border systems and processes for identifying imported goods are not able to automatically and reliably determine processes or labour standards applied in the manufacture of imported goods due in large part to the complexity of modern day supply chains. This includes manufacturing occurring in various stages and locations, combining components from different origins, producers, and production methods to create a single finished product.

The ABF obtains relevant objective details of imported goods – including description, origin, value and tariff classification – to enable the accurate identification of the goods for customs purposes. The ABF also conducts physical interventions on consignments of goods at the border to confirm the nature of the goods and inform any decision to detain them. Physical intervention relies on ABF officers screening, inspecting or testing the goods to positively identify their contents and characteristics. These processes apply to the imported goods as they appear at the border, and they are not able to determine conditions of labour that may have applied in their manufacture.

Where an ABF officer suspects on reasonable grounds that an imported good is in breach of an import prohibition, the ABF may seize the offending goods and the importer can then claim the return of the goods within 30 days. The goods must be returned to the owner unless legal action is then taken by the ABF, such as a prosecution for importing prohibited imports or an action to condemn the goods.

In any such legal action, the ABF must prove that the goods fall within the scope of an import prohibition or the defendant will succeed. The defendant does not have to prove that the goods are not prohibited imports.

Enforcing a prohibition on the importation of goods made ‘wholly or in part with forced labour’ would require the Commonwealth to be able to clearly identify such items at the border (to enable them to be seized). As mentioned above, the current settings do not provide for this, and obtaining such an ability would require a fulsome and long term overhaul of the current regulatory framework and supporting IT systems – this is both timely and expensive and would require extensive scoping and consultation domestically and internationally. Such a prohibition would also require the Commonwealth to meet the appropriate evidentiary standard to demonstrate that a specific good was in breach of the prohibition. It is highly unlikely the Commonwealth would be able to reliably meet such a standard for most imported goods.

The Government will continue to consult closely with other countries that are implementing new policy measures to address emerging concerns around forced labour and other human rights violations. Some measures include:

- designating individuals and entities under human rights sanctions regimes
- restricting trade with specific companies
- prohibiting the importation of certain goods.

The Government is of the view that business should put in place voluntary, rigorous due diligence policies and mechanisms to mitigate the potential of contracting with international firms responsible for, or involved in, forced labour.

Recommendation 2

The committee recommends that the government should consider taking steps to empower the Australian Border Force to be able to issue rebuttable presumptions for specific goods, companies and/or regions with particularly high risk of being associated with forced labour.

The committee recommends that, once the issuance of such orders is possible, the Australian Border Force should immediately consider issuing an order, at a minimum, for cotton sourced from Xinjiang.

Response: Agree in principle.

The Australian Government agrees in principle with this recommendation.

The Government is concerned with the reports in relation to forced labour in Xinjiang and agrees with the principle of mitigating the risk of forced labour practices occurring in the supply chains of goods and services in the Australian market. However, the Government notes that before any such steps could be carefully considered by Government, it will consult in depth with industry and business.

Before any domestic, state or territory laws could be amended to support the ABF’s implementation of the proposed importation control, Australia’s international trade law obligations and the significant practical challenges of enforcement and implementation identified in Recommendation 1 would need to be addressed.

As Australia’s Customs Service, the ABF is responsible for enforcing customs laws and supporting the Government’s policy objectives at the border. The ABF manages importation

controls under Commonwealth legislation on behalf of more than 35 Commonwealth departments and agencies.

The Government is of the view that Australian businesses should voluntarily put in place due diligence policies and mechanisms to mitigate the potential of contracting with international firms responsible for, or involved in, forced labour. This is a preferable initial mechanism to government-enforced prohibitions.

Recommendation 3

The committee recommends the government consider amending the Commonwealth Procurement Rules to include a requirement on due diligence with regards to the possibility of exposure to forced labour and encourages state, territory and local governments and their various business enterprises to do likewise.

Response: Agree in principle

The Government agrees with the need to enhance awareness of the risks of exposure to forced labour. General guidance on undertaking due diligence activities in Commonwealth procurement is being developed for publication on the Procurement Policy pages on the Department of Finance website. The Department of Finance will work closely with the Australian Border Force on the development of these materials to ensure entities consider due diligence activities when undertaking a procurement, including the consideration of tenderers' ethical employment practices, and Australia's international trade law obligations are addressed...

The Commonwealth Procurement Rules stipulate that relevant entities, regardless of the value of the procurement, must not seek to benefit from supplier practices that may be dishonest, unethical or unsafe (Paragraph 6.7 refers). Practices may include, for example, tax avoidance, fraud, corruption, unmanaged conflicts of interest, exploitation and modern slavery practices.

The Commonwealth Procurement Rules further require entities to make reasonable enquiries that the procurement is carried out with consideration to relevant regulations and/or regulatory frameworks. This includes, but is not limited to, tenderers' practices regarding labour regulations and ethical employment practices (Paragraph 10.19 refers).

Additionally, the Commonwealth Procurement Rules require officials undertaking procurement to consider the Government's reporting requirements under the Modern Slavery Act (Paragraph 7.27 refers). The Modern Slavery Act established a Modern Slavery Reporting Requirement that applies to large businesses and other entities operating in the Australian market with annual consolidated revenue of at least AUD\$100 million. Entities required to comply with the Reporting Requirement, including the Commonwealth Government, must prepare annual Modern Slavery Statements that set out the reporting entity's actions to assess and address modern slavery risks in their global operations and supply chains. The Australian Government publishes all properly submitted statements on the Government's Online Register of Modern Slavery Statements to facilitate public scrutiny and accountability of reporting entities' responses to modern slavery. The Australian Border Force is the entity responsible for driving implementation of the Modern Slavery Act, including by supporting businesses to understand and meet their reporting obligations and by coordinating the development of Commonwealth Modern Slavery Statements in close consultation with non-corporate Commonwealth entities.

While the Commonwealth may endeavour to demonstrate best practice in relation to due diligence activities, State and Territory and local Governments operate within their own Procurement Frameworks and will therefore establish their own policies, principles and practices relevant to their jurisdiction.

Recommendation 4

In crafting provisions to prohibit the import of goods produced by forced labour, the committee recommends the government give due consideration to adequate resourcing for the Australia Border Force to conduct investigations in support of those provisions.

Response: Noted

The Australian Government notes this recommendation.

Recommendation 5

The committee recommends that the Home Affairs portfolio establish a working group to examine the role emerging technologies can play in tracing the geographical origin of products and raw materials.

Response: Agreed

The Australian Government accepts this recommendation.

The Government has tasked relevant Commonwealth Government agencies to establish a working group to consider these issues.

The Government recognises the important role that technology can play in mapping supply chains. A number of entities required to report under the *Modern Slavery Act* have reported on the use and application of emerging tools and technology in their modern slavery statements.

The Government also acknowledges that there are limitations to the employment of emerging technologies, particularly those limited to origin and DNA tracing. These technologies may be able to identify from where a particular component of a good has been sourced, but they cannot reliably confirm the use of forced labour practices in the production or manufacture of that particular good. More rigorous examination of the use of such technologies is required to form a sound empirical evidence base on the effectiveness of these technologies in identifying the use of forced labour practices in goods that present at the border.

Recommendation 6

The committee recommends the government establish and maintain a list of products or companies considered to be at high-risk of being produced by forced labour.

Response: Noted

The Government is concerned with the risks of forced labour in supply chains, while recognising some practical difficulties in both business and government identifying all such practices. The Government supports engagement with industry in support of due diligence to

identify the risk of such practices and therefore agrees in principle with the policy intention to shine a light on products, or companies to which that risk exists. Transparency of such risks, where clear evidence exists, can support increased due diligence of Australian businesses. The Government will continue consulting international partners, industry and business on the best mechanisms to increase transparency and guidance.

The Australian Government already provides advice on specific risks of forced labour through a range of channels including briefings to industry peak bodies and direct outreach to businesses. In our interactions with businesses, we note that parts of the textile, clothing and footwear sectors, the broader agricultural sector and manufacturing supply chains are at particular risk of forced labour. We also advise business stakeholders of any risks of which we are aware that are relevant to their sectoral interests.

We strongly urge Australian companies sourcing products from these high-risk sectors to undertake due diligence, and to ask all appropriate questions to ensure their commercial and other arrangements are effectively managing risk consistent with Australian legislation and international standards. We advise businesses that modern slavery, including forced labour, is a global concern and not limited to any specific country. The onus is therefore on business, to be alert to these risks and avoid unintentionally facilitating, or being otherwise complicit in, human rights violations.

The Australian Government encourages Australian businesses to consider the laws, regulations, and licence requirements of the countries in which they operate, including seeking independent legal advice as appropriate. Indeed, many at-risk industries have put safeguards in place. The Government will also continue to consult with other countries in relation to their measures to publicly identify products or companies considered to be at high-risk of forced labour.

The Government will also continue working with domestic stakeholders and international counterparts to bring to light modern slavery wherever it is identified and collectively respond to reduce and eliminate its practice.

As stated in Recommendation 1, modern manufacturing processes and supply chains can make it impractical to identify specific manufacturing practices used in the production of the various inputs or components that may go in to making a final product. Forced labour can be present in any industry or product's supply chain. However, as some sectors or products have characteristics that put them at a higher risk of involving forced labour, the Government will explore whether red lists can be developed where there is evidence of such involvement. But it cannot be assumed, just because an industry shows some of these characteristics, that forced labour is present. The risk of industry and the public considering such lists to be all-inclusive would also need to be taken into account. This is why industry ensuring the existence of rigorous and consistent due diligence mechanisms for all import arrangements is the preferred approach.

The committee recommends the government, where feasible, publish Integrated Cargo System data online.

Response: Agreed

The Australian Government accepts this recommendation.

The ABF collects large volumes of data relating to the movement of goods across the Australian border. Information collected by the ABF from Australian importers and exporters is confidential and contains personal information and commercially sensitive data. The dissemination of this data is constrained by a number of pieces of Commonwealth legislation, including requirements of the *Privacy Act 1988*, the *Australian Border Force Act 2015*, and *Migration Act 1958*.

The ABF primarily uses the Integrated Cargo System (ICS) to risk assess cargo crossing the Australian border and intervene where necessary to protect the community and the economy. The ICS allows registered users in industry to legitimately track the movement of goods to ensure efficient transportation.

Information supplied to the ABF through the ICS is available to relevant parties on request, including those who report through the ICS (registered users) or to importers and exporters directly. Information is accessible through various reports available through the ICS or by requesting specific information from the Business Information Group within the ABF.

It is important to note that, as with other countries' customs data, ICS data is restricted information as it provides commercial and other information used for border enforcement purposes. Broader dissemination or publication of this data could be abused by those wishing to engage in illegal activities. There is a risk that individuals may abuse access to cargo movement information to track illicit goods to determine whether law enforcement authorities are interested in certain containers and to pass that information to transnational, serious and organised criminal groups, including those involved in perpetrating forced labour.

Publishing commercially sensitive data, particularly which names individuals and companies and gives descriptions and quantities of goods and their value, could potentially also be used by competitors to unfair advantage. This may inadvertently create incentives for importers and exporters reporting through the ICS to provide inaccurate, misleading or less detailed information. This could undermine the integrity of Australia's cargo movement information system and impact the ABF's ability to undertake compliance activities to keep Australians safe from prohibited goods, such as illicit drugs and firearms.

In addition to releasing ICS data to relevant parties upon request, the Government recognises the importance of making some import and export data publicly available, as currently provided through the Australian Bureau of Statistics (ABS). The ABS uses the ICS data to provide a number of products for Government and Industry (for which they pay). The ABS can provide quite specific information relating to a specific commodity (HS code/tariff classification) as long it does not compromise commercial in confidence restrictions for a particular company (for example, where there are such limited importations or exportations that specific companies may be able to be identified).

Additionally, in May 2021, the Australian Government committed \$16.5 million over four years to establish the National Freight Data Hub (the Hub). The Hub's design and data projects are based on two years of consultation with industry and other stakeholders. The Hub will be a federated data sharing network that has an initial focus on governments providing better access to their data; facilitates data exchange, including by establishing data standards; and promotes leadership and innovation.

The National Freight Data Hub prototype website showcases existing freight data. The Hub contains freight data on the origin, value, volume and final destination of imports and exports. The public can use the website to explore freight data through interactive maps and graphs to identify trends and patterns.

The website also includes details of freight data projects being undertaken across governments and industry, including further efforts to collect, curate and analyse Australian freight data, and to identify gaps and limitations of current data sets.

Feedback and lessons learnt on the prototype website will help inform the next steps on delivering a National Freight Data Hub.

Recommendation: 8

The committee recommends the relevant government departments coordinate closely with counterparts in likeminded countries, in particular Canada, the United Kingdom and the United States, both to ensure policy consistency and to ensure Australia can benefit from the practical implementation lessons learned by those countries.

Response: Agreed

The Australian Government accepts this recommendation.

Relevant government departments already work closely with counterparts in likeminded countries. At the UN General Assembly in September 2018, Australia, along with Canada, New Zealand, United Kingdom and the United States launched the *Principles to guide government action to combat human trafficking in global supply chains* (the Principles). The Principles provide a framework on which all countries can build a strategy to take effective action to prevent and eradicate human trafficking from public and private sector supply chains.

The Principles are designed to prevent human trafficking in global supply chains by focusing on leveraging government procurement; supporting government-private sector collaboration to inform companies' due diligence efforts; advancing responsible recruitment practices; and striving for harmonisation in relevant policies and regulations.

Under this Framework officials from these countries meet regularly to discuss actions taken in each jurisdiction, work that can be done together, and emerging issues of concern. Members are alert to the importance of coordination between each country's position.

Australian officials liaise regularly with likeminded counterparts on the dynamics, effectiveness, and challenges of a range of related measures, including transparency legislation, prohibitions, a range of other import restrictions and advice provided to business.

Australia also engages in multilateral standard setting on business conduct that includes accountability for business to ensure that forced or compulsory labour does not exist in their operations. Australia is an adhering country to the OECD Guidelines for Multinational Enterprises. Paragraph 1 (d) of Chapter V of the Guidelines provides that Multinational Enterprises should contribute to the elimination of all forms of forced or compulsory labour and take adequate steps to ensure that forced or compulsory labour does not exist in their operations. Australia has established a National Contact Point (AusNCP) to promote the Guidelines in Australia and to review complaints made against any enterprise operating in Australia, or Australian enterprises operating overseas, who fail to meet the Guidelines.

Recommendation 9

The committee recommends that the government explore with likeminded States the possibility of introducing a resolution condemning the situation in Xinjiang at the 76th session of the Third Committee of the General Assembly in 2021.

Response: Agree in principle

On 21 October, Australia was one of 43 countries to support a statement delivered by France during the 76th session of the UN General Assembly (UNGA) Third Committee, which reiterated our shared concerns about the human rights situation in Xinjiang. The statement called on China to allow immediate, meaningful and unfettered access to Xinjiang for independent observers, including the UN High Commissioner for Human Rights. The statement also welcomed UN High Commissioner Bachelet's announcement at the Human Rights Council (HRC) on 13 September that she would present her findings to date on Xinjiang, and encouraged publication of these findings as soon as possible.

Australia shares the grave concerns of the international community about credible reports of severe human rights abuses against Uyghurs and other Muslim ethnic minorities in Xinjiang. The Government has been clear and consistent in raising our concerns directly with China, in joint statements with other likeminded governments, and in partnership with a broad range of member states at the United Nations. We urge China, as we do all countries, to act in ways consistent with its human rights obligations.

The Government considers transparency and accountability to be central to addressing deep concerns about human rights in Xinjiang. International scrutiny is an important way to raise awareness and encourage the resolution of complex human rights concerns.

The Government has raised concerns about human rights in Xinjiang consistently, including at UNGA, the last nine sessions of the HRC, in national statements and jointly with the international community. Foreign Minister Payne raised Xinjiang in her dignitary address to the Human Rights Council in September 2020. Australia was one of 44 countries to join a statement delivered at the 47th session of the HRC on 22 June 2021, expressing concern about Xinjiang and calling on China to grant access for independent observers. Australia was one of 39 countries that joined a statement delivered in the UNGA Third Committee in New York in October 2020 regarding human rights in Xinjiang, Hong Kong and Tibet.

We liaise regularly with a broad, cross-regional range of partners on this issue.

On 21 January 2022, Foreign Minister Payne and Defence Minister Dutton issued a joint AUKMIN statement with the UK Foreign Secretary Truss and Defence Secretary Wallace expressing grave concerns about credible reports of severe and egregious human rights

violations in Xinjiang, including restrictions on freedom of religion, mass surveillance, large-scale extra-judicial detentions, forced labour and forced birth control. Both sides called on China to grant urgent, meaningful access for independent observers including the UN High Commissioner for Human Rights.

On 6 January 2022, Prime Minister Morrison issued a joint statement with Japan's Prime Minister Kishida, expressing serious concerns about reported human rights abuses against Uyghur and other Muslim minorities in Xinjiang.

On 16 September 2021, Foreign Minister Payne and Defence Minister Dutton issued a joint AUSMIN statement with US Secretary of State Blinken and Secretary of Defence Austin, expressing grave concerns about human rights abuses in Xinjiang, calling for China to grant urgent, meaningful and unfettered access to Xinjiang, and announcing their decision to strengthen international collaboration to eliminate forced labour from global supply chains.

On 9 June 2021, Foreign Minister Payne and Defence Minister Dutton issued a joint Australia-Japan 2+2 Statement with Japan's Foreign Minister Motegi and Defense Minister Kishi, expressing our shared serious concerns about reported human rights abuses against Uyghurs and other Muslim minorities in Xinjiang, and calling on China to grant urgent meaningful access to Xinjiang for independent observers including the UN High Commissioner for Human Rights.

On 23 March 2021, Foreign Minister Payne issued a joint statement with New Zealand Foreign Minister Mahuta on our shared concerns about human rights abuses in Xinjiang, including restrictions on freedom of religion, pervasive surveillance, mass extra-judicial detentions, forced labour and forced birth control, including forced sterilisation.

In May 2021, Australia was one of 18 co-sponsors of a UN side-event in New York, calling on China to grant urgent access to Xinjiang for a meaningful, unfettered visit by the UN High Commissioner for Human Rights. Australia's Permanent Representative to the UN, Ambassador Fifield, delivered our national intervention.

Australia will continue to raise our concerns about the situation in Xinjiang directly with China, in joint statements with the international community, and at the United Nations.

Recommendation 10

Recalling the recommendation of the References Committee in its report on Issues facing diaspora communities in Australia, the committee recommends that the Department of Foreign Affairs and Trade explore options to better leverage the experience and expertise in Australia's diaspora communities.

Response: Agree in principle

The Government will continue working with diaspora communities to ensure all experiences and expertise are understood and taken into account. The Government will explore opportunities in considering its response to the final report of the Senate Foreign Affairs, Defence and Trade References Committee Inquiry into *Issues Facing Diaspora Communities in Australia*.

Recommendation 11

The committee recommends that the government initiate the review of the *Modern Slavery Act 2018* as soon as possible following the conclusion of the first reporting cycle on 30 June 2021.

Response: Agreed

The Australian Government accepts this recommendation.

The Government is committed to publicly monitoring the effectiveness of the Modern Slavery Act and must report annually to Parliament about its actions to implement the Act. The Government also included a legislative commitment in the Act to review the Act as soon as practicable three years after the Act commences.

The intention of the review requirement was to ensure that the Modern Slavery Reporting Requirement continues to remain effective in the Australian context.

Accordingly, the Act stipulates that the relevant period to be reviewed is the first three years of the operation of the Act. The Act commenced on 1 January 2019, so the review period is 1 January 2019 to 31 December 2021. The review must be completed within 12 months of its commencing.

The Government intends to commence the review in the first half of 2022, in line with the timeframe set out in the Act.

Recommendation 12

The committee recommends that the review of the *Modern Slavery Act 2018* considers provisions for its strengthening and broadening, together with the establishment of an independent body to oversee and enforce its implementation.

Response: Agreed

The Australian Government accepts this recommendation.

When the Modern Slavery Act was developed, national consultations with business and civil society indicated that business compliance would be driven by reputational risk and reward, rather than punitive penalties or an independent enforcement body. To support the effective implementation of, and compliance with the Act, the Government committed \$3.6 million through the 2018 Federal Budget to establish a new Modern Slavery Business Engagement Unit to provide expert support and advice to businesses. In May 2020, the Government also established a multi-stakeholder Modern Slavery Expert Advisory Group to provide independent advice and feedback about the effective implementation of the Act.

The Assistant Minister for Customs, Community Safety and Multicultural Affairs, as the Minister responsible for the Act, is required to review the Act after three years. The review will be comprehensive and will consider a range of issues relating to the operation of the Act. Section 24(1) of the Act stipulates that the review consider:

- whether additional measures to improve compliance with the Act are necessary or desirable, including civil penalties for failure to comply

- whether it is necessary or desirable to do anything else to improve the operation of the Act
- whether a further review should be undertaken, and if so, when
- whether the Act should be amended to implement review recommendations.

The Government has committed to a public consultation process for the review. The public consultation process will seek the Australian community's views on the effectiveness of the reporting requirement and possible improvements, including whether additional measures such as penalties or an Independent Anti-Slavery Commissioner are required to improve the operation of the Act.

Recommendation 13

The committee supports the work and recommendations of the Joint Standing Committee on Foreign Affairs, Defence and Trade, Human Rights Sub-committee on the use of targeted sanctions to address gross human rights abuses and echoes its recommendation that the government 'enact stand-alone targeted sanctions legislation to address human rights violations and corruption similar to the United States' *Magnitsky Act 2012*'.

Response: Agreed

The Government has established a thematic autonomous sanctions regime in relation to serious human rights violations and abuses. The regime commenced on 21 December 2021, following amendments to the *Autonomous Sanctions Act 2011* and the *Autonomous Sanctions Regulations 2011*. Given the importance of ensuring consistency with Australia's existing autonomous sanctions framework, the Government decided against introducing stand-alone legislation to implement the new thematic autonomous sanctions regimes. The new thematic autonomous sanctions regime complements Australia's existing autonomous sanctions regimes, which are primarily country-specific. The Government's reform to the autonomous sanctions framework will enable the Government to take timely action to impose sanctions on persons and entities responsible for slavery, servitude, or forced or compulsory labour, where it is in the national interest to do so.

These reforms implemented the Australian Government's response, tabled on 5 August 2021, to the December 2020 report of the Joint Standing Committee on Foreign Affairs, Defence and Trade, *Criminality, corruption and impunity: Should Australia join the Global Magnitsky movement?*

Modernising Australia's autonomous sanctions regime will ensure the framework is aligned with Australia's contemporary foreign policy objectives. Sanctions will only be applied when in Australia's national interests, taking account of our unique regional interests. Australia may apply sanctions individually or in coordination with international partners in response to global developments.

Recommendation 14

The committee recommends the government explore introducing guidelines to assist Australian businesses to avoid sourcing products from forced labour.

Response: Agreed

The Government accepts this recommendation.

The Australian Government currently provides written and oral guidance to business to raise awareness of the responsibility to respect human rights in business operations, including in supply chains, as well as domestic and international laws and regulations. However, the Government acknowledges the value in exploring whether more targeted guidelines could be established to assist Australian businesses avoid the risks of forced labour in their supply chains.

The Australian Government will continue to provide advice on specific risks of forced labour through a range of channels including briefings to industry peak bodies and direct outreach to businesses. We will also continue to advise businesses that modern slavery, including forced labour, is a significant global concern and not limited to a specific country. Businesses must be alert to these risks to avoid unintentionally facilitating or being otherwise complicit in human rights violations.

In addition, the Modern Slavery Act established a robust transparency framework to drive business action to identify and address modern slavery risks in supply chains. The Government has developed detailed, comprehensive and practical guidance to support entities to comply with their reporting obligations under the Act, including how to identify modern slavery risks in supply chains, take actions to address these risks, and report on these actions in compliance with the Act.

Additional Recommendations – Senator Rex Patrick

Recommendation 1

That the Government introduce and deal with legislation to implement Recommendation 1 before the 46th Parliament is dissolved.

Response: Noted

The Australian Government notes this recommendation.

See the response to Recommendation 1.

Recommendation 2

Report to the Parliament on its implementation of all other recommendations no later than 31 December 2021.

Response: Noted

The Government regularly reports to Parliament on its efforts to combat modern slavery including forced labour.

Additional recommendations – Australian Greens

Recommendation 1

That the Australian Government ratify the ILO *Protocol of 2014 to the Forced Labour Convention*.

Response: Agreed

The Government has a longstanding commitment to implementing international standards to combat forced labour. Once all states and territories confirmed their support for ratification, the Australian Government ratified the International Labour Organization (ILO) *Protocol of 2014 to the Forced Labour Convention, 1930 (No. 29)* (the Protocol) on 31 March 2022.

Having ratified the most significant ILO Conventions to abolish this element of modern slavery, the *Forced Labour Convention, 1930 (No. 29)* and the *Abolition of Forced Labour Convention, 1957 (No. 105)*, the Australian Government announced its intention to progress ratification of the International Labour Organization (ILO) *Protocol of 2014 to the Forced Labour Convention, 1930 (No. 29)* (the Protocol) in November 2017.

The Commonwealth does not proceed with ratification of ILO Conventions until compliance has been established in all jurisdictions, and each state and territory government has provided its support for ratification. The Government of Western Australia had previously identified a risk of non-compliance with the Protocol. In December 2021 the Western Australian Parliament passed the *Industrial Relations Legislation Amendment Act 2021* which addresses this matter. This allowed the Government to progress Australia's ratification.

Recommendation 2

That the Australian government develop, resource and implement a comprehensive national anti-racism strategy.

Response: Noted

The Race Discrimination Commissioner is developing a proposal for a new National Anti-Racism Framework. The Commissioner is working closely with the Commonwealth and other relevant agencies and stakeholders on the development of the proposal. The Government welcomes the Commissioner's work to develop a National Anti-Racism Framework and has provided a contribution to the Commissioner to assist in its development.