

30 April 2024

By email: GroceryCodeReview@treasury.gov.au

Attention: Dr Craig Emerson

Submission: Interim Report of the Independent Review of the Food and Grocery Code of Conduct

Thank you for the opportunity to provide our submission on the consultation questions in the Interim Report of the Independent Review of the Food and Grocery Code of Conduct (**Code**) (**Interim Report**).

Be Slavery Free is part of the global movement that aims to prevent, disrupt, and abolish slavery. We work collaboratively with other organisations to effect change.

Be Slavery Free engages with Australian retailers and their suppliers to support supply chains in eliminating modern slavery, with a particular focus on products at high risk of slavery such as chocolate, fresh produce and clothing. These processes often require engagement with stakeholders throughout the supply chain to agree on common approaches and standards.

Through our ongoing engagement with Australia's supermarket retailers and their suppliers, we have gained insights into the imbalance of bargaining power between large retailers and their suppliers and the unintended consequence this can have on the human rights of workers in Australia's grocery supply chains, particularly those human rights that are infringed when modern slavery practices are found to have occurred. We are aware that Australian supermarket retailers importing products from overseas are often purchasing only a very small portion of the suppliers' total sales. Individually they have little leverage on the human rights conditions in factories, on farms and fishing farms and boats.

We also know that the Code is currently perceived as a barrier to effective collaboration between businesses in the food and grocery sectors to address modern slavery because of the perceived risk that collaborative efforts may result in breaches of the Code (see Part C below).

Part A: Summary of Be Slavery Free's submission

Reforming the Code is an opportunity to further the Code's purpose of helping to regulate standards of business conduct in the grocery supply chain and to build and sustain trust and cooperation throughout that chain.¹

This could be achieved through:

1. Including in the Code, minimum standards for responsible business conduct that apply to retailers, wholesalers and suppliers; and
2. The ACCC's provision of enhanced regulatory guidance and/or creation of a new class exemption for modern-slavery focused collaborations in pursuit of the Code's objectives (as amended to include minimum standards for responsible business conduct).

Part B: Modern slavery risks in food and grocery supply chains

We know from our work that there are modern slavery risks in Australian food and grocery supply chains, including horticulture, seafood, dairy and meat processing.

Factors that exacerbate the prevalence of modern slavery in grocery supply chains

1. **Temporary migrant labour:** The presence of temporary migrant labour in the workforce of any industry is an indicator of the inherent risk of modern slavery. Temporary migrant labour is a key feature of workforces in Australia's horticulture, meat processing and seafood supply chains and each of these industries is known to be at high risk of modern slavery and other forms of labour exploitation. For example:
 - a. **Horticulture:** the Fair Work Ombudsman² and the Senate Select Committee on Temporary Migration³ have both identified the Australian horticulture industry as at a significant risk of labour exploitation.
 - b. **Seafood** has long been associated with modern slavery risk.⁴ Two recent cases which led to the AFP charging suspects with forced labour and slavery offences in

¹ Food and Grocery Code of Conduct, section 2.

² Fair Work Ombudsman, 2018, Harvest Trail Inquiry, <https://www.fairwork.gov.au/sites/default/files/migration/1461/fair-work-ombudsman-harvest-trail-inquiry-report.pdf>

³ The Senate Select Committee on Temporary Migration, Parliament of Australia, September 2021, https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/024510/toc_pdf/SelectCommitteeonTemporaryMigration.pdf;fileType=application%2Fpdf

⁴ Walk Free, Global Slavery index, <https://www.walkfree.org/global-slavery-index/findings/spotlights/forced-labour-at-sea/>.

the Australian seafood industry highlight the need for more attention to workers' vulnerability in this sector.⁵

- 2. Multi-layered supply chains:** Risks of modern slavery and labour exploitation may manifest deep in the lower tiers of the supply chain, for example worksites of second and third-tier suppliers, especially at sites which hire temporary migrant workers and where labour hire providers are used. Temporary migrant workers are often additionally vulnerable to unscrupulous employers where they reside in accommodation provided by their employer and where they do not have social services and safety nets.⁶ Lower tiers of the supply chain are often out of scope of the social compliance standards, audit requirements⁷ and social monitoring programs of the three largest retailers.

Part C: Impediments to effectively addressing modern slavery risks in Australia's food and grocery supply chains

Australian retailers have direct contractual relationships with only the first tier of their supply chains. They have social monitoring programs which can impose ethical sourcing policies that set minimum working standards, and social audit requirements for the sites they know of.

Lack of collective action to identify, prevent and remediate modern slavery

Risks of modern slavery are often high in the most distant, hard-to-trace parts of all supply chains. In these circumstances, collective competitively benign action can deliver enhanced social standards across an industry with greater benefit to vulnerable workers than any single company can leverage through individual action. The NSW Anti-Slavery Commissioner has lamented that 'the system as it currently operates is not providing effective remedy for people harmed by exploitation and labour abuse'.⁸ He observes that solutions lie in working together.

⁵ AFP, Media Release 'Darwin man charged with forced labour and servitude offences, victims rescued', 22 December 2023, <https://www.afp.gov.au/news-centre/media-release/darwin-man-charged-forced-labour-and-servitude-offences-victims-rescued>; Jordyn Beazley, The Guardian, 'Queensland man charged with slavery and torture of deckhands on his fishing boats', 17 January 2024, <https://www.theguardian.com/australia-news/2024/jan/17/queensland-man-fishing-boats-slavery-torture-allegations-deckhands-gulf-of-carpentaria>.

⁶ Deloitte, 2022, Accommodation for horticulture workers: A project for Coles and the Ethical Retail Supply Chain Alliance, <https://www.colesgroup.com.au/FormBuilder/Resource/module/ir5sKeTxxEONDzdh00hWJw/file/Horticulture-Worker-Accommodation.pdf>

⁷ The Senate Select Committee on Temporary Migration, Parliament of Australia, September 2021, https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/024510/toc_pdf/SelectCommitteeonTemporaryMigration.pdf;fileType=application%2Fpdf pages 118-122.

⁸ Office of the NSW Anti-Slavery Commissioner, 20 October 2023, 'Protecting Our Harvest from Harm' https://dcj.nsw.gov.au/documents/legal-and-justice/anti-slavery-commissioner/speeches/Protecting_Our_Harvest_from_Harm'_Remarks_at_the_Fair_Farms_Fair_and_Ethical_Sourcing_Conference_2023.pdf.

Where companies take proactive efforts to identify modern slavery in their suppliers' supply chains, they have better chance of identifying and remediating modern slavery. At times, this is best achieved through collective action by a group of companies.

In our work, retailers have communicated to us they will not collaborate for fear that they may be in breach of the Code or be seen to have breached the Code. This is even if the collaboration was to address common modern slavery concerns in forums that are focused on this issue, are not constituted to share or exchange competitively sensitive information (such as retail pricing) and are most likely to be competitively benign. We find that this pushback is increasing. This includes meetings to discuss particular commodities as well as attempts to have conversations to harmonise standards relating to mitigating human rights issues – particularly indicators of forced labour.⁹

Multi-stakeholder collaboration in other jurisdictions

In contrast to the position in Australia, we are aware that collaboration between competitors to address modern slavery is permissible in other jurisdictions. For example:

1. **Belgium:** A sustainability initiative of five major Belgium Retailers with support of IDH – Sustainable Trade Initiative to achieve living wages in the banana sector was cleared by the Belgium Competition Authority in March 2023.¹⁰
2. **Germany:** The German Retailers Working Group on Living Income and Living Wages, under which participating German food retailers voluntarily committed to set common standards for wages in the banana sector,¹¹ was cleared of any competition concerns by the German competition authority, the Bundeskartellamt, in January 2022.¹² The Bundeskartellamt also indicated in June 2023 that it would not conduct a detailed examination of the German Initiative on Sustainable Cocoa (**GISCO**) after finding 'no indications that the initiative would incur a clear risk of a restraint of competition'.¹³ GISCO is a joint initiative of government and participants in the sweets, confectionary and chocolate industries to 'conserve and protect natural resources and biodiversity in cocoa producing countries as well as to increase the cultivation and commercialization of sustainably produced cocoa'.¹⁴
3. **United Kingdom:** Some examples of engagement in the UK include:
 - a. The **Retailer Cocoa Collaborative** is a group that assesses the progress of cocoa traders in cocoa sustainability, covering topics such as deforestation, traceability, gender

⁹ See more here: <https://www.ilo.org/publications/ilo-indicators-forced-labour>.

¹⁰ Belgium Competition Authority, Press Release, 30 March 2023,

https://www.belgiancompetition.be/sites/default/files/content/download/files/20230330_Press_release_11_BCA_0.pdf. See for more information: <https://www.idhsustainabletrade.com/news/belgian-retailers-living-wage-bananas/>.

¹¹ <https://www.nachhaltige-agrarlieferketten.org/en/in-practice/german-retailers-working-group>.

¹² Bundeskartellamt, Press Release, 18 January 2022,

https://bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2022/18_01_2022_Nachhaltigkeit.html.

¹³ Bundeskartellamt, Press Release, 13 June 2023,

https://www.bundeskartellamt.de/SharedDocs/Meldung/EN/Pressemitteilungen/2023/13_06_2023_Kakaoforum.html.

¹⁴ See for more information: <https://www.kakaoforum.de/en/about-us/german-initiative-on-sustainable-cocoa/>.

equality, farmer incomes, and child and forced labour. Their joint annual research is used to recommend and drive change in the cocoa industry in a competitively benign manner.¹⁵

- b. **Unseen**¹⁶ is a charity that facilitates reporting of modern slavery. Unseen then coordinates remediation in farms and manufacturers and provides updates and coordination on the case with all retailers who use that supplier. This mechanism saves time and resources, and facilitates retailers working together, which also reduces the strain on the supplier with a single coordination point.
 - c. In the **Banana Retail Commitment on Living Wage**, nine UK retailers¹⁷ joined forces to commit to a living wage for banana workers in their international supply chains. This initiative complements similar agreements in Belgian, Dutch and German markets.
4. **The European Commission**¹⁸ has an initiative to improve sustainability in the cocoa sector. It includes representatives of the European Parliament, EU Member States, cocoa growers, growing nations and civil society. The dialogue aims to deliver concrete recommendations to advance sustainability across the cocoa supply chain through collective action and partnerships. In addition, many cocoa importing countries have Initiatives on Sustainable Cocoa (ISCOS) in which the state, producers, traders, retailers, civil society organisations, research institutes and academic institutions participate to address child and forced labour, provide a living wage to farmers and address deforestation.^{19, 20, 21, 22, 23.}

Part D: Response to consultation questions

Mandatory minimum standards for responsible business conduct can assist in addressing the prevalence of modern slavery in food and grocery supply chains.

The Interim Report's Consultation Question 5 asks *'What minimum standards of conduct, if any, should be specified in the Code that should not have exceptions? If exceptions are provided for, how should these be limited?'*

The authoritative standard for responsible business conduct is the *United Nations Guiding Principles on Business and Human Rights (UNGPs)*, adopted by the United Nations in 2011.

¹⁵ See for more information: <https://retailercocoacollaboration.com> .

¹⁶ See for more information: <https://www.unseenuk.org/>.

¹⁷ See for more information: <https://www.idhsustainabletrade.com/banana-retail-commitment/>.

¹⁸ https://international-partnerships.ec.europa.eu/news-and-events/news/commission-launches-initiative-more-sustainable-cocoa-production-2020-09-22_en

¹⁹ Switzerland <https://www.kakaoplattform.ch/>

²⁰ Germany <https://www.kakaoforum.de/en/about-us/german-initiative-on-sustainable-cocoa/>

²¹ Belgium <https://www.idhsustainabletrade.com/initiative/beyondchocolate/>

²² The Netherlands <https://www.idhsustainabletrade.com/initiative/dutch-initiative-on-sustainable-cocoa-disco/>

²³ France <https://www.vie-publique.fr/rapport/286664-initiative-francaise-pour-un-cacao-durable-ifcd-rapport-20212022>

The UNGPs require States to take steps to protect human rights, for example through setting clear expectations for business by enacting effective policies, legislation and regulations. Implementation of the *Modern Slavery Act 2018* (Cth) and the subsequent review of the Act are examples of actions taken by the State to protect human rights from adverse impacts arising from modern slavery practices.

The UNGPs also require businesses to respect human rights, demonstrated by avoiding infringing on the human rights of others and addressing those adverse impacts which they have caused or contributed to; or to which they are directly linked via their operations, products or services by their business relationships. Conducting human rights due diligence to identify, assess and mitigate human rights impacts is core to a business's responsibility to respect human rights.

The inclusion in the Code of minimum standards for responsible business conduct to address and mitigate modern slavery risks in high-risk industries within the food and grocery supply chains is an opportunity for the federal government to further its obligation to protect the human rights of Australia's most vulnerable workers.

Examples of matters that could be included in minimum standards for responsible business conduct are:

- Retailers and suppliers have an ongoing obligation to conduct reasonable and proportionate due diligence to identify, assess and prevent modern slavery in high-risk categories including horticulture, meat processing, dairy and seafood, regardless of whether they are own branded or other branded products.
- Suppliers must meet minimum supplier standards directed to reducing the risk of modern slavery in their supply chains.
- Where suppliers are unable to meet those minimum standards, retailers may choose to engage a supplier on terms that work towards the supplier meeting those minimum standards.
- Retailers must act reasonably and consider the overall cost and social compliance burden on suppliers when setting minimum standards. Collaboration between retailers to adopt compatible minimum standards of responsible business conduct is to be encouraged and not discouraged by the Code.
- Retailers must uphold responsible buying behaviour and not transfer risk and costs down the supply chain where it is reasonably likely to incentivise, cause or contribute to a supplier being unable to meet the minimum supplier standards (or jeopardise their ability to pay their own workers).

Addressing impediments to collaboration

Enabling collaboration between retailers to address modern slavery is critical to achieving the government's policy objectives. Collaboration could address the following:

1. **Agreeing on common minimum supplier standards** (or at least establishing a baseline set of minimum supplier standards),²⁴ which would have multiple benefits including:
 - a) Reducing the cost of social audits for suppliers.
 - b) Freeing social compliance staff in both retailers and supplier companies to direct more resource and attention to identifying and remediating modern slavery risks.
2. Enabling retailers to **share information** about identified instances of modern slavery practices in their supply chains.
3. Enabling **collaboration between civil society members and retailers**, which would assist businesses to develop solutions to common modern slavery challenges.

While options for effective collaboration exist, Australia's competition laws, and the Code as it presently operates, are significant barriers to facilitating the level of collaboration required to address modern slavery. We therefore urge the ACCC to:

1. **Issue detailed guidance** for food and grocery industry participants as to when multistakeholder collaboration to achieve sustainability outcomes is permissible (in particular outcomes that are consistent with government policy and in this case, combatting modern slavery), having regard to Australia's prohibition under the Competition and Consumer Act.
2. **Develop and consult on a new class exemption** for modern slavery-focused collaborations. While Be Slavery Free's position is that the exemption should apply beyond the Code's participants, it recognises that in the context of the Review of the Code, this recommendation ought to be confined to what is necessary to advance the purposes of the Code and the objective to prevent modern slavery abuses. A class exemption would allow those businesses that fall within the Code's mandate to engage in specified conduct in pursuit of the Code's objectives without risk of contraventions. This would provide those businesses with greater confidence to engage in collaborative information exchanges regarding modern slavery. Once established, businesses can self-assess whether their planned activity is covered by the class exemption.
3. **Extend the ACCC's guidance to businesses on making environmental claims²⁵ to include social aspects of sustainability claims.** This will provide businesses with guidance as to how they can make claims about their genuine efforts to adopt social practices within their business, including through industry collaborative efforts, without breaching the Competition and Consumer Act, whilst also providing consumers with greater transparency and trust to allow them to make informed decisions.

²⁴ The Senate Select Committee on Temporary Migration, Parliament of Australia, September 2021, https://parlinfo.aph.gov.au/parlInfo/download/committees/reportsen/024510/toc_pdf/SelectCommitteeonTemporaryMigration.pdf;fileType=application%2Fpdf pages 118-122.

²⁵ See ACCC, *Making Environmental Claims: A Guide for Business*, December 2023, <https://www.accc.gov.au/system/files/greenwashing-guidelines.pdf>.

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