

Our Ref: 100-GO-0291
Your Ref:



Committee Secretary
Joint Standing Committee on Foreign Affairs,
Defence and Trade
PO Box 6021
Parliament House
CANBERRA ACT 2600

28 April 2017

Dear Secretary

INQUIRY INTO ESTABLISHING A MODERN SLAVERY ACT IN AUSTRALIA

Fortescue Metals Group (Fortescue) is pleased to provide a submission to the Joint Standing Committee on Foreign Affairs, Defence and Trade, on the Inquiry into the Establishment of an Australian Modern Slavery Act.

Fortescue is committed to protecting and promoting human rights and has business wide policies and practices to prevent, detect and remedy instances of forced labour within our operations and in the operations of our suppliers and business partners.

We support the establishment of a modern slavery act in Australia and believe that the development of a strong legislative framework will lead to significant advances in the prevention of modern slavery within the domestic and international supply chains of business and government.

Please do not hesitate to contact Tom Weaver at _____ or Cath Bozanich at _____ if you require any additional information.

Yours sincerely,

FORTESCUE METALS GROUP

TIM LANGMEAD

Director, External Relations

Enc.

Attachment 1 Joint Standing Committee on Foreign Affairs, Defence and Trade:
Inquiry into the Establishment of an Australian Modern Slavery Act
– Submission by Fortescue Metals Group (100-RP-GO-0011).

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Fortescue
The New Force in Iron Ore

**JOINT STANDING COMMITTEE
ON FOREIGN AFFAIRS, DEFENCE AND TRADE**

Inquiry into the Establishment of an Australian Modern Slavery Act

28 April 2017

100-RP-GO-0011

1. INTRODUCTION

Fortescue Metals Group (Fortescue) welcomes the Joint Standing Committee on Foreign Affairs, Defence and Trade's inquiry into whether Australia should adopt a modern slavery act and acknowledges the leadership the Australian Government is providing on this issue.

Fortescue supports the establishment of a modern slavery act and believes that the development of a strong legislative framework will lead to significant advances in the prevention of modern slavery in Australia and within the supply chains of businesses and organisations that operate in Australia and overseas.

Fortescue believes that an Australian modern slavery act will:

- reduce the number and severity of cases of modern slavery within Australian businesses and their domestic and international supply chains;
- provide better protection to the victims of modern slavery;
- promote transparency in relation to company actions on addressing slavery in supply chains;
- encourage self-reporting and enhance knowledge sharing on effective methods to tackle modern slavery within and across supply chains;
- reduce duplication in effort and lead to more varied and multiple approaches in eradicating modern slavery;
- provide a more even playing field for companies already acting/reporting on this issue;
- raise business and community awareness of the horror of modern slavery and its prevalence;
- provide law enforcement agencies with better intelligence so as to target investigations and prosecutions of those directly benefiting from slavery;
- engender enhanced community confidence in the Australian business sector's commitment to human rights;
- ensure that more resources are available to address the scourge of modern slavery in the private and public sector; and,
- lead to increased levels of support to the victims of slavery.

1.1 About Fortescue

Fortescue is a global leader in the iron ore industry, recognised for its culture, innovation and industry-leading development of world class infrastructure and mining assets in the Pilbara, Western Australia. Since it was founded in 2003, Fortescue has discovered and developed major iron ore deposits and constructed some of the most significant mines in the world.

Now producing 165 – 170 million tonnes of iron ore per annum, the company has grown to be one of the largest global iron ore producers and is focussed on its vision of being the safest, lowest cost, most profitable iron ore producer. The company's operations span four mine sites in the Pilbara. The Chichester Hub, which includes the Cloudbreak and Christmas Creek mines, is located in the Chichester Ranges and the Solomon Hub, in the Hamersley Ranges, includes the Firetail and Kings Valley mines.

1.2 Protecting Human Rights

Fortescue is committed to protecting and promoting human rights and has a zero tolerance for modern slavery in its supply chain. The Company recognises, respects and works to uphold the human rights of every individual and acknowledge the 'Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework (2011)'.

Fortescue has business wide policies and practices to prevent, detect and remedy instances of forced labour within our operations and in the operations of our suppliers and business partners.

Fortescue's Human Rights Policy, Employee Code of Conduct, Directors' Code of Conduct and Vendor Terms and Conditions form the framework for this, establishing the standards of personal and corporate practice and behaviour expected of everyone who works for or with Fortescue including contractors, suppliers and business partners.

2. ERADICATING SLAVERY FROM OUR SUPPLY CHAINS

2.1 Our Suppliers

Fortescue has approximately 2,000 suppliers. The largest categories of materials and services procured include labour hire, fuel, fixed plant components and heavy mining equipment.

Approximately 80 per cent of Fortescue's vendors are based in Australia, the majority in Western Australia, with others based in Hong Kong, Singapore and China. The majority of the Company's contracts are awarded for 24-36 months duration.

2.2 Procurement at Fortescue

Fortescue sources the goods and services necessary to operate the business in a number of ways, depending on the scope of work, as well as its value and risk characteristics.

Goods and services are most commonly sourced via direct negotiation, tendering or sole sourcing, and contracts are carried out under Fortescue's standard terms and conditions for low risk projects, and adjusted contract terms for larger, higher risk projects.

Fortescue's primary procurement categories are:

Strategic Contracts;

- Energy;
- Services;
- Mobile Plant;
- Fixed Plant; and,
- Sustaining Capital expenditure.

New supplier contracts are decided based on the scope of work and appropriate contract terms using a matrix with a weighted scoring system. Factors considered include:

- Safety;
- Forced labour declaration;
- Value;
- Capability capacity; and,
- Cultural fit with Fortescue

Fortescue is committed to supporting local business, with initiatives such as Billion Opportunities designed to promote sustainable business opportunities for Aboriginal people.

2.3 Facing Modern Slavery in Our Supply Chain

Fortescue's public commitment to eradicate the scourge of modern slavery began in 2012, and significant structural change and policy frameworks to realise this target were put in place in the first 12 months.

The commitment began at the Board level, with the full support of Chairman and Founder Andrew Forrest and Chief Executive Officer Neville Power. This was communicated throughout the business as a "zero tolerance for modern slavery". At this time Fortescue also joined the UN Global Compact for Business.

Through one on one engagement with Fortescue's Procurement team, suppliers were notified of the Company's commitment and expectations and were asked to respond and advise on steps taken in their own operations and supply chains to respond to risk of modern slavery. Suppliers were required to sign a Statutory Declaration reflecting the commitment.

Fortescue then conducted an investigation of its supply chain and completed a risk assessment of its suppliers using matrix of Category (eg: labour services, construction etc), Spend, Country and Commitment. It became clear some suppliers were at high risk of slavery.

2.4 Initial Rapid Response

Following its own, internal audit in 2012, which identified vulnerability in the supply chain, Fortescue contracted the services of Verité to attend the site of one of its major suppliers and investigate the labour and living conditions of their workers.

As a specialist social auditor, Verité were able to rapidly assemble an experienced team with relevant language skills, and competencies in interviewing factory workers from India, Nepal and Bangladesh about labour conditions. The audit methodology was designed to uncover risks of forced labour.

The audit identified:

- Excessive recruitment fees, which in some cases exceeded the legal limit in the relevant countries;
- Some workers needed loans to pay for recruitment fees and excessive interest rates were sometimes applied to these loans so that repayment required up to two years' work, during which time workers felt unable to leave their jobs or send money back to their families;
- Workers were required to surrender their passports to their employer upon arrival in a new country, removing their ability to return home; and,
- Significant ambiguities in worker's contracts, particularly around overtime and leave, which left them vulnerable to exploitation.

Following the Verité report, Fortescue conducted its own full audit and verification visit, and a suite of remediation efforts were undertaken including the repayment of excessive recruitment fees to the foreign contract workers and the installation of safety deposit boxes for workers in the labour camps so they could hold their own passports safely.

The remediation efforts were verified through follow on actions including checks with workers to ensure they had received repayment and unannounced site visits.

2.5 Comprehensive Policy and Practice reform

By the end of 2013, Fortescue had business wide policies and practices in place intended to prevent, detect and remedy instances of modern slavery within its own operations, and the operations of its suppliers and business partners including a Policy Framework established through the Employee Code of Conduct (internal facing) and Procurement Policy (external facing).

The foundation documents for implementing Fortescue's anti-slavery policy are the Company's Human Rights Policy, Employee Code of Conduct and Integrity Policy and Directors Code of Conduct. These documents establish the essential standards of personal and corporate conduct and behaviour expected of everyone who works for or with Fortescue including directors, employees, contractors, suppliers and business partners.

Fortescue's Procurement documents, notably the Vendor Pack Terms and Conditions, outline the standards the Company expects of its suppliers.

Finally, Fortescue's approach to ending modern slavery is reported annually in the Corporate Social Responsibility Report, within the Annual Report.

Fortescue acknowledges the 'Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework (2011)'.

To that end, Fortescue's commitment to eradicating slavery has been integrated into all aspects of the Company's procurement process through policies and ongoing due diligence.

These documents are publically available at www.fmgl.com.au

2.6 Business Integrity Manager

Fortescue employs a Business Integrity Manager, reporting to the Company Secretary. The responsibilities of the role include evaluating the risk of slavery within Fortescue's supply chain as part of the initial sourcing strategy, undertaking audits where necessary and implementing corrective action in any identified cases of non-compliance.

Fortescue's Business Integrity Manager has direct key performance indicators that align with the Company's commitment to ending modern slavery.

2.7 Working with Suppliers to End Modern Slavery

The cooperation and support of Fortescue's suppliers is critical to the company realising its commitment to prevent, detect and remedy instances of forced labour in its supply chain.

All potential suppliers are subjected to a robust risk assessment and due diligence process at the start of any procurement process. The risk model is built on a number of databases including the Global Slavery Index which combines 17,000 data points and provides an objective comparison and assessment of the prevalence of modern slavery in various countries.

If a vendor is rated as high risk for slavery, they will be flagged for further investigation prior to contract award. Investigation methodologies are tailored to the circumstance.

During the procurement process, preference is given in the evaluation of quotes or offers, to vendors who are willing to work with Fortescue to ensure that they comply with the Company's commitment to no forced labour or slavery in its supply chain.

Fortescue's Procurement documents, notably the Vendor Pack Terms and Conditions, outline the standards the Company expects of its suppliers:

- All suppliers are required to sign a statutory declaration certifying that they have undertaken investigation of their own labour practices and those of their direct suppliers to ensure they use no slavery or forced labour; that they have all necessary policies, procedures, investigations and compliance systems in place to ensure this continues to remain the case; and that they have taken actions and investigations to confirm the accuracy of these statements; and
- Fortescue supply contracts include a clause on forced labour and slavery, requiring each contractor to warrant that it has thoroughly investigated its labour practices and those of its direct suppliers to ensure there is no forced labour or slavery anywhere in the contractor's business or that of its direct suppliers; and that the contractor has put in place processes, procedures, investigations and compliance systems to ensure that that this will remain the case at all times.

Fortescue retains the right to conduct unannounced spot audits verifying all of the above.

2.8 Shift to Real-time Risk Assessment

In 2016, Fortescue developed and implemented a system of real time risk alerts, through the Fortescue Risk Management Framework.

The Fortescue Risk Management Framework (FRMF) is a tailored methodology and approach designed to support effective management and oversight of risk within the business. The FRMF is aligned to ISO 31000, the international standard for risk management, and provides a consistent approach to the recognition, measurement and evaluation of risks across the business.

Designed to monitor third parties with real time updates and notifications of their business practices, the FRMF conducts business partner risk assessments on an ongoing and continuous basis. Any material changes to a business partner's risk rating, relating to the risk of slavery, are automatically notified to senior management where a further direct assessment is made as to the level of risk involved and whether further action is required by Fortescue.

Where risk is identified, whether through reports from internal or external sources such as media, judicial determination, or any other source, these are quickly followed up at the highest level and steps taken to investigate and address the situation. In the event a supplier has detected instances of forced labour within their supply chain, Fortescue will work collaboratively with that supplier to urgently remedy the situation.

2.9 Transparency and Accountability

Fortescue reports on its anti-slavery policies and procedures annually in the Corporate Social Responsibility section of the Annual Report.

Fortescue empowers its officers, employees and contractors to report any breaches of the Code of Conduct and Integrity, or unethical or illegal business conduct, including behaviour which may not accord with the Code including identifying instances of forced labour in the business or supply chain.

Fortescue has established a range of mechanisms for a whistle-blower hotline to confidentially identify breaches of the Code or unethical or illegal business conduct.

- The Fortescue whistle-blower hotline offers:
- Confidential reporting and the choice to remain anonymous;
- Telephone and web-based reporting options;
- 24-hour access; and,
- Ability to follow up on concerns, even if the reporter chooses to remain anonymous.

Fortescue's Business Integrity Manager serves as the primary point of contact for all complaints. The Business Integrity Manager undertakes a detailed investigation of every allegation made to the whistle-blower hotline. The findings are then reviewed and dealt with by the appropriate Senior Managers within the business.

From 2017, Fortescue's approach to ending modern slavery is to be reported via an annual stand-alone Corporate Social Responsibility Report.

3. ESTABLISHMENT OF A MODERN SLAVERY ACT

Fortescue supports the introduction of an appropriately drafted modern slavery act into Australian law. An appropriately drafted act will provide the strong legal framework required to encourage action to address the stain of modern slavery in Australia and in the operations of Australian companies abroad.

Fortescue recognises the practical difficulties and complexities of detecting and eradicating modern slavery from within supply chains and believes therefore that a stand-alone, purpose drafted statutory regime must be established. Existing legislation is not adequate to address the complexities of modern slavery.

Any new legislation should build on existing, voluntary agreements and standards and legislation including the Guiding Principles on Business and Human Rights and could be modelled on the UK Modern Slavery Act. Harmonisation with UK legislation is important to ensure efficiency for company's already reporting under that regime.

Fortescue believes that the following key elements should form part of a modern slavery act:

- The appointment of an Independent Anti-Slavery Commissioner with the responsibility to issue an annual report on the status of modern slavery in Australian business and Government operations and their domestic and international supply chains, and with the power to investigate and report upon suspected or actual breaches of the modern slavery act;
- A requirement for 'large' businesses to publish an annual 'modern slavery statement' and comply with provisions similar to relevant provisions in section 54 of the UK Modern Slavery Act;
- A requirement for State and Commonwealth Government Agencies and statutory authorities to, at a minimum, comply with provisions similar to section 54 of the UK Modern Slavery Act;
- Be designed to encourage and not penalise the voluntary self-identification of the existence of modern slavery and support business and government in their efforts to eradicate it;
- The establishment of a publically available central repository for all 'modern slavery statements'; and,
- Provide for statutory defences for victims of modern slavery including protection for those who are victims of human trafficking.

3.1 Independent Anti-Slavery Commissioner

Fortescue believes that the nature and complexity of the scourge of modern slavery requires oversight by an Independent Anti-Slavery Commissioner. The Commissioner will be required to work with a wide range of stakeholders and to assess the work of business and government

agencies. It would not be appropriate for a Commissioner to sit within an existing government agency but should rather lead a new, independent Anti-slavery Statutory Authority.

The Act should provide the Commissioner with, at a minimum, the following characteristics, powers and responsibilities:

- Issue to Parliament an annual report on the status and prevalence of modern slavery in Australian business and Government operations and their domestic and international supply chains. The purpose of the report is to hold businesses and government agencies accountable, and acknowledge business and government success, through an open, independent and transparent process;
- A role in monitoring, assessing and reporting upon the effectiveness of the act across business and government;
- Provide independent, expert advice on Government policy and practices including coordination between State and Federal government agencies, in relation to the implementation of the act;
- Have the tenure of an independent statutory officer appointed for a fixed term;
- To request, collect and distribute data on best practice across government and business;
- Be supported by a small agency of expert staff;
- The power to appoint a special investigator for the purposes of verifying or auditing the annual slavery statement of a government or business where, on reasonable grounds, the Commissioner believes that the government or business may not be reporting or appropriately addressing modern slavery in their supply chain;
- Be appropriately funded; and,
- Provide guidance notes for law enforcement priorities, government funding and/or policy development.

3.2 Annual 'Modern Slavery Statements' – Large Business

Fortescue believes that all large businesses should be required to publish annual modern slavery statements. The definition of a large business should be consistent with the definitions under the *Corporations Act 2001* (Cth).

The requirement to publish an annual statement will encourage large businesses to do more to address modern slavery within their own companies and their supply chains. It will also lead to a more even playing field for those companies already working to address this issue and those that are already required to report in a similar way through their operations in other countries including under the UK Modern Slavery Act.

These statements will also allow the public and businesses themselves to consider the performance of large businesses in addressing modern slavery when looking to procure services and purchase products that a certain business may offer.

The statements should be mandatory and require businesses to provide details on the steps taken to ensure modern slavery does not exist within their own organisation as well as their supply chains. Without mandatory reporting, those companies that voluntarily report on the identification of slavery within their supply chain may be unfairly disadvantaged.

These reports will also create a starting point to assess the effectiveness and level of implementation of the Act.

Content of the statements should be based on the relevant provisions of Section 54 of the UK Modern Slavery Act, but should go further as outlined above.

To encourage rigour in reporting, the annual statement must be authorised under signature of the Director members of the Risk and Audit Committee (or equivalent in non-listed companies).

Almost 10% of Australia's top 100 ASX listed companies already report under Section 54 of the UK Act including ANZ Bank, Qantas, Wesfarmers and BHP (2017 Walkfree). These existing reporting requirements should be taken into consideration when reporting requirements of a new act are designed.

3.3 'Modern Slavery Statements' – Government Agencies

Fortescue believes that large Government departments and statutory authorities should be required to issue an annual modern slavery statement.

Government agencies are large procurers of a wide range of products and services including electronic equipment, food and logistics. In 2015/2016 the Australian Government procurement contracts were valued at approximately \$57 Billion across over 70,338 contracts (2017 Department of Finance).

Fortescue believes government agencies should be model corporate citizens in this area and eliminate modern slavery from their supply chains. This will increase the effectiveness and scope of the act by focusing government's efforts on reducing its own exposure in this area, and encouraging business to do the same.

Government Statements should be authorised by the Secretary of the Department (or equivalent).

3.4 Encourage not Penalise

The legislation and in particular the reporting process, must be structured in a manner that encourages businesses to identify issues and work to address them. Businesses and their suppliers should not be incentivised to restrict investigations or reporting because they fear being penalised.

Through its work in the area Fortescue has found that it is critical to work cooperatively with suppliers. Suppliers should not automatically be excluded from providing services if a risk assessment identifies a potential slavery issue. A thorough investigation into the matter should be undertaken to assess the nature of the issue. In some instances the action of a supplier may mean that a contract must be cancelled but in other cases undertaking remedial actions with the supplier may result in a better outcome for all parties.

This will also ensure that reporting gives a true reflection of the actual situation in Australia.

Fortescue sees this culture of encouragement as sitting neatly with the powers of the Commissioner who, through the annual reporting statement, is provided with a power to investigate and report upon both best practice and under-performance of compliance with the Act.

3.5 Central Repository for All ‘Modern Slavery Statements’

A single, free, easily accessible central repository will ensure transparency and accountability on this issue. Any business required to report should be listed so any viewer can easily identify those businesses that have not reported. This repository will allow the public, procurers, investors, government agencies and other key stakeholders to review the level of commitment and actions of large businesses and compare their actions to other businesses, in one place. It will also allow stakeholders to more easily hold businesses accountable for their level of action.

Fortescue believes the establishment and maintenance of this repository should fall under the responsibility of the Anti-Slavery Commissioner.

3.6 Statutory Defences for Victims

The act should include a section consistent with that contained in the UK Modern Slavery Act 2015 (s45) that protects victims from being detained, charged and prosecuted for offences committed whilst in slavery. The Australian modern slavery act must also including provisions offering protection from involuntary deportation or detention for persons who are the innocent victims of human trafficking. As well as protecting the victims of slavery, these measures will result in more cases being reported by the victims themselves.

3.7 Extra-territorial Effect

The act should apply to all large Australian companies and government department, and should apply to their operations and those of related bodies corporate, subsidiaries and joint venture operations both domestically and abroad. It can no longer be acceptable for a corporation to state that it “complies with all relevant domestic law”, if the relevant domestic law supports or benefits from modern slavery in any of its insidious forms.

REFERENCES

2017 Walkfree Foundation, *Submission to the Joint Committee on Law Enforcement Inquiry into Human Trafficking*

2017 Department of Finance, Statistics on Australian Government Procurement Contracts

<https://www.finance.gov.au/procurement/statistics-on-commonwealth-purchasing-contracts/>