



MODERN SLAVERY BILL 2018

SUBMISSION

Senate Legal and Constitutional Affairs Legislation Committee

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The Salvation Army acknowledges the forced labour, servitude and enslavement of Aboriginal and Torres Strait Islander people and Pacific Islander peoples in Australia's history, and recognises the trauma and long-term impacts of those injustices on individuals, their families and communities.



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20 July 2018

Dr. Sean Turner, Committee Secretary
Senate Legal and Constitutional Affairs Legislation Committee
PO Box 6100 Parliament House Canberra ACT 2600
Via Email: legcon.sen@aph.gov.au.

Dear Dr. Turner,

Thank you for the opportunity to make a submission to the Modern Slavery Bill 2018. As part of this submission, we refer the Committee to our submissions made to the Joint Standing Committee on Foreign Affairs, Defence and Trade Inquiry into Establishing a Modern Slavery Act in Australia and to the Government Consultation on a 'Modern Slavery Reporting Requirement'.

The Salvation Army would like to acknowledge the enormous effort that has gone into this legislation by hundreds of stakeholders, particularly the work of the public servants in the Department of Home Affairs who have undertaken extensive, genuine consultation to inform this bill. We commend the government for its leadership in developing the Modern Slavery Bill and are grateful for the genuine engagement offered by many Members, Senators, and Committee representatives.

We now offer brief additional comments and recommendations here in response to the bill. Whilst we believe the bill could be enhanced through some minor amendments, The Salvation Army recommends first and foremost that the Parliament pass this bill as soon as practicable before the end of 2018.

The range of issues relevant to this bill have been thoroughly considered and there is broad consensus amongst key civil society and business groups. As stated herein, this moment is an unprecedented opportunity to pass historic legislation and establish Australia as a global leader in the fight against modern slavery.

Yours Sincerely,

Dr. Elli McGavin
Head of Policy, Research and Social Justice
The Salvation Army Australia



Creation of a statutory officer on modern slavery

It is widely acknowledged that one of the most successful aspects of the UK Modern Slavery Act has been the impact of the work led by the UK Independent Anti-Slavery Commissioner. Indeed, an independent review of the UK Act found that, in its first year, more victims were identified, more proactive and reactive police investigations were undertaken, more prosecutions and convictions were achieved, judicial awareness was increasing and leading to stronger sentencing and more training and cross-agency coordination and reporting was put into place.¹

All of these outcomes are attributable to the Commissioner whose key function is “to encourage best practice in the fight against slavery and provide independent assessment on the effectiveness of actions taken by the Government and other actors to fight slavery.”² The Commissioner has oversight over and brings together the range of government stakeholders who are involved in combatting the crimes of modern slavery. While the role has no legislated responsibility regarding the business reporting requirement, the Commissioner has engaged, educated and supported businesses to fulfil their obligations under the Act.

The Commissioner’s work in mobilising support and action by government agencies, civil society and community members has had measurable impact. In evidence provided to the Modern Slavery Inquiry, Commissioner Hyland noted that identification of victims had risen sharply in his first two years in office (63%), prosecutions had greatly increased (71%), and convictions had also risen (44%).³

Mr. Hyland strongly argued that it is the independence of the Office that has enabled him to engage government agencies and business as a “critical friend” and in a way that a departmental employee simply could not do. This point was echoed by the Australian People Smuggling and Trafficking Ambassador in his own evidence to the Committee.⁴

We observe there is great appetite for such a role within the Australian business community. Additionally, we observe that whilst Australia has a robust legislative framework on modern slavery, where the UK did not prior to the Modern Slavery Act 2015, Australia faces similar challenges to the UK in improving its implementation of a criminal justice response to this issue. Since 2003, referrals for prosecution and successful convictions are poor (<25) and of approximately 730 referrals to the AFP, less than 350 people have received assistance from the Government’s Support for Trafficked People Program. These issues have been the subject of international criticism, including by successive annual Trafficking in Persons (TIP) reports by the US Department of State.

The discussion around the creation of an Australian Independent Commissioner has largely focused on replicating the model of the UK MSA. However, as with the reporting requirement, an Australian Statutory Office could improve upon the UK legislation in key areas. While the UK Commissioner has as part of his strategic plan engaged with business, the Office has no legislated role advising or monitoring business. Australia could improve upon this by extending the role to act as a trusted

¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/542047/2016_07_31_Haughey_Review_of_Modern_Slavery_Act_-_final_1.0.pdf

² Modern Slavery Act 2015 (UK) s 41(1).

³ <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;adv%3Dyes;orderBy%3Dcustomrank;page%20%3D0;query%3DId%3A%22committees%2Fcommjnt%2Ffe3a87c9-7fdd-492c-9ea9-747829afc155%2F0000%20%22;rec%3D0;resCount%3DDefault>

⁴ http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Foreign_Affairs_Defence_and_Trade/Modern_Slavery/Public_Hearings 22 June 2017.



friend to business as they seek to improve their systems and understanding of the challenges in complex supply chains. In our conversations with business colleagues, we have seen that business wants an independent point of contact to seek advice, not just for meeting their obligations under the Act, but also if they experience issues in their supply chains.

The Business Engagement Unit is a welcome commitment but cannot provide this kind of independent, operational support. It is also uncertain whether the current criminal justice response is adequate to meet increased demand that would presumably come from increased scrutiny of domestic supply chains.

The Modern Slavery Bill provides Australia with an unprecedented opportunity to rethink its response and consider how to improve not only business efforts to address modern slavery risks, but government agency efforts as well.

For instance, while the government has not yet responded to the range of recommendations from the Hidden in Plain Sight report, we note that many of these do not necessarily require a legislative response and will certainly require time, consideration and possibly further consultation for proper implementation. Additionally, as the states begin to take more action on this issue, there is an emerging critical need to ensure effective coordination between all levels of government. Finally, as the current National Action Plan concludes next year, it is time to begin reflecting on areas of strength and weakness, to set a new course in 2020 with clear roles for business, the community, the states and territories, and survivors themselves. We submit that there has never been a more appropriate or more necessary moment for independent leadership and coordination of Australia's response to modern slavery than now.

We regard this office as vital to our domestic response and as an opportunity to build on the inter-departmental structures and processes that currently exist. The role of the office could also be part of the three-year review assessment.

To these ends, we propose the following roles for the Office and Business Engagement Unit respectively:

A Statutory Office on Modern Slavery should:

1. Act as a trusted advisor to business to seek advice if they experience issues in their supply chains. On this basis, the appointee would have special expertise in identifying and responding to slavery and slavery-like practices in supply chains.
2. Encourage best practice in the prevention of slavery and human trafficking and the identification and support of victims and provide support to government agencies in improving their responses and coordination;
3. Be the lead in implementing a community engagement strategy to educate the public about the new legislation, particularly as it relates to fostering a culture of safety for business reporting on risks of modern slavery in supply chains.

The Business Engagement Unit should:

1. Take responsibility for administration of the Act, including administering the central repository and monitoring compliance with the Act;
2. Coordinate Government reporting and supply chain policy; and
3. Provide guidance and advice to business regarding their obligations to report.



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Put plainly, business cannot do this alone. Government and consumers also have an important role to play. Any initiative that lacks all three components is incomplete and will, at minimum, fail to meet the potential for success, and at worst, leave victims of slavery, forced labour, and servitude in conditions of exploitation and violence. Thus, a role like this has never been more necessary to see through a complete, coherent and enduring Australian response to this problem.

The Salvation Army therefore strongly recommends introduction of an amendment to the bill to establish an office of a statutory officer on modern slavery to provide leadership and guidance to business and government agencies in strengthening responses to modern slavery.

Part 1 Section 4 – Definitions

Whilst The Salvation Army agrees that early and forced marriage constitutes one form of modern slavery, we do not agree that entities should be required to report on risk and steps being undertaken to reduce risk of early and forced marriage in their supply chains. This is for two primary reasons:

- (1) It is not clear how entities may assess for early and forced marriage within their supply chains as this conduct would presumably occur in the private lives of employees and not within the supply chain. There is risk that requiring entities to assess risk of this practice may lead to unintended negative consequences, including racial and/or religious profiling of some staff; and
- (2) It is questionable whether an entity should bear any responsibility for the private conduct of its employees.

The Salvation Army, therefore, recommends excluding the offence of early and forced marriage (as defined in subsection 270.7A(1) of the Commonwealth Criminal Code) under the definition of modern slavery for the purposes of the reporting requirement.

Part 1 Section 5—Meaning of *reporting entity*

In our submission to the government consultation on a modern slavery reporting requirement, we recommended the Government adopt a long-term, visionary approach to reducing slavery in supply chains. We also recommended a very pragmatic approach that achieves a balance between intention and implementation.

To ensure the intention of a Modern Slavery Act is realised, commitments must be proportionate to both the capacity of entities to report and the capacity of the government to promote full and robust reporting. Without this balance, Australia will follow the UK's course, where sufficient government resources have not been allocated to notify and support the thousands of entities required to report, shifting much of the burden onto civil society. Consequently, this has undermined the intention of generating greater transparency of slavery risks in UK supply chains.

We have the benefit of learning from the UK's experience to ensure modern slavery reporting under an Australian Act is more than just an intention, but becomes an evidence base for real change on the ground. This means starting with a manageable target, getting strong implementation in place



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through guidance and support, and evaluating the effectiveness of current policy settings. As reporting capacity develops and we learn more through multiple reporting seasons, it will likely become more feasible to lower the threshold and bring in more entities in a strategic and methodical fashion.

The Salvation Army therefore supports initially defining a reporting entity as one which has a consolidated revenue of at least \$100 million for the reporting period.

Part 2 Sections 13 and 14—Modern slavery statements

The Salvation Army supports these sections, but also recognises the additional benefits of making statements available directly through entities' websites, including:

- (1) Doing so will raise further awareness of the issue by being visible to website visitors who are not necessarily visiting the page for the purpose of viewing the statement;
- (2) it will further elevate the importance of the issue at the senior management level through the extensive approval processes for corporate home page content; and
- (3) it will extend and facilitate greater access for scrutiny by investors, civil society, governments, other companies, consumers and the media.

The Salvation Army therefore recommends introduction of an amendment after 13 (e) and 14 (f) requiring entities to also publish statements on their home page or at minimum via a drop down menu or link on the home page. We refer the committee to the home pages of Rio Tinto (<https://www.riotinto.com/our-commitment-107.aspx>) and Nestlé (<https://www.nestle.com.au/>) as examples of good practice.

Part 2 Section 15—Commonwealth modern slavery statements

The Salvation Army commends the Government for its commitment to reducing risk of slavery in its own supply chains through Commonwealth modern slavery statements. However, there is a greater role for Government to play—one where it will foster a true race to the top without creating further regulatory burden on business. Incentives measures embedded into procurement rules will ensure the Government does not contract any goods or services provided by a company that has not met its own obligations under a Modern Slavery Act. This should not be a controversial addition, as it merely requires those seeking Government contracts to have met their own legal obligations under the legislation or to have provided evidence that they are not subject to the legislation. Any disputes or queries may be referred to the Business Engagement Unit for confirmation.

The Salvation Army therefore recommends introducing an amendment with measures that incentivise responsible reporting, including, but not limited to inserting after Part 2 Section 15, a provision to create a pre-qualification of compliance with the MSA (for entities to which the law applies) in order to tender for Government contracts.



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Part 4 Section 24—Review of this Act

As stated previously, The Salvation Army supports a long-term, visionary approach to reducing slavery in supply chains. We believe that no one tranche of legislation will be sufficient to fully address this problem; but rather, that a long-term commitment is needed to ensure the necessary refinements and adaptations as we learn over time.

The Salvation Army notes the experience in the United States, where the *Trafficking Victims Protection Act 2000* is reauthorised every three to four years. Over the course of the last 18 years, this legislation has been amended multiple times to include important provisions that strengthen the United States' overall response to the crime of human trafficking.

Taking this approach strengthens our strategy by making this a priority for all governments in the future and by guaranteeing milestones for evaluation over time. It also ensures a process whereby all stakeholders can participate and engage together in assessment and ongoing improvement.

The Salvation Army therefore recommends amending this section to establish a rolling three-year review to maintain attention on this critical issue and facilitate ongoing improvement in responses to modern slavery in supply chains.

The Salvation Army further recommends strengthening this provision through the introduction of an amendment to prescribe specific terms for the first three-year review to increase its usefulness. In particular, the three-year review should consider the following:

- (1) Extent of compliance in both quantity and quality of reporting under s15 of the Act and possible measures to incentivise and encourage higher levels of reporting;
- (2) The role of the statutory officer, should one be created, and effectiveness in achieving expressed outcomes;
- (3) Evidence established over the first three years that would inform creation of a verified, or estimated list of entities required to publish Modern Slavery Statements under the legislation;
- (4) Whether guidance issued by the Business Engagement Unit has been effective in supporting entities to meet their obligations under s15 and what changes may be required to improve such guidance; and
- (5) Assessment of whether the legislation has had any measurable impact in reducing modern slavery in supply chains, which may be drawn from responses under Section 16(e).