



Submission to the Senate Legal and Constitutional Affairs Committee Inquiry
into the Modern Slavery Bill 2018

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Human Rights Law Centre

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1. Executive Summary

The Human Rights Law Centre (**HRLC**) welcomes the opportunity to provide a submission to the Senate Legal and Constitutional Affairs Committee Inquiry into the Modern Slavery Bill 2018 (**the Bill**). This submission is made further to our earlier detailed submission to the Modern Slavery Inquiry (**the Inquiry**), overseen by the Joint Standing Committee on Foreign Affairs, Defence and Trade (**Joint Committee**). The Committee's final report, *Hidden in Plain Sight*, included many of the recommendations that we propose here.

Addressing modern slavery is an issue of critical international importance. We fully support the Government's stated objective of ensuring the Australian business community takes proactive and effective action to address modern slavery in their supply chains and welcome the introduction of legislation to achieve this objective. We also commend the Government's commitment to publish an annual statement covering Commonwealth procurement.

We are concerned however that, the Bill has a number of key flaws that will seriously limit its effectiveness. In particular, the lack of any consequences (financial or non-financial) for entities which fail to submit reports or provide misleading information in those reports is likely to result in low compliance rates and fundamentally undermine the Bill's objectives. This submission makes a number of recommendations to strengthen the legislation, improve its transparency and promote greater compliance with the reporting requirement.

Recommendations:

1. **The Bill should be amended to include a robust enforcement framework, including penalties for entities that fail to report or provide inadequate, false or misleading information. Penalties should include both financial and non-financial penalties (such as ineligibility for government contracts or trade promotion).**
2. **The Government should publish an annual list of the companies required to report under the legislation and a list of entities that have failed to report in order to promote transparency and encourage compliance.**

3. **The Government should appoint an independent Anti-Slavery Commissioner to oversee and promote the legislation.**
4. **The Government should commit as a matter of priority to implementing the other recommendations of the Joint Committee in the *Hidden in Plain Sight* report in order to further strengthen Australia's response to modern slavery.**

2. Penalties for non-compliance

The Bill contains no criminal or civil consequences for entities which fail to report on the risks of modern slavery in their operations or which provide misleading or inadequate information in their reports.

The absence of penalties is likely to seriously undermine compliance with the legislation. Low reporting rates have been recognized as a major failing of the UK Modern Slavery Act (**UK Act**), which also relies on voluntary compliance. While the number of entities that have submitted reports has risen slowly over the three years since the Act was introduced, the percentage of businesses that have reported still hovers at around 30% of those that supposedly have an obligation to do so. Moreover, independent studies of the reports submitted indicate that many are of poor quality and fail to address the minimum requirements of the Act.¹

We recommend that the Bill be amended to include at a minimum financial penalties for entities that fail to report or provide incomplete or misleading information. Penalties should be set at a sufficient level to act as a genuine deterrent against non-compliance. We note that the Modern Slavery Act recently passed in NSW provides for a criminal penalty of up to 10,000 penalty points (\$A 1.1 million) for businesses operating in NSW that do not comply with its requirements.² It would appear logical for

¹ A recent study by the Business & Human Rights Resource Centre of reports submitted by the FTSE 100 companies, for example, found that nearly half of these failed to meet the minimum requirements of the Act. Business & Human Rights Resource Centre, "First Year of FTSE 100 Reports under the Modern Slavery Act: Towards Elimination?" (2017), p 2. Available at <https://www.business-humanrights.org/sites/default/files/FTSE%20100%20Report%20FINAL%20%28002%291Dec2017.pdf>

² Modern Slavery Act (NSW), s 24(2).

the Commonwealth legislation to introduce an equivalent provision to promote consistency between the two regimes.

We also recommend the Government make reporting under the legislation a precondition for eligibility for government contracts or support for trade promotion to further incentivize compliance.

If the concern is to give business sufficient time to adjust to the new regime, the legislation could provide for a delayed start date for the introduction of such penalties. The Joint Committee recommended that the Government include penalties and compliance measures applying to the second year of reporting onwards and which would be published alongside the central repository of statements.³ We believe that this approach would strike a reasonable balance between giving companies time to adjust to the new regime, and ensuring that the legislation is taken seriously by the entities that fall within its scope.

3. A public list of entities required to report

We welcome the decision to include in the Bill a requirement that the Minister establish and maintain a central register of entities required to report under the legislation. The absence of a central register has been identified as another major weakness of the UK Act. The UK Modern Slavery Commissioner, Mr Kevin Hyland, recently published a joint statement on behalf of a large coalition of UK businesses, investors and civil society organisations calling on the UK Government to establish such a register due to ongoing difficulties there in monitoring compliance.⁴

To maximize the benefit of the central register and promote greater transparency and accountability in reporting, we recommend that the Government publish an annual list of the entities required to report under the legislation, and a corresponding list of those entities that have failed to report, as proposed by the Joint Committee.⁵

³ Joint Standing Committee on Foreign Affairs (JSCFA), Defence and Trade, *Hidden in Plain Sight* (Dec 2017). Available at https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Foreign_Affairs_Defence_and_Trade/ModernSlavery/Final_report (accessed 23 July 2018), para 5.171.

⁴ See <https://www.antislaverycommissioner.co.uk/news-insights/joint-statement-calls-on-government-for-central-modern-slavery-registry/>

⁵ *Hidden in Plain Sight*, above, para 5.142 & 5.171.

One of the Government's stated aims in introducing the legislation is to promote a "race to the top" as reporting entities compete for investor and consumer support. In order to leverage consumer/investor power to drive compliance, however, consumers and investors must be able to quickly and easily compare companies' performance and make informed decisions about which companies they reward and which they penalize. Without a publicly available list, this exercise becomes extremely difficult.

4. An independent Anti-slavery Commissioner

The Bill makes no provision for the appointment of an independent Anti-Slavery Commissioner to oversee the new legislation, as envisaged by the Joint Committee.⁶ The Government instead proposes establishing a business engagement unit in the Department of Home Affairs to support business in addressing the requirements of the Act and to promote best practice, administer the central repository and undertake awareness-raising and training.

We query whether a unit without compulsory powers and based entirely within government has the necessary independence, authority or public profile to engage Australian business and other key stakeholders and drive best practice in the fight against slavery. The unit's ability to critically assess of the effectiveness of the legislation and to suggest reforms to improve the reporting framework will also be inherently limited by its position within government.

The UK Anti-Slavery Commissioner Mr Hyland has, according to many UK organisations, been central to raising the profile of these issues within the UK and improving inter-agency cooperation, leading for example to increased numbers of prosecutions and convictions for modern slavery in the UK.⁷ In his evidence to the Inquiry, Mr Hyland argued that the independence of the Office has been central to its success, enabling him to be a "critical friend" to government agencies, businesses and other stakeholders alike.⁸

⁶ *Hidden in Plain Sight*, above, para 4.60

⁷ <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>

⁸

https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Foreign_Affairs_Defence_and_Trade/Modern_Slavery/Final_report/section?id=committees%2Freportjnt%2f024102%2f25192

It is our view that Australia would benefit from a similar independent statutory office to oversee the new legislation and promote compliance with it. The functions set out in Division 2 of the Modern Slavery Act NSW provide good model terms of reference for a Commissioner and we would urge the Government to include equivalent provisions in the Bill.

5. Other measures to address modern slavery

The Government has not yet formally responded to the majority of recommendations of the Modern Slavery Inquiry. In our view, these recommendations provide a sound platform for action to address modern slavery in Australia and in the supply chains of Australian companies and we would urge the Government to commit to implementing them as a matter of priority. In particular, we would highlight and support the following recommendations of the Joint Committee:

1. Better support for victims of modern slavery, including the introduction of a civil remedy;
2. Ratification of the *Protocol of 2014 to the Forced Labour Convention*;
3. Consideration of other trade mechanisms to address modern slavery risks, including potential import restrictions on goods produced with forced labour;
4. Consideration of extending the reporting obligation at the point of the 3-year review to include full mandatory due diligence by entities captured by the legislation.

6. Conclusion

We urge the Australian Government to introduce robust Modern Slavery legislation with consequences for non-compliance that are commensurate with the serious nature of the labour abuses which this legislation aims to help address. If the Bill is to make a real difference to the lives of workers in the supply chains of Australian companies, both here and overseas, it must act as a genuine motivator to businesses to delve much deeper into their supply chains and address the risks of abuse.

We respectfully ask that the Committee consider this submission as a constructive attempt to ensure that the legislation performs this role and becomes a key tool in the fight against modern slavery.