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Legal and Constitutional Affairs Legislation Committee - Modern Slavery Bill 2018

20 July 2018



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Chamber of Commerce
and Industry



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Executive Summary

- The Modern Slavery Bill 2018 (Bill) before the Legal and Constitutional Committees (Committee) is a product of growing awareness of the evil of modern slavery, recognition that Australia needs to do more, and an extensive consultation process.
- The Bill is modelled on the UK Modern Slavery Act 2015 which seeks to use transparency to bring change in this area. The Australian Chamber supports this approach to combatting modern slavery. Consistency with the United Kingdom scheme will be important.
- The Australian Chamber was involved in the consultative process which, recognising that it is new legislation, addressed many of the major objectives and concerns for such a scheme. We have made comments and proposed amendments throughout our submission.
- Legislation should support risk-based assessment and recognise that the capacity to ensure operations, and particularly in the Australian context, to ensure external supply chains, will take time. Affected entities need an opportunity to develop and learn.
- Legislators should recognise that the administrative and costs impact of the Bill will not be confined to reporting entities. Impacts will cascade down the supply chain as reporting entities develop their approaches to assurance.
- To be an effective weapon in the fight against modern slavery, reporting should be practical, navigable, transparent and well-communicated. What is to be reported on, as a statutory minimum, should be clear for those compiling and signing off on reports and those reading them.

Part 1 of the Bill – Preliminary

- The Chamber supports the Bill's approach to:
 - Defining Modern Slavery (cl.4) in its focus on criminal conduct with respect to slavery and servitude, trafficking and immoral child labour.
 - Prescribing which entities must report (cl.5) including the proposed revenue threshold (\$100M) Although lower than the Chamber believes appropriate, the \$100M floor targets reporting to those entities that are most likely to have reasonable capacity to do so.
- The legislation's flow on ramifications will be significant.
 - The impact of reporting will extend well beyond the defined reporting entities to also affect tens of thousands of smaller Australian enterprises that supply into reporting entities or their suppliers.
 - Conservatively estimated the \$100M reporting threshold extends direct reporting obligations and assessment to at least 3,000 entities carrying on business in Australia.
- The Chamber supports capacity for voluntary reporting (cl.6).
- There must be a single national reporting obligation, with no mirror or overlapping state schemes.



Part 2 of the Bill – Modern Slavery Statements

- The proposed content and arrangements for statements appear broadly appropriate (cl.11 - 16).
- Reporting by non-corporate Commonwealth entities and consequential tendering requirements must not impose additional burdens or costs.
- Reporting by non-corporate Commonwealth entities must not discourage or select out small business private sector participation in government work.

Part 3 of the Bill – Access to Modern Slavery Statements

- The proposed process for accessing statements appears appropriate to communicate information to the community on risks of modern slavery in doing business in Australia (cl.17-20).
- We support the central register.

Other Matters

- The majority of the additional matters in Part 4 of the Bill (cl.21-25) are appropriate
- The Chamber supports the proposed three-year review process in the Bill (cl.24).
- The Australian Chamber considers that, if an Anti-Slavery Commissioner were to be appointed, such a role might best focus on promoting and supporting compliance.



Contents

INTRODUCTION	1
PART 1 – PRELIMINARY	5
PART 2 - MODERN SLAVERY STATEMENTS	7
PART 3 - ACCESS TO STATEMENTS	11
OTHER MATTERS	12
About the Australian Chamber	14
Australian Chamber Members	Error! Bookmark not defined.



INTRODUCTION

1. On 27 June 2018 the Minister introduced the *Modern Slavery Bill 2018* which was referred to the Senate Legal and Constitutional Affairs Legislation Committee to inquire into its provisions. The Bill is for an act requiring significant entities¹ to report on the risks of modern slavery in their operations and supply chains and the actions they take to address those risks. The Committee is to report on 24 August 2018.
2. The Australian Chamber of Commerce and Industry thanks the Committee for the opportunity to comment on the draft legislation.
3. The Bill's explanatory memorandum draws attention to the consultative process undertaken by the Government in arriving at this legislation. The Chamber has participated in all stages of the process and wishes to formally thank to Government for the opportunity, the Opposition for opportunities to input its thinking on modern slavery.
4. Many, perhaps nearly all, of the businesses and employers that took up the opportunity to engage with the Bill's development process are already addressing the challenge of possible slavery in their operations and suppliers. Many are already monitoring and reporting following board decisions, taken well prior to this legislation, about how they wished to inform stakeholders and because of statutory obligations in other jurisdictions.
5. The insights and accumulated knowledge of these businesses have provided an amount of valuable information to the Government for its consideration. One of the key understandings which the Australian Chamber gained from its engagement in the consultation process is the difficulty of the task of developing and maintaining lawful and transparent supply chains – it takes time to develop an understanding of how to assess risk; how to reach an assurance that high risk inputs are acceptably free of modern slavery and to assess what's actually happening; and how to train staff in what to look for and how to address any areas of concern.
6. We do caution that the perspectives of those already engaged with this issue will not fully identify the capacities of other, often smaller, businesses to assume the proposed new reporting responsibilities, or even what their current understanding is in this area.
7. UK experience has shown that developing organisational expertise, even reporting expertise, takes time. It is developmental, and iterative – step building on step - as is identifying best practice.
8. For entities within scope of the proposed legislation that are not currently undertaking modern slavery supply chain assurance and not currently reporting (which will be the case for many of those falling within the Bill's scope), even something as simple sounding as mapping supply chains can take a long time. It takes months, often many months. Supply in large, diverse multi-country businesses can be immensely complicated to track, and is significantly more difficult when multiple inputs or products are involved.

¹ Defined in the proposed legislation.



9. The Bill is a major new piece of legislation. Requiring reporting entities to identify risks, and assess, investigate and respond to modern slavery exposures in their business' output has no Commonwealth counterpart.
10. It differs from other, established forms of statutory tracking such as chemicals or sustainable production.
 - a. First, the entity's overall operations and supply chains are subject to the legislation, not just selected input or activity areas. This means demanding information and action from businesses over which reporting entities do not exercise control and oversight,
 - b. Second, modern slavery is not easily seen – there are no standard tests or benchmarks. Victim self-identification, coming forward, requires courage, motivation and a level confidence about what will happen as a consequence. Responses are situationally determined, and this is complicated in a globalised, trading world in which Australian organisations purchase goods, services and inputs internationally.
11. In its public consultation paper, *Modern Slavery in Supply Chains Reporting Requirement*², the Government went to some pains to identify that the purpose of its forthcoming legislation (now the Bill before the Committee) was to better support the Australian business community to combat modern slavery in their operations and supply chains.
12. This is the proper lens through which to view the legislation. The Bill focusses on transparency and reporting, but the ultimate target and the point of acting is minimising modern slavery.
13. The Chamber's accepts that there is a broad national consensus that commercial and government operations and supply chains should be transparent in regard to exposures to modern slavery, even if there are differences about the nature of underpinning legislation.
14. The Chamber would like to see that over time there can be a greater level of agreement about what is the best starting point to support and grow greater transparency in this area and improve supply chain assurance than might initially seem to be the case.
15. The Australian Chamber's approach to the Bill is based on key principles, many of which are set out in the introduction / executive summary to this submission. These principles have evolved from those we advanced to the Committee in our earlier inquiry and to the Departmental inquiry. Many of the issues we previously raised, whilst valid, fall away at this point given the drafting choices reflected in the Bill and the anticipated approach of the Parliament.
16. In the Chamber's view the Committee should be guided by the following principles in its assessment of the Bill's provisions:
 - a. National approach: Government action to support Australian economic activities to help in the fight against modern slavery should be national, through a single national reporting scheme.

² <https://www.homeaffairs.gov.au/about/consultations/modern-slavery-supply-chains-reporting-requirement>

- b. Consistency: The definition of slavery has to be practical, understood so far as is possible, and drawn from internationally agreed definitions. Modern slavery is not just a domestic scourge and the Bill seeks broad extra-territoriality. There should be scope for organisations / products that are reported on globally or in other jurisdictions to replicate that reporting in Australia with minimal additional effort, to the extent possible, and with recognition that a major reporting supplier can usually be considered low risk.
- c. Proportionate: Any reporting scheme should have the effect of supporting and encouraging the Australian business community to take reasonably proportionate actions to combat risks of modern slavery in their operations and supply chains.
- d. Focus on promotion not compliance: Reporting should support and encourage organisationally driven efforts based on each business, its circumstances and its markets.
 - i. Statutory measures should not have the effect of driving overly technically compliance behaviours, such as just filling in returns, at the expense of effectiveness and genuinely engaging with risks of modern slavery.
 - ii. Reporting should encourage and support each reporting organisation in identifying its areas of risk, if any, and in taking reasonable actions appropriate to that organisation and its capacities.
- e. Risk based / Directed / Prioritised: Large companies can deal with thousands of individual suppliers. Any reporting entity must be able to target its efforts to larger, regular suppliers and those areas in which it assesses risks of forced labour to be the greatest.
- f. Transparency: To be effective to assist with tackling modern slavery, reporting must be practical, accessible, navigable, transparent and well-communicated.
- g. Review: The United Kingdom experience is that this type of legislation requires refinement. The enacted legislation should provide for review – a chance to look at what’s working and where there might be problems. Review and reconsideration is also consistent with the objective of promoting a “race to the top”.

How This Will Work in Practice

- 17. How the Bill will operate if enacted is an important consideration. Imposing a reporting obligation on operations with \$100M revenue impacts them, but it also impacts their suppliers, smaller entities supplying into their output, or indirectly supplying as a second or lower tier supplier.
- 18. This is a critically important point. The Committee should not focus solely on direct reporting entities in considering the impact of this legislation; for each reporting entity there will be potentially dozens of often smaller operations that will be called on to do the same due diligence and risk assessment.
- 19. One of the typical ways that a reporting entity satisfies itself about the circumstances of a supplier is by independent audit. Approaches vary. Sometimes an audit may be undertaken by way of an unannounced visit and audit by the reporting entity’s staff; sometimes a third party auditor is commissioned. Third party audits may be commissioned by the reporting entity or required of the supplier.



20. Even where undertaken or commissioned by the reporting entity, audits are demanding of administrative time and particularly for suppliers which are small businesses can be proportionately costly. Where the supplier is in Australia it is relatively easy and low risk for the reporting entity to transfer the cost and obligation for an audit onto the supplier. Cost shifting down the chain is not uncommon, and will be an inevitable consequence of this legislation and the introduction of modern slavery reporting in Australia.
21. The audit questions are determined by the reporting entity. Suppliers to more than one reporting entity, whether direct, or indirect through a higher tier supplier, can face different audit requirements across their customer range. The fact is that reporting obligations also impact non-reporting suppliers and place transparency obligations upon them. This is not often remarked upon and these costs are not captured in the Outline of Costings which is confined to estimating the costs of writing and approving the report within reporting entities.³

The Bill

22. The Bill is intended to provide for entities to report on the risks of “*modern slavery*” in their operations and supply chains. The Bill seeks to promote good practices and a race to the top, but it also intends to provide a level minimum playing field.
23. To achieve this it must not only be internationally consistent, but Australian legislation must be nationally consistent as well. There must be a single set of obligations on reporting entities and these obligations must be consistently applied to entities which tender for government business – at all levels of government.
24. The Bill legislates a statutory minimum and therefore should be neutral about the nature of the undertaking, its operational structure and organisational form. In terms of legislation, it is appropriate that the Bill impose consistent obligations upon its target cohort of entities without attempting to differentiate between them.

³ This follows the United Kingdom’s approach. The impact assessment for the *Modern Slavery Bill* dated 30/10/2014 stated of the transparency in supply chains proposal simply required to disclose what they have done to ensure there is no modern slavery in the business or supply – it does not require particular actions. At that point consultations about the reporting floor were incomplete. [P 18 quote]

PART 1 – PRELIMINARY

25. Part 1 of the Bill addresses various preliminary and definitional matters.
26. Clause 4 provides most of the Bill’s definitions including that for “modern slavery”. It also defines “entity” which provides broad operational structure neutrality, particularly when combined with the definition in cl 5 of “reporting entity” and its internal definition of “carries on a business in Australia”.

Definition of Modern Slavery

27. “Modern slavery” is a widely used term but does not have an independent legal meaning. It is important there is clarity and consistency about where an entity’s statutory reporting obligations lie.
28. “Modern slavery” is conduct which in Australia would breach Divisions 270 (Slavery or slavery-like offences) or 271 (Trafficking in persons) which are part of Chapter 8 (Offences against humanity and related offences) of the *Criminal Code* (Cth). The definitions of the various crimes identified in the two divisions are closely aligned with internationally agreed definitions. This is appropriate and constitutes the most effective definition for the purposes of the proposed Modern Slavery Act.
29. Not all of the crimes prescribed in Divisions 270 and 271 are relevant to reporting organisations (i.e. to Australia’s larger commercial organisations). For example, the crime of forcing someone into marriage, or of being a party to a marriage into which the other party was forced, would not usually be a crime which a reporting entity could assess for risk or identify. Except in unusual circumstances a reader should not expect reference to forced marriage in an entity’s report.
30. The Bill’s definition of “modern slavery” also includes
 - a. Trafficking in persons as defined in the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* which is a protocol to the *United Nations Convention against Transnational Organised Crime*.
 - b. The worst forms of child labour as defined in the International Labour Organisation’s *Worst Forms of Child Labour Convention, 1999*.
31. The major consequence of the treaty references is to expand territorial coverage. This is an appropriate approach to delivering a statutory floor which should be activity/income source/operational structure neutral. Competitive neutrality is important for equity, but equally so because of the costs of the regime.
32. However, as pointed out in the explanatory memorandum, the definition of the worst forms of child labour includes internationally agreed moral crimes against the child which are not always captured as modern slavery crimes by statute. The expanded coverage is not inappropriate but makes it more important that there is good guidance about what reporting entities must, by law, be looking for and reporting on.

Definition of Reporting Entities

33. The clause 5 definition of “reporting entity” also provides that a reporting entity is one which has a consolidated revenue of \$100M. It is estimated that this floor will capture about 3,000 reporting entities. The figure of 3,000 is used for costing purposes but the explanatory memorandum is less certain. The United Kingdom experience is that estimating the number of reporting entities is difficult. Estimates are imprecise and will underestimate because of the difficulty of knowing the revenue of entities which may be reporting entities but which have a small presence in the jurisdiction. Estimates of the number of entities carrying on a business in the United Kingdom with a turnover of £36M ranged from 12,000 to 17,000.
34. Nowhere near 3,000 entities that carry on a business in Australia have an existing reporting obligation nor currently report. Assuming that no additional entities which carry on a business in Australia opt under proposed section 6 to report, which, particularly for initial reporting periods, seems a reasonable assumption, the \$100M consolidated revenue floor will create a large number of new reporting entities.
35. There are two other reasons for confining the number of reporting entities with the introduction of the reporting requirement. The larger the entity the more likely it is to be addressing its suppliers, working with them and reporting on this activity. Not only will the total number of entities potentially requiring sustained guidance with the introduction of the reporting obligation be less than if there were a lower threshold, but a higher proportion of reporting entities will bring an understanding of the requirements with them.

Voluntary Reporting

36. As briefly noted above clause 6 of the Bill provides for non-reporting entities which are carrying on a business in Australia, or Australian, to opt into the reporting regime. An opted-in reporting entity is then treated in the same way as a defined reporting entity under the Bill.
37. The Australian Chamber supports this capacity.

PART 2 - MODERN SLAVERY STATEMENTS

38. Part 2 of the Bill (Clauses 11 - 16) addresses modern slavery reporting and modern slavery statements.
39. Clauses 12 – 14 define modern slavery statements and provide for a modern slavery statement prepared by a non-Commonwealth reporting entity to be given to the Minister within 6 months of the end of the entity's financial year (reporting period). Modern slavery statements must conform with the requirements of clause 16, be in a format approved by the Minister and be signed off by an individual authorised to act on behalf of the reporting entity's governing body.
40. Depending on the operational structure of the reporting entity, or entities, a modern slavery statement may be single or joint. Where joint, its preparation must involve the joint operations and, unless impracticable, sign off must involve them or a controlling entity.
 - a. Clause 14, which provides for joint modern slavery statements, also allows the Minister to alter the reporting time where there may be an issue with different reporting periods between the entities.
 - b. The Australian Chamber believes clause 14 adequately addresses the varying circumstances of large multi divisional operations and groups where divisions themselves satisfy the reporting entity criteria.

Commonwealth Modern Slavery Statements

41. Clause 15 addresses Commonwealth reporting entities which are not separate corporations in relevantly similar ways. This is appropriate and extends a level playing field. It also reduces the likelihood that differing demands will be placed on entities wishing to supply Commonwealth reporting entities, compared to the demands placed on them for supply into the non-government economy.
42. The Commonwealth is a massive source of purchasing and supply opportunities for the private sector, and many private sector industries, businesses and jobs rely on the Commonwealth being able to practically and accessibly do business with the private sector. Some businesses doing business with government will be reporting entities in their own right, but many more will be smaller to medium businesses.
43. Commonwealth modern slavery information requirements, and the reporting and information asked of those doing business with government, beyond the legislation, need to be:
 - a. Directed to be consistent with other reporting obligations.
 - b. Not impose reporting obligations on smaller firms not otherwise captured by the legislation.
 - c. Practical in scope and pervasiveness.

- d. Transparent and clear in what is being required of the private sector when doing business with government.
 - e. Geared in particular to support scope for SMEs to do business with the Commonwealth, and take part in Commonwealth work.
44. It would be undesirable and counterproductive if tendering obligations⁴ with respect to modern slavery risk were so extensive or bureaucratic as to preclude participation in government work for all but the largest and most sophisticated entities which only source their supply from larger suppliers.
45. We don't want to put in any danger through the new modern slavery reporting process, the commitments of successive governments to extend government business opportunities to smaller enterprises. For example, reflected in the following from the former Minister for Small Business:

The Hon Michael McCormack MP, Minister for Small Business

Media Release - 25 January 2017

Small business stars in Government procurement stats⁵

ALMOST a third of total Australian Government contracts were won by Australian small businesses in the 2015/16 financial year, AusTender data has confirmed.

Valued at \$5.5 billion, Small Business Minister Michael McCormack said the reporting period demonstrates the Coalition's commitment to encouraging Australian small businesses to apply for Australian Government contracts.

"Government procurement is a key focus of mine as Small Business Minister. I want to help as many Australian small businesses as I can get access to tender information to ensure small businesses are in the driver's seat of delivering Government goods and services," Mr McCormack said.

"With 22,883 Government contracts won in FY15/16, small businesses account for more than 33 per cent of Australia's Government procurement programme by number and more than \$5.5 billion in total value."

Mr McCormack said small business takes a particularly starring role in Government contracts worth up to \$5 million.

"In total, of the 10,793 businesses with which the Government contracted up to a value of \$5 million, small businesses accounted for more than two thirds."

Mr McCormack reiterated his commitment to helping make more Australian small businesses aware of tender contracts for which they can apply, and help diversify their business.

⁴ Not directly under a Modern Slavery Act, but imposed by the Commonwealth seeking to give effect to its obligations under the Act.

⁵ <http://mfmm.ministers.treasury.gov.au/media-release/003-2017/>

“As I meet with small businesses across Australia, I see first-hand how modern and adaptable businesspeople and their employees are a great asset on which we can rely for delivering Government contracts,” Mr McCormack said.

“Through greater awareness of AusTender and the Coalition Government’s commitment to fair and equitable access principles in Government contracts, we can see even more Australians helping deliver the contracts and services we need into the future.”

Mandatory Criteria for Modern Slavery Statements

46. Clause 16 prescribes the minimum subject matter which must be addressed in a modern slavery statement. Clause 16 differs from the equivalent subject matter listing at section 54(5) of the *Modern Slavery Act 2015* (UK) in three significant ways:
47. Firstly, the Bill requires these specified minimum criteria to be reported in an entity’s modern slavery statement; under the United Kingdom act reporting subject matter is suggested but not required. A reporting entity under the United Kingdom act can report upon some or all of the criteria or not, or it can report that no steps were taken.
48. The Bill’s approach is less light touch than its UK counterpart. The Australian Chamber recognises that standardised reporting criteria can assist assessment and comparability. More standard criteria can also support the development of useful and effective guidance material. Consistent reporting criteria also do not impede the development of sectoral guidance or accepted sectoral approaches to risk identification and audits.
49. Secondly, the Bill’s reporting criteria differ in some respects from those in the United Kingdom. The items identified in clause 16(1)(a)-(d) could be said to require reporting on such matters as training and policies, although not as explicitly as the United Kingdom act, however clause 16(1)(d) also requires reporting on remediation processes, as well as due diligence. This is a general obligation, as explained in the explanatory memorandum:
 131. *‘Due diligence’ is intended to refer to an entity’s ongoing management processes to identify, prevent, mitigate and account for how they address incidences of modern slavery.*
 132. *‘Remediation processes’ is intended to cover any process or mechanism to remedy incidences of modern slavery. For example, ‘remediation processes’ could include establishing and maintaining an entity-level grievance mechanism.*
 133. *The requirement to report on ‘due diligence’ and ‘remediation’ processes is intended to ensure reporting entities communicate their general approaches to prevent and address modern slavery. It does not require reporting on specific responses to particular incidences or cases of modern slavery. However, this is not intended to prevent entities from reporting on specific responses to incidences or cases where they consider it appropriate to do so.⁶*

⁶ P 20, Explanatory Memorandum

50. Paragraph 133 draws attention to the fact that reporting on due diligence and remediation process is a general obligation; the Bill does not require reporting specific responses to particular instances or cases of modern slavery. It is absolutely appropriate that a reporting entity not be required to report individual responses or the discovery of specific instances of modern slavery. The needs of victims, confidential reporting to appropriate authorities, leaving appropriate levels of public visibility to the needs of investigators and proceedings must be accorded priority.
51. There is a broader issue raised by moving from the suggested reporting criteria under the United Kingdom Act, to mandatory reporting criteria. A mandatory list requires all criteria to be addressed, but the later criteria depend on considerable headway being made on earlier ones. For example, describing the risks of modern slavery practices in an entity's supply chain requires that the chain be relatively well mapped and understood. Similarly, developing an entry level grievance mechanism, where it should be, its role and conditions of access, depend on an understanding of the entity's likely risks, their nature and context.
52. Some reporting entities will struggle to complete the list. The capacity to complete the list will depend on the complexity of operations, their nature, location, dependence on and the level of engagement with its supplier chains a reporting entity brings to addressing its modern slavery statement requirements when they are enacted. The Minister's power provided at clause 19(2) to register non-complying modern slavery statements in the event they do not comply with proposed section 16 will assist as will the capacity to revise registered modern slavery statements under proposed section 20.
53. Reporting entities are being asked by this legislation to embark on a journey, and for many if not most, a journey to understand and address an entirely new set of considerations. This process must be an iterative and growing one, proceeding from risk assessment, through prioritisation, to active steps to address areas of concern. Reporting must also be a journey and grow over time. We anticipate a growing and evolving process in which an initial focus on complying with reporting requirements over time becomes a positive exercise in information gathering and taking action. It is entirely appropriate that the legislation empower the Minister to recognise and work with reporting entities to have their reports flesh out and become more comprehensive over time (against the statutory requirements for reporting).
54. The first reporting period is the entity's financial year to commence after the Bill's operative provisions commence. Most entities' reporting period commences 1 July. Expeditious passage of the Bill and its proclamation would assist by providing more time for entities to meet their first report date.
55. Thirdly, clause 16(1)(f) requires the modern slavery statement to describe the process of consultation with entities which the reporting entity owns or controls. This has no equivalent in the UK legislation, and it is not clear whether clause 16(1)(f) requires reporting consultation about the preparation of the report or something more. This could be usefully clarified in the passage of the legislation, or in an amended Explanatory Memorandum.

PART 3 - ACCESS TO STATEMENTS

56. Part 3 of the Bill (Items 17 - 20) addresses access to the modern slavery statements.
57. As discussed above (clauses 13 – 14) reporting entities must give their modern slavery statements to the Minister within 6 months of their reporting period ending.
58. Clause 18 requires the Minister to then maintain a publicly accessible register of modern slavery statements (Modern Slavery Statements Register). This appears an appropriate mechanism to communicate information to the wider community on the exposures of Australian businesses to risks of modern slavery.
59. It is proposed that the Modern Slavery Statements Register be supported by a Modern Slavery Business Engagement Unit which would also provide advice, education and training to business about modern slavery risks in their supply chains, and would co-ordinate the Government's own Commonwealth entity's modern slavery statements⁷.
60. The linkage between the Commonwealth's report preparation role for its own entities and an advice and assistance role to (mainly) reporting non-Commonwealth reporting entities (i.e. the private sector) is welcome. This arrangement provides a good opportunity for cross fertilisation. The undertakings in the Explanatory Memorandum about both the provision of timely guidance and consultation in its development is also welcome.
61. Risk identification is not the same as victim identification and its follow up. While the likelihood of modern slavery in domestic supply chains is very low in most sectors, external regionally sourced commercial supply can carry a higher risk. Identification, providing the capacity for victims to self-identify and determining what steps to take in a particular location where instances of criminal modern slavery are uncovered may not be as straight forward as it would be domestically. They will require specialist advice, at least until the reporting entity has built up sufficient understanding of its supplier operations, and what can be done to address concerns. This support and guidance will require a wider and perhaps different network than is likely to be available in the Department. These networks will need to be better developed.

⁷ P 54, Explanatory Memorandum

OTHER MATTERS

62. Part 4 of the Bill provides a number of miscellaneous provisions. Clause 22 clarifies the extension of the Bill's obligations to unincorporated entities.

3 Year Review

63. Clause 24 provides that the Minister must cause a report reviewing the operation of the enacted legislation and any rules as soon as practicable three years after the operating provisions of the Act commences. The review is to be completed within 12 months. The Australian Chamber strongly supports this provision and its timing.
64. Reviewing the Act follows directly from the Chamber's view that many reporting entities will require time to develop satisfactory processes, that guidance material and training may need to be refined in the light of experience, and to draw out identified operational shortcomings in the Act. A review is consistent with the Bill's intention to support a race to the top.
65. The Australian Chamber also supports the proposed timing. The great majority of reporting entities have reporting periods starting on 1 July which means that reporting entities will have lodged two reports in time for the review's consideration.⁸

Promotion and Oversight

66. One of the issues is raised by the introduction of a modern slavery reporting regime is whether there should be a separate person, akin to the Anti-Slavery Commissioner which was established under *Modern Slavery Act 2015* (UK), to assist with the fight against modern slavery. Views vary about such a role, and amongst proponents of it, views vary about the nature of such a role.
67. The Australian Chamber has not been a supporter of such a role primarily because of the significant differences between the nature of modern slavery legislation in the United Kingdom and Australia. The United Kingdom's Anti-Slavery Commissioner role was not directly associated with the transparency in supply chains regime.
68. Australian anti-slavery and trafficking criminal law was significantly more developed and comprehensive than that of the UK at the introduction of its legislation. Australia's labour market supervision is comprehensive and well developed, not piecemeal. Australian borders do not have the porosity of the United Kingdom's and cross border trafficking is not linked to the supply of forced labour services into Australian domestic commercial production in the same way as can occur in the United Kingdom.
69. Modern slavery crimes in Australia seem more likely to take place in the domestic and private sphere than in supply into commercial undertakings.

⁸ If the Modern Slavery Act commenced on 1 January 2019, the first report would be due no later than 31 December 2020 and the second by 31 December 2021. The review would commence as soon as practicable after 1 January 2022.



70. It remains true that victim identification is poor, and that police services and other regulator co-operation and co-ordination, and victim protection co-ordination can be improved, but the point remains that the challenge in Australia materially differs from that in the United Kingdom.
71. The United Kingdom's Commissioner role focusses on encouraging good practices in preventing, detecting, following up and prosecuting modern slavery crimes and victim identification at the general level. The role is not itself a regulator role and does not deal with specific cases, but an educator, co-ordinator and evaluator role.
72. It may be that an advisory and educative role of that kind with these functions which is located outside an administering department could assist to improve detection of and response to incidents of modern slavery, particularly those outside Australia. These would be our broad parameters for any role of this kind, were such a role introduced into the system proposed in the Bill.



About the Australian Chamber

The Australian Chamber of Commerce and Industry is the largest and most representative business advocacy network in Australia. We speak on behalf of Australian business at home and abroad.

Our membership comprises all state and territory chambers of commerce and over 70 national and state industry associations. Individual businesses are also able to be members of our Business Leaders Council.

We represent more than 300,000 businesses of all sizes, across all industries and all parts of the country.

The Australian Chamber strives to make Australia the best place in the world to do business – so that Australians have the jobs, living standards and opportunities to which they aspire.

We seek to create an environment in which businesspeople, employees and independent contractors can achieve their potential as part of a dynamic private sector. We encourage entrepreneurship and innovation to achieve prosperity, economic growth and jobs.

We focus on issues that impact on business, including economics, trade, workplace relations, work health and safety, and employment, education and training.

We advocate for Australian business in public debate and to policy decision-makers, including ministers, shadow ministers, other members of parliament, ministerial policy advisors, public servants, regulators and other national agencies. We represent Australian business in international forums.

We represent the broad interests of the private sector rather than individual clients or a narrow sectional interest.

OUR MEMBERS



CHAMBER



INDUSTRY ASSOCIATION

