

Committee Secretary
Senate Legal and Constitutional Affairs Committee
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17 July 2018

Dear Committee Secretary,

I welcome the opportunity to make a submission in relation to the Modern Slavery Bill 2018 (Cth).

I am a Teaching Fellow at the University of New South Wales, where I teach international law and business law. I have recently been admitted to a PhD in international human rights law.

The Modern Slavery Bill requires Australian businesses and entities with an annual turnover of \$100 million or more to make an annual report (“modern slavery statement”) to the Australian government addressing the risks of modern slavery in their operations and supply chains. The Bill does not impose a penalty on businesses that do not comply with this requirement. Nor does the Bill require relevant businesses and entities to take measures to minimise the risks of modern slavery in their operations and supply chains or prohibit them from commercially profiting from modern slavery.

The Modern Slavery Bill has been drafted on the assumption that where, through the Bill’s reporting mechanism, Australian businesses become aware of incidents of modern slavery in their operations and supply chains, these businesses will take steps to cease their dealings with, or bring an end to, the slavery. As the Bill’s Explanatory Memorandum states: “The Modern Slavery Reporting Requirement supports the Bill’s primary objective to assist the business community in Australia to take proactive and effective actions to address modern slavery.”

In addition, the Bill has been drafted on the assumption that the initiative to eradicate modern slavery in corporate operations and supply chains should come from businesses themselves—and, perhaps indirectly, from investors and consumers where, as the Explanatory Memorandum states, “reporting entities compete for market funding and investor and consumer support”. An implication of the Bill is that, in contrast, the Australian government should perform merely an administrative role in efforts to eradicate modern slavery in corporate operations and supply chains, and unions and workers need not participate.

These two assumptions are addressed in this submission.

First, the laws of economics call into question the assumption that Australian businesses will cease their relationship with modern slavery or take measures to eradicate it in their operations and supply chains if they become aware of it. Businesses the world over must balance competing interests of profit and human enrichment. In doing this, they may be inclined to make decisions about their operations that involve the least cost. Australian

businesses long have been aware of modern slavery and exploitative conditions in their operations and supply chains. Indeed, in many cases, they purposely choose operations and supply chains that are highly exploitative in order to maximise their profit. For example, it is common for large Australian corporations to move their operations to offshore locations where labour costs are significantly lower and employees' working conditions are significantly worse. The reporting mechanism in the Modern Slavery Bill may be intended to make businesses more aware of, and motivated to change, their role in perpetuating modern slavery. However, by their very nature, businesses are unlikely to alter their practices if it is not in their commercial interests to do so.

Second, I disagree with the assumption that Australian businesses are better placed than other sectors of society to address modern slavery. Businesses have interests—including minimising their cost of labour and maximising their profit—that can be contrary to the interests of workers. For this reason, the Modern Slavery Bill creates a conflict of interest by effectively tasking Australian businesses with leading the response to systematic abuses of workers in corporate operations and supply chains. A more appropriate approach may be for the Australian government to investigate modern slavery in commercial enterprises and to ensure that Australian companies cease, and are prosecuted for, their involvement in modern slavery. The Australian government has a responsibility to protect workers, particularly the most vulnerable workers who are at the behest of large companies.

In responding to modern slavery, the Australian government should work with unions and workers who are at the coalface of modern slavery and who can provide critical information on corporate malpractice. The labour movement can play an important role in ending modern slavery. In contrast, in the Modern Slavery Bill's Explanatory Memorandum, investors and consumers are seen as pivotal stakeholders in ending modern slavery. However, there is no guarantee that the market will correct injustices in the system through investment and consumer choices.

I would be pleased to provide further information on the issues raised in this submission, at the convenience of the Committee.

Yours sincerely,
Dorothea Anthony