

Project Respect submission to the Senate
Legal and Constitutional Affairs Legislation
Committee
Modern Slavery Bill 2018

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Who we are:

Project Respect is a support and referral service for women in the sex industry and women trafficked for sexual exploitation. We undertake outreach to licensed brothels across the Greater Melbourne Region to provide information and support, provide case-coordination for women in the sex industry, and intensive case-management for women trafficked for sexual exploitation. We deliver capacity-building workshops to a broad range of social, community and welfare services, which includes sections on human trafficking indicators, support, and referral pathways. We run a peer-led Women's Advisory Group consisting of women with experience of the sex industry who provide information, guidance and input on strategic direction for the organisation. We also create a safe space for women, including a monthly peer-led community lunch which women trafficked attend.

Endorsements:

This submission has been endorsed by the Australian Women Against Violence Alliance (AWAVA) Advisory Group and Domestic Violence Victoria (DV Vic).

A note on language:

Project Respect uses the term 'survivor' to refer to people who have been trafficked, rather than 'victim' to be consistent with a human-rights, survivor centred model. However, when discussing policy and legislation, the term 'victim' has been used to reflect the legal language.

Introduction

1. Project Respect welcomes the opportunity to make a submission on the proposed Modern Slavery Bill 2018 to the Senate Legal and Constitutional Affairs Legislation Committee. We congratulate the government and all parties involved in proposing this important legislation.
2. Project Respect acknowledges the government's long-standing commitment to addressing human trafficking, slavery and serious forms of labour exploitation. We recognise the Joint Standing Committee on Foreign Affairs, Defence and Trade's (the Committee) Inquiry in to Establishing a Modern Slavery Act in Australia (JSCFADT Inquiry) directly underpins the proposed Modern Slavery Bill, and builds on numerous other areas of work undertaken by government, including:
 - the Senate Legal and Constitutional Affairs report on the Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012;
 - Joint Standing Committee on Foreign Affairs, Defence and Trade Inquiry in to Slavery, Slavery-like conditions and People Trafficking 2013 and the subsequent report *Trading Lives: Modern Day Human Trafficking*;
 - Parliamentary Joint Committee on Law Enforcement An Inquiry into human trafficking, slavery and slavery-like practices 2017;

and a number of ongoing government inquiries including:

- the 2017 Treasury Black Economy Taskforce;
- the 2016 Attorney-Generals' Department's Labour Exploitation Working Group

- the 2016 Attorney-General's Department Supply Chains Working Group;
 - the 2016 Migrant Workers' Taskforce; and,
 - the 2013 Fair Work Ombudsman's *Harvest trail campaign*;
3. Addressing all forms of modern slavery, and the grave human rights abuses as a cause and consequence of slavery is of extreme importance.

The Modern Slavery Bill

4. The Modern Slavery Bill is a forward step for Australia in setting the standards and guidelines for companies to support them to ensure they are not violating human rights in their operations and supply chains consistent with the *United Nations Guiding Principles on Business and Human Rights* and the *Guidelines for Multinational Enterprises of the Organisation for Economic Co-operation and Development*.
5. Project Respect would like to congratulate the government on the intention to establish a dedicated Modern Slavery Business Engagement Unit, and the stated commitment to work with business and civil society to develop detailed guidance about reporting requirements.
6. Project Respect believes it is necessary for business to be adequately supported during this pioneering process to ensure engagement and commitment from business to foster greater longterm change in addressing slavery.
7. The proposed Bill ensures the Australian Government is one of the few global governments which are actively addressing the issue of slavery in supply chains.
8. Project Respect supports the Government's stated intention to introduce this Bill, however believe it can be improved in a number of respects.

Concerns with the proposed Bill

A. *The reporting threshold*

9. In June 2018 there were 2,616,707 companies registered¹ with Australian Securities and Investment Commission (ASIC).
10. The Bill proposes a reporting threshold of \$100 million consolidated revenue, which will bring approximately 3000 companies in scope to report on their supply chains. Minister Hawke

¹ 2018 Company registration statistics, ASIC - Australian Securities and Investments Commission, <<https://asic.gov.au/regulatory-resources/find-a-document/statistics/company-registration-statistics/2018-company-registration-statistics/>> (accessed 13th July 2018)

suggests this is to ensure that “it focuses on entities that have the capacity to meaningfully comply and the market influence to clean up and address their global supply chains”.²

11. Eradicating slavery should be of concern to everyone, particularly businesses’, and Project Respect supports the view of Fairtrade Australia who indicated in the JSCFADT public hearing that “ *if the standards are clear and transparent, if the expectations are clear and if the playing field is level, then the size of the operation is not relevant. The point is really that everyone is expected to play by the same rules.*”³
12. However, Project Respect acknowledges that reporting requirements and obligations in the burgeoning stages of implementing new legislation such as the proposed Bill may be considerable for small businesses, and reporting for small businesses should be worked towards in the future.
13. As suggested by the Law Council of Australia in their submission in to the JSCFADT Inquiry, the threshold should align with the threshold requirements for ‘a large propriety company as set out in section 45A of the Corporations Act 2001 (Cth)(Corporations Act) which would have a consolidated revenue of \$25 million.⁴
14. The recommendation of the Committee was a threshold of \$50 million, to capture most large entities operating in Australia, and to be internationally consistent with the UK threshold under the Modern Slavery Act 2015⁵.
15. Therefore, Project Respect believes the reporting threshold of \$100 million is too high, and captures too few organisations to address the systemic issue of slavery in global supply chains and recommends the reporting threshold be \$25 million.

B. Penalty Breach

16. The Bill does not include any civil or criminal consequences for the failure to comply with the mandatory reporting requirements.
17. Project Respect acknowledges mandatory reporting and the inclusion of punitive measures for failure to comply with reporting could discourage organisations from investigating their supply chains, or to simply walk away from supply chains which have evidence of slavery, rather than working with their suppliers to address slavery.

² Commonwealth of Australia House of Representatives, *Hansard, Thursday 28th June 2018*, in , Canberra, 2018, pp. 15-18

³ JOINT STANDING COMMITTEE ON FOREIGN AFFAIRS, DEFENCE AND TRADE (JSCFADT), *Hidden in Plain Sight: An Inquiry in to Establishing Modern Slavery Act in Australia*, in, Canberra, 2017 p 102

⁴ Australian Law Council submission to JSCFADT p. 23

⁵ JSCFADT p. 103-104

18. However, the lack of any accountability is likely to result in companies failing to comply, or producing superfluous reports, ultimately undermining the intention of the Bill, and subsequently minimising efforts to address modern slavery.
19. Project Respect agrees with the Committee's view that penalties and compliance measures should not apply for companies which identify and report on steps taken to address modern slavery risks⁶, acknowledging that longterm change in addressing slavery on a global scale will require companies to build the capacity of their supply chains to address slavery within their own operations.
20. This is the current practice of other global entities, such as Apple, who place suppliers in violation of Apple's Code of Conduct and Anti-Human Trafficking Policy on probation, and only terminate the relationship if the supplier is not committed to corrective action by the next audit.⁷
21. Project Respect agrees with the Committee view that there should be accountability for companies who fail to report, however there should be a grace period, and the introduction of penalties and compliance measures applying from the second year of reporting onwards.⁸
22. Project Respect believes organisations should be provided support and guidance through this process, and should not be penalised for finding slavery risk in their supply chains, but believe punitive measures should be enforced on businesses' which fail to meaningfully investigate their supply chains and/or fail to produce their report.

C. Government run register

23. Project Respect welcomes the proposal that the government "will make all statements freely available online through a central, transparent, government-run register."⁹
24. As consumers, the broader community should be able to review statements and make knowledgeable and informed decisions about ethical consumerism.
25. Project Respect does hold concerns that the register will be run by the government, and would ultimately recommend that the central repository be run by NGOs and funded by the government to allow for additional independence and comment.

What is missing from the Bill

⁶ JSCFADT p. 135

⁷ Apple, 2017 Statement on Efforts to Combat Human Trafficking and Slavery in Our Business and Supply Chains, 2017 <https://www.apple.com/supplier-responsibility/pdf/Apple-Combat-Human-Trafficking-and-Slavery-in-Supply-Chain.pdf> (accessed 16th July 2018) p. 6

⁸ JSCFADT p. 135

⁹ Commonwealth of Australia House of Representatives, *Hansard, Thursday 28th June 2018*, in, Canberra, 2018, pp. 15-18.

26. The Government undertook extensive consultations and research for the JSCFADT Inquiry in to establishing a Modern Slavery Act in Australia. This included 225 submissions from civil society, business and government, as well as 10 public hearings with a broad range of people sharing their specialised knowledge and expertise with the Committee.
27. The summary of evidence from the Inquiry listed 6 key areas:
 - establishing an Independent Anti-Slavery Commissioner;
 - transparency in global supply chains;
 - support for survivors of modern slavery;
 - criminal justice responses to modern slavery;
 - child exploitation as a result of orphanage trafficking; and
 - labour exploitation, particularly for migrant workers, and gaps in Australia's visa framework.
28. Establishing reporting requirements for business, and addressing slavery in supply chains, primarily offshore, formed one area of evidence of the Inquiry.
29. Provisions addressing the remaining 5 key areas are entirely missing from the Bill, and, should be incorporated in to a Modern Slavery Act to ensure Australia creates a robust Act that addresses all forms of slavery, and provides support and redress for survivors..

A. Independent Anti-Slavery Commissioner

31. The Modern Slavery Bill does not include an Anti-Slavery Commissioner, which was supported by civil society, and a recommendation by the Committee in the final report.
32. An Independent Anti-Slavery Commissioner, wholly independent from government would ensure there was an individual with the capacity to:
 - engage with government, civil society, unions and business in relation to matters to do with modern slavery;
 - oversee the implementation as well as monitoring of national plans relating to modern slavery;
 - undertake legislative reviews of any implemented Act;
 - ensure survivors have access to appropriate support, and,
 - work with other agencies to strengthen identification, response, reporting and data collection.
33. Without an independent Anti-Slavery Commissioner, the Act will be weakened as public servants providing information to the public with no compulsory powers will be weaker and less effective than the creation of an independent office.
34. The introduction of new legislation provides an opportunity to undertake large scale community education campaigns around Australia about modern slavery, and what efforts need to be undertaken to prevent and deter this crime, and the establishment of an independent Commissioner would provide the opportunity from the outset to undertake this opportunity.

35. The establishment of a Modern Slavery Act is the opportunity for Australia to become international leaders in addressing modern slavery, however, without the inclusion of an Anti-Slavery Commissioner, the Act is significantly weakened.
36. Project Respect recommends a wholly independent Anti-Slavery Commissioner be included in the Modern Slavery Act.

B. Support for Survivors

National Compensation Scheme

37. Despite being a key recommendation in the Committee's final report, there is no provision in the Bill for a National Compensation Scheme.
38. Currently in Australia, compensation is regulated differently in each state, and compensation also differs for the type of offence(s) perpetrated¹⁰ which results in the provision of, as well as compensation amounts differing.
39. Under international Law, the Australian Government is obliged to provide provisions for compensation for survivors of human trafficking. The Palermo Protocol indicates states are required to "ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered."¹¹ Joy Ngozi Ezeilo, the United Nations Special Rapporteur on trafficking in persons, especially woman and children, recommended in 2012 that Australia should "establish a federal compensation scheme for victims of trafficking, noting this would 'be in accordance with the obligations of Australia with respect to remedies under the Trafficking Protocol and international human rights law.'¹²
40. Project Respect, and other organisations such as Anti-Slavery Australia (ASA) and the Law Council of Australia (LCA) have long advocated for a National Compensation Scheme for survivors of trafficking.

¹⁰ Project Respect submission to JSCFADT p. 19

<https://d3n8a8pro7vhmx.cloudfront.net/projectrespect/pages/15/attachments/original/1504666130/25052017_MSAFINAL_amended.pdf?1504666130>

¹¹ *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*, 15 November 2000, Article (6).

¹² United Nations Human Rights Council (UN Human Rights Council), Report of the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo, Addendum, Mission to Australia, 18 May 2012, p. 16 & p. 21,

http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A.HRC.20.18.Add.1_En.PDF (accessed 7 November 2017)

41. In 2016, ASA and LCA produced the report *Establishing a National Compensation Scheme for Victims of Commonwealth Crime* which sets out Australia's obligations, the current inadequacies, as well as proposed models¹³.
42. The 2018 United States Trafficking in Persons' Report also highlights and recommends Australia needs to fulfil this obligation.
43. The implementation of a Modern Slavery Act is a prime opportunity to implement a National Compensation Scheme which will provide restitution to survivors of grave human rights abuses and address Australia's failings to uphold our international obligations.

De-linking support from the Criminal Justice system

44. The Modern Slavery Bill does not address the ongoing concern relating to support being contingent on the criminal justice system.
45. Anti-trafficking organisations in Australia have long advocated for fostering a survivor-centred holistic human rights based approach¹⁴ to survivor support.
46. This primarily centres around delinking of the government funded Support for Trafficked People Program (STPP) and the Human Trafficking Visa Framework pathways from the criminal justice process.
47. This approach is supported by:
 - International Organisation for Migration;
 - United Nations Office on Drugs and Crime;¹⁵
 - a recommendation in the 2012 report by UN Special Rapporteur on trafficking in persons, especially women and children, Ms Joy Ngozi Ezeilo on Australia's trafficking framework;
 - a recommendation in Parliamentary Joint Committee On Law Enforcement (PJCLE), *An inquiry into human trafficking, slavery and slavery-like practices*¹⁶
 - a recommendation to the Australian Government in the 2018 United States Trafficking In Person Country Narrative Report, and;
 - submitted evidence to the JSCFADT Inquiry by numerous civil society and NGOs who have been working in the anti-trafficking space for numerous years¹⁷; and
 - was the Committee view and recommendation that support be de-linked in the JSCFADT Inquiry.¹⁸

¹³ Law Council of Australia, Anti-Slavery Australia and the University of Technology Sydney, *Report on ESTABLISHING A NATIONAL COMPENSATION SCHEME for Victims of Commonwealth Crime*, 2016.

¹⁴ JSCFADT p. 150

¹⁵ JSCFADT p. 141 -142

¹⁶ PARLIAMENTARY JOINT COMMITTEE ON LAW ENFORCEMENT (PJCLE), *An inquiry into human trafficking, slavery and slavery-like practices*, 2017. p. 35

¹⁷ See Project Respect, Anti-Slavery Australia and Australian Law Council submissions to JSCFADT

¹⁸ JSCFADT p. 159

48. Project Respect overwhelmingly supports this position, and requests the government to acknowledge international best practice and the numerous recommendations that support for survivors be de-linked from the criminal justice system.

Referrals to access the Support for Trafficked People Program

49. Referrals to the Support for Trafficked People Program can only be made by the Australian Federal Police (AFP).
50. This again makes access to the support program contingent on engaging with the AFP, despite survivors being afforded a reflection period to decide if they would like to proceed with a criminal investigation.
51. It was the Committee's recommendation that "the Australian Government extend the ability to refer potential victims to the Support for Trafficked People Program and the Bridging F visas beyond the Australian Federal Police to other approved entities, such as the Department of Immigration and Border Protection, Australian Border Force, approved NGOs, state and territory police, the proposed modern slavery hotline operators and the Fair Work Ombudsman."¹⁹
52. Project Respect supports this recommendation, and urges the government to incorporate this change to ensure the human rights of survivors are upheld by providing survivors with access to support.

Length of support available

53. Survivors of trafficking are initially only provided 45 days of support through the initial Assessment and Intensive Support Stream.²⁰
54. In Project Respect's experience, the initial 45-day reflection period is inadequate for women who have been trafficked, who are likely to be experiencing trauma as well as other mental and physical health issues as a result of their exploitation, to reflect and make critical decisions²¹.
55. The inadequacies of this reflection period has been raised in the 2012 report by United Nations Special Rapporteur on trafficking in persons, especially women and children, Ms Joy Ngozi.²²
56. Numerous NGOs submitted evidence to the JSCFADT Inquiry²³ also outlining the inadequacies of this reflection period.

¹⁹ JSCFADT p. 159

²⁰ AUSTRALIAN GOVERNMENT ATTORNEY-GENERAL'S DEPARTMENT CRIMINAL JUSTICE POLICY AND PROGRAMMES DIVISION (AGAGD) submission to JSCFADT, p. 12

²¹ JSCFADT p. 156

²² UN Human Rights Council, p. 14

²³ JSCFADT - See HTRAC, Anti-Slavery, Norton Rose Fulbright, Project Respect and UNICEF UK submissions submissions p. 156-157

57. The Committee's view indicated the reflection period be increased to 90 days.
58. Project Respect recommends the government to increase the reflection period to provide the foundational support for survivors to recover from the exploitation they have experienced, which is likely to increase their ability to assist in criminal proceedings.

Criminal Proceedings and Defence:

59. The proposed Modern Slavery Bill does not address the issue that people, particularly women, still face criminal proceedings as a consequence of being enslaved.
60. As per the UN Special Rapporteur on trafficking in persons, Australia has a "legal obligation to correctly ensure that (trafficked individuals) are not criminalized for offences relating to the fact of their having been trafficked."²⁴
61. This view is supported by the PJCLE, *An inquiry into human trafficking, slavery and slavery-like practices*²⁵, and was noted by the witness Ms. Felicity Gerry, QC, international barrister and academic at the JSCFADT Public Hearing who "told the Committee that Australia's common law and legislative provisions to provide defences for people who commit crimes when they are subject to exploitation are 'currently wholly inadequate ... particularly in relation to women offenders'. Ms Gerry suggested that Australia is required to provide such defences under its international law obligations."²⁶
62. This view supports Project Respect's own longstanding advocacy to ensure women are not criminalised as a consequence of being coerced or forced in to the sex industry as a result of being trafficked.
63. Australia has made significant commitment to addressing gender based violence and gender equality through a number of initiatives, including the *National Plan to Reduce Violence against Women and their Children 2010-2022* and the *Gender Equality Action Plan 2017-2020*, however women trafficked are not represented in any planning or response.
64. Project Respect recommends the government introduce a defence of coercion to ensure women who are forced to provide illegal sexual services or sexual services in an illegal setting are not criminalised, and ensure women trafficked are incorporated and represented in addressing violence against women policy and planning responses.

Other matters

65. There is still no law in Australia which criminalises a person who knowingly and/or recklessly has sex (rape) with someone who has been trafficked.
66. Project Respect recommends the government explicitly make this act illegal in order to better protect people, more specifically women, from men's violence against women.

²⁴ UN Human Rights Council, p. 7

²⁵ PJCLE p. 69

²⁶ JSCFAD p. 161

Final Comment

67. Project Respect would again like to congratulate the government on taking steps in becoming a world leader in developing response initiatives in addressing slavery in global supply chains.
68. It is important to recognise that slavery does not just happen in the Global South, and Australia is not immune from slavery happening within our own borders.
69. Project Respect believes the introduction of a Modern Slavery Act should not solely focus on business and supply chains.
70. Australia has ratified the *United Nations Convention against Transnational Organized Crime* and its supplementary *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* which outlines Australia's protection obligations for survivors.
71. It is consistently recommended to the Australian government that they need to do more to meet their international obligations in protecting survivors of slavery, slavery-like and trafficking offences.
72. While addressing slavery in supply chains is paramount, the proposed Bill completely excludes any provisions for strengthening the protection for survivors, particularly survivors within Australia, which ultimately weakens Australia's response to combatting slavery, and undermines the commitment to uphold the human rights of survivors of slavery.