

Chapter 1

Introduction and background

1.1 On 28 June 2018, the Senate referred the provisions of the Modern Slavery Bill 2018 (the bill) to the Legal and Constitutional Affairs Legislation Committee (the committee) for inquiry and report by 24 August 2018.¹

1.2 The Selection of Bills Committee of the Senate recommended that the provisions of the bill be referred to the committee, as:

- the proposed legislation is the first of its kind in Australia; and
- there is a need to consider expert views on potential impacts of the bill and possible improvements.²

1.3 This chapter provides a brief overview of the background and purpose of the bill. A more detailed explanation of the bill is provided in the next chapter.

Background and purpose of the bill

1.4 According to the Explanatory Memorandum, the primary objective of the bill is to assist the Australian business community take 'proactive and effective actions' to address modern slavery, and mitigate the risks to supply chains and goods and services in the Australian market.³ Additionally, the bill is also intended to increase the information available to consumers and investors about the risks of modern slavery practices, so they are better able to make informed decisions.⁴

1.5 The bill would establish the *Modern Slavery Act 2016* (the Act). The Act would require certain large businesses and other entities to lodge Modern Slavery Statements (statements) annually, to fulfil the Act's Modern Slavery Reporting Requirement (reporting requirement). These statements would detail the actions entities have taken to address modern slavery risks in their operations and supply chains, and be provided to the Minister for Home Affairs (Minister) for publication on an online central register.⁵

1.6 The Explanatory Memorandum explains that the reporting requirement would:

1 *Journals of the Senate*, No. 105, 28 June 2018, p. 3358.

2 Senate Standing Committee for the Selection of Bills, *Report No 7 of 2018*, 28 June 2018, p. 3 and Appendix 4.

3 Explanatory Memorandum, p. 2.

4 Explanatory Memorandum, p. 26.

5 Explanatory Memorandum, p. 2.

...drive a 'race to the top' as reporting entities compete for market funding and investor and consumer support. The Bill also aims to increase awareness of modern slavery risks among the Australian business community, and assist investors and consumers to make more informed decisions when using, buying and selling goods and services.⁶

1.7 The bill provides that entities that meet a \$100 million consolidated revenue threshold for turnover globally would be liable to lodge statements.⁷ Companies with turnovers that fall beneath the threshold would be able to comply with the reporting requirement on a voluntary basis.⁸ The Commonwealth would also be liable to submit a 'consolidated annual [statement] on behalf of all non-corporate Commonwealth entities', except when corporate Commonwealth entities or companies meet the revenue test and must therefore lodge a statement themselves.⁹

1.8 The bill would establish a Modern Slavery Business Engagement Unit (Business Engagement Unit) within the Department of Home Affairs (the department), to 'ensure business is appropriately supported to address modern slavery risks in their supply chains'.¹⁰ The 2018 Federal Budget committed \$3.6 million to establish and administer this unit from January 2018 to June 2022.¹¹

The global challenge of slavery

1.9 In his second reading speech, the Assistant Minister for Home Affairs, the Hon Alexander Hawke MP, underlined the extent of the challenge of modern slavery in the world today, and the pressing need for action:

The UN estimates that up to 25 million modern slavery victims are exploited in global supply chains.

This includes over 4,000 people in Australia estimated to be enduring slavery or slave-like conditions.

These victims are enslaved in mines, in factories, in brothels, in brick kilns, and on construction sites, fishing boats and farms around the world.

Their exploitation involves serious crimes and grave human rights abuses and taints the goods and services that we use every day.

6 Explanatory Memorandum, p. 2.

7 Explanatory Memorandum, p. 3.

8 Explanatory Memorandum, p. 3 and p. 12.

9 Explanatory Memorandum, p. 12.

10 Explanatory Memorandum, p. 35.

11 Explanatory Memorandum, p. 54.

Modern slavery in supply chains also distorts global markets, undercuts responsible businesses, and poses significant legal and reputational risks for companies.¹²

1.10 It is difficult to overstate the heinous nature of modern slavery practices, or the damage these practices cause. Modern slavery practices, as the Explanatory Memorandum observes:

...are major violations of human rights and serious crimes. Modern slavery practices include trafficking in persons, slavery, slavery-like practices (including forced labour and forced marriage) and the worst forms of child labour (including using children for prostitution or in hazardous work).¹³

Risks in Australia

1.11 The risk of exposure to modern slavery is a very real and current problem for Australian businesses. As the Explanatory Memorandum points out, there is a 'high risk' that Australian businesses are exposed to modern slavery practices, and that Australian goods and services 'are tainted by modern slavery'.¹⁴

1.12 Exposure to modern slavery can occur at any point in a supply chain, including those parts of a supply chain located within Australia. Nonetheless, the risk of such exposure may be heightened for Australian businesses and other entities that rely on global supply chains, particularly where those supply chains are especially complex and/or extensive. The United Nations has estimated that there are more than 40 million victims of modern slavery worldwide; more than half of these victims live in the Asia-Pacific region, where the supply chains of many large Australian businesses are concentrated.¹⁵

1.13 Incidences of modern slavery or slavery-like practices can be found in any industry or sector. However, certain industries are considered particularly high-risk, due to their trans-national supply chains. These industries include agriculture, construction, electronics, extractives, fashion and hospitality.¹⁶

Legal frameworks to address modern slavery in other jurisdictions

1.14 The Australian Government is not alone in introducing legal frameworks aimed at addressing Modern Slavery. For example, the United Kingdom enacted the *Modern Slavery Act 2015* (UK Act) in 2015 and, in Australia itself, the New South Wales government passed legislation aimed at tackling modern slavery in

12 The Hon Alexander Hawke MP, Assistant Minister for Home Affairs 'Second Reading Speech' in *House of Representatives Hansard*, 28 June 2018, p. 15.

13 Explanatory Memorandum, p. 2.

14 Explanatory Memorandum, p. 2.

15 Explanatory Memorandum, p. 2.

16 Explanatory Memorandum, p. 2.

June 2018. There have also been similar regimes introduced across the European Union, in some states and sectors of the United States, and in other parts of the world.¹⁷

1.15 The UK and New South Wales frameworks share the same goals and broad approach of the current bill. However, there are notable differences, which will be discussed in the second chapter of this report.

'Hidden in Plain Sight' report

1.16 The bill currently under consideration was developed following the inquiry into establishing an Australian Modern Slavery Act undertaken in 2017 by the Joint Standing Committee on Foreign Affairs, Defence and Trade of the Australian Parliament (Joint Committee). The Joint Committee's report, *Hidden in Plain Sight*, was tabled in December 2017, and was informed by 225 submissions and 10 public hearings. Evidence was received from individuals, businesses, and organisations that work to eradicate modern slavery, including from global supply chains, along with relevant Commonwealth departments.¹⁸

1.17 As part of its inquiry, the Joint Committee assessed in detail the effectiveness of the UK Act, and considered whether similar or improved measures should be introduced in Australia. The report made 48 recommendations, including the central recommendation calling for:

...the establishment of an Australian Modern Slavery Act, including an Independent Anti-Slavery Commissioner to lead and coordinate Australia's response to combatting modern slavery. Evidence suggests that the UK Commissioner has made an important contribution to raising awareness of modern slavery, better coordinating UK law enforcement agencies and advocating for improved supports for victims.¹⁹

1.18 To address the risks of modern slavery practices in supply chains, the Joint Committee recommended the Act should include a mandatory global supply chain reporting requirement for certain entities operating in Australia. Entities subject to the proposed reporting requirement would need to 'take responsibility to ensure that they

17 See Fiona McGaughey and Justine Nolan, 'Modern Slavery Bill a step in the right direction – now businesses must comply' in The Conversation online at <https://theconversation.com/modern-slavery-bill-a-step-in-the-right-direction-now-businesses-must-comply-99135> (accessed 26 July 2018).

18 Joint Standing Committee on Foreign Affairs, Defence and Trade, *Hidden in Plain Sight: An inquiry into establishing a Modern Slavery Act in Australia* (December 2017), p.4.

19 Joint Standing Committee on Foreign Affairs, Defence and Trade, *Hidden in Plain Sight: An inquiry into establishing a Modern Slavery Act in Australia* (December 2017), p. x

are not profiting, or gaining a competitive advantage, from modern slavery in their global supply chains'.²⁰

1.19 The Joint Committee further recommended that statements made under the reporting requirement be held in a central repository.²¹

1.20 The Joint Committee also made recommendations in a number of other relevant areas, including:

- changes to the way Australia's victim identification and support programs operate, including a national compensation scheme;
- improving coordination and training for Australia's law enforcement and criminal justice agencies;
- a series of measures to ensure Australian donations and volunteers do not inadvertently perpetuate orphanage trafficking and the exploitation of children internationally; and
- better protections in Australia's visa framework for migrant workers and backpackers in regional areas.²²

Consultation in developing the bill

1.21 The measures in the bill were developed after the government undertook a consultation process to ascertain the views of the business sector, relevant NGOs, and interested individuals, as outlined in the Explanatory Memorandum:

To ensure full public consultation, Government conducted a two-phase consultation process. The first phase of consultations involved a series of 12 stakeholder roundtables in Canberra, Melbourne, Sydney and Perth. More than 130 representatives from business and civil society attended these roundtables. The second phase of consultations involved seeking written submissions from interested stakeholders. The Australian Government received 99 written submissions addressing the key areas for feedback set out in the consultation paper. In addition to formal consultations, the Australian Government has held more than 50 direct meetings with interested stakeholders. The Australian Government also held targeted exposure draft consultations on draft legislation with over 40 expert stakeholders between 29–30 May 2018.²³

20 Joint Standing Committee on Foreign Affairs, Defence and Trade, *Hidden in Plain Sight: An inquiry into establishing a Modern Slavery Act in Australia* (December 2017), p. x.

21 Joint Standing Committee on Foreign Affairs, Defence and Trade, *Hidden in Plain Sight: An inquiry into establishing a Modern Slavery Act in Australia* (December 2017), p. xxxvii.

22 Joint Standing Committee on Foreign Affairs, Defence and Trade, *Hidden in Plain Sight: An inquiry into establishing a Modern Slavery Act in Australia* (December 2017), p. xxvii–xxviii.

23 Explanatory Memorandum, p. 35.

Human rights

1.22 The Explanatory Memorandum contains a statement of compatibility with human rights confirming the bill is compatible with all Australia's international obligations listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. The Explanatory Memorandum further concludes that the bill is compatible with Australia's human rights commitments because:

...it promotes the protection of a number of human rights, including absolute rights to freedom from slavery and forced labour and to freedom from torture and other cruel, inhuman or degrading treatment or punishment. To the extent that the Bill may limit the right to privacy and reputation, those limitations are reasonable, necessary and proportionate to the legitimate objective of the Bill, which is to strengthen Australia's approach to modern slavery by equipping and enabling the business community to respond effectively to modern slavery and develop and maintain responsible and transparent supply chains.²⁴

Financial implications

1.23 The Regulation Impact Statement included in the Explanatory Memorandum states that the bill would have an annual regulatory impact on the business community of approximately \$65.85 million (\$21,950 per reporting entity).²⁵

1.24 As noted above, the 2018 Federal Budget committed \$3.6 million to establish the Business Engagement Unit within the department.²⁶

Conduct of the inquiry

1.25 Details of the inquiry were published on the committee's website, including a call for submissions to be received by 20 July 2018. The committee also wrote to a number of relevant individuals and organisations inviting them to make submissions.

1.26 The committee received 93 submissions, which are listed at appendix 1 of this report. All submissions are available in full on the committee's website.

1.27 The committee held three public hearings, in Melbourne on 1 August 2018, in Sydney on 2 August 2018, and in Canberra on 3 August 2018.

24 Explanatory Memorandum, p. 32.

25 Explanatory Memorandum, p. 35.

26 Explanatory Memorandum, p. 54.

Structure of this report

- 1.28 This report consists of three chapters. In addition to this introductory chapter:
- chapter two provides an outline of the bill's provisions, and then sets out the general support for the bill in evidence received by the committee; and
 - chapter three offers an overview of the evidence received regarding potential improvements that could be considered by the government, and in turn sets out the committee's views and recommendations.

Acknowledgements

1.29 The committee thanks all the organisations and individuals that made submissions to the inquiry, as well as those that gave evidence at public hearings.

