

## Chapter 2

### Provisions of and support for the bill

2.1 The first part of this chapter summarises the key provisions of the bill, which would:

- establish a modern slavery reporting requirement;
- set out which entities would be required to make Modern Slavery Statements under the requirement, what information would need to be included in statements, and provide for the creation of a government-administered central registry on which statements would be published and made publicly available;
- establish a Modern Slavery Business Engagement Unit in the Department of Home Affairs, which will work with the business community to support the implementation of the reporting requirement; and
- provide for a review of the Act three years after commencement.

2.2 This chapter also summarises the broad support for the bill expressed in evidence received by the committee.

#### Provisions of the Bill

##### *Modern Slavery Reporting Requirement*

2.3 As noted in the previous chapter, the bill would establish a reporting requirement that would require reporting entities to provide an annual statement, known as a Modern Slavery Statement, to the responsible Minister. Statements would also be published online on a central register administered by the government.

##### *Entities required to report*

2.4 The modern slavery reporting requirement would apply to a range of entities operating in Australia.

2.5 Australian entities and foreign entities carrying on business in Australia would be required to submit a statement for every 12-month period that their annual global revenue exceeds \$100 million. In explaining the \$100 million threshold, which would capture approximately 3,000 entities, Assistant Minister Hawke indicated that this would ensure the reporting requirement was focused on 'entities that have the capacity to meaningfully comply and the market influence to clean up and address their global supply chains'.<sup>1</sup> A number of inquiry participants commented on whether the threshold had been appropriately set—this question is explored further in the next chapter.

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

2.6 The Commonwealth would also be required to publish an annual consolidated statement under the Act on behalf of all non-corporate Commonwealth entities, as defined in the *Public Governance, Performance and Accountability Act 2013*.

2.7 Commonwealth corporations and companies would not be included in the Commonwealth's consolidated statement, and would instead be treated like any other entity. As such, if those entities meet the revenue threshold, they would be considered a 'reporting entity' and must comply with the reporting requirement.

2.8 The Explanatory Memorandum explains that requiring Modern Slavery Statements from the Commonwealth, corporate Commonwealth entities and Commonwealth companies:

...helps to create a level playing field by covering as many entity types as practicable. It will also help ensure that potential modern slavery risks in Government procurement are assessed and addressed.<sup>2</sup>

2.9 Additionally, entities falling under the threshold would still be able to provide a voluntary public statement of compliance with the Act, should they wish to do so. As the Explanatory Memorandum notes, this will facilitate voluntarily statements where, for example, an entity wishes 'to demonstrate their commitment to identifying and mitigating modern slavery risks in their operations and supply chains'.<sup>3</sup>

#### *Mandatory criteria for Modern Slavery Statements*

2.10 Section 16 of the bill sets out what reporting entities, including the Commonwealth, must address in their Modern Slavery Statement. The mandatory criteria are intended to provide reporting entities with clarity as to their obligations, while also helping ensure that statements are consistent and can be easily compared.

2.11 The statements would include certain mandatory criteria set out in the Explanatory Memorandum:

- the entity's structure, operations and supply chains;
- the potential modern slavery risks in the entity's operations and supply chains;
- actions the entity has taken to assess and address those risks, including due diligence and remediation processes; and
- how the entity assesses the effectiveness of those actions.<sup>4</sup>

2.12 Modern Slavery Statements would also:

...identify the reporting entity, describe consultation with other entities and details of approvals, and can include other relevant information. A Modern

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2 Explanatory Memorandum, p. 12

3 Explanatory Memorandum, p. 12

4 Explanatory Memorandum, p. 3. For the purposes of the reporting requirement, 'Modern Slavery' is defined broadly to include all forms of trafficking in persons, slavery and slavery-like practices, and the worst forms of child labour. For more information, see Explanatory Memorandum, pp. 7–9.

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Slavery Statement must be signed by a responsible member for the entity, approved by the principal governing body of the entity and provided to the Minister within six months from the end of the entity's financial year.<sup>5</sup>

2.13 It should be noted that Section 10 makes it clear that the bill extends outside Australia. As such, in preparing Modern Slavery Statements, reporting entities will need to consider modern slavery risks in their global operations and supply chains, not only their operations and supply chains in Australia.<sup>6</sup>

*Access to Modern Slavery Statements through central register*

2.14 The government would make entities' Modern Slavery Statements available through a free, publicly accessible central register, to be administered by the Department of Home Affairs. Entities would also have discretion to publish their statements on their webpages, in annual reports or elsewhere.

***Modern Slavery Business Engagement Unit***

2.15 The bill includes provisions to establish a Business Engagement Unit in the Department of Home Affairs. According to the Explanatory Memorandum, this measure would 'ensure business is appropriately supported to address modern slavery risks in their supply chains'.<sup>7</sup>

2.16 The Explanatory Memorandum notes that the Business Engagement Unit would create a single point of contact for stakeholders to seek guidance and non-binding advice on compliance with the reporting requirement, including how to remedy identified risks of modern slavery.<sup>8</sup> The functions and performance of the Business Engagement Unit would be assessed on an ongoing basis, including through the Interdepartmental Committee on Human Trafficking and Slavery's annual report to Parliament, Senate Estimates and feedback from businesses.<sup>9</sup>

***Review of the Act***

2.17 The bill provides that the Minister must commence a review of the Modern Slavery Act three years after commencement, and complete the review within 12 months. The purpose of the review will be to ensure the Modern Slavery Reporting Requirement 'remains effective and responsive to the Australian context'.<sup>10</sup>

2.18 The Explanatory Memorandum notes that the timeframe of the review means that it would take place:

...after reporting entities have published at least two Modern Slavery Statements to ensure there is a sufficient evidence base to inform the

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5 Explanatory Memorandum, p. 3.

6 Explanatory Memorandum, p. 14.

7 Explanatory Memorandum, p. 3.

8 Explanatory Memorandum, p. 53.

9 Explanatory Memorandum, p. 55.

10 Explanatory Memorandum, p. 3.

review. This will facilitate an effective review of the practical operation and implementation of the Act, including the levels of compliance by reporting entities and the quality of Modern Slavery Statements.<sup>11</sup>

## Support for the bill

2.19 The evidence received by the committee was overwhelmingly supportive of the bill, even in instances when inquiry participants suggested certain amendments (as discussed in the next chapter). In particular, a large number of inquiry participants welcomed the bill as an important first step toward addressing the challenges of modern slavery, with some also noting that the bill stood as a sign of the government's commitment to addressing slavery and slavery-like conditions in Australian supply chains.<sup>12</sup>

2.20 Some submitters noted that the proposed Act would put Australia at the forefront of global efforts to address slavery. For example, Project Respect noted that the bill 'ensures the Australian Government is one of the few global governments which are actively addressing the issue of slavery in supply chains'.<sup>13</sup>

2.21 In a similar vein, some inquiry participants noted that the measures in the bill to tackle modern slavery in supply chains compared favourably to approaches taken in other jurisdictions. For example, the Uniting Church submitted:

The Bill, combined with the establishment of a new Modern Slavery Business Engagement Unit, is a vastly superior system design for the reporting of entities on what they are doing to address modern slavery in their supply chains over the UK Modern Slavery Act. It keeps the number of reporting entities to a workable number, making it hard for companies that give the least consideration to the risks of modern slavery from being able to hide in a pack of thousands of entities that fail to fulfil their reporting obligation. It also, unlike the UK Act, spells out meaningful aspects that the reports by entities must address. Ideally, the bill would have additional sections addressing other issues, but as the Bill stands it is a valuable step forward even without amendment.<sup>14</sup>

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11 Explanatory Memorandum, p. 24.

12 For example, see: Public Affairs Commission of the Anglican Church of Australia, *Submission 4*, p. 1; Australian Christian Churches and ACC International Relief, *Submission 5*, p. 3; Josephite Counter-Trafficking Project *Submission 9*, p. 1; Project Respect, *Submission 10*, p. 3; Freedom Project, *Submission 11*, p. 1; ACRATH, *Submission 21*, p. 3; Australian Catholic Bishops Conference, *Submission 16*, p. 3; Lutheran Church of Australia, *Submission 19*, p. 1; British Institute of International and Comparative Law, *Submission 20*, p. 1; Australian Freedom Network, *Submission 24*, pp. 2–3; Business Council of Australia, *Submission 67*, p. 21; KPMG, *Submission 51*, p. 6; Synod of Victoria and Tasmania, Uniting Church in Australia, *Submission 59*, p. 1; Law Council of Australia, *Submission 64*, p. 5; AHRC, *Submission 70*, p. 3; Intrepid Group, *Submission 72*, p. 1; Global Compact Network Australia, *Submission 89*, p. 1; and BHP Australia, *Submission 91*, p. 1.

13 *Submission 10*, p. 3.

14 *Submission 59*, p. 1.

2.22 Similarly, the Walk Free Foundation (Walk Free) commended the bill, and observed that, while it has been 'modelled on the United Kingdom Modern Slavery Act..., [it] is in several respects a significantly superior piece of legislation'. Walk Free also highlighted the value of the central register, and welcomed the inclusion of the Commonwealth as a reporting entity in the proposed regime:

The creation of a central repository within government for lodging business statements will be a powerful force for transparency and compliance and will address a significant weakness of the UK Act. The decision to include Commonwealth public procurement in the supply chain reporting regime is a world first and will have resonance in other jurisdictions. No longer will governments be able to set expectations on business for tackling modern slavery that they do not also apply to their own departments and agencies. Both measures are important initiatives in driving effective accountability for tackling modern slavery.<sup>15</sup>

2.23 A number of submissions identified a number of other features of the bill that would make the Act strong and effective. For example, the Freedom Project welcomed the inclusion of a number of the bill's provisions:

The broad definition of a 'reporting entity'—especially inclusion of the Commonwealth;

The definition of 'Modern Slavery' to include the worst forms of child labour;

A voluntary Modern Slavery Statement for those outside the threshold;

Mandatory criteria for the Modern Slavery Statement, including being signed by a responsible member of the company;

A Minister responsible for maintaining a register of Modern Slavery Statements;

The registration of revised Modern Slavery Statements and;

A review of the Act after 3 years.<sup>16</sup>

2.24 The Business Council of Australia (BCA) observed that the measures contained in the bill would complement the existing work being undertaken by large businesses to identify and tackle slavery in their supply chains. In particular, the BCA expressed its support for how the bill sets out:

...an effective and proportionate reporting requirement that harnesses transparency to drive better practice and governance of modern slavery risks in supply chains and operations.

The Bill will complement the existing initiatives underway by large businesses to voluntarily disclose modern slavery issues and continuously improve the governance of modern slavery risks in their supply chains and operations.

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15 *Submission 37*, p. 1.

16 *Submission 11*, p. 1.

We believe the current Bill adopts the right focus of encouraging companies to continuously assess their supply chains and operations for evidence of modern slavery, instead of a more prescriptive or punitive approach.<sup>17</sup>

2.25 A number of submitters supported the Business Engagement Unit as a central feature of the Act to encourage compliance and provide advice to the business sector. For example, Australian Catholic Religious Against Trafficking in Humans (ACRATH) commented that it:

...affirms the announcement from the Government in May 2018 that an Anti-Slavery Business Engagement Unit will be established to support and provide advice to business on modern slavery risks and manage a central repository of all Modern Slavery Statements.<sup>18</sup>

2.26 A number of submitters highlighted the extensive consultation that informed the Commonwealth's development of the bill, and commended the high level of engagement shown by parliamentarians and the public sector in the discussion about how to tackle modern slavery.<sup>19</sup> For example, the Salvation Army submitted that it:

...would like to acknowledge the enormous effort that has gone into this legislation by hundreds of stakeholders, particularly the work of the public servants in the Department of Home Affairs who have undertaken extensive, genuine consultation to inform this bill. We commend the government for its leadership in developing the Modern Slavery Bill and are grateful for the genuine engagement offered by many Members, Senators, and Committee representatives.<sup>20</sup>

2.27 A common thread in much of the evidence received was that the Parliament should pass the bill with multiparty support as soon as possible, even when they noted potential areas in which the bill could be strengthened.<sup>21</sup> For example, Walk Free argued:

Support for the prompt passage of an agreed Modern Slavery Bill comes from nearly every section of Australian society and politics. Business, civil society, religions, academics, and lawyers have all argued their support to

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17 *Submission 67*, p. 2.

18 Australian Catholic Religious Against Trafficking in Humans, *Submission 21*, p. 3.

19 For example, see comments made by: Project Respect, *Submission 10*, p. 6; Konica Minolta Business Solutions Australia, *Submission 14*, p. 1; Lutheran Church of Australia, *Submission 19*, p. 1; Australian Freedom Network, *Submission 24*, p. 3; See also Walk Free Foundation, *Submission 37*, p. 2; Australian Institute of Company Directors, *Submission 40*, p. 1; Supply Chain Sustainability School, *Submission 52*, p. 2; National Australia Bank, *Submission 54*, p. 1; IJM Australia, *Submission 63*, p. 3; ACCI, *Submission 66*, p. 3; and Department of Home Affairs, *Submission 79*, p. 3.

20 Salvation Army, *Submission 33*, p. 3.

21 For example: Australian Freedom Network, *Submission 24*, p. 3; Salvation Army, *Submission 33*, p. 3; IJM, *Submission 63*, p. 19; Uniting Church in Australia, *Submission 59*, p. 4; and Walk Free Foundation, *Submission 37*, p. 2;

pass legislation to tackle modern slavery. The Government, the Labor Opposition, the Greens and other Parliamentarians have been supportive and have engaged seriously in the policy work. The [Joint Committee] Report was unanimous.

Such a consensus is rare indeed and one well worth sustaining.<sup>22</sup>

2.28 Ms Laura McManus, Responsible Sourcing Manager, Woolworths Group Ltd, also spoke about the goodwill and consensus that has characterised the development of the bill, and hoped this would continue in its consideration by the Parliament:

[I]t feels like we're close to having a modern slavery act in Australia, and it's a really exciting prospect. I commend all parties on the momentum to get us to this point, particularly the early work of the joint standing committee, and welcome ongoing bipartisan support to see the timely passage of the legislation.<sup>23</sup>

2.29 This sentiment was echoed by Dr Mark Zirnsak, the Senior Social Justice Advocate for the Synod of Victoria and Tasmania, Uniting Church of Australia (Uniting Church), who told the committee that:

From our perspective, the worst possible outcome here, given the momentum that now exists towards doing the reporting [under the Act], would be that we have a bill that gets amended in the Senate but then can't pass the House of Representatives and gets stuck in permanent stalemate. We will lose all that momentum.<sup>24</sup>

2.30 Mrs Skye Kakoschke-Moore, Special Adviser for the International Justice Mission Australia (IJM Australia), told the committee:

[W]e want to make this point very clear: we do not want the perfect [to] be the enemy of the good, and we would like to see this legislation passed without delay. It is no exaggeration to say that the lives of millions of people stand to change for the better once Australian entities start investigating their supply chains, but given the opportunity still exists for this legislation to be amended, we would encourage this committee and the government to remain open minded about ways to enhance the effectiveness of this legislation and to ensure it achieves its intended aims.<sup>25</sup>

## Summary and next chapter

2.31 As noted previously, the evidence received by the committee was broadly supportive of the bill as an important step toward addressing the challenge of modern slavery. In particular, inquiry participants were overwhelmingly supportive of the bill's objective of assisting the business community in Australia to take proactive and effective actions to address modern slavery.

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22 Walk Free Foundation, *Submission 37*, p. 2.

23 *Proof Committee Hansard*, 2 August 2018, p. 1.

24 *Proof Committee Hansard*, 2 August 2018, p. 45.

25 *Proof Committee Hansard*, 2 August 2018, p. 38.

2.32 Notwithstanding this broad support, many inquiry participants suggested ways in which the bill might be amended to extend or, in their view, otherwise strengthen the government's actions to address modern slavery. These suggested amendments, and the issues they relate to, are considered in the next chapter.