Chapter 3

Potential amendments raised in evidence

3.1 Although the intent and provisions of the bill were overwhelmingly supported in evidence, there were some aspects of the bill, or matters not covered by the bill, that witnesses and submitters considered warranted further consideration. Matters raised in this regard included:

- the lack of any provision for an independent statutory anti-slavery officer;
- the absence of penalties in relation to the modern slavery reporting requirement;
- whether the threshold of $100 million consolidated revenue, above which an entity is subject to the reporting requirement, is appropriate;
- matters related to the administration of the central register for Modern Slavery Statements, and more broadly the accessibility of statements;
- whether a list of entities subject to the reporting requirement should be maintained, and for what purpose;
- the possibility of a compensation scheme for victims of trafficking and slavery;
- the potential for harmonisation between jurisdictions of legislation directed at addressing modern slavery; and
- the terms of the review of the Act to be undertaken in three years.

3.2 These matters, including calls for amendments and support for the bill as it stands, are considered in this chapter. This chapter also sets out the committee's views on the bill and matters raised during the inquiry, and concludes with the committee's recommendations.

An independent statutory anti-slavery officer

3.3 A significant number of submitters and witnesses argued that the bill should provide for the creation of an independent statutory officer for anti-slavery, as included in the UK Act.[1] Much of this evidence noted that one of the core

---

1 See, for example: Ms Fiona McLeod SC, *Submission 3*, p. 2; Public Affairs Commission of the Anglican Church of Australia, *Submission 4*, p. 2; Josephite Counter-Trafficking Project, *Submission 9*, p. 4; Project Respect, *Submission 10*, p. 6; Freedom Project, *Submission 11*, p. 1; Social Responsibilities Committee (SRC) Anglican Church Southern Queensland (Diocese of Brisbane), *Submission 13*, p. 1; Australian Lawyers Alliance, *Submission 15*, p. 4; Australian Catholic Bishops Conference, *Submission 16*, p. 3; Executive Council of Australian Jewry, *Submission 17*, p. 7; Federation of Ethnic Communities Councils of Australia Inc. (FECCA), *Submission 18*, p.1; British Institute of International and Comparative Law, *Submission 20*, pp. 2–3; Australian Catholic Religious Against Trafficking in Humans, *Submission 21*, p. 3; Good Shepherd Australia New Zealand, *Submission 22*, p. 7; Slavery Links Australia Inc., *Submission 23*, p. 1; Australian Freedom Network, *Submission 24*, p. 4; Top End Women's Legal Service Inc. (TEWLS) and Northern Territory

recommendations of the Joint Committee's report was that 'the Australian Government establish an Independent Anti-Slavery Commissioner under the proposed Modern Slavery Act', with the authority and resources to fulfil a range of functions:

- overseeing the implementation of the *National Action Plan to Combat Human Trafficking and Slavery 2015–19* and any future plans to combat modern slavery;
- monitoring and investigating compliance of government agencies with the *National Action Plan to Combat Human Trafficking and Slavery 2015–19* and existing modern slavery legislation;
- ensuring victims of modern slavery, including children, have access to appropriate support services;
- providing education, guidance and awareness training for government agencies and entities about modern slavery issues;
- engaging with government and entities on the implementation and operation of the proposed supply chain reporting requirement and central repository;
- collecting and analysing data on modern slavery in Australia;
- undertaking legislated reviews of the proposed Modern Slavery Act at least every three years;
- improving coordination between criminal justice agencies in identifying and prosecuting modern slavery cases;
- providing advice on how to improve the proposed Modern Slavery Act, as well as responses to modern slavery, on an ongoing basis;

Working Women's Centre Inc. (NTWWC), *Submission 25*, p. 5; Chartered Accountants Australia and New Zealand, *Submission 26*, Appendix A, p. 1; Dr Fiona McGaughey, Adjunct Professor Holly Cullen, Mr John Southalan, and Dr Donella Caspersz, *Submission 30*, p. 4; Salvation Army, *Submission 33*, p. 4; Bernard G. Dobson, *Submission 34*, p. 1; Property Council, *Submission 36*, p. 1; Walk Free Foundation, *Submission 37*, p. 4; Australian Lawyers for Human Rights, Submission 39, p. 3; International Commission of Jurists Victoria, *Submission 43*, p. 1; Mercy Foundation, *Submission 45*, p. 2; Oxfam, *Submission 46*, p. 3; Stop the Trafik, *Submission 48*, p. 6; Anti-Slavery Australia, *Submission 50*, p. 8; Supply Chain Sustainability School, *Submission 52*, p. 3; National Council of Churches, *Submission 53*, p. 2; Chartered Institute of Procurement & Supply, *Submission 55*¸p. 1; Synod of Victoria and Tasmania, Uniting Church of Australia, *Submission 59*, p. 3; Ethnic Communities' Council of Victoria, *Submission 60*, p. 3; ACTU, *Submission 61*, p. 4; International Justice Mission Australia (IJM Australia), *Submission 63*, p. 18; Law Council of Australia, *Submission 64*, p. 5; Human Rights Law Centre, *Submission 65*, p. 4; Australian Human Rights Commission, *Submission 70*, p. 4; Victorian Trades Hall Council with the National Union of Workers Victorian Branch, *Submission 77*, p. 2; Civil Liberties Australia, *Submission 78*, p. 2; Mr Karl Schubert, *Submission 80*, p. 3; Legal Services Commission of South Australia, *Submission 81*, p. 2; Australian Christian Lobby, *Submission 82*, p. 2; Hagar Australia, *Submission 84*, p. 5; Electrical Trades Union of Australia, *Submission 87*, p. 1; Australian Council of Superannuation Investors, *Submission 88*, p. 1; Associate Professor Justine Nolan, *Submission 90*, p. 3; Outland Denim, *Submission 92*, p. 2; and The Border Crossing Observatory and the Monash Migration and Inclusion Centre, *Submission 93*, p.3.

- providing independent oversight of the response to combatting modern slavery across all sectors, and identifying gaps and solutions;
- working with various agencies, law enforcement bodies, prosecutors and others to increase the identification and reporting of modern slavery crimes, and to bolster the prosecution rates for modern slavery offences;
- raising community awareness of modern slavery; and
- any other related matters.[2]

3.4 Some submissions argued that the lack of a statutory office was a major deficiency of the bill. For instance, Walk Free stated:

> The failure to include a measure such as a Statutory Office similar to the UK Independent Anti- Slavery Commissioner is regarded by most involved in these issues as a major failing of the Bill and the matter that must be addressed by amendment of an otherwise excellent Bill.[3]

3.5 Project Respect submitted the bill was 'significantly weakened' by the lack of provision for an independent anti-slavery officer with a mandate 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.[4]

3.6 Some evidence suggested that a statutory officer would be able to capitalise on the current momentum towards tackling slavery, not only in government, but more broadly across society. Ms Fiona McLeod SC told the committee:

> I just want to make this point as well: the passage of this bill actually represents an enormous and exciting opportunity to spearhead a major campaign around what is required by business. If you have a commissioner in place at the outset, you can build on that momentum from the outset.[5]

3.7 A number of submissions emphasised the value of an independent office that could provide advice and oversee the Act more effectively than the proposed Business Engagement Unit. Walk Free provided an outline of these functions, and explained:

---

2 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. xxxi.

3 *Submission 37*, p. 4.

4 *Submission 10*, p. 5.

5 *Proof Committee Hansard*, 1 August 2018, p. 29. See also her *Submission 3*, p. 2.

> …there is a role for an Australian Statutory Office to be a trusted friend to business as they seek to improve their systems and understanding of the challenges of rooting out slavery in complex international supply chains. Business would benefit from a trusted point of contact from whom to seek advice if they experience issues in their supply chains. It is unrealistic to expect business to seek that confidential advice from a government department responsible for the administration, compliance and enforcement (potentially penalties) around their reporting. Such a role and relationship would only be possible if the Office was totally separate to, and independent of, the government agency responsible for the repository and compliance with the legislation.[6]

3.8 At a public hearing, Mr Chris Evans, Government and Business Strategy, Walk Free, elaborated on how a modestly-resourced independent officer could complement the work of the department through the Business Engagement Unit:

> The question for me is around the compliance function, which should stay in Home Affairs. There's a champion community awareness function, and, quite frankly, I would argue Home Affairs are not the best body to do that. They're currently being funded to do both. What we argue is that the statutory office can be a small office that can provide that sort of function…We don't think it needs to be a hugely resourced body...We see it as an advocate adviser role and, as I say, if you take the budget currently allocated and divvy it up between the two functions, I don't think you're too far off.[7]

3.9 STOP THE TRAFFIK argued that a commissioner would be better placed than the Business Engagement Unit to take on monitoring and review of the Act, as well as whole-of-government coordination:

> Commissioners in other areas of Australian government have roles which include advocacy, examination and review of legislation and oversight of policies and practices which support the implementation of legislation. The Australian Public Service Values and Code of Conduct, which would govern the unit in the Department of Home Affairs, requires a public service which is impartial and apolitical and states that it is the role of those working therein to explain policy, rather than to advocate for or critique it. It is problematic for the key body in charge of administering the Act to be so intrinsically tied to the government because evidently, this leaves no scope for criticism and advocacy.
>
> Further, the issue of modern slavery is not addressed by one Government department alone….There are at least six government departments whose engagement and action will be required to implement the Act effectively.[8]

---

6 Walk Free Foundation, *Submission 37*, p. 4. See also Ms Fiona McLeod SC, *Submission 3*, p. 2.

7 *Proof Committee Hansard*, 1 August 2018, p. 18.

8 *Submission 48*, p. 6.

3.10 The ALA also noted that an independent statutory officer could be responsible for reviewing the Act in the future, to ensure it is effective, and for monitoring levels of stakeholder and public awareness and the operation of its reporting requirements.[9]

3.11 Some evidence highlighted the positive effect that the UK Anti-Slavery Commissioner had on the implementation and oversight of a similar Anti-Slavery legislative framework. The British Institute of International and Comparative Law submitted that the UK Commissioner has 'performed an invaluable role in raising community awareness of the issue of modern slavery in the UK and mobilising action', including work to 'liaise with a variety of stakeholders such as NGOs, trade unions, business and government with the purpose of encouraging cooperation and inciting action around the eradication of slavery'.[10]

3.12 The Salvation Army also noted that:

> It is widely acknowledged that one of the most successful aspects of the UK Modern Slavery Act has been the impact of the work led by the UK Independent Anti-Slavery Commissioner. Indeed, an independent review of the UK Act found that, in its first year, more victims were identified, more proactive and reactive police investigations were undertaken, more prosecutions and convictions were achieved, judicial awareness was increasing and leading to stronger sentencing and more training and cross-agency coordination and reporting was put into place.[11]

3.13 Some submissions noted that a statutory officer could also oversee the regulatory functions associated with compliance, including any penalty or compensation frameworks, should the bill or Act be amended to include them.[12]

3.14 Most inquiry participants calling for the appointment of an independent modern slavery statutory officer framed the role as that of a 'commissioner'. Mr Chris Evans, Walk Free, suggested that some of the opposition to the appointment of a statutory officer (discussed below) might be mitigated if a more appropriate title was found:

> I would argue that it would be helpful…that we think of another title [other than commissioner]. I'm making the argument that it's about a statutory office; it's not a commissioner in the Australian context, which we associate with mediation, arbitration and decision-making [for example, relating to Fair Work or Human Rights commissioners]. That's not what the UK

9 *Submission 15*, p. 6.

10 *Submission 20*, p. 3;

11 *Submission 33*, p. 4. See also FECCA, *Submission 18*, p. 2.

12 For example, see Oxfam, *Submission 46*, p.4

> independent commissioner does. I haven't found a really good name, but I think of it as an advocacy or advisory role, which is what it is.[13]

Opposition to a statutory officer

3.15 Some inquiry participants supported the bill's omission of an independent Anti-Slavery Commissioner. For example, the ARA suggested it would be 'premature' for the bill to contain provision for a statutory office, and that it should be considered at the three-year review.[14]

3.16 The ACCI noted that the UK Commissioner had roles that were not directly transferable to the Australian context, including that the Australian bill was developed with a focus on supply chains. In contrast, the UK model was developed in a context where trafficking, labour market supervision and porous borders are of greater immediate concern, and in this context a different approach, including provision for a statutory officer, is appropriate.[15]

3.17 The department stated that the Business Engagement Unit would be better positioned than a commissioner to fully implement the Act:

> Providing support and advice to business, managing the Modern Slavery Register and undertaking awareness-raising and training are best undertaken by the dedicated Modern Slavery Business Engagement Unit rather than an Independent Anti-Slavery Commissioner. These functions require significant resources and time and it is unlikely any Commissioner could undertake this work while also carrying out a range of other statutory functions. Consultations also indicated that requiring entities to contact Government rather than an independent body for advice is unlikely to impact whether entities seek assistance. This approach is also consistent with the role of the UK Independent Anti-Slavery Commissioner, which does not include a formal, statutory responsibility to work with business. Australia already has a well-coordinated national response to modern slavery which is subject to robust oversight from Parliament, Government Ministers and civil society.[16]

---

13 Walk Free Foundation, *Submission 37*, p. 7. Note: a number of names for a statutory officer were discussed in evidence. Although the majority used 'commissioner', the committee canvassed the position as being an 'advocate' in the public hearings. Additionally, 'special adviser' was used by a number of submitters, including the Property Council, *Submission 36*, p. 1; Supply Chain Sustainability School, *Submission 52*, p. 3; and Synod of Victoria and Tasmania, Uniting Church of Australia, *Submission 59*, p. 3. 'Anti-Slavery Champion' was proposed by Walk Free Foundation, *Submission 37*, p. 5. the Mercy Foundation suggested it could be an 'ombudsman' position in *Submission 45*, p. 2.

14 *Submission 35*, p. 5.

15 *Submission 66*, p. 13.

16 *Submission 79*, p. 7.

3.18 The department also stated that the need for a commissioner could be revisited as part of the three-year review.[17]

The lack of penalties for non-compliance

3.19 The committee received contrasting evidence about the lack of penalties in the bill, both for liable entities not reporting, as well as for non-compliant or substandard reporting. Whereas some witnesses and submitters thought that this was a positive element of the bill, as it would allow a 'race to the top' for private enterprise to comply, others suggested that this would make the compulsory reporting requirement under the act unenforceable.

Support for the bill's lack of penalties

3.20 The AICD set out a number of reasons for their support for the bill's approach of not including a penalty regime for non-compliance with the reporting requirement:

> It would be consistent with legislation in the United Kingdom, France and California, all jurisdictions that have been leading efforts to address modern slavery risks.
>
> It will create an organisation-driven response, rather than a compliance-driven response which will more likely lead to lasting and impactful changes in businesses.
>
> It supports transparency in reporting and the sharing of effective initiatives to combat modern slavery risks.
>
> It creates a culture of 'encouragement' which will look to positively change corporate behaviour.
>
> It will foster a 'race to the top' culture as highlighted by The Hon Alex Hawke MP Assistant Minister for Home Affairs in his media release dated 28 June 2018.[18]

3.21 Ms Francesca Muskovic, the National Policy Manager, Sustainability and Regulatory Affairs for the Property Council of Australia, told the committee that the inclusion of penalties could, in fact, encourage a meaningless 'tick box' approach to reporting:

> We want a culture that encourages people to find and remediate instances of modern slavery rather than something that creates a disincentive up-front for companies not to look. As you've correctly said, you can submit a statement under the UK act that says: 'We looked. We didn't find anything. Tick.' That's a compliance statement. We're not wanting to encourage that sort of approach from the outset, so we've said that we don't think the

17 See evidence given by Mr Hamish Hansford, First Assistant Secretary, National Security and Law Enforcement Policy, Department of Home Affairs *Proof Committee Hansard*, 3 August 2018, p. 24.

18 *Submission 40*, p. 2.

> immediate introduction of penalties is going to motivate corporate engagement.[19]

3.22 Walk Free suggested that the establishment of a central repository for compliance statements would drive higher rates of compliance for Australian stakeholder, noting that the UK model did not incorporate this measure:

> We want the focus to be on best practice rather than on penalty and punishment, which is not conducive to cultural change and committed buy in. During the development of the legislation there has also been meaningful engagement between business and civil society, improved understanding and relationships, and it is that environment that will facilitate real impact….
>
> The establishment of the central repository will greatly enhance transparency in comparison to what has been possible under the UK Act. The inability to introduce a definitive list of businesses required to report under the Australian legislation will make the practicality of applying penalties highly problematic at this stage.[20]

3.23 Ms Heather Moore, National Policy and Advocacy Coordinator, Freedom Partnership to End Modern Slavery, Salvation Army, also noted that it would be impractical for the government to set up a penalty regime without a clear list of entities that were liable:

> [W]e understand that the government's done some extensive work trying to develop a confirmed list of who has to report. My understanding is that that is not possible at this point and that a great deal further work is going to be required to confirm who is actually captured under the legislation. So, in our view, if you don't know who has to report, you can't actually enforce your penalties...[21]

3.24 Ms Moore also commented that the reputational risk to businesses would be more effective than any potential financial penalty:

> We've had extensive conversations with a range of business representatives, and my understanding is that a financial penalty in and of itself is not actually going to be the deterrent that many think it will be. The real deterrent is the reputational risk.[22]

3.25 Dr Zirnsak, Uniting Church of Australia, noted that some regulators were reluctant to 'enforce civil penalties', even when they were able to, 'simply because of the resources that it consumes to have to go to court to actually get that civil penalty remedy enforced on the entity'.[23]

---

19 *Proof Committee Hansard*, 2 August 2018, p. 22. See also Australian Institute of Company Directors, *Submission 40*, p. 2.

20 *Submission 37*, p. 8.

21 *Proof Committee Hansard*, 1 August 2018, p. 17.

22 *Proof Committee Hansard*, 1 August 2018, p. 17.

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

Support for penalties

3.26 On the other hand, some witnesses and submitters argued that clear penalties should be incorporated into the Act. For example, Anti-Slavery Australia suggested that penalties should be considered for a number of breaches, including for:

> …entities that fail to prepare a modern slavery statement, prepare an incomplete statement or make a deceptive, misleading or fraudulent statement be subject to sanctions or penalties. Guidance could be taken from the provisions of the Australian Consumer Law concerning misleading and deceptive conduct (section 18), the exculpatory provisions of the *Illegal Logging Prohibition Act 2012* (Cth) and the civil penalty provisions of the *Corporations Act 2001* (Cth).[24]

3.27 Ms Keren Adams, Director of Legal Advocacy, Human Rights Law Centre, summarised a number of concerns about a non-enforceable reporting scheme, especially the lack of incentive for compliance for companies without a public-facing aspect:

> [W]e think that the legislation does need penalties for companies that fail to report or provide false or misleading information. We have no problem with the idea of trying to encourage a positive start to this and provide as much assistance as possible to business to ensure that they comply. But the idea that reputational risk alone will drive compliance and lead to a race to the top is just not borne out by the evidence elsewhere.
>
> We don't believe that just including the central register provides a complete answer to that problem. Some Australian organisations will undoubtedly be motivated by a genuine desire to do the right thing, by the fact that it's the law of the land, by investor pressure or by reputational damage to report voluntarily. [But] there will be a proportion of businesses that aren't motivated by those factors, particularly those without a public facing aspect to their business or who have little interest in corporate social responsibility. Those businesses will need additional motivators.[25]

3.28 Professor Redmond suggested that the three years of experience from the UK indicated the drawbacks of voluntary systems regarding low rates of compliance and the slow adoption of good reporting practices:

> The Home Office in the UK estimates that there are between 9,000 and 11,000 companies now required to report under the UK act. Only a short time ago, the estimate was 17,000, so it's floating around; there's some uncertainty. The Modern Slavery Registry, which is the authoritative collection of modern slavery statements collected, as of this morning reports that there are 6,394 statements by 5,596 companies. It doesn't indicate whether any of those are voluntary statements. So we are looking at roughly 50 per cent compliance simply in putting in a modern slavery report, three years after the introduction of that legislation. Look at the

24 *Submission 50*, p. 7.

25 *Proof Committee Hansard*, 1 August 2018, p. 22.

> quality of the reports. The Modern Slavery Registry reports that only 19 per cent of the reports lodged meet the minimum requirement of the act—that is, they were approved by the by the board, signed by a director and published on a website. It is 19 per cent, and this is three years on.[26]

3.29 Ms McLeod SC suggested to the committee that penalties were not only about punishing breaches, but also sending a signal about how seriously the Commonwealth considered breaches:

> If there is a penalty in place, a number of companies have indicated that that would help them understand what the obligations are. Where a voluntary mechanism creates a level of uncertainty, [when] that's what's actually required… An open-ended requirement without consequence, apart from the amorphous reputational risk consequence that depends on consumers knowing that they have or haven't complied, is too unclear for general counsel…to understand how they're meant to advise on that.[27]

Options for penalties

3.30 A wide range of penalty options were canvassed in evidence including:

- alignment with the high penalties under NSW legislation of 1,000 penalty units (or up to $1.1 million) as a criminal offence, which would also avoid duplication across Commonwealth and state anti-slavery schemes;[28]
- smaller fines given under civil penalty provisions, which would also potentially serve as a penalty on the reputation and integrity of the entity;[29]
- criminal penalties applicable both to the corporate entities and to senior executives, with the possibility of escalating fines for repeat offenders;[30]
- preventing non-compliant companies from tendering for Commonwealth contracts, grants, and trade or consular assistance overseas;[31] and

---

26 *Proof Committee Hansard*, 2 August 2018, p. 18. See also the suggestion that California's voluntary framework is also characterised by under-reporting, Ms Keren Adams, Director of Legal Advocacy, Human Rights Law Centre, *Proof Committee Hansard*, 1 August 2018, p. 22. Ms Joy Kyriacou, Fair Economies Advocacy Manager, Oxfam, also highlighted disappointing initial and declining subsequent rates of compliance following the introduction of a Voluntary Tax Transparency Code in Australia in 2016, *Proof Committee Hansard*, 2 August 2018, p. 26. See also evidence given by Ms Kakoschke-Moore, IJM Australia, which suggested low returning rates for the Workplace Gender Equality Agency's required gender equality reports for companies with more than 100 employees, in *Proof Committee Hansard*, 2 August 2018, p. 38.

27 *Proof Committee Hansard*, 1 August 2018, p. 31.

28 For example, see: Ms Kyriacou, Oxfam, *Proof Committee Hansard*, 2 August 2018, p. 27; Ms Fiona McLeod SC, *Submission 3*, p. 4; Human Rights Law Centre, *Submission 65*, p. 4; and Australian Christian Lobby, *Submission 82*, p. 3.

29 For example, Ms Fiona McLeod SC, *Submission 3*, p. 4.

30 For example, ACTU, *Submission 61*, p. 3; and Civil Liberties Australia, *Submission 78*, p. 4.

- for entities that consistently breach reporting requirements to be named in the Parliament or included on a public list of non-compliant bodies.[32]

A phased-in approach

3.31 Many organisations that supported penalties advised that a penalty regime could be phased in gradually to give liable entities time to adjust their reporting frameworks, seek advice, and ensure the integrity of supply chains. For example, Anti-Slavery Australia and the Human Rights Law Centre both supported penalty provisions coming into effect 12 months following the commencement of the reporting requirement, which follows the recommendation of the Joint Committee report.[33]

3.32 A number of other submitters suggested that the need for penalties should be revisited as part of the three-year review, should poor reporting standards warrant more coercive measures. This perspective was shared by both organisations that supported and did not support the introduction of a penalty regime.

3.33 For example, while supporting the bill's current provisions, Mr Evans, Walk Free, stated:

> Basically, the general view is you look at compliance after some experience. I say to companies: if there's high non-compliance, what will a parliament do? They'll go for penalties and enforcement of the review. It'll be the obvious response. If there's very high compliance and companies do the right thing, then there'll be a different view.[34]

3.34 On the other hand, Advisory Committee to the Modern Slavery Registry, who were 'disappointed' no financial penalties are included in the bill, submitted:

> …should low reporting levels or poor reporting standards warrant it, penalties be phased-in after an initial three-year grace period post enactment following the first legislative review.[35]

Threshold for compliance and reporting entities

3.35 The bill provides that entities carrying on business in Australia with an annual turnover of more than $100 million globally must lodge statements of compliance. The committee received a large amount of evidence on this threshold: whereas some

---

31 For example, see: Australian Christian Churches and ACC International Relief, *Submission 5*, p. 3; ALTO Global Consulting, *Submission* 7, p. 2; Save the Children, *Submission* 28, p. 2; ReThink Orphanages Australia, *Submission* 29, p. 2; Forget Me Not Australia, *Submission* 32, p. 2; Salvation Army, *Submission* 33, p. 7; Oxfam, *Submission 46*, p. 4; Mr Karl Schubert, Submission 80, p. 3; and Associate Professor Justine Nolan, *Submission 90*, p. 3.

32 For example, see Josephite Counter-Trafficking Project, *Submission 9*, p. 4; and FECCA, *Submission 18*, p. 3.

33 See *Submission 50*, p. 7 and *Submission 65*¸ p. 5 respectively.

34 *Proof Committee Hansard*, 1 August 2018, p. 18. See also evidence given by Mr Fuzz Kitto, National Director, STOP THE TRAFFIK, *Proof Committee Hansard*, 2 August 2018, p. 13.

35 *Submission 56*, p. 7.

inquiry participants supported the intent and design of a $100 million threshold, others suggested it should be amended.

3.36 For example, Project Respect suggested the $100 million threshold would capture 'too few organisations to address the systemic issue of slavery in global supply chains'. It argued in support of reducing the threshold in the bill to $25 million consolidated revenue, which it noted would align with the threshold requirements for a large propriety company as set out in section 45A of the *Corporations Act 2001*.[36]

3.37 A number of other witnesses and submitters suggested adopting a $50 million threshold for compliance, as recommended by the Joint Committee, noting that this would also align with the NSW framework and the UK threshold (£36 million–around $60 million).[37]

3.38 The AICD suggested that the implementation of the threshold could be staggered and start at a higher level, with large entities with revenue of at least $250 million required to report in the first reporting period, and smaller companies adopting the lower requirements of the bill in following cycles. This, it was argued, would assist building positive compliance practices with reporting entities, as well as providing the Commonwealth time to refine its guidance materials.[38]

3.39 Mr Morry Bailes, President of the Law Council of Australia, gave an estimate of how many entities would be captured under some of these proposals:

> …[if] the threshold were $100 million [it] is 3,957, whereas at $60 million it's 6,421. Out of interest, if it were $25 million, that would rise to over 16,000.[39]

3.40 The committee heard that the number of businesses that would look to address modern slavery would be far greater than these estimates, as large companies would drive compliance in smaller businesses that fed into their supply chains. Mr Scott Barklamb, Director, Workplace Relations, Australian Chamber of Commerce and Industry, described this process to the committee:

> The impact of the initiative, both positively in addressing modern slavery and as an impost and a new administrative requirement on business, is

36 *Submission 10*, p. 4. A number of other submitters supported consideration of a $25 million threshold, for example: Public Affairs Commission, Anglican Church of Australia, *Submission 4*, p. 2; Project Respect, *Submission* 10, p. 4; International Commission of Jurists Victoria, *Submission 43*, p. 1; Stop The Traffik, *Submission 48*, p. 8; Australian Council of Trade Unions, *Submission 61*, p. 4; Mr Shane Duran, *Submission 69*, p. 1; and Victorian Trades Hall Council and the National Union of Workers Victoria Branch, *Submission 77*, p. 2.

37 For example, see: Josephite Counter-Trafficking Project, *Submission 9*, *p.* 3; Australian Lawyers Alliance, *Submission 15*, p. 6; TEWLS and NTWWC, *Submission 25*, p. 5; Law Council of Australia, *Submission 64*, p. 6. Australian Human Rights Commission, *Submission 70*, p. 4; Australian Christian Lobby, *Submission 82*, p.2; Hagar Australia, *Submission 84*, p. 6; and Electrical Trades Union, *Submission 87*, p. 2.

38 *Submission 40*¸ p. 2.

39 *Proof Committee Hansard*, 3 August 2018, p. 2.

> going to extend well beyond the nominal coverage of the direct reporting entities. Utterly conservatively we say there would be at least 10 more entities for every formal reporting entity. That gets you to 30,900 on the figures we were given earlier [by Mr Bailes]. I noted that our [the Law Council] talked about Qantas as having 10,000 suppliers. Whatever action is taken here goes well beyond the nominal 3,000, introducing this consideration to a vast swathe of the Australian business community [under] $100 million, the level set in the bill.[40]

3.41 These themes were drawn out in other evidence. For example, Walk Free–having previously supported a $50 million threshold–submitted that the $100 million threshold in the bill:

> …is an appropriate starting point for the legislation. It will provide the opportunity to avoid the problems experienced in the UK where the overreach of scope has undermined impact and compliance.
>
> We note that the impact of the legislation will be experienced by businesses further down the supply chain of those formally required to report as those businesses require greater transparency of their suppliers. Smaller businesses will also to be encouraged to voluntarily report. Having consulted widely within the business community and recognising the diverse levels of understanding and preparedness among business we think the Bill's threshold is appropriate.[41]

3.42 Others noted the regulatory burden that would be created if the threshold were lowered.[42] For example, the ARA supported the $100 million threshold as:

> This will ensure that the retailers with the greatest capacity to influence change are subject to the reporting requirement, while ensuring that SME retailers, who may not possess the expertise or capacity to comply with the reporting requirement, are not unfairly captured by the legislation.[43]

3.43 The ACNC noted the NSW Act had a revenue trigger of $50 million, and suggested this created a higher regulatory burden for charities with employees in NSW, which affected the not-for-profit sector adversely.[44]

3.44 Dr Zirnsak, Uniting Church of Australia, spoke about the practical implications of lowering the threshold for the Commonwealth:

> The only thing we strongly oppose [in evidence from other stakeholders] is a lowering of the threshold in the current regime, because we're looking at the system. We're looking at: how do you effectively engage with 3,000 entities already? Currently the government has committed five public

---

40 *Proof Committee Hansard*, 3 August 2018, p. 9.

41 *Submission 37*, p. 3. See also Housing Industry Australia, *Submission 38*, p. 7.

42 For example, see: Chartered Accountants Australia and New Zealand, *Submission 26*, p. 4; Salvation Army, *Submission 33*, p. 7; and Australian Retailers Association, *Submission 35*, p. 4.

43 *Submission 35*, p. 4

44 *Submission 2*, p. 3.

> servants to do that [in the Business Engagement Unit]. That's 600 entities per staff member already….That's 3,000 reports that have to be gone through before they're put on the register. There are a whole lot of tasks. We need to think about this as a system, not just as a piece of legislation. It's very easy to say, 'Let's just expand it to 15,000 or 20,000 entities'–and I'm completely comfortable with that, if the government then announces we're going to have a new regulatory body with 150 staff. Great! Fantastic! I'll fully support that. But if we're talking five staff—lowering the threshold at this point in time is not something that will make this bill more effective; it will make it less effective.[45]

3.45 The department also noted the barriers that many small businesses would have to compliance, which militated against both a lower threshold and the adoption of a risk-based approach (as discussed below):

> The Department's consultations have clearly demonstrated that smaller entities below the revenue threshold do not have the capacity or resources to comply with the reporting requirement. Importantly, many of these entities also do not have sufficient buying power or market influence to change supplier practices. This includes entities in sectors that may be seen as higher-risk, such as family-run construction businesses, farms and small manufacturing companies. Unlike larger businesses, these entities do not have dedicated procurement teams, access to in-house legal counsel, or resources to hire staff with sustainability or human rights expertise. Requiring reporting from these smaller entities would impose significant regulatory costs and may undermine their competitiveness.[46].

Other matters relating to threshold and liable entities

A risk-based approach

3.46 The committee also received evidence that argued that the Commonwealth could adopt a targeted and 'risk-based approach' to reporting, rather than a revenue threshold. This would provide that entities in high-risk industries would be required to report regardless of revenue.[47] This could potentially target industries in which there were high risks of slavery in supply chains, such as electronics, fashion, horticulture, fisheries, construction and mining.[48]

3.47 For example, STOP THE TRAFFIK argued:

> Using a financial threshold for reporting is a crude proxy for risk mitigation. It would be both fairer to the business sector and more effective in terms of the prevention of modern slavery, for companies who operate in

45 *Proof Committee Hansard*, 2 August 2018, p. 44

46 Answers to questions on notice received 13 August 2018, p. 2

47 For example, see: Freedom Project, *Submission* 11, p. 1; Mercy Foundation, *Submission 45*, p. 4; IJM Australia, *Submission 63*, pp. 17–18; Mr Karl Schubert, *Submission 80*, p. 1.

48 See, for example, the US Department of Labor's list of high-risk industries relating to child and forced labour, which was cited in several submissions, including the Mercy Foundation, *Submission 45*, p. 4.

> high risk industries or source from high risk countries to report to the lower threshold of $25 million. The nature of the industry or business sector should also be considered when developing the reporting framework. For example, adequate due diligence responses to slavery in a business providing fresh food products produced in Australia will evidently be different to those required in relation to a multinational fashion company.[49]

3.48 Ms Keren Adams, Director of Legal Advocacy, Human Rights Law Centre, noted this drop in threshold could be considered as part of the three-year review:

> One of the things that we would really encourage the government to do is publish a list of high-risk industries and locations, which is one of the recommendations of the other inquiry. At the three-year point, we would ideally like to see a potential drop in the threshold, at least for companies that are operating in that space, because it's a more targeted response that's more likely to yield the sort of information that's genuinely useful than a very broadbrush approach.[50]

3.49 Mr Peter Loone, Chief Technology Officer, STOP THE TRAFFIK, argued that the use of technology could reduce the burden of compliance for liable entities under a risk-based framework. He suggested a well-designed online platform for statements could mean that large companies with little risk could comply easily, whereas industries with higher risks would have a more demanding compliance process:

> You've got a very good system for reporting and you've got statements people have to make in this report. We think that's not risk assessment; that's doing a report. In parallel, you could do a low-effort risk assessment capability that might go down to $25 million turnover or revenue but it may end up being just a few questions. We may start small; we may start with only two or three industries. We may start with cotton, cocoa and seafood. It's only when you filter through that next level that you get the next level of questionnaires that get a lot of detail, because we know they're the highest risk, and then, over time, you build up that capability.[51]

3.50 The department addressed potential difficulties and drawbacks of adopting a risk-based approach:

> Focusing on high-risk sectors would potentially make the regime quite confusing and complex. Firstly, information about high-risk industries, countries and goods is very broad. It's incomplete to target the reporting of crime in high-risk sectors. For example, you might say clothing from a particular country is potentially tainted by modern slavery, but obviously not every clothing company or every factory in that country will be subject to the same risk or will be tainted by the same risk. Equally, there's potential for the dark factories in what are seen as less high-risk

---

49 *Submission 48*, p. 8.

50 *Proof Committee Hansard*, 1 August 2018, p. 24. See also IJM Australia, *Submission 63*, pp. 17–18.

51 *Proof Committee Hansard*, 2 August 2018, p. 12.

> jurisdictions in countries. Secondly, targeting perceived high-risk areas ignores that all large businesses have modern slavery risks, irrespective of their sectors. For example, a bank or an accounting firm might not, at one level, appear to be engaged in any modern slavery risks, but they may have cleaning contractors, and you also have to think about the banks–what their lending might enable and that sort of thing. It's our view that pretty much all businesses that engage the threshold will likely have some level of modern slavery risk. Thirdly, it would be very difficult to identify which entities are operating in high-risk sectors and whether they're doing sufficient business to justify the need for that report. You'd likely need to establish a secondary threshold so you don't capture businesses that only have a small area in that sector.[52]

Online central register of Modern Slavery Statements

3.51 The bill contains provisions for an online 'Government-administered public register' of compliance statements, overseen by the Minister.[53] This was highlighted by a range of inquiry participants as a strong feature of the bill that would make the Australian framework more transparent and robust than the UK Act.[54] KPMG briefly outlined the benefits:

> [A] public register of modern slavery statements is crucial to the comparable and transparent reporting that will incentivise compliance and accountability. This dedicated resource will also encourage collaboration and provide a single point of contact for business to disseminate the relevant reporting information, reducing the regulatory burden they face.[55]

3.52 Some submissions commended the public aspect of this list, but commented that to be effective, it must be updated regularly, searchable to facilitate analysis and comparison, allow tracking of particular entities, contain sufficient data about compliance and company information, be user-friendly and accessible, and well-publicised.[56] Others advised that the Minister should be able to provide feedback on non-compliant or deficient statements, to improve reporting over time.[57]

---

52 Ms Laura Munsie, Acting Assistant Secretary, Transnational Crime Policy, Department of Home Affairs, *Proof Committee Hansard*, 3 August 2018, p. 25.

53 Explanatory Memorandum, p. 26 and p. 21.

54 For example, see: Project Respect, *Submission 10*, p. 5; Freedom Project, *Submission 11*, p. 1; TEWLS and NTWWC, *Submission 25*, p. 3; Chartered Accountants Australia and New Zealand, *Submission 26*, p. 3; Australian Lawyers for Human Rights, *Submission 39*, p. 4; Australian Institute of Company Directors, *Submission 40*, p. 1; Oxfam Australia, *Submission 46*, p. 3; Anti-Slavery Australia, *Submission 50*, p. 2; and the HRLC, *Submission 65*, p. 5.

55 KPMG, *Submission 51*, p. 4.

56 See, for example: Advisory Committee to the Modern Slavery Registry, *Submission 56*, p. 6; and IJM Australia, *Submission 63*, pp. 14–15.

57 IJM Australia, *Submission 63*, p. 13.

3.53 Some evidence suggested that the bill should also be amended to require liable entities to publish their statements on their own websites, as required by the UK Act. Of this, the Advisory Committee to the Modern Slavery Registry claimed:

> This step would ensure that statements are accessed by a wider audience of interested parties. This in turn would enhance the ability of the legislation to generate transparency of information about corporate measures to address modern slavery. A homepage publication requirement would also ensure that the process of preparing a company's Modern Slavery Statement attracts greater attention internally. This should assist in generating higher quality and more detailed statements.[58]

A list of liable entities

3.54 A number of witnesses and submitters argued that the Commonwealth should go beyond the central repository provided under the bill, and include a provision for the government to develop public list of liable entities that must comply with the reporting requirement.[59] For example, the Human Rights Law Centre submitted:

> To maximize the benefit of the central register and promote greater transparency and accountability in reporting, we recommend that the Government publish an annual list of the entities required to report under the legislation, and a corresponding list of those entities that have failed to report, as proposed by the Joint Committee.[60]
>
> At the very least, consideration should be given to requiring the Government, after a reporting period, to publish a list of names of entities which were supposed to report in that period but failed to do so.[61]

3.55 Some advocates for this approach suggested that the Commonwealth could determine liable entities through the annually published Australian Tax Office (ATO) Corporate Tax Transparency Report (CTTR) of all listed companies with a turnover of $100 million or more, and privately owned companies with a turnover of $200 million or more, along with other Commonwealth-held tax data.[62]

3.56 Dr Fiona McGaughey, Adjunct Professor Holly Cullen, Mr John Southalan, and Dr Donella Caspersz suggested that once a list of potentially liable companies had been developed, then:

---

58 Advisory Committee to the Modern Slavery Registry, *Submission 56*, p. 6. See also Law Council of Australia, *Submission 64*, p. 3.

59 Chartered Accountants Australia and New Zealand, *Submission 26*, p. 3;

60 *Submission 65*, p. 5. See also Dr Fiona McGaughey, Adjunct Professor Holly Cullen, Mr John Southalan, and Dr Donella Caspersz, *Submission 30*, p. 5; Oxfam, *Submission 46*, p. 4; and Law Council of Australia, *Submission* 64, p. 8.

61 Law Council of Australia, *Submission 64*, p. 8.

62 See, for example: Oxfam, *Submission 46*, p. 4; and Dr Mark Zirnsak, Uniting Church of Australia, *Proof Committee Hansard*, 2 August 2018, p. 49.

- the government's system can then send a notice to the registered office(r) of every such entity, referring to the requirement for a Modern Slavery Statement;
- the notice could inform the entity that if a Modern Slavery Statement is not provided (or a one-page statement as to why that is not required), then the Register will display the entity's publicly reported consolidated revenue and the fact no Modern Slavery Statement has been supplied.[63]

3.57 The department informed the committee that a definitive list of entities required to report would be difficult to develop and resource-intensive to maintain. It also indicated that the CTTR would not capture all relevant reporting entities, as often companies were structured as parts of corporate groups, rather than standalone entities. The department further noted that the CTTR does not account for some companies, where revenue is foreign or where groups of companies are not consolidated for tax purposes.

3.58 Moreover, the department suggested that the risks of maintaining such a register were high, given the fluctuations in revenues for companies and company structures, and the potential for an incorrectly identified company to suffer financial or reputational losses.[64]

3.59 However, the department informed the committee about a number of approaches that the Minister and/or the Business Engagement Unit could adopt regarding this matter:

> [T]he business engagement unit would be able to draw on existing datasets and work closely with other regulators to identify the companies that it believes need to report. If it becomes aware of an entity that hasn't reported that it believes should have reported then obviously the business engagement unit would be making contact with that entity and saying: 'We believe you should have reported. Is there a reason why you haven't?' They might not have realised they were required to. There might be a discussion around their threshold….
>
> You don't have to have a public list, and certainly I don't think you would need to have anything in the legislation. There's nothing stopping the business engagement…if it is feasible, from having either a private list or something that is more public facing. It's just not something that at this point is practically feasible. It's certainly something that the unit will continue to explore.[65]

63 *Submission 30*, p. 5.

64 *Submission 79*, p. 6.

65 Ms Laura Munsie, Acting Assistant Secretary, Transnational Crime Policy, Department of Home Affairs, *Proof Committee Hansard*, 3 August 2018, p. 18.

Other matters

Compensation scheme for victims of trafficking and slavery

3.60 A number of stakeholders called for the Commonwealth to adopt a compensation scheme for victims of trafficking and slavery, as recommended by the Joint Committee.[66] It was noted that state and territory-based victims of crime schemes were inconsistent, difficult to navigate, and complex when dealing with slavery cases that occurred in more than one territory.[67] Ms McLeod SC, an expert in this area, summed up why this was necessary:

> A National Compensation Scheme for offences under Division 270 and 271 of the Commonwealth Criminal Code is necessary to ensure that Australia effectively fulfils its obligations under international law by providing a unified framework that avoids the inconsistencies and unfairness associated with the current varied State and Territory specific crime compensation schemes.[68]

3.61 Ms McLeod SC noted that the Commonwealth already administers victim compensation schemes, including for defence abuse reparation and for Australian victims of overseas terrorist acts, which provided good models for consideration.[69] A range of funding mechanisms were suggested in evidence, including reclaiming costs from perpetrators or from proceeds of crime more generally.[70]

3.62 The department submitted that further recommendations from the Joint Committee report are currently being considered by government, including a compensation scheme.[71]

Harmonisation between jurisdictions

3.63 A number of witnesses and submitters were concerned about the potential confusion stemming from duplicative anti-slavery regimes of the Commonwealth and NSW governments.[72] Given this challenge, the Commonwealth was encouraged to

---

66 For example, see: Law Council of Australia, *Submission 64*, p. 10; Project Respect, *Submission 10*, p. 7; FECCA, *Submission* 18, p. 3; ACRATH, *Submission* 21, p. 3; Anti-Slavery Australia, *Submission 50*, p. 7; and IJM Australia, *Submission* 63, p. 18.

67 *Submission 3*, p. 5.

68 *Submission 3*, p. 5.

69 *Submission 3*, pp. 4–5.

70 For example, see: Ms Fiona McLeod SC, *Proof Committee Hansard*, 1 August 2018, p. 32; and Law Council of Australia, *Submission 64*, p. 10.

71 *Submission 79*, p. 7.

72 See, for example: Mr Evans, Walk Free, *Proof Committee Hansard*, 1 August 2018, p. 16; Ms Kakoschke-Moore, IJM Australia, *Proof Committee Hansard*, 2 August 2018, p. 38; Mr Greg Vickery, Chair, Business And Human Rights Committee, Law Council Of Australia, *Proof Committee Hansard*, 3 August 2018 , p. 2; and Mr Barklamb, Australian Chamber of Commerce and Industry, *Proof Committee Hansard*, 3 August 2018, p. 10.

look to engage the states and territories in a positive dialogue about how differing systems could be harmonised. For example, the Law Council submitted that it:

> …encourages the Commonwealth to work with New South Wales to harmonise reporting criteria, to avoid entities captured by both regimes having to produce two statements, and to reduce the compliance costs and confusion that occurs from entities being subject to two reporting regimes.[73]

3.64 Mr Barklamb, ACCI, observed that there was scope for the Commonwealth to encourage jurisdictions to submit reports under the Act for their government entities, which would also drive harmonisation across levels of government:

> We suggest the committee might urge the states to themselves submit their government business entities to this process…and to provide similar guidance and tendering requirements. There is a real opportunity for some cooperative federalism with the states here.[74]

Definition of modern slavery

3.65 Slavery Links submitted that:

> [T]he definition of slavery used in the Modern Slavery Bill should be consistent with the definition of slavery used in the Criminal Code. Businesses, anti-slavery organisations and slaves themselves need a coherent legal and policy framework'.[75]

3.66 The committee notes that the Joint Committee recommended that a Modern Slavery Act should specifically include:

> [R]eferencing in one location Australia's existing modern slavery offences as outlined in Division 270 and 271 of the Criminal Code Act 1995.[76]

Guidance material and review of the Act after three years

3.67 Some stakeholders emphasised that guidance material explaining the requirements of the bill should be clear, comprehensive, and relevant to business stakeholders.[77] The department reassured the committee that:

> In terms of implementation, should the parliament pass the bill, we will continue to work closely with business and civil society to implement the reporting requirement. Over the next five months the department will develop detailed guidance to support the reporting requirement. This will include case studies, explanation of key definitions, best practice templates, information about modern slavery risks and step-by-step instructions. It will include advice on what business can do and what support they can access if

---

73 *Submission 64*, p. 9.

74 *Proof Committee Hansard*, 3 August 2018, p. 9.

75 *Submission 23*, p. 1.

76 See Recommendation 1 of the 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. 26.

77 *Submission 79*, p. 4.

> they identify instances of modern slavery. The drafting of the guidance will be informed by a small expert advisory group of business and civil society. As I mentioned, we've got quite a number of interested stakeholders that we've been working with for a prolonged period. We expect to make the draft of the guidance available for public comment.[78]

3.68 There was broad support for a review of the Act three years following its enactment. However, a number of stakeholders considered that the bill should be amended to stipulate the terms of this review, including suggested amendments contained in evidence to this inquiry. Other submitters also called for a rolling review process, following the initial review after three years.[79]

3.69 The department has been clear in its evidence that the three-year review would consider whether there is an emerging need for a commissioner, the compliance rates of reporting entities and the quality of statements, and the appropriateness of the $100 million reporting threshold.[80] The department has also commented that the Commonwealth is yet to finalise its response to the full recommendations of the Joint Committee report, including regarding a compensation scheme.[81]

Committee view

3.70 This bill represents a significant step forward in Australia's efforts to address the global challenge of modern slavery, and the significant crimes and human rights abuses that it involves.

3.71 The requirement for entities to report on the risks of modern slavery in their supply chains, and the publication of these on a central repository, will transform how the Australian businesses community responds to the challenge of modern slavery, and allow consumers to access information about how the products they buy are produced. This will drive a 'race to the top', as businesses compete for the support of investors and consumers.

3.72 Evidence received by the committee overwhelmingly commended the bill's provisions and its intent. Submitters and witnesses repeatedly noted the work of the Government in developing this bill, the powerful effect of bipartisan goodwill of the Parliament, not least in the Parliamentary Joint Committee, and the depth of consultation with stakeholders undertaken by the Commonwealth.

3.73 The committee notes that many witnesses and submitters saw the bill as a good 'first step' in addressing the critical issue of modern slavery, even those that suggested potential amendments.

---

78 Ms Laura Munsie, Acting Assistant Secretary, Transnational Crime Policy, Department of Home Affairs, *Proof Committee Hansard*, 3 August 2018, p. 18.

79 For example, see Anti-Slavery Australia, *Submission 50*, p. 9; Salvation Army, *Submission 33*, p. 8; and Property Council, *Submission 36*, p. 3.

80 See evidence given by Mr Hamish Hansford, First Assistant Secretary, National Security and Law Enforcement Policy, Department of Home Affairs *Proof Committee Hansard*, 3 August 2018, pp. 24–25; see also Department of Home Affairs, *Submission 79*, p, 5.

81 Department of Home Affairs, *Submission 79*, p, 7.

3.74 In this regard, much of the evidence received noted the general consensus on the need for and value of a Modern Slavery Act among stakeholders and the general public, and encouraged the Parliament to prioritise passing the legislation with as little delay as possible.

Proposed amendments in evidence

3.75 Noting the widespread support for the bill and its intent, many witnesses and submitters proposed particular amendments. The committee understands that some of these proposed amendments reflect recommendations made by the Joint Committee report, *Hidden in Plain Sight*, and notes that the Government is still working on its full response to that report.

3.76 The bill also includes a provision for the Act to be fully reviewed three years following its enactment, which would provide an opportunity to evaluate its design, implementation and early outcomes. The review will also allow the Commonwealth to revisit both the proposals of the Joint Committee, and the views of stakeholders who informed this inquiry, alongside evidence and data gathered from the implementation of the Act and two complete reporting cycles. As stated by the department, this would include rates of compliance, quality of reporting, numbers of entities required to report, and indication of reform measures that have had outcomes in the Australian business community's supply chains.

A statutory anti-slavery officer

3.77 Many witnesses and submitters argued that the bill should provide for a statutory officer to coordinate, play an advocacy role for, and advise stakeholders in relation to the new anti-slavery Act. It was noted that the UK commissioner has played a central role in the implementation of their anti-slavery legislation, and that a key recommendation of the Joint Committee was that a commissioner also be part of the Australian framework.

3.78 Rather than a commissioner, the Australian model incorporates a Business Engagement Unit, which would seek to advise and inform stakeholders about their obligations, as well as oversee the implementation of the Act. The department commented that this unit would be better positioned to drive the implementation process than a commissioner, given the focus of the Australian Act on supply chain reform and oversight, rather than the anti-trafficking issues faced in the UK.

3.79 While the committee considers a Business Engagement Unit will help drive the implementation and operation of the new reporting requirement, it is nonetheless of the view that an independent statutory officer would complement the Unit’s work and go further still in ensuring the integrity of the new regime, provide advocacy and support, and provide important feedback for the three year review. In light of evidence received and the Joint Committee’s findings, this committee considers that the bill should be amended to include a statutory officer to support the implementation and operation of the Act. This officer should be responsible for the duties detailed in recommendation 6 of the *Hidden in Plain Sight* report, as outlined at paragraph 3.3. of this report.

Penalties

3.80 The committee received contrasting views on whether the bill should include provision for penalties. Whereas some argued that industry-driven compliance rates would be low without penalties, others suggested that compliance standards would be more rigorous and meaningful without a penalty regime. The committee notes that the lack of a penalty regime makes the bill consistent with similar legislation in the UK, and in some parts of Europe and the US, and that it is designed to encourage a 'race to the top', rather than set up a coercive punishment regime that may be counter-productive for compliance and the quality of reporting statements.

3.81 The committee is not averse to the inclusion of a penalty scheme but is of the view that any consideration of the potential efficacy and scope of a penalty scheme would most usefully be conducted as part of the statutory three-year review of the Act, with the benefit of the substantial data that will have been amassed by that time regarding the Act generally and compliance specifically.

Threshold for compliance

3.82 There was some debate in evidence about whether the bill's $100 million compliance threshold was appropriate. Some argued it should be lifted to $250 million for the initial stages of implementation to build a culture of compliance; others suggested a $25 million threshold, which would capture a larger number of entities in the reporting requirement. A number of submissions also discussed the adoption of a risk-based approach, to target industries with a higher risk of slavery in their supply chains.

3.83 On balance, the committee supports the $100 million threshold in the bill. This will initially capture over 3,000 large corporate and government entities in reporting requirements. In turn, these large companies will drive reform in smaller businesses that are part of their supply chains, without overburdening these smaller entities with significant regulatory burdens and costs of their own.

3.84 Again, the committee notes that the review of the Act would be able to reconsider the threshold, and the potential benefits and challenges of adopting a risk-based approach. This review will have benefit of three years of data and evidence on compliance rates, reporting standards and outcomes to evaluate this matter more fully.

List of entities

3.85 Regarding the list of entities, the committee notes that there was widespread support for this measure, which will make the Australian Act more robust and transparent than the UK equivalent.

3.86 Some submitters advised that compliance statements should be required to be available on the websites of entities, as in the UK. The committee notes that any entity would be able to include its statement on its public-facing website, and expects many will choose to do so voluntarily.

3.87 Others advocated for the Commonwealth to take a more proactive approach, including that it develop a public list of liable reporting entities, or public list of entities in breach of reporting requirements.

3.88 It was also canvassed that the government could write to all potentially liable entities identified using ATO tax data, to advise them that they would be considered as required to report, unless they could reasonably show otherwise.

3.89 The department has submitted that a definitive public list of liable entities would be very difficult to develop and resource-intensive to maintain. Additionally, it is clear that naming non-compliant entities under such a measure would come with a significant financial and reputational risk, should the Commonwealth misidentify a company as being non-compliant.

3.90 However, the committee understands that the processes adopted by the Business Engagement Unit are yet to be finalised, and that they could potentially incorporate the development of a list of entities that may be required to report, and using this list to alert and educate the sector about responsibilities under the Act.

3.91 The committee encourages the Commonwealth to consider using ATO data to develop such a list, and use it to engage and educate stakeholders in order to build good compliance cultures.

Other matters

3.92 Regarding a compensation scheme for victims of modern slavery, the committee notes that this was a recommendation of the Joint Committee, and that the Commonwealth has not yet finalised its response to this report, as indicated by the department.

3.93 Regarding harmonisation between jurisdictions, the committee shares the concerns of submitters about potential duplication between the Commonwealth and NSW schemes. The committee expects that the Commonwealth will engage the states and territories on this matter, including through COAG, to ensure the harmonisation of reporting criteria and processes, to minimise confusion and the regulatory burden on reporting entities. This should include encouraging jurisdictions to meet reporting requirements of the Act where their entities meet the $100 million threshold.

3.94 Regarding guidance material, the committee is reassured that the Commonwealth would work with business and civil society to implement the bill, which would include detailed guidance materials being developed in consultation with stakeholders.

3.95 The committee notes Recommendation 13 from the *Hidden in Plain Sight* report of the Joint Standing Committee on Foreign Affairs Defence and agrees that provision should be made to assist reporting entities in not having to provide an annual Modern Slavery statement multiple times in multiple jurisdictions. The committee is persuaded that the submission of a compliant Modern Slavery Statement in one jurisdiction should be understood to constitute compliance in all relevant jurisdictions excepting where a request for further information relates to matters not addressed in the submitted report.

3.96 The committee notes the importance of defining modern slavery comprehensively in the Act, as recommended by the Joint Committee's report, *Hidden in Plain Sight.*

Recommendation 1

3.97 The committee recommends that the Government work towards building a list of 'reporting entities', and to publish compliance standards publicly, in order to test the proposition that 'reputational risk' is a sufficient motivator for reporting entities to comply with the requirements of the Act.

Recommendation 2

3.98 The committee further recommends that lists of entities that do report, including entities outside the compliance threshold who report voluntarily, should be published publicly.

Recommendation 3

3.99 The committee recommends that an independent statutory officer be appointed to support the operation of the Modern Slavery Act and be charged with the duties detailed in recommendation 6 of the Joint Standing Committee on Foreign Affairs Defence and Trade *Hidden in Plain Sight* report (see paragraph 3.3 of this report).

Recommendation 4

3.100 The committee recommends that the statutory three-year review consider all aspects of the Act, with particular attention to compliance thresholds and compliance standards, and that the review be required to consider whether a mandatory penalty regime is required, drawing on the evidence and data gathered through the first three years of the Act's operation. The committee acknowledges that it may be shown that penalties are not needed.

Recommendation 5

3.101 The committee recommends that the Modern Slavery Bill be amended to include, in one location, reference to Australia's existing Modern Slavery offences (as outlined in Divisions 270 and 271 of the *Criminal Code Act 1995*) and to offences relating to fighting modern slavery such as offences relating to sexual and labour exploitation under the *Migration Act 1958*.

Recommendation 6

3.102 Subject to the above recommendations, the committee recommends that the bill be passed.

Senator the Hon Ian Macdonald

Chair