

The Senate

Legal and Constitutional Affairs
Legislation Committee

Modern Slavery Bill 2018 [Provisions]

August 2018

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Recommendations

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.

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.

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'.¹ A number of inquiry participants commented on whether the threshold had been appropriately set—this question is explored further in the next chapter.

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.²

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'.³

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.⁴

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

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.

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.⁵

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.⁶

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'.⁷

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.⁸ 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.⁹

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'.¹⁰

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

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.¹¹

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.¹²

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'.¹³

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.¹⁴

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.¹⁵

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.¹⁶

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.

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.¹⁷

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.¹⁸

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.¹⁹ 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.²⁰

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.²¹ 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

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.²²

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.²³

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.²⁴

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.²⁵

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.

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.

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

Australian Greens additional comments

1.1 The Australian Greens acknowledge the extensive work of the Committee in this inquiry, and thank everyone who made a public submission and/or public representation.

1.2 The Australian Greens welcome the key recommendations in the report and strongly support legislating to create an anti-slavery framework in Australia.

Anti-Slavery Commissioner

The Australian Greens strongly support the appointment of an independent statutory anti-slavery commissioner. As STOP THE TRAFFIK submitted:

...the issue of modern slavery is not addressed by one Government department alone.¹

1.3 Importantly, an independent statutory anti-slavery commissioner is crucial to oversee some of the Committee's and Australian Greens' recommendation on the bill.

Review of the Act

1.4 The bill provides for a review of the Modern Slavery Act three years after commencement. This review would be best conducted by the independent statutory anti-slavery commissioner. However, the Australian Greens believe this should be an ongoing three-yearly review, as a continual improvement process.

Recommendation 1

1.5 That the Act be reviewed on a regular and ongoing three-yearly basis by a statutory anti-slavery commissioner.

Threshold for Compliance

1.6 The Australian Greens believe the \$100 million threshold, given the resourcing allocated, is adequate for the Act's implementation. However, lower thresholds and targeting of businesses in high-risk industries regardless of annual turnover are preferable in the medium and long term, and should be considered in the Act's first three year review.

1.7 A review of the Act's threshold and targeting of high-risk industries must also include a review of appropriate and commensurate resourcing of any changes made.

Penalties

1.8 The Australian Greens support the views of a number of submitters who argued that the first three years should be without penalties, with the focus instead on developing capacity and buy-in from businesses. However, penalties should be considered in the Act's first three-year review, and revisited in subsequent reviews.

1 *Submission 48*, p. 6.

Recommendation 2

1.9 That the first three-yearly review of the Act consider lower thresholds, targeting of businesses in high-risk industries regardless of annual turnover, appropriate and commensurate resourcing of the Commission, and penalties for non-compliance.

Public Register and Reporting

1.10 The Act should provide for an online public register of compliance statements. Compliance, whether compulsory or voluntary, should be something businesses aspire to, and can be held to account over. This will promote engagement from ethical consumers and consumer activists, which in turn will positively influence market behaviour.

Recommendation 3

1.11 The Act should include a public register of compliance for entities over the reportable threshold that provides for real-time online analysis of the data to the public.

Government Tenders

1.12 The Australian Greens support Save the Children's recommendation that there is:

...a requirement that entities over the reportable threshold to comply with the legislation in order to tender for government contracts.²

1.13 Governments needs to lead by example when it comes to modern slavery, and ensure their own supply chains are as compliant as those in the private sector legislated by this Act.

Recommendation 4

1.14 That it be a requirement in the Act that entities over the reportable threshold comply with the Act to be eligible to tender for government contracts.

Victim Support and Compensation

1.15 Several submitters have called for the Act to include a national compensation scheme for victims of modern slavery. Although compensation is traditionally covered by state legislation, and the focus of this bill is on transparency and accountability, the Greens believe this argument has great merit, and is not without precedent, as submitted by Ms Fiona McLeod SC.³

1.16 Consideration of a national compensation scheme should be the next priority consideration for the Australian Parliament regarding modern slavery. Part of this consideration would include whether a victim support scheme would sit under the Modern Slavery Act, or under other Commonwealth legislation such as the Social

2 *Submission 28*, p 2.

3 See *Submission 3*.

Security Act, which includes compensation schemes such as Australian Victim of Terrorism Overseas Payments.

Recommendation 5

1.17 That the Parliament consider the need, scope, and application of a national victim support and compensation scheme as the next tranche of modern slavery legislation in Australia.

Senator Nick McKim

Australian Greens

Appendix 1

Submissions

- 1 Mr David Hale
- 2 Australian Charities and Not-for-profits Commission
- 3 Ms Fiona McLeod SC
- 4 Public Affairs Commission, Anglican Church of Australia
- 5 Australian Christian Churches and ACC International Relief
- 6 Ms Dorothea Anthony
- 7 ALTO Global Consulting
- 8 Mr Robert Rands
- 9 Josephite Counter-Trafficking Project
- 10 Project Respect
- 11 The Freedom Project Ltd.
- 12 Coalition Against Trafficking in Women Australia (CATWA)
- 13 Social Responsibilities Committee, Anglican Church Southern
Queensland (Diocese of Brisbane)
- 14 Dr David Cooke
- 15 Australian Lawyers Alliance
- 16 Australian Catholic Bishops Conference
- 17 Executive Council of Australian Jewry
- 18 Federation of Ethnic Communities' Councils of Australia (FECCA)
- 19 Lutheran Church of Australia
- 20 British Institute of International and Comparative Law
- 21 Australian Catholic Religious Against Trafficking in Humans
- 22 Good Shepherd Australia New Zealand
- 23 Slavery Links Australia Inc
- 24 The Australian Freedom Network
- 25 Top End Women's Legal Service Inc. (TEWLS) and Northern
Territory Working Women's Centre Inc. (NTWWC)
- 26 Chartered Accountants Australia and New Zealand
- 27 Andrew Oliver
- 28 Save the Children Australia

- 29 ReThink Orphanages Australia
- 30 Dr Fiona McGaughey, Adjunct Professor Holly Cullen, Mr John Southalan and Dr Donalla Caspersz
- 31 Queensland University of Technology Faculty of Law
- 32 Forget Me Not Australia
- 33 The Salvation Army
 - 33.1 Supplementary to submission 33
- 34 Mr Bernard Dobson
- 35 Australian Retailers Association
- 36 Property Council of Australia
- 37 Walk Free Foundation
- 38 Housing Industry Association
- 39 Australian Lawyers for Human Rights
- 40 Australian Institute of Company Directors
- 41 Ms Kate van Doore
- 42 Public Health Association of Australia
- 43 International Commission of Jurists (Victoria)
- 44 Australian Catholic University
- 45 Mercy Foundation
- 46 Oxfam
- 47 Woolworths Group Limited
- 48 STOP THE TRAFFIK
- 49 Mr Peter Loone, STOP THE TRAFFIK
- 50 Anti-Slavery Australia
 - 50.1 Supplementary to submission 50
- 51 KPMG
- 52 Supply Chain Sustainability School of Australia
- 53 National Council of Churches in Australia
- 54 National Australia Bank
- 55 Chartered Institute of Procurement and Supply
- 56 Advisory Committee to the Modern Slavery Registry
- 57 Collective Shout
- 58 Catholic Women's League of Australia

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- 59 Synod of Victoria and Tasmania, Uniting Church in Australia
 - 60 Ethnic Communities' Council of Victoria
 - 61 Australian Council of Trade Unions
 - 62 Australian Industry Group
 - 63 International Justice Mission Australia
 - 64 Law Council of Australia
 - 65 Human Rights Law Centre
 - 66 Australian Chamber of Commerce and Industry
 - 67 Business Council of Australia
 - 68 Governance Institute of Australia
 - 69 Mr Shane Duran
 - 70 Australian Human Rights Commission
 - 71 Human Rights Watch
 - 72 Intrepid Group
 - 73 Ms Olivia Dean
 - 74 International Organization for Migration
 - 75 inTouch Multicultural Centre Against Family Violence
 - 76 Nestlé Australia
 - 77 Victorian Trades Hall Council and National Union of Workers,
Victorian Branch
 - 78 Civil Liberties Australia
 - 79 Department of Home Affairs
 - 80 Mr Karl Schubert
 - 81 Legal Services Commission of South Australia
 - 82 Australian Christian Lobby
 - 83 Lumos Foundation
 - 84 Hagar Australia
 - 85 Catholic Archdiocese of Sydney
 - 86 White Ribbon Australia
 - 87 Electrical Trades Union
 - 88 Australian Council of Superannuation Investors
 - 89 Global Compact Network Australia
 - 90 Associate Professor Justine Nolan

- 91 BHP
- 92 Outland Denim
- 93 The Border Crossing Observatory and the Monash Migration and Inclusion Centre

Answers to questions on notice and tabled documents

Answers to questions on notice

- 1 Department of Home Affairs - answer to question on notice taken at the public hearing on 03 August 2018.
- 2 Woolworths Group - answer to question on notice taken at the public hearing on 02 August 2018.

Tabled documents

- 1 Slavery Links Australia Inc - 'Indicia of Slavery', tabled at the public hearing on 1 August 2018.
- 2 Slavery Links Australia Inc - 'Hierarchy of Slavery Offences', tabled at the public hearing on 1 August 2018.
- 3 ACRATH - 'Ethical Fashion Guide', tabled at the public hearing on 1 August 2018.
- 4 ACRATH - postcards tabled at the public hearing on 1 August 2018.

Appendix 2

Public hearings and witnesses

Wednesday, 1 August 2018 – Melbourne

ADAMS, Ms Keren, Director of Legal Advocacy, Human Rights Law Centre

CAROLAN, Ms Christine, Executive Officer, Australian Catholic Religious Against Trafficking in Humans

EVANS, Mr Chris, Government and Business Strategy, Walk Free Foundation

HOWELL, Mr Roscoe, Founder, Slavery Links Australia Inc.

McDONALD, Mrs Lisa, Group Mission Leader, St Vincent's Health Australia

McLEOD, Ms Fiona, SC, Private Capacity

MOORE, Ms Heather, National Policy and Advocacy Coordinator, Freedom Partnership to End Modern Slavery, Salvation Army

STRACHAN, Mr Mark, Chair, Slavery Links Australia Inc.

Thursday, 2 August 2018 – Sydney

BEST, Ms Caroline, Interim Director, Corporate and Legal, International Justice Mission Australia

BURN, Professor Jennifer, Director, Anti-Slavery Australia

CATT, the Very Reverend Dr Peter, Member, Public Affairs Commission, Anglican Church of Australia

CONDON, Commissioner James, Chairman, Australian Freedom Network

DENT, Ms Kelly, Food, Climate and Humanitarian Advocacy Manager, Oxfam Australia

FLOYD, Mr Rob, Associate General Secretary, National Assembly, Uniting Church in Australia

KAKOSCHKE-MOORE, Mrs Skye, Special Adviser, International Justice Mission Australia

KITTO, Mr Fuzz, National Director, STOP THE TRAFFIK

KITTO, Ms Carolyn, National Director, STOP THE TRAFFIK

KYRIACOU, Ms Joy, Fair Economies Advocacy Manager, Oxfam Australia

LOONE, Mr Peter, Chief Technology Officer, STOP THE TRAFFIK

MAKSIMOVIC, Ms Andrea, Associate Director, International and Civil Society, Australian Council of Trade Unions

McMANUS, Ms Laura, Responsible Sourcing Manager, Woolworths Group Ltd

MICHAEL, Mr Heath, Director, Policy, Government and Corporate Relations, Australian Retailers Association

MUSKOVIC, Ms Francesca, National Policy Manager, Sustainability and Regulatory Affairs, Property Council of Australia

REDMOND, Professor Paul, Member, Anti-Slavery Australia

SINCLAIR, Mr Cameron, Public Policy Manager, Woolworths Group Ltd

ZIRNSAK, Dr Mark, Senior Social Justice Advocate, Synod of Victoria and Tasmania,
Uniting Church in Australia

Friday, 3 August 2018 – Canberra

BAILES, Mr Morry, President, Law Council of Australia

BARKLAMB, Mr Scott, Director, Workplace Relations, Australian Chamber of Commerce
and Industry

HANSFORD, Mr Hamish, First Assistant Secretary, National Security and Law Enforcement
Policy, Department of Home Affairs

MOLT, Dr Natasha, Deputy Director of Policy, Law Council of Australia

MUNSIE, Ms Laura, Acting Assistant Secretary, Transnational Crime Policy, Department of
Home Affairs

VICKERY, Mr Greg, Chair, Business and Human Rights Committee, Law Council of
Australia

ZORNADA, Ms Kristen, Policy Lawyer, Policy Division, Law Council of Australia