



Australian Government

Australian Government response to
the Senate Legal and Constitutional
Affairs Legislation Committee Report
on the Modern Slavery Bill 2018

[October 2018]

The Government thanks the Senate Legal and Constitutional Affairs Legislation Committee for its report on the Modern Slavery Bill 2018. The Bill is a key milestone in the Government's response to modern slavery and will ensure Australia remains at the forefront of global efforts to combat this crime. If passed, the Bill will establish a national Modern Slavery Reporting Requirement (reporting requirement) for large businesses and other entities in Australia. This will increase business awareness of modern slavery, reduce modern slavery risks in Australian goods and services, and drive a business 'race to the top' to improve workplace standards and practices. It will also increase information available to consumers and investors about modern slavery risks in goods and services.

The Government has developed this Bill through an extensive public consultation process and is committed to continuing to work with business and civil society to implement the Bill. Importantly, international efforts to use transparency legislation to combat modern slavery are still in their early stages. This means that the evidence base about the effectiveness of these responses is still being developed. As international responses to modern slavery continue to evolve, the Government will work closely with business and civil society to promote a consistent international regulatory approach to this issue and ensure the reporting requirement continues to reflect international best practice.

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.

The Government accepts this recommendation in principle.

The Government has determined that it is not possible to publish a complete and verifiable public list of all reporting entities at this time. This is due to a range of practical impediments, including limitations in the types of data held by corporate regulators and difficulties accurately monitoring changes in entities' revenue and structure. Any errors in a public list could also result in legal and reputational risks for businesses and Government. The Government is committed to continuing to consider options to develop a future public list of reporting entities. Publishing a list would not require legislative authority and does not need to be explicitly included in the Bill.

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.

The Government accepts this recommendation.

The Government recognises the importance of ensuring that consumers, business peers and investors are able to easily identify entities that comply with the reporting requirement. This is why the Modern Slavery Bill 2018 requires the Government to establish a central register for modern slavery statements. This world first initiative will provide an easily accessible, public mechanism to identify all entities that have provided modern slavery statements. The Government will also consider other options to publish lists of entities that have reported, including through the Minister's annual reports to Parliament (see response to Recommendation Four).

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).

The Government notes this recommendation.

The Modern Slavery Bill 2018 aims to support businesses to combat modern slavery by establishing a Modern Slavery Reporting Requirement. To ensure that this reporting requirement is implemented effectively, the Government will establish a specialist Modern Slavery Business Engagement Unit (the Unit) in the Department of Home Affairs. The Government committed \$3.6 million funding for the Unit through the 2018-19 Federal Budget.

Based on extensive consultations, the Government considers that the Unit is the best body to support the operation of the reporting requirement. The Unit's primary focus will be to provide advice and support to business about compliance with the reporting requirement. It will also undertake awareness-raising and training, manage the central register of statements, and coordinate the Commonwealth Modern Slavery Statement. These functions do not require statutory independence.

The 2017 Joint Standing Committee on Foreign Affairs, Defence and Trade (JSCFADT) inquiry into an Australian Modern Slavery Act recommended the Government establish an Independent Anti-Slavery Commissioner to oversight Australia's broader national response to modern slavery. Australia's national response to modern slavery is guided by the Government's *National Action Plan to Combat Human Trafficking and Slavery 2015-19* and is already subject to robust oversight from Parliament, Government Ministers and civil society. The Government is currently finalising its response to the JSCFADT inquiry.

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.

The Government accepts this recommendation.

The Government will amend the Modern Slavery Bill 2018 to clarify the focus of the three year review of the Modern Slavery Reporting Requirement and provide a clear pathway to introduce future penalties if compliance rates are inadequate. The Government's amendments will require the review to explicitly consider compliance with the reporting requirement and whether additional measures to improve compliance are required, including civil penalties. The amendments will also explicitly require the review to consider whether any other changes to the reporting requirement are necessary, as well as the timing of any further reviews.

The Government will also amend the Bill to require the responsible Minister to report annually to the Parliament on the implementation of the reporting requirement. This will provide a mechanism to address any issues that may arise prior to the three year review and ensure that the Parliament is able to assess the effectiveness of the reporting requirement on an ongoing basis. It will also provide a key source of evidence and data for the three year review.

These amendments demonstrate the Government's commitment to implementing the reporting requirement in an open and transparent manner and in collaboration with business and civil society. These amendments also significantly improve on similar legislation overseas and ensure that the Bill reflects world's best-practice.

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.

The Government notes this recommendation.

The Modern Slavery Bill 2018 aims to support businesses to combat modern slavery by establishing a Modern Slavery Reporting Requirement. The Bill is not intended to duplicate or consolidate existing criminal offences related to modern slavery. This would increase the complexity of Australia's legislative frameworks and would not improve the operation of the reporting requirement.

Importantly, the Bill already comprehensively defines modern slavery with reference to the Commonwealth *Criminal Code* and international standards. The Government will also provide detailed explanatory guidance to assist business to understand and apply this definition. The Government's extensive public consultations have demonstrated strong support from business and civil society for this approach to defining modern slavery in the Bill.