Anti-Slavery Australia
Response to ‘Hidden In Plain Sight’ Report
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Anti-Slavery Australia welcomes Hidden in Plain Sight, the final report of the Joint Standing Committee on Foreign Affairs, Defence and Trade’s (JSCFADT) Inquiry into establishing a Modern Slavery Act in Australia. If implemented, the comprehensive recommendations contained in Hidden in Plain Sight will significantly improve the lives of the men, women and children who experience slavery and human trafficking in Australia. 2017 saw huge steps taken towards ending modern slavery in Australia.

Anti-Slavery Australia also congratulates the Australian Government for its commitment to enact landmark modern slavery legislation in 2018, including a Modern Slavery in Supply Chains Reporting Requirement. Anti-Slavery Australia looks forward to continuing to work with the Australian Government and other stakeholders to see a meaningful and effective Modern Slavery Bill tabled in 2018.

*Human rights-based approach*

It is essential that the human rights and safety of survivors be at the centre of any legislation, policies or programmes developed to combat human trafficking and slavery. Anti-Slavery Australia recommends that the Australian Government utilise a human rights framework in drafting a Modern Slavery Act.

*Language of ‘Modern Slavery’*

‘Modern Slavery’ is a powerful rallying call and advocacy tool that conveys the seriousness of modern forms of grave exploitation. However, Anti-Slavery Australia shares the reservations of the Committee, and other submitters regarding the use of the term ‘modern slavery’.

‘Modern slavery’ has no agreed legal definition, and does not reflect the historical continuity of slavery. Using the term ‘modern slavery’ to define a broad spectrum of exploitative practices does not reflect the continuum of seriousness of those practices. Slavery is the most serious exploitative conduct, distinct from other slavery-like practices. As stated by Gleeson CJ in the case of *R v Tang*:

“It is important not to debase the currency of language, or to banalise crimes against humanity, by giving slavery a meaning that extends beyond the limits set by the text, context and purpose of the 1926 Slavery Convention. In particular it is important to recognise that harsh and exploitative conditions of labour do not of themselves amount to slavery.”

Anti-Slavery Australia recommends that the Australian Government engage critically with the language of ‘modern slavery’ before importing ‘non-legal’ language into an Australian legislative context.

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2 Joint Standing Committee on Foreign Affairs, Defence and Trade, Parliament of Australia, *Hidden in Plain Sight: An inquiry into establishing a Modern Slavery Act in Australia* (December 2017), 47 [3.55]-[3.61].

3 *R v Tang* [2008] HCA 39, [32].

4 Joint Standing Committee on Foreign Affairs, Defence and Trade, above n 2, 47 [3.60].
De-linking support for trafficked people and support from criminal justice proceedings

Anti-Slavery Australia strongly supports the recommendations of the JSCFADT and the Parliamentary Joint Committee on Law Enforcement (JCLE) that the Australian Government ‘de-links’ access to the Support for Trafficked People Program from cooperation in a police investigation.

Anti-Slavery Australia has consistently advocated for the implementation of a pathway to permanent residency within the Human Trafficking Visa Framework, and ongoing access to the Support for Trafficked People Program in situations where a survivor is unable to contribute to a police investigation for compelling and compassionate reasons.

Creating this pathway would represent a significant advance in the protection of the human rights of survivors of modern slavery in Australia.

National Compensation Scheme

Anti-Slavery Australia welcomes the consensus amongst Parliamentary Inquiries in 2017 that the Australian Government should introduce a national compensation scheme for survivors of modern slavery. The JCLE, JSCFADT and NSW Legislative Council Select Committee on human trafficking recommended the creation of a national compensation scheme. Anti-Slavery Australia calls upon the Australian Government to adopt these recommendations. The incorporation of a national compensation scheme would ensure that Australia’s Modern Slavery Act reflects our international obligations to provide survivors of modern slavery with effective remedies.5

The JCLE and JSCFADT recommended that a national compensation scheme be funded by the proceeds of crime, and modelled on existing Commonwealth supported compensation and reparation payments such as the Australian Victims of Overseas Terrorism Payments Scheme and the Defence Abuse Reparation Scheme.6 This reflects the advocacy of Anti-Slavery Australia and the Law Council of Australia. The improvements to Australia’s criminal justice response to modern slavery included in a Modern Slavery Act, and the proceeds of penalties introduced under a Modern Slavery in Supply Chains Reporting Requirement could significantly increase the proceeds of crime available to support survivors.

The implementation of a national compensation scheme would recognise the serious harms suffered by survivors of slavery and human trafficking, and provide survivors with the financial support to start a new life in Australia.

Anti-Slavery Commissioner

Anti-Slavery Australia strongly supports the recommendation of the JSCFADT that the Australian Government establish an Independent Anti-Slavery Commissioner. The Committee recommended that the Commissioner fulfil a range of roles that broadly fall within the following categories:7

1. Monitoring the effectiveness of Australia’s response to modern slavery, including the National Action Plan to Combat Human Trafficking and Slavery 2015-19;

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7 Joint Standing Committee on Foreign Affairs, Defence and Trade, above n 2, xxxi, [4.59].
2. Improving the implementation of relevant legislation and policy;
3. Gathering data and reporting on modern slavery in Australia;
4. Awareness raising within the community and amongst government agencies; and
5. Ensuring that survivors of modern slavery have access to appropriate support services.

In order to fully equip the Anti-Slavery Commissioner with the power to ensure that survivors of modern slavery in Australia have access to appropriate support services, Anti-Slavery Australia recommends that the Commissioner be empowered to receive individual complaints from individuals and civil society organisations. The Commissioner should have the power to receive such referrals related to specific cases, investigate, and make recommendations about actions related to individual cases. In this way, the Commissioner would be able to adopt a victim-centred approach and audit the response of the Australian Government to modern slavery within a human rights framework.

**Transparency in Supply Chains**

For the last two years, Anti-Slavery Australia has advocated for a robust legal framework that requires large entities to report on their supply chains and the steps they have taken to prevent and eliminate modern slavery. Anti-Slavery Australia commends the extensive consideration the JSCFADT has given to a supply chain reporting requirement in Australia. Anti-Slavery Australia also commends the Australian Government’s commitment to introduce a meaningful Modern Slavery in Supply Chains Reporting Requirement.

**Central Repository**

Anti-Slavery Australia commends the JSCFADT and the Australian Government’s proposed Modern Slavery in Supply Chains Reporting Requirement for recommending that reports under the legislation be published in a Government-run central repository. This is a significant improvement on the reporting framework created by the UK Modern Slavery Act.

**Threshold**

Anti-Slavery Australia supports the introduction of a lower revenue threshold than the $100 million proposed by the Australian Government, or $50 million threshold proposed by the JSCFADT. Anti-Slavery Australia joins the Law Council of Australia in advocating for a revenue threshold of $25 million. This is consistent with the definition of a large proprietary company in the Corporations Act 2001 (Cth).

Anti-Slavery Australia adopted this revenue threshold as companies of this size are required to prepare annual financial and directors reports. This would create broad consistency with other regulatory burdens already imposed on large companies. Organisations of this size are also more likely to have international, multi-tiered supply chains, which increases the risk of modern slavery within the organisations’ operations.

A lower threshold will provide greater consistency between global supply chain reporting requirements, and also better serve the regulatory purpose of the Supply Chain Reporting Requirement.

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8 Joint Standing Committee on Foreign Affairs, Defence and Trade, above n 2, 124; Attorney-General’s Department (Cth), Modern Slavery in Supply Chains Reporting Requirement Public Consultation Paper and Regulatory Impact Statement (16 August 2017) 17.
9 Corporations Act 2001 (Cth) s45A(3).
10 Ibid, s 292(1).
11 Andrew Crane, Genevieve LeBaron, Jean Allain, Laya Behbahani, ‘Governance gaps in eradicating forced labor: From global to domestic supply chains’ (September 2017) Regulation and Governance 1, 3; ‘Beyond Compliance: Effective reporting under the Modern Slavery Act’ (Guidance, CORE Coalition, February 2016) 9.
Penalties

Anti-Slavery Australia strongly supports the recommendation of the JSCFADT Committee that the Australian Modern Slavery in Supply Chains Reporting Requirement should be supported by a robust framework of civil penalties. Anti-Slavery Australia emphasises that these penalties should not punish entities for discovering modern slavery in their supply chains and operations. Anti-Slavery Australia recommends that the following breaches should incur a civil sanction or penalty under transparency in supply chain legislation:

- continued failure to issue a statement or issuance of an incomplete statement; and
- making a misleading or fraudulent statement.

The lack of effective penalties has been identified as a significant weakness in many comparable, international supply chain reporting laws, including the UK Modern Slavery Act, the California Transparency in Supply Chains Act and the Dodd–Frank Wall Street Reform and Consumer Protection Act. This has been contrasted with the UK Bribery Act 2010. This Act is supported by robust sanctions, including extraterritorial corporate criminal liability, binding public standards and sanctions for non-compliance for bribery that occurs within a company’s global supply chain. A 2017 study found that the Bribery Act has lead to significant changes in corporate policy and practices regarding bribery, and companies have communicated these standards to their down-stream suppliers.

Market disclosure is a weak regulatory tool for a variety of reasons, including the failure of consumers to understand the implications of disclosures, the failure to collect the full range of pertinent information, and the lack of resources or expertise to fully research issues. Furthermore, consumers’ decisions may continue to be shaped by economic considerations, rather than adverse human trafficking or slavery disclosures. There is limited empirical evidence concerning the effect of ethical considerations on consumer behaviour.

As such, ‘light touch’ market-regulated disclosure legislation is not appropriate in light of the serious risk of criminal slavery and human trafficking being hidden by complex supply chains. Without an adequate penalty or sanction to deter non-compliance with reporting obligations, there is little incentive for organisations to engage with supply chain transparency. A meaningful framework of financial penalties would send a strong message to consumers, and the international business community that the Australian Government will not tolerate modern slavery in supply chains.

Public Procurement

Anti-Slavery Australia applaud the Australian Government commitment to extend a Supply Chain Reporting Requirement to public bodies and public procurement. We also

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13 Modern Slavery Act 2015 (UK) c 30, s 54.

14 California Transparency in Supply Chains Act §3, 556 Cal Civil Code §1714.43(a)(1) (West, 2010).

15 Dodd-Frank Act § 1502.


17 Genevieve LeBaron and Andreas Rühmkorf, above n 12, 16.

18 Robert Baldwin, Martin Cave and Martin Lodge, Understanding Regulation: Theory, Strategy and Practice (Oxford University Press, 2011) 120.

acknowledge the important role of the JSCFADT Committee’s strong recommendations in this area.

This is a considerable improvement over the more limited scope of the UK MSA, the Labor Party’s proposed modern slavery reporting legislation, and the Australian Government’s proposed Modern Slavery in Supply Chains Reporting Requirement. The inclusion of public procurement and public bodies within the Modern Slavery in Supply Chains Reporting Requirement reflects the compelling obligation on the Australian Government to exercise ethical and moral leadership in the fight against grave human rights abuses.

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