
SUBMISSION

Submission to the Senate Legal
and Constitutional Affairs
Legislation Committee on the
Modern Slavery Bill 2018

July 2018

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The Business Council of Australia draws on the expertise of Australia's leading companies to develop and promote solutions to the nation's most pressing economic and social policy challenges.

ABOUT THIS SUBMISSION

This is the Business Council's submission to the Senate Legal and Constitutional Affairs Legislation Committee on the *Modern Slavery Bill 2018*.

RECOMMENDATION

The Senate should pass the *Modern Slavery Bill 2018* without delay or substantive amendments.

SUMMARY

The Business Council is proud to have been a vocal and long-standing supporter of an Australian Modern Slavery Act. Australians deserve to have confidence that our businesses are playing their part to ensure supply chains and production processes for our products and services have not been exposed to modern slavery.

The *Modern Slavery Bill 2018* 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.

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.

The government should also be commended for extending the reporting requirement to public procurement.

We strongly encourage all Senators to support the *Modern Slavery Bill 2018*, as a sensible and robust approach to modern slavery. We ask the Senate to pass the Bill without delay or substantive amendments.

DISCUSSION

Principles of a reporting requirement

The *Modern Slavery Bill 2018* is consistent with the principles set out previously by the Business Council¹. We recommended that a reporting requirement should:

- apply to large businesses with a substantial presence in Australia and extensive supply chains.
- promote better performance by companies, rather than punishing companies for any problems that are identified through the reporting requirement.
- require the Board to sign off the report.
- allow flexibility in how companies report, so efforts can be targeted towards parts of supply chains and operations with the greatest risk.
- be consistent with the United Kingdom's *Modern Slavery Act 2015*. Companies operating in both jurisdictions should be able to submit a single statement to both.
- be available in a central, searchable repository to enable easy monitoring, tracking and benchmarking of performance.

Design of the reporting requirement

It is important that a modern slavery reporting requirement balances increased transparency of supply chains and operations with the need to take a practical approach to new regulation.

The proposed reporting regime is well-designed to achieve the objectives in the Bill. Any changes to the Bill at this stage should be limited to improving practicality, for example, should it be necessary to clarify that one statement can be submitted on behalf of a group of entities.

Substantive amendments to the Bill are not warranted and would risk unduly increasing regulatory costs on business without any improvement in the desired outcomes of the Bill.

The Business Council supports the following design elements of the reporting requirement:

- The definition of modern slavery
- The revenue threshold for companies required to report
- The broad areas to be covered in a modern slavery report
- The ability for companies to align reporting with their existing financial reporting timeframes

¹ In our submission to the Parliament's Joint Standing Committee on Foreign Affairs, Defence and Trade's inquiry into establishing a modern slavery act in Australia (June 2017), available at <http://www.bca.com.au/publications/submission-to-the-inquiry-into-establishing-a-modern-slavery-act-in-australia>

- The timeframe for businesses to commence reporting (although there may be value in considering whether a phased commencement is appropriate, to give small and medium enterprises a longer period of time to prepare for reporting commencing)
- The ability for companies to register the same reporting in both Australia and the United Kingdom
- The draft legislation's focus on collaboration and best practice, rather than penalties
- The extension of the requirement to public procurement
- The establishment of a central repository of reports
- The commitment to review the legislation three years after commencement.

We are comfortable with a revenue threshold of \$100 million for the reporting requirement.

Additional commentary is provided below on three additional areas of interest.

Penalties and compliance

Some parties have suggested the Bill should be amended to introduce penalties into the regime. We believe the current Bill is effective and proportionate, and we would not recommend any amendments in relation to penalties.

A regime with a focus on transparency (like the one currently in the Bill) is the most effective way to encourage companies to collectively improve performance, and to share lessons with regulators, not-for-profits and other businesses. It recognises the active role many businesses are already taking in addressing modern slavery.

At this point, it is preferable for legislation to focus on establishing the reporting regime and then working with businesses to improve their performance (especially those who are not currently captured by a modern slavery reporting requirement in the United Kingdom).

Legislation that is punitive or has an excessive focus on compliance would risk driving compliance behaviours (a 'tick and flick' approach to reporting) and shifting the focus away from sharing best practice or collectively improving performance.

Independent oversight

We welcome the announcement of the new Anti-Slavery Business Engagement Unit to work with businesses in addressing modern slavery. We are open to any form of independent oversight, like the UK Anti-Slavery Commissioner model, if it works constructively with businesses to lift performance.

State and territory schemes

In June 2018, the New South Wales Parliament passed a separate, state-specific *Modern Slavery Act 2018 (NSW)*. There are many differences between the New South Wales

legislation and the federal Bill, most notably, a different and lower revenue threshold for companies required to report (\$50 million) and the imposition of penalties for failing to report or report compliantly.

Establishing a separate and different reporting scheme in one state creates duplication and an additional regulatory burden that ultimately adds little towards efforts to address modern slavery. A single national regime is the best way to achieve the desired outcomes and avoid unnecessary costs on business.

We support efforts to streamline reporting and establish mutual recognition between the New South Wales and Commonwealth regimes, so businesses subject to the Commonwealth regime only need to report once (under the Commonwealth regime).

BUSINESS COUNCIL OF AUSTRALIA

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