

Executive Council of Australian Jewry Inc.

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18 July 2018

Committee Secretary
Senate Legal and Constitutional Affairs Committee
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Dear Committee members

Modern Slavery Bill 2018

The Executive Council of Australian Jewry (ECAJ) makes the following Submission to the Senate Legal and Constitutional Affairs Committee Inquiry into the *Modern Slavery Bill 2018* (the Bill). We consent to the Submission being made public.

The ECAJ is the elected peak national body of Australian Jewry representing the Jewish communities of each of the States and Territories, as well as other national Jewish organisations. The ECAJ represents the needs and interests of the Australian Jewish community to the Federal government and bureaucracy, the media and other ethnic and faith communities. The ECAJ's 46 Councillors, who include its 12 Executive members, are elected from the ECAJ's Constituent bodies (each of which is a State or Territory roof body to which the major Jewish organisations of that State or territory are affiliated, including schools, hospitals, welfare organisations, religious institutions and other charitable bodies) and from the ECAJ's Affiliate bodies (each of which is a Jewish organisation that operates nationally, including those which maintain charitable funds or institutions).

Altogether, the ECAJ sits at the apex of approximately 200 of the major Jewish communal bodies across Australia, which are the lifeblood of the Australian Jewish community. In addition, the ECAJ has a number of Observer bodies which are entitled to attend and observe proceedings at the ECAJ's general meetings.

On 23 June 2017 one of the authors of this submission appeared in Sydney on behalf of the ECAJ with members of the Australian Freedom Network (a multi-faith group – Salvation Army, Uniting Church, other Christian groups and Jewish community) before the Joint Standing Committee on Foreign Affairs Defence and Trade at its Inquiry into establishing a Modern Slavery Act. The Australian Freedom Network urged the Australian government to introduce legislation to address the problem of modern slavery, and we commend MPs from all parties whose efforts have led to the tabling of the Bill.

Slavery as an affront to Jewish values

The central event of the Hebrew Bible is the liberation of an entire nation of slaves, Israel, from a cruel oppressor. This liberation is brought about by the direct intervention of God, "with a mighty hand and an outstretched arm" (Deuteronomy 26:8). From this we learn that life, liberty and dignity are the inalienable birthright of every human being, Divine gifts that no human being or institution may justly abrogate.

From the great Prophet of Israel, Isaiah, we learn that each of us is morally obliged to do what we can to "undo the heavy burdens, and let the oppressed go free." (Isaiah 58:6). As is true of all of the profound teachings of the Hebrew Bible, this passage has many levels of meaning, but at its most basic it demands the release of captives and slaves, at home and abroad.

The Jewish attitude to slavery is shown most clearly in its development in our tradition. The Hebrew Bible dates from a time when slave owning was universal, and while it did not demand its immediate abolition, it reformed slavery drastically by making conditions for slaves as comfortable as for their masters, and demanding that slaves be offered their freedom after seven years. In time Jewish tradition totally removed slavery, and realised the ideal to which the Bible was pointing, when no person is owned by another person. The time has come for all cultures and societies to reach this point.

No society which today claims to value justice can tolerate the practice of slavery. It should have been abolished in all of its forms long ago. It is appalling that this scourge persists even in the twenty-first century. Fair-minded people everywhere must unite to stamp it out once and for all.

What is Modern Slavery?

There is as yet no globally-agreed definition of 'modern slavery'. It is widely used as an umbrella term that encompasses any working and living conditions involving deprivation of freedom, contrary to human dignity.¹ This includes human trafficking, forced labour, debt bondage, forced marriage, child slavery and other slave-like exploitation.² The International Labour Organisation has estimated that in 2016 40.3 million people were living in conditions of modern slavery, including 24.9 million in forced labour and 15.4 million in forced marriage.³ Some 11.7 million forced labourers, or 56 per cent of the global total, live in the Asia-Pacific region.⁴

¹ <http://www.ilo.org/global/topics/forced-labour/definition/lang--en/index.htm>

² Article 1, Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956), United Nations, *Treaty Series*, vol. 266, p. 3. Entry into Force: 30 April 1957. Australia became a party by ratifying the Convention on 6 January 1958.

³ International Labour Organisation, [Global Estimates of Modern Slavery: Forced Labour and Forced Marriage](#), Geneva, September 2017.

⁴ Second reading speech, Assistant Minister for Home Affairs Alex Hawke MP, *Hansard*, House of Representatives, 28 June 2018, p.16: http://parlinfo.aph.gov.au/parlInfo/genpdf/chamber/hansardr/429b4c41-4a6c-465d-a259-05e8252b994d/0037/hansard_frag.pdf;fileType=application%2Fpdf.

Historically, slavery was associated with the transatlantic slave trade and physical captivity. However, as new means of depriving individuals of their freedom have been developed, it has become increasingly evident that the traditional understanding of what constitutes slavery is outdated.

Companies and businesses are not untainted by slavery. Reported cases of forced labour and debt bondages are on the rise in company supply chains across industries. Contractors with links to major supermarkets and retailers have been found liable for serious exploitation of migrant labour, with cases of underpayment for long periods of time, assaults and harassment, including sexual harassment.⁵ Agriculture, construction, manufacturing and mining companies have also been found guilty of exploiting forced labour in their supply chains.⁶

As a result, stakeholders and communities are calling for businesses to be held accountable for abolishing forced labour and modern slavery in its supply chains and are promoting the importance of human rights and ethical sourcing. There is a widespread consensus in favour of abolishing slavery both locally and globally, particularly among businesses whose complex supply chains may hide potential violations of human rights.

Across virtually all industries, the weight of evidence confirming that modern slavery is a supply chain risk has driven businesses to increase engagement on issues that have historically fallen in the realm of the public sector and NGOs. Rising stakeholder concerns about human rights abuses in the form of modern slavery, and associated reputational risks highlight that businesses need to look at more than simply their bottom line.

In spite of this, to date there has been little regulation or authoritative guidance in Australia concerning better practice, due diligence and responsible sourcing, especially for larger businesses that have more complex supply chain networks. In line with the ongoing uptake of environmental, social and governance (ESG) reporting, businesses are looking to rely on guiding principles that can assist with their sustainability reporting and disclosures on human rights.

Frameworks such as the Global Reporting Initiative (GRI) Sustainability Reporting Standards and the UN Sustainable Development Goals (UN SDGs) aim to increase business engagement with ESG-related issues by providing mandatory and sector-specific disclosures for voluntary reporters. However the extent and quality of disclosure under these guidelines have been weak, with many sustainability reports lacking quantitative data or any statements around tackling modern slavery and upholding human rights. There are further difficulties in developing benchmarks for assessing these reports due to the inconsistencies between the kinds of information they are required to disclose.

This highlights the need and value of Australia establishing its own legal standards for investigating, identifying and addressing modern slavery in company supply chains and abolishing all forms of modern slavery which are in any way connected with Australian business operations.

⁵ <http://www.abc.net.au/news/2015-05-04/supermarkets-food-outlets-exploit-black-market-migrant-workers/6441496>

⁶ <http://www.abc.net.au/news/2013-06-24/australian-retailers-linked-to-sweatshop-abuse/4773738>
<http://theconversation.com/global-supply-chains-link-us-all-to-shame-of-child-and-forced-labour-33593>

The UK's Response to Modern Slavery

Aimed at abolishing slavery and simplifying business reporting requirements on human rights, the *Modern Slavery Act 2015* (UKMSA) requires businesses that have global turnovers of £36 million or more and which supply goods or services in the UK, to release an annual slavery and trafficking statement on their websites. It is essential that the statement sets out what steps their businesses will take to ensure that there no forms of slavery are implicated in any parts of their businesses and operations, including supply chains.

A survey conducted by Historic Futures found that, of the 34 companies which participated, 76% reported that their directors are now more engaged with issues of risks within supply chains, with 62% of buyers and 68% of ethical trading teams also recognising the importance of ethical sourcing.⁷ This indicates greater engagement in supply chain related issues, following the introduction of the UKMSA.

Inquiry into establishing a Modern Slavery Act in Australia

In Australia, there is no current binding statute equivalent or comparable to the UKMSA. The present Bill was introduced following the recommendations made in the final report of the Joint Standing Committee on Foreign Affairs, Defence and Trade following its Inquiry into establishing a Modern Slavery Act in Australia (the JSCFADT Inquiry). The Committee recommended that the Australian Government introduce a Modern Slavery Act in Australia, the provisions of which would include:

- *referencing in one location Australia's existing modern slavery offences as outlined in Division 270 and 271 of the Criminal Code Act 1995, as well as offences relevant to combatting modern slavery such as withholding passports under section 21 of the Foreign Passports (Law Enforcement and Security) Act 2005, offences relating to sexual and labour exploitation and offences under the Migration Act 1958;*
- *provisions for an Independent Anti-Slavery Commissioner;*
- *provisions for a mandatory supply chain reporting requirement that requires certain entities to report on modern slavery risks in their supply chains;*
- *measures to support victims of modern slavery, including establishing a national compensation scheme;*
- *measures to improve criminal justice responses to modern slavery;*
- *measures to address orphanage trafficking and child exploitation in overseas residential institutions; and*
- *measures to address labour exploitation, including establishing a labour hire licensing scheme and making changes to Australia's visa framework.*⁸

⁸ *Hidden in Plain Sight: An Inquiry into establishing a Modern Slavery Act in Australia*, December 2017, Recommendation 1, para 2.72:

https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Foreign_Affairs_Defence_and_Trade/ModernSlavery/Final_report

The Bill

The Bill implements only the first and third of the above recommendations made by the JSCFADT Inquiry. In accordance with the first recommendation, the Bill includes a comprehensive definition of “modern slavery”. In accordance with the third recommendation, the key features of the Bill, as outlined by the Assistant Minister for Home Affairs in his second reading speech are:

“Under the reporting requirement over 3,000 corporations, trusts, partnerships and other entities will need to publish annual modern slavery statements.

The bill sets a \$100 million consolidated revenue threshold for reporting. This ensures that it focuses on entities that have the capacity to meaningfully comply and the market influence to clean up and address their global supply chains.

Statements will need to address mandatory criteria set out in the bill, including identifying the entity's key modern slavery risks and describing their actions to address these risks. These criteria will provide certainty for business about how to report and ensure statements can be easily compared.

The bill also makes senior management accountable for the entity's modern slavery risks by requiring statements to be approved by the entity's principal governing body.

The government will make all statements freely available online through a central, transparent, government-run register. The world-leading initiative will promote transparency and ensure that the community can easily access and compare statements.

The government also recognises that our own procurement is not immune from modern slavery risks.

That is why the government will publish an annual consolidated modern slavery statement for all non-corporate Commonwealth entities. Commonwealth corporations and companies will publish separate statements if they meet the revenue threshold.

This world-first step demonstrates the government's commitment to taking real and serious action to combat modern slavery.

The government also recognises the importance of supporting the business community to implement the reporting requirement.

The government will work with business and civil society to develop detailed guidance about the reporting requirement. The guidance will be finalised before the reporting requirement comes into force.⁹

⁹ Second reading speech, Assistant Minister for Home Affairs Alex Hawke MP, *Hansard*, House of Representatives, 28 June 2018, pp.16-17: http://parlinfo.aph.gov.au/parlInfo/genpdf/chamber/hansardr/429b4c41-4a6c-465d-a259-05e8252b994d/0037/hansard_frag.pdf;fileType=application%2Fpdf.

Welcome features of the Bill

The Assistant Minister noted that the Bill “*improves on similar legislation overseas by including mandatory reporting criteria covering the Commonwealth government, and establishing a government-run register for statements*”.¹⁰

The government is to be commended for recognising the importance of supporting the business community to implement the reporting requirement, and for committing to work with business and civil society to develop detailed guidance about the reporting requirement. The government has said that the guidance will be finalised before the reporting requirement comes into force. We would urge that this guidance, *inter alia*, suggest that Australian businesses should implement the following as a priority:

- Review company-wide policies and process that manage risks of human rights within the business and operations, including a thorough check of the operations of suppliers and contractors.
- Undertake more active due diligence of high risk suppliers and, if instances of modern slavery are found, collaborate with suppliers to terminate such practices immediately and communicate the outcome publicly to ensure ongoing awareness and action from other suppliers.
- Provide training for employees to identify and immediately report modern anti-slavery practices
- Form a position statement on modern slavery and human rights
- Identify opportunities to collaborate across and within industries to promote increased transparency and share better practice approaches regarding the management of human rights, and in particular, modern slavery issues
- Publish registered reports on their home page or via a drop down menu on the home page.

We also note that the government has committed \$3.6 million through the 2018 budget to establish a dedicated Modern Slavery Business Engagement Unit within the Department of Home Affairs to advise and support business.

Shortcomings of the Bill

The legislation will be administered by the Minister for Home Affairs rather than by a specialist anti-slavery Commissioner with wide powers of inquiry and investigation, and the resources needed to exercise such powers effectively, as recommended by the JSCFADT Inquiry.

There is no provision for any adverse consequence to ensue for non-compliance in mandatory reporting.

¹⁰ *Ibid.*

The section requiring the Minister to review the operation of the Act and any Rules after 3 years (section 24) is expressed in general terms. It does not prescribe any specific matters which, as a minimum, the review must address. The section provides for a once-only review.

The measures outlined in the fourth, fifth, sixth and seventh recommendations made by the JSCFADT Inquiry do not appear to have been implemented in the Bill. On the other hand we recognise that through the *National Action Plan to Combat Human Trafficking and Slavery 2015-19* the government has already done much to address early and forced marriages, international and regional leadership against slavery, and exploitation in supply chains.

Recommendations

We note that the Assistant Minister stated that “*the government is carefully considering the need for additional steps based on the recommendations of the [JSCFADT Inquiry]*”,¹¹ and we would urge the government in particular to implement the recommendation that the legislation establish and make provision for an Independent Anti-Slavery Commissioner.

We also recommend that the terms of section 24 of the Bill be expanded to specify the minimum matters which the 3 year review should address, including the level of compliance in reporting; the extent to which registered reports have indicated that supply chains of major companies carrying on business in Australia are affected by modern slavery practices; an assessment of the effectiveness of the Business Engagement Unit; and an assessment of whether the legislation has had any measurable impact in reducing modern slavery in supply chains.

In our view, section 24 should also provide for subsequent reviews every three or five years.

In order to incentivise compliance with reporting requirements in the legislation, a further provision should be added to Part 2 of the Bill to create a pre-qualification of compliance, for entities to which the law applies, in order to tender for Government contracts.

We thank the Committee for the opportunity to comment on the Bill.

Yours sincerely



Anton Block
President



Peter Wertheim AM
co-CEO

¹¹ *Ibid.*