



WALK FREE
FOUNDATION

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Senator Ian McDonald
Committee Chairman
Senate Legal and Constitutional Affairs Legislative Committee
20 July 2018

Dear Senator

Re Modern Slavery Bill Inquiry

Introduction

Walk Free Foundation (“**Walk Free**”) welcomes the opportunity to make a submission to this Inquiry. As part of our submission we reference our earlier submissions to the Joint Standing Committee on Foreign Affairs, Defence and Trade Inquiry (“**JSFADT Inquiry**”) into establishing a Modern Slavery Act and the Attorney General’s public consultation – Modern Slavery in Supply Chains Reporting Requirement.

This submission does not to traverse all the issues canvassed in those earlier submissions, but directly addresses the provisions of the Modern Slavery Bill (“**Bill**”) and what Walk Free believes is the one major initiative absent from the Bill that would greatly enhance the legislation.

There has been a lengthy process of development leading to this legislation, including consideration of the issues by several Parliamentary inquiries, culminating with the unanimous Joint Foreign Affairs, Defence and Trade Committee report “Hidden in Plain Sight” (“**JSFADT Report**”).

Walk Free are grateful for the informed engagement of so many Members and Senators in the debate around modern slavery and Australia’s legal and policy responses. We believe the processes that have led to the introduction of this Bill reflect very positively on the Australian Parliament and its Committee work. We are also appreciative of the comprehensive and positive consultative process conducted by the Government and the Attorney Generals Department around the supply chain reporting requirement paper.

As a result, we believe there is a good understanding of the issues and the other perspectives of all those who have taken an interest in these matters. This has seen many of us adjust our views because of those interactions and consequently the areas of serious dispute between the main interlocutors have been narrowed.

The Government is to be congratulated for its work in developing the Modern Slavery Bill. It will support businesses in Australia take real strides to eliminate modern slavery from their supply chains. The Modern Slavery Bill, while modelled on the United Kingdom Modern Slavery Act (“**UK Act**”), is in several respects a significantly superior piece of legislation.

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.

Recommendations

Walk Free makes the following five recommendations and supporting argument as our submission for the Committee's consideration.

1. That the Commonwealth Parliament pass the Modern Slavery Bill as soon as practicable and with bi-partisan support.

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 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 JSFADT Report was unanimous.

Such a consensus is rare indeed and one well worth sustaining.

The platform for quick resolution and passage of the Bill is established. The potential for unity and consensus across our society and politics is close. We must seize the opportunity offered.

Walk Free believes that the Australian Parliament should come together and speak with one powerful voice on behalf of all Australians.

An urgency for action lies in both the suffering of our fellow human beings whom we seek to free, and in the capacity for Australia's leadership to have impact well beyond the specific scope of the legislation. We live in the region of the world where the greatest prevalence of modern slavery exists. Australia will be the first in the region to mobilise the power of business to support government and civil society. If Australia leads, others will follow.

Australia has committed to the Sustainable Development Goals ("SDG's"). If our commitments are to mean anything we must drive practical responses at home and abroad. We know there is child and forced labour in the supply chains of businesses operating in Australia. This legislation is an essential part of the suite of measure that must be taken for Australia to make a serious contribution to the achievement of SDG Target 8.7. In addition to taking immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour, SDG Target 8.7 commits us to end child labour in all its forms by 2025. There is no time to waste.

2. That the Australian Parliament support the threshold for business reporting as stipulated in the Bill.

Walk Free supports the Bill's proposed threshold of \$100 million for requiring businesses to report under the legislation.

Walk Free in its earlier submissions expressed the view that a threshold set at a level, in Australian dollars, broadly equivalent to the UK legislation might be the most appropriate threshold. Part of our reasoning was that this would assist in providing consistency to the extent possible across jurisdictions. Following the work of the Home Affairs (formerly known as Attorney General's) Department and the consultative process we endorse the threshold of \$100 million proposed in the Bill.

The Home Affairs Department administrative rationale and the evidence that the \$100 million threshold will capture 3,000 businesses has convinced Walk Free that this 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 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.

3. That the Bill be amended to include the creation of a Statutory Office responsible for leadership, advice, and awareness raising in support of more effective and coordinated responses by government, business and civil society to the crime of modern slavery.

3.1 Background

In requesting the JSFADT Committee to conduct an Inquiry into a potential Australian Modern Slavery Act, the Government asked them to give particular attention to the UK Modern Slavery Act ("UK Act") and the lessons of its early operation. The UK Act was widely regarded as the most comprehensive legislative response to modern slavery when enacted in 2015.

The UK Act essentially had a three-pronged approach:

- (1) A significant improvement of the effectiveness of UK criminal provisions applying to modern slavery offences, the introduction of much more severe penalties for offences and increased support for victims.
- (2) The introduction of a new Statutory Office of an Independent Anti-Slavery Commissioner to coordinate and drive a higher level of public awareness and government agency response.
- (3) A requirement on large businesses to report on measures to address modern slavery in their supply chains.

In summary, they addressed the UK's criminal response, their government agency response and the response of their businesses.

In considering the Australian context and possible improvements in Australia's response the JSFADT Committee formed a unanimous view on all three aspects of the UK Act.

- (1) The Committee took the view that the Australian Parliament, under governments of both persuasions, had in recent years taken legislative measures that gave us the most comprehensive criminal justice framework and strong penalties. Their conclusion has not been disputed and the criminal provisions have not been the focus of recent consideration or debate.
- (2) The Committee adopted the very strong view that Australia's domestic response, the coordination of our agencies and the community understanding of the issues could be greatly enhanced and victims better identified and supported. They recommended the adoption in the legislation of a similar Statutory Office for Australia modelled on the UK Independent Anti-Slavery Commissioner.
- (3) The Committee supported introducing a business supply chain reporting measure based on the UK model but addressing the inadequacies that had been identified in the short experience of that legislations operation.

In responding to the Interim Committee Report both the Government and Opposition committed to legislating an Australian Modern Slavery Act.

The "Bill" addresses the business reporting requirement; appropriately references the existing criminal justice provisions contained in other legislation; but completely fails to address the third prong of the UK Act, the measure that would improve the domestic response of both government agencies and the broader Australian community.

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.

3.2 The UK Experience

It is widely acknowledged in the UK, and internationally, that perhaps the most successful aspect of the UK legislation has been the impact of the work led by the UK Independent Anti-Slavery Commissioner.

The UK Commissioner is responsible to the Home Affairs Minister who approves the Commissioner's Strategic Plan.

The UK Office of an Independent Anti-Slavery Commissioner has the general functions of encouraging good practice in the prevention, detection, investigation and prosecution of slavery and human trafficking offences, and identifying the victims. The Commissioner has oversight over the range of government stakeholders who are involved in combatting the crimes of modern slavery.

The UK Act expressly provides the Commissioner cannot exercise any function in relation to an individual case.

The UK Commissioner has no responsibility for receiving, publishing or enforcing company reporting in accordance with Section 54 of the UK Act.

The Commissioner's work in galvanising support and action by government agencies, business, civil society and community members has been outstanding. The efforts of his office in training and awareness raising among police, magistrates, public officials, health workers, businesses and the community has galvanised responses and awareness. Identification of victims has risen sharply, prosecutions have greatly increased, and convictions have also risen. Coordination across agencies has improved and driven much greater awareness of the issues and challenges.

3.3 Why we need an Australian Independent Anti-Slavery Champion and Advisor

The case for an Australian Statutory Office similar to the UK Commissioner is outlined eloquently in the Hidden in Plain Sight Report. The Parliamentary Joint Committee on Law Enforcement, Inquiry into Human Trafficking July 2017 had earlier made a similar unanimous recommendation.

Modern slavery is a complex multi-faceted crime involving a multitude of government and non-government stakeholders in the functions of prevention, detection, prosecution and victim support. Because of the nature of the crime and the lack of any single line of accountability within government, independent oversight and leadership is critical. The complexity of our Commonwealth and the centrality of State legislation and agencies only reinforces the need for a national central point of coordination and leadership.

There is deep concern among many that the laudable objectives of the National Action Plan are not being met despite the committed efforts of public officials.

Our current oversight of the National Action Plan is by an Inter-Department Committee of twelve or more Federal Government agencies. The frontline State Government agencies of police, hospitals and Attorney's General are not represented. The National Roundtable which is the mechanism for engagement with civil society formally meets once a year.

Australia's record of identification of victims, referrals for prosecution and successful convictions are poor and have been the subject of criticism including by the US State Department Trafficking in Persons Report (TIP).

Walk Free does not believe our current management of Australia's response to modern slavery is adequate, let alone best practice. A Commonwealth Inter-Departmental Committee will not meet the challenge of modern slavery in Australia.

Without a focal point and champion, our response will continue to be fragmented and inadequate. The Government Bill fails to provide any impetus, initiative or increased coordination to drive a much-needed improved government agency response to modern slavery.

Unlike the UK legislation, the introduction of greater accountability on business is not matched by greater accountability on government.

Walk Free argues strongly that a Commonwealth Statutory Office reporting to the Minister of Home Affairs is a key component of a much more effective Australian domestic response to these crimes. The Statutory nature of the position is vital to ensure that there is a drive and advocacy

around the issue of modern slavery and an independent source of advice for agencies, businesses, NGO's and State Governments.

3.4 An Australian Model

The consideration around the creation of an Australian Independent Anti-Slavery Commissioner has very much been focussed on replicating the model contained in the UK Act. Additionally, the discussion in Australia has focussed on whether an Australian Statutory Office could provide more support to business than is formally legislated for in the UK Act. The UK Commissioner has as part of his strategic plan, as approved by the Minister, engaged with business. However, the Commissioner has no legislated role in advising business. This may be explained in part due to the supply chain reporting measure being a late included amendment to the draft UK Act.

Walk Free contends that 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.

The UK Commissioner has forcefully stated that he would not want any responsibility associated with business reporting or compliance with the legislation. The Commissioner has no policing role and believes strongly that independence is critical to the effectiveness of the Office.

The Government's proposed Business Support Unit and funding is welcomed by Walk Free. The roles of maintaining the central repository, providing technical reporting advice, receiving business reports, and coordinating government agency responses are clearly ones for government officials skilled in public administration. The provision of confidential advice to business, oversight and advice to government agencies, public advocacy, engagement with civil society on improving victim identification and support are all functions better suited to a Statutory Office that is independent of Departmental reporting lines but still accountable to the Home Affairs Minister.

Walk Free has provided a suggested model of the responsibilities of an Independent Australian Statutory Office which we believe would strengthen the Bill. We believe that such a model would meet the need for leadership and coordination, be a source of confidential advice to business and draw a clear line between the advisory, trusted friend and advocate role of the Statutory Office and the compliance responsibilities of the Department of Home Affairs.

This model would meet the expectations of business and civil society and could enjoy the confidence of the community and the Parliament.

3.5 Proposed Alternative Structure

- (1) That the Home Affairs Department Business Unit take responsibility for administration of the Act and of the central repository, provide advice to business regarding their obligations to report, monitor compliance with the Act, and coordinate Government agency reporting.

- (2) That the Statutory Office created under the Act be responsible for encouraging best practice in the prevention of slavery and human trafficking and the identification and support of victims, the provision of support to government agencies in improving their responses and coordination; the delivery of education and awareness raising within the community; and the provision of advice to business in developing their supply chain monitoring systems and in dealing with identified concerns.

3.6 The Title of a Statutory Anti-Modern Slavery Office in Australia

Walk Free acknowledges that there exists some concern within Government about the proposed Statutory Office. Our understanding is that this is in part based on concern about overlap with other Statutory Officer roles and partly by concern that the Office would have policing or adjudicator type functions.

Under the Walk Free proposal, like the UK Act, the Statutory Office would not conduct either of those functions.

In the Australian context, the title of the Office of an Independent Anti-Slavery Commissioner evokes unhelpful association with the functions of other Commonwealth Statutory Officers who do perform those functions such as the Human Rights Commissioners or Fair Work Commissioners. These are quite dissimilar roles performing functions not performed by the UK Commissioner and not functions proposed or desired for the Australian Office by Walk Free or other advocates of the proposition.

Walk Free believes a title for an Australian Anti-Slavery Statutory Office that better reflects the roles and functions of the Office could help give greater clarity and understanding about the proposed role.

4. That the Parliament reject the inclusion of penalties for businesses who fail to report.

This Bill has been developed by the Government with the strong support of business. Without that support of business, the Bill would not be before the Parliament. The inclusion of penalties for non-reporting would not enhance the effectiveness of the legislation nor send the right signal to business. Business have made the commitment to act and to embark on the journey to improve their response to the risks of slavery in their supply chains.

The legislation encourages a race to the top and the legislative consultative processes have been a positive experience that has generated learning among many businesses. They have looked to government for support and guidance. That environment is one which Walk Free believe should be maintained and fostered. 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 JSFADT Report recommended a phased introduction of any move to penalties for reporting recognising the time it would take for some businesses to introduce the systems and training that would support effective reporting.

In practical terms, the passing of the legislation this year would see most businesses reporting activity across only two reporting periods prior to the conduct of the proposed three-year review. For businesses starting from a low base they will need that time to develop the capacity to make meaningful change.

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.

Walk Free understands that many in civil society believe that the inclusion of penalties for businesses that fail to report is vital to the success of the legislation. Walk Free appreciates that their concerns are informed by the experience of significant non-compliance with the UK Modern Slavery Act.

Walk Free contend that penalties should not be included at this stage. Clearly if there is evidence of substantial non-reporting at the time of the three-year review, the Parliament will have the opportunity to reassess the situation.

5. That the Parliament support a single national business reporting regime and encourages the States to support the national scheme.

Walk Free has welcomed the recent leadership of the NSW Government and Parliament in passing the NSW Modern Slavery Act. We encourage all State governments to follow that leadership and enact legislation that provides for their government entities to report and for the creation of Statutory Anti-Slavery Commissioner like positions in their jurisdictions.

However, Walk Free are opposed to the development of individual State based supply chain reporting regimes that would impose an administrative burden on businesses required to report in more than one jurisdiction. Multiple reporting systems will create confusion, undermine confidence and support for the initiative, and dilute the efforts of business in seeking to better monitor their supply chains.

Walk Free acknowledges that the NSW legislation provides for exemptions for companies reporting under another comparable regime, however there is already confusion and concern among businesses who were caught unprepared for the NSW legislation. Walk Free would welcome the opportunity to consult with the NSW Government on a constructive way forward if the Commonwealth Legislation is enacted.

We would urge all Australian jurisdictions to support one national scheme for business supply chain reporting on modern slavery.

Conclusion

Walk Free believes that the Modern Slavery Bill provides the basis for Australia to introduce world's best practice legislation to combat modern slavery. It would be a terrible missed opportunity if we failed to include an Australian Independent Anti-Slavery Statutory Office. That initiative will energise our agency and community response and substantially raise our effectiveness in combatting this evil.

The Bill is superior to the UK Modern Slavery Act in so many ways, we must not allow it to be deficient in failing to replicate a key element of that Act that has been so effective in meeting our shared objectives.

We thank the Committee for the opportunity to present our case and urge the Parliament to make this legislation something that will fully enable all sectors of Australian society to come together to help end the misery of so many of our fellow human beings.

Yours faithfully,



Andrew Forrest
Chairman
Walk Free Foundation