

ESTABLISHING AN AUSTRALIAN MODERN SLAVERY ACT AND ITS IMPACT ON AUSTRALIAN BUSINESS

22 December 2017 | Australia

Legal Briefings - By **Jacqui Wootton, Amalia Stone, Amanda Lyras and Alice Gardoll**

Australia's Joint Standing Committee on Foreign Affairs, Defence and Trade (**'Committee'**) has handed down its final report in its inquiry into establishing a Modern Slavery Act in Australia.¹

The inquiry included consideration of the Australian Government's announcement in August this year that it would adopt the Committee's in principle recommendation in the interim report to introduce a modern slavery reporting requirement.

The report recommends a range of measures, including:

- supporting the Australian Government's proposed establishment of mandatory reporting on modern slavery risks in the supply chains of companies operating in Australia, although with some modifications including lowering the reporting threshold to companies with over \$50 million annual revenue;
- restrictions on government procurement from companies who do not report; and
- a range of other mechanisms to ensure compliance with proposed reporting requirements.

The report adds to momentum within Australia to introduce a Modern Slavery Act. This update provides an overview of the report's key recommendations that will impact businesses with operations in Australia.

MANDATORY SUPPLY CHAIN REPORTING

As indicated in its interim report, which we reported on [here](#), the Committee has recommended the Australian Government enacts legislation to mandate supply chain reporting, which will include:

- mandatory reporting on modern slavery risks in the supply chains of entities operating in Australia with an annual revenue of at least \$50 million. Applicable entities include companies, organisations (such as religious bodies), Commonwealth government agencies, trusts, partnerships and superannuation funds. The \$50 million threshold is roughly consistent with the corresponding UK threshold of £36 million, but lower than the \$100 million threshold contemplated in the Government's proposed model;
- each entity to publish an annual statement due within 5 months from the end of the Australian financial year, to be authorised at the board level (or equivalent) and signed by the equivalent of a company director;
- statements that cover, at a minimum:
 - the organisation's structure; its business and supply chains;
 - its policies, due diligence and remediation processes relating to modern slavery;
 - identification of aspects of its business where there is a risk of modern slavery occurring, and the steps taken to assess and manage that risk; and
 - training around modern slavery.
- The proposed minimum content of each statement is broadly consistent with the Australian Government's proposed model, although the Committee recommendation would extend the reporting requirement to also specifically include a company's remediation processes.

PENALTIES AND COMPLIANCE MEASURES

The Committee has supported the following disclosure mechanisms to incentivise reporting:

- that each entity's statement must be published on their website, or made otherwise available;
- the establishment of a central repository of modern slavery statements; and
- the publication of a list of entities required to report, along with a list of the entities that have in fact reported.

The third recommended measure adds to the public accountability measures already contemplated in the Australian Government's proposal.

The Committee also made two further recommendations in relation to compliance measures:

- The Committee recommended that the Australian Government only procure from entities that publish a modern slavery statement. The Committee noted that the Government's annual procurement spend of \$56 billion provides a strong incentive for companies to report.
- The Committee also recommended that the Australian Government introduce monetary penalties for entities that fail to report, however has suggested that the Government determine the appropriate level of penalties. The Australian Government's proposal earlier this year for a modern slavery reporting requirement made no provision for any penalties for non-compliance.

Whether non-reporting should result in penalties is an issue that has divided international responses to modern slavery. While the UK *Modern Slavery Act* does not contemplate monetary or other penalties, the French *Duty of Vigilance Law* initially incorporated penalties of up to 10 million euros for non-reporting, before these penalties were found to be unconstitutional.² It is not clear whether the Committee's recommendation will alter the Australian Government's attitude to penalties for non-compliance.

OTHER KEY RECOMMENDATIONS

Establishment of an Anti-Slavery Commissioner: The Committee has recommended the establishment of an independent Anti-Slavery Commissioner, similar to the office established in the UK, to undertake a broad oversight, monitoring and implementation role in relation to Australia's response to modern slavery.

National labour hire licencing scheme: In response to reports of labour hire companies exploiting migrant workers, the Committee recommends the introduction of a uniform national licencing scheme consistent with the Parliamentary Joint Committee on Law Enforcement, the Joint Standing Committee on Migration and the Senate Education and Employment References Committee.

Our previous [article](#) regarding the proposed labour hire licencing schemes at a State level in Queensland, South Australia and Victoria, outlines the various jurisdictional requirements and the current stages of implementation. It is yet to be seen how the Committee's recommendation will affect the progress of the various State schemes.

Other issues raised by the Committee

The report also highlighted a number of further issues that the Committee did not resolve, but considered were critical to combatting modern slavery and should be addressed as part of a proposed three year review to be conducted by the Anti-Slavery Commissioner:

- whether to introduce other trade mechanisms to address modern slavery risks in the supply chain of goods entering Australia, similar to the US model of importation restrictions under the *Trade Facilitation and Trade Enforcement Act 2015*;
- whether tax incentives should be incorporated into the Act to encourage compliance;
- the possible introduction of a consumer mark or logo for products and services that are deemed to be "slavery-free" to raise awareness; and
- potential escalation to prescribed full or stepped due diligence reporting.

We are continuing to monitor consideration of the Committee's recommendations, and the Australian Government's proposal for a modern slavery reporting requirement.

For an analysis of how Australian businesses have been responding to Australian proposals to address modern slavery and what they can do to combat modern slavery risks, please see our previous article [here](#).

*This article was also prepared with the assistance of Nigel Amigh.

ENDNOTES

1. 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* (2017).
2. Sandra Cossart, Jerome Chaplier and Tiphaine Beu De Lomenie, “Developments in the Field, the French Law on Duty of Care: A Historic Step Towards Making Globalization Work for All”, *Business and Human Rights Journal*, 2 (2017) 317.

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



**JACQUELINE
WOOTTON**
PARTNER, BRISBANE

+61 7 3258 6569 / +61 3 9288
1022
jacqueline.wootton@hsf.com



AMALIA STONE
SPECIAL COUNSEL,
SYDNEY

+61 2 9225 5522
Amalia.Stone@hsf.com

LEGAL NOTICE

The contents of this publication are for reference purposes only and may not be current as at the date of accessing this publication. They do not constitute legal advice and should not be relied upon as such. Specific legal advice about your specific circumstances should always be sought separately before taking any action based on this publication.

SUBSCRIBE TO STAY UP-TO-DATE WITH LATEST THINKING, BLOGS, EVENTS, AND MORE

Close