

Ai GROUP SUBMISSION

The Senate
Legal and Constitutional
Affairs Committee

Modern Slavery Bill 2018 (Cth)

20 July 2018

Ai
GROUP

About Australian Industry Group

The Australian Industry Group (Ai Group) is a peak industry association in Australia which along with its affiliates represents the interests of more than 60,000 businesses in an expanding range of sectors including: manufacturing, engineering, construction, automotive, food, transport, information technology, telecommunications, call centres, labour hire, printing, defence, mining equipment and supplies, airlines, health, community services and other industries. The businesses which we represent employ more than one million people. Ai Group members operate small, medium and large businesses across a range of industries. Ai Group is closely affiliated with many other employer groups and directly manages a number of those organisations.

Ai Group contact for this submission

Stephen Smith, Head of National Workplace Relations Policy

Telephone: 02 9466 5521

Email: stephen.smith@aigroup.com.au

INTRODUCTION

Ai Group welcomes the opportunity to provide a submission to the Senate’s Legal and Constitutional Affairs Committee as part of its inquiry into the Federal Government’s *Modern Slavery Bill 2018 (the Bill)*.

Crimes of modern slavery have no place in society and should be eradicated. Ai Group supports effective and targeted measures to eradicate modern slavery crimes in the community. Any measures imposed on business to combat modern slavery should be realistic, workable and sustainable.

Many large businesses already have policies, contract management systems and risk controls that reduce instances and risks of criminal conduct in their operations. Indeed, the force of the criminal law, in addition to commercial and reputational damage, are effective incentives to eliminate criminal conduct from supply chains.

On 6 November 2017 Ai Group made an earlier [submission](#) in response to the Federal Government’s proposed [Modern Slavery in Supply Chains Reporting Requirement Consultation Paper](#). That submission established our broad support for industry to play its role in eradicating modern slavery and that a reporting regime on business aligned with the United Kingdom model should only be considered if the Government’s Option 2 for reform through non-regulatory action proved ineffective. The submission also raised specific concerns about the operation of a reporting requirement. We note that a number of our concerns have been addressed in the Bill.

We set out below our position on certain aspects of the Bill.

THE REPORTING REQUIREMENT MUST NOT BE PUNITIVE

Ai Group welcomes the Bill’s approach in adopting the UK model of a non-punitive reporting regime.

The reporting requirement will have varying impacts on different industries and different businesses, regardless of size. Industries such as manufacturing and construction are highly fragmented with significant integration into global supply chains across multiple business units and products. It is important that businesses operating in these industries are not disproportionately penalised by the Bill.

Ai Group is also supportive of the reporting entity threshold of consolidated revenue of \$100 million and considers this an appropriate threshold for the reporting requirement to apply to larger businesses who have greater capacity and resources than smaller organisations to invest in the identification and elimination of modern slavery risks.

SUPPLEMENTING INFORMATION IS CRITICAL

Ai Group welcomes the introduction of supporting guidelines and information about eliminating modern slavery risks in organisations and supply chains. The elimination of modern slavery is best served by practical support to industry about the steps it can take relevant to its particular business and supply chain.

Ai Group would provide constructive feedback about the supplementary information that the Government intends to develop.

OVERLAP WITH MODERN SLAVERY ACT NSW ADDS UNNECESSARY DUPLICATION

The recent passage of the *Modern Slavery Act 2018 (MSA NSW)* by the New South Wales Parliament obligates businesses which have an annual turnover of \$50 million in a financial year to submit an annual modern slavery statement. The content of the annual modern slavery statement is to be prescribed by regulations, which may include information about:

- (a) the organisation's structure, its business and its supply chains;
- (b) its due diligence processes in relation to modern slavery in its business and supply chains;
- (c) the parts of its business and supply chains where there is a risk of modern slavery taking place, and the steps it has taken to assess and manage that risk; and
- (d) the training about modern slavery available to its employees.

A maximum financial penalty of \$1.1 million may be imposed on an organisation which fails to provide a modern slavery statement.

No regulations for the MSA NSW have yet been made. Further, the MSA NSW has not yet been proclaimed and the commencement date is currently unknown.

Section 24 of the MSA NSW states that the obligation to provide an annual modern slavery statement does not apply to an organisation if it is also subject to a corresponding law. It remains unclear however, whether a corresponding law explicitly includes the Federal legislation.

The unnecessary duplication of reporting requirements on business must be avoided. Duplication of regulation creates unnecessary administrative and compliance costs that may otherwise be more usefully invested in supply chain verification initiatives. Moreover, overlapping reporting requirements may create confusion over precise obligations and uncertainty about the enforceability of the respective reporting regimes.

It is therefore essential that the Federal Bill be amended to explicitly exclude the operation of the MSA NSW for businesses that participate in the reporting requirements under the Bill, including those who elect to opt-in under section 6.

We note that ss.26-28 of the *Fair Work Act 2009 (Cth)* contain a similar approach in respect of certain state-based industrial laws that are declared to have no effect in their entirety or in a particular respect.

Absent such an amendment, legal uncertainty will arise for businesses covered by the Bill.

We also consider it important that any incentive for businesses to opt-in to the reporting requirement under the Federal Bill not be eroded by overlapping reporting regimes.

INDUSTRY NEEDS TIME TO PREPARE FOR IMPLEMENTATION

Should the Bill proceed, it is essential that businesses be given adequate time to adjust and prepare for the new reporting laws.

Ai Group proposes that industry be given at least 12 months from the date when the legislation comes into operation before any obligations under the legislation apply.

As referred to above, industries such as manufacturing and construction are highly fragmented with significant integration into global supply chains. It is essential that businesses in these industries have sufficient time to prepare for the new reporting obligations.

If the Government wishes to instil business and public confidence in its proposed reporting scheme, the implementation arrangements need to be fair and workable.



AUSTRALIAN INDUSTRY GROUP METROPOLITAN OFFICES

SYDNEY 51 Walker Street, North Sydney NSW 2060, PO Box 289, North Sydney NSW 2059

CANBERRA Ground Floor, 42 Macquarie St, Barton ACT 2600, PO Box 4986, Kingston ACT 2604

MELBOURNE Level 2, 441 St Kilda Road, Melbourne VIC 3004, PO Box 7622, Melbourne VIC 8004

BRISBANE 202 Boundary Street, Spring Hill QLD 4004, PO Box 128, Spring Hill QLD 4004

ADELAIDE Level 1, 45 Greenhill Road, Wayville SA 5034

PERTH Suite 1, Level 4, South Shore Centre, 85 South Perth Esplanade, South Perth WA 6151

REGIONAL OFFICES

ALBURY/WODONGA 560 David Street Albury NSW 2640

BALLARAT Suite 8, 106-110 Lydiard St South, Ballarat VIC 3350, PO Box 640, Ballarat VIC 3350

BENDIGO 87 Wills Street, Bendigo VIC 3550

NEWCASTLE Suite 1 "Nautilus", 265 Wharf Road, Newcastle 2300, PO Box 811, Newcastle NSW 2300

WOLLONGONG Level 1, 166 Keira Street, Wollongong NSW 2500, PO Box 891, Wollongong East NSW 2520

www.aigroup.com.au