



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: HRC/DHvk:1562434

13 July 2018

Mr Jonathan Smithers
Chief Executive Officer
Law Council of Australia
DX 5719 Canberra

By email: natasha.molt@lawcouncil.asn.au

Dear Mr Smithers,

Modern Slavery Bill 2018 (Cth)

Thank you for your memo dated 29 June 2018 seeking the contribution of the Law Society of NSW in respect of a Law Council submission on the Modern Slavery Bill 2018 (Cth) (the "Bill"). The Law Society's response is informed by its Human Rights Committee.

While the Law Society welcomes the introduction of the Bill, notable is the absence of a number of features that would have assisted with creating a culture of compliance and 'race to the top' as envisaged in Assistant Minister Hawke's second reading speech.

The Law Society is disappointed to note that the threshold for reporting set by the Bill is \$100M, which is higher than the level both the Law Council and the Law Society has recommended.

The Law Society is also disappointed to note that the Bill does not include financial penalties for non-compliance. In the Law Society's view, this aspect of the proposed model undermines the reporting scheme, and is inconsistent with the Government's aim to regulate the conduct of business in order to achieve the aim of addressing modern slavery in supply chains.

The Law Society suggests that the Law Council advocate for financial penalties to be introduced after a three year review period, if poor reporting standards warrant it.

The Law Society continues to support the inclusion of the following features (in order of significance), in the legislation, as well as part of the infrastructure for compliance:

1. A public list of reporting entities. Assistant Minister Hawke's second reading speech suggests that the Bill will create transparency where "Businesses that fail to take action will be penalised by the market and consumers and severely tarnish their reputations." A public list of the entities required to report under the legislation would be the first step in creating such transparency.
2. Public procurement incentives for compliance. As noted in our previous submissions to the Law Council, an effective driver for compliance would be to include the requirement

for reporting entities to comply with the legislation in order to be eligible for public tenders.

3. Robust repository of modern slavery statements. Such a repository should be easily searchable, well maintained and current. As noted in our previous submissions, it should provide information on the entities that are required to comply with the reporting requirement, and the status of their compliance.

As the legislation does not include penalties for non-compliance, the burden of driving compliance will fall largely on civil society and investors carrying out the necessary scrutiny. The role of the repository will be particularly crucial in this regard. We understand that this has been the experience of the UK scheme. It may be that governments will be comfortable commenting on strict compliance issues (that is, has an entity that is required to report, made such a report?). However, governments may not wish to publicly scrutinise the content of reports, or highlight weak reporting as this will be perceived to be critical of business. In our view, it is unlikely that governments will comment on the content and quality of the reports (that is, are the reports sufficiently detailed? Do they comply with the spirit of the legislative requirements?).

In the Law Society's view, only sufficiently detailed information will create impetus for change in corporate approaches to human rights, and this is an issue that goes to the impact of the legislation. The Law Society understands that in the UK, third parties already operate a register of statements, and also conduct an analysis on compliance and content of the reports.

4. Quality guidance required. Business will require clear guidance on what constitutes substantive compliance. Such guidance should be clear and comprehensive, and we submit that the Government should consult widely on the draft guidance material. We understand that the guidance provided under the UK scheme was relatively poor, and this may have affected the effectiveness of the reporting requirement
5. Public awareness campaign. The Government should carry out a public awareness campaign targeted at both business and consumers, which should include measurable outcomes and rolling evaluations of the effectiveness of the campaign.

Thank you for the opportunity to provide comments. Questions may be directed to Vicky Kuek, Principal Policy Lawyer, at (02) 9926 0354 or victoria.kuek@lawsociety.com.au.

Yours sincerely,



Doug Humphreys OAM
President