



Australian
Retailers
Association

Committee Secretary
Senate Legal and Constitutional Affairs Committee
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ARA Response to *Modern Slavery Bill 2018* **July 2018**

About the ARA:


The Australian Retailers Association (ARA) is the retail industry's peak representative body representing Australia's \$310 billion sector, which employs more than 1.2 million people. The ARA works to ensure retail success by informing, protecting, advocating, educating and saving money for its 7,500 independent and national retail members covering over 50,000 shopfronts. The ARA ensures the long-term viability and position of the retail sector as a leading contributor to the Australian economy.

Members of the ARA include Australia's most trusted retailers, from the country's largest department stores and supermarkets to specialty retail, electronics, food and convenience chains to mum-and-dad operators.

Executive Summary:

Over the last decade, the retail and consumer products industry in Australia has become increasingly exposed to global influences. Many international brands have now established operations in Australia, while many local retailers have built on their success at-home by establishing operations overseas. Whilst this has provided both benefits and challenges to the industry, it has also highlighted the risk of modern slavery for retail, especially in the apparel, footwear and textile products space.

As a customer facing industry, retail is uniquely positioned to respond to the risks and challenges posed by the increased prevalence and awareness of modern slavery. As a result, many of Australia's leading retail brands have implemented, or are expanding, ethical sourcing, sustainability, and corporate social responsibility programs. This extends to ethical sourcing guidelines and statements, sustainability



reports, risk assessments, supplier codes of practice, and public commitments to achieve these standards.

The ARA has submitted to previous inquiries related to modern slavery, including the Committee on Foreign Affairs, Defence and Trade *Inquiry into Establishing a Modern Slavery Act in Australia* ([available here](#)), and the Attorney General's Department *Consultation on the Modern Slavery in Supply Chains Reporting Requirement* ([available here](#)). For our members and businesses in all industries, it is important to ensure that existing work to employ ethical sourcing practices is considered. It is also necessary, for any regulations to be reasonable, flexible and light-touch.


While the ARA is in broad agreement with the intentions and substance of the *Modern Slavery Bill 2018 (Bill)*, we are seeking clarification on several points and associated issues which have not been addressed. In our previous submissions on this matter, the ARA has noted its position on a proposed Anti-Slavery Commissioner, as well as the flagged introduction of penalties for non-reporting, and potential capture of non-reporting entities as suppliers or concessions for larger retail businesses. This submission seeks further clarification on these issues.


1: Background:

In late-2017, the ARA pulled together major retailers in multiple consultations and briefings related to modern slavery. Our members were supportive of the introduction of a *Modern Slavery Act* and a reporting requirement as this was something many were already doing to assure customers of integrity in their supply chains. The ARA has also submitted to previous consultations related to modern slavery, as well as representing the views of our members by engaging in regular dialogue with the Department of Home Affairs.

The ARA's previous submissions on modern slavery have focused on the importance of ensuring that any reporting requirement under a *Modern Slavery Act* is flexible, broad in scope, follows market-based principles, and is light-touch. Our members see this as the correct approach in order to ensure that the complexities associated with reporting are minimised and easily achievable.

Businesses should be encouraged and rewarded for their transparency and willingness to articulate their efforts in this space. *The Bill* largely follows these





principles and will provide for a mechanism whereby businesses can report on their best efforts to address incidences of modern slavery in their supply chains.

2: Definitions:

The *Bill* defines modern slavery as the following:

- Slavery and slavery-like offences and human trafficking (as per divisions 270 and 271 of the Commonwealth Criminal Code).
- Human trafficking (as per the Palermo Protocol).
- The worst forms of child labour (as per the International Labour Organisation Convention No.182).

The ARA agrees with these definitions to the extent that guidance will be required for retailers and other businesses to identify such instances where they may occur. Many businesses may not have sufficient expertise or required resources to properly understand the full extent of slavery-like offences articulated in the treaties. With adequate direction, the definitions of modern slavery within the *Bill* provide a sufficient balance between legal and ethical obligations and should be achievable for most businesses.

3: Modern Slavery Reporting:


ARA members recognise their role in providing up-to-date, transparent information to their customers, shareholders, the public and Government, in assessing and addressing legal and ethical obligations. The *Bill* provides for a mechanism whereby Australia's leading businesses can fulfil their obligations by providing an annual Modern Slavery Statement.

In our previous submissions, the ARA has supported a reporting requirement under any modern slavery legislation, provided that: the requirement applies only to Australia's largest businesses; the reporting requirement is not overly prescriptive, and; reporting obligations are flexible.

The ARA is supportive of the measures in this *Bill* which establish and outline the reporting requirement in the following ways:

3.1: Reporting Threshold:





Consistent with our previous submissions on this matter, the ARA is supportive of the reporting threshold, suggested in *the Bill* as \$100 million AUD in annual turnover. This will ensure that the retailers with the greatest capacity to influence change are subject to the reporting requirement, while ensuring that SME retailers, who may not possess the expertise or capacity to comply with the reporting requirement, are not unfairly captured by the legislation.

We suggest that the threshold should be monitored and adjusted to account for future inflation if the need arises, to prevent any unnecessary regulatory capture of SMEs. In this vein, the ARA and our members will not support any potential attempts to lower the reporting threshold in the future.


3.2: Modern Slavery Statements:


The *Bill* outlines the proposed requirements for modern slavery reporting in Part 2, Section 16, including that statements must:

- (a) Identify the reporting entity; and
- (b) Describe the structure, operations and supply chains of the reporting entity; and
- (c) Describe the risks of modern slavery practices in the operations and supply chains of the reporting entity, and any entities that the reporting entity owns or controls; and
- (d) Describe actions taken to assess and address any risks of modern slavery practices, including due diligence and remediation processes; and
- (e) Describe how the reporting entity assesses the effectiveness of such actions; and
- (g) include any other information that the reporting entity, or the entity giving the statement, considers relevant.

The *Bill* also requires modern slavery statements to be signed off by a board of directors or equivalent.

The ARA broadly agrees with these requirements and the nature of modern slavery reporting which will be required of businesses. The reporting requirements contain sufficient guidance, yet retain the flexibility required for businesses to report the necessary actions that they have taken to address investigate and address instances of their supply chain operations, when and where they occur. The proposed conditions also allow for retailers and other businesses to include actions already undertaken, including ethical sourcing programs, risk assessments and supplier codes of practice, as part of their reporting.





On behalf of our members, we seek clarification on whether these conditions allow for businesses to focus their reporting on identified risk areas in their supply chains, or whether the entire supply chain operations of an organisation must be taken into consideration when preparing a Modern Slavery Statement.

Should the *Bill* pass and receive assent, many businesses may not be in a position to meaningfully address all of the criteria within the first years of its operation. The ARA believes that businesses will require time to adapt, especially where a reporting entity has only recently begun investigating its supply chains for modern slavery incidences. We propose that the initial 3 years of operation, leading into the first 3-yearly review period, act as a transitional period for businesses to fully adjust to the new reporting requirements.

3.3: Access to Modern Slavery Statements:

The *Bill* contains a provision where Modern Slavery Statements will be posted to a publicly accessible website, or 'central repository.' The ARA has supported this measure in principle in our previous submissions, with the view that businesses should be publicly acknowledged for their actions in reporting on and addressing instances of modern slavery.

We are also supportive of The Minister's role in maintaining the central repository, as outlined in the *Bill*. This will ensure that businesses are not unfairly targeted based on the contents of their Statements.


The ARA does not support the proposal for an NGO to administer the central repository as outlined prior to the drafting of this *Bill*¹.


3.4: Potential SME capture:

In our previous submissions, the ARA has outlined the potential for SMEs to be inadvertently captured by the reporting requirement.

Businesses with turnover under the proposed threshold, would not normally be required to report under the provisions detailed in the *Bill*. However, risks exist for SMEs who fall within the supply chain for larger businesses, or operate under concessional agreements, such as within major department stores. Reseller

¹ Joint Standing Committee on Foreign Affairs, Defence and Trade, Parliament of Australia, *Inquiry into Establishing a Modern Slavery Act in Australia*, (2017).





businesses and small marketplace operators may also be subject to regulatory capture in these instances.

4: 3-yearly review period:

The ARA is supportive of provisions in the *Bill* which articulate a review after the initial 3 years of operation. There is potential for the review period to be extended to 4 years after the initial review.

5: Associated Issues:

In its final report, the Committee on Foreign Affairs, Defence and Trade *Inquiry into Establishing a Modern Slavery Act in Australia (Inquiry)*, made a number of recommendations for a potential *Modern Slavery Act* in its final report. Some of these matters which have not been included in the drafting of this *Bill* warrant consideration in this submission.

5.1: Anti-Slavery Commissioner:

The appointment of a specific Anti-Slavery Commissioner was a further recommendation of the *Inquiry*². The ARA indicated in our initial modern slavery submission that the creation of such a position would be premature at this stage. In that submission, we proposed that this may warrant further investigation during the initial 3-yearly review. The ARA continues to maintain this view, and we seek clarification on the proposal to appoint an Anti-Slavery Commissioner.


5.2: Penalties:

The *Inquiry* outlined the potential for penalties or formal sanctions to be included within any future *Modern Slavery Act* as a disincentive for non-compliance³. Whilst this *Bill* does not provide for sanctions (other than refusal to post statements to the repository), the ARA is aware that some remain of the view that penalties should form part of any legislated provisions to tackle modern slavery.

² Joint Standing Committee on Foreign Affairs, Defence and Trade, Parliament of Australia, *Inquiry into Establishing a Modern Slavery Act in Australia, 'Hidden in Plain Sight (Final Report)'* (2017).

³ *Ibid.*





We do not support the inclusion of formal sanctions or penalties in the *Bill* at this point, or in the future. The ARA believes that in a free-market society, competition, public exposure and potential reputational damage act as sufficient incentives for businesses to be compliant with the provisions of this *Bill*. This is reinforced by the provision for a publicly searchable repository of public statements.

Conclusion:

The ARA and our members are broadly supportive of the provisions outlined in the *Modern Slavery Bill 2018*. While further clarification is needed on some of the aspects not-addressed in this *Bill*, we believe it will act as a means to encourage a transparent business culture and to combat instances of modern slavery where they occur.

The production of Modern Slavery Statements will better-inform customers, investors and the public in easily identifying retailers who adopt stringent ethical sourcing and business practices.

We are grateful for the opportunity to respond to the *Modern Slavery Bill 2018*. We would be pleased to discuss our submission further, at your earliest convenience.

Please contact ARA Executive Director, Russell Zimmerman at russell.zimmerman@retail.org.au or ARA Director of Policy, Government and Corporate Relations, Heath Michael at heath.michael@retail.org.au for further comment.

Kind regards,



Russell Zimmerman
Executive Director
Australian Retailers Association



A handwritten signature in black ink, appearing to read 'Heath Michael', with a stylized flourish at the end.

Heath Michael
Director of Policy, Government & Corporate Relations
Australian Retailers Association