Public Health Association of Australia submission on Modern Slavery Bill 2018

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Preamble

The Public Health Association of Australia

The Public Health Association of Australia (PHAA) is recognised as the principal non-government organisation for public health in Australia working to promote the health and well-being of all Australians. It is the pre-eminent voice for the public’s health in Australia.

The PHAA works to ensure that the public’s health is improved through sustained and determined efforts of the Board, the National Office, the State and Territory Branches, the Special Interest Groups and members.

The efforts of the PHAA are enhanced by our vision for a healthy Australia and by engaging with like-minded stakeholders in order to build coalitions of interest that influence public opinion, the media, political parties and governments.

Health is a human right, a vital resource for everyday life, and key factor in sustainability. Health equity and inequity do not exist in isolation from the conditions that underpin people’s health. The health status of all people is impacted by the social, cultural, political, environmental and economic determinants of health. Specific focus on these determinants is necessary to reduce the unfair and unjust effects of conditions of living that cause poor health and disease. These determinants underpin the strategic direction of the Association.

All members of the Association are committed to better health outcomes based on these principles.

Vision for a healthy population

A healthy region, a healthy nation, healthy people: living in an equitable society underpinned by a well-functioning ecosystem and a healthy environment, improving and promoting health for all.

The reduction of social and health inequities should be an over-arching goal of national policy and recognised as a key measure of our progress as a society. All public health activities and related government policy should be directed towards reducing social and health inequity nationally and, where possible, internationally.

Mission for the Public Health Association of Australia

As the leading national peak body for public health representation and advocacy, to drive better health outcomes through increased knowledge, better access and equity, evidence informed policy and effective population-based practice in public health.
The Bill

The Modern Slavery Bill 2018 aims to assist the business community in Australia to take proactive and effective actions to address modern slavery. To achieve this, the Bill will establish a Modern Slavery Reporting Requirement, for annual public reports from large businesses and other entities in Australia, on their actions to address modern slavery risks in their operations and supply chains. This is intended to help mitigate the risk of modern slavery practices occurring in the supply chains of goods and services in the Australian market, through targeting large companies and other entities with extensive, complex and/or global supply chains, who may be at increased risk of exposure to modern slavery.

Annual Modern Slavery Statements will be provided to the responsible Minister and published in an online central register, freely available to the public. Any Australian entity and foreign entities carrying on business in Australia will be required to submit Statements for every 12 month period that they have annual revenue of at least AUD$100 million. The Australian Government will also be required to publish an annual Statement. Entities falling outside the scope of the Bill may voluntarily provide Statements.

The Statements will be due within 6 months of the relevant financial year and be required to cover mandatory criteria including:

- The entity’s structure, operations and supply chains;
- The potential modern slavery risks in the entity’s operations and supply chains;
- Actions the entity has taken to assess and address those risks, including due diligence and remediation processes; and
- How the entity assesses the effectiveness of those actions

In the absence of an agreed international definition for modern slavery, for the purposes of the Statements, it has been defined broadly to include all forms of trafficking in persons, slavery and slavery-like practices, and the ‘worst forms of child labour’. The ‘worst forms of child labour’ are defined according to Article 3 of the International Labour Organization Convention No 182 concerning the Prohibition and Immediate Action for the Elimination of the Worse Forms of Child Labour:

a) All forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
b) The use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
c) The use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
d) Work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

Detailed explanatory information about the definition of modern slavery, including case studies, will be provided by the Australian Government in formal administrative guidance.

The provisions allow for the occurrence of modern slavery to be in Australia or overseas.

The Bill also provides for a review of the legislation 3 years after commencement.
PHAA welcomes the opportunity to provide input to the Modern Slavery Bill 2018, and commends the government on its introduction.

PHAA believes that slavery in all its forms – including the quasi-slavery that takes place within ordinary society where persons are subject to extreme economic control – is entirely unacceptable, whether in this country or elsewhere in the world.

As noted in the Minister’s Second Reading speech for the Bill, the government estimates 4,000 people in Australia are living in some form of slavery-like conditions. The Global Slavery Index survey (2017) puts the figure for Australia at 4,300.

The Bill clearly draws from the recently adopted UK Modern Slavery Act, which saw the creation of an Anti-Slavery Commissioner for that country. There were also reporting requirement placed on large businesses. The Present Australian Bill has not created a commissioner agency, but has proposed reporting requirements similar to those in the UK.

The reporting requirements created by the Bill will place reasonable, measured burdens on large businesses to inquire, audit and report on their supply chains to determine, to the extent possible, whether those chains are free of any slavery-affected production in Australia or other countries, and what actions the businesses are taking to ensure this.

Importantly, the Australia government will also examine its own global and national procurement processes, complementing the requirements placed on importers of goods and services.

The legislation will play an important role in empowering consumers to direct their purchasing towards retailers and manufacturers which take appropriate steps to help eliminate all forms of slavery, and away from those which do not. Similarly, it will empower investors to discriminate knowledgeably as to where they bestow their businesses investments. Finally, it will encourage simple awareness in the community of the ongoing existence of this problem.

There should be some caution about the expectations of the proposed reporting regime. It is questionable whether the legislation could trigger a ‘race to the top’ driven by business reputational concerns alone. A retailer whose products are tainted by modern slavery may well be punished in the marketplace through decreases in sales. However, it is ambiguous if a ‘clear’ statement would create sufficient market advantage as to be an incentive for businesses to comply with the requirements of the Bill. Nonetheless, the Bill is a reasonable starting point.

The Bill sets a business size threshold of AUD$100 million revenue for the application of the reporting requirements. In the future, consideration should be given to expanding the coverage of the obligations to businesses of smaller size. To this end, in administering the law every effort should be made to ensure that the auditing and reporting systems are as efficient and low-cost as is possible while achieving their goals. The clause allowing smaller entities to voluntarily provide Statements is sensible and should ease a future lowering of the threshold.

It is highly desirable that the impact of this proposed law be made measureable. PHAA recommends that the Government establish baselines about the prevalence of slavery-related domestic products and imports prior to the law taking effect, and commits to regularly repeated measurements. This monitoring measure may enable an assessment of the extent to which this law impacts on slavery-related products being sold in Australia. Any monitoring system should be co-developed by the Government and civil society organisations.
The Bill appears to focus on supply chains, but not to directly address the actual occurrence of slavery or quasi-slavery in Australia, for example, through under-payment of migrant workers in Australia. Small businesses whose products and services do not form part of the supply chain of large businesses and entities will escape the scrutiny provided by the Annual Modern Slavery Statements.

To compliment this Bill, PHAA urges the government to take every possible effort to eliminate any slavery-like practices from occurring in Australia, whatever their economic or social nature.

Ongoing measures

In addition, PHAA highlights the advice of the International Federation of Red Cross and Red Crescent Societies, which recently (2018) called for the following ongoing approaches to be taken by their national society members:

- “Develop a basic understanding of human trafficking referral mechanisms in their country, as well as the positive and negative impacts of trafficked people being referred to various State or civil society bodies, and the primacy of the informed consent of the person who has been trafficked. ....
- Play a role in raising awareness of the risks of trafficking, in providing assistance and protection to victims of trafficking, and in promoting improved identification and protection initiatives, as well as promoting the benefits of and pathways for ‘safe migration’. ....
- Consider providing targeted and relevant ‘safe migration’ messaging to those considering onward secondary movements.
- In the context of disaster and crisis response and recovery, offer protection and assistance through provision of essential services (such as health, psychosocial, and livelihood support), with attention given to gender, diversity, and child protection concerns, which may be effective in terms of trafficking prevention.
- Recognise the role that livelihoods support can play in preventing distressed migration and trafficking, and prioritise livelihoods projects for those most at risk, in crises and in countries of origin for labour migration.” 1

While these matters are outside the scope of the current Bill, the Bills aims would certainly be enhanced by the Government acting to assist our national Red Cross Society on each of these points, or indeed to undertake some of these activities itself.
Conclusion

PHAA supports the broad directions of the proposed Modern Slavery Bill 2018. We are particularly keen that the following points are highlighted:

- This Bill provides an important first step in addressing modern slavery
- Over time, the threshold for reporting should be reduced to include smaller businesses, and to provide for voluntary participation by any business
- The Bill should be accompanied by further action address the occurrence of slavery within Australia, either by the Government itself or through assistance to relevant NGOs.

The PHAA appreciates the opportunity to make this submission and the opportunity to contribute to the elimination of modern slavery.

Please do not hesitate to contact us should you require additional information or have any queries in relation to this submission.

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20 July 2018

References

1 International Federation of Red Cross and Red Crescent Societies; Addressing the humanitarian consequences of labour migration and trafficking: The role of Asia Pacific National Societies, 2018 - www.ifrc.org