

Top End Women's Legal Service Inc. and NT Working Women's Centre's submission to the inquiry into the Modern Slavery Bill 2018 (Cth)



**TOP END WOMEN'S
LEGAL SERVICE INC.**

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NT Working Women's Centre

20 July 2018

Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600

By email to legcon.sen@aph.gov.au

Dear Madam or Sir,

Submission to the inquiry into the Modern Slavery Bill 2018 (Cth)

The Top End Women's Legal Service Inc. ("TEWLS") and Northern Territory Working Women's Centre Inc. ("NTWWC") welcome the opportunity to make a submission to the Senate Legal and Constitutional Affairs Committee's inquiry into the Modern Slavery Bill 2018 ("the Bill").

About TEWLS

TEWLS is a community legal centre focused on the advancement of women's rights. Founded in 1996, we are funded by the Commonwealth Departments of the Attorney General and Prime Minister and Cabinet. TEWLS provides high quality, responsive, and culturally appropriate legal advice, casework, community legal education, and advocacy in civil law areas to women living in the Greater Darwin region.

TEWLS provides advice and assistance in a number of areas of law, including family law, domestic and family violence, housing and tenancy, consumer law, debts, fines and welfare rights, sexual assault, discrimination, compensation for victims of crime, and complaints about government and other services. We provide outreach services for Aboriginal and Torres Strait Islander women in the town communities surrounding Darwin, women incarcerated in the Darwin Correctional Precinct, women being treated at the Royal Darwin Hospital, and culturally and linguistically diverse women within the Greater Darwin region.

About NTWWC

The NTWWC is a community based, not for profit organisation that provides free and confidential advice and support services on work-related matters to women employees across the NT. The NTWWC is funded by the Fair Work Ombudsman and the NT government, has provided services since 1994, and is located in Darwin and Alice Springs.

The NTWWC works primarily with women who are not represented by a union, lawyer or other advocate. Women who contact our Centre are often economically disadvantaged and work in precarious areas of employment. Many women who contact our service experience domestic or family violence.

Our submission

A Support for the Bill

TEWLS and NTWWC commend and support the Australian Government on its initiative to develop modern slavery legislation in Australia. We welcome the introduction of modern slavery identification and reporting requirements for large Australian businesses, noting that the Bill:

- has wide extra-territorial scope in order to capture modern slavery risks in global supply chains;
- applies to a large range of entities, including those carrying on business in Australia; and
- mandates a publicly available modern slavery statement register.

Our submission is based on our experience assisting women in the (“NT”), including Aboriginal and Torres Strait Islander women, and women from culturally and linguistically diverse backgrounds, where recent client stories from both services touch on the vulnerabilities and exclusions that are foundational to modern slavery.

Min-seo’s story

Min-seo* commenced residence in Australia with work on an isolated property picking and packing agricultural produce. The wages received were meagre, where she contributed personal and family assets to the enterprise. Unfamiliar with spoken or written English, and without an interpreter, Min-seo signed legal documents, as requested by the business owner. Min-seo attended TEWLS for legal advice and assistance regarding debts incurred as a consequence of signing the legal documents, and for advice regarding bankruptcy.

*not her real name

Ximena’s story

Ximena* was savaged by animals, whilst working on a remote property, causing significant scarring and potential impairment. The employment had been organised interstate, by a business, who paid for Ximena to travel to the Northern Territory. She declined to provide instructions regarding her employment arrangements, including the terms and conditions, in the absence of a valid work visa. Ximena attended for legal advice regarding debts incurred for the required medical treatment.

*not her real name

Dalisay’s story

Dalisay* married her Australian husband in her country of origin in South East Asia before travelling to the NT to commence a new life. She was promised that she would share the business that belonged to her husband and work together there. When she came to Australia, Dalisay found herself in a physically and sexually abusive relationship, working in excess of 12 hours per day, five (5) to seven (7) days per week. Due to the nature of the domestic violence, she was unable to leave the relationship or work for several years. Dalisay received no wages or any form of financial compensation for her many years of work.

*not her real name

Ying Yu's story

Ying Yu* was brought to the NT on a skilled worker visa to work for a large company. Upon her arrival, Ying Yu learned that she had incurred a debt of thousands of dollars to her employer for costs associated with her visa and housing. Despite Ying Yu being on a skilled worker visa, her wages were low. The debt was illegally deducted from her wages leaving her with insufficient funds to cover her basic needs. Ying Yu was threatened with deportation if she complained about wages or any other issues associated with her employment.

*not her real name

B Comments to the Bill

TEWLS and NTWWC wish to make particular comments to the Bill, as follows:

1 Absence of penalties for non-compliance

TEWLS and NTWWC are concerned with the absence of penalties for non-compliance with the Bill and encourages the Australian Government to reconsider its position on penalties for non-compliance.

Offences for non-compliance can be modelled off the recently assented Modern Slavery Bill 2018 (NSW). The NSW legislation introduces penalties for non-compliance to entities that,

- a) fail to prepare or publish a modern slavery statement; or
- b) provide false or misleading information.¹

The introduction of penalties into the NSW regime recognises and attempts to overcome one of the major deficiencies identified in the UK modern slavery legislation by civil society organisations.²

The UK modern slavery regime does not include penalties for non-compliance with mandatory reporting requirements. In the absence of penalties, only a handful of entities are taking robust action to combat modern slavery in their supply chains. It has been reported that entities subject to the UK scheme have shown “lacklustre” responsiveness to the mandatory reporting requirements, with many opting-out of the requirements or failing to adequately investigate and report on modern slavery risks.³

TEWLS and NTWWC advocate for the Bill to be amended to include penalties for non-compliance with the investigation and reporting requirements, and for providing false or misleading information in modern slavery statements. It is anticipated that penalties will go a long way to achieving the Bill's objective of assisting the Australian business community to take proactive and effective

¹ Modern Slavery Bill 2018 (NSW) s 24.

² Naomi Woodley, 'Parliament urged to introduce strong penalties to crack down on modern slavery' *ABC News* (online) 2 August 2017 <<http://www.abc.net.au/radio/programs/pm/parliament-urged-to-introduce-strong-penalties-to/8768422>>.

³ Business & Human Rights Centre, 'First Year of FTSE 100 Reports Under the UK Modern Slavery Act: Towards Elimination?' (1 December 2017) <<https://www.business-humanrights.org/en/first-year-of-ftse-100-reports-under-the-uk-modern-slavery-act-towards-elimination>>.

actions to address modern slavery.⁴ Additionally, these amendments would bring the Bill in line with NSW legislation and provide consistency for entities conducting business within Australia.

II Annual turnover threshold

While TEWLS and NTWWC appreciate the Bill's application to a wide variety of entities in Australia and carrying on business in Australia, we are concerned that entities must have AU\$100m annual turnover before being required to report on modern slavery risks in their supply chains. We recommend the AU\$100 million annual turnover threshold be lowered to be consistent with domestic and international reporting requirements.

Further, we are of the view that the AU\$100 million annual reporting requirement threshold is significantly higher than that prescribed in the Modern Slavery Bill 2018 (NSW). The NSW Bill introduces reporting requirement to entities with annual turnover of AU\$50 million or more. The AU\$100 million threshold is also well above that of the UK modern slavery regime which applies to entities with turnover of £36 million (approximately AU\$60 million).⁵ Adopting a lower annual threshold would not only be consistent with domestic and international frameworks, it would also allow businesses to streamline their investigations and reporting practices on their global supply chains. In addition, a lower threshold will mean that more entities will be required to investigate and report on modern slavery risks. This has the ability to increase awareness on modern slavery and help identify and deal with modern slavery and slavery like practices in a variety of industries.

It is important and appropriate that the Australian threshold provide broad coverage and apply to more than a handful of multinationals. The annual turnover threshold requirement should be lowered to ensure consistency with domestic and international modern slavery frameworks.

III Independent Commissioner

TEWLS and NTWWC strongly encourage the Australian Government to establish an Independent Anti-Slavery Commissioner as part of the federal modern slavery regime. We support the views and recommendations of the Joint Standing Committee on Foreign Affairs, Defence and Trade in their 2017 report, *Hidden in Plain Sight*, for an Independent Commissioner.⁶

IV Compensation Scheme

TEWLS and NTWWC support the recommendations set out in the 2016 *Report on establishing a compensation scheme for Victims of Commonwealth Crime* by Anti-Slavery Australia and the Law Council of Australia.⁷ Further, we endorse the recommendation of the Joint Standing Committee on Foreign Affairs, Defence and Trade in their report, *Hidden in Plain Sight*, that the Australian government establish a national compensation scheme for victims of modern slavery in Australia

⁴ Explanatory Memorandum, Modern Slavery Bill 2018 (Cth) [2].

⁵ *Modern Slavery Act 2015* (UK) s 54(2)(b); *Modern Slavery Act 2015 (Transparency in Supply Chains) Regulations 2015* (UK) reg 2.

⁶ Joint Standing Committee on Foreign Affairs, Defence and Trade, Parliament of Australia, *Hidden in Plain Sight* (2017) Chapter 4

<https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Foreign_Affairs_Defence_and_Trade/ModernSlavery/Final_report/section?id=committees%2freportjnt%2f024102%2f25192>.

⁷ Anti-Slavery Australia and the Law Council of Australia, 'Report on establishing a national compensation schedule for Victims of Commonwealth Crime' (12 September 2016)

<<http://www.antislavery.org.au/images/FINAL%20REPORT%20-%20ASA%20-%20LCA%20The%20Case%20for%20a%20National%20Compensation%20Scheme.pdf>>.

and that eligibility for compensation should not be contingent on participation in criminal investigations or prosecutions.⁸

C Conclusion

We appreciate the opportunity to make this submission and support ongoing policy and legal development in responding to modern slavery risks in Australia and abroad.

We look forward to the outcome of the Senate Legal and Constitutional Affairs Committee's inquiry.

Yours faithfully,

TOP END WOMEN'S LEGAL SERVICE INC.



Vanessa Lethlean
Managing Solicitor

NORTHERN TERRITORY WORKING WOMEN'S CENTRE INC.



Rachael Uebergang
Co-Director

⁸ 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) xli [6.134].