Australia Pacific LNG would like to provide the following feedback for your consideration in developing the final Guidance paper.

- 1. Page 30- We suggest clarification of the concept of "business relationships" to ensure the scope of "business relationships" is clearly limited to those that are formalised directly through contracts with the reporting entity in the case of Operations, and as part of a chain of formalised contractual arrangements in the case of a Supply Chain, if this is the intent.
- 2. Page 51 Para 162.1- the Act requires that a "responsible member" of the reporting entity sign the modern slavery statement. Para 160.1 clarifies that this should be a director of the board (in APLNG's circumstances). Para 162.1 goes on to say that "best practice" is that it should be the head of the principal governing body (namely the chairman of the board or the CEO). This additional requirement is not present in the Act and we suggest it should be removed from the guidance note.
- 3. Page 53 Para 177.1- the combined reading of 177.1 and Figure 5, tends to imply that joint statements can only be made on behalf of related entities. The Act is not limited in this way. We think there should be a positive statement in the guidance note to the effect that joint statements can be done on behalf of non-related entities.
- 4. Appendix 1, Table 3- it would be helpful if each of the eight "Types of Exploitation" identified in the Table 8 (i.e. Trafficking in persons, Slavery, Servitude etc.) could be cross-referenced with the corresponding paragraph from the definition of "modern slavery" within the Act.



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Assent Compliance's Comments in Response to the Public Consultation on the "Modern Slavery Act 218: Draft Guidance for Reporting Entities"

Assent Compliance is the global leader in supply chain data management, supporting companies across the globe in their compliance and due diligence efforts related to modern slavery. Assent Compliance acts as the Secretariat of the Slavery & Trafficking Risk Template (STRT) Development Committee, and a member of Assent's Regulatory team, Sarah Carpenter, is the committee's co-chair. The recommendations and comments provided below were developed by our business and human rights experts, and draw from our experience working with companies that are in scope of other existing modern slavery laws, as well as from our participation in relevant multi-stakeholder initiatives.

We commend the Australian government for enacting the 2018 Modern Slavery Act, and for striving to provide clear and practical guidance for reporting entities.

Recommendations

PAGE 7

- **2.1** Recommend removing or clarifying the term "freedom," as too often freedom is understood to be "freedom of movement."
- **3.1** Recommend changing the language around what constitutes "serious exploitation." This paragraph does not adequately capture how substandard working conditions and underpayment of workers are often indicators of modern slavery, according to International Labour Organization (ILO) indicators of forced labor (2012).

PAGE 8

Box: Where does modern slavery fit?

This diagram could imply that debt bondage isn't a form of slavery. It needs to be adjusted so that it accurately aligns with the ILO indicators of forced labor (2012), and the recognition that forced labor can be present even with just one indicator.

6.1 This sentence would benefit from further clarification: "The nature and extent of modern slavery." Suggestincluding a few words about the prevalence and characteristics of modern slavery in supply chains.

11.1 Recommend tying modern slavery to negative financial impacts. This point could be expanded to note that modern slavery can disrupt an organization's supply chain, impacting its ability to deliver goods and services to customers.

PAGE 23

Recommend adding bullet points as follows:

- Provide a clear and transparent picture of your efforts, progress and gaps by leveraging data collected from your supply chain.
- Where relevant, mention your use of standard due diligence tools and resources, and consider how such tools could benefit your response. For instance, by mentioning your use of a standard data collection tool for your modern slavery risk assessment, you will help readers better understand how you are assessing and addressing risks, and how your response aligns with that of other reporting entities.

PAGE 27

Recommend adding the following as an additional way to describe the supply chain in order to give further context to the nature of the entity's third-party relationships:

Approximate number of suppliers, including direct and indirect.

PAGE 30

Recommend adding nuance to this box. Arriving at a decision on whether a specific instance falls into the "contribute" or "linked" category requires judgements that can't always be captured by simple hypothetical scenarios.

PAGE 35

"Learn more: where do I start?"

Recommend giving an example by inserting a paragraph between the third and fourth paragraphs:

You may decide to leverage a standard data collection and risk assessment tool to help you determine which suppliers should be prioritized for further due diligence activities.

PAGE 36 - 106.1

Recommend including the following sentence: "If you are leveraging existing tools and resources as part of your due diligence efforts, you may consider mentioning these in your statement to help readers better understand? how you are conducting due diligence."



PAGE 38

Suggest adding three bullet points:

- Leverage existing standard data collection tools and resources developed by trusted multi-stakeholder, industry or civil society initiatives to collect and assess information from your suppliers, and mention your use of these tools. This can help readers understand your risk assessment methodology and assess the reliability of your data.
- Consider using a supplier self-assessment questionnaire to collect information from your supply chain.
- You may wish to check whether your suppliers have been linked to labor standards violations, including modern slavery, or are present on sanctions lists.

PAGE 41

1. Applicable to the following bullet point:

Develop tools and policies to monitor high-risk suppliers and mitigate associated risks.

Recommend rephrasing as follows:

Develop or leverage existing tools and policies to monitor high risk suppliers, and mitigate associated risks.

2. Applicable to the following bullet point:

Build partnerships with (...)

Recommend rephrasing to add "multi-stakeholder initiatives" to this sentence in order to highlight the important role of such initiatives, which bring together expertise and perspectives from stakeholders across public, private and civil society sectors.

3. Consider adding another bullet point:

Decide on the use of a data collection process and determine key data points to help you assess risk, then
ensure consistency in your methodology year after year. This will enable you to set expectations with
suppliers and track their progress over time. Where possible, leverage standard data collection templates.

PAGE 42

Under supplier engagement, consider adding the following bullet point:

Work with suppliers to conduct root-cause analysis of identified risks.

PAGE 44 - 130.1

1. Recommend adding the following bullet point:

 Collaborating with multi-stakeholder initiatives to work toward a common approach for the collection and assessment of modern slavery or human rights data, to ensure your risk assessment process evolves to

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maintain effectiveness and relevance, reflecting emerging knowledge and practice about modern slavery risks globally.

2. Applicable to the following bullet point:

Regularly checking your risk assessment processes to ensure they remain up to date. For example, if your entity commences operations in a high risk country or region it is important that you identify and assess any new risks that may result.

Recommend amending as follows:

Regularly checking your risk assessment processes to ensure they remain up to date. For example, if your entity undertakes detailed risk assessments using self-assessment questionnaires, it is important that theses questionnaires evolve to reflect new research and learning on modern slavery.

PAGE 45

Consider adding a bullet point:

 The number or percentage of suppliers who have completed risk mitigation activities allocated as a result of supplier-level risk assessments.

PAGE 62-64

Recommend aligning with ILO indicators of forced labor.

PAGE 65

Bullet point #4, recommend amending to read as follows:

Recognize that your suppliers may need to respond to requests from multiple reporting entities. Where possible, consider options to reduce the compliance burden for your suppliers. For example, you could § leverage shared, standard tools for supply chain data collection and risk assessment. You could agree to mutual recognition of audits so your supplier does not need to undergo multiple modern slavery audits. You could also work with other entities in your sector to develop common approaches to reporting and joint resources.

Bullet point #4, suggest amending as follows:

Change from "such as workplace health and safety standards" to "such as workplace health and safety standards or product compliance requirements."
 Iggest adding a bullet point to read:
 Consider your supplier's context and needs when working together to address modern slavery. For

Suggest adding a bullet point to read:

 Consider your supplier's context and needs when working together to address modern slavery. For instance, ensure you take into account requirements for support and local languages in your communications, including codes of conduct and supplier self-assessment questionnaires.

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PAGE 66

Consider adding a bullet point under Principle Two:

 Consider assessing supplier risk based on both inherent risk (due to geographical location, industry or product) and risk linked to lack of adequate policies, practices and processes in place to prevent and address modern slavery.

PAGE 69

Appendix 4

Consider changing the focus of this appendix to recognize and encourage multi-stakeholder collaboration, bringing together civil society, industry and government expertise and perspectives, rather than placing a narrow focus on civil society organizations. Companies can benefit greatly from opportunities to collaborate, and share challenges and learning with their peers and civil society.

Recommend removing "trying to sell you a product or system to 'improve' your response" and/or adding nuance. As written, it gives a negative impression of organizations offering paid solutions to support anti-modern slavery efforts. Many of these paid solutions are effective and needed.

PAGE 73

Appendix 5

While the guidance included in this resource is extremely beneficial, many companies struggle to translate this guidance into risk assessment and impact measurement approaches. It is worthwhile to include free and open source practical tools and resources for companies in this guidance, known to have been developed with expertise and knowledge of modern slavery in global supply chains.

Recommend the addition of the following resources:

- The Responsible and Ethical Private Sector Coalition Against Trafficking (RESPECT)'s online resource centre¹ for companies in addressing modern slavery in supply chains. RESPECT is an initiative founded by the International Organization for Migration, the Global Initiative Against Transnational Organized Crime, and Babson College.
- The Organization for Security and Co-operation in Europe (OSCE)'s compendium of relevant references materials and resources on ethical sourcing and prevention of trafficking in human beings for labor exploitation in supply chains.²
- The soon-to-be-published "Reporting on Exploitation of Workers Through Modern Slavery: Stakeholder Expectations and Best Practices", facilitated by the Global Reporting Initiative (GRI) and the Responsible Labor Initiative (RLI) with funding from the government of Australia (DFAT).

² https://www.osce.org/secretariat/375910?download=true



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¹ http://www.respect.international/article_type/online-tools/



Australian Red Cross Feedback Modern Slavery Act 2018 - Draft Guidance for Reporting Entities Department of Home Affairs

Australian Red Cross (Red Cross) is pleased to contribute to the Department of Home Affairs understanding of modern slavery in providing feedback on the *Modern Slavery Act 2018 Draft Guidance for Reporting Entities* (guidance) and considers this opportunity an important contribution to the ongoing dialogue on the context, policy settings and response to modern slavery in Australia.

In Red Cross's role as auxiliary to the public authorities in the humanitarian field, and as a member of the National Round Table on Human Trafficking and Slavery (National Round Table), Red Cross works to address broader systemic issues identified directly through our work. Our submission is based on Red Cross's experience working to address the needs of the most vulnerable in Australia and globally, including our direct experience and knowledge addressing the impact of human trafficking, forced labour and forced marriage in Australia, primarily through the Australian Government's Support for Trafficked People Program, as well as our other areas of work in response to modern slavery.

Our submission is structured by chapter and mandatory criteria in the guidance document. All feedback is based on our knowledge and experience of working to support those impacted by modern slavery. We have also consulted internally within Red Cross procurement and legal departments, as well as our international programs and international humanitarian law teams, and their feedback is also reflected here.

Red Cross is grateful for the opportunity to provide feedback on the guidance and hopes to have contributed to strengthening the guidance and overall reporting requirements as a result. Red Cross would be interested and available to discuss any of our feedback provided in this document in further detail, if that would be of assistance.

For further information or discussion, please contact:

s47F

National Program Coordinator – Support for Trafficked People program Australian Red Cross

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Modern Slavery Act 2018 Draft Guidance for Reporting Entities: Feedback

Chapter 1. Introduction

• Modern slavery exists on a continuum of exploitative practices

Red Cross acknowledges that Australia's legislative framework in response to modern slavery is a robust and strong framework, and that the *Modern Slavery Act* (the Act) is the first national legislation to define modern slavery. It defines modern slavery as including eight types of serious exploitation and such a definition can be helpful in many ways. However in the context of assessing complex and often international operations and supply chains, consideration should also be given to other exploitative practices that may be common and problematic in countries outside of Australia, which may not be captured within this definition.

As has been recognised by the United National Office on Drugs and Crime (UNODC), "different patterns of trafficking emerge in different parts of the world along with different forms of exploitation".¹ From Red Cross's perspective, for the purpose of the guidance, modern slavery should continue to be used as an umbrella term to cover a range of exploitative practices in its broader capacity, but not as an exhaustive list.² It would be helpful for the guidance, despite clarifying the eight types of exploitation defined as modern slavery under the Act, to recognise the existence of other exploitative practices that should be taken into consideration by reporting entities as per the UNODC definition.

• The use of the term 'victim'

As reporting entities work to assess and address modern slavery risks, they may identify suspected situations of modern slavery in their operations or supply chains. From Red Cross understanding, under the Act, entities are not required to determine whether a person is a victim of modern slavery but only to identify situations where there may be a risk of exploitation. Red Cross sees that using the specific term 'victim' within the guidance, as in paragraph 2.1 on page 7, may be considered as assuming that entities will actually determine if, within situations identified as having risks of modern slavery, the people impacted either individually or collectively suffered harm, including physical and mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights as a bridge of a legal obligation. Therefore Red Cross suggests the term victim should only be used in contexts when an individual has indeed been assessed as having suffered a crime type, and not as a generic term to refer to people that might be impacted by or at risk of a situation of exploitation.

Crimes that are linked to modern slavery

Paragraph 9.1 on page 8 of the guidance states that "Modern slavery can occur in every industry and sector. It is also often linked to other crimes and activities that adversely impact human rights, such as corruption and environmental damage". Red Cross recognises that modern slavery is often accompanied by other human rights abuses which can also be hidden by linked crimes such as systemic corruption and bribery. From Red Cross's perspective, the importance of highlighting other crimes

¹ United Nations Office on Drugs and Crime (UNODC), Global Report on Trafficking in Persons 2018 (United Nations publication, Sales No. E.19.IV.2).p 11.

² As it has been recognised by UNODC, "'modern day slavery' might be useful as an […] umbrella term that seeks to bring together the variety of situations in which a person is forcibly or subtly controlled by an individual or a group for the purpose of exploitation. United Nations Office on Drugs and Crime (UNODC), *Submission 195*, p. 3.

that intersect with modern slavery is to identify and assess the root causes of the problem, and hence, to identify effective and appropriate remedies.³

Although Red Cross recognises efforts taken to do so in the guidance (for example, the table on page 8), further explanation could be helpful. For example, listing environmental damage in the guidelines does not necessarily show the link between modern slavery and this offense. However, if there was further explanation on the link that exists between modern slavery and environmental destruction this would demonstrate how modern slavery activities can put stress on the environment and, at the same time, how this environmental stress increases vulnerability to slavery.

Red Cross suggests that further explanation on the linkages between modern slavery and other crimes, and a more extensive list of linked crimes (including, for example, commercial sexual exploitation of children, unlawful removal of organs, arbitrary detention, sexual assault, assault, enforced pregnancy) that directly affect individuals is provided in the guidance. Red Cross also suggests that the table "Learn more: where does modern slavery fit?" could be further explained through a case study that explains the spectrum in more detail.

• The use of case studies throughout the guidance

Red Cross notes that the case studies provided on page 10 could provide more insights if they examined how modern slavery risks were assessed and what actions were taken to mitigate the risks. Red Cross suggests that case studies are further developed with stronger links made to the content of the guidance, including reference to specific sections, in order to provide clearer understanding of reporting requirements.

• Reference to state based modern slavery legislation

In describing 'What is the Modern Slavery Act', paragraphs 16.1-18.1 on page 11 of the guidance refers to the *Commonwealth Modern Slavery Act*. Red Cross suggests that reference to the NSW Modern Slavery Act, similar to what is provided on page 16: "The State of New South Wales has also introduced a Modern Slavery Act that requires certain businesses to report", could also be helpful here in order to support reporting entities to understand the different layers of federal and state based legislation that currently exists in Australia in relation to modern slavery.

• The purpose of improving transparency about modern slavery

Red Cross recognises that the reporting requirement will also contribute to identifying people in potential situations of exploitation and initiating actions to ensure they receive the care and support that they need. Therefore Red Cross suggests that paragraph 23.1 is amended to also include "identify and support people in potential situations of exploitation" in the overarching purpose of improving transparent about modern slavery. *Note: the same comment applies to paragraph 48.1 in chapter 2.*

• The Australian response to modern slavery

Red Cross recognises that the Australian response to modern slavery is based on offenses criminalised in the Australian Criminal Code, however, the Whole of Government and Community strategy goes beyond solely a criminal justice response. Elements of the four pillars of which it comprises, (i) prevention and deterrence; (ii) detection and investigation; (iii) prosecution and compliance; (iv) victim support and protection, include initiatives not directly linked to a criminal justice response, such as the Forced Marriage Trial. Classifying the Australian response as solely a criminal justice response

nder the *Freedom of Information Act 1982*

³ Fairtrade Australia and New Zealand, Submission 49, pp 3–4

and linking all efforts to the criminal justice process behind these conducts therefore doesn't accurately capture the full efforts of the Australian response.

Therefore Red Cross suggests amending paragraph 26.1 on page 11 to "It complements Australia's existing whole of government and community response to modern slavery, which includes specialist police investigative teams, a dedicated victim support program and a National Action Plan on Human Trafficking and Slavery. The Department of Home Affairs is responsible for implementing Australia's response to modern slavery and the reporting requirement".

Chapter 5: How do I prepare a statement?

• How to develop a statement and metrics to assess the effectiveness of an entity's actions

Red Cross suggests that including a template of what a full statement under the Act should cover, with prompts to various sections of the guidance and further advice about appropriate metrics, will support entities to have a more detailed understanding of what to include in their statements and the work required in order to meet reporting requirements. Red Cross suggests that a list of industry bodies and non-government organisations with expertise on modern slavery be included in the guidance in order to support entities to know who to contact for support within Australia, given the relatively small size of the domestic sector.

• Guidance for suppliers who will need to provide information to reporting entities

According to paragraph 72.1 on page 23 of the guidance, "You can also apply the principles set out in this chapter if you are a supplier who is not required to prepare a statement but you are asked by reporting entities to take action to identify and address your modern slavery risks. For example, this chapter can help you to understand and identify your specific modern slavery risks and decide what action you may need to take".

Red Cross sees that this linkage could be helpful for suppliers who will need to provide information to reporting entities, however clearer identification of the principles being referenced (or alternatively, an Annex designed to specifically support suppliers) may further clarify the difference between the obligations reporting entities are under due to the Act and the work that suppliers can undertake to support entities in meeting these obligations. Red Cross suggests that the content provided in paragraph 72.1 is expanded with more detailed guidance on how suppliers can respond to requests for information from reporting entities.

Mandatory Criteria One and Two: Identify the reporting entity and describe its structure, operation and supply chains

Suggested ways to describe an entity's structure, operations and supply chains

Despite the provision of a hypothetical example on page 25 to demonstrate 'what do structure, operations and supply chains mean', the level of detail provided in table one on page 27 is higher than what the hypothetical example reflects. Therefore, by including the hypothetical example as currently stands, it may appear that this limited level of detail is acceptable for reporting entities to include, when describing their structure, operations and supply chains. Therefore Red Cross suggests the hypothetical example on page 25 is restructured and built upon further to address all areas identified in the page 27 table, in order to help entities better understand how to describe their structure, the operations and supply chains.

• Classification of 'high risk' sectors

Paragraph 78.1 on page 26 of the guidance states that "an entity with extensive international operations in high risk sectors or emerging markets will have different modern slavery risks to an entity that only operates in Australia and has shorter and more direct supply chains". Red Cross sees that it is important to further clarify what is understood as 'high risk' sectors and how this classification is made.

From Red Cross's perspective, paragraph 77.1 provides enough detail on how the structure and operations will determine the level of modern slavery risks and therefore, paragraph 78.1 may not be necessary to include at this point in the guidance. Therefore Red Cross suggests that either further explanation is provided for reporting entities to define 'high risk' sectors, or alternatively, paragraph 78.1 is removed.

Mandatory Criterion Three: Describe the risks of modern slavery practices in the operations and supply chains of the reporting entity and any entities the reporting entity owns or controls

• Reporting of specific individual risks or actual cases of slavery

Paragraph 87.1 on page 28 of the guidance states that: "This criterion also does not require you to report on specific individual risks or actual cases of modern slavery. However, you are able to voluntarily include information about specific risks or cases if you wish to do so. For example, you could include an anonymised case study".

Despite making it clear that entities are not required to report on individual cases, this statement indeed opens the possibility of doing so. This is further encouraged through the 'Learn More' box on page 28 entitled 'Reporting on Modern Slavery Cases' which states that "including information about specific allegations or cases can help to show that your entity's actions to identify and address modern slavery risks are effective".

Red Cross is concerned that including this ability and encouragement to report on specific individual risks or actual cases, without providing further guidance about appropriate ways to do so, might put people impacted by slavery at further risk. This could be through the inappropriate handling in response to identified actual cases, or individual risks/actual cases reported on without appropriate safety, security, privacy and information sharing considerations made.

In the process of deciding to report on specific individual risks or actual cases, reporting entities will have to analyse if reporting a case could indeed put the person subjected to exploitation at further risk, with little or no previous experience in assessing such situations. Given this is (generally) not their area of expertise, it could be have a significant detrimental impact on the individual(s) if not handled appropriately, as well as on any potential ongoing investigations on the matter. For example, there are situations where de-identifying personal information however providing other details related to an actual case including location, type of industry, type of work within the industry, among others, can put an individual at considerable risk, especially if reports will be made publicly available as the statements are intended to be.

Additionally, further consideration also needs to be given to the responsibility of the Australian Government, as the collator and holder of the information provided by reporting entities in their statements, once specific or individual cases were reported. For example, once Government becomes aware of a specific individual risk or actual case of modern slavery, a duty of care to respond may arise which brings into question capacity to monitor or follow up safety and wellbeing concerns of the individuals in question.

Red Cross would welcome the opportunity to be involved in further discussions around this specific point, given the complexity of its nature. However Red Cross suggests that, as a first step to addressing these concerns, if this option is going to remain for reporting entities, further clarification needs to be provided on how to 1) appropriately respond to specific individual risks or actual cases and 2) how to appropriately handle related information and share with external audiences. Other things that could be helpful here include amending the 'Learn More' box on page 29 'Reporting on Modern Slavery Cases' to include in the DO list, 'ensure you respond appropriately to the person identified in a situation of exploitation, with primary consideration to their safety and wellbeing'. Further consideration will be required in the DO NOT list depending on the overall decision on whether individual cases can or should be provided by reporting entities in their statements. Further examples of what is acceptable as de-identified information could also be provided as from Red Cross's experience, in certain circumstances, deleting the name, date of birth and gender of the person is not enough to de-identify a case.

The scope and context of modern slavery risk

Red Cross acknowledges the statement made in the guidance around the importance of identifying the risks of modern slavery to people and not to the entity and sees this as a positive step to ensuring entities undertake this process with a person-centred approach. However, from Red Cross perspective, the section on page 33 could be strengthened to demonstrate this person-centred approach and further emphasise the importance of recognising the impact on people who are in situations of exploitation, behind the modern slavery risks identified.

The scope of modern slavery risks also requires entities to "check which of the sectors, types of products and services, countries and entities that you have identified may involve high modern slavery risks". Red Cross considers that it is not only a matter of identifying which sectors and industries have higher risks, or which regions are more likely to present modern slavery, but also the context of where an entity operates; the dynamics around the operations; the cultural patterns in particular regions or territories, among others. The guidance could be strengthened through providing additional information on how to assess these things and further clarification on what basis entities will be required to link specific services, products, geographical location or sectors to potential modern slavery risks. Therefore Red Cross suggests the hypothetical example provided on page 34 is amended to better illustrate how to identify modern slavery risks; how to classify the risks and then how to work to respond to them. The hypothetical example could be a helpful tool for how to conduct a scoping exercise and how to link specific services, products, geographical location or sectors to potential modern slavery risks.

Step three of the scoping exercise on page 33 also requires entities to "identify the parts of your operations (including any investment or financial lending portfolios) or supply chains that you do not have visibility over and consider if they may involve modern slavery risks". This sentence has the potential to be confusing for entities as if they do not have visibility over certain operations, it will be difficult for them to identify potential modern slavery risks. Clarity on if reporting entities are indeed required to seek out this visibility when it doesn't exists, and further advice on how to overcome this will be helpful.

• Identifying and describing modern slavery risk

Paragraphs 92.1 to 102.1 of the guidance could benefit from more details on how to identify and

Paragraphs 92.1 to 102.1 of the guidance could benefit from more details on how to identify and describe risks of modern slavery. For example, paragraph 92.1 states that: "In order to address this criterion, you need to ensure that your statement includes a description of how risks of modern slavery practices may be present in the operations and supply chains of the reporting entity"

Providing further clarity on what this description should include and the level of detail which needs to be provided would be helpful.

In the same way, paragraph 109.1 states that: "It is important that your entity takes meaningful steps to identify and respond to modern slavery risks. This is why the Act requires you to report on what your entity and any entities it owns or controls are doing to assess and address modern slavery risks". Further clarification on what is meant by 'meaningful steps' to identify and respond to modern slavery risks would strengthen the guidance and overall reporting requirements.

Red Cross suggests developing further paragraphs 92.1 to 102.1 to provide clearer and more detailed advice, guidance and tools for entities to ensure they can properly identify and describe risks.

Mandatory Criterion Four: Describe the actions taken by the reporting entity and any entities that the reporting entity owns or controls to assess and address these risks, including due diligence and remediation processes

• Remediation for people subjected to modern slavery

Page 37 of the guidance states that "Remediation can take many forms". As it has been recognised by international law, remedies available should be adequate and appropriate, proportional to the gravity of the violation and adapted to the circumstances of each case. The guidance recognises that there is no need to have a remediation process focused just on modern slavery. Even when this statement may be true, from Red Cross's experience, it is also important to recognise that, given the extent of harm often suffered, the provision of remedies may vary according to their particular circumstances and needs.

Remediation in the modern slavery context cannot put the person in a new risk; it should be focused on protection, acknowledge the person's resilience, may not be publicly recognised, should aim to compensate the person, and be focused on rehabilitation and recovery. It may also involve mechanisms to: (i) remove people from exploitative situations and; (ii) supports required to ensure safety and wellbeing based on the particular needs of each person (e.g. immigration advice to return to their home country if appropriate); (iii) appropriate immigration support while pursuing civil claims or other legal redress; (iv) increased capacity to identify and appropriately refer suspected cases. through more investment in training and support for frontline responders.

Red Cross suggests that providing additional detail on what remedies need to consider, both in situations of exploitation identified in Australia and overseas, would strengthen the guidance.

• Responding to identified modern slavery

Page 42 of the guidance entitled 'Possible actions to assess and address modern risks', states that entities must "ensure you are prepared to respond if you find modern slavery occurring in your operations or supply chains, including by developing an agreed procedure for responding to modern slavery cases." From Red Cross's perspective, additional guidance is needed for entities to understand what "be prepared to respond" actually means in reality, and indeed how to develop this ability.

From Red Cross's experience, being prepared to respond should include establishing, amongst other things; referral pathways; general response protocols both in Australia and overseas; emergency

⁴ Office of the High Commissioner for Human Rights (OHCHR), Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework (New York and Geneva, United Nations, 2011).

protocols for high risk cases both in Australia and overseas; training, tools and resources for employees to better understand modern slavery and how to respond; and response guidelines which ensure the safety and wellbeing of the person in a situation of exploitation is paramount.

Being prepared to respond also involves collating and detailing information of who to consult or where to seek advice or guidance when a situation of modern slavery is identified. Therefore, a list of specialist organisations could be helpful to include in the guidance for entities to contact if and when required, in order to support efforts by entities and minimise duplication. These specialist organisations are likely to see an increase in inquiries and requests for advice as a result, as well as requests to train staff to better understand modern slavery, and therefore will also likely experience additional resources constraints to meet this need.

Page 41 of guidance encourages entities to "Improve staff and management awareness of modern slavery risks through awareness-raising and training, including staff orientation". Red Cross recognises the importance of training staff on modern slavery to improve awareness on this matter. However, further guidance on what this training should include, such as how to manage modern slavery risks and situations based on evidence and good practice, could be beneficial. If entities are going to be identifying and assessing risks of modern slavery, and responding to specific individual risks or actual cases, they need to be well equipped to do so. Any training should: put the person in a situation of exploitation at the centre; consider protective measures; consider safety and wellbeing; and include potential response protocols, among others. As mentioned above, specialist organisations, are likely to see an increase in inquiries and requests to develop and provide such training, and therefore will also likely experience additional resource constraints to meet this need.

Red Cross suggests that additional funding is made available for specialist civil society organisations to develop meaningful training, tools and resources with a humanitarian focus in order to support entities to appropriately equip their employees and improve their responses to modern slavery.

Appendix 1 – What is modern slavery?

Table four - Risk indicators for modern slavery

Red Cross recommends including the following indicators of modern slavery on page 64:

Appear to be subjected to a hazardous working environment or hazardous conditions without

protection (for example being forced to provide sexual services without a condom).

In the same way, with regards to the indicator "appear to be subjected to, or threatened with, violence" in connection with their employment", Red Cross suggests either adding a new one or revising the existing one.

• Suggestions:

- - o new:
 - revised:
- appear to be subjected to insults, degrading treatment or abuse in connection with their employment, or appear to be subjected to verbal, emotional, physical or sexual abuse connection with their employment:

 appear to be subjected to, or threatened with, violence, intimidation or threats to themselves or their family in connection with their employment

 I respond to a case of modern slavery?

Appendix 3 - How do I respond to a case of modern slavery?

Freedom

Mention of the Support for Trafficked People Program

Red Cross sees the guidance as a great opportunity to raise awareness about the Support for Trafficked People Program, and to encourage entities to better understand what supports are available for people impacted by slavery in Australia. Red Cross suggests that the Support for Trafficked People Program is mentioned and explained in both Appendix 3 and Appendix 4.

Appendix 5 - Helpful Resources

If appropriate, Red Cross is able to recommend other useful resources to be included in Appendix 5.

General Feedback

1. Consideration of not-for-profits as reporting entities and their comparative lack of resources

Paragraph 22.1 of the guidance on page 11 states that "the reporting requirement is focussed on large businesses and other entities that have the capacity to drive change throughout their supply chains". Red Cross acknowledges the importance of engaging corporate and for-profit entities in ways to encourage ethical business operations and socially responsible practices, as well as the potential positive impact for communities and societies that can be achieved as a result. However, Red Cross understands that not-for-profit organisations are also reporting entities under the Act. Any available profit in these types of organisations is, by nature of their mission, directed to provide a humanitarian response. Therefore, not-for-profit entities have more limited 'financial capacity' to invest in actions to drive change throughout their supply chains.

However not-for-profit organisations do often indeed have both the expertise and the willingness to drive this change and to help other organisations, entities and institutions do the same, and together work towards the end of modern slavery. Therefore, despite often lacking the 'financial capacity', often not-for-profit organisations may have more 'knowledge capacity' to drive this change than other corporate entities.

Red Cross suggests that consideration is given to implementing a system of financial support to assist not-for-profit organisations with limited 'financial capacity' to meet the obligation placed on them through the reporting requirements to drive change throughout their supply chains.

The Commonwealth Modern Slavery Act generally provides that modern slavery statements must be approved by the principal governing body of the entity and signed by a responsible member of the entity (with some additional nuances in the event an organization publishes a joint statement). The draft guidance, however, appears to place a further limitation on approval that is not clearly required by the text of the Act and may raise questions or pose unnecessary implementation challenges for some organizations. Specifically, the draft guidance states on p. 51 that organizations "cannot delegate this approval process to a subcommittee or to another body." Many large organizations use board committees to assist the board of directors on complex or specialized matters, and to enable directors to use their time efficiently and effectively. Given the importance of board committees to overall corporate governance and the specialized nature of modern slavery disclosures, the final guidance should clarify that approval of the modern slavery statement may appropriately be delegated to a board committee (e.g., a subset of the directors formed for a specific purpose such as an audit committee, a nomination committee, etc.) for approval on behalf of the board itself.





s22(1)(a)(ii)

Director

Modern Slavery Business Engagement Unit

May 17, 2019

Dear s22(1)(a)(ii) ,

Thank you for the opportunity to comment on the Australian Modern Slavery Act 2018's Draft Guidance for Reporting Entities. Our organizations appreciate the work, diligence, and collaboration that was put into this Draft Guidance. Overall, we are encouraged by its contents. We do, however, believe that there are areas where the Draft Guidance should be strengthened. We accordingly make the following recommendations for your consideration.

1. Encourage a Gender Sensitive Approach

Modern slavery impacts women and men differently and the Guidance should include gender considerations in each section to address those gender-specific impacts. Companies should be aware that women are disproportionately affected by modern slavery in many sectors and regions and that over half of all victims of modern slavery are women. They are often exposed to high levels of violence, including sexual harassment and abuse, and threats of other harm of termination if they lodge a complaint. The Guidance made a great effort to highlight forced marriage as a type of exploitation, which mostly affects women, but the gender-specific risks leading up to this form of modern slavery might be helpful to include.

Recommendation 1: The Guidance should encourage reporting entities to integrate a gender-sensitive approach when seeking to describe and explain modern slavery risks under the Mandatory Criterion Three, and to describe the actions taken by the entity to assess and address those risks under Mandatory Criterion Four. A gender-sensitive approach may include conducting gender-sensitive human rights due diligence, collecting and disclosing gender disaggregated data, and providing gender-sensitive training throughout supply chains. Collaboration and discussion with women's rights organizations may help companies in identifying concealed gender-specific risks of modern slavery. The Unit should also consider highlighting 'at risk' groups, such as women, in "Table Four: Risk Indicators for Modern Slavery".

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2. Encourage the Disclosure of Factory Names and Addresses

In order to adequately describe their corporate structures, operations and supply chains and to enable external stakeholders to understand this information, reporting entities should provide detailed and meaningful information regarding their business operations and entities in their supply chain. Such information could include the disclosure of the names and addresses of the factories which the reporting entity works with. The disclosure of this information also provides workers with a clearer understanding of which brands their factory is supplying to and may empower them to assert their rights¹.

Recommendation 2: In "Table One: Suggested Ways to Describe an Entity's Structure, Operations and Supply Chain", the Guidance should include the disclosure of factory names and addresses as part of the best practices to describe the reporting entity's structure, operations and supply chains.

3. Consider Modern Slavery as Part of a Continuum of Other Labor Rights Violations

Understanding modern slavery is essential in effectively identifying and addressing modern slavery risks. Indeed, our organizations understand modern slavery as occurring along a continuum from lower level labor abuses to more extreme forms of exploitative practices. Poor labor practices, that do not themselves constitute modern slavery, can escalate into severe exploitation and push workers into conditions of modern slavery if combined with other factors, as has been shown by recent research². It is therefore essential for reporting entities to assess, address and report on risks of broader labor rights abuses to effectively address modern slavery risks.

Embedding general labor protections into auditing mechanisms and supplier requirements (such as contracts and codes of conduct) are some of the ways that companies can address broader labor rights abuses. The Guidance should also note that enabling workers themselves to monitor and protect their rights, through freedom of association and collective bargaining, is crucial first line of defense in protecting a workforce from abuse and exploitation.

Recommendation 3: Under Mandatory Criterion Seven, reporting entities should be encouraged to include information related to risks, instances and measures to address broader labor abuse which may be conducive to modern slavery. The Guidance should make clear that including such information is a way for reporting entities to show that they have comprehensive understanding of and are serious about addressing modern slavery risks.

¹ For more information, see https://transparencypledge.org/

² <u>Labour Compliance to Exploitation and the Abuses In-between</u>, Labour Exploitation Advisory Group Position Paper, April 2016

The Guidance must acknowledge that companies' own business models and business practices, such as their purchasing practices, can in and of themselves be generating risks of modern slavery. For instance, there is strong evidence that last-minute orders, last-minute changes or demands on orders, demand for fast turn-around, and other aspects of procurement practices can contribute to abusive labor practices that include forced labor and other forms of labor exploitation. This is the case for the reporting entity's model and practices, as well as for that of its suppliers and other business relationships. The business operations that should be examined both in the reporting entity and its business partners include, among others, their recruitment and employment practices, the extent of outsourcing of labor and services, their procurement practices, and their overall labor standards and practices.

Recommendation 4: Reporting entities should be encouraged to assess how their own business model and practices, as well as those of their suppliers and business relationships, may be conducive to risks of modern slavery. Reporting entities should be advised to implement and report on measures to address such risks in their statements.

5. Consider Workforce Characteristics

The risks of forced labor, human trafficking and other forms of modern slavery have been shown to be aggravated depending on the specific characteristics of the workforce used. Factors that may aggravate risks include the lack of unionised workers; high proportions of outsourced workers; precarious employment structures leading to uncertainty about earnings and future work availability; or reliance on migrant workers who may have limited access to public funds or tied visas and may lack local support networks or language skills. Understanding their supplier and operational workforces is key for businesses to effectively address modern slavery risks.

Reporting entities should therefore examine and provide information on the nature and background of their workforce, including the extent to which labor and services are outsourced; the extent of the use of agency workers and casualized and/or temporary workers; and the proportion of workers that may have characteristics leading to increased vulnerabilities (such as women, young people, and migrants) within the workforce. Reporting entities should require suppliers and firms over which they exercise control or with which they hold relationships to provide them with similar information.

Recommendation 5: Reporting entities should be encouraged to consider the specific risks related to the nature and background of their workforce when assessing modern slavery risks, and to report on the measures taken to mitigate these.

6. Encourage Ongoing Stakeholder Engagement

The Guidance mentions stakeholder engagement in Chapter 5 as a way for entities to become more aware of what is happening in their supply chains and investment portfolios. However, stakeholder engagement is important throughout the entire reporting process, including in stages leading to the issuing of statements, such as during the identification of risks and of measures to prevent and mitigate such risks. Reports are most effective when reporting entities of

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work in partnership with stakeholders who can provide a more comprehensive account of risks in their supply chains and of possible measures to prevent and address risks, including remedial measures, and who can help assess the effectiveness of modern slavery procedures and policies. Stakeholders, including local worker and union representatives and affected individuals, are allies in addressing modern slavery and should be consulted on an ongoing basis.

Recommendation 6: Reporting entities should therefore be encouraged to consult with relevant stakeholders when designing and reporting on their policies and processes to prevent and address modern slavery in their operations and supply chain. Consultation with affected individuals, CSOs, trade unions, or other organizations should be used to develop a clear and thorough plan to identify modern slavery risks, to elaborate and implement measures to prevent and mitigate these risks, to assess if efforts to address risks have been impactful, and to create an accurate and meaningful reporting statement. Reporting entities should also be encouraged to work with industry associations and multi-stakeholder initiatives that may offer to help address industry-wide challenges.

7. Include Effectiveness Criteria for Grievance Mechanisms

The Guidance refers to 'grievance mechanisms' a number of times in Chapters 5 and 8 but it does not provide advice to businesses on what an appropriate and adequate grievance mechanism might look like. It would be beneficial to companies using this document to be provided with clear criteria for an effective mechanism, such as those outlined in principle 31 of the UN Guiding Principles on Business and Human Rights. These criteria should include worker confidentiality, the availability of translation in relevant languages, the availability hours which should enable workers to use the mechanism alongside their working hours, and timely follow up action. Any meaningful grievance mechanism should also have a clear pathway to resolution with measurable corrective action taken after investigation into a grievance has taken place. Businesses do not need to view grievance mechanisms as purely a channel by which workers can raise complaints; rather, such mechanisms can be effective ways for companies to receive information about issues within their operations and supply chain and to undertake targeted action to resolve them in a timely fashion, rather than wait for and rely upon broader auditing processes.

Recommendation 7: The Guidance should describe the key criteria to ensure the effectiveness of grievance mechanisms, drawing on the UN Guiding Principles on Business and Human Rights.

8. Recommend Efforts to be Taken in the Long Term

The process of assessing and addressing risks of modern slavery should be an ongoing and constant one. It is therefore important for reporting entities to disclose the measures they have taken to address modern slavery in a given year, as well as what specific actions they plan to take in the future to address risks they have identified but have been unable to address yet. This would give reporting entities an opportunity to communicate the challenges they face; for example, that of fully mapping risks in complex supply chains potentially spanning several

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sectors and countries, as well as to outline a detailed plan to reach this goal over time. Recognizing that setting up and communicating these action plans takes time, reporting on long term plans to address modern slavery would benefit companies in the long run by enabling external stakeholders to provide better guidance to companies based on their specific risks, and to push for improved policies and practices.

Recommendation 8: The Guidance should suggest that reporting companies describe both efforts to address modern slavery in a given year, as well as how they intend to continue such efforts in the future.

Mills Oakley Submission on Modern Slavery Act Draft Guidance

- 1. How deep does the Business Engagement Unit ('BEU') expect organisations to go when examining their supply chain pg. 25 of the Guidance includes an example which is quite extensive and seems to go beyond first tier suppliers. Depending on an entity's operations, there are many tiers that could be examined but that will of course not be practical for everyone (or costs of doing so may inhibit an entity's willingness to look for risks). Is there a suggested triage process which could be included, that assists an entity in understanding how deep is deep enough?
- 2. What does the BEU expect in the conduct of 'adequate' risk assessments? Noting the information at pg. 33 of the Guidance, what can an entity consider to be sufficient discharge of this obligation?
- 3. Where there is multiple tier subcontracting, what is expected of a reporting entity in terms of enforcing contract requirements for suppliers to provide data? In some cases, such as cleaning, there may be up to 5 times subcontracted entities the contractual ability of the end purchaser to compel the 5th tier cleaner may be completely diluted (as there will be no privity of contract between that supplier and the end purchaser). Is it expected that the purchaser will consider the failure by the 5th tier cleaner to provide data, a breach of its contract with the 1st tier cleaner?
- 4. A practical consideration that has arisen is to ensure that entities leave sufficient time for proper Board review and decision on whether or not to approve a draft Statement. It would be helpful to include some commentary on pg. 51 of the Guidance that those assisting their Board in this work, ensure that several months' lead time is given to the Board to ensure they can properly discharge their legal obligations (i.e. the message should be not to wait until the 5th month after the end of the reporting period, to get started).
- 5. There is a powerful opportunity to expand the reach of the Act to entities below the reporting threshold. The comments on pg. 18 at para 48.1 are good but additional emphasis could be placed on:
 - a. The fact that the Commonwealth will no doubt require that any entity (irrespective of size) that it contracts with, ensures that the Commonwealth is able to comply with its obligations under the Act thus, making compliance for small businesses also effectively a non-negotiable; and
 - b. The same point will no doubt arise for the procurement conditions of reporting entities, i.e. requiring everyone in their supply chain to comply.
- 6. 'Risk' will be a new term in the present context to many who find themselves having to report under the Act. The commentary in the Guidance at pp. 30-33 might benefit from an additional suggestion that those needing to understand this type of 'risk' (which will be foreign to the ordinary risk practitioner), ought undertake tailored training to help focus their mind on the sorts of things they need to be thinking about, in order to properly identify and address such risks.
- 7. How do those not involved with modern slavery understand at what point it is caused? At pg. 30 of the Guidance reference is made to 'knowingly' setting unrealistic cost targets etc. The question of 'knowingly' or 'unknowingly' is one that really only has a reference in criminal culpability; the outcome will be the same for the victim they will have been exploited. One can expect that businesses will be concerned to ensure they are always cost effective. How they determine at what point that cost effectiveness crosses over into an outcome of exploitation, is going to be very difficult for them to identify. What tips can be given by BEU to assist entities in identifying the consequences of such competing notions of 'competition' in business with harmful / unethical / illegal business.
- 8. Appendix 3 on pg. 67 of the Guidance refers to contacting NGOs or other civil society groups when a case of modern slavery has been identified. It would be very helpful to entities to have an actual list of potential organisations and their contact details and / or a hotline run by / contracted by the BEU to deal with such cases and ensure proper triage and response without delay.
- 9. There is a lot of knowledge on the fact of breaches of human rights leading to a person finding themselves in a situation of (legally defined) modern slavery. The Guidance (at pg. 9) could

- make clearer the fact that an entity identifies a breach of a human right which may not be within the legal definition of modern slavery, is still a serious thing and absent the breach / risk being properly treated, is likely to result in a person entering a circumstance of modern slavery in the future (and thus, needs to be acted on immediately).
- 10. Within the Guidance (see for example pp. 25 and 27) there are multiple references to 'financial lending and investments'. There are two major points of concern:
 - a. In discussions with superannuation funds, there is a lot of concern about the lack of any substantial information (beyond 'Step One' on pg. 33 of the Guidance) on how they will go about understanding how to interpret the obligation on them, given the massive amounts of funds held under management. In every superannuation fund within Australia, there are very diverse portfolios held. Some of these investments will be equity (i.e. investing in other companies through the purchase of shares), some funds will be property focused (for example owning shopping centres, office buildings, airports and other complex premises) and other funds will be in cash / term deposits held with authorised deposit taking institutions (i.e. banks). The challenge for these superannuation funds is how do they go about working out their risk assessments, beyond mapping the first tier of their investments? Are they really expected to do a risk assessment of every company they invest in? And every tenant of every property they own? And every bank they invest in (and every investment that bank holds)? Also, what level of look-through is required where their investments may be in funds that invest in funds that invest in companies. They may have limited visibility of underlying assets when they are relying on the expertise of fund managers. What if their investments are in derivatives of a sector or a product?
 - b. Additionally, the relevance of 'lending' should be explained more so that entities understand why who they lend money to is part of their 'operations' and why it is important for the purposes of reporting under the Act. Further, how deep into the supply chain and operations of another entity who a reporting entity lends money to, could be made clearer in the Guidance.

- Adding references to OECD Guidelines and Due Diligence Guidance: We suggest to add mention of the OECD instruments throughout the guidance (where reference to global instruments is made) as a standard that the Australian government has endorsed, and to reinforce the strength of the Aus MS Act within the global context. Our experience working with government on supply chain legislation suggests that while regulation can clearly drive companies to carry out due diligence, a proliferation of expectations at a domestic level can create challenges for businesses operating globally. For this reason we have made suggestions throughout the guidance to explicitly recognise alignments with OECD Due Diligence Guidance. Additionally, the OECD Due Diligence Guidance and its sector guidance have benefited from extensive consultation and enjoy significant support from business, civil society and governments. Hence, you may find it useful to rely on this instrument to resolve contentious areas of disagreement between your stakeholders. As mentioned on our call, if it would be useful we would be happy to discuss OECD drafting a short explanatory leaflet about how OECD instruments can help companies to fulfil their obligations under the AUS Modern Slavery Act. For example, please see this leaflet we did at the request of the US SEC in order to outline the synergies between the OECD Due Diligence Guidance for Responsible Mineral Supply Chains and section 1502 of the US Dodd Frank Act.
- Strengthening references to stakeholder engagement: While the guidance makes reference to collaboration with civil society organisations/workers it does not explicitly recognise these groups as stakeholders or provide clear guidance on how they should be engaged. Both the OECD Due Diligence Guidance and UNGPs recognise stakeholder engagement as a key aspect of the due diligence process. We suggest that reference to engagement with stakeholders be included in the relevant mandatory reporting requirements in line with international standards. (Please see Q8-11 of the OECD Due Diligence Guidance).
- Adding nuance on prioritisation: Prioritisation is a key factor of due diligence in ensuring that a
 business's due diligence activities are relevant and targeted, and appropriate to the risk
 posed. We suggest to reinforce this throughout the guidance where the steps a company should
 take to identify and address risks of or actual modern slavery cases in the supply chain are
 discussed. We have noted further OECD resources on this topic in our comments on the guidance
 (see attached).
- Referencing OECD work on "Cause, contribute, & direct linkage": As for prioritisation, our
 guidance contains language that has been negotiated between key stakeholder groups on these
 definitions, and the sector guidance explores this more specifically targeted to particular
 sectors. We have indicated in the attached guidance some further resources. In addition, and
 particularly on the joint-venture issue that we discussed on the phone, please see the Financial
 Sector paper here, where you can find discussion on these nuances on page 13 and 14.

Adding additional reference to OECD National contact points: The National contact point of Australia is mentioned briefly in an appendix to the guidance. The AusNCP has a mandate from the government to promote the recommendations of the OECD Guidelines, including due diligence, as well as to handle inquires and also handle grievances involving Australian companies and issues related to non-observance of the Guidelines. As such the NCP can also serve as an important resource for companies seeking to better understand due diligence expectations and international standards on responsible business conduct. It would be useful to better showcase the role of the NCP in this document. For

example, a separate line for the NCP can be provided in the resources appendix. It would also be valuable to mention it in the section on "How can the Modern Slavery Business Engagement Unit help me?" as another agency which can provide technical advice to companies on this issue.



MODERN SLAVERY ACT 2018 DRAFT GUIDANCE FOR REPORTING ENTITIES

PAGE OF COMMENTS FROM BUSINESS LEADERS/INVESTORS/CIVIL SOCIETY PROMOTING USE OF GUIDE

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FOI Document #8 MINISTERIAL FOREWORD

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Contents

The Commonwealth *Modern Slavery Act 2018* established Australia's national Modern Slavery Reporting Requirement (reporting requirement). The aim of this Guide is to explain in plain language what entities need to do to comply with this reporting requirement.

Under the reporting requirement, certain large entities must publish annual Modern Slavery Statements (statements) describing their actions to assess and address modern slavery risks. The main audience for this Guide is people that need to prepare a statement for their entity. You can also read this Guide if you do not have to report but want to learn more about the reporting requirement or provide a voluntary statement.

Each chapter of this Guide will help you to understand a specific part of the reporting requirement. You can also find extra information about key issues in the appendices at the end of this Guide.

We recommend that you share this Guide with other relevant areas of your entity. For example, this Guide may include helpful information for your entity's procurement, legal, compliance, and finance teams. You may also wish to encourage your business partners, including suppliers, to read this Guide.

This Guide addresses the main issues and concepts that you need to understand to comply with the reporting requirement. You can access additional support and advice by contacting the Modern Slavery Business Engagement Unit in the Department of Home Affairs at slavery.consultations@homeaffairs.gov.au.

This Guide does not include specific information for Commonwealth entities covered by the reporting requirement. Separate guidance will be provided for Commonwealth entities.

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CHAPTER OVERVIEWS

Chapter I: Introduction

• This chapter explains the context for the reporting requirement. It also outlines how to comply with the reporting requirement and the consequences for noncompliance.

Chapter 2: Do I need to report?

 This chapter explains how to work out if your entity is required to comply with the reporting requirement.

Chapter 3: Can I report voluntarily?

 This chapter explains how to voluntarily comply with the reporting requirement and whether your entity is eligible to do so.

Chapter 4: When do I report?

This chapter explains how to determine when you will need to report.

Chapter 5: How do I prepare a statement?

 This chapter explains how to draft your statement, including how to respond to each of the mandatory criterion.

Chapter 6: How do I approve and publish a statement?

 This chapter explains how to finalise your statement, including how to have your statement approved within your entity. This chapter also explains how to publish your statement on the central register.

Chapter 7: Can I prepare a joint statement?

 This chapter explains how to draft and finalise a joint statement on behalf of one or more reporting entities.

Chapter 8: How can the Modern Slavery Business Engagement Unit help me?

This chapter explains the role of the Unit and how it can assist you.

Appendix 1: What is modern slavery?

• This appendix explains the definition of modern slavery and provides examples and indicators of modern slavery.

Appendix 2: How can I work with suppliers?

 This appendix sets out recommendations for working with your entity's suppliers to assess and address modern slavery risks.

Appendix 3: How do I respond to a case of modern slavery?

 This appendix sets out recommendations to help you respond to cases of modern slavery in Australia and overseas.

Appendix 4: How can I collaborate with civil society organisations?

 This appendix explains how collaborating with civil society can strengthen your response to modern slavery.

Appendix 5: Helpful resources

 This appendix includes links to other resources that can help you learn about modern slavery and how you can respond.

1.

Introduction

You can read this chapter to learn:

- What is modern slavery
- How modern slavery can impact your entity
- What is the Modern Slavery Reporting Requirement
- 1.1 This introductory chapter explains the context for the Modern Slavery Reporting Requirement.

What is modern slavery?

- 2.1 The term modern slavery is used to describe situations where coercion, threats or deception are used to exploit victims and undermine or deprive them of their freedom.
- 3.1 Modern slavery is only used to describe serious exploitation. It does not include practices like substandard working conditions or underpayment of workers. However, these practices are also illegal and harmful and may be present in some situations of modern slavery. The **Learn More** box on page 8 explains the differences between modern slavery, other forms of exploitation, and decent work.
- 4.1 The Australian *Modern Slavery Act 2018* (the Act) is the first national legislation in the world to define modern slavery.
- 5.1 The Act defines modern slavery as including eight types of serious exploitation: trafficking in persons, slavery, servitude, forced marriage, forced labour, debt bondage, the worst forms of child labour, and deceptive recruiting for labour or services. You can learn more about each of these types of exploitation by reading **Appendix One** (page 59).

LEARN MORE: WHERE DOES MODERN SLAVERY FIT?

Modern slavery happens at the most extreme end of a spectrum that ranges from decent work to serious criminal exploitation.

MODERN SLAVERY

- Worker cannot refuse or cease work because of coercion, threats or deception.
- Worker may also be deprived of personal freedom.

DANGEROUS OR SUBSTANDARD WORKING CONDITIONS

- Worker can refuse or cease work but doing so may lead to detriment.
- Worker is not paid fairly and does not receive some or all entitlements.
- Worker may be required to work excessive hours.
- · Workplace is unsafe.

DECENT WORK

- Workers' rights respected.
- Worker free to refuse or cease work.
- Worker paid fairly (at least the minimum wage).
- Workplace is safe.

How does modern slavery impact your entity?

- 6.1 The nature and extent of modern slavery means there is a high risk that it may be present in your entity's operations and supply chains.
- 7.1 The United Nations (UN) and Walk Free Foundation estimate there are approximately 40 million victims of modern slavery around the world. 17 million of these victims are exploited in the private economy.
- 8.1 Australia is not immune from modern slavery. The Australian Government (the Government) estimates there were 1,567 modern slavery victims in Australia between 2015-16 and 2016-17.
- 9.1 Modern slavery can occur in every industry and sector. It is also often linked to other crimes and activities that adversely impact human rights, such as corruption and environmental damage.
- 10.1 Modern slavery has severe consequences for victims. It involves grave abuses of human rights and serious crimes.
- 11.1 Modern slavery can also significantly impact your entity. It distorts global markets and undercuts responsible business. If not addressed, modern slavery in your operations and supply chains can pose substantial reputational and legal risks for your entity and damage your commercial relationships.

- 12.1 Under the UN Guiding Principles on Business and Human Right entity has a responsibility to respect human rights. This includes taking action to prevent, mitigate and where appropriate remedy modern slavery in your entity's operations and supply chains. Investors, business peers, civil society and governments expect you to understand and meet this responsibility.
- 13.1 Taking action to address modern slavery in your entity's operations and supply chains is also good business sense. It can protect against possible harm to your business, improve the integrity and quality of your supply chains, increase profitability, improve investor and consumer confidence and financing opportunities, improve your relationship with your workers and local communities, and lead to greater access to business opportunities.
- 14.1 As part of the 17 UN Sustainable Development Goals, the international community has committed to end modern slavery by 2030 (Target 8.7). The chart on this page explains how businesses, governments, civil society, investors and consumers all have a key role to play in this process.
- 15.1 You can learn more about the nature and extent of modern slavery by reviewing the resources listed in **Appendix Five (page 71)**.

Figure 1: How can we all play a role in combating modern slavery?



Summary of Comments on Modern Slavery Act - Guidance

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Number: 1 Author: OECD

Subject: Sticky Note Date: 3/05/2019 1:36:52 AM +10'00'

And OECD Guidelines for Multinational Enterprises to which the government of Australia has been an adherent since 1976.

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LEARN MORE: MODERN SLAVERY CASE STUDIES

The purpose of these case studies is to show how modern slavery risks can be present in entities' operations and supply chains. These case studies are hypothetical but draw on facts from real cases in Australia and overseas. The businesses named in these case studies are fictional.

CASE 1: EcoFresh Meats is an Australian company that processes certified organic meat products for retail domestically and overseas. EcoFresh often employs migrant workers in its factories, many of which are located in regional areas. Police begin investigating EcoFresh after a local resident complains that a large number of workers are being housed in a neighbouring property. The investigation reveals that the owners of EcoFresh are exploiting migrant workers through forced labour in several of their factories. EcoFresh charges the workers exorbitant recruitment fees that must be paid back through their wages. EcoFresh also confiscates workers' travel documents for 'safekeeping'. The workers do not speak English, are subjected to regular physical threats and abuse and are not permitted to leave the factories or their accommodation without an escort.

CASE 2: Innovative Infrastructure Inc is a large Australian construction company specialising in road and rail bridges for national infrastructure projects. Innovative Infrastructure's bridge building programs include an emphasis on off-site pre-fabricated elements, which include large steel and concrete components. Innovative Infrastructure's extended materials supply chains for these components include overseas ship-breaking yards in coastal regions. In collaboration with specialist civil society organisations on the ground, Innovative Infrastructure obtains evidence that these ship-breaking yards are using forced labour to generate scrap steel to recycle for steel making. Further investigations reveal that Innovative Infrastructure cannot determine which of its bridge elements contain 'new' or recycled steel and other materials.

CASE 3: Everfree Travel is an Australian wholesale travel company that specialises in arranging overseas volunteering 'adventures' for students and young adults. Everfree's packages are sold by many of the large travel retailers in Australia. The most popular package Everfree offers is a 'volunteering experience' at an overseas orphanage. This involves participants taking part in short-term placements at the orphanage to provide 'social and emotional support' to children. The orphanage operators appear legitimate and claim fees paid by Everfree are directly used to support the children. Everfree has not taken any steps to verify this is the case. After several years, Everfree is approached by an NGO with evidence the orphanage is trafficking children and exploiting them in the orphanage, including for the purpose of orphanage tourism. The orphanage actively recruits children from poor communities, often 'purchasing' children from their families. The children are not permitted to have contact with their families or leave the facility and are regularly abused by staff. The children are forced to lie to volunteers about being orphaned or abandoned. Further investigation revealed that donations from volunteers and fees paid by Everfree were pocketed by the orphanage operators.

CASE 4: Uniforms Galore is an Australian clothing company that supplies uniforms to a large number of Australian schools, hotels, sporting clubs and corporate businesses. Uniforms Galore engages a range of overseas subcontractors to produce its uniforms. To minimise costs, Uniforms Galore regularly changes subcontractors and often uses short-term contracts. A media investigation reveals one of Uniforms Galore's subcontractors is producing uniforms at prison factories in a country where state-imposed forced labour is prevalent. The uniforms are then falsely labelled by the supplier as made in a third country.

What is the Modern Slavery Act?

- 16.1 The Commonwealth *Modern Slavery Act 2018* (the Act) established Australia's national Modern Slavery Reporting Requirement (reporting requirement).
- 17.1 The Act was developed through extensive consultations with the Australian business community and civil society, including investors.
- 18.1 The Australian Parliament passed the Act on 29 November 2018 and the reporting requirement entered into force on 1 January 2019.

What is the Modern Slavery Reporting Requirement?

- 19.1 The reporting requirement aims to support the Australian business community to identify and address their modern slavery risks and maintain responsible and transparent supply chains.
- 20.1 Under the reporting requirement, certain large businesses and other entities must publish annual Modern Slavery Statements (statements) on an online, central register.
- 21.1 These statements must explain what the entity is doing to assess and address the risks that modern slavery practices may be occurring in its global operations and supply chains and the operations and supply chains of any entities it owns or controls.
- 22.1 The reporting requirement is focused on large businesses and other entities that have the capacity to drive change throughout their supply chains.
- 23.1 By improving transparency about modern slavery, the reporting requirement will increase business awareness of modern slavery risks, reduce modern slavery risks in Australian goods and services, and drive a business 'race to the top' to improve workplace practices. The reporting requirement will also increase information available to consumers, investors and business partners.
- 24.1 The **Learn More** box on page 14 explains the key features of the reporting requirement.
- 25.1 The reporting requirement is one part of Australia's broader response to modern slavery domestically and overseas.
- 26.1 It complements Australia's existing criminal justice response to modern slavery, which includes specialist police investigative teams, a dedicated victim support program and a National Action Plan on Human Trafficking and Slavery. The Department of Home Affairs is responsible for implementing Australia's criminal justice response to modern slavery and the reporting requirement.

How do I comply with the Modern Slavery Reporting Requirement?

- 27.1 The flowchart on page 13 explains the main steps you will need to take to comply with the reporting requirement. The following chapters in this guide also explain each of these steps in detail.
- 28.1 You must comply with the reporting requirement if your entity is required to report under the Act. You can learn if your entity is required to report by reading **Chapter Two (page 15)**.
- 29.1 If your entity is not required to report you are still able to provide a voluntary statement. You can learn more about voluntary statements by reading **Chapter Three (page 18)**.
- 30.1 Chapters Four (page 20), Five (page 22) and Six (page 49) explain how to determine when your entity will need to report and how to prepare, approve and submit your statement. Chapter Seven (page 53) explains how you can prepare a joint statement on behalf of one or more entities that need to report.
- 31.1 If you need additional support and advice to understand how to comply with the reporting requirement, you can seek assistance from the Modern Slavery Business Engagement Unit (the Unit) in the Department of Home Affairs.

 Chapter Eight (page 57) explains how to contact the Unit.
- 32.1 You must ensure you comply with the reporting requirement if you are required to do so. Failure to comply can significantly damage your entity's reputation, undermine your ability to do business with other entities and damage investor confidence.
- 33.1 Under the Act, the Government has the power to publicly name entities that fail to comply in certain circumstances. The Government can also require entities that fail to comply to take remedial action, including requiring an entity to provide a statement.
- 34.1 Modern slavery is a significant issue for the Australian business community. However, modern slavery is only one aspect of responsible business conduct. It is important that you also consider other ways that your entity may adversely impact human rights through its operations and supply chains. You can read **Appendix Five (page 71)** to learn more about resources that will help you understand your entity's responsibility to respect human rights.

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LEARN MORE: WHAT IS THE MODERN SLAVERY REPORTING REQUIREMENT?

This box will be an infographic that highlights key features of the reporting requirement. This box will be completed after public consultations.

Covers over 3,000 entities.

Applies to the Australian Government.

Requires entities to publish annual statements explaining their actions to assess and address modern slavery risks in their operations and supply chains.

Requires reporting all modern slavery practices, including the worst forms of child labour.

Sets clear mandatory criteria for reporting.

All statements published on a free, online register.

Annual reports to Parliament about implementation.

A three year review of the legislation to consider improvements.

2.

Do I need to report?

You can read this chapter to learn:

- Which entities need to report
- How to calculate the annual consolidated revenue of your entity
- Whether your entity is an Australian entity
- Whether your entity is a foreign entity carrying on business in Australia
- 35.1 This chapter explains how to work out whether or not your entity is required to comply with the reporting requirement by providing a statement. You do not need to read this chapter if you already know that your entity is required to report.
- This chapter does not include information about voluntarily providing a statement under the reporting requirement. Voluntarily providing a statement can benefit your entity, including by helping you to respond to questions from your customers and investors. If you want to learn more about how to voluntarily participate, you should read **Chapter Three (page 18)**.

What does the Modern Slavery Act say I need to do?

- 37.1 Your entity is a reporting entity and will need to report under the Act if it:
 - has a consolidated revenue of at least AUD\$100 million over its twelve month reporting period

AND

- is an Australian entity at any time in that reporting period
 OR
- is a foreign entity carrying on business in Australia at any time in that reporting period.
- 38.1 If your entity does not meet these requirements you are not required to report under the Act. However, you are still able to voluntarily participate.

Why is this requirement in the Modern Slavery Act?

- 39.1 Under the Act, the reporting requirement applies to large entities that meet the definition of reporting entity, including the AUD\$100 million consolidated revenue threshold for reporting.
- 40.1 The definition of reporting entity ensures that the reporting requirement covers large entities that have the capacity to meaningfully comply with the reporting requirement and the leverage to influence change in their supply chains.

How do I work out if I need to report?

- 41.1 Entities that are required to report are called reporting entities.
- 42.1 The Act applies to a wide range of entity types, including individuals, partnerships, associations and legal entities such as companies, trusts, superannuation funds and other types of investment organisations. This includes both commercial entities and not-for-profit entities, such as charities.
- 43.1 In order to work out whether or not your entity must report, you will need to check if the consolidated revenue for your entity is at least AUD\$100 million over your reporting period. Your reporting period means the financial year or other annual accounting period of your entity. The **How To** box on page 17 explains what you need to do to calculate your entity's consolidated revenue.
- 44.1 If your entity has at least AUD\$100 million consolidated revenue you will then need to determine if you are an Australian entity or a foreign entity carrying on business in Australia. The **How To** box on page 17 explains what you need to do to confirm if you are an Australian entity or a foreign entity carrying on business in Australia.
- In some situations, multiple entities in the same corporate group may be reporting entities. In this case, you can decide to do one joint statement that covers each reporting entity. Alternatively, each reporting entity can prepare a separate statement. **Chapter Seven (page 53)** explains how to prepare a joint statement.

LEARN MORE: WHAT IF MY ENTITY ALREADY NEEDS TO REPORT UNDER ANOTHER LAW?

Similar laws to the Australian *Modern Slavery Act 2018* exist in other countries like the United Kingdom. The State of New South Wales has also introduced a Modern Slavery Act that requires certain businesses to report.

Your entity will need to comply with the Australian Modern Slavery Act even if you already report in another country, like the United Kingdom. You can use the same statement in each country. However, you must still ensure that your statement meets all the requirements in the Australian Modern Slavery Act.

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HOW TO: CALCULATE THE CONSOLIDATED REVENUE OF YOUR ENTITY?

This box explains how to calculate your entity's consolidated revenue. You need to calculate your entity's consolidated revenue to determine if you are required to comply with the Act. Your entity will need to comply with the Act if its annual consolidated revenue is at least AUD\$100 million over its twelve month reporting period.

It is important that you calculate your entity's consolidated revenue in accordance with the Australian Accounting Standards. You need to use these standards even if they do not normally apply to your entity. However, in many cases, your entity will already apply the Australian Accounting Standards in preparing financial statements.

Under the Australian Accounting Standards, the concept of consolidated revenue is used to describe the total revenue of your entity and any entities your entity controls. Australian Accounting Standard AASB 10 *Consolidated Financial Statements* explains how to determine if one entity controls another entity.

It is important to understand that consolidated revenue does not include the revenue of entities that own or control your entity. Consolidated revenue also excludes revenue from intercompany transactions between entities that are part of the same consolidated group.

HOW TO: DETERMINE IF YOUR ENTITY IS AN AUSTRALIAN ENTITY OR A FOREIGN ENTITY CARRYING ON BUSINESS IN AUSTRALIA?

This box explains how to determine if your entity is an Australian entity or a foreign entity carrying on business in Australia. The information in this box is not legal advice. You should refer to the text of the Act for further detail.

Is your entity an Australian entity?

Under the Act, your entity is an Australian entity if it is a company, trust, or corporate limited partnership that is resident in Australia for income tax purposes. In most cases, you should already know whether your entity is a resident for tax purposes. You can learn more about whether your entity is a resident for tax purposes by visiting the Australian Taxation Office website.

Your entity will also be an Australian entity under the Act if it is formed or incorporated in Australia or if the central management and control of your entity is in Australia.

Is your entity a foreign entity carrying on business in Australia?

Under the Act, your entity carries on business in Australia if its activities meet the legal threshold for carrying on business set by section 21 of the Commonwealth *Corporations Act 2001* (Corporations Act).

If your entity is a foreign corporation you should already know if your entity is carrying on business in Australia. This is because all foreign corporations carrying on business in Australia must register with the Australian Securities & Investments Commission.

If your entity is not a foreign corporation, you will need to determine if your entity's activities meet the definition of 'carries on business in Australia' within the meaning of section 21 of the Corporations Act. The Corporations Act does not specifically define carrying on business.

3.

Can I report voluntarily?

You can read this chapter to learn:

- How providing a voluntary statement can benefit your business
- Whether you are eligible to provide a voluntary statement
- How to provide a voluntary statement
- 46.1 This chapter explains how to voluntarily comply with the reporting requirement.
- 47.1 Any Australian entity or entity carrying on a business in Australia can provide a voluntary statement.
- 48.1 Providing a voluntary statement may benefit your entity. For example, it can demonstrate your leadership on modern slavery and show you are a responsible business that acts with integrity. This may help you to attract customers, access new business opportunities, provide a competitive advantage and build your reputation.
- 49.1 Providing a voluntary statement will also help you to respond to questions from customers and investors, including other entities that you do business with. In some cases, your business partners may ask you to provide a voluntary statement.

What does the Modern Slavery Act say I need to do?

- 50.1 There are three things that you need to do if you want to provide a voluntary statement:
 - 1) check if you are eligible to provide a voluntary statement
 - 2) notify the Department of Home Affairs that you will provide a voluntary statement, and
 - 3) prepare and submit a statement that complies with the requirements for statements set out in the Act.

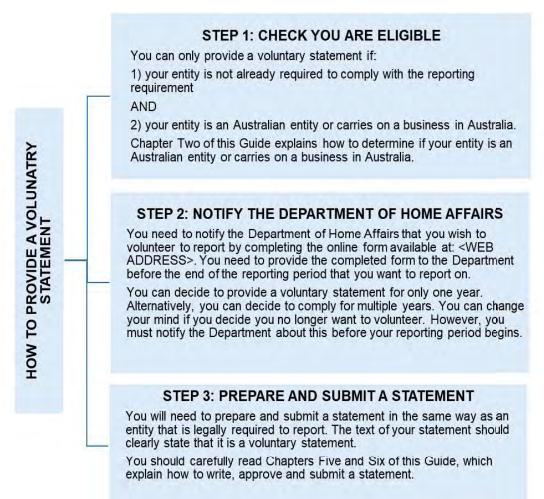
Why is this option in the Modern Slavery Act?

51.1 The Act allows entities to provide voluntary statements to ensure that entities not covered by the reporting requirement are able to participate if they wish to do so.

How do I report voluntarily?

- 52.1 The flow chart below sets out the three steps you will need to complete if you would like to provide a voluntary statement.
- 53.1 You can contact the Modern Slavery Business Engagement Unit for advice if you are unsure about what to do.

Figure 3: Process for voluntary reporting



4.

When do I report?

You can read this chapter to learn:

- · When you need to report
- How to determine your entity's reporting period
- 54.1 This chapter explains how to determine when you need to report and what period of time you need to report on.

What does the Modern Slavery Act say I need to do?

- 55.1 The Act requires you to prepare annual statements covering your entity's reporting period.
- 56.1 Your reporting period means the financial year or other annual accounting period used by your entity. You will need to prepare a statement for every reporting period for your entity.
- 57.1 You will also need to submit your statement to the Department of Home Affairs within six months after the end of your reporting period. **Chapter Six (page 49)** explains the process for submitting your statement.

Why is this requirement in the Modern Slavery Act?

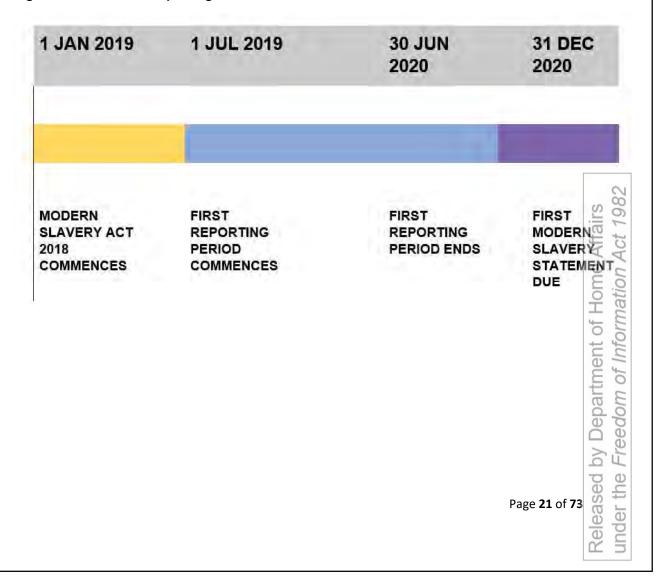
- 58.1 The requirement to report annually under the Act encourages entities to continually assess their modern slavery risks and improve their responses over time.
- 59.1 The timing for reporting is based on entities' financial years or other accounting periods to align the reporting requirement with entities' existing reporting processes, such as annual reports.

How do I work out when I need to report?

60.1 You can work out when you need to report by identifying your entity's reporting period.

- Your entity's reporting period means your entity's financial year or other annual twelve month accounting period used by your entity. You must report within six months after the end of your reporting period. You can read **Chapter Six** (page-49) to learn more about the deadlines for reporting.
- 62.1 For example, if your entity operates on an Australian Financial Year, your reporting period will be 1 July to 30 June. If your entity operates on a calendar year, your reporting period will be 1 January to 31 December.
- 63.1 You need to begin reporting on your first full reporting period after 1 January 2019.
- 64.1 For example, if your entity operates on an Australian Financial Year, your first reporting period will be 1 July 2019 to 30 June 2020. You do not need to report on the period from 1 July 2018 to 30 June 2019.
- 65.1 If your entity operates on a calendar year, your first reporting period will be 1 January 2020 to 31 December 2020.
- 66.1 The chart below explains the timing for reporting for an entity using an Australian Financial Year reporting period.

Figure 4: Timeline for reporting



5.

How do I prepare a statement?

You can read this chapter to learn:

- What to include in your statement
- How to understand and respond to each mandatory criterion
- The meaning of key words in the Act, including operations, supply chains, remediation and due diligence
- 67.1 This chapter explains what you need to do to prepare a statement by addressing each of the seven mandatory criteria for content set out in the Act. This includes:
 - what the Act requires you to do
 - why each criterion was included in the Act, and
 - how you can address each criterion in your statement.
- 68.1 The seven mandatory criteria require every statement to:
 - 1: identify the reporting entity
 - 2: describe the reporting entity's structure, operations and supply chains
 - describe the risks of modern slavery practices in the operations and supply chains of the reporting entity and any entities it owns or controls
 - 4: describe the actions taken by the reporting entity and any entities it owns or controls to assess and address these risks, including due diligence and remediation processes
 - 5: describe how the reporting entity assesses the effectiveness of these actions
 - 6: describe the process of consultation with any entities the reporting entity owns or controls (a joint statement must also describe consultation with the entity giving the statement)
 - 7: any other relevant information.

Number: 1 Author: OECD Subject: Highlight Date: 3/05/2019 2:40:44 AM +10'00' OECD Due Diligence Guidance can help companies understand how to carry out these three steps.

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- 69.1 To help explain each criterion, this chapter draws on the *UN Guiding Principles* on *Business and Human Rights* (UN Guiding Principles). The UN Guiding Principles are the recognised global standard for preventing and addressing business-related human rights harm. Australia supports the UN Guiding Principles, which were unanimously endorsed by the UN Human Rights Council in 2011. Investors, business peers, civil society and governments expect you to understand and apply the UN Guiding Principles in your response to modern slavery.
- 70.1 Your statement will be a public document and it must meet specific requirements for approval and publication. You can learn about these requirements by reading **Chapter Six (page 49)** of this Guide.
- 71.1 If you are preparing a joint statement you should also read **Chapter Seven** (page 53). **Chapter Seven** explains the additional requirements that need to be met for a joint statement.
- You can also apply the principles set out in this chapter if you are a supplier who is not required to prepare a statement but you are asked by reporting entities to take action to identify and address your modern slavery risks. For example, this chapter can help you to understand and identify your specific modern slavery risks and decide what action you may need to take.

LEARN MORE: KEY TIPS TO WRITE A MODERN SLAVERY STATEMENT

- 1) Carefully read this Guide to make sure you understand what you need to do.
- 2) Use the statement process as a way to genuinely consider how you can improve your entity's response to modern slavery.
- 3) Engage senior management, executives and board members as early as possible to ensure they understand the statement process.
- 4) Involve relevant areas of your entity and any entities your entity owns or controls in the drafting process (such as Human Resources, Finance, Procurement, Sourcing, Legal, Risk, Sustainability, Major Projects and Senior Leadership). Where possible, you should include your sourcing and/or procurement teams in all your countries of operation, especially any high risk locations.
- 5) Avoid copying generic templates or statements from other entities.
- 6) Be honest about your entity's situation and risks and what you have done to improve.
- 7) Consider what your next steps will be and how you will show improvement in your next statement.
- 8) Avoid aspirational statements that are not supported by action.
- Consider how you can benefit from third-party expertise and partnerships to improve your overall response to modern slavery, including with industry bodies, international organisations and expert NGOs.
- 10) Check you have complied with all the legal requirements set out in the Act, including addressing all of the mandatory reporting criteria.

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Would suggest incorporating reference to the OECD Guidelines here: "Australia is also an adherent to the OECD Guidelines for Multinational Enterprises. The Guidelines are the most comprehensive, government backed standard on responsible business conduct. The recommendations on human rights due diligence in the Guidelines are aligned with those of the UNGPs. In 2018 the OECD published Due Diligence for Responsible Business Conduct. It is the first government backed reference on due diligence which is relevant for all types of companies operating in all countries and sectors of the economy. The Guidelines also come equipped with a unique non-judicial grievance mechanism, the National Contact Points (NCPs) for Responsible Business Conduct. The NCP of Australia (AusNCP) is located in the Treasury Department."

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Mandatory Criteria One and Two: Identify the reporting entity and describe its structure, operations and supply chains

What does the Modern Slavery Act say I need to do?

- 73.1 The first mandatory criterion requires you to clearly identify the reporting entity that is covered by the statement.
- 74.1 The second mandatory criterion requires you to describe the structure, operations and supply chains of the reporting entity.
- 75.1 Your entity may already use the concepts of 'operations' and 'supply chains' when complying with other legislation. However, you need to make sure that you use 'operations' and 'supply chains' in the way these terms are described in this Guide.

KEY TERMS EXPLAINED: WHAT DO 'STRUCTURE', 'OPERATIONS' AND 'SUPPLY CHAINS' MEAN?

As part of your statement, you need to describe the reporting entity's structure and global operations and supply chains. You will also need to report on modern slavery risks in the operations and supply chains of the reporting entity and any entities that entity owns or controls.

STRUCTURE: the legal and organisational form of the entity, including its legal classification (company, trust, partnership etc), number of employees, whether it is part of a larger corporate group of entities, and whether it owns or controls other entities.

OPERATIONS: any activity or business relationship undertaken by the entity to pursue its business objectives and strategy, including research and development, construction, production, arrangements with suppliers, distribution, purchasing, marketing, sales, provision and delivery of products or services, and financial lending and investments. This includes activities in Australia and overseas.

SUPPLY CHAINS: the products and services (including labour) that contribute to the entity's own products and services. This includes products and services sourced in Australia or overseas and extends beyond direct suppliers.

HYPOTHETICAL EXAMPLE: Blue Sky Construction is a large Australian building company with over 1,500 employees. Blue Sky Construction is structured as a publicly listed company incorporated in Australia and has its headquarters in Melbourne. Blue Sky Construction owns two subsidiary entities and has also established a charitable foundation that operates as a trust.

Blue Sky Construction's main operations include its building sites, including the workers it directly employs and the specialist workers it subcontracts. Blue Sky Construction's operations also include its global sales and marketing program.

Blue Sky Construction's supply chains include the manufacture and transportation of the products it uses in its construction, such as bricks. In this context, Blue Sky Construction's supply chains include the overseas factory where the bricks are made, the importation of the bricks into Australia and the subsequent sale and distribution of the bricks to Blue Sky Construction. Blue Sky Construction's supply chains also include services that contribute to its operations, such as the cleaning and security companies that service Blue Sky Construction's offices and building sites.

Why are these requirements in the Modern Slavery Act?

- 76.1 It is important that the Government, investors, consumers and business peers can identify which reporting entity is covered by a statement. This is why the Act requires you to identify the reporting entity that is covered by your statement.
- 77.1 It is also important that you provide information about the reporting entity's structure, operations and supply chains in the statement. This information is directly relevant to the reporting entity's modern slavery risks and will provide important context for your statement.
- 78.1 For example, an entity with extensive international operations in high risk sectors or emerging markets will have different modern slavery risks to an entity that only operates in Australia and has shorter and more direct supply chains.

How can I address these criteria in my statement?

- 79.1 You must ensure your statement clearly identifies the reporting entity. For example, you may wish to:
 - clearly set out the name of the reporting entity on the front page of the statement and in any introductory text
 - consider including the logo of the reporting entity (if applicable) and the logos
 of any relevant brands or divisions within the reporting entity in a visible
 location in the statement, and
 - explain where the reporting entity is incorporated and listed (if applicable).
- 80.1 You can use the suggested information in the table on page 27 to help you describe the structure, operations and supply chains of the reporting entity. The aim of this description is to provide context for your statement by helping readers to understand the reporting entity. If your entity is part of a corporate group, you should make sure you also describe the overall structure of the group.
- 81.1 If you exclude certain parts of the reporting entity's business from the statement you must ensure this is permissible under the Act and note this exclusion in your statement. For example, if you are a mining company you may decide not to report on your non-managed joint ventures because they will be covered in the managing entity's statement.

TABLE ONE: SUGGESTED WAYS TO DESCRIBE AN **ENTITY'S STRUCTURE, OPERATIONS AND SUPPLY CHAINS**

You may wish to use the suggested information below to help you describe the structure, operations and supply chains of the reporting entity. The aim of this description is to provide context for your statement by helping readers to understand the reporting entity.

Structure	Operations	Supply Chains
Explain the general structure of the entity (for example, is the entity a public company, a partnership or a trust). If the entity is part of a larger group, explain the general structure of the overall group (both upstream and downstream from the entity).	Explain the nature and types of activities undertaken by the entity (for example, mining, retail, manufacturing) and any entities it owns or controls.	Identify the countries or regions where the entity's suppliers are located.
Explain whether the entity owns or controls other entities.	If the entity's activities involve investments or financial lending, explain the type and nature of the entity's investments or lending.	Explain the main types of goods and services the entity procures.
If the entity does own or control other entities, explain what these entities do and where they are located. For example, the entity may own a foreign subsidiary in another country.	Identify the countries or regions where the entity's operations are located or take place.	To the extent possible, identify the source countries for these goods and services.
Identify any trading names or brand names associated with the reporting entity and entities it owns or controls.	Provide facts and figures about the entity's operations, such as the total number of employees, factories, and/or stores.	Link to any disclosures by the entity about the identity of their suppliers (such as a public supplier list).
Provide the entity's Australian Company Number (if relevant) or other public identifying information	Explain in general terms the type of arrangements the entity has with its suppliers and the way these are structured (are they often short term and changeable or stable longer-term relationships).	of Home Affairs
Provide the details of the reporting entity's registered office.	Explain the types of business relationships the entity has in addition to suppliers, such as joint venture partners.	artment o
Indicate the approximate number of workers employed by the entity and any entities it owns or controls.		by Department
		Page 27 of 73

Mandatory Criterion Three: Describe the risks of modern slavery practices in the operations and supply chains of the reporting entity and any entities the reporting entity owns or controls

What does the Modern Slavery Act say I need to do?

- 82.1 The third mandatory criterion requires you to describe the disks of modern slavery practices in the operations and supply chains of the reporting entity.
- 83.1 You also need to describe the risks of modern slavery practices in the operations and supply chains of any entities the reporting entity owns or controls.
- The **Key Terms Explained** box on page 30 explains what the 'risks of modern slavery practices' means.
- 85.1 This criterion only requires you to identify how risks of modern slavery practices may be present in the reporting entity's operations and supply chains.
- 86.1 This criterion does not require you to certify that the reporting entity is 'slavery-free'. Every entity has modern slavery risks in its operations and supply chains
- 87.1 This criterion also does not require you to report on specific individual risks or actual cases of modern slavery. However, you are able to voluntarily include information about specific risks or cases if you wish to do so. For example, you could include an anonymised case study.
- 88.1 The **Learn More** box on page 29 explains how to report on specific cases in a way that is safe for the victim and respects their privacy.

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For more alignment with the Guidelines/UNGPs/GRI reporting standard you may ask for reporting on "actual and potential modern slavery impacts." Potential impacts covers risks, but as it is written now reporting on existing cases of modern slavery may be omitted. Also the level of detail of reporting required here may not be clear to readers. You may also want to draw from GRI reporting recommendations (and adapt specifically to modern slavery)- "Organizations with diverse operations or business relationships can identify broad material human rights topics and then specify the severe impacts that arise in different contexts. For example, an organization can identify "labor practices in the supply chain" as a material human rights topic, and then specify the human rights of workers that are most at risk in, for example, its heavy machinery business, separately from the human rights of workers that are most at risk in its IT services business."

And "For example, the organization can explain individual incidents, such as a strain of bacteria that has caused the deaths of several of the organization's customers, or endemic problems, such as systemic child labor or forced labor in countries where the organization operates or sources inputs from."

LEARN MORE: REPORTING ON MODERN SLAVERY CASES

You can decide to voluntarily include information about specific modern slavery allegations or cases in your statement. You can read **Appendix Three (page 67)** to learn more about responding to specific modern slavery cases.

Including information about specific allegations or cases can help to show that your entity's actions to identify and address modern slavery risks are effective. You can read **Appendix Three** to learn more about responding to situations of modern slavery.

DO:

- be clear how you responded to the allegation or case
- respect the privacy of the victim and other individuals that may have been involved (such as the victim's family) at all times
- take into account any other potential impacts that reporting may cause to the victim and other individuals that may have been involved (such as the victim's family).

DO NOT:

- · report on the allegation or case if doing so could put the victim at risk
- provide the name, age, or other personal information about the victim
- disclose the specific location of the allegation or case (such as city X) if doing so would put the victim at risk
- provide specific details about allegations or cases that are currently being investigated or are before a court.

KEY TERMS EXPLAINED: WHAT ARE 'RISKS OF MODERN SLAVERY PRACTICES'?

The 'risks of modern slavery practices' means the potential for your entity to **cause**, **contribute to**, or be **directly linked to** modern slavery through its operations and supply chains – in other words the risks that your entity may be involved in modern slavery.

The concept of risk in this context means risk to people rather than risk to your entity (such as reputational or financial damage). However, often these risks to people will intersect with risks to your entity. For example, potential forced labour in a clothing factory poses clear risks to the human rights of the workers (risk to people) but may also lead to reputational damage and legal liability for the clothing company (risk to the entity). This 'outward-facing' and 'people focused' approach to risk may be different from how your entity normally deals with other types of risk.

The concepts of cause, contribution and direct linkage are set out in the ON Guiding Principles and are part of a continuum of conduct. This means that your entity's risks may not always fit neatly into one of these categories.

isks that you may <u>cause</u> modern slavery practices: This means the risks that your entity's operations may directly result in modern slavery practices.

• For example, your entity may own and run a factory that uses exploited labour.

Risks that you may <u>contribute</u> to modern slavery practices: This means the risks that your entity's operations and/or actions in its supply chains may contribute to modern slavery. This includes acts or omissions that may facilitate or incentivise modern slavery.

- For example, your entity may have specifically asked a construction company to find the cheapest possible labour for a project and turned a blind eye to evidence that the workers were being exploited.
- For example, your entity may knowingly set unrealistic cost targets and delivery timeframes for a supplier that can only be met by using exploited labour.

Risks that you may <u>be directly linked</u> to modern slavery practices: This means the risks that your entity's operations, products or services (including financial products and services) may be connected to modern slavery through the activities of another entity you have a business relationship with. Your business relationships include all of the entities in your supply chain, including entities you do not have a direct contractual relationship with. Your business relationships also include your business partners and customers, including entities you provide with financial products or services.

- For example, your entity may retail electronic goods. These goods may have been manufactured by another entity using minerals sourced from a third entity that were mined using forced labour.
- For example, your entity may fund a client to undertake an overseas infrastructure project. Despite your entity putting appropriate safeguards in place, the client engages subcontractors that use forced labour to complete the project.

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The concept of a continuum of conduct is actually quite controversial. I would suggest you omit this.

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You might want to align this with language in the OECD Due Diligence Guidance which was carefully negotiated and approved by all adhering governments- "Cause: An enterprise "causes" an adverse impact if the enterprise's activities on their own are sufficient to result in the adverse impact."; "Contribute: An enterprise "contributes to" an impact if its activities, in combination with the activities of other entities cause the impact, or if the activities of the enterprise cause, facilitate or incentivise another entity to cause an adverse impact. Contribution must be substantial, meaning that it does not include minor or trivial contributions."; Directly linked: "Linkage" is defined by the relationship between the adverse impact and the enterprise's products, services or operations through another entity (i.e. business relationship).
"Directly linked" is not defined by direct contractual relationships, for example "direct sourcing"

See OECD Due Diligence Guidance p70, Q29. http://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf

Why is this requirement in the Modern Slavery Act?

- 89.1 It is important you consider how your entity may cause, contribute to, or be directly linked to modern slavery. This is why the Act requires you to describe the risks of modern slavery practices for the reporting entity and any entities it owns or controls.
- 90.1 Accurately and honestly describing your modern slavery risks is a key part of your statement. Once you have identified your modern slavery risks, you can then develop an appropriate response.
- 91.1 You will need to describe the actions the reporting entity and any entities it owns or controls have taken to assess and address their modern slavery risks in your response to mandatory criterion four.

How can I address this criterion in my statement?

- 92.1 In order to address this criterion, you need to ensure that your statement includes a description of how risks of modern slavery practices may be present in the operations and supply chains of the reporting entity.
- 93.1 If the reporting entity owns or controls any other entities then you also need to describe how risks of modern slavery practices may be present in the operations and supply chains of each of these entities.
- 94.1 You can do this by identifying how the reporting entity and any entities it owns or controls may cause, contribute to, or be directly linked to modern slavery through its operations and supply chains.
- 95.1 This should include identifying the general types of modern slavery risks that may be present in the operations and supply chains of the reporting entity and any entities it owns or controls.
- 96.1 For example, a fashion company's statement could explain that the entity has identified there is a risk it may contribute to modern slavery practices through its arrangements with third-party supplier factories, which focus on minimising production costs. The statement could also explain that the entity has identified a risk that it may be directly linked to modern slavery practices further down its supply chains, including through the labour practices used by raw material suppliers.
- 97.1 Similarly, a mining company's statement could explain that the entity has identified there is a risk it may cause modern slavery practices because parts of its operations are in countries reported to have a high prevalence of modern slavery by international organisations or NGOs. The statement could also explain that the entity has identified a risk it may contribute to modern slavery through its arrangements with charter vessels that may use exploited labour.

- 98.1 You do not need to exhaustively list specific risks in your description. However, you must include sufficient detail to clearly show the types of products and services in the entity's operations and supply chains that may involve risks of modern slavery.
- 99.1 For example, your statement may explain that the reporting entity has identified risks relating to its sourcing of timber products from countries A, B and C, which may be produced using modern slavery. Your statement does not need to specify the particular factories these risks relate to.
- 100.1 In many cases, you will need to do a basic scoping exercise to help you identify and describe the risks of modern slavery practices for an entity. You may also wish to complete this process for other responsible business conduct risks, such as corruption.
- 101.1 The **How To** box on page 33 explains how to complete a basic scoping process. This process is a first step that will help you to consider the nature and extent of your entity's modern slavery risks. It is not the same as a detailed risk assessment.

HOW TO: SCOPE YOUR ENTITY'S MODERN SLAVERY RISKS

Every entity's modern slavery risks will be different. Completing a basic scoping exercise will help you to understand which parts of your entity's operations and supply chains may involve modern slavery risks. You can then use this information to describe your entity's modern slavery risks.

- STEP ONE: Map out the broad operations and overall supply chain structure of your entity. If your entity undertakes investment or financial lending activities, this map should include your investment and lending portfolio. Use this map to identify the general sectors and industries, types of products and services, countries and entities that are involved in your entity's operations (including any investments or financial lending) and supply chains.
- STEP TWO: Check which of the sectors, types of products and services, countries and entities that you have identified may involve high modern slavery risks. Consider that your entity's most severe modern slavery risks may not align with the volume or cost of the products and services you procure. Appendix One (page 59) includes a list of modern slavery risk indicators to help you evaluate your risks. Appendix Five (page 71) includes a list of resources that will help you learn more about modern slavery risks.
 - Dector and industry risks: Certain sectors and industries may have high modern slavery risks because of their characteristics, products and processes. For example, extractives, textiles and fashion, fishing, electronics, cleaning, and agriculture are recognised as high risk industries globally.
 - Product and services risks: Certain products and services may have high modern slavery risks because of the way they are produced, provided or used. For example, bricks, cobalt, cotton and rubber are recognised as high risk products globally. Similarly, services such as cleaning that often involve lower wages and manual labour may have high modern slavery risks.
 - Geographic risks: Some countries may have higher risks of modern slavery, including due to poor governance, weak rule of law, conflict, migration flows and socio-economic factors like poverty.
 - Entity risks: Some entities may have particular modern slavery risks because they have poor governance structures, a record of treating workers poorly or a track record of human rights violations
- STEP THREE: Identify the parts of your operations (including any investment or financial lending portfolios) or supply chains that you do not have visibility over and consider if they may involve modern slavery risks. For example, your entity may purchase uniforms for staff from a supplier. Although textiles and clothing is a high risk sector, you may not have any information about where and how the uniforms are made.

***Although scoping exercises are a useful tool, you should remember that modern slavery risks can also occur in areas that may initially seem low risk. You also need to continually review your risks to identify changes over time, such as risks relating to new products or suppliers. ***

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It may be useful to include links to resources that can help companies better understand risk areas. The USDOL has produced guidance on high risk products and geographies for child and forced labour for example.

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SCOPING YOUR ENTITY'S MODERN SLAVERY RISKS: HYPOTHETICAL EXAMPLE:

AlphaBeta Resources is an extractives company that owns and operates mining facilities around the world. AlphaBeta Resources' initial scoping exercise shows that the entity has a range of modern slavery risks.

AlphaBeta Resources operates in a high risk sector (extractives) but its operations and supply chains also involve a range of other high risk sectors and industries. For example, AlphaBeta Resources has identified there is a risk that it may **contribute** to modern slavery by subcontracting cleaning services for its offices around the world to other companies at the lowest possible costs and buying large numbers of uniforms for its workers. AlphaBeta has also discovered that one of the companies that provides cleaning services has been criticised by credible NGOs for underpaying its workers.

AlphaBeta Resources has also identified a number of product risks. One of these risks is that AlphaBeta Resources may be **directly linked** to modern slavery through its supply chain because it regularly purchases complex electronic equipment to help operate its mining sites. Often this electronic equipment includes components made from cobalt (which is a high risk product).

Lastly, AlphaBeta Resources has identified that it operates mining sites in two countries that are considered to have high modern slavery risks because of poor governance and a weak rule of law. AlphaBeta Resources is concerned that it may be at risk of **causing** modern slavery if its workers at these sites are not properly employed.

What does the Modern Slavery Act say I need to do?

- 102.1 The fourth mandatory criterion requires you to describe what actions are being taken by the reporting entity to assess and address the risks of modern slavery practices occurring in its operations and supply chains.
- 103.1 If the reporting entity owns or controls any other entities then you also need to describe the actions these entities are taking.
- 104.1 Your description should only cover actions taken during the twelve month reporting period for the reporting entity. Actions that are taken after the end of the reporting period should be described in your next statement.
- 105.1 Your description of these actions must include information about due diligence and remediation processes.

LEARN MORE: WHERE DO I START?

Many entities have complex operations and supply chains involving thousands of other entities. This means it may be impossible for you to immediately assess and take action to respond to the modern slavery risks associated with every part of your entity's operations and supply chains.

In this situation, the UN Guiding Principles (Principle 17) suggest that you focus on assessing general areas of your operations and supply chains where modern slavery risks are likely to be most significant. For example, you could decide to focus on areas of your operations and supply chains that involve high risk goods or services, certain geographic locations and high risk sectors.

You may also need to prioritise which risks you respond to first. The UN Guiding Principles (Principle 24) explain that you should focus on the most 'severe' risks (those that would cause the greatest harm to people). This means those risks that have the greatest scope (gravest impact) or scale (number of people affected) or where delayed response would make them irremediable (for example, because delay would cause loss of life or loss of education). These factors are more important than the probability of the risk occurring.

Prioritising which risks you respond to first does not mean you can disregard the risks that you de-prioritise. Once you have addressed your most severe risks, you should ensure you move on to address these other risks.

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Prioritisation can be an extremely complex topic for companies. I would suggest including a reference to the OECD (2018) Due Diligence Guidance for Responsible Business Conduct which provides additional concrete and practical guidance on how to handle prioritisation throughout the due diligence process.

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- 106.1 This means that your statement should explain how the reporting entity and any entities it owns or controls are doing due diligence to identify, prevent, mitigate and account for how it addresses its modern slavery risks.
- 107.1 This also means that your statement should include information about the processes the reporting entity and any entities it owns and controls have in place to remedy situations where you may cause or contribute to modern slavery.
- 108.1 Due diligence and remediation are key concepts in the N Guiding Principles and are important parts of an effective response to modern slavery. The **Key Terms Explained** box on page 37 explains these concepts in more detail.

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KEY TERMS EXPLAINED: WHAT DOES 'REMEDIATION AND DUE DILIGENCE PROCESSES' MEAN?

As part of your statement, you need to describe your entity's actions to address modern slavery risks, including due diligence and remediation processes.

DUE DILIGENCE: Under the UN Guiding Principles (Principles 15 and 17), your entity is expected to undertake human rights due diligence. The term 'due diligence' refers to an ongoing management process to identify, prevent, mitigate and account for how an entity addresses actual and potential adverse human rights impacts in their operations and supply chains, including modern slavery.

here are four key parts to due diligence:

- 1) Identifying and assessing actual and potential human rights impacts (for example, screening new suppliers for modern slavery risks).
- 2) Integrating your findings across your entity and taking appropriate action to address impacts (for example, introducing internal training on modern slavery and processes for incident reporting).
- 3) Tracking your entity's performance to check whether impacts are being addressed (for example, doing an internal audit of your supplier screening).
- 4) **Publicly communicating what you are doing** (for example, by publishing a Modern Slavery Statement or publicly responding to allegations against a supplier).

Due diligence is important because it helps you to understand your entity's modern slavery risks and the actions you need to take to prevent and mitigate them. This helps you to know and show that your entity is respecting human rights. Your due diligence process should be appropriate to your size, sector, operational context, ownership and structure.

REMEDIATION: The Notice of Guiding Principles make it clear that entities that identify that they have caused or contributed to adverse impacts such as modern slavery must provide for, or cooperate in, the remediation of that impact. This means that you should try to 'make good' the adverse impact by restoring the victim to the situation they would be in if the adverse impact had not occurred. Entities that do not cause or contribute to harm but are directly linked to adverse impacts like modern slavery by a business relationship are not responsible for remediating the impact. However, they may play a role in doing so and should still use their leverage to work with the entity that caused the impact to prevent or mitigate the harm and its recurrence. If this is unsuccessful, Intities should consider ending their business relationship with the entity that caused the impact.

Remediation can take many forms, including steps to ensure the harm cannot recur, formal apologies, compensation, or stopping certain activities. The UN Guiding Principles expect that you develop processes to enable remediation. You do not need to have a remediation process focused just on modern slavery. For example, your entity and your suppliers may already have general remediation processes in place to address a range of adverse human rights impacts, including modern slavery. Often this will take the form of a grievance mechanism (a way for people to safely raise concerns about the impact an entity is having on them).

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Number: 1 Author: OECD Date: 3/05/2019 8:11:00 PM +10'00' Subject: Highlight And OECD MNE Guidelines (Chapter II. para 10)

Number: 2 Author: OECD Subject: Highlight Date: 3/05/2019 8:12:40 PM +10'00'

The OECD Due Diligence Guidance for Responsible Business Conduct outlines 6 principle steps. We strongly encourage alignment with this approach it was developed in partnership the OHCHR, UNWG on BHR and Shift as well as other important stakeholders and has been formally adopted by all adherents to the Guidelines- including the government of Australia. UN Working Group on Business & Human Rights presented its report on human rights due diligence at the UN General Assembly in New York, which featured OECD Due Diligence Guidance for Responsible Business Conduct prominently. It recognized that the Guidance provides a comprehensive practical tool for supporting implementation of human rights due diligence in line with the Guiding Principles, which is based on comprehensive multi-stakeholder inputs and dialogue."

Date: 3/05/2019 8:13:11 PM +10'00' Number: 3 Author: OECD Subject: Highlight And OECD MNE Guidelines

Date: 3/05/2019 8:36:17 PM +10'00' Number: 4 Author: OECD Subject: Highlight

Provide reference to paragraph in Appendix 3 p68 on responsible disengagement from suppliers/business relationships. Also see OECD Guidance (2018) p80, Q39 "How can an enterprise approach disengagement?" for further guidance. http://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf

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Why is this requirement in the Modern Slavery Act?

- 109.1 It is important that your entity takes meaningful steps to identify and respond to modern slavery risks. This is why the Act requires you to report on what your entity and any entities it owns or controls are doing to assess and address modern slavery risks.
- 110.1 This requirement is consistent with the expectations for business set out in the N Guiding Principles. The Guiding Principles (Principle 13) make it clear that entities must act to assess and address adverse impacts in their operations and supply chains, including modern slavery.
- 111.1 Your entity may already be working to assess and address its broader human rights risks. In this situation, you should be able to use the same process to manage your modern slavery risks.

LEARN MORE: HOW CAN I FIND OUT WHAT IS HAPPENING DEEP IN MY SUPPLY CHAINS OR IN MY INVESTMENT PORTFOLIO?

Supply chains are often long and complex. In many cases, your entity will not have direct contractual relationships with most of the entities in your supply chain. Similarly, the complex and changeable structure of investment portfolios means many investors may have limited relationships with their investees. This means your entity may not have visibility of what is happening deep in your supply chain or in your investment portfolios. As a result, it may be difficult to assess and address modern slavery risks. For example, a construction company may not know where and how the bricks it uses are made. Similarly, a superannuation fund may not be aware of how some of its investees are responding to modern slavery risks.

There are several ways that you can assess high risk parts of your supply chain that involve entities you do not have direct contractual relationships with. These include:

- requesting information from your direct suppliers about sub-suppliers, including country of origin
- engaging with investees to understand how they are addressing their modern slavery risks
- working with other entities in your sector to carry out a joint assessment of high risk parts of a supply chain
- · using existing traceability processes to improve information about the source of products
- identifying existing credible assessments of entities in your supply chain, such as audit reports or NGO reviews
- developing trusted relationships with civil society stakeholders who can provide information about situations 'on the ground'
- working directly with high risk entities you do not have a direct contractual relationship with to help them assess and address their risks.

You can learn more about engaging with suppliers by reading Appendix Two (page 65).

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And the OECD MNE Guidelines Chapter II para 10

How can I address this criterion in my statement?

- 112.1 In order to address this criterion, you need to ensure that your statement clearly sets out what the reporting entity is doing to assess and address its modern slavery risks.
- 113.1 If the reporting entity owns or controls any other entities then you also need to ensure your statement clearly sets out the actions these entities are taking.
- 114.1 The table on page 40 provides examples of the types of actions you can take to assess and address modern slavery risks.
- 115.1 The actions you take should reflect the relationship between your entity and the risk you are trying to assess and address.
- 116.1 The **Learn More** box on page 40 explains how to determine what actions you should take based on whether you are at risk of causing, contributing to or being directly linked to modern slavery.
- 117.1 You can also read **Appendix Two (page 65)** to learn more about how to work with suppliers to take action.
- 118.1 In many cases, it may take time for your entity to develop an effective response to modern slavery risks.
- 119.1 It is important to be honest about your situation in your statement. This means you should be transparent about what you are doing to develop your response and try to show how you are genuinely working to improve. For example, you could provide information about what you want to achieve and the timeframes you have set to do this.
- 120.1 You should also be honest about issues that may limit your ability to take action, including your ability to use your leverage. For example, a passive investment entity with a large investment portfolio may have limited ability to engage directly with specific investees and no meaningful leverage to change their behaviour.
- 121.1 Initially, you may also need to prioritise which risks you respond to. The **Learn**More box on page 35 explains how to prioritise assessing and responding to modern slavery risks.

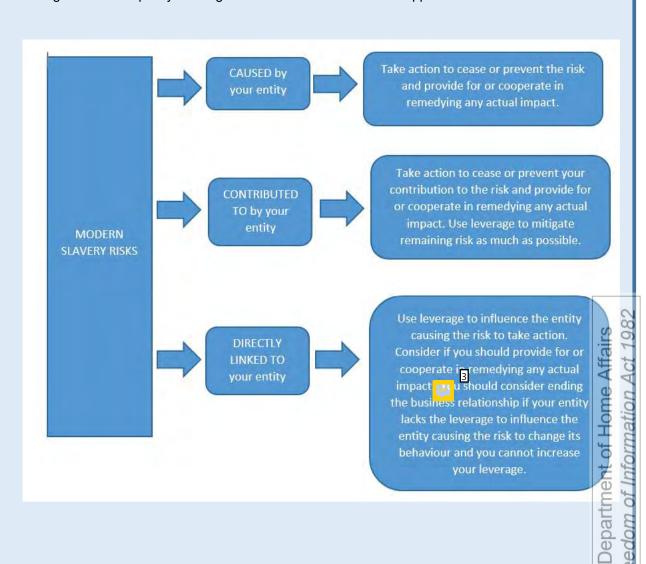
Number: 1 Author: OECD Subject: Highlight Date: 3/05/2019 8:22:32 PM +10'00'

Recommend omitting this example as it is not correct. Eg. Blackrock, the biggest passive investor in the world carries out direct engagement with companies- as that is the best leverage point they have as passive investors - and they have considerable leverage. We have seen passive investors use their leverage with actual impacts in practice and developed an entire guidance on this (see OECD (2017) RBC for institutional investors). https:// mneguidelines.oecd.org/rbc-financial-sector.htm.

LEARN MORE: HOW DOES MY RELATIONSHIP TO THE RISK **AFFECT MY RESPONSE?**

The **Key Terms Explained** box on page 30 explains that the 'risks of modern slavery practices' means the potential for your entity to cause, contribute to, or be directly linked to modern slavery through its operations and supply chains.

The UN Guiding Principles (Principle 19) make it clear that the way that you respond to your modern slavery risks will depend on whether you are causing, contributing to or are directly linked to each risk. If the risk is not caused by your entity then the type of action you take will also depend on your 'leverage' with the other entities involved. Peverage means your ability to influence the other entities to change their behavior. If you lack leverage, you should consider ways to increase your leverage, including by collaborating with other entities. You could also seek to increase your leverage by incentivising the entity to improve its performance, including through offers of capacity building assistance or future business opportunities.



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Number: 2 Author: OECD

Number: 2 Author: OECD Subject: Highlight Date: 3/05/2019 8:24:34 PM +10'00'
Leverage can be a tricky concept for companies to understand. You may wish to direct readers to the OECD Due Diligence Guidance (2018) section A3, questions 36 and 37, for further guidance on this issue.

Number: 3 Author: OECD Subject: Sticky Note Date: 12/05/2019 12:20:17 AM +10'00'

Please see the OECD Due Diligence Guidance for negotiated text on responsible disengagement from suppliers. The current text doesn't acknowledge that there could be a greater risk to workers through disengagement and this should be taken into account by a company when considering disengagement. See OECD DD Guidance (2018) Section II 3.2 (h) and Annex Q39. You may also wish to reference the OECD DD Guidance on understanding relationship to impact which include negotiated text on how to assess whether an enterprises is causing/contributing/directly linked to. See annex Q 29-30.

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LEARN MORE: POSSIBLE ACTIONS TO ASSESS AND ADDRESS RISKS

This box sets out examples of the types of actions you can take to assess and address modern slavery risks. This box is not a complete list of every possible action. You will need to consider which actions are most appropriate for your entity.

☐ SSESS RISKS

- Review existing information about your entity's operations and supply chains, such as Human Rights Impact Assessments, Environmental and Social Impact Assessments and WH&S inspections.
- Map your operations and supply chains to improve your understanding about what is
 happening in your supply chains. Use this information to undertake a detailed risk
 assessment, including a process to assess particular suppliers using enhanced
 checks where necessary. Mapping your supply chains can be an extensive process. The
 Learn More box on page 35 explains how to prioritise and respond to key risks.
- Assess the risks of modern slavery in your investment portfolio.
- Develop tools and policies to monitor high risk suppliers and mitigate associated risks.
- Bring together key areas of your entity to help assess and respond to key risks, including Human Resources, Finance, Procurement, Sourcing, Legal, Risk, Sustainability, Major Projects and Senior Leadership.
- **Develop a specific action plan** for how you will improve your response to modern slavery risks and include measurable outcomes and deadlines.
- Assign responsibility for assessing and addressing modern slavery risks to a senior manager and brief your board or other principal governing body appropriately.
- Set up a mechanism to allow people to safely report modern slavery risks in your entity's operations and supply chains.
- **Build partnerships** with business peers, expert civil society groups, local community groups, and industry bodies to improve your understanding of modern slavery risks.
- Engage directly with workers and other potentially affected groups in your operations and supply chains, as well as credible experts, to assess risks.

CHANGES TO POLICIES AND PROCESSES

- Make your entity's policies on modern slavery publicly available, including online. Where relevant translate them into local languages.
- Review and improve existing policies and procedures, including supplier codes of conduct; and sourcing policies. Ensure you communicate these changes to staff and suppliers and make regular updates as your understanding of modern slavery risks evolves.
- Improve staff and management awareness of modern slavery risks through awarenessraising and training, including staff orientation. Ensure training is fit for purpose.

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Subject: Sticky Note Date: 13/05/2019 11:58:20 PM +10'00'

See OECD DD Guidance (2018) Section II, 2 for language which is ordered in process order for how a company should take steps to identify actual or potential adverse impacts, and also covers the question of prioritisation which is missing here.

- Ensure you are prepared to respond if you find modern slavery occurring in your operations or supply chains, including by developing an agreed procedure for responding to modern slavery cases.
- Address practices in your operations and supply chains that may lead to modern slavery, such as charging recruitment fees for workers, tying workers' accommodation to their employment status, sham contracting, unmanageable lead times and purchasing practices, unlawful wage deductions or underpayment.
- Review and improve policies and process used to screen potential investees to ensure they appropriately address modern slavery risks.
- Consider ways to engage with investees directly or collectively to encourage them to address their modern slavery risks.
- If your operations involve direct engagement with children (such as charities, corporate social responsibility programs or travel and tourism operators), review and improve your child protection processes and policies.

UPPLIER ENGAGEMENT

- **Improve supplier awareness** of modern slavery risks and how they may contribute to modern slavery through awareness-raising and training.
- Take steps to build supportive, transparent and collaborative relationships with suppliers, including couraging suppliers to be honest with you about modern slavery risks.
- Where possible, ensure workers in your supply chains have access to information about their rights, obligations and ways to access support.
- Clearly communicate your expectations to suppliers, including by ensuring modern slavery issues are specifically addressed in supplier contracts, prequalification and other relevant mechanisms.
- Appendix Two (page 65) includes recommendations about engaging suppliers

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See for example: OECD Garments Guidance (2017) Module 3. Forced Labour which gives risk factors and indicators which can make these issues more tangible for workers and suppliers.

Number: 2 Author: OECD Subject: Highlight Date: 15/05/2019 12:20:35 AM +10'00'

The language "encouraging suppliers to be honest with you" could be interpreted as casting a negative light on supplier behaviour. Suggest to replace with neutral language about building relationship/expectation of mutual openness/open a conversation about modern slavery risks in shared supply chains.

What does the Modern Slavery Act say I need to do?

- 122.1 The fifth mandatory criterion requires you to describe how the reporting entity assesses the effectiveness of the actions it is taking to assess and address the risks of modern slavery practices in its operations and supply chains.
- 123.1 If the reporting entity owns or controls any other entities then you also need to describe how the reporting entity is assessing the effectiveness of the actions these other entities are taking.
- 124.1 The Act only requires you to explain *how you assess* the effectiveness of an entity's actions. The Act does not ask you to determine whether an entity's actions *are effective*.

Why is this requirement in the Modern Slavery Act?

- 125.1 You cannot improve your entity's response to modern slavery if you do not have a way to check whether your actions to assess and address modern slavery risks are working. This is why the Act requires you to describe how you assess the effectiveness of the actions taken by the reporting entity and any entities it owns or controls to assess and respond to modern slavery risks.
- 126.1 For example, your entity may develop and implement modern slavery training for staff and suppliers. However, this training will not meaningfully address your modern slavery risks unless it is fit for purpose and effective in actually raising awareness amongst staff and suppliers.

How can I address this criterion in my statement?

- 127.1 In order to address this criterion, you need to ensure that your statement clearly sets out how the reporting entity assesses the effectiveness of its actions (and the actions of any entities it owns or controls) to both assess and address modern slavery risks.
- 128.1 This means that you need to explain what the reporting entity is doing to check whether its actions to *assess* its modern slavery risks are working. How will it know whether it is appropriately identifying and evaluating its modern slavery risks?

Number: 1 Author: OECD Subject: Highlight Date: 16/05/2019 11:41:52 PM +10'00'
This distinction (124.1) is not too clear and could be confusing. The due diligence process expects companies to monitor and assess their own efforts in terms of effectiveness (so as to improve these processes and ensure they are relevant and impactful). In case other entities are part of the corporate structure of the reporting entity, then the reporting entity should be working towards tracking and communicating the actual effectiveness of their due diligence activities. In case the aim here is to give a staged approach in order to help companies to start the process with their business partners (and progressively improve their process each year) then some language on this intention would perhaps clear up any confusion. See OECD DD Guidance step 5.1 and also UNGPs para 21.b.

- 129.1 You also need to explain what the reporting entity is doing to check whether its actions to *address* modern slavery risks are working. How will it know if its actions are making a difference?
- 130.1 Understanding and assessing effectiveness can be difficult. There are a range of ways that you can demonstrate how you assess the effectiveness of your entity's actions, including:
 - Establishing a process to regularly review the actions you have taken. For example, you could set up an annual senior management review of your entity's response to modern slavery.
 - Regularly checking your risk assessment processes to ensure they remain up to date. For example, if your entity commences operations in a high risk country or region it is important that you identify and assess any new risks that may result.
 - Setting up a process to provide for regular engagement and feedback between key areas of your entity (such as Sourcing, Human Resources, and Legal), as well as with any entities you own or control.
 - Conducting internal audits or monitoring of specific steps you have taken to assess and address modern slavery risks. For example, you could audit your prequalification checks for suppliers to determine if mitigation measures have been consistently actioned.
 - Tracking the actions you have taken and measuring their impact. For example, you could track the number of actions that have been implemented to deadline, the number of high risk suppliers or investees engaged, and levels of awareness among staff.
 - Working with suppliers to check how they are progressing any actions they have put in place to address modern slavery risks.
 - Considering any trends in cases reported through grievance mechanisms and how these cases were handled.
 - Partnering with an industry group, external auditor, or trusted NGO to undertake an independent review of your actions.

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The OECD DD Guidance speaks about due diligence being a dynamic process, you may want to draw on the language there: "Enterprises should aim to progressively improve their systems and processes to avoid and address adverse impacts. Through the due diligence process, an enterprise should be able to adequately respond to potential changes in its risk profile as circumstances evolve (e.g. changes in a country's regulatory framework, emerging risks in the sector, the development of new products or new business relationships)."

LEARN MORE: DO I NEED MODERN SLAVERY KEY PERFORMANCE INDICATORS (KPIs)?

It is important that you assess the effectiveness of your entity's actions in both qualitative and quantitative ways.

Une way that you can assess the quantitative impact of your actions over time is by developing KPIs to help you measure your response to modern slavery.

For example, you could develop KPIs covering the implementation of modern slavery policies or processes, as well as your responses to possible cases. This could include specific KPIs on:

- the number of modern slavery training and awareness-raising programs delivered
- the proportion or number of complaints resolved by a grievance mechanism
- the number of contracts that include modern slavery clauses
- the number of actions taken to work with suppliers to improve their capacity to respond to modern slavery risks.

Using KPIs in this way can be helpful. However, you should make sure you also continue to use a range of other methods to assess the effectiveness of your actions.

You should also review your entity's broader KPIs to ensure they do not inadvertently contribute to modern slavery risks. For example, your entity may use KPIs that promote a focus on securing the lowest possible costs and rapid delivery times from suppliers.

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Indicators measured in KPIs can be either quantitative or qualitative. Date: 15/05/2019 12:23:45 AM +10'00'

Mandatory Criterion Six: Describe the process of consultation with any entities the reporting entity owns or controls

What does the Modern Slavery Act say I need to do?

- 131.1 The sixth mandatory criterion requires you to describe how the reporting entity consulted on its statement with any entities it owns or controls.
- 132.1 You do not need to respond to this criterion if the reporting entity does not own or control any other entities
- 133.1 If you are preparing a joint statement you will also need to describe how the entity giving the statement consulted with each reporting entity covered by the statement. **Chapter Seven (page 53)** explains how to prepare a joint statement.

Why is this requirement in the Modern Slavery Act?

134.1 It is important that entities take a collaborative approach to combating modern slavery. This includes ensuring that all relevant areas of your entity and any entities it owns or controls are aware of what actions they need to take and that modern slavery risks relating to these areas and entities have been identified assessed, and addressed.

How can I address this criterion in my statement?

- 135.1 You only need to address this criterion in your statement if your entity owns or controls other entities.
- 136.1 If your entity owns or controls other entities, it is up to you to decide how best to consult with these entities. You are also able to decide at what level this consultation should occur.
- 137.1 The level of consultation you undertake should reflect your relationship with the other entity and the risk profile of that entity. Your consultation should be sufficient to ensure that the modern slavery risks relating to the other entity have been appropriately identified, assessed and addressed and that other entity is aware of what actions they need to take.
- 138.1 For example, a reporting entity may own several entities that operate in different sectors and so need to respond to modern slavery risks in different ways. In this case, the statement should demonstrate that there is meaningful and ongoing dialogue between each entity. This could include regular meetings between each

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Alignment point: Under the UNGPs and OECD GL for MNE the reporting entity is responsible for preventing and addressing actual or potential adverse impacts of modern slavery in its own operations, whether that risk occurs in its own company, in an entity it owns or controls, or that it causes, contributes to or is linked to at a direct or indirect supplier or business relationship. Therefore, the reporting entity must ensure that the companies it owns or controls have conducted their own due diligence as part of its own due diligence and if submitting a statement together, this should presented as the reporting entity's own due diligence process, rather than as a consultation between separate entities.

- entity's sustainability or procurement teams and/or briefings for the boards of the other entities.
- 139.1 In contrast, some large reporting entities may own or control other entities that exist for only financial reasons, follow polices set by the reporting entity and do not have any actual physical operations or assets. For example, a large corporate group may establish a separate entity to perform a group-wide treasury function. In this situation, detailed consultation would not be necessary or useful. For example, it may be sufficient to ensure the company secretary for that entity is aware that you are preparing a statement and has an opportunity to participate in the statement process if required.

Mandatory Criterion Seven: Any other relevant information

What does the Modern Slavery Act say I need to do?

- 140.1 The seventh mandatory criterion enables you to include information that you think is relevant but that is not covered by the other six mandatory criteria.
- 141.1 You do not need to include information for this criterion if you consider your responses to the other six criteria are sufficient.

Why is this requirement in the Modern Slavery Act?

142.1 In some circumstances, you may decide that it is appropriate to include additional information in your statement that is not directly relevant to the other six criteria. This criteria has been included in the Act to provide a way for you to include this information.

How can I address this criterion in my statement?

- 143.1 You only need to address this criterion in your statement if there is additional relevant information that you wish to include.
- 144.1 You should ensure that any information you include in response to this criterion is relevant. This means the information should be connected in some way to how the reporting entity is responding to modern slavery. You should explain in your statement how the additional information you have included is relevant.
- 145.1 For example, you could provide information about:
 - how the reporting entity has supported the development of legislation on modern slavery in another country
 - whether the reporting entity has participated in external forums on modern slavery to help improve awareness about modern slavery in the business community
 - How the reporting entity has partnered with a civil society organisation or industry body or participated in international or multilateral fora
 - how the reporting entity has contributed to addressing the root causes or structural factors that contribute to modern slavery, such as poverty, forced migration, and education
 - if you reported on a situation of modern slavery in a previous statement, any updates on how the situation has been addressed.

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Suggest to clarify what is expected to be reported under MC7 and what not. I.e. any relevant and expedient information on modern slavery due diligence should be provided in previous sections.

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Per previous comment, if this partnership is strategic for enabling the reporting entity to carry out its due diligence more effectively then this should be reported under MC 3, 4, and/or 5.

6.

How do I approve and publish a statement?

You can read this chapter to learn:

- What approvals you need to finalise your statement
- How to publish your statement
- Where to publish your statement
- 146.1 This chapter explains the specific approvals that you require to finalise your statement.
- 147.1 This chapter also explains how to publish your finalised statement.
- 148.1 If you are preparing a joint statement you should read **Chapter Seven (page 53)** to learn more about the specific requirements for approving a joint statement.

What does the Modern Slavery Act say I need to do?

- 149.1 The Act requires you to ensure that your statement meets two specific requirements for approval. These requirements are:
 - the statement must be approved by the principal governing body of the reporting entity
 - the statement must be signed by a responsible member of the reporting entity (in most cases, a responsible member means a member of the reporting entity's principal governing body).
- 150.1 The Act also requires you to provide your finalised statement to the Department of Home Affairs for publication on an online central register. You must do this within six months from the end of your reporting period.
- 151.1 The requirements for approving and publishing your statement are mandatory. If your statement does not meet these requirements you will fail to comply with the Act.

- 152.1 In this situation, the Minister may require you to explain your noncompliance or take remedial action, such as providing a statement that meets the requirements for approval set out in the Act. If your entity does not comply, the Minister may publicly identify your entity as being noncompliant.
- 153.1 The Act also allows you to revise your statement after it has been published on the online central register in certain circumstances.

Why is this requirement in the Modern Slavery Act?

- 154.1 It is important that senior management lead their entity's response to modern slavery and are accountable for the actions their entity takes. This is why the Act requires statements to be approved by the principal governing body of the reporting entity and signed by a responsible member.
- 155.1 The Act also requires statements to be published on an online central register.

 This ensures that all statements are publicly accessible in a single location and can be easily accessed and compared. The central register also provides a way to identify entities that have reported.

KEY TERMS EXPLAINED: WHAT DOES 'PRINCIPAL GOVERNING BODY' MEAN?

Your statement must be approved by your entity's principal governing body and signed by a responsible member of your entity. In most cases, a responsible member of your entity will be a member of your entity's principal governing body.

Principal governing body: means the body or group of members of the entity that are responsible for the governance of the entity.

Examples:

- If your entity is a company, your principal governing body is the board. A director on the board will need to sign the statement.
- If your entity is a trust, your principal governing body will be the board of trustees. One of the trustees on the board will need to sign the statement.
- If your entity is a University, your principal governing body will be the University Council. One of the members of the Council will need to sign the statement.
- * Under the Act, the responsible member of a trust administered by a sole trustee is that sole trustee and the responsible member of a corporation sole is the individual constituting the corporation. If the entity is under administration within the meaning of the Corporations Act 2001, the administrator is the responsible member.

How do I approve a statement?

- 156.1 You must ensure that your statement is approved by the principal governing body for the reporting entity.
- 157.1 The Act also requires you to ensure your statement clearly states that it has met this requirement for approval. This means that your statement must say that it has been approved by the principal governing body for the reporting entity; name that governing body; and specify the date that governing body approved the statement.
- 158.1 You cannot delegate this approval process to a subcommittee or to another body. The **Key Terms Explained** box on page 50 explains what an entity's principal governing body will be. For most entities, the principal governing body will be the board of the reporting entity.
- 159.1 You should also ensure that your statement is approved by the principal governing body as a stand-alone document and not as part of a larger document, such as a sustainability report.
- 160.1 Once approved by the principal governing body, you must also ensure your statement is signed by a responsible member of the reporting entity. For most entities, this means your statement will need to signed by a director on the board of the reporting entity. This signature can be done electronically and must be clear and easy to find in your statement. You should also ensure that your statement specifies the name and position of the signatory next to the signature.
- 161.1 You can choose which responsible member signs your statement. You may also wish to have more than one responsible member sign the statement.
- 162.1 It is best practice that the head of the principal governing body signs the statement (for those entities where the responsible member is a member of the principal governing body). For example, if the reporting entity has a board, then the chair of the board or the Chief Executive (if they are a member of the board) should sign your statement.

How do I publish a statement?

- 163.1 Once your statement is approved, you need to provide it to the Department of Home Affairs. The Department will then publish your statement on the online central register. The **How To** box on page X (to be inserted once register established) explains what you need to do to submit your statement.
- 164.1 You must make sure that you provide your statement to the Department of Home Affairs within six months after the end of the reporting entity's reporting period.

- 165.1 For example, if the entity's reporting period is the Australian Financial Year (1 July to 30 June) you will need to provide your statement by 1 January the following year. You can read **Chapter Four (page 20)** to learn more about when you need to report.
- 166.1 The Minister may refuse to publish your statement if it does not meet all the requirements under the Act. In this situation, the Department of Home Affairs will explain what areas of your statement need to be improved.
- 167.1 All statements must be published on the central register. However, you can also choose to publish your statement in other ways, including on your website or in your annual report. This can be a way to demonstrate your entity's leadership on modern slavery. It can also be a way to promote and share best practice between entities.

How do I revise a statement?

- 168.1 In exceptional circumstances, you may need to revise your entity's statement.
- 169.1 Revising a statement will usually only be necessary if it includes false or misleading or market sensitive information that needs to be corrected.
- 170.1 You can revise your entity's statement at any time.
- 171.1 If you think you may need to revise your statement you should advise the Modern Slavery Business Engagement Unit as soon as possible. **Chapter Eight** (page 57) explains how to contact the Unit.
- 172.1 You can revise your statement by providing an updated copy to the Department of Home Affairs and requesting that it be uploaded to the register.
- 173.1 The revised statement needs to clearly indicate the date of the revision and explain what changes have been made. This explanation must provide readers with an understanding of what content has changed and the reasons for this change. For example, you could add a short note to the front page of the statement that explains the reason for the revision.
- 174.1 You also need to ensure that your revised statement has been reapproved by the principal governing body of the reporting entity and signed by a responsible member of the reporting entity.

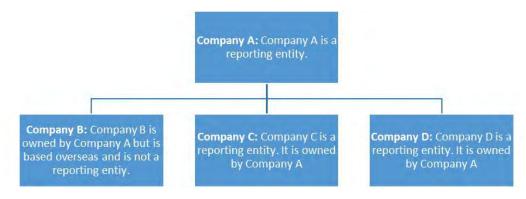
7.

Can I prepare a joint statement?

You can read this chapter to learn:

- When to do a joint statement
- How to prepare a joint statement
- How to approve a joint statement
- 175.1 This chapter explains how to prepare a joint statement.
- 176.1 A joint statement is a statement that is submitted by an entity on behalf of one or more reporting entities. The entity that submits the statement may or may not be a reporting entity.
- 177.1 You can use a joint statement as a way to report on behalf of a number of related reporting entities. The diagram below explains how you could use a joint statement.
- 178.1 In the situation set out in the diagram, Company A could choose to prepare a single joint statement that covers Company A as well as Company C and Company D. Company B is not required to prepare a statement. However, Company A will still need to report on Company B's operations and supply chains and actions to assess and address modern slavery risks as part of its own statement.

Figure 5: How to use a joint statement



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What does the Modern Slavery Act say I need to do?

- 179.1 The Act allows you to provide a joint statement on behalf of one or more reporting entities.
- 180.1 A joint statement must:
 - be prepared in consultation with each reporting entity covered by the statement
 - address each of the mandatory reporting criteria for each reporting entity covered by the statement, including describing the process of consultation with any entities owned or controlled by each reporting entity covered by the statement
 - meet specific requirements for approval, and
 - be provided to the Department of Home Affairs for publication on the central register of statements.

Why is this option in the Modern Slavery Act?

- 181.1 The Act provides for joint statements to ensure that entities have flexibility to report in the way that is most appropriate for their circumstances. The Act sets out clear requirements for joint statements to ensure that entities are not able to use this process as way to minimise or avoid their reporting obligations.
- 182.1 For example, in some cases, it may be appropriate for a single statement to cover several reporting entities. This includes situations where a group of entities have some form of legal relationship with each other and use the same policies and systems.
- 183.1 There may also be cases where it is appropriate for an entity that is not a reporting entity to give a statement that covers one or more reporting entities. This includes situations where a foreign parent entity wishes to report for its subsidiary reporting entities in Australia.

How do I prepare a joint statement?

184.1 It is important that you carefully consider whether a joint statement is appropriate in your situation. For example, investors and consumers may expect that a reporting entity that has a strong public identity and brand provides a separate statement.

- 185.1 If you decide to prepare a joint statement, you must ensure that you address all of the mandatory criteria for each reporting entity.
- 186.1 This does not mean that you need to respond to each criterion separately for each entity. However, your statement should clearly show how your responses to each criterion address each reporting entity.
- 187.1 You must also ensure that you consult with each reporting entity covered by your statement.
- 188.1 The level of consultation you undertake with each reporting entity should reflect your relationship with that entity and the risk profile of that entity. At a minimum, you should ensure that the reporting entity's senior management is aware of the content of your statement.

How do I approve a joint statement?

- 189.1 It is also important that you comply with the requirements set out in the Act for the approval of your statement.
- 190.1 The table below sets out the three ways that you can approve your statement. Further information about the approval process, including the meaning of principal governing body, is set out in **Chapter Six (page 49)**.

TABLE TWO: OPTIONS TO APPROVE A JOINT STATEMENT

OPTION	WHEN SHOULD I DO THIS	EXAMPLE
Option One: The principal governing body of each reporting entity covered by the joint statement approves the statement. AND A responsible member of each of those reporting entities signs the statement.	This is the default option for approval of a joint statement. It shows that each reporting entity has meaningfully engaged in the statement process. It also sends a clear signal that the principal governing bodies of these entities are committed to addressing modern slavery.	Company A is a parent entity and owns Company B and Company C. Each company operates in different sectors and has different supply chains. Companies A, B and C decide to prepare a joint statement that is approved and signed by each entity. This sends a strong message to the market that each company is working to respond to their own risks.
Option Two: The principal governing body of a higher entity must approve the joint statement on behalf of each of the reporting entities. AND A responsible member of the higher entity must sign the statement. [A higher entity is an entity that is able to directly or indirectly influence or control each reporting entity]	This option allows you to prepare a statement for multiple reporting entities without needing to have the statement approved by the principal governing bodies of each entity. This may be appropriate in situations where an entity wishes to report on behalf of other entities it owns or controls. This includes situations where this entity sets the policies and processes used by the reporting entities.	Company A and Company B are sibling entities (they are both owned by the same offshore parent company which does not need to report). Both Company A and Company B operate in the same sector and share many suppliers and vendors. They also follow policies and processes set by the parent company. The parent company decides to prepare and approve a joint statement on behalf of Company A and Company B. This is appropriate because the actions of the parent entity govern Company A and Company B's responses to this issue.
Option Three: The principal governing body of at least one reporting entity must approve the statement. And A responsible member of each reporting entity whose governing body approved the statement must sign the statement. And The statement must explain why the other reporting entities have not approved the statement at principal governing body level.	This option should only be used if Options One and Two are not practicable. It provides flexibility for reporting entities that have complex or unusual structures or relationships with other reporting entities.	Company X has established two Australian subsidiaries, Company Y and Company Z. Company X is not a reporting entity but Companies Y and Z must report. Company Y prepares and approves a joint statement on behalf of Company Z. This is appropriate because both companies work closely together and Company Z uses many of Company Y's policies and processes.
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How can the Modern Slavery Business Engagement Unit help me?

You can read this chapter to learn:

- What the Modern Slavery Business Engagement Unit is
- How the Modern Slavery Business Engagement Unit can support you
- How to contact the Modern Slavery Business Engagement Unit
- 191.1 This chapter explains the role of the Modern Slavery Business Engagement Unit (Unit).

What is the Modern Slavery Business Engagement Unit?

- 192.1 The Unit is a dedicated team in the Trade and Customs Division in the Department of Home Affairs and is responsible for implementing the Act. The Unit is led by a senior officer from the Department of Home Affairs.
- 193.1 The Unit has five main functions:
 - providing advice and support to entities about compliance with the reporting requirement
 - undertaking awareness-raising and training about modern slavery and the reporting requirement
 - promoting best practice and monitoring overall compliance, including by reporting annually to Parliament about implementation of the Act
 - administering the online central register for statements
 - coordinating the Commonwealth Modern Slavery Statement.

How can the Modern Slavery Business Engagement Unit support me?

- 194.1 The Unit can support you by providing non-binding advice about the reporting requirement and what you need to do to comply. The Unit can also help you to identify and understand best practice.
- 195.1 The Unit is not able to provide you with legal advice or detailed advice about developing and implementing specific steps to address your modern slavery risks.
- 196.1 The table below explains how the Unit can support you.

THE UNIT CAN:	THE UNIT CANNOT:
 Help you to understand how the reporting requirement works and what you need to do to comply. Provide general comments on your draft statement to help you meet the requirements set out in the Act. Provide general advice about best practice responses to modern slavery. Help you to collaborate with other organisations. 	 Give you legal advice. Write all or parts of your statement. Prepare training materials or information specifically for use by your entity. Provide detailed advice on actions you plan to take to address modern slavery, such as developing a grievance mechanism. Provide detailed advice about modern slavery risks in specific countries or sectors. Advise you about how to respond to a specific case of modern slavery.

How can I contact the Modern Slavery Business Engagement Unit?

- 197.1 Information about the Unit is available on the Department of Home Affairs' website.
- 198.1 You can contact the Unit by emailing slavery.consultations@homeaffairs.gov.au. This website also includes more detailed information about the role and functions of the Unit.

Appendix 1. What is modern slavery?

This appendix provides more information about modern slavery, including risk indicators and examples.

The term modern slavery describes situations where coercion, threats or deception are used to exploit victims and undermine their freedom.

Coercion, threats and deception in situations of modern slavery can sometimes involve clear physical indicators, such as physical confinement or confiscation of identity and travel documents. However, often coercion, threats and deception are more subtle and harder to identify.

The Act defines modern slavery as including eight types of serious exploitation. Each of these types of exploitation has a clear legal definition in international or Australian law. The table on page 60 explains each of these types of exploitation with examples.

Importantly, the definition of modern slavery used in the Act includes the worst forms of child labour. The worst forms of child labour means extreme forms of child labour that involve the serious exploitation of children, including through enslavement or exposure to dangerous work. The worst forms of child labour does not mean all child work.

Modern slavery can happen in any industry and any country. Modern slavery victims are often vulnerable to exploitation due to their background, migration status or structural factors like poverty. Both adults and children can be victims of modern slavery. Women and children are often especially vulnerable. The table on page 63 of this appendix sets out key risk indicators for modern slavery.

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This is an ILO-defined term with its own convention so recommend reference is made to the ILO Convention (C182).

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Here it would be useful to clarify that these indicators are not all-encompassing. For example there could be instances of modern slavery where these indicators are not present or where it's not possible to detect these indicators (note that workers are often hidden from view), therefore a company shouldn't rely on the indicators alone to identify actual or potential instances of modern slavery.

The table 4 indicators are detailed and helpful. Some explanation on how companies can use these indicators may be useful. You might like to mention collaborative initiatives that are looking at prevention of certain practices, eg. AAFA/FLA Responsible Recruitment Commitment (apparel sector). In addition the OECD Guidance gives help to companies thinking how to prioritise actions and the importance of taking a whole supply chain approach in the scoping phase so that the reporting entity focuses on the high risk parts of the supply chain from the beginning, instead of those entities with which they have a closer connection (direct suppliers and their subcontractors).

TABLE THREE: TYPES OF MODERN SLAVERY

Type of exploitation	Definition (Each of these types of modern slavery involve coercion, threats or deception)	Example	
Trafficking in persons	Describes the recruitment, harbouring and movement of a person for exploitation through modern slavery.	An orphanage actively recruits children from families and pays parents to place children in their care. They promise children will be well educated and cared for in the orphanage. The children are removed from their parents and housed in substandard conditions. The orphanage makes false claims that the children are orphans to attract donations. The children are exploited in the orphanage, including for sexual exploitation and for the purpose of orphanage tourism. A number of Australian travel companies regularly visit the orphanage with tour groups.	
Slavery	Describes situations where the offender exercises powers of ownership over the victim, including the power to make a person an object of purchase and use their labour in an unrestricted way.	A group of migrant men and boys are forcibly detained by a people smuggler and then sold to a fishing company. The men and boys are taken to sea and not allowed to return to shore. They are forced to work 20 hours a day and receive no pay and little food. They are regularly beaten and abused. The fish they catch are used in products sold in major grocery stores overseas.	
Servitude	Describes situations where the victim's personal freedom is significantly restricted and they are not free to stop working or leave their place of work.	A company provides an expatriate worker and her husband with money to hire a domestic servant. The couple hire a migrant woman. The woman is never paid, physically abused and made to sleep in the garage. The couple also monitor the woman's communication with her family in her home country. When the couple are away they lock all the exits from the home so the woman cannot leave. They also tell the woman that if she escapes the local police will imprison her for working illegally.	
Forced labour	Describes situations where the victim is either not free to stop working or not free to leave their place of work.	Local women are employed in a garment factory that makes clothes for a large fashion brand. The factory stops paying them full wages after six months and instead pays them less than half the local minimum	

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Type of exploitation	Definition (Each of these types of modern slavery involve coercion, threats or deception)	Example	
		wage. When they complain, the women are told by their manager that he will harm their families if they do not continue working.	
Forced marriage	Describes situations where coercion, threats or deception are used to make a victim marry or where the victim does not understand or is incapable of understanding the nature and effect of the marriage ceremony. *You only need to report on forced marriage in situations where your entity's activities or the activities of entities in your supply chain may cause or contribute to forced marriage.	A global extractives company builds a camp for its foreign workers near an isolated local village. Some of the workers secretly pay local women to provide sexual services. Several of the workers then force the local women to 'marry' them by threatening to publicly shame the women if they refuse. The women feel they cannot refuse because doing so would expose them and their families to shame and they would no longer be able to remain in the village. After the marriage ceremony the women are repeatedly sexually abused and forced to perform menial household tasks.	
Debt bondage	Describes situations where the victim's services are pledged as security for a debt and the debt is manifestly excessive or the victim's services are not applied to liquidate the debt, or the length and nature of the services are not limited and defined.	man arrives, his employer exaggerates the size of his debt and confiscates his passport for security reasons. After six months of working the man has not received any wages. When he questions his employer he is told his debt has grown even larger because of interest. The man tries to leave but is	

Type of exploitation	Definition (Each of these types of modern slavery involve coercion, threats or deception)	Example
e worst forms of child labour	Describes situations where children are: exploited through slavery or similar practices, including for sexual exploitation or engaged in hazardous work which may harm their health, safety or morals or used to produce or traffic drugs. *The worst forms of child labour can occur in a variety of contexts and industries. This may include orphanage trafficking and slavery in residential care institutions, as well as child labour in factories and manufacturing sites, mining and agriculture.	A husband and wife are forced to work at a brick kiln to pay off an inflated debt incurred by the husband's father. They have a young son. Once the son is old enough to carry materials, the owners of the brick kiln make him work in the quarry with his parents to help pay off the debt. There are no breathing masks or other safety equipment in the kiln, which uses dangerous chemicals and the son works 10-12 hours a day. The bricks are used by a foreign company to build their new office in the country's capital.
Deceptive recruiting for labour or services	Describes situations where the victim is deceived about whether they will be exploited through a type of modern slavery.	A young woman is travelling overseas and has a temporary work visa. She does not speak the local language. She answers an advertisement for seasonal farm work posted by a labour hire company. She is told she will be paid in cash for picking a certain amount of produce each day and that she will be provided with free accommodation. The labour hire company takes her to a small private home where 15 other workers are staying. She is driven to a farm each day and driven back to the house in the evening. After two weeks she has not been paid. When she complains, the labour hire company tells her she has breached her visa by working too many hours and she will be detained by immigration authorities if she leaves.

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idem re reference to ILO convention

TABLE FOUR: RISK INDICATORS FOR MODERN SLAVERY

This table sets out indicators that you can use to help identify modern slavery risks in your entity's operations and supply chains. This table also sets out direct indicators of modern slavery that may indicate a person is in a situation of modern slavery.

TYPE OF RISK	INDICATORS
Sector and industry risks Certain sectors and industries may have high modern slavery risks because of their characteristics, products and processes.	 Use of unskilled, temporary or seasonal labour. Use of short-term contracts and outsourcing. Use of foreign workers or temporary or unskilled labour to carry out functions which are not immediately visible because the work is undertaken at night time or in remote locations, such as security or cleaning. Use of child labour in hazardous conditions, such as underground, with dangerous machinery or tools, in unhealthy environments (including where they are exposed to physical or sexual abuse), or for long hours. Recruitment strategies by suppliers, their agents or labour hire agencies target specific individuals and groups from marginalised or disadvantaged communities. The sector involves direct engagement with children, including through orphanage tourism and other forms of 'voluntourism' (including through companies' social investment and corporate social responsibility programs).
Product and services risks Certain products and services may have high modern slavery risks because of the way they are produced, provided or used.	 Cost requirements or delivery timeframes might require suppliers to engage in excessive working hours, make cost savings on labour hire or rapidly increase workforce size. The development of the product or delivery of the services has been reported as involving labour exploitation by international organisations or NGOs. Children are often used in the development of the product or delivery of the service, such as carpet weaving. The product or components of the product are made in countries where there is a high risk of labour exploitation reported by international organisations or NGOs. The services are provided in countries where there is a high risk of labour exploitation reported by international organisations or NGOs. The product is made from materials or using services reported to involve a high risk of labour exploitation by international organisations or NGOs.
Geographic risks Some countries may have higher risks of modern slavery, including due to poor governance, weak rule of law, conflict, migration flows and socio-economic factors like poverty.	 The country has not ratified international conventions relevant to modern slavery, such as: the International Convention to Suppress the Slave Trade and Slavery (1926); ILO Convention (No. 29) concerning Forced or Compulsory Labour (1930); the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Practices similar to Slavery (1956); the Protocol to Supress, Prevent and Punish Trafficking in Persons, Especially Women and Children (2000); ILO Convention (No. 182) concerning the Prohibition and Immediate Action for the Elimination of Worst Forms of Child Labour (1999). The country is reported to have a high prevalence of modern slavery or labour rights violations, other human rights violations and/or child labour by international organisations or NGOs. The country has inadequate protections for workers, including no or weak capacity of effectively monitor workplace standards and enforce compliance with national standards. Law enforcement agencies are reported to be hostile to workers in at risk industries. The country forces parts of the population to work for development purposes, for example to assist in construction or agriculture.
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TYPE OF RISK	INDICATORS
	 The country is reported to have weak rule of law by international organisations or NGOs, including due to corruption, conflict and/or political instability. The country has a high prevalence of people who are vulnerable to exploitation because they are impoverished, displaced or subject to severe discrimination
Entity risks Some entities may have particular modern slavery risks because they have poor governance structures, a record of treating workers poorly or a track record of human rights violations.	 Entity has previously been reported as noncompliant with human rights or labour standards, including by media or NGO sources. Entity's procurement and sourcing processes appear poorly managed or inefficient. Entity has complex or opaque supply chains. Workers appear to have little information about workplace entitlements and protections and there is a general lack of information about workplace standards. Audit results for the entity appear unreliable or conflict with other sources of information about the supplier, such as NGO reports. Staff recruitment costs by labour hire companies or recruiters are not covered by the company, meaning that recruitment expenses such as travel may be improperly imposed on workers. Entity provides residential care for children overseas.
Indicators of modern slavery A combination of these signs may indicate a person is in a situation of modern slavery and that further investigation and assessment is required.	The suspected victim or victims are: living at the workplace, or another place owned/controlled by their employer underpaid or not paid at all required to work excessive hours confined or isolated in the workplace or only leave at odd times guarded at work or in their accommodation isolated in remote locations that are difficult to access and/or restricted from contacting or interacting with people outside the workplace (for example, their phones are confiscated or they are supervised when in public) managed by an intermediary or third party who 'holds' or 'invests' their money for them subject to different or less favourable working conditions than other workers because of their country of origin, gender or other factors unable to terminate their employment at any time appear to be servicing a debt to an employer or a third party (such as a recruitment agent) appear to be subjected to, or threatened with, violence in connection with their employment appear to have false travel or personal documents and/or are not allowed access these documents because they are being held by an employer or third party appear to have been deceived about the conditions of their employment are not provided with contracts in a language and format that they can easily understand are not informed of, or do not appear able to understand the terms and conditions their employment are not provided with any protective equipment, training or means to refuse to participate in dangerous work practices, or refuse to handle known toxic materials at hazards do not have permission to work because they are from another country or appear be working in breach of visa requirements.
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Appendix 2. How can I work with suppliers?

ou will need to engage and work closely with your suppliers to assess and address your entity's modern slavery risks. This appendix sets out three principles and key recommendations to help you engage constructively with your suppliers.

PRINCIPLE ONE: BUILD MEANINGFUL PARTNERSHIPS WITH YOUR SUPPLIERS.

- Provide support for your suppliers to improve their response to modern slavery, including training and awareness-raising: Your suppliers will have different levels of understanding about modern slavery risks. Building their capacity through awareness-raising and training will help them to address modern slavery risks that may impact your entity.
- Avoid outsourcing compliance to your suppliers: You and your suppliers share
 responsibility for assessing and addressing modern slavery risks in your operations and
 supply chains.
- Clearly communicate your expectations to suppliers and encourage honest two-way engagement: Ensure your suppliers understand what actions you want them to take and how they can engage with you. You should also make sure you include your expectations for suppliers in contracts and codes of conduct. For example, you should make sure your suppliers know how to engage with you if they identify a case of modern slavery and under what conditions you would terminate the supplier relationship.
- Recognise your suppliers may need to respond to requests from multiple reporting
 entities: Where possible, consider options to reduce the compliance burden for your
 suppliers. For example, you could agree to mutual recognition of audits so that your supplier
 does not need to undergo multiple modern slavery audits. You could also work with other
 entities in your sector to develop common approaches to reporting and joint resources.
- Consider how you can use existing supplier engagement processes: Your entity may
 already have processes for engaging suppliers and assessing their compliance with related
 issues, such as workplace health and safety standards. You may be able to adjust these
 existing processes to also address modern slavery. For example, you could include modern
 slavery questions in existing pre-qualification questionnaires for suppliers.
- Ensure any 'zero tolerance' policies focus on zero tolerance for inaction not dases: Your suppliers may be reluctant to raise issues with you if they believe this may lead to the immediate termination of the business relationship under a 'zero tolerance' policy.

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Number: 1 Author: OECD Subject: Highlight Date: 16/05/2019 11:45:58 PM +10'00'

It would be useful to add some context here and note that the reporting entity should have carried out a forced labour risk scoping and prioritisation exercise taking into account the whole supply chain and decided which suppliers to engage and on which topics as a basis of this scoping.

Number: 2 Author: OECD

Subject: Highlight Date: 22/05/2019 10:47:27 PM +10'00'

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PRINCIPLE TWO: ENSURE YOUR ENGAGEMENT WITH SUPPLIERS IS RISK-BASED

• Try to avoid blanket approaches and take a risk-based approach that prioritises high risk suppliers: You should tailor your responses to the risk profile of your supplier. For example, a lower risk supplier may not need to undergo the same audit processes as a supplier in a high risk sector. Remember that modern slavery risks need to be understood in terms of 'risk to people' rather than risk to your entity or to a supplier.

PRINCIPLE THREE: RECOGNISE THE LEVERAGE THAT YOU AND YOUR SUPPLIERS HAVE TO INFLUENCE CHANGE

- Consider how your entity may be contributing to suppliers' modern slavery risks: In some cases, your entity's actions and purchasing practices may be increasing your suppliers' modern slavery risks. For example, your entity may require suppliers to meet unrealistic pricing and deadline requirements.
- Encourage suppliers to respond to modern slavery risks in a way that is appropriate to their circumstances, including their size, capacity, structure, risk profile and leverage with their sub-suppliers: The size and capacity and other circumstances of your suppliers does not change their responsibility to assess and address their modern slavery risks but will affect how they do this. For example, smaller suppliers with financial and resource constraints may need to prioritise the order in which they respond to risks.
- **Mentify and engage with suppliers that operate at 'control points' in your supply chains: Some suppliers will have particular leverage and visibility over activities further down the supply chain because they operate at 'control points'. **After control points will be key points of transformation in the supply chain, such as a metals smelter or factory that assembles electronics products using multiple components.

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- Number: 1 Author: OECD Subject: Highlight Date: 15/05/2019 12:37:12 AM +10'00'

 Ref. OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector (2017), p73-74. Box 4 "Prevent contribution to harm through responsible purchasing practices".
- Number: 2 Author: OECD Subject: Highlight Date: 15/05/2019 12:37:57 AM +10'00'

 The wording does not exactly align with the OECD Guidelines or UNGPs and could lead to misunderstanding. In fact suppliers should be encouraged to respond to modern slavery risks in a way commensurate with the risk itself (first and foremost), while acknowledging that "the nature and extent of due diligence can be affected by factors such as the size of the enterprise, the context of its operations, its business model, its position in supply chains, and the nature of its products or services" See OECD DD Guidance (2018) p18: "Due Diligence is appropriate to an enterprise's circumstances".
- Number: 3 Author: OECD Subject: Highlight Date: 15/05/2019 12:43:59 AM +10'00'
 It may be appropriate to remind readers that they may not (and it's likely they won't) have a direct sourcing relationship with the supplier operating at a control point but there are other ways to work with control points, especially through collaborative initiatives, eg. a number of industry initiatives that carry out audits on smelters on their due diligence to address conflict and human rights risks under the OECD Minerals Guidance. See the OECD Alignment Assessment report (2018), available on the OECD Minerals webpage, on five industry initiatives in the minerals sector if you would like to include an example.
- Number: 4Author: OECD Subject: Highlight Date: 15/05/2019 12:41:50 AM +10'00'

 Or where there are relatively few actors that process a majority of the commodity. See OECD Due Diligence Guidance (2018) Box 5, p69. or OECD Garment Guidance (2017) p13 "Key Terms".

Appendix 3.

How do I respond to a case of modern slavery?

As you work to assess and address your entity's modern slavery risks, you may identify suspected situations of modern slavery in your operations or supply chains. This Appendix sets out key recommendations to help guide your response.

You will be able to respond more effectively if your entity has a pre-agreed process or policy in place to guide your actions. If your entity does not have an existing policy or process setting out how to respond to a situation of modern slavery (or other human rights impacts) you should develop one as part of the process of preparing your statement.

You may also be able to respond more effectively to modern slavery situations if you are able to engage directly with key stakeholders who understand the local operating context, such as NGOs, other civil society groups and workers and their representatives. Building trusted relationships with these stakeholders in advance can help ensure you are able to respond appropriately if modern slavery is identified.

- **Do not attempt to resolve the situation by yourself.** Trying to deal with the situation without support from other areas of your entity, governments or trusted partners may lead to further harm to the victim or victims.
- Ensure your actions are always in the best interests of the suspected victim or victims. This means you should take steps to prevent further harm and achieve the best possible outcome for the victim or victims. For example, immediately removing workers from an exploitative situation without appropriate support may lead to unintended negative consequences, including their deportation, re-exploitation, blacklisting by employers and/or violence from creditors.
- Consider if further action is required to verify if modern slavery is occurring.
 For example, if allegations of modern slavery are made through unsubstantiated media reporting you may need to check whether these reports are correct. You should ensure any actions you take do not alert the suspected offenders or result in any unintended consequences for the affected worker or workers.
- Consider whether and how to involve law enforcement. Modern slavery involves serious crimes and severe harm to victims. In Australia, you should report any suspected situations of modern slavery to the Australian Federal Police. If someone is at risk of immediate harm call Triple Zero (000). This will ensure the situation is properly investigated, any victims are identified and protected and that the perpetrators are held to account.

- Respond in a way that is appropriate to the circumstances of the situation.
 Every situation of modern slavery will be different and it is important you respond in the way that is most appropriate for each case. For example, your response will vary depending on whether the affected entity was unaware that modern slavery was occurring in part of their operations and supply chains or was instead deliberately engaging in modern slavery.
- Recognise that you may not be aware of all the victims involved or the extent
 of the exploitation. You should be careful that any actions you take do not have
 unintended consequences for other victims you are not aware of.
- Address the harm caused. If you identify that your entity has caused or contributed to the exploitation you should provide for, or cooperate in, the remediation of that harm. If you are directly linked to the exploitation by a business relationship you may play a role in remediation and should use your leverage to work with the entity that caused the harm to prevent or mitigate its recurrence.
- Carefully consider the consequences of ending your relationship with the affected entity. If the situation of modern slavery has occurred in the operations of one of your suppliers or other business partners you should usually avoid immediately ending the business relationship. Generally, you should only consider ending the relationship if the affected entity refuses to address the issue and there is no real prospect of change. You should also make sure you consider and address any negative impacts that may result from ending the relationship. For example, ending the relationship could have negative flow on impacts for other workers in the supply chain who may find themselves unable to access any income and at risk of further exploitation.
- Consider opportunities to collaborate with international and local organisations or civil society groups. Reputable international and local organisations and civil society groups may be able to assist you by providing an 'on the ground perspective' and providing advice about the most appropriate way to respond in a given location or context.

Number: 1 Author: OECD Subject: Highlight Date: 15/05/2019 12:44:51 AM +10'00'

This is well explained. Suggest to clarify that, where ending supplier relationships is mentioned earlier in the guidance (box on remediation, p37), a reference is made to lead readers to this paragraph and OECD Guidance on this topic (OECD, 2018 p80 Q39)

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Appendix 4.

How can I collaborate with civil society organisations?

Collaboration with civil society organisations such as non-government organisations, workers and their representatives can be an important way to strengthen your entity's response to modern slavery. It can help you to:

- Better understand issues 'on the ground', including in parts of your supply chain where you may not have visibility or access.
- Verify what is happening in your operations and supply chains by providing access to the views of workers and vulnerable groups.
- Access expertise on key issues such as child protection, country or sector specific risks and context specific sensitivities.
- Check if your response to modern slavery is working by providing a 'critical friend' who can impartially review and assess your actions.
- Identify actual, or potential, risks of harm as part of your ongoing due diligence processes and develop effective and context appropriate ways to address such risks.
- Provide information about what constitutes appropriate remedy in a particular context
- Raise awareness about the risks of harm and potential pathways to remedy within your own organisation, your suppliers or other business partners such as recruitment firms and supply chain workforce.

Civil society organisations are often diverse and can vary widely in their skills and expertise. It is important to make sure that any civil society organisations you engage with are reputable and have genuine expertise on modern slavery.

You may wish to consider the list of questions below when deciding whether to engage with a civil society organisation.

- Is the organisation well established with a track record of engaging productively with governments, other businesses and/or industry organisations?
 Is the organisation affiliated with credible international networks or bodies?
- Does the organisation have genuine expertise on modern slavery? What experience does the organisation's staff have? Has the organisation published information or articles in well-regarded media and/or participated in key fora?

Number: 1 Author: OECD

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Meaningful Stakeholder Engagement is a key component of the due diligence process under the OECD MNE Guidelines. It would be useful to align this section with OECD and UN guidance on this issue and recognize stakeholder engagement as a key aspect of the process. It would also be useful to delineate between engagement with expert stakeholders (highlighted here) and with impacted groups. These elements should also be included in the mandatory reporting criteria above, as relevant. See the OECD Guidance on Meaningful Stakeholder Engagement in the Extractives Sector (2015) for more info.

See OECD Guidance (2018) p50 and 51.

• Is the organisation willing to genuinely partner with you to create long-term change or are they advocating simplistic 'quick fix' solutions or trying to sell you a product or system to 'improve' your response.

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Appendix 5.

Helpful resources

The resources listed below can help you to learn more about modern slavery and how to respond. The Government is not responsible for the content of these resources and has not approved their content.

INFORMATION ABOUT MODERN SLAVERY

Title	Overview	Why should I read this?
2017 Global Estimates of Modern Slavery: Forced Labour and Forced Marriage	These estimates provide a detailed breakdown of the extent of modern slavery globally and by region. They were compiled by the International Labour Organization and the Walk Free Foundation, in partnership with the International Organization for Migration.	To learn more about the global prevalence of modern slavery.
2018 Global Slavery Index	The Global Slavery Index is produced by the Walk Free Foundation. It provides a country by country estimate of people living in modern slavery.	To learn more about the country-level prevalence of modern slavery, how modern slavery impacts specific countries, and what governments are doing to respond.
Annual Trafficking in Persons Reports	The US Government produces annual Trafficking in Persons Reports that rank the efforts of countries around the world to respond to trafficking in persons.	To learn more about what specific countries are doing to combat modern slavery.
US Department of Labour List of Goods Produced by Child or Forced Labour	The US Government maintains a list of goods and their source countries, which it has reason to believe are produced by child labour or forced labour	To identify and learn more about goods that may involve a high risk of modern slavery.
'Hidden in Plain Sight': Report of the 2017 Parliamentary Inquiry into establishing a Modern Slavery Act in Australia	The Australian Parliament's Joint Standing Committee on Foreign Affairs, Defence and Trade conducted a detailed inquiry into Australia's response to modern slavery in 2017.	To learn more about modern slavery in Australia.

INFORMATION ABOUT HOW TO PREVENT AND RESPOND TO MODERN SLAVERY

Title	Overview	Why should I read this?
UN Guiding Principles on Business and Human Rights	The UN Guiding Principles are the recognised global standard for preventing and addressing business-related human rights harm. The UN Human Rights Council endorsed the Guiding Principles in June 2011.	To learn more about your entity's responsibility to respect human rights, which includes taking steps to prevent, mitigate and where appropriate remedy modern slavery.
The Corporate Responsibility to Protect Human Rights: An Interpretive Guide	This Guide was prepared by the Office of the UN High Commissioner for Human Rights and provides additional background explanation about the UN Guiding Principles on Business and Human Rights.	To understand the meaning and intent of the UN Guiding Principles and how to apply them to your entity. This Guide includes detailed discussion of key concepts such as leverage, remediation and due diligence.
OECD Due Diligence Guidance for Responsible Business Conduct	This Guide was prepared by the Organisation for Economic Co-operation and Development (OECD) to supportentities to implement the ECD Guidelines for Multinational Enterprises. It includes a detailed explanation of the role of due diligence in responsible business conduct.	o learn more about due diligence and how your entity can implement appropriate due diligence processes.
	Phe Australian National Contact Point promotes this guidance in Australia and further advice is available at the National Contact Point website.	
OECD sector-specific guidance about due diligence in key sectors and industries, including: the extractive sector; mineral supply chains; agricultural supply chains; garment supply chains; and the financial sector	This sectoral guidance has been prepared by the OECD to help entities identify and address risks to people, the environment and society associated with business operations, products or services in particular sectors.	To learn more about how your entity can identify and address risks in specific sectors.

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Number: 1 Author: OECD	Subject: Highlight	Date: 15/05/2019 12:47:20 AM +10'00'		
"implement due diligence processes formally supported by 48 governments and in line with international standards."				
Number: 2 Author: OECD	Subject: Sticky Note	Date: 14/05/2019 12:14:08 AM +10'00'		
Also include reference to OECD Guidelines for Multinational Enterprises				
Number: 3 Author: OECD	Subject: Highlight	Date: 14/05/2019 12:15:01 AM +10'00'		

Would suggest including a separate reference about the NCP and its role which is to promote the guidelines, as well as provide advice to companies how to implement them and handling instances of non-observance (i.e. function as a non-judicial grievance mechanism).

Title	Overview	Why should I read this?
Remediation Guide for Victims of Exploitation in Extended Mineral Supply Chains	This Guide was prepared by the International Organization for Migration. It aims to provide concrete operational guidance for companies and their business partners about remediating adverse human rights impacts in their operations and supply chains,	To learn more about assisting and protecting victims of exploitation in global supply chains.
Guidance from the Australian Fair Work Ombudsman about monitoring and managing contract arrangements	The website for the Australian Fair Work Ombudsman includes a range of resources, including guidance about labour contracting and monitoring your labour contracting.	To learn more about monitoring and managing contracts.
In Our Lifetime: How Donors Can End The Institutionalisation Of Children	This report from Lumos provides donors with information about making informed decisions about investments and funding in relation to the institutionalisation of children.	To learn more about how your donor activities may contribute to the institutionalisation of children.

Modern Slavery Business Engagement Unit

Department of Home Affairs

Level 13/9 Castlereagh St, Sydney NSW 2000

Oxfam Australia's Submission on the Department of Home Affairs' Draft Guidance for Reporting Entities under the Modern Slavery Act 2018

We congratulate the Department of Home Affairs for the Draft Guidance for Reporting Entities and welcome the opportunity to provide feedback.

Oxfam Australia has a long history advocating for the rights of workers in the supply chains of Australian based and operated companies. We know firsthand the importance of providing clear, straight-forward guidance to the private sector on human rights issues and have seen how clear guidance leads to real outcomes for workers. Our company guidance on living wages - A Sewing Kit for a Living Wage - has been a critical tool enabling Australian based or operated companies to understand this issue, global human rights frameworks and the steps required for meaningful action.

Oxfam Australia endorses the submission of the Australian Corporate Accountability Network.

In addition, this feedback identifies areas the Draft Guidance for Reporting Entities could be strengthened in order to improve its clarity, consistency and, ultimately, its ability to contribute to the eradication of Modern Slavery in the supply-chains of Australian companies.

Chapter 1 - Learn More: Where does Modern Slavery fit?

The explanation on what modern slavery is and where it fits into the broader workers' rights conversation is critical. Whilst we agree there is a scale of workplace conditions, in our view using 'Decent Work' and 'Modern Slavery' as the values on the scale on page 8 is unhelpful.

Using 'Modern Slavery' as the 'worst' category suggests that modern slavery will happen only in factories where 'Decent Work' conditions are not present. Whilst modern slavery is certainly at the very worst end of the scale, it is present in many factories that might be otherwise considered safe or where some workers' rights are respected. Not using a linear line graph or using broader good/bad language and flagging that modern slavery can be found in factories anywhere along the continuum would help to avoid this confusion.

We strongly suggest replacing 'workers paid a minimum wage' to 'workers paid a decent wage' to fall in line with the accepted definition of 'Decent Work.' Decent work, according to the International Labour Organisation definition ensures 'the fundamental rights of the human person a well as the rights of workers in terms of conditions of work safety and remuneration.'

Payment of a minimum wage unfortunately cannot be considered a benchmark for decent remuneration. In our recent report 'Made in Poverty' we demonstrate that payment of the minimum wage, as little as 51cents an hour, in core export economies including Bangladesh and

1 UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 18: The Right to Work (Art. 6 of the Covenant) (2005)

² Made in Poverty, The True Price of Fashion, https://whatshemakes.oxfam.org.au/wp-content/uploads/2019/02/Made-in Poverty-the-True-Price-of-Fashion.-Oxfam-Australia..pdf

Vietnam is trapping workers in poverty and often accompanied by a range of other workers' rights offenses including wage theft and unpaid overtime. We suggest, as above, replacing the words 'minimum wage' with 'decent wage' as this would more accurately reflect what 'best' is on a scale from positive/fair workplace practices to extreme and exploitative practices. In other words, often paying only the minimum wage in a range of countries is, in fact, also exploitative and curtailing people's human right to a fair and decent remuneration.

Chapter 5 - Mandatory Criteria Three: Describe the risks of modern slavery practices in the operations and supply chains of the reporting entity...

Mandatory Criteria Three requires companies to describe only the risks of modern slavery practices in their operations and supply chains at the exclusion of other human rights abuses that are occurring in supply chains and operations.

The UNGP states that companies have a legal obligation to, at a minimum, respect the human rights of their workers expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the ILO Declaration on Fundamental principles on Rights at Work.

We agree with the Human Rights Law Centre that 'The Guidance should emphasise that modern slavery rarely occurs in isolation and often arises in a context of generalised exploitative or dangerous employment practices or practices which violate other human rights.'

Guiding companies to ensure they cover their broader human rights obligations by describing the risks of all human rights risks in their supply chains would increase the visibility of modern slavery by shining a light on the human rights abuses that are often pre-conditions for, or appear alongside modern slavery. Mapping a broader set of human rights issues here in Mandatory Criteria Three is also consistent with the discussion on Remediation and Grievance Mechanism on page 37 and Appendix three 'How do I respond to a case of modern slavery?' where it is acknowledged that entities and suppliers may already have general remediation processes for human rights abuses that are suitable to use to address modern slavery.

Mandatory criteria 4: Key terms explained: What does 'remediation and due diligence processes' mean?

The Draft Guidance stresses that companies must provide for and cooperate in remediation for human rights abuses they cause or contribute to. It is our view that the guidance should go further in unpacking the term remediation and include a more robust discussion on how this should be applied. Including further examples and case studies will assist companies to understand the role that a process for providing remedy has played in practise and enable a company to meet its human rights obligations. The UNGP Reporting Framework Implementation Guide outlines key contextual considerations for remediation that could be included in full and provide the basis for a case study exploring best practise response to a particular situation.

Specific remedies should be provided in specific cases (e.g., compensation, replacement housing for communities, apologies for harms caused, reinstatement in a job, contribution to communities' livelihoods, agreement on joint monitoring of a situation); and in relation to certain types of

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complaint (e.g., compensation for crops destroyed across multiple individuals or communities, agreement to provide improved living quarters for workers)³

We note that on page 37 grievance mechanisms are discussed in relation to remediation. In our view, it would be helpful to be more explicit that grievance mechanisms are a process that could lead to remediation steps being taken, and not remediation in itself. Though the guidance does say this, it will not be obvious to a first-time reader. The inclusion of a specific remediation case study will also help to make this clearer. For example, the Bangladesh Fire & Safety Accord, and the role companies take in remedy where factories are independently found to be unsafe, may be a good case study to include.⁴

Appendix 3 – Responding to Cases of Modern Slavery

As previously noted, cases of modern slavery often occur simultaneously with other human rights abuses. The Guidance identifies that a company may already have processes and policies for broader human rights challenges that could be used to address instances of modern slavery. It is our view that this is not just possible but best practice and the Guidance should encourage companies to report and process modern slavery instances within the broader set of human rights issues being identified.

Reporting and processing modern slavery in this way will allow companies to respond more effectively, by identifying risk and applying sophisticated remediation for workers who may be impacted by modern slavery and other human rights issues that would otherwise be excluded from the process.

Appendix 4 – How can I collaborate with civil society organisations?

It is our view that further clarity on the definition of civil society and what collaboration might look like is needed.

We support the ACAN submission which stresses the need for a distinction to be made between civil society and business and points out that 'Civil society should not be expected to play the role of an unpaid advisor or modern slavery consultant for reporting entities. Government and business need to consider adequate funding for advocacy and consultation for the sector.'

We also support the notion that 'signposts' on the attributes of civil society organisations should be developed to assist companies as they look to develop 'genuine partnerships' to tackle modern slavery. In addition to the criteria listed by ACAN we would add that a credible civil society organisation may also have a history that can be evidenced of collaborating with workers and advocating for victims of modern slavery, with a clear emphasis on those workers' or victims' own wants and viewpoints.

Kind Regards,

³ UN Guiding Principles Reporting Framework Implementation, *Guide C6:Remediation: Supporting Questions* (2014)

⁴ See the Accord website for further details: https://bangladeshaccord.org/about

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Point Advisory Pty Ltd

Level 17, 31 Queen St, Melbourne, VIC-3000



Level 28, 161 Castleraegh St Sydney, NSW-2000 ABN 30 159 916 677

To: slavery.consultations@homeaffairs.gov.au

[Date]

Dear Business Engagement Unit,

Re: Submission on Modern Slavery Act (MSA) 2018 Draft Guidance For Reporting Entities ('Draft Guidance')

Point Advisory is a leading sustainability services company. We believe in creating a positive impact for our clients and the broader society. Our team of engineers, scientists, entrepreneurs, economists and consultants combine deep technical knowledge and expertise with strong international networks.

We work with the public, private and social sectors across energy, climate change, environment, human rights and economics. In those domains, we help our clients with their strategy and policy, operations and implementation, risk and disclosure, and investment and impact needs.

Our 'Business and Human Rights' experience

We help our clients to develop and enhance their approach to respecting and advancing human rights. Our team bring practical experience in business and human rights to help navigate this highly interconnected and complex field. We take clients beyond societal expectations and compliance requirements, toward a strategic approach that seeks to respect and advance human rights. We do this through applying our 'Respect and Advance Model' to help clients establish and manage their approach to business and human rights. Our team specialises in supporting large listed companies and the financial services and investment sectors.

Members of our team have:

- 1. developed and led 'Business and Human Rights' policies and programs for some of Australia's largest companies
- 2. been responsible for Australian company compliance with the UK Modern Slavery Act (2015)
- 3. developed global investor-led 'Business and Human Rights' benchmarks and assessed ASX300 company performance in this area.

Our feedback on the Draft Guidance

Our feedback on the Draft Guidance is as follows. We:

- welcome the development of the Draft Guidance and believe it will act as an important reference to support Australian company's compliance with the MSA.
- welcome and support the clarification and inclusion of investments and financing as pertinent business activities, particularly for the banking and investment sector.

We also suggest some areas of improvement in these areas:

1. Language of 'risk' and notion of 'risk to people'

While the notion of 'risk to people' is highlighted in the 'key terms explained' box on page 30, this concept could be better reinforced throughout the document. When 'modern slavery risk' language is read in isolation in other sections of the guidelines, it can still be ambiguous to those that are not familiar with the important concept of 'risk to people'. This can lead to some reporting companies only considering the risk to the business and not 'exposure to and risk of modern slavery practices'. We suggest that:

- 'risk to people' be better reinforced throughout the document and
- consideration be made toward using language that seeks to avoid any ambiguity (for example 'modern slavery exposures and risks' or 'exposed to modern slavery exploitation'.



When the word 'risk' is used in a business context, this can be interpreted as business risks, which are typically of interest to shareholders and a topic of discussion in Directors' Reports. The current risk language may also result in a degree of resistance within companies when it comes to the level of detail will be comfortable disclosing in their statements. Another example of this issue of language is in Table 4 (page 63) which is titled 'Risk Indicators for Modern Slavery', which could be stated as 'Indicators for modern slavery risk exposures'. We believe this aspect of language will be more conducive to more open business participation in identifying and weeding out exploitative practices of modern slavery.

2. Small business

Point Advisory

Given that many small businesses exist within the supply chains of captured reporting entities, the practical and real challenge of sufficient resource to act on identifying and address modern slavery risk exposures will quickly be met. We suggest further thought be put toward assisting small businesses in relation to support they could access in order to meaningfully contribute and exercise some level of leverage with their own suppliers.

Should you have any questions or need clarification on any aspect of our submission, please feel free to contact me on

should you have any questions of need clarified or at \$47F

Kind regards, \$47F

Managing Principal, NSW



Modern Slavery Act 2018

Submission on the Draft Guidance for Reporting Entities

Prepared by

s47F

Director

SD Strategies Pty Ltd

Summary Comments

The Draft Guidance for Reporting Entities 2019 ("Guidance") is well structured and provides comprehensive information on preparing a Modern Slavery Statement for Australian businesses.

Our four critical observations of the Guidance are that it:

- 1. Focuses almost exclusively on the 'what' rather than the 'how' to manage modern slavery risks.
- 2. Provides information largely on supply chain risk and does not adequately address operational risk.
- 3. Provides confusing and ambiguous information on the assessment of 'effectiveness'.
- 4. Fails to guide entities on what remedy looks like in an Australian context.

Included below are summary observations, followed by a more in-depth analysis of specific sections of the Guidance.

The Guidance provides sound advice to business on <u>actions</u> need to do to address risks of modern slavery. However, it falls short in guiding entities on <u>how</u> to implement the suggested action. "How to" information provided (such as on page 33) focuses mostly on actions businesses should take - such as mapping the overall supply chain structure - not how this can, or should be done.

Focusing on the *what*, rather than the *how* relegates the document to an elaborate list of actions, rather than a practical tool that helps reporting entities implement systems and processes to manage modern slavery risks and deliver tangible outcomes.

By focusing predominantly on supply chain risk the Guidance also falls short in advising businesses about how their own operations can contribute to modern slavery. Examples include recruitment processes that promote the use of contractors and sub-contractors or short-term migrant labour, and procurement practices that put pressure on suppliers to achieve short turn-around times, provide cheap products and respond to seasonal demand.

Appendix 1 provides clear definitions of modern slavery and excellent risk indicators. Appendix 2 provides good information about, and principles of, supplier engagement, however this could be strengthened by referencing the International Association for Public Participation's spectrum of engagement.¹

The Guidance includes a good mix of case studies highlighting important differences (and similarities) between sectors working to identify and scope supply chain risks. Including case studies to guide entities on what to do when incidents of slavery are found in local or global supply chains and what remedy looks like in an Australian context would add significant value to entities utilising the Guidance material.

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¹ https://www.iap2.org.au/Tenant/C000004/0000001/files/IAP2 Public Participation Spectrum.pdf

Suggestions for Improvement

Comments on specific paragraphs and pages

Paragraph 14.1 refers to SDG 8 and specifically to Target 8.7 which includes ending child labour in all its forms by 2025 (not 2030 as indicated in the Guidance). It is unclear how the actions or indicators included in the Guidance relate to this target or indeed the global 'effectiveness' indicator which is the "proportion and number of children, aged 5-17 years engaged in child labour, by sex and age."

Simply assessing, documenting and transparently reporting on the high-level risks of slavery in corporate supply chains does little to address Target 8.7 and may mislead stakeholders to believing Australia (and our top 3000 entities) are "taking immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour". The reference should be removed or clearly qualified as reporting entities could claim they are addressing SDG 8 by simply preparing a Modern Slavery Statement.

Figure 1 broadly outlines the respective roles that governments, business, investors, consumers and civil society play in combating modern slavery. Further points should be included on:

- The **Government's role** in providing national response mechanisms and victim support; and more clarity on the type of 'support' provided to civil society / NGOs e.g. is it 'ongoing financial support'?
- **Business** clarify to what level the responsibility to remedy harm extends.
- **Investors** should they go beyond 'considering' modern slavery risks to actually 'divesting' where known risks exist?
- **Consumers** what support and education is provided to consumers to 'raise awareness and promote best practice'? Who will educate the consumers?
- Industry bodies or business associations should be included as they have a critical role in
 educating their stakeholders / sectors and consumers more broadly, and supporting
 collaborative sectoral approaches to identifying and managing risk.

Paragraph 19.1 needs an explanation of the 'intent' of the legislation. Is it to reduce or eliminate slavery or 'maintain responsible and transparent supply chains'? Greater clarity is critical to help inform the assessment of the 'effectiveness' of actions and outcomes.

Paragraph 23.1 requires clarification on how the reporting requirement will increase information available to consumers. For example, where will reports be located, how will they be promoted to consumers? How will consumers know which entities are required to report? This links to 32.1 and also to the statement in the 'Learn More" box on page 14 indicating that the Act covers 3,000 entities, but which ones? Will there be a published list of names to hold them to account?

Figure 2 fails to outline the scope of work required in the lead up to preparing a statement as this can be substantial piece of work requiring adequate resourcing by the reporting entity. The statement is the outcome of actions undertaken in the 12-month reporting period and should not be interpreted as the starting point for an entity (as suggested by Figure 2).

Modern Slavery Act 2018 Submission: Draft Guidance for Reporting Entities

Paragraph 65.1 should clarify whether entities who report on a calendar year are able to submit a statement early (i.e. in the financial year reporting cycle). If this is the case, will this be considered a voluntary statement and will entities need to notify the Department that they wish to report early?

'Key Tips' Breakout Box on page 23 -Point 4 suggests including procurement teams in all countries of operation, especially high-risk locations. Clarification is essential on how this relates to Australian businesses who are subsidiaries of global entities and whose global business is in effect, its Tier 1 supplier (as is the case for many ICT companies in Australia). Are the

SD Strategies works with a number of entities who purchase finished products from their global parent companies for resale in Australia. We are consistently advised that the Australian subsidiaries are outsourcing supply chain risk management to these global entities based in the US, Japan and other jurisdictions without a legislative requirement for supply chains risk identification, supplier mapping or risk mitigation.

As such, Australian subsidiaries are reviewing only the risk presented by their "Australian supply chain" for products such as stationery and uniforms, and services such as cleaning and security. They are not assessing and addressing the risks associated with the electrical products or componentry manufactured by their global parent company that they on-sell in Australia.

Australian subsidiaries who sell products made in high risk countries responsible for identifying and managing risks in those jurisdictions or can they outsource responsibility to their global operations?

The Guidance appears to suggest that the Australian entity is directly linked to this risk and is thus required to assess, address and remedy any risks in the extended supply chain where this is not undertaken by the global entity. This key point must be made clear to Australian entities who directly procure high risk products/commodities — often through internal transactions or purchasing arrangements - from their global operations (who are effectively their Tier 1 suppliers).

Definition of due diligence on page 37 refers to UNGPs and Human Rights Due Diligence, however only examples of corporate due diligence are provided.

Guidance on remediation on page 37 is weak. The document states that businesses may "already be working to assess and address broader human rights risks" and as such should use the same process to manage modern slavery risks. This broad and poorly substantiated assumption doesn't reflect the reality of the majority of Australian businesses who are required to report. No actual guidance or remediation is provided.

SD Strategies works with reporting entities who largely have no understanding or experience in identifying and addressing human rights risks and responsibilities. They do not have existing policies or frameworks for considering modern slavery issues and impacts and are starting from a very low base. These reporting entities require significant support and guidance.

Guidance on understanding supply chain risk on page 38 focuses only on WHAT to do, not HOW to do it which should be a key purpose of the document. For example:

- what are 'existing traceability processes'?
- how does an organisation know what a 'credible assessment' is?
- how do they work with high risk entities? What does a best practice approach look like?
- what does a joint assessment entail? Is it desk top or on the ground and what questions should they ask?

There are many critical gaps in this section of the Guidance that are key to businesses taking practical and effective action to address modern slavery risks.

The "Learn More" information on actions to assess and address risks on pages 41 and 42 provides a few ideas on WHAT to do, but again no guidance is offered on HOW to do it. A statement such as "map your operations and supply chains" is unhelpful without supporting guidance on how to do this.

Similarly, "develop tools and policies to monitor high risk suppliers and mitigate risk" is a broad and largely unhelpful idea with limited supporting information on what such a tool or policy might look like, who should be involved in preparing it and the types of best practice examples that already exist across different industry sectors.

The Guidance makes numerous poorly supported assumptions that Australian entities have the skills, capacity and resources to act on these broad ideas. A notable example of this is the suggestion that entities "set up a mechanism to allow people to safely report modern slavery risks" in their operations and supply chains. This is a huge task by itself and one that requires sensitivity backed up with comprehensive systems, processes and expertise which is almost certainly lacking in the vast majority of

The reporting entities SD Strategies is working with have indicated they are waiting on government leadership and guidance on whistle-blower or reporting mechanisms.

Similarly, they are uncertain what to do when they find slavery in their supply chains and expect clear and detailed advice to be issued by the Commonwealth Government in relation to this.

Australian businesses. Significantly more guidance is required on how businesses should approach such a task particularly given the grave consequences for victims of modern slavery if done poorly.

The action on page 42 that entities ensure they "are prepared to respond" if they find modern slavery by 'developing a procedure' is vague and unhelpful in the absence of a coordinated national response and clear guidance. What action should businesses take, who do they call, how to they ensure the victim's safety, what if the slavery is uncovered in their supply chain outside of Australia? Appendix provides some guidance on this, but does not go far enough.

Paragraph 124.1 states "The Act only requires you to explain *how you assess* the effectiveness of an entity's action. The Act does not ask you to determine whether an entity's actions *are effective*." This statement is unhelpful, confusing and dismissive. What is it actually trying to say? Please refer to our analysis in Box 1 below.

Paragraph 126.1 suggests that modern slavery training is considered 'effective' if it raises awareness. We question whether an outcome of increased awareness is a measure of effectiveness in this context. An entity's workforce may be aware of modern slavery, but if they collectively do nothing about managing or mitigating modern slavery risks, the training cannot be considered 'effective'.

Paragraph 127.1 provides reasonable advice but seems to contradict the previous paragraph. If a statement is to provide information on how an entity assesses the effectiveness of its actions to both assess AND address modern slavery risks, then it makes sense to identify whether the **actions are effective**. What is it we are trying to measure or indeed achieve with this piece of legislation? Paragraph 129.1 asks how an entity will know "if its actions are making a difference". The inference here is knowing whether actions make a difference to eliminating modern slavery from supply chains, not identifying and reporting on risks.

Paragraph 130.1 includes a list of ideas on internal review mechanisms but provides little to no guidance on assessing the actual effectiveness in addressing modern slavery. Similarly, the KPIs suggested in the "Learn More" box on page 45 only measure the effectiveness of actions undertaken, not the **outcomes** of those actions. This is a critical distinction and one that must be clarified if the Guidance is to provide clear and meaningful advice on effectiveness measures.

Paragraph 134.1 indicates that a collaborative approach is necessary for **combating modern slavery**. This is interesting given the rest of the Guidance focuses only on identifying, assessing and addressing risks (not actually combating slavery).

BOX 1: Assessing effectiveness or measuring actual effectiveness?

The uncertainty around the requirement to assess effectiveness is perhaps best discussed in the context of what we are trying to achieve with the legislation – i.e. what is the **intent** of the legislation and of our actions? Is the intent to eliminate slavery from supply chains? Or is it to identify and transparently report on the risks of slavery?

Ultimately measuring the effectiveness of actions comes down to establishing clear and measurable KPIs for the **outcomes** we are wanting to achieve.

By way of example, an entity undertakes an action to include modern slavery clauses in supplier contracts which state that the goods or services supplied to the entity must not be the product of modern slavery.

To measure effectiveness of this action the entity firstly needs to determine what outcome it is wanting to achieve:

- a) Is it to have 100% of supplier contracts include a modern slavery clause? If so, the KPI suggested in the Guidance (ie the number of contracts that include modern slavery clauses) will measure the effectiveness of that action.
- b) If the outcome is to ensure that the goods or services supplied are not the product of modern slavery, the effectiveness measures would look very different (and include supplier, NGO and Union engagement, worker voice, sectoral collective bargaining, fair labour standards, establishment of Accords, factory assessments etc).

Appendix 3 provides some useful information about WHAT to do, but this is not backed up with clear information on HOW these steps can be done. For example, the advice provided in the Guidance to ensure 'actions are always in the best interest of the victim" does little to guide entities on what they actually need to do. Answers to the following questions should be provided if the Guidance is to help entities effectively respond to cases of modern slavery:

- How do they achieve the "best possible outcome for victims"?
- Who can they call?
- What is the recognised best practice approach in Australia (supported by government, the AFP and migration officers)?
- How will the Australian government help?
- Who are trusted partners and how can these partnerships best be established?
- How should organisations check that media claims are correct?
- Is there a recommended process they should follow that doesn't endanger victims?
- What does effective or acceptable remedy look like?

Case studies and supporting information on how to develop remediation plans would be helpful.

About SD Strategies

SD Strategies has been working with businesses in Australia and internationally for the past 20 years to help identify, manage and mitigate environmental, sustainability and human rights risks from business operations. The company Director, Sonja Duncan has undertaken social, environmental, health and safety audits for clients across the Asia Pacific Region. She is a preferred consultant to the NSW Government's Sustainability Advantage Program and has been assisting businesses develop and implement sustainable supply chain strategies for over a decade.

For additional information or clarification on any of the points raised in this submission, please contact:

, Director SD Strategies

s47F

M: s47F



www.sdstrategies.com.au

Thank you for the opportunity to provide a submission on the *Draft Guidance for Reporting Entities* (the Guidance) which seeks to provide guidance on key aspects of the *Modern Slavery Act 2018* (the Act).

The Shopping Centre Council of Australia (SCCA) represents Australia's major shopping centre companies. We note that the Act captures several of our members as a "reporting entity" under Section 5.

Following consideration of the application of the Act and the Guidance, it is our strong recommendation that clarification needs to be provided in the Guidance (e.g. via the insertion of a case study) to remove uncertainty in relation to the scope of the terms 'operations' and 'supply chains' insofar as they relate to the relationship between a lessor of property and their lessee. Specifically, within the objectives of the Act, this would clarify that a lessor is not responsible for a lessee's operations. This certainty was not provided in the Explanatory Memorandum, second reading speech or related material for the then Bill. We would like to see this clarified in the Guidance.

As currently drafted the Guidance offers some explanation of the abovementioned terms however without further detail, the 'guidance' remains sub-optimal; particularly for a new legislative instrument and scheme. The document defines operations as "any activity or business relationship undertaken by the entity to pursue its business objectives and strategy, including research and development, construction, production, arrangements with suppliers, distribution, purchasing, marketing, sales, provision and delivery of products or services, and financial lending and investments. This includes activities in Australia and overseas."

We believe the Guidance gives rise to a level of uncertainty in relation to the scope of "operations" in a property leasing context where a lessor provides services to a lessee in the form of the granting of leased premises under a lease agreement.

It is our interpretation of the definition of "operations" in the Guidance that a reporting entity's operations could potentially be interpreted as needing to extend beyond the reporting entity's own operations as a service provider (centre management) to 'downstream' receivers of supplies (i.e. lessee's operations). Such extension would be, from our perspective, not consistent with the intent or application of the Act. We would consider the extension of a lessor's reporting requirements "downstream" into the lessee's operations (e.g. the operations of a lessee such as Woolworths, Medicare or 7-Eleven) to be a hyper-extension beyond the application of the Act. Any 'encouragement' (e.g. via 'best-practice' type guidelines) to seek to extend scheme in such a manner would not be fair and reasonable, and go beyond the remit of the legislation.

Further, while leasing is part of a shopping centre companies' operations, under a formal and legally binding lease agreement the lessee exclusively occupies the premises and enjoys quiet possession; meaning that the lessor does not and cannot interfere with the lessee's occupation of the premises or its business beyond the permitted use under the lease (and in the case of a shopping centre, compliance with the rules of the centre. The operation of the lessee's business is solely the lessee's responsibility and not part of the lessor operations. Our position is that such as a hyper-interpretation of the reporting requirement would be far beyond any reasonable expectation of any supplier of lettable space. It would also be inconsistent with the general concepts of "supply" under other Australian legislation (for example, consumer law and taxation law)



which clearly delineate between "upstream" and "downstream" supply of goods and services in respect of obligations imposed on suppliers).

As a theoretical example of the impact on a lessor, if a broader interpretation of "operations" was encouraged or adopted, and where it was interpreted that a lessor's reporting requirements extends to the operations of its lessees, an entity which leases office space to a Commonwealth Department (e.g. Home Affairs – the agency responsible for the Modern Slavery Act) would be responsible for reporting on the Department's 'operations' and 'supply chains'. To elaborate, this would potentially extend to reporting on the 'operations' and 'supply chains' of individual agencies that comprise the Department both domestically and internationally such as:

- Australian Criminal Intelligence Commission
- Australian Border Force, and
- Australian Federal Police

For the reasons outlined above, we strongly recommend that the final Guidance expressly clarifies, either via specific commentary and/or a clear case study, that the application of the Act, and the scope of the terms "operations" and "supply chain", do not capture the operations and the supply chain of a lessee. We do not believe that such clarification in the Guidance would give rise to an inconsistency with Act or other legislation. We believe that a shopping centre example should be used in light of the 50,000+ retail leases entered into and administered by our industry nationally. We note that such clarity would potentially benefit other industries such as the commercial office and industrial sectors. If the Department opts not to adopt our recommendation, we respectfully request a written response outlining the reasons for such a decision.

We would welcome an opportunity to discuss this issue with you. Please feel free to contact me to discuss on or via email on start .

Kind Regards,

s47F

Deputy Director

13 May 2019

Modern Slavery Business Engagement Unit

Trade Modernisation and Industry Engagement Branch Infrastructure, Transport Security and Customs Group Department of Home Affairs 6 Chan Street Belconnen ACT 2617

Attention: Modern Slavery Business Engagement Unit

slavery.consultations@homeaffairs.gov.au

Dear Modern Slavery Business Engagement Unit

Re: Modern Slavery Act 2018 Draft Guidance for Reporting Entities

The International Organization for Migration (IOM) appreciates the opportunity to provide a letter of response in lieu of a formal submission to the Modern Slavery Act 2018 Draft Guidance for Reporting Entities.

Established in 1951, IOM is the leading intergovernmental organization in the field of migration. IOM's work helps to ensure the orderly and humane management of migration, promote international cooperation on migration issues, and provide humanitarian assistance to migrants in need, be they refugees, displaced persons or other uprooted people. It does so by providing services and advice to governments and migrants. The IOM Constitution gives explicit recognition to the link between migration, economic, social and cultural development, and to the right of freedom of movement of persons.

IOM initially welcomed the opportunity to provide a submission to the Modern Slavery Bill in July 2018 and further strongly welcomed the passing of the Modern Slavery Act in 2018 working toward collective eradication of modern slavery, including trafficking in persons and associated forms of exploitation. IOM acknowledges the Modern Slavery Act captures key recommendations within IOM's submission to the Modern Slavery Bill inclusive of:

- Increasing clarity about how the Bill interacts with existing Australian legislation prohibiting human trafficking and slavery (i.e. the Criminal Code Act 1995);
- Strengthening the systems and structures that surround the Bill, such as national referral mechanisms and victim support services; guidance to such services are well articulated the draft guidance for reporting entities.
- Supporting implementation through a suite of measures, including strengthening working partnerships and drawing on existing tools and good practices;

Increasing regional and global engagement on modern slavery through forums such as the Bali Process, Government and Business Forum

IOM commends the Modern Slavery Business Unit for the development of the Modern Slavery Act 2018 Draft Guidance for Reporting Entities. IOM is supportive of guidance and initiatives comprehensively offered within the Draft and offers the feedback below.

The Draft Guidance for Reporting Entities adequately captures the following:

- A coherent description of Australia's Modern Slavery Act, the context of modern slavery itself, the purpose of reporting and who is required to report. The content and language is very clear and concise for diverse businesses to comprehend. In addition to this, we recommend the examples cited for each of the recognized forms of exploitation could be more clearly distinguishable between slavery, servitude and forced labour.
- The strength of the introduction is the encouragement of any non-mandated businesses to voluntarily prepare a Modern Slavery annual statement and each section of the document is very easy to follow.
- Encourages organizations to work together to collaborate to reduce the burden of suppliers when answering questions for modern slavery questionnaires, and use this collaboration as a leverage in encouraging suppliers to adhere to better practices
- Good guidance references, inclusive of the UN Guiding Principles on Business and Human Rights and the IOM Remediation Guide for Victims of Exploitation in Extended Mineral Supply Chains
- Details key elements of the Modern Slavery Statement and provides guidance on practical challenges
- Strongly emphasizes that actions in response to identification of modern slavery or risk of modern slavery within entities/supply chains is always in the best interest of the suspected victims.
- Provides good guidance how entities can work with suppliers through (i) building meaningful on relationships, (ii) ensuring engagement is the relationships, (ii) ensuring engagement is the relationships, (ii) ensuring engagement is the relationships, (iii) ensuring engagement is the relationships engagement is the r requirement in Australia's Model...

 engagement.

 The draft raises positive strategies for collaboration with civil society organizations and NGOs. I.e. and expertise on key issues," "better understand issues on the ground".

IOM recommends the following considerations to the Draft Guidance for Reporting Entities:

o In the absence of real legal repercussions for non-compliance, it may be useful to include a some examples in the document of how companies have been impacted reputationally, undermined their ability to do business, and damaged investor confidence. It would help to buttress the argument that companies should do more than submit a public relations statement.

- o With regards to the diagram 'Figure 2' on page 13, IOM recommends adding a sixth step to demonstrate what happens once a slavery statement is submitted. I.e., will it be reviewed and evaluated, is there feedback to the submitting entity?
- o The section on 'voluntary reporting' on page 19 indicates its possible for voluntary reporting to be undertaken, but it doesn't answer the question posed above it; "Why is this an option in the Modern Slavery Act"? This section should replica the answer provided on page 43, article 125.1.
- o IOM is wondering if there is a definition of 'high risk sectors' found in Article 78.1, on page 26.
- O IOM suggests the description found in 125.1 on page 43 could be added to the section 89.1-91.1, as it provides a more thorough description to the paragraph.
- o IOM queries whether the definition of "to the extent possible" is adequately defined to the reader on page 27 (row 3/column 3). The sentence in reference is, 'to the extent possible, identify the source countries for these goods and services'.
- Referencing page 27 again, IOM recommends adding 'the countries where these workers are employed' and/or 'to the extent possible, the nationalities of these workers', (row 7/column 3).
- The draft cites an excellent paragraph on page 29 regarding the potential impacts to migrants and those around them that reporting may cause. IOM recommends adding examples of what negative impacts are, such as expulsion of the migrant worker, criminal defamation charges for allegations the victim may have made against a supplier in the country of operation, or stigmatization in the victim's community.
- The draft offers a hypothetical example of scoping one's modern slavery risks on page 34.
 IOM recommends adding a template of how those risks might be framed for reporting purposes.
- The draft offers a text box titled 'Learn more: Where do I start?' on page 35. IOM suggests severity and scale are important considerations, but 'probability' is also very important and shouldn't be minimized here as a less significant variable. Understanding the likelihood of the risk helps distinguish what is realistic from what is not and can help in prioritizing responses.
- IOM has a recommendation for article 109.1, page 38. The clause does not directly answer the question "Why is this requirement in the Modern Slavery Act?". It only says that "it important that your entity take meaningful steps". Part of the answer could include: "Governments have the primary responsibility to eradicate modern slavery, but businesses are often better placed to identify it within their (international) supply chains and so are required by the Act to detect it." It could also include: "victims of crime, including crimes related to modern slavery, have an internationally-recognized right to remedy. Governments require the cooperation of private entities to identify and respond to modern slavery risks to ensure that this right is upheld." See clause 125.1 as an example which

- o In the following statement on page 39: "For example, you should provide information about what you want to achieve and the timeframes you have set to do this."; IOM suggests reinforcing the language from "could" to should" to reaffirm this messaging.
- o With regards to the heading on 'Changes to Policies and Procedures' on page 41, IOM recommends adding "...including supplier codes of conduct; <u>safe complaints/grievance mechanisms</u>; and sourcing policies."
- o Page 44 outlines some excellent strategies for assessing the effectiveness of the entity's actions. While noting the following section on KPIs, IOM suggests including in the bulleted list the point on the importance of establishing measurable indicators as a way of ensuring a common understanding of what needs to happen but also as a way to track progress towards the intended result.
- There are useful references on tracking progress towards the intended results of the submitting entity, however IOM recommends changing the first bullet point on page 45 from the 'number of training/awareness raising programmes' to 'percentage of managers trained'. Also consider adding something like: 'number of audits reporting on modern slavery indicators'.
- O IOM suggests that it may be useful to demonstrate a more easily recognizable trafficking example for a large business on page 60. For instance, "A company's supplier relies on informal brokers to recruit people from rural areas in Country A, with promises of low-skilled but well-paid construction jobs in a big city in Country C. Applicants are required to pay \$2000 per person to access these jobs. Those who can't pay are told that the costs of the application process (work permit, travel) will be taken from their wages once they start working. Upon arrival in Country C, the migrant workers are taken to a remote plantation. Their identity/travel documents are confiscated, and they are told to begin working. They are also told that they will be charged \$50/night for their accommodation, which can only be provided by the company. Those who complain are reminded of their remote location, their lack of documentation, and that they have a debt that must be paid."
- o Also, on page 60, as concerns the slavery example, IOM would recommend considering the usage of an example that would clearly illustrate slavery based on a relationship between two people, since as an exploitative domestic worker scenario or forced prostitution scenario. This would explicitly show the powers attaching to the right of ownership, perhaps including some of those enumerated in the UN Secretary General's 1953 Report to ECOSOC:
 - 1. The individual may be made an object of purchase.
 - The master may use the individual, in particular his or her capacity to work, in absolute manner.
 - 3. The products of the individual's labor become the property of the master without any compensation commensurate to the value of the labor.
 - 4. The ownership of the individual can be transferred to another person.

- 5. The status/condition of the individual is permanent in the sense that it cannot be terminated at the will of the individual.
- 6. The status/condition is inherited/inheritable.
- o IOM recognises there is often confusion in the sector on child labour and child work. Therefore, it might be useful to include a contrasting example of 'child work' on page 62.
- With reference to Appendix 3, page 67, IOM suggests adding "Not all countries have or apply laws and procedures that protect victims of modern slavery. In some cases, victims who have made complaints to police have themselves been subjected to charges of criminal defamation. International organizations are often well positioned to advise on how to navigate these challenges."
- o Under the section of 'responding to modern slavery', page 68, there is a point referring to 'address the harm caused'. IOM recommends this is a good place to describe common needs/considerations of individual victims. I.e.; physical and mental health concerns, employment, income to service debt obligations or to pay education/medical fees, legal status, risk of retaliation and further harm, possible stigma attached to being a victim of modern slavery.
- o Appendix 5, 'helpful resources', page 71. IOM suggests adding the Council of Europe's GRETA country reports to the list of resources: https://www.coe.int/en/web/anti-humantrafficking/country-monitoring-work

Additional discussion points of relevance to IOM and Australia's Modern Slavery Act:

- o IOM is actively engaged in meetings with civil society players in understanding support needs/gaps in expertise, including on the ground in supply chain countries.
- o IOM welcomes collaboration within Department of Home Affairs Workshops supporting the private sector human rights due diligence approach.
- o IOM welcomes appropriate partnerships with private sector actors and the utilisation expertise and IOM existing programmes such as Corporate Responsibility in Eliminating Slavery and Trafficking Responsibility (CREST) and the IOM tool known as the International Recruitment Integrity System (IRIS).

In summary, the International Organization for Migration (IOM) appreciates this opportunity to provide In summary, the International Organization for Migration (IOM) appreciates this opportunity to provide a letter of response in lieu of a formal submission to the Modern Slavery Act 2018 Draft Guidance for Reporting Entities.

Sincerely,

Chief of Mission- Australia;
Coordinator and Advisor for New Zealand,
Papua New Guinea and the Pacific

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Submission on the Department of Home Affairs' Draft Guidance for Reporting Entities under the Modern Slavery Act 2018

14 May 2019

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1. Executive Summary

The Human Rights Law Centre (HRLC) welcomes the opportunity to comment on the Department of Home Affairs' (DHA) Draft Guidance for Reporting Entities under the *Modern Slavery Act 2018* (Cth) (MSA) (the Guidance). We congratulate the DHA for preparing this detailed draft Guidance and, in particular, for clearly situating MSA compliance within the global context of corporate respect for human rights and the UN Guiding Principles on Business and Human Rights (UNGPs).

This submission makes a number of recommendations to further strengthen the Guidance, relating to the following areas:

- Chapter 5: reporting against the mandatory criteria
- Appendix 3: how to respond to cases of modern slavery
- Appendix 5: helpful resources

2. Chapter 5: Reporting against the mandatory criteria

Chapter 5 of the Guidance outlines the concepts on which entities must report in line with the mandatory reporting criteria legislated in the Act.

Mandatory criteria 1 & 2 require reports under the MSA to identify the reporting entity and describe the reporting entity's "structure, operations and supply chains".

- The Guidance should encourage entities to provide specific & meaningful information about their operations and suppliers rather than simply identifying, for example, the 'region' where their operations or supply chains are located. It is only through the provision of greater detail that external stakeholders such as investors, workers or customers will be able to use the reports to independently gauge whether a company is accurately assessing and acting on its modern slavery risks. We would recommend that text is inserted in the preamble to Table One on page 27 to encourage this approach. We would suggest that Table One also makes clear that it is best practice to identify suppliers by publicly disclosing the names and addresses of suppliers or factories.
- Further guidance should also be provided in this section on how entities should analyse and review their own business operations as opposed to just managing their supply chains. For example, in the 'Blue Sky Construction' case study on page 25, the company's operations extend beyond what is currently listed to include Blue Sky's customer contracts, the ways in which Blue Sky obtains finance for its activities, and its upstream and downstream contractual arrangements. Understanding the breadth of what is entailed by 'operations' also impacts how reporting entities report on operational risks. For example, in the Blue Sky example, modern slavery risk could arise where Blue Sky negotiates unreasonably low pricing and short timeframes with a principal in relation to a construction contract, carrying subsequent implications for the working conditions of subcontractor. Another example of a customer-related risk would be where Blue Sky Construction enters into a contract for the construction

of a private prison where prisoners are required to work excessive hours without pay. Without further guidance on the breadth of the meaning of 'operations', some of this analysis is likely to be lost as entities prepare their initial statements.

It would also be useful to include a further case-study here relating specifically to financial sector entities (such as project financing of a mine operating in a jurisdiction where there is high-risk of child labour) to illustrate the different considerations relevant to those entities. While page 33 notes the need to consider 'investment and lending portfolios', it should be stressed that financial sector entities carry substantial risks through contributing or being directly linked to the modern slavery risks of their customers – thereby exposing them to risks across a multitude of sectors and geographic regions.

Mandatory criteria 3 requires entities to describe the risks of modern slavery practices in their operations and supply chains.

• The Guidance should emphasise that modern slavery rarely occurs in isolation and often arises in a context of generalised exploitative or dangerous employment practices or practices which violate other human rights. We would recommend that in addressing criteria 3, entities are encouraged to consider and report on broader human rights risks within their operations and supply chains and in particular, on risks of poor labour practices that may create the conditions in which situations of modern slavery develop.

Mandatory criteria 4 & 5 require entities to describe the actions they are taking to address risks and how they assess the effectiveness of those actions.

- Page 35 of the Guidance (para 104.1) states that entities should only describe actions taken during the 12 month reporting period for the reporting entity. We believe the Guidance should also encourage entities to set out what actions they propose to take in the future to address risks identified during the current reporting period. This would enable measurement of entities performance over time and encourage a commitment by reporting entities to develop longer-term plans to fully map their supply chains and address the risks within them. Further, commitments as to future steps can be referred to in subsequent statements when evaluating effectiveness and improvements in approach year on year.
- Page 37 of the Guidance provides information on what constitutes 'remediation' for the purposes of the mandatory reporting criteria under the MSA. In our view, this part of the guidance could better highlight the central importance of remediation in circumstances where violations are found to have occurred, as well as from the standpoint of encouraging entities to develop effective grievance and remediation mechanisms. It would be useful to include a case-study here, as well as links to guidance on what constitutes effective grievance mechanisms (such as the Shift report on 'Remediation, Grievance Mechanisms and the Corporate Responsibility to Respect Human Rights' (2014)).

- Some of the suggested KPIs set out on page 45 appear to list measures that emphasise process rather than actual effectiveness in detecting or protecting persons who may be adversely impacted by an entity's activities (eg, number of contracts including modern slavery clauses without including qualitative information on the nature of contractual controls included, and how much of the entity's supply chain is impacted). Other appropriate KPIs might include some of the following:
 - o Proportion of suppliers screened for modern slavery risks;
 - o Proportion of suppliers audited for evidence of payslips and working hours;
 - Number of workplaces in a company supply chain that have collective bargaining agreements or recognised trade union representation.

KPIs should be used to hold entities accountable to their own standards for continual improvement, and should assist civil society and government regulatory entities to assess the progress being made by a reporting entity year by year.

We would also recommend the inclusion of a further case study to demonstrate the effectiveness of actions taken by a company when cases of forced labour or human trafficking have been identified.

3. Appendix 3: Responding to cases of modern slavery

Appendix 3 deals with how entities should respond to situations of modern slavery identified in their operations or supply chains.

- The Guidance should encourage entities to consider responses that go beyond how to resolve an individual instance of modern slavery and consider systemic improvements to address underlying causes. It should be emphasised that instances of modern slavery should be viewed as structural rather than isolated instances of abuse, and that responses to uncovering instances of modern slavery will often require complex solutions that address root causes of exploitation, including an examination of how an entity's own practices may be contributing to the conditions that create forced labour.
- We also recommend that references to unions are expressly included on page 68 and
 elsewhere in the Guidance where entities are encouraged to consider opportunities to
 collaborate with international and local organisations or civil society groups, given the central
 importance, deep experience and effectiveness of unions in addressing issues of labour
 exploitation on behalf of workers.

4. Appendix 5: Further resources

We would recommend that the following additional resources be added to Appendix 5 of the Guidance:

- International Labour Organisation, Combating forced labour: a handbook for employers and business (2015) https://www.ilo.org/global/topics/forcedlabour/publications/WCMS_101171/lang--en/index.htm
- 2. International Labour Organisation, *Child Labour Guidance Tool for Business* (2015), https://www.unglobalcompact.org/docs/issues_doc/labour/tools_guidance_materials/ILO-IOE-child-labour-guidance.pdf



15 May 2019

Modern Slavery Business Engagement Unit
Department of Home Affairs
By email to slavery.consultations@homeaffairs.gov.au

Dear Modern Slavery Business Engagement Unit,

RE: Australian Broadcasting Corporation Feedback on the Draft Guidance - Modern Slavery Act 2018

The Australian Broadcasting Corporation (ABC) is a reporting entity under the Modern Slavery Act 2018 (the Act) and welcomes the issuing of 'Draft Guidance for Reporting Entities'. We provide the below feedback on the Draft Guidance to 'inform the final guidance to ensure that it is fit for purpose'.

Overall, the Draft Guidance is a valuable resource which will support the ABC in its implementation of a multifaceted program to address the requirements of the Act. In particular the ABC values the guidance provided on risk assessment, due diligence and remediation of identified Modern Slavery risks.

Opening Statement

The ABC recommends the inclusion of a prominent opening statement or question along the lines of "Does your organisation use IT equipment and stationery, have promotional merchandising or wear uniforms/employ a supplier whose staff wear uniforms? If yes, then your organisation may be buying products and/or services at risk of modern slavery in their supply chain."

The intent of this recommendation is to reinforce that every reporting entity uses these items in their supply chain and hence is at risk.

Applicability of the Guidance

Page 4 of the Draft Guidance states:

This Guide does not include specific information for Commonwealth entities covered by the reporting requirement. Separate guidance will be provided for Commonwealth entities.

The ABC understands that the guidance is intended to apply generally to all reporting entities and that the separate guidance for Commonwealth entities referred to on page 4 is intended to provide additional complementary guidance relevant for Commonwealth entities. If that is the intention, we suggest clarifying the paragraph on page 4 to make clear that both guidance documents apply to Commonwealth entities.

Released by Department of Home Affairs under the Freedom of Information Act 1982

Definition of annual revenue

The ABC recommends further guidance is provided to define 'annual revenue', beyond the existing reference to the Australian Accounting Standards. Practical examples per the Standards definition would potentially prevent Government and NGO entities from mistakenly believing they are not a reporting entity, due to their funding models and absence of traditional revenue streams.

Reasonable depth of Supply Chain Mapping

The ABC recommends the inclusion of further guidance on what constitutes a reasonable depth of mapping into the tiers of the supply chain and/ or what is a reasonable period of time to complete a program of supply chain mapping over multiple years.

Reliance on Supply Chain entities who are reporting entities for the purposes of the Act

The ABC requests further guidance on the reasonable level of reliance it may place on implementation actions being taken by Supply Chain entities (public or private) who are reporting entities for the purposes of the Act.

Case studies

The inclusion of Case studies in the Draft Guidance is a value add. The ABC recommends inclusion of real and fact-based Australian case studies which demonstrate that Modern Slavery is occurring 'in our backyard'. Further case studies will also assist in demonstrating:

- The depth of supply chains. With reference to the existing Case Study 'Blue Sky Construction" a graphical representation of supply chain depth will assist readers in understanding that the concept of a supply chain extends well below direct supply relationships. The ABC found the following chart useful https://www.elementum.com/chain-reaction/why-we-need-n-tier-visibility-for-supply-chain
- "Dangerous or sub-standard working conditions" (and therefore not Modern Slavery), per the
 continuum at page 8. These case studies would assist Reporting Entities in scoping Supply Chain
 mapping and assessing, classifying and responding to identified incidences.

Forced Marriage

The ABC recommends the inclusion of further guidance on Forced Marriage. The Explanatory Memorandum (EM) to the Bill sets out that the Bill "establishes the Modern Slavery Reporting Requirement, which requires reporting on modern slavery practices that are criminalised under Commonwealth law, wherever they occur. This includes slavery, trafficking in persons, servitude, forced labour and forced marriage." The draft Guidance states: *You only need to report on forced marriage in situations where your entity's activities or the activities of entities in your supply chain may cause or contribute to forced marriage.

The ABC requests further clarification on how the reporting requirements in the EM correspond with the draft Guidance.

Training and awareness raising - reasonable coverage

The ABC would appreciate additional guidance on what constitutes a reasonable approach to provision of training and awareness, across the staff base and supply chain. In particular:

- What is a reasonable level of training & awareness for staff who have no active role in supply decision making or the recruitment of staff?
- What is a reasonable level of responsibility for the ABC, for providing training & awareness to the supply chain (2nd tier and beyond)

Yours sincerely,

s47F

A/Chief Financial Officer

Finance

s47F

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elea:

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Please direct all responses/queries to: s47F

Our reference: DRIMS#1401116542

CONFIDENTIAL

15 May 2019

Modern Slavery Reporting Requirement Consultation on Draft Guidance for Reporting Entities Department of Home Affairs

By email: slavery.consultations@homeaffairs.gov.au

Dear Sir/Madam

CONFIDENTIAL SUBMISSION ON THE GOVERNMENT'S MODERN SLAVERY ACT 2018: DRAFT GUIDANCE FOR REPORTING ENTITIES

Woodside Energy Limited ('Woodside') thanks the Department of Home Affairs ('the Department') for the opportunity to make this confidential submission on the *Modern Slavery Act 2018: Draft Guidance for Reporting Entities* ('the Draft Guidance').

Woodside is recognised for its world-class capabilities as an integrated upstream supplier of energy. We deliver energy solutions domestically and internationally that provide sustainable value for our shareholders, partners and the communities where we are active. We operate joint-venture interests in Australia, Senegal, Ireland, Myanmar and Timor-Leste and have non-operator interests in assets in Australia, Canada, Myanmar, Gabon, Peru, and Bulgaria that are operated by various joint venture participants.

Woodside is committed to conducting business in a way that respects the human rights of all people, including our employees, the communities in which we are active, and those working within our supply chains. Our business is informed by the UN Guiding Principles on Business and Human Rights, which defines the accountabilities of governments in protecting human rights, and of business in respecting human rights.

Woodside is supportive of the Government's efforts to establish guidance for reporting entities on obligations under the *Modern Slavery Act 2018* (Cth) ('the Act'), and is pleased to make the following confidential submissions on the Draft Guidance:

The Act requires reporting entitles to report on the risks of modern slavery practices in their operations and supply chains. The Act does not define the term "operations". The Draft Guidance suggests that "operations" means "any activity or business relationship undertaken by the entity to pursue, its business objectives or strategy, including research and development, construction, production, arrangements with suppliers, distribution, purchasing, marketing, sales, provision and delivery of products or services, and financial lending and investments". The inclusion of the words "or business relationship", suggests that the meaning of "operations" is significantly broader than the meaning given to "operations" in the Explanatory Memorandum to the Act.²

Woodside is concerned that, if such a broad meaning of "operations" were adopted, this would extend Woodside's reporting obligations to business relationships and associated activities over which Woodside does not have operational control. For example, this would extend to the activities of Woodside's non-operated joint ventures, its partner research institutions and even its customers and

Draft Guidance at p 25

² Explanatory Memorandum, Modern Slavery Bill 2018 (Cth) at [129].

their respective supply chains (noting that section 81.1 of the Draft Guidance appears to confirm that a reporting entity's operations would ordinarily include its non-operated joint venture activities).

This may lead to an expectation that reporting entities such as Woodside should take actions to actively assess and address modern slavery risks (e.g. conduct due diligence and implement remedial processes) in respect of operations outside of their control. The ability to take such actions is not typically contemplated under existing operating agreements, partnership agreements or other contractual arrangements that govern these business relationships. Even if access was provided to the supply chains of these third parties, conducting due diligence would not only be highly resource intensive, but could be insufficient if remediation was required, as the reporting entity would not have the ability to directly influence or control remediation activities or outcomes within those relationships.

Woodside therefore encourages the Department to reconsider the current definition of "operations" in the Draft Guidance, which Woodside submits should be limited to an entity's controlled operations. To this end, we note that the Act includes a definition of the term "control".

Paragraph 81.1 of the Draft Guidance suggests that it may be permissible for a reporting entity to
exclude certain parts of its business from its modern slavery statement, and provides the example of
a mining company who may decide not to report on its non-managed joint ventures because they will
be covered in the managing entity's statement. The Draft Guidance notes that reporting entities "must
ensure this is permissible under the Act". However, neither the Act nor the Draft Guidance provides
any further detail on the situations in which it will be permissible for an entity to exclude certain parts
of its business from its statement – for example, in respect an entity's non-operated joint venture
interests.

For the reasons outlined above, Woodside encourages the Department to reconsider its current suggested definition of "operations" in the Draft Guidance, and to provide further clarity on the scope of an entity's reporting obligations for its non-operated activities, in particular non-operated joint venture activities, having regard to the frequent use of joint ventures in many industries including the oil and gas industry. In Woodside's submission, the final guidance should clarify that reportable "operations" are limited to an entity's controlled activities. Further, if the Department considers that there may be circumstances in which it is permissible under the Act for a reporting entity to exclude parts of its business from its modern slavery statement, the final guidance should include more detail about those circumstances.

The Act establishes a modern slavery reporting regime. It does not prescribe obligations in relation to modern slavery due diligence and remediation. In places, the Draft Guidance may appear to suggest otherwise. In particular, Woodside notes that the "How to" and "Learn more" sections of the Draft Guidance could be construed as being prescriptive. These sections would appear to be particularly helpful for entities that have not yet established an approach to modern slavery due diligence and remediation. We understand that the intention of these sections is to provide general guidance, rattier than prescribing a specific approach. We would suggest that the Department makes this clear in its final guidance.

Woodside understands that submissions on the Draft Guidance will not be published. Woodside provides above submissions on a confidential basis for the purposes of the Department's internal consideration on and requests the Department to first contact it should the Department wish to disclose any of the above submissions to any third parties.

Woodside would be happy to further discuss these matters with the Department should you require any further clarification.

Yours faithfully	
s47F	
Michael Abbott,	

Senior Vice President, Corporate & Legal



16 May 2019

The Manager Modern Slavery Business Engagement Unit Department of Home Affairs T +61 2 9223 5744 F +61 2 9232 7174 E info@governanceinstitute.com.au Level 10, 5 Hunter Street, Sydney NSW 2000 GPO Box 1594, Sydney NSW 2001 W governanceinstitute.com.au

By email: slavery.consultations@homeaffairs.gov.au

Dear Sir/Madam

Modern Slavery Act 2018 Draft Guidance for Reporting Entities

Governance Institute of Australia (Governance Institute) is the only independent professional association with a sole focus on whole-of-organisation governance. Our education, support and networking opportunities for directors, company secretaries, governance professionals and risk managers are unrivalled.

Our members have primary responsibility for developing and implementing governance and risk frameworks in public listed, unlisted and private companies. They are frequently those with the primary responsibility for dealing and communicating with regulators such as the Australian Securities and Investments Commission (ASIC) and the Australian Prudential Regulation Authority (APRA). In listed companies, they have primary responsibility for dealing with the Australian Securities Exchange (ASX) and interpreting and implementing the Listing Rules. Our members have a thorough working knowledge of the Corporations Act 2001 (the Corporations Act). Our members also play an important role in the external reporting by public listed, unlisted and private companies. We have drawn on their experience in providing our feedback.

Governance Institute was involved in stakeholder engagement concerning the development of the Modern Slavery Act 2018 and provided a submission to the Consultation Paper on 10 November 2017.

Governance Institute welcomes the opportunity to comment on the Draft Guidance for Reporting Entities (Draft Guidance).

We commend the Government on the draft guidance. We consider that the draft guidance is well drafted and contains helpful examples. We also consider that it will be of considerable assistance to entities considering their obligations to report under the Act. We make the following comments on the draft guidance which we consider will improve the guidance for users:

1. Introduction

We note that the purpose of the introductory chapter is to explain the context for the Modern Slavery Reporting requirement. Rather than immediately defining modern slavery, we recommend that the introduction provide a brief overview of the requirements of the Act in order to provide context for the user. Paragraphs 20.1 and 21.1 of the Draft Guidance contain a brief description of the requirement and we recommend that these paragraphs or similar be included in the introduction.

2. General comments and text box on page 14

We consider that it is important that the guidelines clarify and consistently convey that the Act imposes an obligation to describe the risks of modern slavery practices and the actions taken by the entity to assess and address those risks, rather than an obligation to report all modern slavery practices or specific instances of slavery discovered by the entity.

By way of example, where this is not clear and confusion may be created, is the text box on page 14 which currently includes the sentence *Requires reporting all modern slavery practices, including the worst forms of child labour.* We recommend that the material in this text box be clarified to take into account this important distinction.

If you have any questions concerning this submission or would like to discuss any aspect please don't hesitate to contact our General Manager, Policy and Advocacy, Catherine Maxwell.

Yours sincerely



Megan Motto CEO



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17 May 2019

Department of Home Affairs Australian Government

Via Email: slavery.consultations@homeaffairs.gov.au

Dear Sir/Madam

Modern Slavery Act 2019 - Draft Guidance for Reporting Entities

Thank you for the opportunity to provide a submission on the draft guidance for reporting entities applying the *Modern Slavery Act 2018* (the **Draft Guidance**).

The Australian Institute of Company Directors (**AICD**) has a membership of more than 44,000 including directors and senior leaders from business, government and the not-for-profit (**NFP**) sectors. The mission of the AICD is to be the independent and trusted voice of governance, building the capability of a community of leaders for the benefit of society.

The AICD recognises that the issue of guidance on the new modern slavery reporting requirement is critical to its effective implementation. We consider the guidance would benefit from some amendments, including further detail in some areas, the inclusion of a chapter on definitions, and the incorporation of case studies.

Detailed comments

We have identified the following areas where drafting could be improved:

1. Chapter 2: How to calculate the consolidated revenue of your entity? – We do not consider this section contains sufficient guidance on the term 'consolidated revenue' It currently refers to the Australian Accounting Standards to determine 'control' and to calculate revenue. However, we consider the guide needs to provide some simple information on these concepts and then refer to the accounting standards for further detail. The explanatory memorandum accompanying the legislation provides more detail on these concepts and this should be incorporated into the guidance. However, we note that the explanatory memorandum refers to an outdated revenue standard: AASB 118 Revenue and does not refer to the revenue standard applied by many not-for-profits: AASB 1004 Income of Not-for-profit entities. The new standards should be referred to instead - AASB 15 Revenue from contracts with customers and AASB 1058 Income of Not-for-profit entities.

- 2. Chapter 5: Inclusion of customers Chapter 5 describes the risks of modern slavery practices and recommends the entity review its business relationships. The Draft Guidance notes that business relationships include business partners and customers. One of the examples provided relates to funding provided to a customer. We consider that further clarification is needed on this matter and whether consideration of customers is only considered relevant where funding is provided, or whether it involves any goods or services sold to customers. We consider that most entities (except perhaps institutions that are providing capital based on knowing the use to which the funds will be directed) would not be able to determine the use of their products or services by customers and therefore would find this area difficult to assess. Therefore, we would request further clarification on the recommendation to consider customers and further examples in this area.
- 3. Chapter 6: Board approval processes Chapter 6 would benefit from further information about how a board would practically provide oversight on assessing the entity's response to the Modern Slavery Act 2018. This could include example questions the board (or a relevant board committee) may ask as part of its oversight role. The publication Modern Slavery Risks, Rights & Responsibilities¹ includes checklists for boards on each of the mandatory reporting criteria. It would be useful referring to these within the Draft Guidance.
- 4. Chapter 6: Why is this a requirement in the Modern Slavery Act? We do not consider that section 154.1 sufficiently explains why the requirement exists for the board to approve the modern slavery statement. We consider the explanation in the UK guidance Transparency in Supply Chains, etc - A practical guide is preferable, with similar language drawn upon. The UK guide explains that the statement is to be approved and signed by an appropriate senior person in the business - 'This ensures senior level accountability, leadership and responsibility for modern slavery and gives it the serious attention it deserves. An organisation's top management will be best placed to foster a culture in which modern slavery is not tolerated in any form. They need to lead and drive the measures required to address this problem throughout the business'.
- 5. Chapter 6: Key terms explained We consider this section should also clearly define the term 'responsible member' in both the heading and contents. The definition should on note specifically the exception relating to a trust or an entity under administration Further, the examples provided in this section are useful but each of them should clearly indicate the identity of the responsible member.
- 6. Chapter 6: How do I approve the statement? we do not consider it is necessary to 5 include paragraph 162.1 in the guidance. This paragraph indicates that it is best practice for the chair of the board or the Chief Executive (if they are a member of the board) to sign the statement. However, we consider this to be a matter for the board to determine in accordance with a board resolution or policy.

 Shed by the Australian Council for Superannuation Investors in February 2019.

 Page 2 of 32 practice for the chair of the board or the Chief Executive (if they are a member of the

¹ Published by the Australian Council for Superannuation Investors in February 2019.

AUSTRALIAN INSTITUTE of COMPANY DIRECTORS

Next s	steps
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We hope our comments will be of assistance this submission, please contact s47F	to you. If you would like to discuss and Senior Policy Adviser, on s47F	y aspect of or at
Yours sincerely		
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17 May 2019

s22(1)(a)(ii)

Director
Modern Slavery Business Engagement Unit
Department of Home Affairs
slavery.consultations@homeaffairs.gov.au

Dear s22(1)(a)(ii)

Modern Slavery Act 2018: Draft Guidance for Reporting Entities

On behalf of the Australian Council of Superannuation Investors (ACSI), I am pleased to make this submission in relation to the Modern Slavery Act 2018 Draft Guidance for Reporting Entities (Draft Guidance).

Established in 2001, ACSI exists to provide a strong, collective voice on environmental, social and governance (ESG) investment issues on behalf of our members. Our members include 39 Australian and international asset owners and institutional investors. Collectively, they manage over \$2.2 trillion in assets and own, on average, 10 per cent of every ASX200 company, on behalf of millions of beneficiaries.

As a representative of long-term investors, we welcome the Modern Slavery Act 2018. Beyond its devastating human impact, slavery threatens business sustainability and shareholder value. We seek to contribute positively to the discussion and use our collective influence to drive businesses to proactively identify and manage modern slavery risk.

In February 2019, we released our report 'Modern Slavery Risk Rights and Responsibilities' which contains valuable tools for companies and investors in the fight against slavery. Beyond identifying high-risk factors and sectors, it includes practical checklists to diagnose companies' modern slavery readiness and the effectiveness of their response. It may be useful to include our report in the 'Helpful Resources' section in Appendix 5 to the Draft Guidance.

Our further comments are set out over the page. In summary, our view is that the Draft Guidance would benefit from additional focus on continuous improvement. In addition, we think the treatment of investments should be clarified. I trust that our comments are of assistance. Please contact me or safety, ACSI's Executive Manager -Public Policy and Advocacy, should you require any further information on ACSI's position

Yours sincerely	
s47F	

Louise Davidson
Chief Executive Officer

Overview

ACSI supports the Modern Slavery Act and the accompanying Draft Guidance. We consider that increased transparency can provide valuable information to investors and stakeholders. Transparency provisions are designed to drive continuous improvement. Concerted peer support will move everyone towards leading practice more quickly.

Should a company choose not to take genuine steps to address modern slavery it will risk unfavourable market comparison, investor scrutiny and find it increasingly difficult to maintain public trust. Annual public modern slavery statements will allow stakeholders – including investors, civil society and others – to compare year-on-year progress.

Guidance should promote continuous improvement

We recognise that human rights reporting requirements, such as those embedded within the Australian modern slavery legislation, are designed to promote continuous improvement. The Draft Guidance properly focuses on what an entity needs to do to comply with the legislation. While we think that approach is helpful, it focuses on 'first time reporting'. ACSI is concerned that this approach may lead to minimal or legalistic compliance, which is unlikely to yield change, and over time, will not meet the aims of the legislation.

Therefore, we recommend that the Draft Guidance state that there is an expectation that modern slavery statements will develop over time as approaches evolve and mature. This would encourage reporting entities to demonstrate how they have matured their capacity to identify, manage, address and remediate modern slavery risks and impacts. To drive consistent improvement over subsequent years, we believe that the Draft Guidance could go further in emphasising this approach. This could be done throughout Chapter 5 or in an additional section in that Chapter. We think that examples would be helpful in this respect. Such examples could involve entities setting work plans for the coming years and reporting back in their subsequent modern slavery statements.

Investments

The legislation provides that a modern slavery statement should describe the risk of modern slavery practice in the 'operations and supply chains' of the reporting entity and any entity that the reporting entity 'owns or controls'.

We think that there is opportunity to clarify how investments should be treated. For example, on plain reading 'operations and supply chains' would not ordinarily include investments, and the box on page 25 'Key Terms Explained' does not mention investments. Similarly, paragraph 81.1 outlines the example of excluding non-managed joint ventures from an entity's modern slavery statement, on the basis that they will be covered in the managing entity's statement, which is analogous to many investment scenarios. However, the table on page 27 suggests that investments should be considered part of an entity's operations, and the box on page 38 outlines actions to address risks in investment portfolios.

Further clarification of the term 'owns or controls' may be useful to distinguish owned or controlled entities from investments. For example, reference could be made to the *Corporations Act* definition of 'control' which incorporates the capacity to determine the *outcome* of decisions on financial and operating policies. Should this be the intention, this would make it clear that investments are to be considered as part of a reporting entity's 'operations and supply chains' for the purposes of their modern slavery statements.

We think that this clarification would be helpful as it would form a basis for clear reporting. This is because the action taken to address modern slavery risks will be different for investments than it might be for owned or controlled entities.

For many of our members, engagement is an effective way of responding to modern slavery risks in investments. In fact, there are many examples of such engagement already taking place. In this respect, the information in the boxes on page 38 and page 40 is helpful, however it could be supplemented with examples as contemplated above. In addition, we think it would be helpful to outline that investors could, as part of mapping their investments in the first instance, consider prioritising those investments where they have larger holdings.

We think it would also be helpful to supplement the references on pages 38 and 40, perhaps with examples mapping an investment portfolio and identifying risks by industry and/or geography. In addition, we

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recommend further information outlining that as investee entities start to provide their own modern slavery statements, investors will, in turn, be able to further consider the risks and appropriate responses. Such guidance would support continuous improvement and evolution of best practice over time as reporting matures.

Ai GROUP SUBMISSION

Department of Home Affairs

Modern Slavery Act 2018 (Cth)

Draft Guidance Materials

17 May 2019



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

, Head of National Manager – Workplace Relations Policy

Telephone: s47F or 02s47F

Email: s47F

EXECUTIVE SUMMARY

Ai Group welcomes the opportunity to review and provide industry feedback on the Commonwealth Government's *Modern Slavery Act 2018 – Draft Guidance for Reporting Entities*.

Ai Group considers the Guidance Material to be a useful tool for businesses required to report under the *Modern Slavery Act 2018* (Cth) (the Act).

The Act provides businesses with the required flexibility to determine how modern slavery risks are best addressed in each operation and supply chain.

While lengthy, the Guidance Material is comprehensive, easy to read and follows a logical sequence. We anticipate that it would be read by many managers in businesses with responsibility for preparing a modern slavery statement.

Ai Group, has however, identified several areas that we consider could improve the effectiveness of the Guidance Material and the operation of the Act more broadly. We identify these areas below.

The Federal Act's interaction with the *Modern Slavery Act 2018 (NSW)* (page 16)

The interaction between the Act and the *Modern Slavery Act 2018 (NSW)* (**NSW Act**) is an issue Ai Group Members frequently question. In the same way that the Guidance Material (page 16), deals with reporting under other modern slavery laws, such as in the United Kingdom, we consider it useful for there to be reference to the NSW Act with cross-references and links to the relevant NSW Government resources.

Businesses that report under the Federal Act, either voluntarily, or because they are covered by a reporting entity's joint statement, should be alerted to possible obligations under the NSW Act that may still apply.

Reporting Periods (page 21)

Ai Group welcomes the Guidance Material's information on page 21 about reporting periods for the purpose of preparing modern slavery statements. In global industry, many organisations adopt different accounting periods, depending on where an organisation's head office, or parent company is located. While we note the Guidance Material's description of two different reporting periods, we request that clarity be given to other accounting periods (such as 1 April to 31 March, which is very common for businesses with head offices in Japan) in respect of whether such periods within the general meaning of a calendar year as is used to commonly described 1 January — 31 December. Presently, it is unclear as to whether a 1 April to 31 March accounting period will mean a 1 April 2019 to 31 March 2020 reporting period.

Preparing a modern slavery statement (page 23)

Provided the modern slavery statement complies with the requirements in the Act, businesses generally can determine the form of their modern slavery statement. This may suit many organisations that already report on modern slavery risks in another jurisdiction, have strong branding protocols, or which frequently publish and publicly report on company operations for other purposes.

For those businesses, however, that are required to prepare a modern slavery statement for the first time, visibility over what a statement should look like would be extremely useful. Ai Group has received regular feedback from Members that they would be assisted by a particular form for the purpose of preparing a statement.

Ai Group suggests that a default form be provided to reporting entities that wish to use it. The default form could set out, in sequence with the Act's mandatory criteria, a series of high-level open questions based on the Act's mandatory criteria. For instance: Please describe your entity's structure; please describe your entity's operations; please describe your entity's supply chains?

The default form could be attached to the Guidance Material as an Appendix.

Embedding the mandatory criteria in a simple default document also assists ease of understanding the Act's mandatory criteria for modern slavery statements, without the need for businesses to bookmark numerous pages of the Guidance Material or access legislation.

Key terms "structure," "operations" and supply chains" (page 25)

The break-down of information identified as relevant for reporting on a reporting entity is generally helpful. However, Ai Group is concerned that in some instances, the Guidance Material, perhaps inadvertently, refers to additional requirements for the content of modern slavery statements that are beyond what is contained in the Act.

For instance, the Act does not define the term 'structure', nor is the intended meaning dealt with in the Act's Explanatory Memorandum (unlike 'operations' and 'supply chains'). We question the basis and utility of expecting a reporting entity to disclose particular aspects or features of its structure, such as employee numbers, or detail its legal relationship with all other related entities. Many reporting entities are part of complex structures and may have a very large number of legal relationships with other entities, including those that contain no assets or employees (e.g. an entity may be created for financial reasons to address requirements of lending institutions).

While there may be some businesses that would be comfortable and willing to disclose particular features of a reporting entity's structure, there would also be many concerned about the disclosure of commercially sensitive information, particularly as it appears on a public register that may be viewed for purposes other than addressing modern slavery risks.

Ai Group recommends that in respect of explaining the term 'structure,' a statement to the effect of "you may provide information about ..." with the listed factors would be more appropriate

Describing modern slavery risks (page 30)

Ai Group has received questions from Members as to whether customers are included in a reporting entity's operations or supply chains for the purposes of identifying and addressing modern slavery risks. It is unclear in the Guidance Materials whether this is the case.

Customers are generally end-users of a reporting entity's product or service over whom, in many cases, very limited, if any, commercial leverage can be exercised. Conversely, it is the customer who exercises leverage over modern slavery risks in their purchase choice of products or services. The inclusion of customers in a reporting's entity's operations or supply chains would be extremely impracticable and unworkable for many reporting entities, particularly if customers are individual consumers of the general public (for example, a retailer selling to an individual consumer).

Ai Group recommends that further clarity on this point is needed in the Guidance Material.

Describing the risks of modern slavery practices (page 33)

Ai Group welcomes the inclusion of a list of risk indicators for modern slavery as outlined in Table 4 of the Guidance Materials and the "how to – scope your entity's modern slavery risks" box on page

is this information and ern slavery may manifest in opening is this information.

ern slavery may manifest in opening is to objective data or information. For instance, use of short-considered as skilled labour are present in almost every global value chain across industrically and to be meaningful or reliable indicators of modern slavery risks.

is not to say that these risk factors are irrelevant, but industry would be better guided by modern better data highlighting:

• Geographical prevalence of modern slavery, such as the Global Slavery Index Heat Map:

• Industry prevalence of modern slavery (as informed by past cases, or work of NGOs).

We understand that many Governments and NGOs have data that could be used by industry to modern slavery risks in operations and supply chains.

Reputational damage arising from transparent disclosures on modern slavery risks (pages 28 and 29)

The avoidance of reputational damage is a significant driver for businesses to address and eliminate modern slavery risks in their operations and supply chains. The Guidance Materials also make this clear as one the of many business reasons why organisations should address modern slavery.

The transparency that reporting entities will be subject to, and how this influences future modern slavery statements and reporting will be an important issue with the reporting requirement.

Ai Group is concerned that in some instances, businesses may be demonized for being transparent, particularly if they decide to disclose in their statement a specific incidence of modern slavery uncovered by its due diligence processes. Uncovering modern slavery in supply chain operations is evidence that an internal system is generally working and effective. Further, for the benefit of other reporting entities that may be considering what systems to implement, businesses should be free to report on a system that works without risk of severe reputational damage.

For this reason, we recommend that a Guide be developed by the Department on how modern slavery statements should be read by civil society with a view to:

- Acknowledging the widespread nature of slavery around the globe;
- Encouraging transparency in reporting for reporting entities;
- Fostering continuous improvement in modern slavery due diligence processes;
- Avoiding public backlash against organisations which disclose incidences of modern slavery in their operations or supply chains.

Remediation; Appendix 3

Remedial responses to modern slavery are a complex area for many businesses. While a range of remedial responses and systems may be available to organisations, many may be filled with complex ethical dilemmas relating to local community values, living standards, local infrastructure, and local or foreign Governments make or enforce their own laws.

While we acknowledge there is no one correct remedial response to uncovering modern slavery. At Group recommends that there be an area of the Guidance Material (specifically Appendix 3) which includes some recent examples or models that businesses have used to demonstrate what an effective remedial response or system looks like.

We also note that the Guidance Material at page 11 refers to Australia's criminal justice response to modern slavery which includes a dedicated victim support program and a National Action Plan on Human Trafficking and Slavery. We would welcome relevant external victim support services, including hotlines, being identified in the Guidance Material or on the Department's website so that they may be used by reporting entities to communicate support for modern slavery victims in an entity's operations or supply chains via policies and processes. This is a valuable step that reporting entities could take as a part of any structure remedial response.

We anticipate that as modern slavery reporting continues, this will be a growing area for ongoing information and guidance.

Conclusion

Ai Group is supportive of the Guidance Materials. We propose some additional amendments as described above to make it a more effective resource for industry in combatting modern slavery.



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Asaleo Care Limited ABN 61 154 461 300 30-32 Westall Road, Springvale Victoria, 3171 www.asaleocare.com



Australian Government Department of Home Affairs Modern Slavery Business Engagement Unit

17 May 2019

Subject: Response to the Modern Slavery Act 2018: Draft guidance for reporting entities

To Whom It May Concern,

This submission is made by Asaleo Care Limited ('Asaleo Care') in connection with the *Modern Slavery Act* 2018: Draft guidance for reporting entities.

Confidentiality

Please note that Asaleo Care requires all of this submission to be treated as confidential, and does not permit the Department of Home Affairs and its agents to use for any other purpose or disclose this confidential submission to any other party without prior consent by an authorised representative of Asaleo Care.

Asaleo Care Limited ABN 61 154 461 300 30-32 Westall Road, Springvale Victoria, 3171 www.asaleocare.com



Asaleo Care is a leading personal care and hygiene Company that manufactures, markets, distributes and sells essential everyday consumer products across the Feminine Care, Incontinence Care, Baby Care, Consumer Tissue and Professional Hygiene product categories. Our products are used daily in households and businesses across Australia, New Zealand, Fiji and a number of countries in the Pacific.

Our sustainability goal is to help support a more sustainable society through our products and business operations. We are committed to respecting human rights and eliminating modern slavery within our supply chain. We welcome the introduction of the Modern Slavery Act 2018 that targets modern slavery and human trafficking in operations and supply chains. Asaleo Care has reported on these issues since we first launched our Responsible Sourcing Program in 2014.

The Guidance Document provides a clear guide to understanding the Modern Slavery Act, including useful resources, explanations and case studies to illustrate instances of modern slavery and provides a useful tool for understanding the compliance requirements under the Act.

We believe that the Guidance Document is well in alignment with the UN Guiding Principles on Business and Human Rights, for example providing clear definitions on the differences between causing, contributing to or being directly linked to a modern slavery risk as well as a detailed list of of risk indicators for modern slavery.

In some parts the Guidance Document is high level and overall we feel it would be helpful to have further guidance on:

- How far down a supply chain an entity needs to investigate in order to satisfy the requirement of conducting due diligence.
- Further practical examples throughout the Guidance Document to assist reporting entities with their understanding and practical implementation.

Our responses to specific parts of the Guidance Document are below.

Section of Guidance Document	Relating to	Asaleo Care comment	ffairs
Chapter 4. When Do I Report?	Section 65.1 If your entity operates on a calendar year, your first reporting period will be 1 January 2020 to 31 December 2020"	As an ASX-listed organisation, our customers, consumers and investors will expect us to to demonstrate our leadership on this issue. Different organisations will have different operating periods. In the early days of reporting, to the public (in particular NGOs etc) it may look like some organisations are not reporting, or that some are more proactive than others, when in fact it is due to entities having different reporting periods. This could result in a risk of negative publicity in some cases. Therefore it may be useful to have information highlighting this to the public so that they are aware of entities having different reporting periods.	ed by Department of Home A



Section of Guidance Document	Relating to	Asaleo Care comment	
		We want to provide public information for the entire reporting period, but as we operate on a calendar year basis, we will not be covered by the first 6 months of the reporting period. Can some guidance be provided as to how proactive entities can share their information publically ahead of their official reporting due date?	
Chapter How do I prepare a statement ? Table One: Suggested Ways To Describe An Entity's Structure, Operations And Supply Chains	Identify the countries or regions where the entity's suppliers are located. Explain in general terms the type of arrangements the entity has with its suppliers and the way these are structured (are they often short term and changeable or stable longer-term relationships)	Further clarification on the extent of the supply chain that needs to be described would be useful. How far down the supply chain do we go? Does this description relate to identification or characterisation of the supply chain? It would be useful to have further clarification regarding which industries this is recommended for?	
Chapter 7: Preparing Join Statement s	186.1 This does not mean that you need to respond to each criterion separately for each entity. However, your statement should clearly show how your responses to each criterion address each reporting entity.	It would be useful to have an example to illustrate the point covered in Section 186.1 In general for Chapter 7, it would be beneficial to have a graphic representation or figure to illustrates the points covered in the chapter, in addition to Table 2: Options to Approve a Joint Statement.	
Appendix 1 What is Modern Slavery	Table 4: Risk Indicators For Modern Slavery	General statements about risks in "certain sectors and industriesproducts and services" are insufficient for entities to understand if and how to respond. It would be useful to have more guidance on reputable information sources linked to each type of risk in the table. This approach is taken in the Illegal Logging Prohibition Act 2012 and related guidance materials, where detailed guidance is provided on how to conduct a timber risk assessment, including links to websites to assess different risks. See for example: APPENDIX 4: Sources of additional information and guidance for regulated risk factors (available at:http://www.agriculture.gov.au/SiteCollectionDocuments/fo restry/australias-forest-policies/illegal-logging/afa-guidance-manual.pdf)	A CANADA

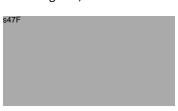
Asaleo Care Limited ABN 61 154 461 300 30-32 Westall Road, Springvale Victoria, 3171 **www.asaleocare.com**



Section of Guidance Document	Relating to	Asaleo Care comment
		This approach could be beneficial for organisations to assess modern slavery risks. For example the IFC/World Bank's document "Managing Risks Associated with Modern Slavery A Good Practice Note for the Private Sector" (available: https://www.ifc.org/wps/wcm/connect/c301ea48-ff44-4b35-9b1f-4459c9812d66/GPN_Managing-Risks-
		Associated-with-Modern-Slavery.pdf?MOD=AJPERES) provides similar guidance in Chapter 3, Table 5 Contextual Factors – for different types of modern slaver risks and information sources to assess these risks.
Appendix 2. How can I work with suppliers?		It would be helpful to have practical examples in regards to how to work with suppliers and some references to 'real life' examples.
Appendix 3. How do I respond to a case of modern slavery?		It would be useful to provide an example of a grievance mechanism or reference to groups which have suitable grievance mechanisms in order to assist companies with the implementation of this process.

If you have any questions or comments for	r Asaleo Care in relation to our submiss	on, please contact either
myself at s47F	or ^{s47F}	. Thank you.

Kind regards,



Quality, Environment and Sustainability Manager, Australasia

Asaleo Care.



17 May 2019

Modern Slavery Business Engagement Unit Department of Home Affairs

Via email: slavery.consultations@homeaffairs.gov.au

Dear Sir/Madam

Modern Slavery Act 2018 - Draft Guidance for Reporting Entities

Chartered Accountants Australia and New Zealand welcomes the opportunity to provide feedback to the Department of Home Affairs on the Modern Slavery Act 2018 - Draft Guidance for Reporting Entities (the Guidance).

Appendix A provides our detailed submission and we have focused our feedback on key areas where we consider we can add the most value. Appendix B provides more information about Chartered Accountants Australia and New Zealand (CA ANZ).

We draw attention to the commencement date of 1 January 2019 of the Commonwealth Modern Slavery Act 2018 (the Act) and highlight that organisations with reporting periods ending 31 March are already in their first reporting period, prior to the availability of guidance.

Key points

- We suggest that clear and concise guidance is provided to assist entities to identify if they are required to comply with the Act. In particular, clearly articulated explanations of how the entity will assess its revenue threshold as well as guidance for borderline entities that may be required to estimate their revenue threshold. It is critical that entities can clearly identify if they are or are not a reporting entity.
- We recommend that the Guidance is separated into three key components: Compliance with the Modern Slavery Act 2018, Understanding Modern Slavery and Modern Slavery Statement preparation and lodgement. This would provide greater clarity for users looking at compliance for the first time as well as users with pre-existing awareness of the Act.
- We recommend that the guidance provide clarity around the scope of the statement, in particular whether business relationships other than suppliers are included, such as customers.

Should you have any queries co	ncerning the matters discussed above or wish	to discuss them in further
detail, please contact s47F	via email at ^{s47F}	
phone ^{s47F}		
Yours sincerely.		

Group Executive Advocacy & Professional Standing Chartered Accountants Australia and **New Zealand**

Business Reform Leader Advocacy & Professional Standing Chartered Accountants Australia and New Zealand

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Appendix A

General Comments

Chartered Accountants Australia and New Zealand supports the implementation of the Commonwealth Modern Slavery Act 2018. We recognise that with any new legislation, careful consideration of any supporting documents is required to ensure that the objectives of the Act are met and that the document is practically fit for purpose. We note that this draft guidance for reporting entities is to support the Modern Slavery Act that commenced on 1 January 2019, meaning organisations with reporting periods ending 31 March and 30 April are currently expected to comply with the Act without appropriate guidance to assist them. We suggest that these organisations are identified and this situation is considered when their first Modern Slavery statements are submitted in September 2020.

Identification of reporting entity

Identifying whether an entity needs to comply with the legislation is a critical component of the guidance. However, we don't consider the current guidance for identifying whether an entity needs to report or not is sufficiently clear and concise. In particular, we note that the guidance states that you must first 43.1 'check the consolidated revenue of your entity' and then 44.1 'determine whether you are an Australian entity or a foreign entity'. While we appreciate that this is the order in the Modern Slavery Act 2018, we recommend that these decision points are reversed in the guidance as it is important to initially define the entity (i.e. Australian entity or foreign entity carrying on business in Australia) and then determine its turnover.

Further, we note that the explanatory memorandum (EM) provides clearly articulated explanations of how the revenue threshold would be assessed within a consolidated group of entities. We recommend that where appropriate, extracts from the EM are included within the guidance which could be followed with plain language explanations. In addition, we note that section 36 of the EM only refers to AASB 118 *Revenue* which is the superseded revenue standard applicable to for profit entities. We suggest updating this reference in the EM to refer to AASB 15 *Revenue from contracts with customers* which is the current standard for revenue (for profit entities). We also suggest that AASB 1058 *Income for Not-for-profit entities* is also included in the EM as Not-for profit entities are also captured by the Act.

Additionally, we note that the revenue threshold will apply to the same reporting period as the modern slavery statement. Therefore, the actual consolidated revenue will not be known until after the reporting period. While for many entities, it will be clear whether they are above \$100m in consolidated revenue or not, there will be some entities with revenue close to the threshold. These will need to estimate whether the entity will be captured at the start of the reporting period. Additionally, there may be a situation where an entity has made an acquisition during the period that takes their consolidated revenue from below to above the threshold. We think the guidance should address these challenges.

Separation of the Guidance

The guidance assumes that users are aware of the details of the Act and the accompanying explanatory memorandum. Page 11 provides basic details of the Act, but we believe that this information would be insufficient for users that are looking at compliance with the Modern Slavery Act 2018 for the first time and may not have awareness of the requirements of the Act. We also note that, from the title of the draft guidance, that there could be an assumption that the document would only apply to entities that have already determined that they will need to report. In order to provide greater clarity, we recommend that the Department of Home Affairs separate the existing guidance into three key components:

1. Compliance with the Modern Slavery Act 2018

Separate guidance focused on compliance aspects of the Act would allow for an entity to determine whether they need to report under the Act. This separate guidance would include the "do I need to report?", "can I report voluntarily" and "when do I report" chapters of the draft guidance.

2. Understanding Modern Slavery

Once an entity has established if they will be a reporting entity, this separate section will allow them to get further context and information on Modern Slavery and how it relates to their business and supply chain

3. Modern Slavery Statement preparation and lodgement

This final section for reporting entities would contain information on how an entity prepares a statement. We suggest this includes chapter 5 – "how to prepare a statement" onwards that is currently provided in the draft guidance.

Absolute clarity around scope of business operations

We understood that the focus of the Modern Slavery Reporting was to be on the business operations and supply chain. We consider that these following points may create some confusion as to the scope of the Modern Slavery Statement, particularly for financial services companies. We recommend that the guidance provide absolute clarity around the scope of the Modern Slavery statement, in particular whether business relationships other than suppliers are included.

Within the guidance, there are specific references to customer related activities.

- In the 'key terms explained' box on page 25 of the draft guidance, operations are defined as "any
 activity or business relationship undertaken by the entity to pursue its business objectives and
 strategy, including... sales, provision and delivery of product or services, and financial lending and
 investments." All of which would be considered as customer related activities.
- In the 'key terms explained' box on page 30 under the heading "risks that you may be directly linked
 to modern slavery practices", the draft guidance states that "your business relationships also include
 your business partners and customers, including entities you provide with financial products and
 services".
- We also draw your attention to page 30 "For example, your entity may fund a client to undertake an
 overseas infrastructure project" and page 33 "this map should include your investment and lending
 portfolio".

Language used may be misinterpreted

In our opinion, the guidance includes some language and references which may cause confusion. For example, on page 4 it identifies the audience of the guidance as "people that need to prepare a statement for their entity". However, as noted above, the first few chapters of the guidance relate to whether the reporting entity needs to report. By separating the guidance as noted above, the specific audiences for each section can be more clearly identified. For example "people preparing a statement for a reporting entity".

In addition, we note the use the 'first person' in chapter headings "do I need to report?" and "how do I approve a statement?" As well as the use of the 'second person' in the commentary – for example: section 156.1 "You must ensure that your statement is approved by the principal governing body for the reporting entity", 158.1 "You cannot delegate this approval process" and 161.1 "you can choose which responsible member signs your statement'.

We suggest that the use of 'You' may cause confusion, as the stakeholders using the guidance may interpret and assume that they are individually responsible for the approval process. We recommend that these references (as well as others within the guidance) are reconsidered and replaced with statements such as "the responsible member of the reporting entity" as this clearly reflects that approval responsibility sits with the principal governing body (and not 'you' being the individual preparing the statement) and is

signed by a responsible member of the entity, who would typically be determined by that principal governing body through appropriate delegations.

Further, the "learn more" box on page 35 references an entity's assessment of risk and the need to focus on the most 'severe' risks. We suggest consideration be given to including reference to "the likelihood and impact of the risk", which are aspects typically considered in an enterprise risk management framework.

Duplication of message

We understand that the guidance intends to use plain language to explain what entities are required to comply with the Act. However in certain sections of the guidance there is duplication of the same message. For example, the explanation of the consolidated revenue threshold is repeated in section 37.1, 39.1, 43.1 and 44.1 (page 15 and 16).

We recommend that the guidance is reviewed for duplication to ensure conciseness.

Further guidance for group structures

Some of our members have expressed confusion in relation to the assessment of consolidated revenue for group structures, particularly when the groups' parent resides overseas. We understand that the intent of the Act is to capture operations within Australia with the assessment of revenue to be carried out at the highest Australian level.

While the draft guidance includes a diagram of a group structure in chapter 7, we recommend that another example be included to illustrate an overseas parent company with sibling reporting entities in Australia. We also consider that including some example group structures to illustrate how the revenue threshold might be calculated within chapter 2 would be helpful.

Further, we recommend expansion of section 184.1 to address the issue of whether a reporting entity or a non-reporting entity could be included in more than one Modern Slavery Statement.

Objective of the Act

We recommend that the original primary objective for the Modern Slavery Act 2018 is included within "what is the Modern Slavery Reporting requirements" section on page 11 to provide context to the purpose of the reporting requirement.

Highlight specific criteria

We note sections 86.1 and 87.1 specify important information relating to specific criterion in the Modern Slavery Act. We suggest that areas such as these are clearly highlighted within the text to avoid them being overlooked by users when reading the guidance.

Further support for reporting entities

We recommend that the guidance include some links to further resources or support for organisations in addressing modern slavery. For example, on page 58 we suggest including references to the relevant departments or organisations that may be able to assist if specific cases of modern slavery are found. Additionally, we recommend including a Frequently Asked Questions (FAQ) page including questions such as "how far do I go down the supply chain" or "what if my entity already reports under another law". This could be a useful tool to highlight areas where there might be confusion and it could provide specific references to sections within the guidance document. This page would also allow for updates to be made on a timely manner. We also recommend that resources and support be provided for principal governing bodies to assist in the approval process and finalisation of an entity's statement.

Further, we recommend that the Department of Home affairs website include a resources section as this will allow for updates to be made to ensure that users are using the most up to date information.

Additional drafting points:

In addition to the above points, we note:

 On page 4 of the guidance, that the page has been titled "contents" however, the narrative provides context to the guidance document and the Act as well as recommended reference points. We suggest

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- that the title of this page is reconsidered as the content of the document is clearly outlined on page 5 (table of contents) and page 6 (chapter overviews).
- Cross references should be double checked, for example: 165.1 refers to 30 June year-ends report by 1 January, however in figure 4 on page 21 it states 31 December 2020.
- The numbering of sections is cumbersome as there appears to be no reason for every paragraph to be numbered with xx.1 when a single number should suffice. If possible, we consider it would be more user friendly for the paragraph numbering system to relate to the chapter numbers.
- All pull out boxes and figures should be mentioned within the commentary of the guidance and should also appear in order that they are mentioned. For example, 15.1 does not refer to the "learn more" box on page 10 however the box provides further case studies to learn more about the nature and extent of modern slavery. Additionally, page 11 refers to a "learn more" box on page 14 and page 12 refers to a diagram on page 13. Figure 1 on page 9 is not mentioned in the text or explained. We also suggest larger text in this figure to make the details clearer.
- The "learn more" boxes on pages 23, 41 and 41 are not mentioned in the guidance commentary and therefore lack context. We recommend that they are referenced in the commentary.
- The "learn more" box on page 14 states "requires reporting all modern slavery practices". However,
 we consider that this is misleading given that point 3 of the seven mandatory reporting criteria
 (section 68.1 on page 22) requires every statement to "describe the risks of modern slavery practices
 in the operations and supply chains".
- We recommend that figure 4 on page 21 includes examples of alternative financial reporting periods such as March, September and December as well as June. These could be illustrated by placing the milestones as headings and the deliverable dates underneath for the different year end reporting periods.
- On page 41 there is reference to "make your entity's policies on modern slavery publicly available".
 We suggest amending this to be 'make your entity's policies which relate to modern slavery publicly available as we consider it likely that these would be an entity's procurement or supply management policies.

Appendix B

About Chartered Accountants Australia and New Zealand

Chartered Accountants Australia and New Zealand is a professional body comprised of over 120,000 diverse, talented and financially astute members who utilise their skills every day to make a difference for businesses the world over.

Members are known for their professional integrity, principled judgment, financial discipline and a forward-looking approach to business which contributes to the prosperity of our nations.

We focus on the education and lifelong learning of our members, and engage in advocacy and thought leadership in areas of public interest that impact the economy and domestic and international markets.

We are a member of the International Federation of Accountants, and are connected globally through the 800,000-strong Global Accounting Alliance and Chartered Accountants Worldwide which brings together leading Institutes in Australia, England and Wales, Ireland, New Zealand, Scotland and South Africa to support and promote over 320,000 Chartered Accountants in more than 180 countries.

We also have a strategic alliance with the Association of Chartered Certified Accountants. The alliance represents 788,000 current and next generation professional accountants across 181 countries and is one of the largest accounting alliances in the world providing the full range of accounting qualifications to students and business.



17 May 2019

Department of Home Affairs

By email: slavery.consultations@homeaffairs.gov.au

Modern Slavery Act 2018 - Draft Guidance for Reporting Entities

HIA takes this opportunity to provide feedback to the *Draft Guidance for Reporting Entities* (Draft Guidance) covered by the *Modern Slavery Act 2018* (Act).

HIA is the leading industry association in the Australian residential building industry. HIA supports and represents the views and interests of over 60,000 member businesses. HIA members comprise a diversity of residential builders, including the Housing 100 volume builders, small to medium builders and renovators, residential developers, trade contractors, major building product manufacturers and suppliers and consultants to the industry. HIA members construct over 85 per cent of the nation's new building stock.

Under the Act, a business with an annual total turnover of more than \$100 million must provide an annual Modern Slavery Statements within six months of their financial year ending

HIA estimates that the number of homes a builder would need to complete a year to reach the \$100 million threshold would be around 285 homes. This would capture a significant number of builders and, an even greater number of small businesses operating within their supply chains.

The Draft Guidance is therefore critical for both large and small businesses operating in the residential building industry to ensure compliance with the reporting requirements as set out in the Act.

General Comments

Useful, accurate and reliable guidance material in relation to the Act is crucial, as is a common sense approach to the content to be included in Modern Slavery Statements.

The Draft Guidance, while useful is somewhat lengthy, contains superfluous information, places a heavy reliance on external material and in some instances goes beyond that intended by the Act.

Specifically the Draft Guidance seems to promote the new regime, for example it is unclear how a page of comments from business leaders/investors and civil society promoting the use of the Draft Guidance assists businesses comply with the reporting requirements. The Draft Guidance also tends to emphasis the benefits of the scheme. While important, this does not fit with the purpose of the document which is to 'explain in language what entities need to do to comply with this reporting requirement'.

The Draft Guidance also tends to demean business decisions that seek to reduce costs and/or improve efficiency. Throughout the Draft Guidance such measures are characterised as contributing to a risk of modern slavery. While this may occur these factors are also legitimate business considerations and should also be described as such.

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HIA have made various representations highlighting a number practical difficulties with implementing the requirements under the Act into the residential building industry. HIA's primary concern is that it is unclear how the legislation will apply to non-reporting entities in the supply chains of reporting entities. These nonreporting entities are likely to be small businesses who are not the stated target of the obligations under the Act.

The Draft Guidance does provide some information to those entities and how they may interact in order to support a reporting entity comply with their obligations, however, industry specific guidance is crucial. HIA look forward to having further discussions with the Department of Home Affairs in relation to this.

Finally, the Draft Guidance makes no overt concession that the initial statements may be difficult to collate and limited in coverage and scope. It is important that reporting entities are provided time to understand their supply chains and the risks of modern slavery in those supply chains. Comments in the Draft Guidance that reporting entities may encounter difficulties or road blocks in carrying out, for example, risk mapping and developing capacity within and between suppliers is important.

Outlined below are some more specific comments in relation to the Draft Guidance.

Reliance on the UN Guiding Principles

Paragraph 69.1 of the Draft Guidance explains that the 2011 United Nations Guiding Principles on Business and Human Rights (UN Guiding Principles) are used to help explain each of the seven mandatory reporting criteria. This paragraph also states that 'Investors, business peers, civil society and governments expect you to understand and apply the UN Guiding Principles in your response to modern slavery'. HIA is concerned that this sets an inappropriately high bar in relation to the expectations on a reporting entity regarding the content of a Modern Slavery Statement.

The Explanatory Memorandum to the *Modern Slavery Bill 2018* states that:

'The mandatory criteria draw on terminology and concepts used in the business and human rights context, particularly the 2011 United Nationals Guiding Principles on Business and Human Rights (UNGPs). The Australian Government will encourage entities to make use of the UNGPs and other relevant frameworks to help them identify, priorities and respond to modern slavery risks.'

The heavy emphasis placed on the UN Guiding Principles in the Draft Guidance sits at odds with these observations. While an informative document the UN Guiding Principles go beyond the reporting requirements set out in the Act. Further, whilst Australia is a party to seven core international human rights treaties, the UN Guiding Principles are not 'law' in the same way that the Act is 'law', yet the Draft Guidance certainly implies some sort of mandatory obligation in relation to the implementation of, and compliance with. UN Guiding Principles. This, in some respects adds further complexity to an already complex regime.

UN Guiding Principles. This, in some response and The UN Guiding Principles should be a document listed in Appendix 5 as one of a number of resources to assist reporting entities comply with their obligations.

The Explanatory Memorandum to the Modern Slavery Bill 2018 states that the 'supply chain is intended the refer to the products and services that contribute to the entity's own products and services and is not restricted to 'tier one' or direct suppliers'.

The extent of the obligations under the Act in this regard is not clearly reflected in the Draft Guidance. At this point in the Draft Guidance it is also unclear that a direct contractual relationship is not necessary for an entity to be in a reporting entities supply chain.

It is critical that reporting entities, particularly those in the residential building industry understand the extent of their supply chains as envisaged by the Act, including that other businesses, particularly small businesses will be involved in supporting a reporting entity comply with their reporting requirements.

In light of this HIA would emphasis the need to make sure that a sensible approach is taken to ensure that those entities with the capacity and capability to report on, and respond to, the risks of modern slavery in their supply chains are primarily responsible for compliance with those reporting requirements. As such, the Draft Guidance should recognise the impact of the scale and complexity of an entities operations as a moderating factor influencing their ability to address the seven reporting criteria.

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Mandatory Criterion Three

HIA understands that compliance with mandatory criteria three involves describing the risks of modern slavery practices in the operations and supply chains of the reporting entity. The 'Key Terms Explained' box on page 30 of the Draft Guidance sets out how an entity may describe those risks by considering if an entity causes, contributes to or is directly linked to modern slavery. This assessment is based on that set out in the UN Guiding Principles. In HIA's view the Draft Guidance goes further than the UN Guiding Principles. For example, the risk of contributing to modern slavery practices through 'acts or omissions that may facilitate or incentivise modern slavery' goes beyond the investigation intended by the Act.

Further, the examples provided refer to the use of 'exploited labour'. This term is not defined and differs from the descriptors used on page 8 in the box titled 'Learn More: Where Does Modern Slavery Fit?' HIA suggests that the Draft Guidance use the terminology used in the Act and set out at table 3 of Appendix 1.

Mandatory Criterion Four

This is one of the more difficult criteria to report on and requires a reporting entity to describe the actions taken to assess and address the risks of modern slavery in an entities supply chain including due diligence and remediation processes.

For those in the residential building industry, the concept of due diligence is most prevalent in relation to compliance with work, health and safety laws. Under those laws there are obligations on offices to exercise due diligence to ensure the business meets its duties to protect workers and other persons against harm to health and safety. Under the commonwealth harmonised work, health and safety laws due diligence includes taking reasonable steps to:

- maintain up-to-date knowledge of work health and safety matters as they apply to a business's specific operation,
- understand the nature of the business and its hazards and risks,
- ensure the business has, and uses, appropriate resources and processes to eliminate or minimise risks to health and safety associated with the operations of the business or undertaking,
- ensure the business or undertaking has appropriate processes to receive information about incidents, hazards and risks, and can respond to that information in a timely manner,
- ensure the business has processes and implements those process to comply with any WHS obligation, and
- verify that these steps have been carried out.

Also the guidance material published in the United Kingdom provides some 'starting questions' to assist in addressing due diligence obligations, for example a questions such as 'Are there ways that our business is affecting, or could affect people negatively? For instance, could requiring high-volume orders to be delivered in a short timeframe lead to abuse of workers?" provides an opportunity to consider the businesses approach and query the consequences of those decisions without the implication that such an approach automatically lead to modern slavery risks.

HIA suggests that these materials, if considered useful, be incorporated as options for reporting entities when considering what 'due diligence' means for their business.

Of note is that in neither case is 'publically communicating what you are doing' considered part of a due diligence obligation. While this may be an obligation under the Act, it should not be considered part of due diligence processes.

HIA is also concerned that remediation is considered to mean 'you should try and 'make good' the adverse impact by restoring the victim to the situation they would be in if the adverse impact had not occurred'. It is unclear what is meant by this and the extent to which such actions should be expected.

Learn more: Possible actions to assess and address risks

It is unclear whether the possible action to assess and address risk set out on page 41 are separate to due diligence and remediation actions or form a part of it. Clarification in this regard would be of use.

Tackling Modern Slavery through Human Rights Due Diligence, CORE Coalition, Business & Human Rights Resource Centre, Unicef UK, Anti-Slavery International

HIA also has concern with the reference on page 42 to *sham contracting* and *underpayment* as practices that may lead to modern slavery. While both are illegal under Australian law HIA are of the view that it is a 'bridge too far' to suggest that such practices may lead to modern slavery as described under the Act.

Mandatory Criterion Five

The Draft Guidance attempts to explain that criteria five requires a reporting entity to explain 'how you assess' the effectiveness of an entities actions to assess and address the risks of modern slavery in its operations and supply chains and not whether an entity's actions 'are effective' in addressing the risks of modern slavery in its operations and supply chains.

Based on the Draft Guidance, in HIA's view the difference is somewhat semantic, for example, paragraph 129.1 requires that a reporting entity explain what they are doing to check its actions to address modern slavery risks are working and puts forward the question *'How will it know if its actions are making a difference'*. This is, in fact assessing if an entities actions 'are effective' in addressing the risks of modern slavery in its operations and supply chains.

To that end the suggestion that an entity develop and implement meaningful modern slavery training to address modern slavery risks and be effective in actually raising awareness raises questions as to how a reporting entity demonstrates that the training has been effective in raising awareness of the risks of modern slavery in an entities supply chain in order to satisfy this criteria.

Learn more: Do I need modern slavery key performance indicators?

The 'Learn More' box on page 45 introduces new concepts of assessing actions in both qualitative and quantitative ways but then only goes on to explain quantitative ways of assessing actions. If these terms are to be used they should be explained and/or used elsewhere in the document.

Role of the Modern Slavery Business Engagement Unit (Unit)

The final section of the Draft Guidance deals with the role of the Unit. It is unfortunate that the Unit cannot:

- Prepare training materials or information for use by a specific entity.
- Provide detailed advice about modern slavery risks in specific countries or sectors.
- Advise on how to respond to a specific case of modern slavery.

It is likely that these would be the areas that a reporting entity would like to engage with the Unit about. HIA recommends that the Unit reconsider these limitations.

Feedback on content

Attachment 1 to this correspondence outlines HIA's comments in relation to specific parts of the Draft Guidance and includes recommendations for improvement.

Please feel free to contact me should you wish to discuss this further.

Yours sincerely HOUSING INDUSTRY ASSOCIATION LIMITED



Executive Director - Industrial Relations and Legal Services

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Attachment 1

Page	Paragraph	Comment	Recommendation	
7	4.1	This statement may be better in the 'content' or introductory sections.	The statement should be moved or	٢
			deleted.	
8	6.1 - 14.1	This does not assist an entity comply with the Act. It is commentary not guidance.	The paragraphs should be deleted.	
11	16.1 and 18.1	This is important information the reader should be provided with at the outset of the	This information should be moved	to
		Draft Guidance.	immediately after paragraph 5.1.	
11	17.1	This does not assist an entity comply with the Act. It is commentary not guidance.	The paragraph should be deleted.	
11	19.1, 22.1, 23.1, 25.1, 26.1	This does not assist an entity comply with the Act. It is commentary not guidance.	The paragraphs should be deleted	
14	Learn More Box	HIA disagrees that 3000 entities will be covered by the reporting requirements, HIA estimates that this number is in fact much greater than that. It is commentary not guidance.	The dot point should be deleted.	
15	Heading: 'What does the	The preceding paragraphs do not relate to this heading.	The heading should be 'How do I w	
	Modern Slavery Act say		out if I need to report'. This heading	-
	I need to do?'		should then be deleted from above	:
			paragraph 41.1.	
16	39.1, 40.1	This does not assist an entity comply with the Act. It is commentary not guidance.	The paragraphs should be deleted.	
16	41.1	The term 'reporting entity' is used earlier in the document without explanation.	Either define earlier or include a lis	t of
			defined terms.	
16	43.1 and 44.1	This information is being repeated.	Combine with paragraph 37.1	
18/19	50.1 and Figure 3	The information at 50.1 and Figure 3 is the same.	Delete paragraph 50.1.	N
20	59.1	This information is already set out elsewhere and does not relate to the heading 'Why	The paragraph should be deleted.	ffairs ct 1982
		is this requirement in the Modern Slavery Act'.		(ffa
22	67.1	This is somewhat confusing in that it refers to the seven mandatory criteria and then	Clarify.	e A
		sets out the three matters chapter 5 explains.		ome tion ,
27	Table One	The information in the column 'Structure' the final dot point is similar to that in the	Clarify.	t of Home
		column 'Operations' at the fourth row.		it of
		The information in the column 'Supply Chains' at the fourth row is confusing. What is	Clarify.	artmen n of In
		meant by 'disclosures'?		artn 70
46	135.1	This information is repetitive	The paragraph should be deleted.	90
48	143.1	This information is repetitive (see paragraphs 141.1, 142.1)	The paragraph should be deleted.	/ D
				D. H

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17 May 2019

International Justice Mission Australia PO Box 1442 **CHATSWOOD NSW 2057** 1300 045 669 | ijm.org.au

Director, Modern Slavery Business Engagement Unit Department of Home Affairs Canberra ACT 2600

By email: slavery.consultations@homeaffairs.gov.au

Dear s22(1)(a)(ii)

Re: International Justice Mission's submission on the Modern Slavery Act 2018: Draft **Guidance for Reporting Entities**

Thank you for the opportunity to provide a submission on the Modern Slavery Act 2018: Draft Guidance for Reporting Entities (Draft Guidance).

We wish to congratulate you and your team for all your efforts on both the Modern Slavery Act 2018 (the Act) and the Draft Guidance (Guide). International Justice Mission Australia (IJM) is pleased to see the Australian Government (the Government) taking a leading role in the effort to eradicate modern forms of slavery from the supply chains of Australian corporate and governmental entities. We are hopeful that this legislation and the Guide will have a real impact on ending modern slavery.

As the largest anti-slavery organisation in the world, IJM brings a unique voice to the modern slavery discussion in Australia. We have seen the real and potential benefits business can have on modern slavery in the developing world. Globally, IJM partners with corporations to both raise awareness of the problems of modern slavery and to fuel the work we do with local authorities to rescue victims, restore survivors, to strengthen criminal justice systems and to bring an end to impunity for perpetrators of crimes of modern slavery. We believe a stronger justice system in those places will not only help protect the poor from violence, it will also provide a more stable environment in which Australian (and other) businesses can operate.

Please find attached our submission on the Draft Guidance. Feel free to contact us if you have any questions or require further information.

Yours faithfully,

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Director of Corporate and Legal
International Justice Mission Australia

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1 bring an end to impunity for perpetrators of crimes of modern slavery. We believe a stronger

Yours fair	thfu	lly,
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International Justice Mission's submission on The Modern Slavery Act 2018: **Draft Guidance for reporting entities**

Overview

- 1. The Draft Guidance is a clear and practical guide to the Act, designed to assist certain entities fulfil their reporting requirements on modern slavery. We recognise that the reporting requirement may seem daunting to some entities, but we believe the Guide will provide those entities with a practical path to reporting.
- 2. We understand the Guide will be considered a "living document" in that the Government may choose to amend or add further information to the document. We are in support of this concept and process, and consider that it fits well with the planned review process for the Act and associated rules. In the following submission we have taken the opportunity to outline some small suggestions for the Guide.
- 3. We would also like to encourage the Government to take advantage of the opportunity presented by this Act and Guidance to highlight and encourage business to take a best practice approach to the reporting requirement. We believe the positive portrayal of case examples of actual business making a positive impact on modern slavery could help build momentum and interest in the process. This could occur through case studies or spotlight articles in the Guidance or on the Government's Modern Slavery webpage.

The Reporting Requirement as part of Australia's broader response to modern slavery (p11)

4. We suggest the addition of a separate paragraph (after paragraph 19.1) that reminds entities that:

"The reporting requirement is a tool that businesses can use to assess how they can best facilitate business practices which respect human rights and contribute to the reduction in prevalence of modern slavery."

We consider this will further frame the reporting requirement as a helpful and positive lever for businesses as they seek means to improve their potential modern slavery risks particularly in the context of human rights obligations.

5. We appreciate the reporting requirement is just one part of the Government's response to modern slavery domestically and overseas, fitting into a larger framework that includes a functioning domestic criminal justice system and a National Action Plan of Human Trafficking and Slavery. We encourage the Government to continue to pursue measures that develop the criminal justice system response to modern slavery in overseas jurisdictions. functioning domestic criminal justice system and a National Action Plan of Human

¹ Modern Slavery Act 2018, section 24



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How to work out which Act to comply with? (p16)

6. Directions provided on reporting across international jurisdictions seem straightforward, but we are unclear as to how the Act and the Modern Slavery Act (NSW) will interact.² Given the title of the text box, it may be useful to add some further details as to where NSW businesses should look for further information, for example, to the NSW Government or the NSW Interim Anti-Slavery Commissioner.

Real life, best practice examples (pps10 & 25)

- 7. We understand that the hypothetical case studies have been provided to encourage business to think about their reporting requirements, without being too confrontational or prescriptive. However, we have some concerns that examples like Blue Sky Construction and AlphaBeta Resources make the requirement too vague. Working towards the 'race to the top' notion, we suggest that later iterations of the Guide include examples of businesses demonstrating best practices, or businesses demonstrating a thorough approach to initiating organisational change or identifying and addressing areas of risk. We are hopeful that this information may be provided in compliant Modern Slavery Statements.
- 8. The Guide and Modern Slavery webpage represent significant opportunity for the Government to showcase not only the utility of the legislation, but the potential for business best practice in Australia and overseas. The UK report "Modern Slavery Reporting: Case Studies of Leading Practice", published by the Business and Human Rights Centre³ provides and celebrates some examples of how entities have responded to reporting requirements.

Supply chains (p27)

- 9. In addition to the suggested ways to describe supply chains (Table One, page 27), we suggest an additional bullet point to:
 - Provide facts and figures about the entity's supply chains, such as the total quantity of goods sourced from different countries and regions.

We believe this will encourage greater specificity of the details provided, in turn requiring companies to know more about their supply chains and hopefully increases the likelihood they will identify and remedy risks.

Learn More box: Reporting on Modern Slavery Cases (p29)

10. This section deals with a sensitive topic, and we are encouraged by the Government's victim-centric approach. We would suggest that a further bullet point under the "DO" list could note:

² P 16 "Learn More" box.

https://www.business-humanrights.org/sites/default/files/Modern%20Slavery%20Act%20-%20Positive%20Actions%20Actions%20Actions%20Act%20-%20Positive%20Actions%20Act%20-%20Positive%20Actions%20Act%20-%20Positive%20Actions%20Act%20-%20Positive%20Act%20-%20Act%2 %20FINAL2.pdf



• consider partnering with or supporting NGOs / civil society organisations with relevant experience of modern slavery cases

Mandatory Criterion 7: Other relevant information (p48)

11. From our perspective, we are hopeful that this section will be used by business to outline how it has gone beyond the reporting requirements to address modern slavery. The details contained in this section may feed our suggested concept of spotlighting and applauding business efforts to assess and address modern slavery risks.

Appendix 1: What is modern slavery (p59)

12. In regard to the final paragraph of this Appendix, we would suggest that the definition could be strengthened and improved if it included language articulating that cases of human slavery are caused by a perpetrator, and the most effective solution to addressing the root cause is a predictable law enforcement response that ends impunity and creates criminal deterrence. We suggest:

"Modern slavery can happen in any industry and any country. Modern slavery victims are often vulnerable to exploitation **by perpetrators** due to their background, migration status ..."⁴

Table Three: Types of modern slavery (definitions) (p60)

13. We would propose the definition of "debt bondage" (page 61) be slightly altered to read:

"Describes situations where the victim's services **and/or forfeiture of freedoms** are pledged as security for a debt, **often established or maintained through coercion or deceit.** The debt may be manifestly excessive, or the victim's services may not be **limited, defined, or rightly** applied to liquidate the debt."⁵

This definition is based on IJM's work on bonded labour slavery in India, aligned with India's *The Bonded Labour System (Abolition) Act* 1976.

14. We would also propose an amendment to the definition of "trafficking in persons" as follows:

Describes the recruitment, **transport**, harbouring **or receipt of a person by improper means** for the purpose of exploitation or forced labour."

This suggestion is based on the definition provided in the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

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⁴ IJM suggested additional words in bold.

⁵ As above for footnote 4.

⁶ As above for footnote 4.



This definition guides our work across countries such as Thailand, Cambodia, India, The Philippines and the Dominican Republic.

Conclusion

15. We are encouraged by the Government's efforts to develop the law and guidance materials on modern slavery. We believe that the Act and the Guide will provide a tangible way for Government and business to make a positive impact in the fight against modern slavery.

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Recommendation on Draft Guidance for Reporting Entities from ISO 20400 Australian Mirror Committee (MB-024)

18 May 2019

To Federal Government

Contact: S47F Chair of MB-024 — S47F ——S47F

Introduction

The Sustainable Procurement ISO 20400 Australian Mirror Committee applauds the publication of the *Modern Slavery Act 2018: Draft guidance for reporting entities,* in particular appendix 2 on 'How to work with suppliers'. It is an effective guidance document for organisations.

However, when comparing the Draft Guidance to Reporting Entities with a robust supply chain management framework we have identified major gaps, as described in AS:ISO 20400. These gaps could lead organisations to fail integrating modern slavery risk identification and treatment into their business-as-usual practices.

AS:ISO 20400 is the first international standard that explains how to manage environmental, economic and social issues (including human rights) in an organisation's supply chains, through its procurement activities. It was identically adopted in 2018 and is an Australian Standard.

AS:ISO 20400 was developed between 2013 and 2017 by 52 countries (65% of the world population, 85% of the world GDP) in collaboration with 11 major international organisations such as the UN, OECD, Global Compact Network and European Commission. It is a comprehensive, practical and consensus-based document that can be considered as global best practice in the field of supply chain management. Human Rights was a topic of primary importance during the development of ISO 20400 and it is well embedded in the standard. For more information about AS: ISO 20400, please consultable www.iso20400.org.

The Australian Mirror Committee has made the recommendations below from the procurement professionals' perspective, as subject matter experts in sustainable procurement practices representing a range of industries and sectors.

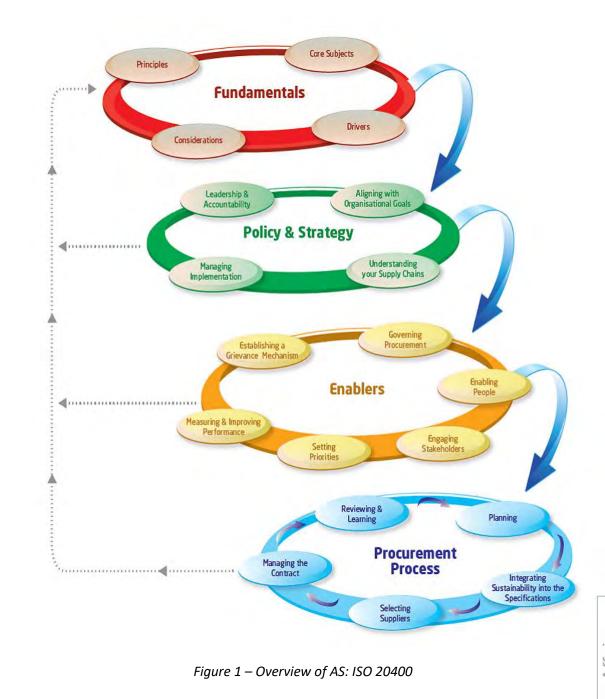


Figure 1 – Overview of AS: ISO 20400

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Recommendations

Across the document

1. Referencing AS:ISO 20400

Organisations typically spend 50-80% of their budget/revenues with their extended supply chains. Procurement is defined by the International Organization for Standardization as the 'activity of acquiring goods or services from suppliers'. As shown in Figure 2 below (source: ISCA), procurement is an activity that occurs between the buying organisation and its supply chains and ensures that specified requirements are met through the selection of the fit-for-purpose goods/services and suppliers, and usually made explicit in an agreement or contract. Procurement thus plays a major role in ensuring that supply chains deliver what the buying organisation needs, including modern slavery requirements.

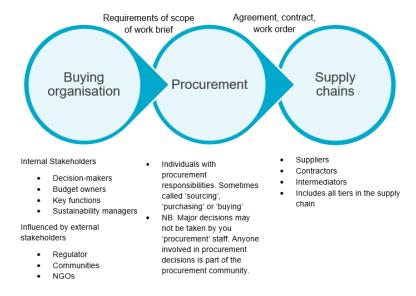


Figure 2 Overview of the role of Procurement

The gap: AS: ISO 20400 was developed to provide individuals and teams involved in procurement and the management of supply chains with a clear, practical framework that they can follow when addressing sustainability issues, including human rights. At this stage, the draft guidance does not provide a clear structure for Procurement. Even though many good practices are described in the current document, they are fragmented and not logically interconnected.

Our recommendation:

• Clearly reference AS: ISO 20400 in different sections of the Guidance, especially in:

• 'What does the Modern Slavery Act say I need to do?' section and the help box 'LEARN MORE: WHERE DO I START?'

• Appendix 5. Helpful resources - INFORMATION ABOUT HOW TO PREVENT AND RESPOND TO MODERN SLAVERY

• Please see in Appendix 1 all our detailed suggestions.

• Close major gaps with AS: ISO 20400, as described in the sections below.

- - Please see in Appendix 2 a detailed gap analysis.

Policy / Strategy

2. Outcome KPI's

<u>The gap:</u> In Chapter 5 the draft guidance recommends entities to use KPI's to assess the effectiveness of their actions in both qualitative and quantitative ways. Within the examples given there is more of an emphasis on input KPI's such as training and awareness rather than outcome KPI's. Outcome KPI's are critical to monitor the effectiveness of an entity's actions, there should be a balance of input and outcome KPI's in the recommendation.

<u>Our recommendation</u>: Update 'DO I NEED MODERN SLAVERY KEY PERFORMANCE INDICATORS (KPIs)' section (C5, p45) with the following text (changes in **bold**):

For example, you could develop **process** KPIs covering the implementation of modern slavery policies or processes, as well as your responses to possible cases. This could include specific KPIs on:

- the number of modern slavery training and awareness-raising programs delivered
- the proportion or number of complaints resolved by a grievance mechanism
- the number of contracts that include modern slavery clauses
- the number of actions taken to work with suppliers to improve their capacity to respond to modern slavery risks.

You could also develop outcome KPIs measuring your performance in reducing the prevalence of modern slavery in your operations and supply chains. This could include specific KPIs on:

- the number of cases unveiled;
- the number of victims that have been freed from modern slavery situations thanks to your organisation's response.

Organisation

3. Governance

<u>The gap</u>: In Chapter 5 the draft guidance recommends bringing together key areas of the entity to help assess and respond to key risks. Whilst this is great advice, it should be taken further to ensure that monitoring of Modern Slavery risk is included within the entity's key governance functions' terms of reference such as risk committee or internal auditing.

Our recommendation: Add a bullet point within 'CHANGES TO POLICIES AND PROCESSES' section (C5 p41&42):

 Update internal governance functions' terms of reference to embed modern slavery into their scope of responsibilities. This should include reviewing and escalating non compliance with the organisation's policies and procedures.

4. Enabling people

<u>The gap:</u> The draft guidance does not include incentives to encourage individuals to work on the management of modern slavery risks. Ensuring that modern slavery is incorporated into performance management will help individuals avoid having to manage contradictory objectives e.g. cost savings versus modern slavery.

nder the *Freedom of Information Act 1982*

<u>Our recommendation</u>: Add a bullet point within 'CHANGES TO POLICIES AND PROCESSES' section (C5, p41&42)

 For individuals who are responsible for the management of modern slavery risks, responsibility should be included in collective and/or individual performance agreements and objectives, staff development reviews and evaluations, incentive plans or other reward and recognition arrangements.

5. Consider business context when setting priorities

<u>The gap</u>: In Chapter 5 the draft guidance provides 'HOW TO' sections on scoping and prioritising modern slavery risk. Whilst the draft MSA Guidance defines risk as risk to individuals, in line with the UN Guiding Principles, the ISO 20400 approach is to <u>also</u> assess business considerations when setting priorities.

ISO 20400 was developed between 2013 and 2018 in consultation with several multinational organisations including OHCHR, UNOPS, the UN Global Compact or the OECD. Through these consultations, we reached consensus about a priority setting system that both consider 'due diligence' and 'business considerations'. Please refer to *ISO 20400 4.5.3 Setting priorities for sustainability issues* section.

If the MSA Guidance document excludes business considerations from the equation, we think that the guidance will lead organisations to:

- Focus their limited resources and time on areas where they can only have limited impact; or
- Not follow the guidance because it is not effective, practical and realistic.

For instance, an Energy distribution company should spend more of its limited resources and time on strategic and direct products such as cables and transformers compared to laptops or office supplies. In this example, it is both a question of criticality to the business and capacity to influence.

What would it mean in terms of practical implementation? For laptops and office supplies, the company may focus on exercising basic due diligence (e.g. through its supplier Code of Conduct and T&Cs) and buying third-party certified products that address human rights standards. For cables and transformers, the company may engage with key suppliers to evaluate their factories, conduct social audits, provide technical support and/or initiate a supplier relationship management program.

Our recommendation: Update 'WHERE DO I START' section (C5, p35) by the following (see **bold** text):

Many entities have complex operations and supply chains involving thousands of other entities. This means it may be impossible for you to immediately assess and take action to respond to the modern slavery risks associated with every part of your entity's operations and supply chains.

In this situation, the UN Guiding Principles (Principle 17) suggest that you focus on assessing general areas of your operations and supply chains where modern slavery risks are likely to be most significant. For example, you could decide to focus on areas of your operations and supply chains that involve high risk goods or services, certain geographic locations and high risk sectors.

You may also need to prioritise which risks you respond to first. The UN Guiding Principles (Principle 24) explain that you should focus on the most 'severe' risks (those that would cause the greatest harm to people). This means those risks that have the greatest scope (gravest impact) or scale (number of people affected) or where delayed response would make them irremediable (for example, because

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delay would cause loss of life or loss of education). These factors are more important than the probability of the risk occurring.

Whilst due diligence is a primary factor to set priorities, other considerations such as the capacity to influence supply chains and generate significant positive impacts can influence these priorities. For instance, an Energy distribution company should spend more of its limited resources and time on strategic and direct products such as cables and transformers compared to laptops or office supplies. In this example, it is both a question of criticality to the business and capacity to influence.

What would it mean in terms of practical implementation? For laptops and office supplies, the company may focus on exercising basic due diligence e.g. through its supplier Code of Conduct and T&Cs and buying third-party certified products that address human rights standards. For cables and transformers, the company may engage with key suppliers to evaluate their factories, conduct social audits, provide technical support and/or initiate a supplier relationship management program.

Prioritising which risks you respond to first does not mean you can disregard the risks that you deprioritise. Once you have addressed your most severe risks, you should ensure you move on to address these other risks.

Process

6. Strategic application

<u>The gap</u>: In Chapter 5 and Appendix 2 the draft guidance makes many great points around due diligence, the need to review and improve policies and procedures and supplier engagement, however it does not give explicit guidance on how to strategically address modern slavery risks in the procurement process. For example, the integration of modern slavery risks into the planning and sourcing processes are not detailed sufficiently. Addressing modern slavery practices is the end goal, however it will unlikely be successful in the long-term if the organisation's procurement practices are poor or contradict the aims of their modern slavery strategy.

<u>Our recommendation</u>: Add paragraphs in the 'Supplier Engagement' section of 'POSSIBLE ACTIONS TO ASSESS AND ADDRESS RISKS' section (C5, p42) – This paragraph should come first:

- Update all project, procurement, commercial and contract management procedures and templates to systematise the management of modern slavery risks across the organisation's supply base.
- Develop a supplier engagement strategy that will prioritise the level of time and resources spent with suppliers on modern slavery based on risks. For instance, low risk suppliers may just need to sign a supplier code of conduct and generic contractual terms and conditions. High risks suppliers may need to be engaged individually through evaluation, audits, supplier meetings and potentially technical support.

ZOIC Environmental Pty Ltd ABN 23 154 745 525 Suite 1, Level 9 189 Kent Street Sydney 2000 Phone: +61 2 9251 8070

www.zoic.com.au

18 May 2019

Modern Slavery Business Engagement Unit- Department of Home Affairs 3 Londsdale St Braddon ACT 2612

Via email: slavery.consultations@homeaffairs.gov.au

To whom it may concern,

Re: Comment on the Modern Slavery Act 2018: Draft Guidance for Reporting Entities

Zoic is a consultancy that provides formal advice on ethical supply chain assessment, non-financial reporting, and modern slavery due diligence to a number of businesses' supply chain. We welcome the opportunity to make this submission to the Unit regarding the Draft Guidance for Reporting Entities on the Modern Slavery Act 2018. We would also welcome the opportunity to speak directly on these points at the appropriate time. Should you have any questions or comments about this submission, please contact the undersigned.

While the underlying intent of the Guidance is clear to professionals in this field, there is a risk that those new to the field may perceive the Guidance as mitigating boardroom risk, rather than as a tool that can break structural causes of modern slavery where it matters (e.g. at the "coal-face" of production).

Yours sincerely,

s47F

Principal Sustainability Consultant

s47F

Managing Director

Zoic Environmental Pty Ltd

https://zoic.com.au/



Background

Modern slavery is an umbrella term used to refer to a range of exploitative practices including slavery and slavery-like practices/conditions and human trafficking. It is estimated that up to 40 million people are victims of modern slavery in 2019. While it is inherently difficult to obtain consistent data regarding modern slavery, it is estimated that 0.6 persons per 1,000 of Australia's population was subject to modern slavery 1¹.

The Commonwealth Modern Slavery Act 2018 established Australia's national Modern Slavery reporting requirements. It requires businesses and other organisations with a consolidated revenue of >A\$100 million, to report annually on the risks of modern slavery in their operations and supply chains, and the actions they have taken to assess and address those risks, as well as the effectiveness of their response.

In April 2019, the Modern Slavery Business Engagement Unit- Department of Home Affairs, released Modern Slavery Act 2018: Draft Guidance for Reporting Entities ("the Guidance"). The Guidance is a transformational document in its capacity to compel entities to demonstrate their nonfinancial performance. It details who is required to report, and details seven mandatory criteria required in every statement.

The Department opened the Guidance to comment from the public, business and other interested parties. Given the relevance of the Guidance to our business (Section 5), Zoic has opted to respond to this call for comments.

As part of this submission, we have:

- Highlighted the significance of the Guidance for the reporting requirements;
- Identified Zoic's experience on ethical supply chain assessment and modern slavery requirements in Australia and Asia; and
- Presented Zoic's feedback on the Draft Guidance for Modern Slavery Act

The following section provides several comments and recommendations for the Units consideration.

2 Our submission

Our submission commences by providing a number of general comments about the tone and format of the Guidance. We have then commented on 19 specific points in the Guidance.

General Comments

The Guidance is an excellent tool that explains the general steps and the information that is necessary to report on, but it remains unclear how compliance with the Act will be monitored, nor is it clear how the Modern Slavery Business Engagement Unit will ensure an equal playing field in terms of quality of reporting.

Recommendation: Some overarching commentary would enhance the Guidance;

- The encouragement of Board-level engagement with the issue of Modern Slavery is highly commended. However, there is a risk that those new to this issue may perceive compliance with the Guidance as being limited to the examples provided.
 - Recommendation: The Guidance would benefit from additional details and practical examples of assessing, managing and remediating modern slavery risks in supply chains.
- The Guidance numbering is difficult to follow. The document would benefit from a clearer numbering system.

Recommendation: All Clauses in Section 1 commence with "1" (e.g. Clause 1.1, Clause 1.2, etc), all Clauses in Section 2 commence with "2" (Clause 2.1, Clause 2.2 etc), and so on.

¹ Cat Barker, Foreign Affairs, Defence and Security Section, Bills Digest no. 12, 2018-19, 16 August 2018, pg. 4.



• The Guidance would benefit from clearer reference to Figures throughout the report, rather than referring to "the chart below" or "Key Terms Explained on page 37".

Recommendation: "The flow chart in Figure 3 below sets out..."

One other point Zoic would like to impress upon the reviewing committee relates to requirements for statutory declarations for supply chain that have been mooted by industry colleagues. Through client engagements, we have encountered several instances where companies within a supply chain and employees have been requested to sign a statutory declaration to the effect that modern slavery does not exist in the entity's supply chain.

Recommendation: The Guidance should specifically advise against the use of statutory declarations to validate that modern slavery is not present in a business. This abdicates the responsibility to consider supply chain entities beyond those immediately engaged, and it is difficult for even the most thorough supply chain audit to validate the absence of Modern Slavery. Requesting such declarations is potentially counter-productive, in that it may drive slavery like practices further under ground.

2.2 Specific Points

We have provided recommendations on word and content changes, and also recommended strengthening the Guidance as follows:

1. **Section 1, Clause 14.1 (pg. 9):** The inclusion of SDG Target 8.7 provides positive connection with the intent of the Act.

Recommendation: A call-out box that specifically details Target 8.7 would strengthen this connection.

2. **Figure 1 (pg. 9):** This Figure is important, but difficult to read.

Recommendation: The Guidance could benefit from allowing an entire page (landscape) to be dedicated to Figure 1.

3. Clause 34.1 (pg. 12): Many readers will be surprised at the extent of Modern Slavery within Australian Businesses.

<u>Recommendation:</u> This point would be strengthened by an acknowledgement that slavery should not be considered in isolation, and that certain observed activities could be taken as indicators of Modern Slavery being present (e.g. pregnant workers working with hazardous materials, poor accommodation/ablution facilities).

4. The points on pg. 12 could better highlight the importance of codes of conduct.

<u>Recommendation</u>: Suggest addition of the following Clause: "To develop a comprehensive report, all aspects from conventional Codes of Conduct should be considered, including working time, freedom of association, environmental risks, etc."

<u>Recommendation:</u> The points on page 12 could also be strengthened by stating that entities must implement a system of monitoring and evaluation of their compliance measures.

<u>Recommendation:</u> The points on page 12 could be strengthened by adding an example highlighting the importance of codes of conduct and governance in managing transparency within a business.

5. Section 2 could benefit from specific information regarding penalties for non-compliance.

<u>Recommendation</u>: More should be provided to detail the extent of repercussions for non-compliance for organisations.

6. Section 2, Clause 43.1 (pg. 16): The Clause could be clarified.

Recommendation: Suggest rewording: "To determine whether your entity must report..."



7. **Section 3 (pg. 18)** of the Guidance explains the process for voluntary statements. While the flowchart (pg. 19) is clear, the extent of the "name and shame" consequences are unclear for voluntary reporters. For example it is unclear what consequences will apply to entities that voluntarily report one year, but do not the next

<u>Recommendation:</u> More details on "name and shame" consequences for voluntary reporters is requested.

<u>Recommendation</u>: More details would be helpful to understand repercussions for non-compliance for organisation that report voluntarily, or for non-submission by an organisation that had previously reported voluntarily.

8. Section 5, Box on page 23, pt. 3: The Clause could be clarified.

<u>Recommendation</u>: Suggest rewording: "Engage responsible member(s) of the report entity (i.e. senior management, executives and board members) as early as possible..."

Section 5, Clause 79.1 presents an option to include the logo of the reporting entity. However, this
should be strengthened to a mandatory requirement, to make the incentive of avoiding reputational
damage more apparent.

<u>Recommendation:</u> Addition of the word 'must' as follows "You *must* ensure your statement identifies the reporting entity, and is presented on the entity letterhead, including the logo of the reporting entity and the logos of any relevant brands or divisions within the reporting entity in a visible location in the statement."

10. **Section 5, Clause 98.1:** The Clause introduces a degree of subjectivity that is open to interpretation;

Recommendation: Additional details should be provided (either as part of the Clause or as a callout box) that explains "Sufficient detail.". Reference to ISO 31,000 may be helpful to define what is "sufficient detail."

- 11. Section 5, page 33, Step two, "Geographic risks": There appears to be a typographical error ("including due to") (also apparent on page 63 and page 64).
- 12. Section 5, page 33. The notes at the bottom of the page introduce a degree of subjectivity that is open to interpretation.

<u>Recommendation:</u> The notes could be expanded to define "low risk", and to define "continually review".

13. **First point: Due Diligence (pg.37):** In addressing Due Diligence requirements, most firms are likely to review direct-contracted suppliers ("First Tier"), before moving on to suppliers of suppliers ("Second Tier") and so on. The Guidance does not describe how entities should justify their investigation/non-investigation of a given tier of suppliers (and associated penalties apparent).

<u>Recommendation:</u> Guidance and Decision Criteria could be provided to enable an entity to determine the lowest tier to be investigated during their year of reporting. The Guidance should detail expectations that future years will require subsequent tiers to be considered

<u>Recommendation:</u> Require Guidance and Decision Criteria to determine the lowest tier to be investigated. The Guidance should detail expectations that future years will require subsequent tiers to be considered.

<u>Recommendation:</u> Reporting entities should be required to justify why their Statement is limited to a given Tier.

<u>Recommendation:</u> The title of the box on pg. 37 should be "Key Terms Explained: What Does Due Diligence and Remediation Processes' Mean", given Due Diligence will be completed prior to Remediation.

14. **Second point: Remediation (pg. 37):** For the sentence commencing "Entities that do not cause or contribute to harm but are directly linked...", we suggest clarifying the wording to ensure the





remediation process is being assigned to the responsible entity, and that this entity is being held accountable by the buyer as a part of the Supplier Management Process

<u>Recommendation:</u> "However, they *may* play a role..." could be amended to "However, they *should* ensure that the entity who directly causes or contributes to harm is held accountable for the implementation of the remediation plan..."

15. Call out box on Section 5 (pg. 38), the fourth dot point (commencing "Using existing traceability processes") assumes existing traceability processes exist, and does not encourage continual improvements.

Recommendation: The fourth bullet point should be amended: "using existing and future traceability processes to improve information about the source of products"

<u>Recommendation:</u> Entities should be required to comment on the quality of information made available by suppliers.

16. **Section 5**, *Mandatory Criterion Five* (pg. 43): Information described in this section is commonly referred to as a "monitoring system".

<u>Recommendation:</u> To improve the contextual setting of this element, it would better to refer to this element as a monitoring system.

17. **Clause 126.1 (pg. 43):** Training is a reasonable example of how modern slavery risks may be *addressed*, although there is a risk that the example may convey that the complex problem of slavery may be solved through a simple internal training program. Similarly, training is not a suitable means of *assessing* modern slavery.

<u>Recommendation:</u> Another example should be added to illustrate a method of *assessing* "the effectiveness of the actions taken by the reporting entity". The information in Clause 130.1 could be incorporated here.

<u>Recommendation:</u> The terms "fit for purpose" and "effective" in relation to "training" need further clarification. Alternatively, the point could be reworded: "engaging with a supplier to build their capacity to plan and manage their production processes and integrated with training of the staff to understand their rights and obligations, and where grievance mechanisms can be accessed."

18. **Clause 128.1.** The Clause should make clear that the requirements for managing the risks of Modern Slavery is ongoing.

Recommendation: Add "including over the long-term" to the end of this clause.

19. Clause 129.1 The Clause contains two separate points.

Recommendation: The clause should be made as two separate points, with the second expanded to include a recommendation for a scoring system/framework to be provided by the entity, to establish a baseline and enable comparisons between years as follows.

Clause 1 "You also need to explain what the reporting entity is doing to check whether its actions to address modern slavery risks are working."

[New clause] Clause: "Entities should be able to explain how they determine whether their actions are making a difference, in the form of either a scoring system, a framework or similar, to enable comparisons year-to-year."

20. "Learn More:..." – box (pg. 45): The provision of examples for KPIs may lead entities to rely on, and limit reporting to, the simplistic examples provided - training events and modern slavery clauses should be considered standard operating procedures for all reporting entities, rather than KPIs.

<u>Recommendation:</u> We suggest the inclusion of other KPIs, including percentage of workers reached/trained, number of on-site visits made, and other human development indicators of workers in supply chains.



<u>Recommendation:</u> The Guidance should describe a number of (anonymous) grievance mechanisms typically used, and their outcomes.

3 Way forward

In our submission Zoic has provided a number of recommendations that we believe strengthens the Guidance. We have made particular effort to ensure our recommendations are practical, based on our extensive in-country and on-the-ground experience. We consider the Guidance an important component of the introduction of the Modern Slavery Act, but are conscious of the need to consider measures that are practicable in removing structural causes of modern slavery. While C-suite measures are, of course, a necessary part of eradicating modern slavery, it is important that equal, if not greater consideration, is given to assessing and removing any instances of validated modern slavery from supply chains.

4 Zoic Environmental

Zoic is a sustainability and environmental consultancy based in Sydney providing advisory services to clients in Australasia. We provide tailored quality services suited to the objectives of our clients, on budget on target.

Our consultants have been involved in the provision of sustainability advice to clients around Asia Pacific with proven capability in providing sustainable management advisory services. We are experienced in assisting large and complex organisations in implementing environmental, social and governance strategies, and have deep subject-matter expertise across all major areas of sustainability, including climate change, waste management and energy use, and have experience of practically applying our knowledge in a business context to identify risks and opportunities.

The adoption and integration of sustainable development goals within organisations implementation sustainability management frameworks, thus forms part of our advisory services.

Our consultants have worked with a variety of large multinational organisations, across a number of sectors, including government (local, state and federal), financial services, fast moving consumer goods, textiles, construction, automotive and education sectors. We are members of the Business Council for Sustainable Development Australia (BCSD).

Should you have any questions or comments regarding any of the above, please contact s47F								
, or ^{s47F} on	or via email:							
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Submission on the Modern Slavery Act 2018 Draft Guidance for Reporting Entities

Australian Lawyers for Human Rights (**ALHR**) is grateful for the opportunity to provide this submission in relation to the *Modern Slavery Act 2018 Draft Guidance for Reporting Entities* (**Draft Guidance**).

ALHR welcomes the Draft Guidance as an essential document in supporting reporting entities to comply with the *Modern Slavery Act 2018* (Cth) (**Act**), and as a means to ensuring the overall effectiveness of the Act.

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1. Recommendations

- 1.1 ALHR makes the following recommendations:
- 1.1.1 ALHR recommends that the final Guidance refers specifically to the modern slavery offences pursuant to s 4 of the Act, in particular the offences under the *Criminal Code Act 1975* (Cth) (Criminal Code), and the word "serious" be removed in defining modern slavery. Further explanation of the terms "coercion", "threat", "deception" and "exploitation" as defined in the Criminal Code, and how the specific offences under the Criminal Code relate to these terms, is required to assist reporting entities in their understanding of what risks to report in their modern slavery statements.
- 1.1.2 ALHR recommends that reporting entities are encouraged to adopt a broad approach to reporting human rights risks, and further guidance is required regarding the term "human rights". The final Guidance should provide reporting entities with the relevant international human rights laws and standards; examples of conduct which constitutes breaches of relevant human rights; and the role the UN Guiding Principles on Business and Human Rights (UNGPs) has in assisting reporting entities to prevent, address and remedy human rights violations in the business sector.
- 1.1.3 ALHR recommends that the final Guidance should contain a separate chapter on the consequences of not complying with the reporting requirement, especially given that the Act does not provide for a penalty for failure to comply.
- 1.1.4 ALHR recommends that the Australian Government takes active steps in supporting civil society and other relevant stakeholders in promoting compliance with the Act.
- 1.1.5 ALHR recommends further guidance is provided regarding the terms "cause", "contribute to", or "be directly linked". Additionally, specific reference should be made to the UNGPs where these terms are set out to enable the reader to easily access the information.
- 1.1.6 ALHR recommends further guidance as to the terms "owns" or "controls".
- 1.1.7 ALHR recommends further guidance on the extra-territorial application of the O

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- 1.1.8 ALHR recommends that examples of modern slavery statements which refer to anti-modern slavery clauses, and/or contractual agreements which include such clauses, be included in the final Guidance, either as links in the document or as additional resources.
- 1.1.9 ALHR recommends that a public list of reporting entities required to report is made available to ensure compliance with the reporting requirements under the Act.

2. **Chapters 1 and 2 of the Draft Guidance**

- 2.1 ALHR's primary concern with Chapter 1 of the Draft Guidance is that it does not expressly mention the conduct which constitutes modern slavery pursuant to s 4 of the Act, in particular the offences under Divisions 270 and 271 of the Criminal Code.
- 2.2 ALHR supports the practical and comprehensive examples of "types of modern slavery" outlined in the Draft Guidance, particularly in Appendix 1, Table Three, commencing on page 59 of the Draft Guidance. However, given the significance and importance of the Act in defining modern slavery, ALHR welcomes further explanation in the final Guidance as to the modern slavery offences as defined in s 4 of the Act so that reporting entities can accurately, and more confidently, identify risks of modern slavery within their supply chains pursuant to ss 16(1)(c) - (d) of the Act. For example, organ trafficking is an offence pursuant to ss 271.7A - 271.7E of the Criminal Code, yet there is no mention in the Draft Guidance of this offence, despite it being a modern slavery offence.
- 2.3 ALHR notes that paragraph 3.1 on page 7 of the Draft Guidance states that modern slavery "is only used to describe serious exploitation", and on page 59, it states "The Act defines modern slavery as including eight types of serious exploitation". Notwithstanding that ALHR accepts that the Draft Guidance aims to simplify the legal definitions of Home modern slavery offences for reporting entities, these particular statements may be confusing for reporting entities in understanding modern slavery offences (an understanding which is required in order for reporting entities to identify risks of modern slavery practices in their operations and supply chains). The statements may also be slavery practices in their operations and supply chains). The statements may also be somewhat misleading given that modern slavery is conduct pursuant to s 4 of the Act. Further, ALHR notes that the legal definition of "exploitation" pursuant to s 271.1A in the Depar Criminal Code does not contain the word "serious".
- 2.4 Further, the "Learn More box" on page 8 of the Draft Guidance has the potential to confuse reporting entities in their understanding of the risks of modern slavery offences in their operations and supply chains. Reporting entities may assume, wrongly, that modern slavery is "only used to describe serious exploitation", when in fact some of the

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conditions listed as "Dangerous or Substandard Working Conditions" in the "Learn More box" may amount to conduct constituting a modern slavery offence or human rights violation.

- For the reasons stated in paragraphs 2.2 to 2.4 above, ALHR recommends that the final Guidance refers specifically to the modern slavery offences pursuant to s 4 of the Act, in particular the offences under the Criminal Code Act 1975 (Cth) (Criminal Code), and the word "serious" be removed in defining modern slavery. Further explanation of the terms "coercion", "threat", "deception" and "exploitation" as defined in the Criminal Code, and how the specific offences under the Criminal Code relate to these terms, is required to assist reporting entities in their understanding of what risks to report in their modern slavery **statements**. This can be achieved by using an infographic or table.
- 2.6 ALHR welcomes the individual and entity risk indicators identified in Appendix 1, Table Four, based on industry, product, geographic location and entity type. These examples provide critical signals and guidance to companies to effectively identify risks of modern slavery practices within their operations and supply chains.
- ALHR supports, at page 8 of the Draft Guidance, the emphasis on the negative 2.7 consequences of modern slavery for reporting entities, including grave abuses of human rights, in addition to the reputational and legal risks, and damage to commercial relationships. This aligns with the aims provided for in the Explanatory Memorandum to:

drive a 'race to the top', as reporting entities compete for market funding and investor and consumer support'.1

- ALHR notes, however, that further explanation of "grave abuses of human rights" is 2.8 required in the final Guidance, especially given reporting entities may not be familiar with the conduct which amounts to "grave abuses of human rights", or indeed a breach of human rights generally. The final Guidance, in providing further explanation about human rights, should state the relevant international human rights laws and standards. and relevant links to documents and publications relating to these laws and standards, to assist reporting entities in understanding, and working from, a human rights framework, which, ultimately, underpins the Act.
- framework, which, ultimately, underpins the Act.

 Further, given there is currently no international treaty on business and human rights. 2.9 in particular, on reporting requirements, ALHR respectfully submits that the Draft Guidance does not go far enough in explaining the UNGPs, including the important

¹ Explanatory Memorandum to the *Modern Slavery Bill 2018*, circulated by authority of the Assistant Minister for Home Affairs, the Honourable Alexander Hawke, MP, p2 at [7].

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these principles have for businesses to prevent, address and remedy human rights violations in the business sector.

- 2.10 ALHR recommends that reporting entities are encouraged to adopt a broad approach to reporting human rights risks, and further guidance is required regarding the term "human rights". The final Guidance should provide reporting entities with the relevant international human rights laws and standards; examples of conduct which constitutes breaches of relevant human rights; and the role the UN Guiding Principles on Business and Human Rights (UNGPs) has in assisting reporting entities to prevent, address and remedy human rights violations in the business sector.
- 2.11 The flowchart on page 13 of the Draft Guidance explaining the main steps required for compliance with the reporting requirements is simple and easy to understand. The guidance regarding compliance on page 12 includes not only information on how to comply with the reporting requirements, but also information about the consequences of not complying. ALHR recommends that the final Guidance should contain a separate chapter on the consequences of not complying with the reporting requirements, especially given that the Act does not provide for a penalty for failure to comply. A chapter on the consequences of non-compliance is essential in ensuring the effectiveness of this Act, and can include examples of how reporting entities around the world are reporting and benefitting from reporting on the risks of modern slavery practices in their operations and supply chains, both financially and in terms of business reputation. ALHR submits that including information about the benefits of complying will positively encourage reporting entities to comply.
- 2.12 Chapter 2 in the Draft Guidance provides useful information for reporting entities on how to calculate their consolidated revenue, and how to identify whether a company is an Australian entity for the purposes of the Act.
- The Act defines "accounting standards" as having the same meaning as in the Corporations Act 2011 (Cth) (Corporations Act), however the Act does not state the relevant provision, namely s 9 and s 334 of the Corporations Act. ALHR submits that further guidance should be provided on the meaning of "accounting standards" as provided for in the Corporations Act.

 ALHR notes that the reporting threshold under the Act is \$100 million consolidated revenue, and that the Draft Guidance at page 16 states that the reason for this is so that the Act covers "large entities that have the capacity to meaningfully comply with the reporting requirements and the leverage to influence change in their supply chains". ALHR echoes our previous submission that high standards of reporting must 2.13
- 2.14 chains". ALHR echoes our previous submission that high standards of reporting must be embedded over the first three years of the Act's regime to ensure that the regime

does not become a mere corporate compliance exercise.² ALHR submits again that at the three-year review of the Act, if not before if appropriate, this threshold be lowered in order for the Act to achieve its aims.

- 2.15 Further, although the Draft Guidance provides helpful guidance in determining a reporting entity for the purposes of the Act, ALHR reiterates our previous submission that the Government, at the three-year review of the Act, if not before if appropriate, takes steps to create a public list of reporting entities that are required to report.³ A public list of reporting entities will enable Government agencies, civil society and other relevant stakeholders, to effectively monitor whether reporting entities are complying with the Act. A public list of reporting entities required to report will remove any ambiguity in identifying whether a reporting entity is required to report. Finally, such a list will enable civil society and relevant stakeholders to focus on their role of monitoring statements, and educating and assisting business to improve their supply chains.4
- 2.16 In addition to the creation of a public list of reporting entities, ALHR recommends that the Australian Government takes active steps to support civil society and other relevant stakeholders in promoting compliance with the Act. This can be done through the provision of guidance for civil society and other relevant stakeholders; funding to assist with monitoring compliance; and ensuring that any public list of reporting entities is easily accessible and searchable, including through the use of filters including, but not limited to, industry, turnover, and business name. Some, or all of these steps, could be avoided by the introduction of penalties for non-compliance and a publicly available list of reporting entities.

3. **Chapters 3 and 4 of the Draft Guidance**

- ALHR supports the encouragement and wider participation of reporting entities to voluntarily provide a modern slavery statement. In our view, Chapter 3 provides a clear explanation of the benefits to, and option of, reporting voluntarily.

 The flowchart on page 19 of the Draft Guidance is likely to be a useful reference for reporting entities as it seems easy to follow and understand. It could be enhanced by using different colours for each box.

 In tralian Lawyers for Human Rights, Submission to the Senate Legal and Constitutional Affairs mittee on the Commonwealth, Modern Slavery Bill 2018, 20 July 2018, p7 at [31] [32], [32], [32], [33], [34], [35] at [20] [21], [35] at [27] 3.1
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² Australian Lawyers for Human Rights, Submission to the Senate Legal and Constitutional Affairs Committee on the Commonwealth, Modern Slavery Bill 2018, 20 July 2018, p7 at [31] - [32], https://alhr.org.au/alhr-submission-modern-slavery-bill-2018/

³ Ibid, p5 at [20] - [21]

⁴ Ibid, p5 at [17]

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- 3.3 In our view, Chapter 4 provides a clear explanation of the reporting period and the timeline for submitting a modern slavery statement. The timeline for reporting provides a useful visual aid in understanding when the reporting period commences and ends, and when the first modern slavery statement is due.
- 3.4 ALHR is of the view that the Draft Guidance can more actively encourage reporting entities to submit their modern slavery statements as soon as possible after the end of their annual reporting period. A clear message of this kind may minimise any potential delays in reporting entities publishing their modern slavery statements, particularly if a reporting entity fails to comply with the reporting requirements. Similar wording is included in the UK's *Transparency in Supply Chains: a practical* guide⁵ document, with a strong expectation that reporting entities should publish their statements sooner rather than later at the same time they publish their annual accounts.

4. Chapters 5 and 6 of the Draft Guidance

4.1 Chapter 5 provides guidance on how to prepare a modern slavery statement with reference to the seven mandatory criteria pursuant to s 16(1) of the Act.

Mandatory Criteria One and Two

- 4.2 Mandatory criteria one and two requires reporting entities to identify the reporting entity and describe the entity's structure, operations and supply chains.
- 4.3 Given the importance of mandatory criteria one and two, further guidance is required regarding the information provided by the reporting entity. For example, under "Structure", a reporting entity should be encouraged to report on its workforce, including the gender and age of its employees (without breaching the privacy of its employees). Under "Supply Chains" a reporting entity should be encouraged to provide more detailed information about their supply chains including its workforce, geographical location, and sources of its products and services.
- 4.4 ALHR submits that mandatory criteria one and two requires detailed information from reporting entities as a means of assessing risks of modern slavery practices, offences pursuant to s 4 of the Act and human rights violations, in its operations and supply chains.

⁵ UK Home Office. 2015. *Transparency in supply chains: a practical guide*, https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/648906/Transparency_in_Supply_Chains_A_Practical_Guide_2017.pdf, p14.

Mandatory Criteria Three

- 4.5 Mandatory criteria three requires a reporting entity to describe the risks of modern slavery practices in the operations and supply chains of the reporting entity and any entities the reporting entity owns or controls.
- 4.6 The Draft Guidance at page 30 defines "risks of modern slavery practices" as "the potential for your entity to cause, contribute to, or be directly linked to modern slavery through its operations and supply chains". The terms "cause", "contribute to", or "be directly linked" are not explained in the Draft Guidance, but rather a general reference is made to the UNGPs. ALHR recommends further guidance is provided regarding the terms "cause", "contribute to", or "be directly linked". Additionally, specific reference should be made to the UNGPs where these terms are set out to enable the reader to easily access the information.
- 4.7 Further, the final Guidance should provide further explanation as to what is meant by the terms "owns" or "controls". This will assist reporting entities to better understand the extent of their reporting requirements with regard to their operations and supply chains.

 ALHR recommends further guidance as to the terms "owns" or "controls".
- 4.8 ALHR notes that s 10 of the Act provides that the "Act extends to acts, omissions, matters and things outside Australia". ALHR recommends further guidance on the extra-territorial application of the Act.

Mandatory Criteria Four and Five

- 4.9 Mandatory criteria four and five requires reporting entities to describe the actions taken to address risks of modern slavery practices and assessing the effectiveness of these actions.
- 4.10 The Draft Guidance at page 44 provides that entities can conduct 'internal audits and monitoring' as part of assessing. Appendix 2 at page 65 provides an example of 'mutual recognition of audits' by the entity and its suppliers, to reduce the compliance burden.
- 4.11 ALHR is of the view that further guidance is required regarding the use of auditing systems in identifying and assessing actions taken to minimise or prevent risks.

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- 4.12 Audits need to meet minimum standards, including being sufficient, qualified, systematic, independent and/or unannounced.⁶ For audits to be effective in identifying and assessing the effectiveness of actions taken, it requires for certain standardisation as to how such audits are conducted. For example, consideration needs to be given to whether the audits are planned and/or unannounced, or a combination of both; by whom, that is, whether by a competent and independent expert or an internal staff member; and how frequently done within the reporting period, for example in certain situations the reporting entity may require more than one audit and/or a follow-up audit.
- 4.13 Such audits, when feasible, should also ensure that they include the voices of workers and those who have been subjected to modern slavery. In practice, it may mean that third party professional audits are more suitable in some contexts, as these are generally considered to provide a more reliable and comprehensive view. Generally, selfassessment, even though potentially lowering the costs for reporting entities, may not be suitable in identifying and assessing risks, and in ensuring the effectiveness of actions to prevent those risks in operations and supply chains, in a systematic manner.
- 4.14 ALHR also submits that further guidance is required regarding modern slavery training for staff and suppliers, and awareness-raising programs. The final Guidance should emphasise the need for implementing such training for all relevant staff and suppliers, and that all staff and suppliers need to be aware of the responsibilities of the reporting entity. Based on the UK experience, in relation to monitoring practices within the higher education sector, it was identified that, in the first and second year of reporting, training was targeted primarily at the 'procurement staff', which is often not sufficient.8
- 4.15 Artificial Intelligence and future technologies can increase some of the difficulties for reporting entities in monitoring and ensuring due diligence, including issues around the source of the raw data and how it is obtained. Given this, ALHR is of the view that reporting entities should be encouraged to train those dealing directly with the data, including data engineers and data scientists.
- 4.16 ALHR is of the view that further guidance should be provided to reporting entities about incorporating, where appropriate, anti-modern slavery clauses into standard terms and conditions of contractual agreements. Introducing anti-modern slavery contractual clauses by the reporting entities can provide them with contractual rights over their sequired under the California Transparency in Supply Chains Act of 2010.

⁷ See, for example, Kamala D. Harris, *The California Transparency in Supply Chains Act, A Resource* Guide (California Department of Justice, 2015), p15.

Similar to the one introduced by the University Bolton (UK), Anti-Modern Slavery and Human Trafficking Statement (Financial Year ending 31 July 2018), https://www.bolton.ac.uk/wpcontent/uploads/2018/11/Anti-Modern-Slavery-and-Human-Trafficking-Statement- -20-Nov-2018.pd

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⁶ As is required under the *California Transparency in Supply Chains Act of 2010.*

Based on 156 Slavery and Human Trafficking statements from 115 Higher Education Institutions (from the enactment of the Modern Slavery Act (UK) 2015 to 31 May 2018). Olga Martin-Ortega and Patrycla Krupinska, UK Modern Slavery Act Transparency in Supply Chains: The Second Year of Reporting by Universities, Research Series Report no. 3 (BHRE, 2018), p6.

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suppliers to demand disclosure of information, collaboration, and/or any other form of process, to support reporting entities in their efforts to meet their responsibilities under the Act, and to send a clear message to their suppliers about refraining from engaging in modern slavery practices.

4.17 ALHR recommends that examples of modern slavery statements which refer to anti-modern slavery clauses, and/or contractual agreements which include such clauses, be included in the final Guidance, either as links in the document or as additional resources.

5. **Chapters 7 and 8 of the Draft Guidance**

- 5.1 Chapter 7 of the Draft Guidance explains how reporting entities can provide joint modern slavery statements, and Chapter 8 explains the role of the Modern Slavery Business Engagement Unit (MSBEU).
- Given the risk that joint modern slavery statements may be used to avoid reporting 5.2 obligations, further guidance should be provided as to when a reporting entity would elect to provide a joint statement rather than a single statement.
- 5.3 ALHR notes a submission made by Adidas regarding the Modern Slavery Bill in 2017:

whilst Adidas Group is a strong advocate for disclosure, from a business perspective we are concerned that parallel legislative requirements in different parts of the world (including Australia) could create duplication in effort or multiple, varied approaches. This should be avoided. 10

- Reporting entities may benefit from further guidance on how joint modern slavery statements operate when a reporting entity is required to report in multiple jurisdictions This will ensure that reporting entities who are required to report in multiple jurisdictions fully understand their reporting requirements under the Act, in light of the option to elect to provide a joint statement.
- ALHR observes that two of the functions of the MSBEU is to promote best practice and 5.5 monitor overall compliance, including by reporting annually to Parliament about implementation of the Act, and administering the online central register for statements.

¹⁰ Adidas Group Submission, 6 March 2017, Inquiry into establishing a Modern Slavery Act in Australia, Joint Standing Committee on Foreign Affairs, Defence and Trade, p7, https://www.aph.gov.au/Parliamentary Business/Committees/Joint/Foreign Affairs Defence and e/ModernSlavery/Submissions.

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5.5 ALHR has previously made submissions about the importance of a public list of reporting entities as an effective means of monitoring compliance with the reporting requirements. ALHR recommends that a public list of reporting entities required to report is made available to ensure compliance with the reporting requirements under the Act.

If you would like to discuss any aspect of this submission, please email me at: president@alhr.org.au

Yours faithfully



President

Australian Lawyers for Human Rights

ALHR

ALHR was established in 1993 and is a national association of Australian solicitors, barristers, academics, judicial officers and law students who practise and promote international human rights law in Australia. ALHR has active and engaged National, State and Territory committees and specialist thematic committees. Through advocacy, media engagement, education, networking, research and training, ALHR promotes, practices and protects universally accepted standards of human rights throughout Australia and overseas.

Any information provided in this submission is not intended to constitute legal advice, to be a comprehensive review of all developments in the law and practice, or to cover all aspects of the matters referred to. Readers should take their own legal advice before applying any information provided in this document to specific issues or situations.

Contributors



¹¹ Australian Lawyers for Human Rights, Submission to the Senate Legal and Constitutional Affairs Committee on the Commonwealth, Modern Slavery Bill 2018, 20 July 2018, p5 at [18], https://alhr.org.au/alhr-submission-modern-slavery-bill-2018/.

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19 May 2019

Department of Home Affairs Canberra

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By email: slavery.consultations@homeaffairs.gov.au

Dear Sir / Madam

Modern Slavery 2018 - Draft Guidance for Reporting Entities - Submission

Thank you for publishing and seeking submissions in respect of the 'Modern Slavery Act 2018 - Draft Guidance for Reporting Entities' (Draft Guidance).

It is our pleasure to provide this submission in respect of the Draft Guidance. As you will see, we have provided observations in respect of the Draft Guidance (which we understand to be the main purpose of the call for submissions), and have also taken the opportunity to briefly comment on the Modern Slavery Act, Cth (2018) (the MSA) more broadly.

1. **Submissions on Draft Guidance**

1.1 **General Overview**

- We consider that the Draft Guidance is a very comprehensive document which provides (a) much needed clarification, assistance and guidance in respect of the MSA.
- Whilst the Draft Guidance is comprehensive, we have had feedback from our Stakeholder (b) client and peer group that it is considered to be too long and should be reviewed to see if it is able to be shortened.

Guidance for Commonwealth Government 1.2

As is acknowledged in the Draft Guidance, it only covers 'Reporting Entities' and does not apply to Commonwealth entities which are also bound to comply with the MSA. Guidance will be required for Commonwealth entities. artmer

1.3 Clarification on entities that are 'Reporting Entities'

- The MSA defines reporting entity as one with over \$100m in revenue, and either Australian (a) or one that carried on business in Australia at any time during a reporting period.
- Whilst paragraphs 41 and 42 of the Draft Guidance provide helpful detail on the entity (b) types that are covered, the application to Australian State and Local Government entities with large revenues should be clarified.

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1.4 Opting In / Voluntary Reporting

- (a) The Draft Guidance states clearly, at paragraph 40.1, that the definition of reporting entity and, in particular, the revenue thresholds, ensures that only large business with the capacity to comply and leverage change are covered.
- (b) However, the MSA also provides for a regime of Voluntary Reporting through the 'Opt-In' provisions.
- (c) The Draft Guidance could provide further detail and clarify the following, which is our understanding:
 - (i) Once an entity has opted-in, it is then required to fully comply with the requirements of the MSA from the date it opts in;
 - (ii) It may opt-out, but this must be done by notice to the Department, and must be done prior to the commencement of a reporting period such that the entity will no longer be covered by the MSA at the end of that reporting period. An entity cannot opt-out during a reporting period and, once one has begun, it will be obliged to comply at the end of that reporting period.

1.5 Specific Comments and Observations

- (a) Paragraph 7.1 and 8.1 provide statistics. The use of statistics is useful and informative but should also be contextualised and sourced. The statistics quoted should be source referenced by a footnote or endnote, and there should be a broader statement regarding the difficulty of obtaining accurate statistics in this area due to modern slavery being criminal activity, and an acknowledgement that the statistics vary depending on who is publishing them. Further, current estimates of Modern Slavery in Australia from the Walk Free foundation are 15,000 victims (Walk Free Foundation Global Slavery Index 2018).
- (b) Part 4 deals with 'When do I report?'. Figure 4 contains a timeline for reporting which is very helpful. It would be useful to have an additional Figure for a non-Australian financial year, such as April 1 to 31 March (with a 30 September 2020 due date for the first statement). We are working with numerous entities (for example those based in Japan, Canada and the UK) that adopt this timeline, which brings the reporting period, and the date for compliance, forward by 3 months.
- (c) Paragraphs 102.1 onwards deal with Mandatary Criteria Four. This deals with assessing Modern Slavery Risk. It is considered that training throughout an organisation on Modern Slavery is an important and key part of meeting this criteria. The Draft Guidance should be much more specific about this, and include it as an important step in meeting this criterial.
- (d) The section regarding Mandatory Criteria Four also states that organisations should be prepared to 'respond to modern slavery' where it is found in the supply chain. This broad statement and requirement is being interpreted to mean cease dealing with the relevant supplier. It may meet the policy objective better to embark on a communication, training improvement and capacity building process with the supplier, rather than terminate business relations. This could be clarified in the main text (whilst it is acknowledged there is very good material on this issue at Appendix 3).

2. Submissions on the Modern Slavery Act 2018 (Cth)

2.1 **Opting In**

As the Commonwealth has decided that the 'onerous' reporting and compliance obligations (a) contained in the MSA should only apply to certain well-resourced and high revenue organisations, it should allow or recognise that entities that opt-in have a lower compliance burden, or are not subject to punitive measures contained in the legislation.

2.2 **Threshold**

(a) The threshold of \$100m is very high, and significantly higher than both the UK and NSW legislation. This should be lowered to be more in line with those other jurisdictions.

2.3 **Penalties**

- (a) The MSA should contain appropriate penalties for non-compliance, similar to the NSW legislation.
- (b) The Modern Slavery Act (2015) in England (2015 Act) has recently undergone its first comprehensive review. It was noted that there was a disappointingly high level of noncompliance blamed, in part, by the lack of penalties.

2.4 **Statutory Defence to Crimes**

The 2015 Act provides a statutory defence to crimes committed by modern slaves (other than murder and other crimes of extreme violence). These provisions should be included in the MSA.

Charity / Victim Support 2.5

The 2015 Act, and its administration, provides for monetary support to be provided to (a) victims, the funds for which come from penalties and proceeds of crime. These provisions should be included in the MSA.

2.6 **Independent Regulation**

(a) The NSW Modern Slavery Act (NSW Act) provides for the office of the Anti-Slavery Commissioner to be independent of government, as does the 2015 Act. The MSA provides for administration by government (the Department of Home Affairs). It is considered best practice for this function to be independent and not part of central government.

2.7 **Cross-Agency Involvement and Education**

- The NSW Act, through its reading speeches, as well as formally in its legislation, provides for (a) cross agency involvement.

 This could be more clearly recognised and provided for in the MSA, for example there is an
- (b) obvious place for working and interaction with a number of entities, including:
 - (i) The Australian Federal Policy (training and reporting)
 - (ii) The Department of Education and Training (education particularly around forced marriage, deceptive recruitment, and human rights)
 - (iii) The Department of Family and Social Services (direct support)

- (iv) The Attorney-General's Department
- (v) The Department of immigration (relating to rescued slaves)
- (vi) The Australian Human Rights Commission

2.8 Duty to Notify

- (a) A criticism of the 2015 Act has been the duty to notify provisions and whether they work appropriately, or potentially double count victims. This is where, in the case of Australia, the AFP and local authorities would be required to report all adult victims of modern slavery.
- (b) The duty to notify provisions in the MSA should be reviewed to the extent they exist and ensure they deal with issues that have been criticised in respect of the 2015 Act.

Thank you for receiving this submission and we look forward to reviewing the final Guidance, as well as the Commonwealth Entity Draft Guidance when it becomes available.

Yours sincerely

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Accredited Specialist Government and Administrative Law



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20 May 2019

Modern Slavery Business Engagement Unit Department of Home Affairs slavery.consultations@homeaffairs.gov.au

Dear Sir/Madam,

Re: The Modern Slavery Act 2018 Draft Guidance for Reporting Entities

Deloitte Touche Tohmatsu (Deloitte) supports the Commonwealth Government's efforts to stamp out modern slavery through the Modern Slavery Act 2018 (the 'Act').

We support and endorse the Government's approach in the Modern Slavery Act 2018 draft guidance for reporting entities (the 'Guidance'). The Guidance is useful and clear. We also commend it for enacting the first national legislation in the world to define modern slavery. The Guidance defines eight different types of modern slavery: trafficking in persons, slavery, servitude, forced labour, forced marriage, debt bondage, child labour, and deceptive recruiting. The Guidance also shows a spectrum of labour abuses so that we can begin to recognise when labour abuse is on a slippery slope that could potentially result in the worst forms of abuse.

The Guidance will assist reporting entities and empower others to tackle such risks in their operations and supply chain. More than 3,000 entities are affected by the legislation in Australia. We recommend publishing a list of those entities for fellow reporters, business partners, investors and consumers, to help them assess the level of compliance of a given entity, and encourage the 'race to the top' the Government hopes to inspire with the Act.

The Guidance provides clear information for entities who wish to voluntarily report. The voluntary reporting follows the same requirements as entities required to comply with the Act. This means a consistent format alrs and standard of reports can be maintained.

The Guidance refers to the UN Guiding Principles on Business and Human Rights ('UNGPs'). This is important to situate the problem of modern slavery within the wider human rights arena. This ensures greater consistency with emerging legislation around the world. The notes to the legislation recommend de la composition della compos that entities undertake a risk assessment to underpin reporting. We think this is an essential early step companies and that the risk assessment should be done against the UNGPs to ensure that we don't inadvertently miss important human rights risks or opportunities through taking a too narrow lens. The Guidance offers interesting case studies that illustrate instances of modern slavery and steps taken by companies to investigate, manage and mitigate these issues. Further examples throughout the document would be very helpful.

We endorse guidance 14.1 linking the legislation to the Sustainable Development Goals. This link is important and ties the fight against modern slavery to other sustainable development issues. However,

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recommend a stronger link be made to illustrate how people in situations of modern slavery have their human rights violated, and what rights exactly.

We further recommend further details be given on:

- Suggested guidance between reporting Step 1 and 2 on actions that entities will find useful, such
 as undertaking a risk assessment and guidance on how far reporting entities need to go in their
 supply chains
- How to work with suppliers to identify and manage risks, for example through updating supplier on-boarding requirements.

We strongly advocate for a victim's rights-based approach to corporate responses to modern slavery risks and impacts. The Guidance indicates that collaboration between governments, business, civil society, investors and consumers will be essential for combating modern slavery. We believe that victims, affected workers and unions are all **important and should be included in the collaboration efforts. Workers' voices** should be sought and listened to as they are at the centre of the legislation.

Finally, based on the UK experience where there has been relatively low levels of compliance with the Act, we recommend the Guidance make a stronger case for compliance with the Act.

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Partner, Strategic & Reputation Risk



Principal and Human Rights Services Lead, Strategic & Reputation Risk



20 May 2019

Modern Slavery Business Engagement Unit Department of Home Affairs 6 Chan St, Belconnen CANBERRA ACT 2617

By email: slavery.consultations@homeaffairs.gov.au

Dear Sir/Madam

Modern Slavery Act 2018: Draft Guidance for Reporting Entities

The Law Council welcomes the opportunity to make submissions to the Department of Home Affairs (the Department) regarding its *Modern Slavery Act 2018: Draft guidance for reporting entities* (Draft Guidance).

The Law Council is grateful for the assistance of its Business and Human Rights Committee, the Law Society of New South Wales and the New South Wales Bar Association in the preparation of this submission.

The Law Council notes that the Chair and individual members of the Law Council's Business and Human Rights Committee contributed directly to the development of the Draft Guidance in their capacity as members of the Department's expert advisory group. The Law Council, guided by its Committee, welcomes the Draft Guidance and generally supports its current form.

The Law Council considers the Draft Guidance to be a comprehensive document and is satisfied that the Department has allowed sufficient time for consultation from interested stakeholders. The final guidance will undoubtedly provide a useful practical resource to reporting entities and legal practitioners advising reporting entities about compliance with the national Modern Slavery Reporting Requirement (Reporting Requirement) under the Modern Slavery Act 2018 (Cth) (the Act). Under the Reporting Requirement, certain large entities must publish annual statements (Modern Slavery Statements). Through providing guidance and adequate support to reporting entities, the Department can assist in creating a culture of compliance with Modern Slavery obligations.

In this submission, the Law Council wishes to raise some additional comments and suggestions, with the aim of enhancing the Draft Guidance.

Overarching comments

Additional integration of human rights principles

The Law Council supports the integration of the United Nations Guiding Principles of Business and Human Rights (**UNGPs**) in the Draft Guidance to frame and explain each criterion that businesses will be required to address in their Modern Slavery Statements.

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The UNGPs are the recognised global standard for preventing and addressing businessrelated human rights harm, and will provide a useful reference point for businesses seeking to comply with the requirements of the Act.

However, the Law Council considers that there is room for further inclusion and expansion on the overarching principles of international human rights law that inform the obligations under the Act. In this respect, the Law Council notes that other organisations, including the Organisation for Economic Co-operation and Development (OECD)¹ and International Bar Association, have released publications designed to raise awareness of the risk of adverse impacts on human rights by businesses and to promote adherence by businesses to human rights principles. Including references to these publications in the Draft Guidance may assist reporting entities, and the legal practitioners who advise reporting entities, in understanding the overarching international human rights law framework within which the Act is intended to operate.

Reference to provisions of the Act

The Draft Guidance necessarily follows the structure of the Act and adopts expressions used in the Act itself (for example, 'operations' and 'supply chains'). It may assist legal practitioners advising reporting entities on compliance with the Reporting Requirement for the Guidance to include references to the relevant provisions of the Act. This will also assist in distinguishing between legal requirements, on the one hand, and guidance, on the other.

Specific suggested amendments and additions

Inclusion of target audience(s) for Modern Slavery Statements

Individuals preparing a Modern Slavery Statement for their reporting entity may find it useful if the Draft Guidance specifically identified the categories of audience who are likely to read their statement. These audiences could include the Minister, the Department of Home Affairs and, once the statement is published on the Modern Slavery Statements Register, interested members of the general public and non-governmental organisations.

Reference to the Corporations Act 2001 (Cth)

Chapter 2 of the Draft Guidance explains how to determine whether a reporting entity is required to comply with the Reporting Requirement by providing a Modern Slavery statement. Page 15 the Draft Guidance states that the Reporting Requirement applies too foreign entities (with a consolidated revenue of at least \$100 million in the 12-month reporting period) 'carrying on business in Australia at any time in that reporting period'.

The expression 'carries on business in Australia' is defined in paragraph 5(1)(b) of the Act≌ to mean:

> (a) in the case of a body corporate—carries on business in Australia, a Statein the case of a body corporate—carries on business in Australia, a State or a Territory within the meaning of the Corporations Act 2001 (see section 21 of that Act); or
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¹ See the Organisation for Economic Co-operation and Development. *Guidelines for Multinational Enterprises* (Web page) http://mneguidelines.oecd.org/guidelines/.

² See the International Bar Association, *Practical Guide on Business and Human Rights for Business Lawyer*'s (2016) and the International Bar Association, Business and Human Rights Guidance for Bar Associations (2015) http://www.ibanet.org/LPRU/Business-and-Human-Rights-for-the-Legal-Profession.aspx>.

(b) in any other case—would be taken to do so within the meaning of that Act if the entity were a body corporate.

The box on page 17 of the Draft Guidance refers to section 21 of the *Corporations Act 2001* (Cth) (**Corporations Act**).

Subsection 21(2) of the Corporations Act states that a reference to a body corporate carrying on a business in Australia, includes the body 'establishing or using a share transfer office or share registration office in Australia', or 'administering, managing, or otherwise dealing with, property situated in Australia... as an agent, legal personal representative or trustee, whether by employees or agents or otherwise'. Subsection 21(3) contains a list of circumstances that do not indicate that a body corporate carries on a business in Australia, or in a state or territory.

The Department may wish to consider whether to make specific reference to the matters contained in section 21 of the Corporations Act in the final Guidance.

Voluntary reporting

Chapter 3 of the Draft Guidance provides information about entities that wish to comply voluntarily with the Reporting Requirement.

An important aspect to the voluntary reporting option is that an entity may, pursuant to subsection 6(3) of the Act, revoke its voluntary reporting to the extent that it applies in relation to a reporting period or periods, by 'giving written notice accordingly to the Minister before the start of the reporting period (or the earliest of the reporting periods)'. The Explanatory Memorandum explains that the provision is intended to prevent an entity that volunteers to comply from withdrawing during a current reporting period to avoid its obligations to report on modern slavery risks identified during that period.³ The Law Council submits that the Guidance should refer to the ability of an entity to revoke its voluntary reporting and the circumstances in which it may do so.

The Draft Guidance could also usefully clarify the application of section 16A of the Act which deals with failures to comply with the Reporting Requirement, to entities that report voluntarily. Section 6 of the Act outlines how an entity may report voluntarily. The definition of 'reporting entity' under subsection 5(d) includes an 'entity which has volunteered to comply with the requirements of the Act under section 6 for that period'. Section 16A outlines the process and powers associated with reporting entities' failure to comply with requirements to report in sections 13 and 14. As reporting entities include those reporting voluntarily per section 6, this means that voluntary entities are also subject to section 16A. The Law Council submits that this should be made clear in the Draft Guidance. It notes that this information may influence entities' willingness to participate voluntarily.

Definitions of 'structure, operations and supply chains'

Paragraph 16(1)(b) of the Act requires a reporting entity to describe its 'structure, operation and supply chains' in its Modern Slavery Statement. These terms are not defined in the Act.

The Draft Guidance provides an explanation of the meaning of these terms on page 25. The term 'operations' is broadly defined to mean 'any activity or business relationship undertaken by the entity to pursue its business objectives and strategy, including 'research

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³ Explanatory Memorandum, Modern Slavery Bill 2018 (Cth) [86-9].

and development', 'construction', 'production', 'arrangements with suppliers' and 'distribution'.

Given the significance of this definition to the reporting obligations under the Act, reporting entities, and those advising them, may benefit from further explanation of the enumerated activities. For example, it would be useful for the Draft Guidance to clarify whether the 'operations' definition includes customer-side risks, and whether reporting entities are expected to identify links between modern slavery and customer relationships.

Similarly, page 25 the Draft Guidance includes an example of the terms 'structure', 'operations' and 'supply chains' as applied to a hypothetical building company. It may be helpful to include parallel examples for service-based industries such as the legal profession, financial services and media firms.

Identification of risks of modern slavery in operations and supply chains

Paragraph 16(1)(c) of the Act requires a reporting entity to describe the risks of modern slavery practices in the operations and supply chains of the reporting entity and any entities the reporting entity owns or controls.

Page 30 of the Draft Guidance defines 'risks of modern slavery practices' as 'the potential for a reporting entity to cause, contribute to, or be directly linked to modern slavery through its operations and supply chains'. The terms 'cause', 'contribute to', and 'directly linked' are significant in the context of reporting on these criteria. While these words evince an intention to apply these criteria beyond direct suppliers and customers, there remains uncertainty regarding how far up or down a supply chain a reporting entity reasonably needs to investigate in order to satisfy these criteria.

The example in the fourth bullet point on page 30 of the Draft Guidance illustrates this point. The example, which is given as an example of an entity being 'directly linked' to modern slavery practices, states:

For example, your entity may retail electronic goods. These goods may have been manufactured by another entity using minerals sourced from a third entity that were mined using forced labour.

This example has two levels of separation between the modern slavery practice (the third entity) and the reporting entity (an electronic goods retailer).

However, it is not clear whether there is an expectation that further removed risks should also be reported. Namely, would an electronic goods retailer have a risk of being directly linked to modern slavery practices if the goods are manufactured by another entity (electronic goods manufacturer) using components manufactured by a third entity (components manufacturer) itself using raw materials produced using forced labour (mining company)? In this revised scenario, there is a further level of separation in the supply chain between the modern slavery practice and the reporting entity. Clarification as to whether in situations such as these the mining company's modern slavery activities would be 'directly linked' to the electronic goods retailer may be helpful to include.

Page 33 of the Draft Guidance states that 'in many cases, you will need to do a basic scoping exercise to help you identify and describe the risks of modern slavery practices for an entity'. The how-to box on the same page provides some further guidance on scoping modern slavery risks. However, the Draft Guidance does not detail how far such scoping should be reasonably undertaken up or down a supply chain.

As such, it may be worthwhile elaborating on this point to clarify expectations for reporting entities and the legal practitioners advising them in respect of this criteria.

Industry specific guidelines: investors and banks

Page 33 of the Draft Guidance indicates that investments should be scoped and mapped in the same manner as suppliers. The Law Council submits that the treatment of investors and banks should be dealt with in a separate section and provided with specific attention. The Law Council notes that there are many different types of investments and the alignment of suppliers and investees is not always appropriate.

Hypothetical examples could usefully be included in the Draft Guidance, such as those that address reporting by superannuation funds, other fund managers and financial institutions. Special criteria would be helpful regarding these examples, noting that these institutions cannot reasonably be expected to review in detail all the operations of the companies they invest in or provide with loans.

Additionally, the Draft Guidance could be clearer regarding how and when the risk of borrowers should be considered in a scoping exercise.

Geographic and rule of law risks

At pages 63 and 64 of the Draft Guidance, it may be beneficial to include specific resources businesses can refer to in order to assess modem slavery risks, including the World Justice Project Rule of Law Index and the Ethical Trading Initiative's list of online resources.4

Assessing the effectiveness of actions being taken to assess and address modern slavery risks

Paragraph 16(1)(e) of the Act states that a Modern Slavery Statement must 'describe how the reporting entity assesses the effectiveness of ... actions' taken to assess and address modern slavery risks. The section of the Draft Guidance (at pages 43-44) explaining this criterion could be improved by including recommendations and examples of best practice for measuring the effectiveness of specific actions taken to assess and address modem slavery.

Engaging with suppliers

Appendix 2 of the Draft Guidance contains helpful suggestions for working with suppliers to assess and address modern slavery risks. Reporting entities may find it useful if this section were to also include guidance on responding to risks in situations where they have limited. leverage over a supplier.

Effect of non-compliance

One aspect of the operation of the Reporting Requirement that is omitted from the Draft

Section 16A of the Act sets out the effect of non-compliance with the Reporting Requirement. It would assist reporting entities, and legal practitioners advising

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⁴ World Justice Project Rule of Law Index (2019) https://worldjusticeproject.org/our-work/publications/rule- law-index-reports/wjp-rule-law-index-2019>; Ethical Trading Initiative, Modern Slavery resources (Web page) https://www.ethicaltrade.org/issues/modern-slavery/modern-slavery-resources.

entities, to understand how the Minister, his or her delegate, and the Department intend to address issues of non-compliance pursuant to section 16A of the Act.

In this respect, it may assist reporting entities, and legal practitioners advising reporting entities, to understand how issues of non-compliance in the first reporting period are intended to be addressed and whether that may change after the initial reporting period.

Suggestions for next steps

The Draft Guidance notes that the Modern Slavery Business Engagement Unit (MSBEU) is not equipped to provide detailed advice about modern slavery risks in specific sectors. The Law Council suggests that as and when capacity permits, the MSBEU develop sector specific guidance to complement the comprehensive guidance for reporting entities. In preparing any sector-specific guidance, the MSBEU may wish to utilise the OECD guidance about due diligence in key sectors and industries,⁵ and adapt it for the Australian context as appropriate.

The Law Council recommends that the Draft Guidance be a 'living document' subject to regular update and review. Topics for inclusion in future editions of the Draft Guidance could include: how a reporting entity can evolve and improve its Modern Slavery Statement by building on each year; and guidance for reporting entities that fall within the scope of both the New South Wales and Commonwealth modern slavery legislation (building on the 'learn more' box located at page 16 of the Draft Guidance).

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Yours sincerely

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Yours sincerely

President

Forganisation for Economic Co-operation and Development, Guidelines for Multinational Enterprises, Sectoral Guidance (Web page) http://mneguidelines.oecd.org/sectors/>. Guidance (Web page) http://mneguidelines.oecd.org/sectors/.



20 May 2019

s22(1)(a)(ii)

Director

Modern Slavery Business Engagement Unit Trade Modernisation and Industry Engagement Branch Infrastructure, Transport Security and Customs Group Department of Home Affairs

Via email: slavery.consultations@homeaffairs.gov.au.

Dear s22(1)(a)(ii)

The Minerals Council of Australia (MCA) appreciates the opportunity to provide comment on draft guidance for entities to meet reporting obligations under the Modern Slavery Act 2018 (the Act).

The MCA represents Australia's exploration, mining and minerals processing industry with a common purpose in advocating responsible policies to promote growth, prosperity and sustainability. Advancing responsible business practices through policy advocacy and practical support is an important part of our work.

The minerals industry supports the Act, which is an important part of the Australian Government's broader response to the global problem of modern slavery. Respect for human rights is a core commitment of Australia's minerals industry and is expressed in *Enduring Value* – the *Australian Minerals Industry Framework for Sustainable Development*¹ (Enduring Value). Principle 3 of Enduring Value includes a commitment to 'uphold fundamental human rights and respect cultures, customs and values in dealings with employees and others who are affected by our activities.'

Australia's minerals industry also strongly supports the Sustainable Development Goals (SDGs), 17 interconnected and global goals that together provide a 'blueprint to achieve a better and more sustainable future for all by 2030.' Achievement of the SDGs is directly linked with respect for human rights, and action to address human rights harm. Reflective of this, among other targets relating to human rights, Goal 8: Decent work and economic growth includes a specific target (8.7) to take immediate action to end modern slavery.

Modern Slavery Reporting Requirement

The Act establishes a requirement for an entity with consolidated revenue of more than \$100 million per annum and carrying on business in Australia to report on actions to identify and address modern slavery risks within its operations and supply chains.

The Act provides that an entity should report on seven mandatory criteria, including its structure, operations and supply chains, potential modern slavery risks, actions taken to assess and address

¹ Minerals Council of Australia, <u>Enduring Value – The Australian Minerals Industry Framework for Sustainable Development</u>, MCA, 2015, p. 7.

² United Nations, Sustainable Development Goals, UN, viewed 3 May 2019.

³ United Nations, <u>Promote inclusive and sustainable economic growth, employment and decent work for all,</u> UN, viewed 2 May 2019.

these risks (including due diligence and remediation) and how the effectiveness of actions taken are assessed. The draft guidance seeks to provide relevant entities with a practical framework to meet these reporting obligations consistent with expectations of government.

In the development of broad reporting expectations it is clear the Department of Home Affairs (the Department) has taken care to understand the practicalities and complexities entities must manage to meet these reporting obligations. The MCA also commends the Department's efforts to gain multistakeholder input including through its expert advisory group.

The MCA's comments focus on additions and amendments to clarify expectations, ensure focus on areas where entities are more likely to have capacity to influence change and support development of meaningful reporting.

A summary of our specific feedback is provided as Appendix 1.

Clarifying expectations

The intention of the guidance is to provide practical support and set expectations for entities required to produce a modern slavery statement. There is opportunity to strengthen the guidance by adding a new opening section outlining high-level expectations for reporting entities. Clearly stating high-level expectations at the outset will also assist entities to interpret step-by-step aspects of the guidance and provide useful context for users of the reports.

The MCA supports the overarching reporting expectations described by the Department during engagement with the minerals industry. The MCA understands these reporting expectations as:

- Statements should demonstrate entities are taking genuine steps to understand and address modern slavery risks within their operations and supply chains
- Reporting on the risk identification process and actions taken to address risks should be done
 in light of the expectation that these processes should be proportionate to the risk profile, size
 and reach of the entity in line with international standards such as the United Nations Guiding
 Principles on Business and Human Rights (UNGPs)
- Reporting should also be done in light of the expectation that entities should prioritise actions
 to respond to risks that are most severe based on their scale, scope and whether they can be
 addressed or remediated
- A consultative and entity-wide approach should inform the process (due diligence) to identify
 risks and actions to address these as well as reporting
- Recognition by the entity that action to identify, address and report on modern slavery risks is a continual process.

The MCA understands these overarching reporting expectations incorporate stakeholder feedback gathered by the Department during its extensive engagement to inform both the Act and draft guidance. Stakeholder groups engaged include non-government organisations with expertise addressing modern slavery, investor groups, businesses, business groups and other human rights specialists.

Various paragraphs within the guidance describe reporting expectations of different stakeholder groups consulted during its development. Rather than describe these expectations in different sections of the report, it would be helpful to provide an overview indicating each group's general expectations in the new opening section and then refer to these groups as 'readers' of statements for consistency and clarity. An alternative could be to include a summary of each group's expectations in addition to the specific expectations for various reporting criteria.

This change also reflects the importance of each entity engaging with its own stakeholders to identify risks and actions as well as their expectations for the entity's statement. Further, such engagement

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will assist the entity and its stakeholders to develop a common understanding of complexities and opportunities regarding the statement.

Applying the UN Guiding Principles on Business and Human Rights

The Australian minerals industry recognises the importance of the UNGPs as a practical framework supporting businesses to meet the corporate responsibility to respect human rights. ⁴ The MCA partnered with the Global Compact Network Australia in 2013 to produce a report covering different approaches to managing human rights risks through the UNGPs. ⁵ Accordingly the MCA supports the use of the UNGPs as an overarching frame for the guidance document to assist entities to meet the legal requirements of the Act.

There is opportunity to refer further to the UNGPs in the guidance, particularly to confirm how an entity meets its responsibility to respect human rights will vary depending on its size, operational context and other factors as per Guiding Principle 14.⁶

There is also opportunity to refer to specific UNGPs to describe reporting expectations in this context. In particular, the guidance should note:

- Principle 17 which provides that the due diligence process undertaken to identify and act on human rights risks will vary depending on the size of the business, operational nature and context and the risk of severe human rights impacts.⁷ In this context, the draft guidance should reflect that reporting may highlight the process an entity takes to assess its modern slavery risks may depend on these factors.
- Principle 24 which provides that, where it is necessary to prioritise actions, the most severe should be addressed first. Supporting commentary clarifies that while entities should address all impacts, it is not always possible to address all risks at the same time and the most severe risks should be prioritised.⁸

In doing so, it should be clear the UNGPs may assist entities by providing a practical framework to meet the legal requirements of the Act.

Scope and focus

Mandatory criterion one and two

The first reporting criterion requires an entity to provide information about its structure, operations and supply chains. The purpose of this information is to enable readers to easily identify the entity and provide operational context for the statement.

Several minor changes to wording of suggested inclusions would better reflect the purpose of the criterion and clarify the expectation to report on categories of business activities rather than specific activities and relationships. Appendix 1 provides recommended amendments.

Mandatory criterion three and four

Defining report scope

The Act intentionally applies to entities that are more likely to have capacity to meaningfully comply and leverage to influence change. This is also why the Act and guidance focus on actions taken by the reporting entity and any entities it owns or controls.

Consistent with this, a reporting entity should be able to define the scope of its report to exclude joint ventures where it is not the managing entity and/or operator if it is appropriate. This should apply in

Minerals Council of Australia 1 3

⁴ Minerals Council of Australia, <u>Australian Mining and Human Rights: Managing human rights risks through the UN Guiding Principles on Business and Human Rights</u>, Canberra, 2013, p. 7.

⁶ Office of the High Commissioner, <u>Guiding Principles on Business and Human Rights, United Nations</u>, New York, 2011, p. 16 ⁷ ibid, p. 17.

⁸ ibid, p. 26.

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all circumstances, regardless of whether the managing entity and/or operator are covered by this or another reporting requirement. To clarify, this would mean that the reporting entity does not need to include those joint ventures as its own reporting entities; in other words, entities for which it would have to report on how modern slavery risks are managed in both their operations and supply chains. It does not mean a reporting entity could abrogate its obligation to report on how it is managing risks in its supply chain even though it does not control actors in its supply chain.

It may be too that the reporting entity chooses to include those joint ventures as part of its supply chain under the Act and decides to report on how the entity is working with those joint ventures to minimise risk. This may be determined in consultation with an entity's stakeholders.

To support transparency, the reporting entity should be required to identify why certain joint ventures has been excluded from the report as a reporting entity. The entity may also refer to a report provided by the managing entity and/or operator of the business (either under the Australian Act or other regimes), where applicable. The guidance could still refer to broad expectations of third parties, such as investors and non-government organisations regarding non-managed operations, which may be that the reporting entity provides information on how it is encouraging and supporting non-managed entities to manage their modern slavery risks.

Appendix 1 identifies the relevant section of the guidance where this clarification is required.

Assessing and addressing risks

During reflections on the United Kingdom Modern Slavery reporting requirements, various stakeholders recognised assessing and addressing modern slavery risks is a continual process. It is particularly so for entities, including within the minerals industry, with complex supply chains involving the procurement of thousands of goods and services and multiple tiers beyond the primary supplier.

Another insight from various Australian modern slavery multi-stakeholder dialogues is recognition that entities should seek to show 'continuous improvement' in reporting. In this context, continuous improvement could involve an entity taking a considered and methodical approach to enhance its reporting approach as its understanding of risks and appropriate responses deepens. This is consistent with the UN Guiding Principles Reporting Framework which notes that it takes time to implement policies and processes to address human rights risks.⁹

As previously noted, it would be helpful for the guidance to further emphasise that the aim is for an entity's report to demonstrate genuine commitment and meaningful progress over time in relation to risk management. To assist entities to meet reporting expectations, the guidance could provide practical examples of how this could be achieved.

A possible example could involve an entity mapping its supply chains by geographic region, and focusing action on a particular region known to have a high risk of modern slavery. The entity could explain its decision to prioritise these risks (most severe) and describe a longer term plan and when and how it plans to act on these other risks in its statement. It could then report on its progress in subsequent years.

Mandatory criterion six

The MCA appreciates the guidance provides details on how related companies can report jointly. Importantly, the suggested process avoids an artificial layer of approval for statements where entities are involved in similar categories of activity (such as mining) and apply similar processes (such as the same human rights management standard).

To assist further, it would be helpful to provide a specific example as to how a statement should describe consultation between the entity providing the statement and those covered by the statement In the minerals industry, for example, this could involve a company group consisting of five operational mines (separate legal entities) with corporate support provided by a single shared group

Minerals Council of Australia I 4

⁹ Shift Project Ltd, <u>UN Guiding Principles reporting framework with implementation guidance</u>, Shift, 2015, p. 7.

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function. A corporate team may produce the statement in consultation with staff from each mine (a reporting entity) and corporate support functional teams such as human resources, supply and procurement, social performance and legal counsel.

The guidance should also confirm that senior management of the entity providing the statement and those covered by the statement may be the same person or body within a corporate group. Using the scenario above, the guidance should include an example confirming that a group-wide senior management team with oversight of a number of mines (separate legal entities) would constitute senior management of both the entity providing the statement and all those covered by the statement. Clarity is also sought as to how an entity could satisfy this process under the Act.

The examples should cover the process of consultation between (a) the entity giving the statement and each reporting entity covered by the statement required to be described for joint statements under section 16(1)(f)(ii) of the Act; and also (b) a reporting entity and any entities that it owns and controls, required to be described under section 16(1)(f)(i) of the Act. It may be helpful to repeat or cross-reference the consultation guidance in the section on single reporting entity statements, not just the joint statement section.

Publishing statements

The Act provides an entity's statement must be approved by its principal governing body, with the purpose of this criterion to support consideration of modern slavery risks and actions by senior leadership. This is separate to the presentation and publication of the statement by providing it to the Department for inclusion on the register, a process intended to support transparency.

While some entities may prefer to publish the statement as a standalone document, it may also be beneficial for some entities to incorporate the approved statement into sustainability and other reports. For example, it may enable readers to understand how an entity's approach to modern slavery risks fits into a broader human rights and sustainability management approach.

Accordingly, the guidance should be updated to clarify that entities can elect to present the statement within sustainability and/or other corporate reports as long as the statement is publishable (able to be added to the register) by the Department and otherwise meets the Act's approval and signature requirements. To avoid confusion, the statement content itself would need to be specifically and expressly approved by the principal governing body.

Supporting industry to meet its obligations under the Act

The MCA would welcome the opportunity to work with the Department to produce supplementary reporting guidance for the Australian minerals industry. Supplementary guidance could be tailored to the particular characteristics of the minerals industry.

In addition, the MCA is considering opportunities to host roundtables to bring together industry, civil society, government and other representatives to share collective experience and develop a common understanding of reporting expectations and practicalities. The MCA would welcome the opportunity to partner with the Department on these engagement activities.

The MCA understands that some entities, both within and external to the minerals industry, could engage an external consultant to assist with statement preparation. Given this, the MCA sees benefit in the Department coordinating targeted information sessions to educate professional services organisations about the objectives of the Act and statement expectations. To support compliance with the Act, the MCA would be happy to assist with these arrangements.

A number of minerals entities have indicated they are working towards publishing a voluntary statement prior to the first reporting deadline. As part of its support for the Act and, more broadly, responsible business practices, the MCA is considering hosting voluntary reports prepared prior to first reporting deadline (31 December 2020) on its own website until the central repository is available.

Supporting readers of the statements

Readership of entity statements will be diverse and likely to include civil society, investor groups, business and government representatives among others. It would be helpful for the Department to prepare guidance documentation to assist readers reviewing the statements.

This guidance could cover the intention and scope of the Act, practicalities and complexities associated with meeting the reporting requirement and other useful information. The MCA would welcome the opportunity to support development of this material, which could include a frequently asked guestions sheet (FAQs).

More information

Consistent with its support for the Act and, more broadly, responsible business practices, the MCA looks forward to continuing to engage with the Department of Home Affairs as it supports its membership to prepare for the first reporting period. Please do not hesitate to contact Manager – Social Policy, on or at Staff or at Staf

Yours sincerely

s47F

GENERAL MANAGER - SUSTAINABILITY

Appendix 1

Paragraph

12.1

Recommendation

12.1	actions entities take should be proportionate to the risk profile and size, reach and influence of the entity.	
14.1	Rework to clarify 193 governments committed to end modern slavery (target 8.7) as part of a commitment to the United Nations Sustainable Development Goals. Agenda 2030 and Goal 17 specifically recognises the important role of the private sector, civil society, communities and other stakeholders in SDG achievement. The SDGs have been widely embraced by the international business community.	
17.1	Clarify to state that the Act was developed through extensive consultation with civil society, the Australian business community and investor groups.	
34.1	Clarify the Act only requires reporting on assessment of modern slavery risks and does not require reporting (or the conduct of) a full human rights impact assessment and management planning (though this may be undertaken). The guidance could provide links to further resources to explain the link between modern slavery and broader human rights risks though to encourage management of modern slavery risks within a broader human rights framework and how this could be reported.	
Page 14	Clarify in the diagram that the Department of Home Affairs Business Engagement Unit will administer the free online register. The diagram should also note the ability of the Minister to seek more information and take additional action if an entity that is required to comply does not do so.	
Page 14	Clarify that the Act 'requires reporting in relation to all modern slavery practices' not necessarily of particulars of any incidents uncovered as the current wording may imply.	
40.1	Clarify to reflect that large entities are <i>more likely</i> to have capacity to meaningfully comply and to influence change in supply chains. Clarification is also required in paragraph 22.1.	
69.1	Clarify that, whilst the use of the UNGPs will assist companies to meet the legislative requirements and is encouraged, it is not mandatory.	
Page 25	 Amend some key term explanations in the box on this page to avoid misinterpretation that such content is required by the Act: Structure - while some entities may choose to provide specific details such as the number of employees, it should be clear that the Act does not require this. Operations – the first sentence should not prescribe a level of granularity ('any activity or business relationship undertaken') unless it is required to describe operational context. Suggest rewording to 'categories of activities undertaken by the entity to pursue its business objectives and strategy, which may include.' 	
	the entity to pursue its business objectives and strategy, which may include'	

Expand paragraph on UNGPs responsibility to respect human rights to clarify the

81.1	Consistent with this, a reporting entity should be able to define the scope of its report to exclude joint ventures where it is not the managing entity and/or operator as appropriate. This should apply in all circumstances, regardless of whether the managing entity and/or operator are covered by the reporting requirement. To clarify, this would mean that the reporting entity does not need to include those joint ventures as its own reporting entities – in other words, entities for which it would have to report on how modern slavery risks are identified and addressed in both their operations and supply chains. It does not mean a reporting entity could abrogate its obligation to report on how it is managing risks in its supply chain even though it does not control actors in its supply chain. It may be too that the reporting entity chooses to include those joint ventures as part of its supply chain under the Act and decides to report on how the entity is working with those joint ventures to minimise risk.
Page 27	Aspects of the suggested information in Table 1 should be updated to better reflect the purpose and scope of the reporting requirement. Changes include:
	Structure – this should be reworked to clarify the objective is to describe the entity's operating structure, including countries where it operates.
	Operations – rework as above comment regarding page 25.
	Supply Chains – this should be reworked to suggest the entity describes the categories of goods and services it procures.
Page 30	Add an additional sentence after 'This means that your entity's risks' to note that the context and sector will be relevant to understanding how the concepts of cause, contribution and direct linkage apply.
	Add an additional sentence at the end of 'Risks that you may be directly linked to modern slavery practices' section to note that the Act requires an entity to report on risks of modern slavery practices that may be occurring in its global operations and supply chains (and those the entity owns or controls). The guidance should clarify what constitutes global operations and supply chains will vary between industries (for example, banking will include customers within its operations). Entities may also choose to report on actions to address risks in other business relationships as appropriate. Stakeholder engagement may help reporting entities to determine this.
Page 30	Provide an example of a situation where there is no link to differentiate from directly linked.
90.1	Clarify entities should describe identified risks accurately as they are understood.
98.1	Clarify expectation is for entity's to report on <i>types</i> of risks rather than specific risks, consistent with guidance on page 33 which describes sector, industry, product and services, geographic and entity risks.
Page 35	Provide further information about UNGP17 to explain that processes to assess risks will vary depending on the entity's size, the risks of severe impact, the nature of its operations and operational context. ¹⁰
	Refer also to Principle 14 which provides that the 'scale and complexity of the means through which enterprises meet that responsibility may vary according to these factors

¹⁰ Office of the High Commissioner, <u>Guiding Principles on Business and Human Rights, United Nations</u>, New York, 2011, p. 17.

	and with the severity of the enterprise's adverse human rights impacts.'11
Page 37	Add an explanatory sentence to explain that this section describes the UNGPs, which are used as a framework to assist entities to meet requirements relating to modern slavery risks under the Act.
Page 37	Amend to state that the UNGPs provide that an entity is expected to undertake human rights due diligence, which describes an ongoing process to identify, prevent, mitigate and account for how an entity addresses these risks.
147.1	Amend to differentiate between presentation and publication of the final statement.
159.1	Clarify that the statement content must be specifically and expressly approved by the principal governing body. However, as there is no requirement in the Act that the statement be published as a standalone document, the entity can choose to publish within a sustainability report or similar report as appropriate. To be clear, the statement content would still need to be specifically and expressly approved by the principal governing body.
167.1	Clarify the statement may be published within a sustainability or other publicly available report after specific and express approval by the principal governing body.
187.1	Include a practical example of appropriate consultation with each reporting entity covered by a statement.
188.1	Clarify that senior management may be the same person or body within a corporate group for all reporting entities included in the joint statement. This definition should reflect that senior management may be a person as well as a group.
	It is important the same example of consultation is included on pages 46 and 47 for consultation with entities owned and controlled by a reporting entity.

¹¹ ibid, p.16



Submission to the Department of Home Affairs

Modern Slavery Act 2018 (Cth) Draft Guidance for Reporting Entities

23 May 2019



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Anti-Slavery Australia is a specialist legal research and policy centre at the University of Technology Sydney working to end human trafficking, slavery and slavery-like practices such as forced labour and forced marriage in Australia. Anti-Slavery Australia provides legal advice and representation to men, women and children who have experienced human trafficking, slavery and slavery-like conditions in Australia.

Acknowledgements

, Researcher at Anti-Slavery Australia

Lawyer at Anti-Slavery Australia

With thanks to s47F and s47F and s47F pirector of Anti-Slavery Australia

EXECUTIVE SUMMARY

Anti-Slavery Australia welcomes the opportunity to provide comments on the Draft Guidance for Reporting Entities (Guidance) to the Modern Slavery Act 2018 (Cth).

Anti-Slavery Australia recommends 12 amendments to the Guidance primarily focused on expanding guidance on the definition of modern slavery, motivators for voluntary reporting and further examples of how civil society organisations can support entities and respond to cases of modern slavery in Australia.

This submission draws upon Anti-Slavery Australia's research and advocacy as well as Anti-Slavery Australia's extensive experience for over 10 years in working with, and providing legal and migration advice to, survivors of human trafficking and slavery within Australia.

1. GENERAL COMMENTS

The Guidance provides a comprehensive framework for reporting entities. In particular, Anti-Slavery Australia welcomes the Guidance's use of the United Nations Guiding Principles on Business and Human Rights.

Anti-Slavery Australia suggests that overall, the Guidance could:

- a) reword parts of the Guidance to use language that is focused more on the worker or potential victim and their needs, rather than the entity or supplier;
- b) include more case studies or examples on modern slavery in Australia, and
- c) hyperlink internal references to sections, appendices or figures within the document for ease of use.

2. COMMENTS ON CHAPTER 1: INTRODUCTION

2. COMMENTS ON CHAPTER 1: INTRODUCTION

Amend Figure 1, page 9 – How does modern slavery impact your entity?

Anti-Slavery Australia welcomes and supports the Guidance's acknowledgment that collaboration between business, government, civil society, investors and consumers is vital in combating modern slavery. Civil society organisations have spent many years collaborating and engaging with business, government, consumers and survivors to enmodern slavery.

In recognition of that crucial role, Anti-Slavery Australia suggests that 'civil society' in Figure 1 include an additional point of 'supports survivors' to acknowledge the work that civil society plays in directly supporting people affected by modern slavery.

Page 2 of 9

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3. COMMENTS ON CHAPTER 2: DO I NEED TO REPORT?

Amend the heading 'Why is this requirement in the Modern Slavery Act?', page 16

For the sake of clarity, Anti-Slavery Australia suggests amending 'Why is this requirement in the Modern Slavery Act?' (on page 16) to 'Why is reporting a requirement in the Modern Slavery Act?'.

Expand on the explanations at paragraphs 39.1 or 40.1, page 16

Anti-Slavery Australia recommends that this chapter acknowledge (at 39.1 or 40.1) that all businesses have a responsibility to respect human rights before going on to outline that the reporting requirement only applies to businesses with consolidated revenue of at least \$100 million. This is consistent with Principle 14 of the UN Guiding Principles on Business and Human Rights:

14. The responsibility of business enterprises to respect human rights applies to all enterprises regardless of their size, sector, operational context, ownership and structure. Nevertheless, the scale and complexity of the means through which enterprises meet that responsibility may vary according to these factors and with the severity of the enterprise's adverse human rights impacts.

Provide further guidance to help business understand the meaning of 'carries on business in Australia', page 17

Currently, the "How to: Determine if your entity is an Australian entity or a foreign entity carrying on a business in Australia" box on page 17 does not provide any guidance on how an entity (which is not a foreign corporation) might determine it meets the definition of section 21 of the *Corporations Act 2001* (Cth).

Anti-Slavery Australia recommends including a reference to:

- a. guidance materials issued by the ASIC or the ATO, or
- b. examples taken from recent case law on the interpretation of section 21,

to assist entities in understanding this threshold. For example, "Regulatory Guide 235 · Registering your business name" issued by ASIC includes a section at RG 235.31-34 that provides a plain English explanation of what 'What does 'carrying on a business' mean?'.

4. COMMENTS ON CHAPTER 3: CAN I REPORT VOLUNTARILY?

Additional reasons for reporting voluntarily

Anti-Slavery Australia welcomes the opportunity provided to entities of any size, who conduct business in Australia, to be able to report publicly on their actions in assessing and addressing their modern slavery risks. However, Anti-Slavery Australia suggests that this chapter highlight how:

- a. voluntarily reporting is an opportunity to demonstrate leadership, and
- b. modern slavery can occur in the operations and supply chains of entities of any size.

For example, paragraph 49.1 could be expanded to include the following statement:

Smaller entities who do not meet the reporting requirements may be more aware of modern slavery risks in their business operations and may be better equipped to respond or support communities at risk where they operate. Entities who identify these risks proactively and support measures to prevent or reduce the risk of modern slavery display admirable corporate citizenship.

5. COMMENTS ON CHAPTER 4: WHEN DO I REPORT?

Amend title of Figure 4, page 21

Anti-Slavery Australia suggest amending the title of Figure 4 to 'Timeline for reporting for entities operating on an Australian Financial Year' (amendments in italics) to acknowledge and clarify that entities will have a variety of reporting periods.

6. COMMENTS ON APPENDIX 1: WHAT IS MODERN SLAVERY?

Include references to additional definitions of modern slavery, page 59

The appendix refers to 'clear legal definition[s] in international or Australian law'. Anti-Slavery Australia suggests including an additional appendix or table below the description that lists the Australian laws and international treaties that have definitions of modern slavery, for example:

- a. Criminal Code Act 1995 (Cth)
- b. Modern Slavery Act 2018 (Cth)

- c. Modern Slavery Act 2018 (NSW)
- d. International Convention to Suppress the Slave Trade and Slavery (1926)
- e. ILO Convention (No. 29) concerning Forced or Compulsory Labour (1930)
- f. Supplementary Convention on the Abolition of Slavery, the Slave Trade and Practices similar to Slavery (1956)
- g. Protocol to Suppress, Prevent and Punish Trafficking in Persons, Especially Women and Children (2000)
- h. ILO Convention (No. 182) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (1999).

Include an additional example of forced marriage in Table Three: Types of Modern Slavery, page 61

Anti-Slavery Australia anticipates that many reporting entities will struggle to identify how their supply chains could cause or contribute to a forced marriage due to the private and personal nature of marriage practices amongst their workers. The example of forced marriage listed on page 61 of the Guidance should include an additional example that is specific to the Australian context and focuses on entities whose core activities in their supply chain could be found to cause or contribute to forced marriage.

Religious institutions are the most likely entities to be at risk of causing or contributing to forced marriage because they are directly involved in the performance of marriages and training of marriage celebrants. One of the case examples should highlight religious institutions' unique role in being involved potentially with both the families and parties to a marriage prior to, and during, a ceremony through the oversight of marriage ceremonies or marriage preparation courses with parties.

An example of a forced marriage within this context is as follows:

A girl is sponsored on a prospective marriage visa to come to Australia to marry her a man chosen for her by her parents. When she arrives, she lives with her fiancé and his family who attend the local church. The girl's parents arranged this marriage without her knowledge or consent, forged her identity documents to increase her age from 16 years old to 18 years old and paid large amounts of money to the fiancé hoping that he will look after their daughter well in Australia.

When the girl arrives, she is not allowed to contact her parents, access any money given to her by her parents or leave the home. She pleads with her fiancé to allow her to return to her parents and break the engagement. He refuses.

The marriage celebrant who is to perform the ceremony tries to meet with the couple a few months before the wedding is planned but the fiancé keeps cancelling the appointments and eventually comes to an appointment alone to provide the documents needed to notify authorities about the upcoming marriage.

At the wedding, the marriage celebrant observes that the girl looks very young, speaks limited English and is unsteady on her feet. During the ceremony, the fiancé's mother insists that she will interpret the questions asked by the marriage celebrant to the woman and will interpret the girl's responses on her behalf. The marriage celebrant observes that the girl is escorted by the fiancé's family members wherever she goes.

7. COMMENTS ON APPENDIX 3: HOW DO I RESPOND TO A CASE OF MODERN SLAVERY?

Include examples to help illustrate considerations in responding to a case of modern slavery, page 67

Anti-Slavery Australia recommends that more examples accompany each of the bullet points in this appendix.

For example, '[r]ecognise that you may not be aware of all the victims involved or the extent of the exploitation' (on page 68) could include an example that states 'you have identified that one of your contractors uses forced labour at their farm; however this contractor may also have forced labourers on neighbouring farms that you're not aware of'.

Similarly, examples of '[r]eputable international and local organisations and civil society groups' could be listed to help entities '[c]onsider opportunities to collaborate with international and local organisations or civil society groups' (on page 68).

In order to provide guidance to entities on civil society organisations who have worked closely with government and businesses over the last decade, a list of civil society organisations in Australia could be included in this appendix, drawn from the Referral Guide in the National Action Plan to Combat Human Trafficking and Slavery 2015-2019 or membership of the National Roundtable on Human Trafficking and Slavery. A list of international civil society organisations could be drawn from a list provided by the United Nations Human Rights Office of the High Commissioner.

Include an additional bullet point that identifies Anti-Slavery Australia's services and provides guidance on how to respond to a case of modern slavery in Australia, page 68

Drawing on the content of the bullet point "Consider whether and how to involve law enforcement" (bottom of page 67), the Guidance should include a separate bullet point that outlines a best practice response to identified cases of modern slavery in Australia consistent with pillar four, victim support and protection, of the National Action Plan to Combat Human Trafficking and Slavery 2015-19.

Anti-Slavery Australia suggests amending the current bullet point to refer to considerations relevant to working with law enforcement overseas and include an additional bullet point to outline the specific response NGOs, like Anti-Slavery Australia, can provide in response to cases of modern slavery identified in Australia. For example:

If the case of modern slavery is in Australia, consider local support options and law enforcement

In Australia, there are a number of government agencies and civil society organisations that can assist you in assessing and reporting cases of modern slavery and seeking support for victims. Your response to a potential case should ensure that any actions you take do not harm any victim or survivor of modern slavery. Victims are often scared to report their situation to authorities for fear they will be harmed or deported.

You should consider the needs of the victim including giving them the opportunity to seek independent, confidential advice or legal and migration assistance. Anti-Slavery Australia offers a confidential, national advice line (Mon-Fri, 9am-5pm AEST) to support entities and victims in understanding what migration, legal or support options are available for victims in Australia. They work closely with government and civil society partners.

If someone is at risk of immediate harm, call Triple Zero (000). Any suspected situations of modern slavery can be reported to the Australian Federal Police on 131 237. The Australian Federal Police can refer victims to an Australian Government funded support program run nationally by the Australian Red Cross.

Example of a response to a case of modern slavery in Australia

May was trafficked to Australia, lured by the prospect of making money to help her sister study nursing. The recruiter/trafficker obtained her passport and visa and travelled with her on the plane to Sydney. He made her work from 7.30am-11.00pm in a local factory, 7 days a week and paid her \$10 per hour. He threatened to cancel the woman's visa and hurt her family back home if May went to the authorities. May called Anti-Slavery Australia, who provided advice and connected her to specialised services and supports. Anti-Slavery Australia also referred her to the Australian Federal Police, who then linked her in with the Australian Red Cross who provide the Support for Trafficked People program. Anti-Slavery Australia helped her obtain a personal protection order against the recruiter/trafficker and a permanent visa to stay in Australia. She is now an Australian citizen and secure emotionally and physically.

8. COMMENTS ON APPENDIX 5: HELPFUL RESOURCES

Anti-Slavery Australia suggests that the helpful resources include Anti-Slavery Australia's e-learning course (pages 71 to 73). Developed through a previous grant provided by the Australian Government, over 60,000 lessons have already been completed by users and feedback has continued to be extremely positive. Following the enactment of the *Modern Slavery Act 2018* (Cth), Anti-Slavery Australia has seen increased interest in the course, particularly from business.

Title	Overview	Why should I read this?
Anti-Slavery Australia e- learning course	Online course with separate modules covering different forms of modern slavery.	To learn more about modern slavery.

s22(1)(a)(ii)

Director

Modern Slavery Business Engagement Unit



24 May 2019

Dear s22(1)(a)(ii)

Submission on the Modern Slavery Act 2018 Draft Guidance for Reporting Entities

This submission is made on behalf of the Australian Corporate Accountability Network (ACAN). ACAN is a network of Australian civil society organisations, academics and trade unions working to promote accountability and respect for human rights by Australian businesses wherever they operate.¹

Thank you for the opportunity to comment on the Australian Modern Slavery Act 2018's Draft Guidance for Reporting Entities. ACAN appreciates the significant work that was put into this Draft Guidance and we welcome it as a positive development. We would make the following recommendations in order to further strengthen the Guidance and ensure that reporting entities clearly understand their obligations.

1. Provide further advice about how to respond to a case of modern slavery

Appendix 3 of the Guidance should draw further attention to the complex range of considerations that should be taken into account when deciding how to respond to modern slavery, including the interests of victims, their families and local community, the potential for improvement in business partner practices towards the elimination of slavery and the feasibility/ desirability of engaging with local government and/or non-government agencies in the locality where modern slavery has been discovered. The Guidance should also where possible include resources and details of organisations able to provide advice on relevant issues.

In cases where modern slavery is detected outside of Australia, entities should be guided against automatically reporting cases to police/authorities due to the potential risks to victims. Expert advice should be sought on the appropriate course of action and potentially DHA can assist in providing direction.

¹ For further information, see https://www.corporateaccountabilitynetwork.net/

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2. Encourage Ongoing Stakeholder Engagement

Chapter 5 of the Guidance describes stakeholder engagement as a way for entities to become more aware of what is happening in their supply chains and investment portfolios. We believe that that stakeholder engagement is important throughout the entire reporting process, including in stages leading to the issuing of statements, such as during the identification of risks and the design of measures to prevent and mitigate such risks. Reports are most effective when reporting entities work in partnership with stakeholders who can provide a more comprehensive account of risks in their supply chains and of possible measures to prevent and address risks, including remedial measures, and who can help assess the effectiveness of modern slavery procedures and policies. Stakeholders, including civil society organisations, local worker and union representatives and affected individuals, are allies in addressing modern slavery and should be consulted on an ongoing basis.²

Reporting entities should therefore be encouraged to consult with relevant stakeholders when designing and reporting on their policies and processes to prevent and address modern slavery in their operations and supply chain. The Guidance should also explicitly encourage reporting entities to form or join in multi-stakeholder sectoral or regional initiatives, which generally have good risk control in a given sector or region and facilitate the exchange of useful information between the companies concerned.

3. Include Effectiveness Criteria for Grievance Mechanisms

The Guidance refers to 'grievance mechanisms' a number of times in Chapters 5 and 8 but it does not provide advice to businesses on what an appropriate and adequate grievance mechanism might look like. Such mechanisms can be effective ways for companies to receive information about issues within their operations and supply chain and to undertake targeted action to resolve them in a timely fashion, rather than wait for and rely upon broader auditing processes.

The Guidance should describe the key criteria to ensure the effectiveness of grievance mechanisms, drawing on the UN Guiding Principles on Business and Human Rights, principle 31. These criteria should include worker confidentiality, the availability of translation in relevant languages, the availability hours which should enable workers to use the mechanism alongside their working hours, and timely follow up action.

4. Encourage a Gender Sensitive Approach

The Guidance should include gender considerations in each section to address gender-specific impacts. Companies should be aware that women are disproportionately affected by modern slaver in many sectors and regions and that over half of all victims of modern slavery are women. They are often exposed to high levels of violence, including sexual harassment and abuse, and threats of

² That said, we note that civil society organisations are often poorly funded and should not be expected to play the role of an unpaid advisor or modern slavery consultant for reporting entities. Both government and business need to consider adequate funding for advocacy and consultation for the sector to make this recommendation in the guidance more meaningful. It may be useful to include reference in the Guidance to the definition of civil society as set out in Office of the High Commissioner for Human Rights, Working with the United Nations Human Rights Programme: A Handbook for Civil Society (2008).

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other harm or termination if they lodge a complaint. Such gendered harm is not only a consequence of forced marriage but present in other forms of contemporary slavery.

The Guidance should encourage reporting entities to integrate a gender sensitive approach when seeking to describe and explain modern slavery risks under the Mandatory Criterion Three, and to describe the actions taken by the entity to assess and address those risks under Mandatory Criterion Four. A gender-sensitive approach may include conducting gender-sensitive human rights due diligence, collecting and disclosing gender disaggregated data, and providing gender-sensitive training throughout supply chains. Collaboration and discussion with women's rights organizations may help companies in identifying concealed gender-specific risks of modern slavery. The Unit should also consider highlighting 'at risk' groups, such as women, in "Table Four: Risk Indicators for Modern Slavery".

5. Provide clearer guidance as to what constitutes a supply chain and how to address it

In Chapter 5, where entities are required to describe their structure, operations and supply chains, the Guidance should encourage entities to provide specific, meaningful information about their operations and suppliers rather than simply identifying, for example, the 'region' where their operations or supply chains are located. It is only through the provision of greater detail that external stakeholders such as investors, workers or customers will be able to use the reports to independently gauge whether a company is accurately assessing and acting on its modern slavery risks. We would recommend that text is inserted in the preamble to Table One on page 27 and that the Table also make clear that it is best practice to identify suppliers by publicly disclosing the names and addresses of suppliers or factories

Many businesses will be concerned with how many tiers of their supply chain they should examine and what constitutes 'enough' due diligence. Companies should also be encouraged to conduct their due diligence in accordance with the guidance provided in the UN Guiding Principle and the OECD Guidance documents on due diligence. The Guidance should encourage entities to demonstrate continuous improvement in the scope and nature of their supply chain human rights due diligence. It should recognise that standard expectations will differ depending on the sector and sector specific guidance under the OECD's Proactive Agenda.

Further specific guidance should be provided on page 25 to reporting entities from the financial services sector concerning what concerns 'operations', 'suppliers' or 'business relations', so as to capture lending and other types of business relations within the financial sector. See https://mneguidelines.oecd.org/RBC-for-Institutional-Investors.pdf p 13-15.

6. Additional resources

We would recommend that the following additional resources be added to Appendix 5 of the Guidance:

 International Labour Organisation, Combating forced labour: a handbook for employers and business (2015) https://www.ilo.org/global/topics/forced-labour/publications/WCMS_101171/lang--en/index.htm

Freedom of Information Act

International Labour Organisation, Child Labour Guidance Tool for Business (2015), https://www.unglobalcompact.org/docs/issues doc/labour/tools guidance materials/ILO-IOE-child-labour-guidance.pdf

7. Small edits to make the Guidance more useable

A small number of changes to the Guidance would make it more useable:

- Where other documents are referred to, a link can be provided for ease of access.
- The 2018 Global Slavery Index report is mentioned as a resource, but more recent publications will be available during the lifecycle of the guidelines. The link to the GSI should be provided so readers can access the most recent report: https://www.globalslaveryindex.org/.
- The case studies and examples provided throughout the Guidance provide important direction for businesses, particularly concerning sector-specific risks. An index would greatly assist reporting entities and others to more rapidly pinpoint relevant Guidance and ensure that essential nuances are not missed due to the current length and complexity of the Guidance.

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Modern Slavery Business Engagement Unit Trade and Customs Division Department of Home Affairs slavery.consultations@homeaffairs.gov.au

24 May 2019 By Email

Dear Sir/Madam

Submission on the 'Modern Slavery Act 2018: Draft Guidance for Reporting Entities'

This submission is made in response to the consultation paper titled *Modern Slavery Act* 2018: Draft Guidance for Reporting Entities (**Draft Guidance**) released by the Department of Home Affairs on 29 March 2019.

Herbert Smith Freehills advises a broad range of clients in relation to human rights and modern slavery reporting obligations, including in Australia, the United Kingdom and France, and it is currently in the process of assisting a number of significant Australian entities implement modern slavery "readiness" programs.

1 Introduction

Overall, we consider the Draft Guidance will provide useful guidance to help reporting entities prepare and publish modern slavery statements (**Statements**) in accordance with the requirements under the *Modern Slavery Act 2018* (Cth) (the **Act**).

We do, however, have some comments on the Draft Guidance, particularly where we consider that the guidance creates an impression that the obligations under the Act are broader than what reporting entities are required to do to report based on the criteria specified in s16 of the Act. We have set out our comments, together with some suggested recommendations, in further detail below.

2 Meaning of 'operations'

The Act requires reporting entities to publish an annual Statement on, amongst other things, the risks of modern slavery in their 'operations', and the actions taken to assess and address those risks.

The Act does not define 'operations'. The Explanatory Memorandum contemplated that the Guidance would explain and clarify this term (and others), with a view to providing flexibility by ensuring different terms can be appropriately applied to the broad range of reporting entities, whose structure and operations may vary significantly, for example, depending on the size of an entity and the sectors and geographies in which it does business. Accordingly, it is appropriate that the Draft Guidance includes guidance as to what a reporting entity's 'operations' may include.

The Draft Guidance proposes to define 'operations' as including:

'any activity or business relationship undertaken by the entity to pursue its business objectives and strategy, including research and development, construction, production, arrangements with suppliers, distribution, purchasing, marketing, sales, provision and delivery of products or services, and financial lending and investments. This includes activities in Australia and overseas'.

Doc 78535043.1

¹ Page 25 of the Draft Guidance.



The proposed definition of 'operations' is very wide in scope and it is wider than the definition included in the Explanatory Memorandum to the Act.²

While the Act includes separate concepts of 'operations' and 'supply chains', the proposed definition of 'operations' is so broad that it does not retain this distinction, and goes so far as to include 'arrangements with suppliers' within the concept of 'operations'. This, in our view, is not consistent with the Act and may lead to confusion.

We also would not have expected that the proposed definition of 'operations' – either on an ordinary reading or by reference to international practice – would necessarily or in all cases extend to organisations/assets that the reporting entity does not itself control (e.g. investments) or to the activities of a reporting entity's customers (e.g. sales or financial lending).

In particular, including all 'business relationships' in the suggested definition of 'operations' extends the concept beyond its ordinary meaning. 'Business relationships' is a concept used in the UN Guiding Principles and refers to:

those relationships a business enterprise has with business partners, entities in its value chain and any other non-State or State entity directly linked to its business operations, products or services. They include indirect business relationships in its value chain, beyond the first tier, and minority as well as majority shareholding positions in joint ventures.³

The breadth of this concept, including the concept of entities being 'directly linked' (which goes beyond an ordinary meaning of 'operations') raises a number of questions as to how practically the entity would be able to comply with its reporting obligations under the Act.

While we agree that it is good practice for companies to consider modern slavery risks which they may contribute or be linked to in a broader context, for example through their business relationships or where they may have meaningful leverage or influence, the Draft Guidance is (we understand) intended to assist reporting entities to understand and comply with their reporting obligations under the Act. As such, we consider that the definitions it contains should be consistent with the obligations imposed by the Act and the ordinary or natural meaning of the terms used in the Act.

In our view, the term 'operations' as used in the Act is more naturally to be understood as referring to a reporting entity's own operations, in the sense of referring to activities which are under the control of the reporting entity. This is particularly the case where:

- (a) The Modern Slavery Bill was described as 'A Bill for an Act to require some entities to report on the risks of modern slavery in their operations and supply chains and actions to address those risks, and for related purposes';
- (b) Section 16(1) refers to 'the operations ... of the reporting entity'.

[emphasis added]

In our view, a definition along these lines would better enable reporting entities to focus on assessing risks with respect to those activities and to appropriately report on those matters. It is also consistent with the approach taken in other jurisdictions, such as the United Kingdom (where the *Modern Slavery Act 2015* is understood *not* to extend to financial lending and investment activities or to the activities of a reporting entity's customers).

² Paragraph 129 of the Explanatory Memorandum suggests that 'operations' is intended to cover 'any activity undertaken by the entity to pursue its business objectives and strategy. These activities may include research and development, construction, production, distribution, purchasing, sales, and financial lending and investments'.

³ Page 5 of the Corporate Responsibility to Respect Human Rights: An Interpretative Guide (2012).



We also suggest that the Draft Guidance be amended to clarify that many of the definitions used are non-statutory and, therefore, are only provided by way of guidance.⁴ As it stands, the mandatory language in the Draft Guidance may give the impression that these definitions are taken directly from the Act.

3 Additional clarity on nature of obligations under the Act

The Act only imposes *reporting* obligations on reporting entities.⁵ The Act does not impose obligations on reporting entities to conduct due diligence activities, remediation processes, or to respond to risks of modern slavery practices. Rather, it requires a reporting entity to *describe* action taken by the reporting entity to assess and address risks of modern slavery in its operations and supply chains, which includes *describing* any due diligence and remediation processes undertaken.⁶

As it stands, the Draft Guidance may create the impression that reporting entities are required by the Act to undertake these additional activities by its emphasis on the UN Guiding Principles in relation to due diligence, remediation and utilising leverage to assist a reporting entity's response if it discovers modern slavery practices.⁷ This is reinforced by the use of prescriptive and mandatory language throughout the Draft Guidance.

We are supportive of reporting entities going beyond what is required by the Act in identifying and remedying modern slavery practices that are uncovered in an entity's operations or supply chain. However, the purpose of the Draft Guidance is to assist entities to understand their reporting obligations under the Act. Accordingly, we suggest that the Draft Guidance should be focused on the legal obligations imposed under the Act (i.e. reporting) and provide practical guidance as to how reporting entities achieve such compliance. For example, the 'Key Tips to Write a Modern Slavery Statement' contains the type of guidance we consider ought to be included.

Parliament deliberately did not legislate express minimum requirements for modern slavery due diligence and remediation processes, leaving these processes to the discretion of reporting entities. We do not think that the Draft Guidance should operate to impose a quasi-legislative minimum standard and there is a risk that the Draft Guidance may be interpreted and applied prescriptively.

Broader context should, in our view, be included for information only, and clearly identified as such and differentiated from guidance on compliance with the reporting obligation. By way of example, we suggest that a clear statement should be included at the start of each appendix that the information contained in an appendix is additional information and a reporting entity is not required to comply with that appendix in order to comply with the Act. Similar statements should be included where broader material appears in the main body of the Draft Guidance.

4 A reporting entity's privacy obligations

In preparing annual Statements, reporting entities may be provided with information that is subject to privacy obligations under the *Privacy Act 1988* (Cth) or equivalent laws in other jurisdictions.

We suggest the Draft Guidance be amended to at least include a warning to reporting entities that information collected for the purposes of reporting may be protected under privacy legislation and care should be taken to comply with the relevant legal obligations.

⁴ For example, the suggested definitions of 'structure', 'operations' and 'supply chains' on page 25 of the Draft Guidance, and 'risks of modern slavery practices' on page 30 of the Draft Guidance.

⁵ Section 16 of the Act.

⁶ Section 16(d) of the Act.

⁷ For example, see on pages 37 and 40 of the Draft Guidance.



5 Joint Statements – covered entities

Section 14(1) of the Act permits joint Statements to be submitted on behalf of multiple reporting entities.

The Act does not prescriptively limit the nature of the relationship that must exist between reporting entities who elect to submit a joint statement, rather it sets out requirements for joint statements, in particular for the consultation, approval, signature and submission of statements covering more than one reporting entity.

The Draft Guidance uses some language which might be read as more limited than the position under section 14 of the Act. For instance, paragraph 177.1 of the Draft Guidance suggests joint Statements can be used 'on behalf of a number of <u>related</u> reporting entities', and paragraph 182.1 provides an example of situations where the entities have 'some form of legal relationship with each other <u>and</u> use the same policies and systems'.

The Act, as worded, does not require a formal legal relationship between the reporting entities as a precondition to joint reporting, or that entities be 'related' bodies corporate in the sense used in other legislation. We also note that common policies and systems should also not be preconditions to joint reporting.

We consider that the flexibility for joint reporting which is currently provided for in the Act would be more accurately reflected in the Draft Guidance by omitting the type of language flagged in paragraphs 177.1 and 182.1 above (which is narrower than section 14 of the Act).

6 Joint Statements – reporting

Paragraph 185.1 of the Draft Guidance outlines that a joint Statement must 'address all of the mandatory criteria for each reporting entity'.

While we are supportive of paragraph 186.1 which explains that 'this does not mean you need to respond to each criterion separately for each entity', we consider that the subsequent reference to 'clearly show[ing] how your responses to each criterion address each reporting entity' may create confusion as to what is required. We consider that this latter wording is not required.

If further clarification was considered important, we submit the Draft Guidance could be expanded to include a disclosure example related to reporting in large corporate groups.

7 Form of Statement

Sections 13(2)(b) and 14(2)(b) of the Act require that Statements must be 'prepared in a form approved by the Minister'. The Act is silent on what form a Statement must take and (as at the date of these submissions) we are not aware of regulations or rules prescribing the approved form.

In the absence of regulations or rules, we suggest that the Draft Guidance provide clarity as to the form that a Statement must take. Ideally, this would be done by including the prescribed form. However, if that has not yet been determined, this clarification could be by way of either:

- (a) setting out an example Statement;
- (b) specifying the requirements of the Form; or
- (c) identifying when the prescribed form is intended to be made available.



8 Questions or comments

If you have any questions or comments on the above submission, please do not hesitate to contact either safe.

Yours sincerely

Herbert Smith Freehills



Modern Slavery Business Engagement Unit Department of Home Affairs

By email to: slavery.consultations@homeaffairs.gov.au

May 24, 2019

Modern Slavery Act 2018: Draft Guidance for Reporting Entities

Submission by the Responsible Investment Association Australasia

The Responsible Investment Association Australasia (RIAA) welcomes the chance to make a submission to the MSA 2018 Draft Guidance for Reporting Entities.

About RIAA and our members

RIAA is the is the largest and most active network of people and organisations engaged in responsible, ethical and impact investing across Australia and New Zealand. We are region's voice dedicated to promoting approaches to responsible investment that align capital with achieving a healthy and sustainable society, environment and economy.

RIAA has over 240 members managing more than \$9 trillion in assets globally. Our membership comprises superannuation funds, asset consultants, fund managers, financial advisers, dealer groups, banks, researchers and analysts, impact investors, venture capital investors, property managers, infrastructure investors and others involved in the finance industry, across the full value chain of institutional to retail investors.

Scope of feedback

The feedback provided in this submission refers to aspects of the Draft Guidance for Reporting Entities (the Guidance) that impacts investors as reporting entities.

Overall feedback

The current the Guidance is clear and concise and makes excellent use of examples to illustrate the guidance provided. The Office of Home Affairs is to be commended for this work.

With specific reference to investors - superannuation funds, fund managers etc. - the Guidance is less clear in helping guide reporting for this style of entity. It is also less clear whether it is intended for investor entities to report on their portfolios.

Specific feedback

1. A risk-based approach

The current Guidance does not say that those that must report, should consider their portfolioholdings; instead the draft Guidance instructs investors to take a risk-based approach.

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RIAA acknowledges the upside of encouraging investor to adopt a materiality/risk-approach in their assessment of their services and operations. In the longer run this may mean the sector becoming better skilled at modern slavery risk identification, assessment and management. It may also lead to investors broadening their lens from modern slavery to wider range of human rights risks and opportunities. However, what a pure risk-based approach fails to do is help direct investors to consider the salience of the impacts on rights holders due to human rights breaches in supply chains (and portfolios). The Guidance may be strengthened if it more clearly discussed modern slavery beyond being a matter to consider within the risk prism; without a broader narrative, the intent of this new law will not be fully realised.

2. UN Guiding Principles

We welcome the strength in anchoring the Guidance on the UN Guiding Principles on Business and Human rights (i.e. para 12.1) - which is bigger in scope than simply modern slavery. This is consistent with the focus of RIAA's 60+ strong Human Rights Working Group (HRWG) and its 2019 work plan including promulgating the Investors Statement in Support of Human Rights.

3. Influence of investors through the portfolios they manage

Finally, we welcome the Guidance calling out investors for the leverage they can have through the better management of the portfolios they manage on behalf of beneficiaries.

To strength the intent of this gesture, it may be helpful to add an example for investors in the section on identifying risks (i.e. para 96.1). An investment company's statement could explain that the entity has identified there is a risk directly linked to your entity to modern slavery practices because parts of its portfolio comprised companies operating in emerging markets where regulation and supervision of labour practices is not consistent with slave-free conditions. Equally an investment company's statement could explain that the entity has identified there is a risk directly linked to your entity to modern slavery practices because parts of its portfolio comprised securities issued by countries that have not ratified international conventions related to modern slavery abolition.

Impact on RIAA and what next

Given the high revenue reporting threshold, only a small number of funds and superannuation funds will be required to report under the MSA. Many of these already report under the UK system. Given the role of investors in helping hold companies to account for their respect for human rights, RIAA will be encouraging its members to undertake voluntary reporting. We believe this is important for two main reasons:

- To become better at understanding how due diligence in supply chain management works,
- To become better acquainted with the reporting process which in turns assists investors in their engagement with companies managing complex supply chains. 운

To this end, a key initiative of the RIAA Member HRWG in 2019 is the development and

promulgation of a guidance note for investors in reporting on the MSA.

We look forward to working with the Department of Home Affairs in implementing the intent of the MSA.

CEO

Responsible Investment Association Australasia

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The Director Modern Slavery Business Engagement Unit **Department of Home Affairs**

Via email: slavery.consultations@homeaffairs.gov.au

27 May 2019

Dear Director

Submission regarding the Draft Guidance for Reporting Entities under the Modern Slavery Act 2018

Konica Minolta Business Solutions Australia Pty Ltd ("Konica Minolta Australia") thanks you for the opportunity to contribute to your consultation on the Draft Guidance for Reporting Entities ("Draft Guidance"). under the Modern Slavery Act 2018 (Cth) (the Act").

Who we are

Konica Minolta Australia is a fully owned subsidiary of Konica Minolta Incorporated ("KMI"). Konica Minolta Australia is a market leading provider of integrated print hardware and software solutions, 3D printing and robotics with the power to transform the business environment.

Our commitment to Human Rights

Both globally and locally, Konica Minolta Australia takes the protection of human rights seriously. KMI, a Japanese Incorporated company, is an active member of the Responsible Business Alliance (RBA), formerly known as the Electronic Industry Citizenship Coalition or EICC, a network of companies committed to supporting the rights and wellbeing of workers affected by the global electronics supply chain. Locally, Konica Minolta Australia works to cascade global practice in our value-chain by taking action to embed ethical sourcing. We also work closely with civil society to support their efforts to uphold the rights of victims of human trafficking in Australia and Cambodia.

Our Human Rights Position Statement first published in December 2016 sets out Konica Minolta Australia's commitment and approach to the mainstreaming and implementation of human rights across our business, which are aligned with the Sustainable Development Goals as well as key internationally recognized human rights laws and standards.

General Comments on the Draft Guidance

The Draft Guidance is a comprehensive but clearly written document, which succinctly and plainly sets out the broader international context in which this legislation has emerged and the international agenda which it seeks to address, with respect to the Sustainable Development Goals, adherence to the UN Guiding Principles on Business and Human Rights and the notion of Responsible Business Conduct, as well as emerging trends on ESG investment. The Draft Guidance is also very clear on the reporting requirements for business and other entities and how these can be met. We commend the Department and its Committee of Experts in this regard.

One area where the Draft Guidance could provide more insight and support to business is through the inclusion of more content on the practical measures and steps that businesses will need to take, preparatory to drafting their Modern Slavery Report. Whilst the legislation creates a reporting requirement, the meaningful action in addressing and reducing the incidence of modern slavery will come from the real actions that business takes as part of its a broader implementation program, which will then form the subject matter for its report. Whilst it is appreciated that

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no two businesses are identical and thus the responses needed from a program and implementation perspective will likely differ from business to business and sector to sector, some further practical guidance is strongly recommended at this early stage of action by business. A key part of this will be to set a level playing field and to help establish a basic understanding of what good corporate responses to modern slavery should look like, with a view to addressing slavery itself, not simply the reporting obligations enshrined in the Act. Whilst guidance on specific actions businesses or other entities can take has been provided at various junctures through the document, it would perhaps be useful for there to be a template step-by-step guide in one part of the Draft Guidance which brings all of those separate pieces of guidance together, thus aiding understanding for businesses approaching this for the first time. One way of doing this might be through the provision of an implementation case study.

Additionally, whilst we acknowledge the comments in the Draft Guidance intended to discourage complete or over-reliance on generic templates, it would be very useful for some sample templates to be provided to address the mandatory reporting criteria, much like the Workplace Gender Equality Agency (WGEA) does for their criterion. As a business that has thrice been recognized as an Employer of Choice by the WGEA, such reporting frameworks have been extremely helpful for our business in meeting such mandatory reporting requirements, establishing a roadmap of activities required and assisting in identifying data collection priorities.

Specific Comments on certain aspects of the Draft Guidance

- The reference in section 8.1 to the estimated numbers of victims of modern slavery in Australia might also
 make reference to the Global Slavery Index estimate in 2018 of approximately 15,000, and/or the Australian
 Institute of Criminology finding that "there are approximately four undetected victims for every victim
 detected."
- 2. It would be useful if section 69.1 explaining the relevance of the UN Guiding Principles appeared earlier in the Draft Guidance, perhaps where the UNGPs are first referenced.
- 3. The description and definitions with regard to the mandatory reporting requirements one and two, to describe the entity's operations and supply chains and the accompanying Table on page 27 are very useful.
- 4. The explanations provided on page 37 regarding Remediation and Due Diligence processes are an integral part of the Draft Guidance and it is likely that these concepts may be unfamiliar to many businesses, particularly that these should be viewed from a human rights perspective, not simply a legal or corporate due diligence and remediation perspective. It would be useful to expand on these further, perhaps with more examples to illustrate the concepts and highlight that remediation is likely to be a staged process with different actions required over a period of time.
- 5. The explanation on page 40 of the Draft Guidance concerning the role of influence and leveraging is very useful in helping businesses to understand what role they can play through their commercial relationships to address risk of modern slavery.
- 6. The KPIs set out on page 45 of the Draft Guidance highlight areas and functions of focus for setting internal performance indicators. It would be useful to include some examples relating to engagement with suppliers, illustrating in particular how these might be tracked over time. These examples could be linked with the principles set out in Appendix 2.
- 7. It would be useful to provide a telephone contact number for the Modern Slavery Business Engagement Unit in section 198.1 of the Draft Guidance as well as the website for the Unit's homepage and/or a resource page.
- 8. On pages 63 and 64 of the Draft Guidance under Geographic and Entity risks, it would be useful to include reference to freedom of association and collective bargaining rights in the country and entity ie, whether workers are able to freely join and advocate for their rights through trade union membership, in accordance with international human rights and labour rights standards.



We thank you for the opportunity to participate in this consultation. Should any further information be required, enquiries can be directed to:

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Small Business Commissioner Level 48, MLC Centre, 19 Martin Place, Sydney NSW 2000 GPO Box 5477, Sydney NSW 2001 T 1300 795 534 www.smallbusiness.nsw.gov.au

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s22(1)(a)(ii)

Director

Modern Slavery Business Engagement Unit Trade Modernisation and Industry Engagement Branch Infrastructure, Transport Security and Customs Group Department of Home Affairs

By email to slavery.consultations@homeaffairs.gov.au

Dear s22(1)(a)(ii)

MODERN SLAVERY ACT 2018 - DRAFT GUIDANCE FOR REPORTING ENTITIES

Thank you for providing the NSW Small Business Commission (NSWSBC) with the opportunity to contribute to the Department of Home Affairs document entitled 'Modern Slavery Act 2018 – Draft guidance for reporting entities'.

The NSWSBC advocates on behalf of small businesses, provides mediation and dispute resolution services, speaks up for small businesses in government, and makes it easier to do business through policy harmonisation and regulatory reform.

The NSWSBC focuses on supporting and improving the operating environment for small businesses, including the hundreds of thousands small businesses providing goods and services to government organisations and large businesses operating in Australia captured by the Commonwealth *Modern Slavery Act 2018* and the New South Wales *Modern Slavery Act 2018*.

The NSWSBC is committed to bringing an end to modern slavery by assisting small businesses to understand and mitigate the risks of modern slavery in their operations and supply chains. As such, the NSWSBC is partnering with the NSW Anti-Slavery Commissioner, Professor Jennifer Burn, and the NSW Department of Premier and Cabinet to engage with the business community regarding the new reporting requirements under the NSW *Modern Slavery Act 2018*. The NSWSBC is also consulting with peak bodies and a range of businesses to contribute to a State-wide guide for reporting entities.

The NSWSBC will advocate for strong measures to be put in place to prevent reporting entities to outsource their compliance requirements to small businesses in their supply chains imposing unnecessary regulatory burden and duplication of efforts on already resource-strained small businesses.

In reviewing the 'Draft guidance material for reporting entities' (the guide) produced by the Department of Home Affairs, the NSWSBC provides the below comments for the Department of Home Affairs' consideration to reflect on the issues and concerns expressed by the business community regarding the reporting requirements they will be subject to under the Commonwealth *Modem Slavery Act 2018* (the Act).

Hundreds of thousands of small businesses are indirectly captured by the Act.

The Act requires Australian entities (private, not-for-profit, Government) with an annual turnover of at least \$100 million to produce an annual public statement on the risks of modern slavery in their operations and supply chains and the steps undertaken to address these risks.

The Act is expected to cover over 3,000 entities, including the Australian Government, who must comply with the reporting requirement under the Act.¹ These entities are referred to as reporting entities and constitute the main audience for the guide that addresses the concerns from the perspective of reporting entities only.

There needs to be more consideration given to the concerns of hundreds of thousands of small businesses, who act as suppliers and sub-suppliers to reporting entities across all tiers of their supply chains.

In considering the different reporting entities that will be captured by the provision, there is also a need for clarification to ascertain the circumstances under which the organisations operating under a franchise model or parent and subsidiary organisations are required to report.

Recommendation 1:

The NSWSBC recommends that the guide address the concerns of small businesses indirectly captured by the Act.

Small businesses are at risk of red tape and duplication of efforts.

Small businesses supplying goods or services to reporting entities may be requested by their clients to provide information on their due diligence processes to mitigate the risks of modern slavery in their operations. Subsequently, a significant number of small businesses may need to respond to multiple reporting entities not only under the Commonwealth *Modern Slavery Act* but also under other laws such as the New South Wales *Modern Slavery Act* or the United Kingdom *Modern Slavery Act*.

The NSWSBC received feedback from small businesses in the agriculture sector who expressed their concerns about the risk of inconsistent and unreasonable requests for compliance from reporting entities. The agriculture sector represents 85,681 farm businesses in Australia, approximately 60 per cent of which are small businesses. More than 50 per cent of farm businesses have no employees at all.² Farm businesses have limited capacity to inform themselves or develop sophisticated policies and procedures to mitigate modern slavery risks. This example is representative of the concerns shared by many of the 2 million of small businesses in Australia.

In the light of this example, the NSWSBC welcomes that reporting entities are encouraged to ask their suppliers to respond to modern slavery risks in a way that is appropriate to their circumstances, including their size, capacity, structure, risk profile and leverage with their sub-suppliers.³ The NSWSBC is also supportive of the risk-based approach driven by large entities that have the capacity to meaningfully comply with the reporting requirement and the leverage to influence change in their supply chains.⁴

Department of Home Affairs - Modern Slavery Act 2018 - Draft guidance for reporting entities, p.14

² National Farmers' Federation – Food, Fibre & Forestry Facts, 2017

³ Department of Home Affairs – *Modern Slavery Act 2018* - Draft guidance for reporting entities, p.66

⁴ lbid., p.16

Released by Department of Home Affairs under the Freedom of Information Act 1982

However the NSWSBC argues that without prescribed reporting requirements specifically tailored for small businesses who act as suppliers and sub-suppliers, reporting entities may impose on small businesses disproportionate regulatory burden and duplication of efforts leading to increased costs for suppliers. Rightfully, the guide suggests that reporting entities should avoid outsourcing compliance to their suppliers but there is no provision to prevent this from happening.⁵ The NSWSBC is of the view that the significant power imbalance between reporting entities and small businesses must be addressed.

The merits for clear guidelines and templates have been discussed in length through numerous Government's consultations before and after the introduction of the Act. While the NSWSBC appreciates the benefits of an industry-led initiative, the NSWSBC encourages a prescriptive approach that ensures small businesses are supported in understanding their responsibilities under the Act.

In addition, the NSWSBC welcomes the consistency across jurisdictions ensuring that approved Modern Slavery statements in Australia can be recognised under certain conditions in another state (e.g. New South Wales) or another country (e.g. United Kingdom) that possess similar laws to the Commonwealth *Modern Slavery Act*. Small businesses should not be required to meet the multiple and varied approaches of reporting entities.

Recommendation 2:

The NSWSBC recommends the creation of a concise guide accessible to small businesses to raise awareness and assist small businesses to mitigate the risks of modern slavery in their operations and supply chains.

This resource should include:

- a self-assessment questionnaire highlighting the risks of modern slavery in recruitment practices and supplier selection processes, and
- a self-declaration template letter to highlight small business efforts to tackle modern slavery that can be provided to reporting entities.

Recommendation 3:

The NSWSBC recommends a similar mechanism of mutual recognition for small businesses who act as suppliers or sub-suppliers to multiple reporting entities, ensuring that a small business self-declaration approved by one reporting entity can in-principle be recognised by another reporting entity in Australia.

Small businesses represent over 2 million of people in Australia operating in excess of 2 million small businesses, with more than 50 per cent of small businesses having no employee, with various levels of understanding and involvement in combatting modern slavery. Investing in the small business community by providing a tailored assistance would allow for increased opportunities to raise awareness on the risks of modern slavery while minimising the disruption caused to small businesses by the introduction of the Act.

Small businesses are considered most vulnerable to disruption and should be supported by the Australian Government to minimise any potential flow on costs identified by the Department of Home Affairs in its Regulation Impact Statement.⁷

⁵ Department of Home Affairs – *Modern Slavery Act 2018* - Draft guidance for reporting entities, p.65

⁶ ABS Counts of Australian Business 8165.0

⁷ Department of Home Affairs – Regulation Impact Statement - Modern Slavery Reporting Requirement

Recommendation 4:

The NSWSBC recommends the role of the Modern Slavery Business Engagement Unit to be expanded to provide tailored assistance to small businesses indirectly captured by the Act.

As part of this assistance, the NSWSBC encourages the implementation of a feedback loop to allow small businesses to report requests by reporting entities that are not consistent with the reporting requirements under the Act.

The Australian Government is a major purchaser of goods and services from the private sector. As such it should be noted that in encouraging small business participation in the Commonwealth Government procurement market, the Australian Government as a reporting entity will be exposed to increased scrutiny from the business community and civil society.

The NSWSBC encourages the Department of Home Affairs to consult with the NSW Small Business Commissioner regarding the separate guide for Commonwealth entities covered by the reporting requirement, noting it has not been released for public comment yet.

The NSWSBC welcomes ongoing engagement in regards to this matter. To discuss any issues raised in this submission please contact state of state of

Yours sincerely

NSW Small Business Commissioner May 2019



31 May 2019

Modern Slavery Business Engagement Unit Trade and Customs Division Department of Home Affairs

BY EMAIL: slavery.consultations@homeaffairs.gov.au

MODERN SLAVERY ACT 2018: DRAFT GUIDANCE FOR REPORTING ENTITIES

The Financial Services Council welcomes the opportunity to make a submission in response to the Modern Slavery Act 2018: Draft guidance for reporting entities (the Draft Guidance).

The FSC is a leading peak body which sets mandatory Standards and develops policy for more than 100 member companies in Australia's largest industry sector, financial services.

Our Full Members represent Australia's retail and wholesale funds management businesses, superannuation funds, life insurers, financial advisory networks and licensed trustee companies. Our Supporting Members represent the professional services firms such as ICT, consulting, accounting, legal, recruitment, actuarial and research houses.

The financial services industry is responsible for investing almost \$3 trillion on behalf of more than 14.8 million Australians. The pool of funds under management is larger than Australia's GDP and the capitalisation of the Australian Securities Exchange, and is the fourth largest pool of managed funds in the world.

The FSC and its members welcome the development of guidance to assist reporting entities to comply with their obligations under the Modern Slavery Act (the Act).

Investors will play an important role in the development of reporting capacity in Australian businesses. In addition to making use of the reports developed by entities they invest in, a significant proportion of investors will also be required to undertake their own reporting.

To this end, the FSC plans to work with our members and other stakeholders to provide additional guidance to assist investors who are required to report, and would welcome the opportunity to work with the Department on any further guidance it intends to develop.

The FSC and its members look forward to ongoing involvement in the implementation of the Act and ongoing process of improving monitoring and reporting capability across Australian businesses. Investors will play an important role in the development of reporting capacity in Australian

Freedom of Information Act

Should you wish to discuss this submission please do not hesitate to contact me on (02) s47F

Yours sincerely,

Policy Manager

under the Freedom of Information Act 1982 age Released by Department of Home Affairs

APPENDIX:

FSC COMMENTS ON MODERN SLAVERY ACT 2018: DRAFT GUIDANCE FOR REPORTING ENTITIES

INTRODUCTION

The FSC and its members welcome the development of guidance to assist reporting entities to comply with their obligations under the Modern Slavery Act (the Act).

We are generally supportive of the guidance provided as a tool for businesses to understand their reporting obligations.

The introduction of Modern Slavery reporting provides significant opportunities for investors who will gain increased visibility of the risks in supply chains of organisations they invest in.

Investors will play an important role in the development of reporting capacity in Australian businesses. In addition to making use of the reports developed by entities they invest in, a significant proportion of investors will also be required to undertake their own reporting.

Investors will play an important role in ensuring businesses are not unduly punished for reporting slavery in their supply chains, where they are actively involved in rectification and risk reduction activities.

We expect to see large investors actively working with the organisations they invest in, to improve monitoring and outcomes throughout supply chains.

CHALLENGES OF REPORTING FOR FINANCIAL SERVICES

While the Draft Guidance provides a large amount of information to help businesses comply, it does not provide a significant amount of direction specific to the financial services sector.

Exposure of financial services entities to modern slavery risk

FSC members recognise that they have direct exposure to modern slavery risks in relation to their own business operations and supply chains – for example, through outsourcing or offshoring of operational functions, procurement practices, activities of subsidiaries or controlled companies etc.

Most of the example scenarios in the Guidance Note reflect these types of situations, and are directly within the purview of our members' boards and management to identify and remediate in the manner envisaged in the legislation. FSC members will report like all other businesses with respect to these direct business operations, where they meet the reporting entity criteria (or may elect to do so voluntarily if they are outside those criteria).

However, the inclusion of the term "financial lending and investments" in the definition of "business operations" in the Guidance Note appears to go beyond these direct business operations, and to capture portfolio holdings of investment managers and superannuation funds (as well as lending institutions such as banks). In some circumstances, this will create significant complexity.

In the case of, say, an international share portfolio managed by one of our member organisations, investment exposures can entail many thousands of individual holdings in listed equity markets globally, in some cases replicating entire markets as represented by recognised indices. The extent of exposure is even higher if we include debt instruments such as sovereign debt, corporate bonds etc. which are also typically held in professionally-managed portfolios of fund managers and superannuation funds.

This means that Australian investment managers and their clients are in effect "directly linked" to the sum total of all modern slavery risks – and indeed all other ESG investment risks – across all sectors of the global economy, at least to the extent that those risks exist in entities trading in publicly-traded equity and debt markets.

This is a similar situation to other endemic risk factors that are embedded across multiple sectors of the economy (climate risk being a notable contemporary example) and has seen the emergence of the notion of "universal ownership" as a guiding principle of institutional investors' role in the modern economy.

We believe that our industry can and does play a critical role in addressing modern slavery risks at a systemic level, through mechanisms such as:

- Company engagement and proxy voting;
- Advocacy for regulation to improve disclosure and management of material risks by companies (including the Modern Slavery Act);
- Investor collaboration;
- Where appropriate, exclusion of or divestment from recalcitrant companies.

But the nature of our members' influence and ability to effect change in particular cases is quite different from the direct operational, corporate ownership or supply chain-based scenarios featured in the paper.

The level of influence investors have will also very based on their corporate structures and investment strategies. For example, actively managed funds investing in Australian companies (with their own disclosure requirements under the Act), can reasonably be expected to consider these disclosures. However, for investors with passive strategies (including ETFs) and global equities (where reporting may not be mandatory), it may not be possible or reasonable to expect direct investor influence.

It would be helpful for these issues to be more clearly noted in the guidance document.

Corporate Structures

In particular, the conglomerate structures of many large financial services organisations make it difficult to understand how their business should structure their reporting processes.

Some examples of situations where it is difficult for an organisation to determine the appropriate structure for their report include:

- Where an in-house fund management function acts as both an investor and supplier
- Where a Responsible Entity, an RSE Trustee and/or an IDPS operator operate and have separate regulatory reporting requirements to its parent

While it is not possible to develop a single prescriptive approach to defining organisational structures, we believe the sector could benefit from additional guidance to ensure a broadly consistent approach to reporting can be developed across the industry, and intend to engage closely with other industry stakeholders to ensure a common approach. This would significantly assist investors and other interested parties in reading and comparing reporting between financial services entities.

The FSC and its members are beginning to examine the opportunities to develop guidance specific to our membership in relation to both of the above issues. We would welcome the opportunity to work with the Department, as well as other relevant stakeholders, to develop additional compliance guidance for the finance sector.

> under the Freedom of Information Act 1982 Released by Department of Home Affairs





Modern Slavery Business Engagement Unit Department of Home Affairs Email: slavery.consultations@homeaffairs.gov.au

31 May 2019

To whom it may concern

Modern Slavery Act 2018: Draft guidance for reporting entities

PricewaterhouseCoopers (PwC) welcomes the opportunity to provide a submission regarding *The Modern Slavery Act 2018: Draft guidance for reporting entities* (**draft guidance**).

As a leading professional services firm, we're committed to respecting and upholding internationally recognised human rights. We see this as being integral to our global purpose, which is to build trust in society and solve important problems. At a global level we are long standing members of the UN Global Compact and we have a standalone, global Human Rights Statement. This sets out the commitment of all PwC Network territories to uphold human rights with our key stakeholder groups anywhere in the world.

PwC Australia already has policies in place to manage the human rights risk associated with our operations and supply chain. We also seek to share our approach to human rights with our business partners and through the specialist advice we offer to our clients a summary of which can be found here:

https://www.pwc.com.au/pdf/modern-slavery-repoting-in-australia.pdf

We commend the Department on the development of the draft guidance and believe that it provides a useful starting point for organisations seeking to understand the requirements of *The* Modern Slavery Act. Areas that we recommend that the Department consider as it seeks to finalise the guidance are as follows:

e commend the Department on the development of the draft guidance and believe that it ovides a useful starting point for organisations seeking to understand the requirements of *The odern Slavery Act*. Areas that we recommend that the Department consider as it seeks to alise the guidance are as follows:

• Guidance on describing a reporting entity's supply chain. The current guidance notes that a supply chain represents goods and services sourced in Australia or overseas and extends beyond direct suppliers. We believe that the guidance would benefit from further examples to assist users in understanding how to consider tiers of their supply chain beyond direct suppliers (e.g. how far down the supply chain to go and how they may prioritise associated risks).

**CeewaterhouseCoopers*, ABN 52 780 433 757*
**Enternational Towers Sydney*, Watermans Quay*, Barangaroo NSW 2000*, 161 2 8266 0000, F: +61 2 8266 9999*, www.pwc.com.au

PricewaterhouseCoopers, ABN 52 780 433 757



• Clarifying the reporting requirements regarding 'customers' of the entity's goods and services. The guidance notes that an entity should consider including the modern slavery risks of its customers within its statement, where there is a 'direct link' to those risks. The example provided was in relation to funding a client to undertake an overseas infrastructure project, which might lead to a direct link to modern slavery practices (refer 'Risk of Modern Slavery Practices' in the Key Terms section of Chapter 5). This concept of considering customers is not clearly elucidated in the Act, and was not mentioned in guidance material published at the time of enactment. Further clarification and guidance would be helpful in ensuring that Modern Slavery statements are considering customers appropriately and consistently.

We would welcome the opportunity to di	scuss our views further. Please contact either 847F
or ^{s47F}	
Kind regards	
547F	s47F
Partner Risk Consulting	Partner PwC Legal



2 June 2019

Modern Slavery Business Engagement Unit Department of Home Affairs 6 Chan Street Belconnen ACT 2617

By email: slavery.consultations@homeaffairs.gov.au

Dear Modern Slavery Business Engagement Unit,

Modern Slavery Act 2018 – Draft Guidance for Reporting Entities

The Global Compact Network Australia (GCNA) welcomes the opportunity to make a submission in relation to the Department of Home Affairs' ("the Department") Draft Guidance for Reporting Entities ("Draft Guidance") who are subject to the Commonwealth Modern Slavery Act ("the Act").

The GCNA was pleased to be a member of the multi-stakeholder advisory group supporting completion of the Draft Guidance and would like to recognise the Department's significant efforts in ensuring a variety of stakeholder voices contributed to its contents.

The GCNA is supportive of measures aimed at improving the understanding of the Act's reporting requirement, and mechanisms that will enable business to effectively report. We also commend the Department for including guidance on how to prevent and address modern slavery in practice as many companies will be looking at these issues for the first time as they prepare their first statements under the Act. We note that this submission has been informed by engagement with GCNA members and various stakeholders, however it represents the GCNA's views and not the views of any particular GCNA member or members.

Broad Commentary

The Department's Draft Guidance provides a clear and practical guide that should enable all businesses (including smaller businesses who wish to voluntarily report) to have clarity as to what is expected of them. The Draft Guidance, in its current form, should also act as an aid to support businesses to build their internal capacity to report against the Act and as a tool for other stakeholders including investors, consumers, business partners and civil society organisations to know what they can ask of business regarding modern slavery reporting. Home Affairs

The GCNA's submission to the Senate Legal and Constitutional Affairs Committee on 25 July 2018 (attached to this submission) outlined the areas that the Guidance should incorporate. This included:

- 1. What modern slavery is, so that companies understand what they are looking for.
- 2. Helping companies to identify red flags, both for modern slavery itself as well as the factors that may lay the groundwork for modern slavery.
- 3. Explaining how modern slavery fits into the broader human rights risk management framework.
- Good practice examples around due diligence and remediation processes relating to conduct at home and abroad.
- Clarity on expectations around reporting on the actions of subsidiaries and other business partners (e.g. what is expected in the requirement to "consult with each reporting entity" for joint statements).
- 6. Good practice examples of how to engage different corporate functions as well as the board including expectations around approval processes by governing bodies.
- Good practice examples of multi-stakeholder partnerships to manage modern slavery risks and to reduce preconditions for modern slavery.

It is our opinion that the Draft Guidance generally provides insights and resources to support the items listed above. The GCNA is particularly encouraged to see strong links between the Act and core international human rights standards so as to encourage consistency as well awareness by Australian businesses of the foundations of modern slavery. This includes the Draft Guidance's clear efforts to align the Act with the UN Guiding Principles on Business and Human Rights.

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However, there are also areas where the Draft Guidance could be strengthened. For example, the Draft Guidance could say more about how businesses could engage different corporate functions and the board, not only on obtaining necessary reporting approvals but also on modern slavery risk management. Practitioners responsible for implementing the Act and responding to the Act's reporting requirement will need to ensure that they can effectively engage different corporate functions and explain the requirements of the Act to senior management and the board. As such, the Draft Guidance could be strengthened by including case study examples of how to engage different business units on the Act and human rights more broadly including functions such as legal, risk, procurement, sustainability and human resources. This might include suggestions on how to ensure that discussions are relevant to a cross-section of corporate functions.

In addition, the Draft Guidance could be strengthened by including stronger examples/case studies of:

- Factors to identify modern slavery in the context of broader human rights impacts such as failure to pay a living wage and other poor labour conditions including by referencing external sources in relation to the list at Appendix 1. For example, including stronger reference to the <u>US Department of Labour's List of Goods Produced</u> by Child or Forced Labour, the Transparency International Corruption Perception Index and the Global Slavery <u>Index</u> all of which might provide good indicators of underlying human rights and modern slavery risks.
- How modern slavery fits into the broader human rights risk management framework, including by referencing other international standards, such as the OECD Guidelines for Multinational Enterprises and their associated due diligence and sector-specific guides.
- How business should undertake due diligence and remediate involvement in modern slavery, including more examples of what might be items to report under each element of human rights due diligence as defined in the UN Guiding Principles on Business and Human Rights . This might include specific case studies demonstrating how to undertake different elements of human rights due diligence, and a few case studies that provide insights on how different businesses have remediated an adverse human rights impact, including labour rights impacts that may lay the foundations for modern slavery. The examples should demonstrate both an Australian and global context and could reference the Corporate Responsibility to Respect Human Rights: An Interpretative Guide.

Inclusion of the UN Guiding Principles on Business and Human Rights

In our submission to the inquiry into a Modern Slavery Act, we emphasised that any legislation should be consistent with – and be implementing of – the UN Guiding Principles on Business and Human Rights (UNGPs).

As the authoritative global standard for preventing and addressing the risk of adverse impacts on human rights linked to business activity, and the best practice framework for governments and businesses to follow to implement business respect for human rights we commend the Department for their inclusion of the UNGPs into the Draft Guidance.

The GCNA remains strongly of the view that modern slavery risk management should be situated within a broader human rights framework in line with the UNGPs. To that end, while as noted above, we encourage some further case studies and examples around these concepts, we also commend the Department for the inclusion of guidance on the terms due diligence and remediation processes in the context of the UNGPs. This will be important to ensure consistency, avoid confusion and encourage a more holistic approach to modern slavery risk management. Ultimately, this will also drive better performance around all internationally recognised human rights.

Specific Commentary

Whilst the GCNA is supportive of the Draft Guidance, we felt it prudent to provide some specific feedback about certain paragraphs and sections in the Draft Guidance. Whilst this feedback is not exhaustive, it captures what we interpret as the main considerations for the Department.

Paragraph 9.1: As the level of sophistication of businesses required to report under the Act will vary, and with due consideration for those businesses who may voluntarily report, it would be beneficial to include case studies that demonstrate how modern slavery impacts are linked to other crimes, such as bribery and corruption and environmental damage. This includes looking out for red flags relating to modern slavery when bribery is suspected or found, given the correlation that can occur between the two, as well as potential partnerships companies could enter into to address some of the root causes of modern slavery including corruption. This is particularly pertinent when the Act is considered in the light of changes to the Australian legislative environment on matters surrounding bribery and corruption including, for example, the recent changes to the Whistleblower Protections Bill (2018) and the impending failure to prevent foreign bribery offence which is currently being considered by Parliament. This will also assist practitioners with having more meaningful engagement with different corporate functions across their business.

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Paragraph 10.1: As with the suggestions above, it would be beneficial to have specific case studies on how modern slavery has affected victims both from an Australian and global perspective. Lived experience examples are crucial for driving social change, provide businesses with an understanding of the need for due diligence and remediation for human rights risks and would also assist the Modern Slavery Business Engagement Unit with enhancing awareness raising about modern slavery and its implications.

Paragraph 12.1: As discussed above, we welcome the inclusion and reference to the UNGPs, however these should be mentioned in the context to broader human rights risks. For example, the sentence could be rewritten to state: "This includes taking action to prevent, mitigate and, where appropriate, remedy adverse human rights impacts, including modern slavery, that might occur in your entity's operations and supply chain..." The introductory sentence to this paragraph could reiterate too that freedom from slavery is an internationally recognised human right. This paragraph should also mention other relevant international guidance, such as the OECD Guidelines for MNEs.

Paragraph 14.1: The GCNA welcomes the reference to the Sustainable Development Goals (SDGs), particularly Target 8.7. Whilst there is growing awareness and understanding of the SDGs in business, it is the GCNA's experience that many businesses are not engaged with the SDGs, nor are they aligning their strategies, processes and reporting to the SDGs. As such, the Department would benefit from referencing guidance material on the SDGs, including the Australian Government's SDG site – www.sdgs.org.au, with potentially specific reference to positive projects carried out by business to help address the foundations of modern slavery.

Paragraphs 19.1 to 26.1: Noting that there is more detail in Chapter 2 about who is required to report, these paragraphs would benefit from clarifying, up front, that the reporting requirement only applies to entities whose consolidated revenue is at least AUD \$100 million. This section would also benefit from noting that the Department encourages businesses of all sizes to submit a Modern Slavery Statement.

Paragraph 26.1: The Department could strengthen this paragraph by referencing the work of other Commonwealth Departments, for example the work undertaken by the Department of Foreign Affairs and Trade on the Bali Process.

Part 5 – Paragraph 81.1: In this paragraph ,and elsewhere the Draft Guidance, it could be clearer that while the reporting entity may choose to exclude certain parts of its business, such as a joint venture, from its reporting in line with the Act, in terms of reporting directly on the joint venture's supply chain or management of modern slavery risks, the reporting entity is still strongly encouraged to report on its own efforts to set clear expectations of the joint venture to manage those risks. This would presumably be part of reporting on the entity's steps within its operations and supply chains consistently with the Act. In discussions with investors and civil society organisations in particular we have found that it is increasingly less acceptable for a company to simply say it cannot comment on the activities of its business partners when asked what it itself has done to set expectations of that partner, especially in a joint venture scenario. The Department can play an important role in helping businesses to understand these emerging views from external stakeholders and build their capacity to effectively respond.

Paragraph 100.1 and the associated 'How to' box: The GCNA is concerned that the use of the term "basic" in reference to scoping exercises might dilute the effectiveness of how companies subsequently undertake due diligence on their phuman rights risks. We are also concerned that it does not given adequate attention on the requirements underpinning the Act and the expectations outlined in the UNGPs about how a company can assess its human rights risks. Whilst acknowledge that there is a section on due diligence, our recommendation is to remove the term "basic" from the scoping process. The 'How to' box could be strengthened by referencing other global sources for identifying sectors and countries that have high modern slavery risks including the *US Department of Labour's List of Goods Produced by Child or Forced Labour*, the *Transparency Corruption Perception Index*, the *Global Slavery Index* and the *Responsible Sourcing Tool*. The Department might also consider providing a definition for scoping and due diligence in the appendix to avoid confusion between the two terms.

Mandatory Criterion Four - Paragraphs 102.1 to 108.1: With due consideration for the inclusion of specific case studies.

Mandatory Criterion Four - Paragraphs 102.1 to 108.1: With due consideration for the inclusion of specific case studies, as mentioned above, the Department would benefit from describing the Australian National Contact Point ("AusNCP") as an option for companies to engage with in the event of an adverse human rights risk. The AusNCP can not only support business to understand due diligence but may provide a forum for resolution of grievances. While complaints are usually initiated by civil society organisations representing affected stakeholders, companies may also use the AusNCP mechanism if they do not feel that their operational level mechanisms would suffice to consider a complaint. It should also be clear that if a company has been the subject of an AusNCP complaint relating to modern slavery then they would be encouraged to discuss this process under mandatory criterion four. The Department might also consider referencing the AusNCP in Appendix 3.



Mandatory Criterion Five - Paragraphs 122.1 to 130.1: The effectiveness criteria of the Act is, in the GCNA's experience, the least understood section of the Act. Whilst the Draft Guidance highlights clearly that the aim is not to confirm the effectiveness of the company's response but rather to show how the company will determine effectiveness, there could still be more examples of best practice in this regard. More case study examples of effectiveness tools might be useful for this section of the Draft Guidance and/or a commitment to provide more examples of good reporting under this criterion after the first twelve months of reporting has been made public.

Part 6 - Paragraph 159.1: We are supportive of the requirement to have the statement approved as a stand-alone document and not part of a larger document, such as a sustainability report. The Draft Guidance could strengthen this point by explaining the benefits to business of not subsuming a modern slavery statement's approval into another reporting document. This includes that the governing body will have a more meaningful opportunity to consider the company's modern slavery risks and identify any gaps in risk management which could result in negative reputational, legal and operational consequences for the business.

Appendix 1, Table Four - Risk Indicators: The list of risk indicators provided in the Draft Guidance is a useful basis for companies to understand and identify modern slavery risks. The table could be strengthened by referencing other sources to identify modern slavery and broader human rights risks (including those mentioned in Appendix 5) and should note that the list is not exhaustive. The list should also include other responsible business conduct risks associated with adverse human rights risks such as examples of environmental degradation and bribery and corruption.

Appendix 2 and 4: These examples, whilst beneficial to building awareness and knowledge of how to work with suppliers and would benefit from some lived experience case studies. The Department might also consider listing the Responsible Sourcing Tool.

The GCNA has been pleased to provide an avenue of consultation for the Department on the Draft Guidance through forums such as our Modern Slavery Community of Practice and looks forward to continuing to work with the Department to provide a business voice on both reporting and modern slavery risk management in practice. The GCNA thanks the Department for the opportunity to make this submission.

Warm regards,

Executive Director Global Compact Network Australia Secretariat@unglobalcompact.org.au s47F Director & Chair - Human Rights

Director & Chair – Human Rights
Global Compact Network Australia
Home Affairs

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