Assurian Consultants is pleased to submit our responses to the Australian Home Affairs Department consultation on the Modern Slavery Act. We are a boutique regulatory advisory firm of highly qualified corporate and regulatory lawyers and compliance experts who have worked globally in Asia, Africa, Europe and the Middle East for our entire careers. We understand the world and the geopolitical landscape and have been involved in cross border investigations, disputes as well as being regulatory and compliance and transactional experts in both financial services industry and MNCs.

Liesl Tziolis has key experience in Turkey, South East Asia, Japan and in China and speaks fluent Turkish, Japanese and reasonable Mandarin and Colin Miller has deep experience in SE Asia, Australia, the Middle East and Africa.

1. **Do the 12 goals capture key areas of focus for Australia over the next five years?**

Assurian believes that the 12 goals go most of the way to encapsulating the policy priorities of the government in relation to Modern Slavery. However we do believe that there is a loop that needs to be closed in terms of implementing the laws and using the right levers to change behaviours. Currently, the legislation and none of the Guidance provides any mechanism or explanation on how behavioural change might be achieved.

Current Limitations on new Regime

Consumer awareness can of course be raised through well targetted campaigns and through investigative journalism. However, it still doesn't stop what is essentially transnational crime, which often is a predicate offence or can be linked to other financial crimes such as money laundering, tax evasion and terrorist financing. It is well hidden deliberately and can be extremely difficult to trace who is responsible for human rights breaches.

Imposing stringent liability on directors for something that is happening in the end user company's supply chain that they either may not reasonably be aware of nor cannot reasonably be aware of, and in most cases have no control over is not an appropriate way to change behaviour or stop such practices and in most cases will pin the blame on that party furthest down the chain of guilt.

2. **Should there be additional goals to address other areas of focus, emerging issues or trends? If so, what should they be?**

Review of current financial crimes and sanctions enforcement regimes

Assurian believes the most important consideration is for the Commonwealth to create a comprehensive and workable package of legislative tools which provide for a variety of offences as a deterrent and to change behaviour. Assurian believes that the Commonwealth has the basics of a comprehensive legislative arsenal but they are not yet in a form where they can be used jointly or severally to curtail the problem of Modern Slavery either directly or indirectly.

There is some discussion of Modern Slavery being a criminal offence under the Commonwealth Criminal Code and of directors of end user companies being liable under the Corporations Law or ASX Governance Codes. It is Assurian's view that this is not an effective deterrent for the actual perpetrators of Modern Slavery unless directors KNOWINGLY use slave labour in their direct operations. The real deterrent should be targeted at the actual part of the supply chain that is using Modern Slavery in their workforce. Economic sanctions and lack of access to key markets hit companies the hardest.

The current FCC legislative framework is:

1. Criminal Code
2. Autonomous Sanctions Act
3. Crimes Legislation Amendment (Combatting Corporate Crime Bill) 2017 ; and
4. Cartel provisions in the Competition and Consumer Act.

At the moment the Commonwealth Legislative framework is piecemeal and doesn't fit together or leverage off each other. The regulators are separate and siloed and look at different typology for enforcement actions.

OFAC in the US has recently prosecuted several modern slavery offences using their sanctions regime. They did fine the end user company but they used the sanctions offences in order to deal with the modern slavery issue. The most recent example is the E.L.F Cosmetics case - a Californian cosmetics company that supplies many big box retailers including Target in Australia. E.L.F was found to be in violation of several (complex) US sanctions laws because some of its packaging was made in North Korea. Because North Korea is on a sanctioned countries list for human rights abuses it was immediately taken as fact that E.L.F cosmetics was making use of products made by Modern Slavery. It is a simple but effective example of how using leverage across legislation can assist in preventing goods made using Modern Slavery from making it into the (US at least) supply chain.

According to OFAC, E.l.f. Cosmetics' compliance program was either "non-existent or inadequate throughout the time period in which the apparent violations occurred, and appears not to have exercised sufficient supply chain due diligence." However even if they did have a robust due diligence program often due to lack of transparency these types of issues can be difficult to uncover.

Further there are cases closer to home such as illegal logging in the Solomon Islands which end up as wooden flooring sold through major Australian retailers but the supply chain is a variety of related companies (unrelated to the end seller).

For example lets take the case of illegal logging in the Solomon Islands. There are many actors in this supply chain. The Malaysian company that is the front for the Chinese shareholders and the powerful Malaysian family that is the face of the company, the Chinese import/export companies, the fabrication mills in China, the logistics companies that ship product out of China to markets around the world as well as the buyers in those markets. At this stage the legislation only obligates the buyers to do their own due diligence and origin is extremely difficult to ascertain particularly on fungible products.

The US and to an extent the EU has had success in regulating behaviour through use of Sanctions against countries, or particular parties and Assurian advocates a similar approach where government assists compliance either through information availability and using legislative tools as well as the company's own internal due diligence programme.

Companies or persons in breach of human rights obligations CAN be made to change behaviour if they no longer have access to their key markets. They may try to hide it, they may use defamation and other lawfare proceedings or other trade relationship leverage to dodge responsibility but we must be prepared to face this head on with policy and legislation.

3. **The Government is committed to ensuring victims of modern slavery are supported, protected and empowered. Are there ways in which the Government can better reflect the voices of victims and their lived experiences in the 2020-24 Plan and Australia's response to modern slavery?**

Assurian has no particular views on victim support programmes (as this is outside our scope of expertise) except that they need to ensure that they are wide ranging because not all Modern Slavery is what people think it is. For example people being lured to Australia for a legitimate job and then are charged most of their salary to pay for accommodation, flights etc. This isn't the typical victim typology and should not be underestimated. This is a powerful way to money launder by using human endeavours and trust.

4. **The Government is committed to ensuring that we can measure the impacts of the 2020-24 Plan. Are there evaluation methods, data sources or metrics the Government should consider in developing an evaluation framework**?

Assurians view is that Modern Slavery compliance programmes should be part of a wider Financial Crime Compliance Programme. Screening public databases for red flags as well as properly conducted due diligence and onboarding of suppliers is essential for companies to evaluate their risks.

The government should maintain private databases of companies, individuals or countries who are found to be or suspected to be in breach of AML/CTF/Sanctions or Anti Bribery Laws. As an example financial services regulators in various countries maintain such lists (usually only of names) which are not available publicly and must be kept confidential. These lists are used to screen when conducting KYC checks. The Australian government could maintain such lists made available through secure log ins to registered users for another layer of screening when conducting due diligence for anti Modern Slavery purposes. The data should be descriptive and assist with company structures, types of business the companies are involved in as well as directors, senior management and shareholders (including if possible UBOs including any offshore companies.

Assurian's view is that mapping corporate structure, businesses of the group as well as ownership of the relevant corporate group is a helpful way to conduct a full risk based analysis of a supplier rather than simplified audit, due diligence on a first tier supplier and relying on their representations. It is Assurian's view, unfortunately, that many human rights abuses are being conducted by a subsidiary or a related or associated entity of the Tier 1 supplier particularly in transnational trade such as agriculture, mining, logging and construction. Relying on the Tier 1 supplier to answer due diligence questions and not coupling this with an overall due diligence on entire corporate structure (much like AML and sanctions screening) will inevitably lead to failures to identify issues where there are issues.