

22 November 2022

Modern Slavery Act Review Secretariat
Attorney-General's Department
3-5 National Circuit, Barton ACT 2600
Via email: ModernSlaveryActReview@ag.gov.au

Dear Sir/Madam

Review of Australia's Modern Slavery Act 2018

Chartered Accountants Australia and New Zealand (CA ANZ) and CPA Australia welcome the opportunity to provide feedback on the Review of Australia's Modern Slavery Act 2018 Issues Paper (Issues paper). Together, we represent over 304,000 professional accountants in Australia, New Zealand and around the world.

We support the dual aim of the Modern Slavery Act 2018 (the Act) which is to increase business and government awareness of modern slavery risks, and support entities to identify, report and address the risks. It is critical that business and government recognise the importance of viewing the Act, and its aim, holistically. Some members have expressed that, to date, many reporting entities have been focusing on meeting reporting requirements rather than understanding and investing in the due diligence process, including considerations around supply chain management and engagement, which underpins both the reporting and the aim of the Act. We are concerned that business's perception of the Act is of another government reporting requirement adding to existing regulatory compliance burden.

Appendix 1 outlines our general comments and we have also addressed specific questions from the Issues paper. Our comments combine feedback received from our members, many of whom are either involved with meeting modern slavery reporting obligations within their organisations or advise reporting entities and from employees within CA ANZ and CPA Australia, who are reporting entities under the Act.

Key points from our feedback are summarised below:

- We strongly support the establishment of an independent anti-slavery commissioner, who we see as an advocate and pro-active collaborator with business, state governments and international stakeholders.
- Many businesses remain unaware that they are captured under the Act. We encourage government to proactively identify and openly communicate with these businesses. This could be through establishing a list of entities required to report.

- We suggest government considers assurance and/or third-party verification procedures to improve the quality of information and data provided in modern slavery statements.
- As practices in this space continue to evolve, we recommend regular, ongoing statutory reviews of the Act to ensure that Australia is at the forefront of international modern slavery developments.
- We encourage government to promote outcomes of the Act, share reporting insights and potential future work plans. This transparent, retrospective and prospective outlook could assist in promoting greater confidence and engagement with the Act. Expansion and strengthening of practical guidance will also be key to supporting businesses to improve reporting.
- As a part of future reviews, we encourage government to consider the Act, its connections to broader requirements of human rights and how it would be incorporated in future sustainability reporting requirements while minimising any potential duplication.

If you have any questions about our submission, please contact Karen McWilliams (CA ANZ) at karen.mcwilliams@charteredaccountantsanz.com or Patrick Viljoen (CPA Australia) at patrick.viljoen@cpaaustralia.com.au.

Sincerely,

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Appendix 1 - General Comments

Many businesses are still unaware of reporting obligations

Some members, in particular those that are trusted advisors to business, have expressed their concern about the large number of businesses who remain unaware of the existence of the Act and/or of their reporting obligations under the Act. It is our understanding that the government does not currently have a defined list of entities that should be reporting under the Act. We are concerned that without a list of entities, the government will not be able to identify and proactively communicate with reporting entities, who may be genuinely unaware of their obligations. Further, we are concerned that this will impact the government's ability to effectively regulate compliance with the Act.

Additional compliance measures

As noted in the Issues paper, the need for additional compliance measures, including civil penalties is being considered as part of this three-year review. We do not oppose additional compliance measures, however we do believe that a balanced and fair approach needs to be taken with consideration of the type of compliance breach that is made. For example, if an entity has not reported because they were unaware of their obligations, a civil penalty maybe inappropriate. However if a reporting entity is aware of their reporting obligations, has been contacted by government and still does not report then additional compliance measures may be appropriate.

Government needs to take a leading role

We have had a mixed response from our members in relation to the role of government thus far. Some members have noted, based on their experience reporting under the Act, that it is perceived as a 'set and forget' project with minimal support, tailored guidance or government-led industry collaboration. Others felt there has been too much emphasis on report preparation to meet obligations rather than focusing on supporting businesses to understand and implement proper due diligence processes.

Government needs to take a leading role in raising awareness, supporting and engaging with business and industry as well as navigating geopolitical issues as they relate to modern slavery risks.

Assurance and engagement of third parties

The quality of information within modern slavery statements, which are housed on the modern slavery statements register, is mixed. Currently, the Act does not stipulate if assurance or third-party verification procedures can be utilised in relation to modern slavery statements. Further, it is common for varying levels of assurance to be provided on non-financial information contained within an organisation's sustainability and integrated reports. We suggest government considers



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how the reliability and credibility of modern slavery statement information can be improved through external verification and assurance procedures and if current practices, such as assurance provided on non-financial information, can be acknowledged within the Act.

Costs to business

In 2018, the regulation impact statement estimated that the average cost to implement per reporting entity would be \$21,950. This initial estimate was unrealistic and did not take into account the processes (internal and external) and resource changes (for some businesses) required. Reporting entities have indicated that initial implementation of the Act included the need to establish procurement teams, resource intensive amendments required for current supplier onboarding documentation, purchase and implement new purchasing software in order to meet the fundamental supply chain mapping requirements and the significant stretch on current resources and teams.

Members have stated that they do not consider the compliance costs have or will offset any potential regulatory gains. In fact, many noted that the cost of reporting has remained consistent (or increased in some cases) beyond the initial reporting period as there is a need for continuous improvement of processes.

In conversations with our members, it is evident that many businesses have focused on adapting their policies and procedures to meet reporting requirements rather than on better understanding the threats and drivers for modern slavery.

Anti-Slavery Commissioner

In the 2022-23 October budget, we note that the Government will establish a new unit within the Attorney-General's Department to scope options to establish an Anti-Slavery Commissioner. We strongly support the establishment of an independent Anti-Slavery Commissioner and believe that the role should be focused on supporting business coupled with pro-active advocacy and outreach. We envisage the Anti-Slavery Commissioner will also contribute to the geopolitical landscape and support the Australian Human Rights Commission.

The Anti-Slavery Commissioner should also work in collaboration with state based anti-slavery commissioners, such as NSW, to support compliance with the Act. Appropriate resourcing (both funding and staff) will be important to allow the Anti-Slavery Commissioner's office to fulfil their role.

Expansion of scope

Although outside the scope of this review, it will be important for government to consider future expansion of scope which recognises human rights and the evolving international sustainability-related landscape.

Human Rights

We consider that expanding the scope of modern slavery to capture a duty to prevent and address business-related human rights abuses will be key to ensuring Australian requirements are consistent with global frameworks such as the UN Guiding Principles on business and human rights.

Sustainability standards

It will be important for Treasury and the Australian Accounting Standards Board (ASSB) to consider the Act and its place within the evolving international (and domestic) sustainability-related landscape. It is expected that the International Sustainability Standards Board (ISSB) will expand their workplan and develop future standards on disclosure areas such as human rights.

We recommend that regular ongoing statutory reviews of the Act are conducted holistically across government to ensure there is minimal duplication between modern slavery statement requirements and sustainability reporting requirements when established in the future.

Consultation Questions

Impact of the Modern Slavery Act

1. Has the Modern Slavery Act had a positive impact in the first three years?

We believe that the Act has raised awareness amongst business and government. However, we note that the conversations about the Act have predominately focused on compliance with the reporting requirements, with less emphasis on the core considerations such as risks and due diligence.

It is unclear if the Act has had a positive impact. Some members have questioned whether the information from statements has contributed to any change of behaviour as currently there is no information or analysis available from Government.

2. Is the 'transparency framework' approach of the Modern Slavery Act an effective strategy for confronting and addressing modern slavery threats, including the drivers for modern slavery?

In principle, the transparency framework has been an effective starting point to raise awareness of modern slavery amongst the business community. However, we are unsure if it has been an effective strategy for confronting and addressing modern slavery threats. Some reporting entities indicated that they view reporting under the Act as a 'report and forget' exercise and that there has been no tangible use of the information that has been submitted to government.



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3. *Should the Modern Slavery Act be extended to require additional modern slavery reporting by entities on exposure to specified issues of concern? If so, what form should that reporting obligation take?*

We suggest that current guidance is strengthened to address specified issues of concern before considerations are made to extend reporting.

4. *Should the Modern Slavery Act spell out more explicitly the due diligence steps required of entities to identify and address modern slavery risks?*

If it is decided that the Act will be more explicit in relation to due diligence steps, we believe that this should be coupled with strengthened guidance which is practical and drafted in conjunction with industry.

5. *Has the Modern Slavery Act been adequately supported and promoted by government, business and civil society?*

Some members have noted there has been limited activity from government post-implementation of the Modern Slavery Act. Many are unsure about how their reporting is contributing towards the overall aim of the Act as government has not openly shared insights from statements, including best practice.

Modern Slavery Act reporting requirements

6. *Is AU\$100m consolidated annual revenue an appropriate threshold to determine which entities are required to submit an annual statement under the Modern Slavery Act? Does the Act impose an appropriate revenue test for ascertaining the \$100m threshold?*

We note that this threshold currently aligns with a number of other similar reporting requirements including payment times reporting and tax transparency reporting.

7. *Should the Modern Slavery Act require annual submission of a modern slavery statement? Does the Act contain appropriate rules for ascertaining the annual reporting timeline for entities?*

Some members have expressed that an annual submission of a modern slavery statement (instead of the current varied reporting timelines, which require an entity to submit its statement no longer than six months after the end of its 'reporting period') could allow teams to more effectively plan their statements in conjunction with other regulatory obligations.

8. *Does the Modern Slavery Act appropriately define 'modern slavery' for the purpose of the annual reporting obligation?*

Yes, the Act does appropriately define modern slavery for the purpose of the annual reporting obligation.

9. *Is further clarification required of the phrase 'operations and supply chains', either in the Modern Slavery Act or in administrative guidelines?*

Further clarification should be included within updated guidance. We suggest government considers what has already been developed within industry and for appropriate elements to be included within future guidance.

10. Are the mandatory reporting criteria in the Modern Slavery Act appropriate – both substantively and in how they are framed?

Some members have noted there is still confusion around reporting criteria. Many considered that further clarification is still required, particularly in relation to sections:

- 16 (d) describe the actions taken by the reporting entity and any entity that the reporting entity owns or controls, to assess and address those risks, including **due diligence** and remediation processes.
- 16 (e) describe how the reporting entity **assesses the effectiveness** of such actions

It is evident that many reporting entities either provide general comments or avoid the requirements in their reporting.

11. Should more be done to harmonise reporting requirements under the Australian Modern Slavery Act with reporting requirements in other jurisdictions, such as the United Kingdom? How should harmonisation be progressed?

We support the harmonisation of reporting requirements internationally. Modern Slavery is a global issue, and it will be important that Australia is not lagging in the conversation and/or reporting requirements. A harmonised approach may also encourage better quality reporting and data as businesses can invest resources to meet one set of criteria rather than multiple different reporting requirements. This harmonisation could be led from within the Anti-Slavery Commissioner's office and would require collaboration with other jurisdictions such as the UK and New Zealand.

Currently Australian businesses are required to report under an array of requirements e.g., gender pay gap reporting, payment times reporting, modern slavery reporting and corporate tax transparency reporting. As noted above, a harmonised approach to business reporting will be important to encourage better reporting.

12. Does the Modern Slavery Act contain appropriate requirements for approval of a statement by the principal governing body of an entity?

Yes, we believe that the Act contains appropriate requirements for approval and oversight. We note that risks and due diligence (as it relates to the Act) appear as regular agenda items and discussion points for many principal governing bodies (ie, boards).

13. Should other reporting features of the Modern Slavery Act be revised – such as the provisions relating to joint statements, or voluntary reporting?

Yes, consideration should be given to group reporting structures which may include dormant entities. Currently under the Act some dormant entities within complex group structures require



separate reports. We suggest that government considers how the Act and supporting guidance can be improved to capture these situations.

Enforcement of the Modern Slavery Act reporting obligations

14. Has there been an adequate – or inadequate – business compliance ethic as regards the Modern Slavery Act reporting requirements?

As noted above, our conversations about the Act have predominately focused on compliance with the reporting requirements, with less emphasis on the core considerations such as risks and due diligence. Further, many businesses remain unaware that they are captured under the Act.

15. Has government administrative action been effective in fostering a positive compliance ethic? What other administrative steps could be taken to improve compliance?

It is unclear if a positive compliance ethic has been fostered. As noted above, it is our understanding that the government does not currently have a defined list of entities that should be reporting under the Act and, as such, no follow up from government administration for those who have not reported.

16. Should the Modern Slavery Act contain additional enforcement measures – such as the publication of regulatory standards for modern slavery reporting?

The Modern Slavery Act should contain options for additional enforcement measures. We also suggest government consider other methods such as publication of those organisations who are non-compliant.

17. Should the Modern Slavery Act impose civil penalties or sanctions for failure to comply with the reporting requirements? If so, when should a penalty or sanction apply?

As noted above, we do not oppose additional compliance measures, however we do believe that a balanced and fair approach needs to be taken with consideration of the type of compliance breach that is made. Consideration should also be applied to **how** a reporting entity has complied with reporting requirements. For example, a reporting entity may report that there has been no indications of modern slavery risks within their supply chains in the reporting period without any supporting evidence or description of the process undertaken to corroborate their claims.

It will be important that government proactively engage with businesses to remedy any issues that have resulted in their failure to comply. Penalty and sanctions should apply in egregious non-compliance situations.

Public sector reporting requirements under the Modern Slavery Act

18. *Should any alteration be made to the Modern Slavery Act as regards its application to Australian Government agencies?*

No specific comments

19. *Does the annual Commonwealth Modern Slavery Statement set an appropriately high reporting standard?*

No specific comments

20. *What action, if any, should be taken to ensure a common standard of modern slavery reporting among Commonwealth, state and territory government agencies in Australia?*

No specific comments

Modern Slavery Statements Register

21. *Does the Register provide a valuable service?*

Our members do not believe that the register provides a valuable service. The service is seen as a 'report and forget' mechanism and there is uncertainty around how the information captured within the register has contributed towards the goals of the Act. Some members have also questioned if the register is checked for completeness, i.e. – does it capture all those businesses that should be reporting?

22. *Could improvements be made to the Register to facilitate accessibility, searchability and transparency?*

We have received feedback that the functionality of the register is limited. The useability of statements housed in the register is inconsistent with some being illegible (font size, format).

Administration and Compliance Monitoring of the Modern Slavery Act

23. *What role should an Anti-Slavery Commissioner play in administering and enforcing the reporting requirements in the Modern Slavery Act? What functions and powers should the Commissioner have for that role?*

We support the role of the Anti-Slavery Commissioner and consider this proactive role should focus on raising awareness amongst the community. We see the Anti-Slavery Commissioner as a collaborative advocate with the business community, working to change behaviour and continuing to engage with state governments (including leading state based anti-slavery commissioners) and international stakeholders to continue the conversation as well as highlight Australia's continued commitment to eradicate modern slavery. The Anti-Slavery Commissioner could also play a key role in international collaboration for a consistent reporting framework. However, we consider it important that the administration and enforcement of reporting requirements of the Act are independent of the Anti-Slavery Commissioner's role and be adequately resourced (funds and staff).



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24. Responsibility within government for administering the Modern Slavery Act?

Regulation and administration of the Act should be an independent role to that of the Anti-Slavery Commissioner. Responsibility for this could sit within another government agency that has experience and expertise in modern slavery but also sufficient knowledge in appropriate disclosures. We suggest regulation and administration of the Act could be assigned to the Department of Home Affairs.

Review of the Modern Slavery Act

25. Is a further statutory review (or reviews) of the Modern Slavery Act desirable? If so, when? And by whom?

Yes, we believe that further statutory reviews, at three-year intervals, should be carried out on the Act. Future reviews will be important to ensure that Australian requirements are current, relevant, and consistent with international developments.

26. Should a periodic review process (other than a statutory review) be conducted of the Modern Slavery Act and its implementation? What form should that review process take?

Periodic reviews should be carried out to ensure that its application is relevant, appropriate, practical and in line with international developments. We also view periodic reviews as an opportunity to promote outcomes of the Act, a mechanism to share reporting highlights and potential future work plans. This transparent retrospective and prospective outlook could assist in promoting greater confidence and engagement with the Act.

Other issues

27. Is there any other issue falling within the Terms of Reference for this review that you would like to raise?

No specific comments