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Transnational Crime Branch  
Attorney-General's Department  
3-5 National Circuit  
BARTON ACT 2600



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Dear Sir/ Madam

**Public Consultation and Regulation Impact Statement – Modern Slavery in Supply Chains Reporting Requirements**

CPA Australia welcomes the opportunity to provide comments on the above consultation. CPA Australia represents the diverse interests of more than 160,000 members in 118 countries. We make this submission on behalf of our members and in the broader public interest.

CPA Australia fully supports national and coordinated international measures to eradicate modern slavery in all its forms from supply chains and commercial transactions. We commend Government on its initiative to introduce a Modern Slavery Statement regime (*Option Three*) however stress that disclosure of itself is insufficient, particularly as the proposal is standalone in nature. As such, the disclosure regime will need over time to reflect national law reform, authoritative guidance from international bodies, along with societal expectations about business conduct and transparency.

Our detailed responses to the specific questions are provided in the attached appendix. If you require further information on our views expressed in this submission, please contact Dr John Purcell, Policy Adviser – ESG, on +61 3 9606 9826 or at [john.purcell@cpaaustralia.com.au](mailto:john.purcell@cpaaustralia.com.au).

Yours faithfully

A handwritten signature in grey ink, appearing to be 'Stuart Dignam', with a long horizontal line extending to the right.

Stuart Dignam  
General Manager, Policy & Corporate Affairs

## APPENDIX

### Consultation questions

- **Is the proposed definition of ‘modern slavery’ appropriate and simple to understand?**

CPA Australia agrees that it is essential that there be an alignment of definitions between any Act of Parliament and associated guidance giving effect to a Modern Slavery Statement regime, and those adopted in the Criminal Code. Given the necessary conciseness in statutory language, we would urge elaboration be given in both explanatory memoranda and practice guidance. Particular areas of concern will be defining types of employment relationship which in reality amount to servitude and addressing the impact of operating in ‘opaque’ regulatory regimes where ultra-low wages and freedom of association are business ‘norms’.

- **How should the Australian Government define a reporting ‘entity’ for the purposes of the reporting requirement? Should this definition include ‘groups of entities’ which may have aggregate revenue that exceeds the threshold?**

CPA Australia is broadly supportive of the intended scope of entity to be captured under the reporting regime. However, the Department needs to be cognisant of the arbitrariness associated with a “bright line” quantitative threshold and ensure any threshold set sufficiently addresses the information needs of users. Modulation of this threshold over time may be necessary to achieve the intended objectives, and accordingly we support the proposal to set the threshold through regulation to allow for periodic adjustments if required.

Moreover, rules and guidance which focus attention on materiality of risk and impact should, we believe, assist the Department in its intention not to confine the reporting regime to specific sectors and likewise avoids the arbitrariness in seeking to distinguish between an entity’s spread of domestic and international activities.

We support the proposal that the definition in the Modern Slavery Statement should include ‘groups of entities’ that exceed the threshold. The specific embracing of group structures is important in addressing those instances where a vulnerable or high-risk activity may be isolated within a subsidiary or related-party. We suggest reference is made to the Australian Accounting Standards Board’s financial reporting framework, in particular AASB 10 *Consolidated Financial Statements*, to define the reporting boundaries for ‘groups of entities’.

Societal awareness of modern slavery and its implications on consumer buying decisions could play an important role in driving voluntary reporting by entities who are not mandatorily required to do so. We therefore support the proposal in the Consultation Paper that entities that do not meet the reporting entity threshold, be able to ‘opt-in’ to the reporting regime if they so wish.

Concluding here, the type of illustrative example presented in Annex C (page 23) of the UK Guidance issued by the UK Home Secretary under section 54(9) of the UK Modern Slavery Act 2015 should be developed to assist Australian entities.

- **How should the Australian Government define an entity’s revenue for the reporting requirement? Is \$100 million total annual revenue an appropriate threshold for the reporting requirement?**

CPA Australia agrees with this proposed threshold. However, given that entities below this threshold may also have slavery within their supply chain, the Department may wish to consider giving the regulator the power to seek an injunction requiring the completion and lodgment of a Statement under the Act regardless of the entity’s turnover. We envisage that such a power would only be used in exceptional circumstances.

- **How should the Australian Government define an entity’s ‘operations’ and ‘supply chains’ for the purposes of the reporting requirement?**

As an initial comment, care should be taken in the promulgating of statute and accompanying guidance that ‘its operations’ and ‘its supply chains’ (refer p. 16 of Public Consultation Paper) are separate, not collective or merged elements within an entity’s business model or value chain. This separate internal and external focus is apparent in the UK approach where the transparency statement is to communicate steps taken in relation to “any of its supply chains” and “any part of its own business” (s 54(4)(a)(i) and (ii)).

Both 'operations' and 'supply chains' are deceptively simple concepts when seeking to articulate both disclosure rules and accompanying guidance. Both the UK legislation (Part 6 of the Modern Slavery Act 2015) and 'Transparency in Supply Chains etc. A practical guide' avoid delving into such precision. Some relevant remarks may be found in Annex D to the latter where it is stated: "It is left to the individual business to determine what policies are relevant and the level of detail required". The context there is reference to other reporting requirements that apply to entities listed or operating in the UK.

On this cross-referencing, CPA Australia believes it significant to point out that Australia presently does not have a similar type or depth of narrative disclosure (refer in particular UK FRC's Strategic Report requirements which are responsive to the adopted broader statutory duty to promote the success of the company - UK Companies Act 2006 section 172) or ancillary sources of applicable reference (particularly in current context the EU Directive on disclosure of non-financial and diversity information - 2014/95/EU). The 'start up' phase for many Australian businesses may therefore be challenging and quality of reporting is likely to be very mixed.

The Public Consultation Paper correctly points out (page 9) with reference to a 2015 Australian Human Rights Commission report, that "many businesses lack clear strategies and processes to trace, monitor and address [modern slavery] risks." CPA Australia recommends that implementation of an Australian Modern Slavery Statement scheme must therefore be geared to both awareness building and capacity building.

CPA Australia would not wish to see developed lengthy and cumbersome 'what to, how to' guidance, yet an initial degree of prescriptive illustration may be needed in the early phase.

There is of course no dearth of material available around which practical guidance could be readily and cost-efficiently developed. One highly valuable reference point would be the United Nation's Sustainability Development Goals (SDGs). For example, SDG 8 *Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all* has twenty or so Business Themes, many of which are highly pertinent to supply chain risk and human rights-based workplace practices, and furthermore, are cross-referenced to data sources such as GRI Indicators.

Yet again, depth of awareness of the SDGs across the Department's estimated cohort of 2,000 corporations and entities is likely to be limited to the top-tier and those specifically motivated around the SDG's intent and purposes.

- **How will affected entities likely respond to the reporting requirement? As this is how the regulatory impact is calculated, do Government's preliminary cost estimates require adjustment?**

How affected entities are likely to respond to the reporting requirement is likely to be driven by the complexity of the reporting requirements developed, the support available to assist such entities and their capability and capacity to develop systems and processes to meet the reporting requirements.

CPA Australia recommends that where Australian law is comparable in effect to the UK law (and potentially the EU directive and the California Transparency in Supply Chains Acts) relief should be available. Evidence that suppliers give UK reporting entities to comply with the UK Act should be accepted as sufficient to comply with the proposed Australian regime, and moreover, Australian entities that report under UK requirements because of listing or other form of presence in that jurisdiction should be able to use those statements for Australian purposes.

Such an approach would reduce the compliance costs on suppliers and therefore reporting entities (through the passing on of costs) as the information and reporting they do for UK purposes would also be acceptable for Australian purposes – removing duplication and differing requirements.

Finally, some distinction needs to be made between set up costs for an individual reporter and then ongoing disclosure. Estimating an annual approximate cost per entity may infer expectations about thoroughness. Monitoring of quality will thus be important.

- **What regulatory impact will this reporting requirement have on entities? Can this regulatory impact be further reduced without limiting the effectiveness of the reporting requirement?**

Whilst CPA Australia is highly supportive of the Modern Slavery Statement initiative we acknowledge concern around the potential for increased reporting burden without consequent information utility or behavioural change.

Some consideration be given to consolidation or cross-referencing into existing listed company risk and governance reporting mechanisms, as identified in the below Consultation Question response, along with the potential opportunity presented through disclosure innovations such as Integrated Reporting.

Shifting expectations around the range and depth of corporate disclosure cannot be ignored, and the Department, we urge, should be mindful of demands arising from other initiatives such as the Financial Stability Board's Taskforce on Climate-related Financial Disclosure and the Board of Taxation's Voluntary Tax Transparency Code.

- **Are the proposed four mandatory criteria for entities to report against appropriate? Should other criteria be included, including a requirement to report on the number and nature of any incidences of modern slavery detected during the reporting period?**

The four proposed mandatory criteria are broadly appropriate, though will require both clear definition and explanation of intent in governing statute, and commensurate elaboration in associated guidance.

The Consultation Paper's preliminary discussion (page 16) which introduces the four mandatory reporting criteria emphasise both the optional character under UK arrangements in determining the scope of an organisation's slavery and human trafficking statement (section 54(5) "may include information about –") and the intended broad equivalence between the UK and Australian proposed approach. The extent to which the four proposed criteria mirror sub-section 54(5) (a) through (f) of the UK Modern Slavery Act 2015 is to a degree a subjective assessment.

Nevertheless, CPA Australia believes the intent and scope of section 54(5)(d) ("the parts of its business and supply chains where there is a risk of slavery and human trafficking taking place, and the steps it has taken to assess and manage that risk") ought to be given prominence. This, we urge, will give greater efficacy to an organisation's modern slavery statement and is consistent with other pronouncements (ASX Corporate Governance Council Principles and Recommendations, and ASIC Regulatory Guide 247 *Effective disclosures in an operating and financial review*) which compel a more iterative approach to narrative close of material risks impacting the business.

Turning to our initial remark about definitions and elaborations, the seemingly unambiguous term 'effectiveness' used in the fourth criteria warrants particular consideration and must, we recommend, be understood in the context of overall endeavours to address modern slavery in terms of dealing with grievances and rectifying harms, whilst at the same time building corporate capacity towards achieving societal advancement.

Absent relevant elaboration, 'effectiveness' is presented in relatively passive terms, whereas at least in section 54(5)(e) of the UK Act the desired outcome of ensuring slavery and human trafficking is not taking place is put to the fore.

Again, the active character of 'effectiveness' can be deduced from other relevant pronouncements. For example, the *OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector* presents the very clear expectation that public communication of the enterprise's due diligence process extends beyond mere description to include discourse on how the enterprise has addressed potential and actual harm (5.1 page 86).

More broadly, this Consultation Question raises in CPA Australia's view uncertainty of where a supply chain reporting regime sits in relation to other measures aimed at combatting modern slavery – particularly law reform potentially affecting Division 270 of the Criminal Code Act 1995 arising out of the 2017 Joint Standing Committee inquiry.

To illustrate our concern, reference need only be made to the breadth of matter dealt with in the UK Modern Slavery Act 2015 within which the reporting regime (Part 6) is but one component. The UK scheme for combatting modern slavery thus has apparent coherence, in contrast to which the Public Consultation Paper approach may appear fragmented.

Aside from issues of suitable design and structuring of public law instruments, the potential practical consequences may be to both cloud the intent of the disclosure regime and create a disconnect with the more fundamental objective of driving effective corporate and business response to detected incidences of modern slavery.

To illustrate, attention should be given to the structure of the UK Home Secretary's guidance issued under section 54(9) in which those parts dealing with the practicalities of preparing, approving and publishing the supply chain transparency statement (parts 4, 5, 7 and 8, in particular) are followed by Part 9 *Responding to an incidence of modern slavery*. This emphasis on a capacity to anticipate an effective response through predetermined grievance handling mechanisms is fundamental to other relevant authoritative pronouncements. For example, the *OECD Guidelines for Multinational Enterprises* (2011 edition) states:

When enterprises identify through their human rights due diligence process or other means that they have caused or contributed to an adverse impact, the *Guidelines* recommend that enterprises have processes in place to enable remediation. (IV. Human Rights, para. 46 page 34)

The 'second limb' of this consultation question canvasses views on an additional criterion to report on the number and nature of incidences of detected modern slavery.

CPA Australia gives in-principle support to this additional reporting measuring noting that a number of sector specific collaborative initiatives encourage disclosure of grievances raised and how those grievances were addressed.

A tendency towards this further level of specificity can also be deduced from relevant Global Report Initiative indicators and standards (For example GRI G4-HR6 *Operations and suppliers identified as having significant risk for incidents of forced or compulsory labor, and measures to contribute to the elimination of all forms of forced or compulsory labor* and its equivalent GSSB Standard 409-1).

Nevertheless, CPA Australia recommends that caution is required so as not to adversely impact or undermine any judicial or non-judicial grievance resolution mechanisms which may be afoot. The implications for disclosure are encapsulated in commentary found in OECD's due diligence guidance for the garment and footwear sector:

There may be legitimate reasons for non-disclosure of information, notably potential risk to affected stakeholders and staff (including arising from the disclosure of personal information). In some cases, where it may not be appropriate to communicate information immediately, an enterprise may be able to communicate information after a period of time, for example after a grievance or risk has been addressed. - - - Considerations of commercial confidentiality may also be a reason for non-disclosure (page 87).

- **How should a central repository for Modern Slavery Statements be established and what functions should it include? Should the repository be run by the Government or a third party?**

CPA Australia is of the firm view that as the requirement arises out of Commonwealth legislation the establishment and maintenance of any central repository of Statements resides with Government.

Concerning which Department, this could be Treasury on the basis that the OECD MNE National Contact Point is hosted there, and it is the OECD pronouncements which, in many instances, are mostly likely to give substance to robust reporting. Alternatively, this function could reside with ASIC as part of its wider function of maintaining company related registers. Regardless of which agency hosts, access must be free consistent with Government's digital-by-default strategy.

Concerning function, it should merely be that of an open access repository, though allowance must be given to oversight and scrutiny functions to ensure the intent of the scheme is being met. Any actions emanating from the content of individual statements is a matter of judicial or non-judicial function that should fall outside of Departmental responsibility.

- **Noting the Government does not propose to provide for penalties for non-compliance, how can Government and civil society most effectively support entities to comply with the reporting requirement?**

CPA Australia supports, at least in its initial phase, this light-touch approach to the implementation of a Modern Slavery Statement regime. Whilst the statement (page 17) indicating that the UK has not adopted a punitive approach to compelling compliance is doubtless correct, the Department should give serious consideration to adopting in legislation ministerial powers similar to those in section 54(11) to compel specific performance.

One further matter we would like briefly to raise in response to this Consultation Question concerns approval of Modern Slavery Statements as outlined at page 16 of the Public consultation paper, though not directly addressed amongst the questions themselves.

CPA Australia is very supportive of the intention that the Statement be approved at the equivalent of board level and signed by a director. In the circumstance of a public company, the likely substantial majority of reporters, such attestation will likely render the Statement a 'document of the company'.

Guidance developed to accompany the legislation's implementation should, we recommend, contain cautionary comments that care needs to be taken in preparing the Statement that information, particularly assertions of current facts and future outcomes, is not false or misleading.

Without giving a definitive conclusion, it may well be that the general liability provisions concerning such conduct (Corporations Act 2001 s 1308) could extend to information included in a Modern Slavery Statement. The practical manifestation of businesses' expectations around this matter has the potential to shape Statement content in terms of 'boiler-plate', use of cautionary statements and disclaimers, along with the desire and appetite for external assurance.

- **Is the five month deadline for entities to publish Modern Slavery Statements appropriate? Should this deadline be linked to the end of the Australian financial year or to the end of entities' financial years?**

Given our observations concerning capacity and possible resistance, an initial five month deadline appears appropriate. Ultimately though, the aim for listed companies should be to align with the three month lodgment requirement for annual financial and directors' reports.

If, as seems the intention, that the Modern Slavery Statement is a function of wider corporate governance practice, timing should therefore be tied to wider practices and approvals.

- **Should the reporting requirement be 'phased-in' by allowing entities an initial grace period before they are required to publish Modern Slavery Statements?**

CPA Australia generally supports an educative approach to the introduction of new reporting requirements such as the one proposed. That is, penalties for late lodgment be generally waived and the regulator focus their efforts on helping impacted entities build their capability to report. However, we note that a 'phase-in' approach may encourage unwarranted inertia and that companies which meet the \$100million threshold will as a matter of best practice have the reporting capacities to meet the deadline.

- **How can the Australian Government best monitor and evaluate the effectiveness of the reporting requirement? How should Government allow for the business community and civil society to provide feedback on the effectiveness of the reporting requirement?**

Please refer our responses above concerning a central repository for Modern Slavery Statements.

- **Is an independent oversight mechanism required, or could this oversight be provided by Government and civil society? If so, what functions should the oversight mechanism perform?**

Please refer our responses above concerning a central repository for Modern Slavery Statements.

- **Should Government reconsider the other options set out in this consultation paper (Options 1 and 2)? Would Option 2 impose any regulatory costs on the business community?**

No comment