

# Modern Slavery in Supply Chains Reporting Requirement

## Submission to Attorney-General's Department

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### Your details

<b>Name/organisation</b>  If you are providing a submission on behalf of an organisation, please provide the name of a contact person.	Karen McWilliams Ethics and sustainability leader Chartered Accountants Australia and New Zealand
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### Publication of submissions

Please email submissions to [slavery.consultations@ag.gov.au](mailto:slavery.consultations@ag.gov.au) by 11:00PM (AEST), 20 October 2017.

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- Microsoft Word
- Rich Text Format (RTF)
- txt format.

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## **Confidentiality**

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Would you prefer this submission to remain confidential? NO

18 October 2017

Transational Crime Branch  
Attorney-General's Department  
3-5 National Circuit  
Barton  
ACT, 2600

Email to: [slavery.consultations@ag.gov.au](mailto:slavery.consultations@ag.gov.au)

Dear Sir or Madam,

## Modern Slavery in Supply Chains Reporting Requirement Public Consultation paper

Chartered Accountants Australia and New Zealand welcomes the opportunity to comment on the Modern Slavery in Supply Chains Reporting Requirement Public Consultation Paper (Consultation paper). Appendix A provides our detailed responses to each of the questions and Appendix B provides more information about Chartered Accountants Australia and New Zealand.

### Key points

- We support the government's preferred option, being targeted regulatory action through a Modern Slavery in Supply Chains Reporting Requirement.
- We note that the primary objective of the reporting requirement is to act as a catalyst for change and not to provide information for use by a specific audience. We consider it critical to keep this in mind when designing the reporting requirement.
- We consider it vital for Government organisations to participate in the reporting requirement as both a sign of leadership to the business community and to recognise the importance of appropriate custodianship of public money.
- We recommend careful consideration is given to the design of the central repository, recognising the qualitative nature of the reporting requirements and the importance of a simple lodgement process for organisations.

Should you have any queries concerning the matters discussed above or wish to discuss them in further detail, please contact Karen McWilliams via email at [karen.mcwilliams@charteredaccountantsanz.com](mailto:karen.mcwilliams@charteredaccountantsanz.com) or phone (612) 8078 5451.

Yours sincerely,



**Rob Ward FCA AM**  
Head of Leadership and Advocacy  
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## General comments

We support the Government's preferred option, being targeted regulatory action through a Modern Slavery in Supply Chains Reporting Requirement. This is broadly consistent with submissions from business and civil society to the Joint Standing Committee on Foreign Affairs, Defence and Trade Inquiry into Modern Slavery's (the Committee's) interim report. Submissions to the UK Modern Slavery Act from business also supported a reporting requirement. It creates a level playing field for business so that responsible businesses who take action to identify and prevent modern slavery in their supply chain are recognised and rewarded

It is important to recognise the primary objective of the reporting requirement, which is to 'equip and enable the business community to respond effectively to modern slavery and develop and maintain responsible and transparent supply chains'. We expect that the ultimate aim would be the elimination of modern slavery by 2030 in line with target 8.7 of the UN Sustainable Development Goals, which states:

*Take 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, including recruitment and use of child soldiers, and by 2025 end child labour in all its forms.*

Therefore, we consider it important to keep in mind when designing the reporting requirements that the reporting output at this stage does not actually have a specific use or audience in mind. It should therefore not be too onerous for business to comply with the requirements. Instead we consider greater focus should be on helping organisations to identify risk areas within their operations and supply chains for modern slavery and educate them on how to mitigate the risks and handle any incidences which arise.

Whilst we recognise the need for action to be taken swiftly in relation to modern slavery, we consider that the release of this Consultation Paper at the same time as the Committee's interim report was pre-emptive. We consider better process would have been to wait for the completion of the Inquiry and publication of their final report prior to the release of this Consultation Paper. The Committee's interim report recommendations specifically state that:

*'The Committee will provide further recommendations for the content of a Modern Slavery Act in its final report, as well as other necessary changes to Australian legislation, policies and practices to combat modern slavery.'*

This has also caused some confusion in the business community with many trying to understand the respective purpose of each process and how they interact with each other.

## Scope

### 1. Is the proposed definition of 'modern slavery' appropriate and simple to understand?

We consider it important for the definition to be consistent with the UN guiding principles on human rights and also with the UK Modern Slavery Act. This is also in line with the Committee's interim report, which supported a broad definition. We note that the current proposed definition excludes forced marriage and trafficking. Whilst we understand that business is less likely to be involved in these issues, we don't consider it necessary to exclude these from the definition. A broad definition will help organisations get a better understanding of modern slavery issues. Organisations may also be exposed to these issues if their employees are directly or indirectly impacted by them.

### 2. 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?

We support the proposal to include a broad range of entities. However, we are concerned at the exclusion of Government entities. We strongly recommend that federal, state and local government organisations which exceed the threshold are included in the Modern Slavery reporting requirement. Given the importance of the issue and that business have been supportive of this approach, we consider it critical for the Government to lead by example and also publish a Modern Slavery Statement. Government are the custodians of public money and therefore it is vital that these funds are not used in ways that could weaken the business community's response to modern slavery.

Further Government procurement is significant and therefore has the ability to influence broader change. We note that the Committee's interim report says the following in paragraph 4.44.

*The Committee gives in-principle support for the Australian Government to introduce into its procurement requirements that it only engages with companies, businesses, organisations and other Australian governments that have submitted modern slavery statements. The Committee considers that this would encourage smaller companies to also report via the opt-in option.*

We consider it appropriate for an organisation to be required to publish a Modern Slavery Statement if it meets the threshold at individual entity or group level. We also recommend the requirements provide flexibility to enable organisations to choose whether it is more appropriate for them to publish the Statement for the whole group or at a sub-group level depending on the structure of their operations.

In order to create a level playing field for organisations operating in Australia, it is critical that the reporting requirement apply to organisation's headquartered outside of Australia but which have operations within Australia. The UK Modern Slavery Act applies to all commercial organisations with annual turnover exceeding the threshold and that carries out their business or part of their business within the UK. We consider a similar application in Australia would be appropriate.

We recognise that this would both extend the number of organisations and make it more difficult to identify those covered by the reporting requirement. However, we note that the proposed threshold is the same as that which applies to public and foreign-owned corporate tax entities under the ATOs corporate tax transparency report. Therefore, we don't consider there to be reasonable arguments to exclude extra-territorial organisations.

### **3. 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?**

The definition of revenue should be consistent with the Corporations Act 2001 and relate to that reported in the annual financial statements. We note that the reporting requirement in the UK applies to all considered 'large' under the UK Company law and the threshold is £36 million. The equivalent threshold in Australia would be \$25 million. Given that the publication of a Modern Slavery Statement is not the primary objective of the reporting requirement, we support the proposed starting threshold of \$100 million.

We understand the intention to review the legislation every three years. We therefore encourage the Attorney General's Department to review the threshold and consider reducing the threshold further overtime. We consider a staged approach would provide time for larger organisations to become familiar with the requirements, reducing the regulatory burden and to increase awareness in smaller organisations through their supply chains.

### **4. How should the Australian Government define an entity's 'operations' and 'supply chains' for the purposes of the reporting requirement?**

Given the primary objective of the reporting requirements, we consider a broad but open definition would be most appropriate. This will enable organisations to assess the risks in their operations and supply chains and

identify the material ones for further consideration. For operations, the starting point would be based on where the organisation has control, for example majority owned subsidiaries and joint ventures. In relation to the supply chain, the extended supply chain is a broad and open term which would enable organisations to apply the most appropriate boundary for their organisation.

We note that Australian businesses may not be significant customers of some of their major overseas suppliers, which will limit their ability to obtain information and influence those operations. The Government also has a role in providing guidance to businesses about appropriate boundaries depending on the sector and countries of operation.

## Application

### 5. 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?

We note the current estimated cost represents an average for all affected entities and reflects only the cost to actually produce and lodge the statement. Given the primary objective is not the publication of the statement, it is important for the reporting impact to be minimised.

We consider the majority of the cost associated with the requirements incurred by organisations will be to implement the necessary processes and procedures to address modern slavery and provide sufficient evidence internally to enable the Board to approve the statement. However, we don't consider it appropriate for the legislation to be drafted with an aim to reduce the actual implementation costs to business of addressing modern slavery. We consider it very important to recognise that the primary objective of the requirements is to eliminate modern slavery and therefore this is a necessary cost for organisations to bear. We also note that whilst initial implementation costs may be higher, they will reduce overtime once processes and procedures to address modern slavery are embedded within the organisation.

Additionally, for those organisations already reporting under the UK Modern Slavery Act, consistency between the two will reduce any regulatory impact.

### 6. 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?

We consider the criteria to be appropriate and support the inclusion of information about the policies and processes as well as due diligence processes.

We don't support the inclusion of the number and nature of incidents. We refer again to the primary objective of the reporting and don't consider this to be related or useful to that objective. This could also unnecessarily increase the scrutiny on those organisations who report a number of incidences that have been detected rather than focusing on those who have not addressed modern slavery.

There is also a need to recognise that helping organisations to address modern slavery in their operations and extended supply chain will be a journey with a significant learning curve for those involved. Organisations which publish a Modern Slavery Statement should not be criticised for the quality of their reporting but be given the opportunity to improve it over time. The criteria can be amended in the future if deemed necessary or if the audience for the Statements changes.

### 7. 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?

We consider the five month deadline to be appropriate.

We recommend the deadline be linked to the entities financial year end. This provides consistency with other reporting requirements and with the UK Modern Slavery Act.

## **8. Are the requirements for statements to be approved by boards and signed by directors appropriate?**

We support the sign off. We consider this requirement important to increase awareness of modern slavery in an organisation's operations and extended supply chain and to encourage action by the organisation to mitigate the associated risks.

We recommend that the definition refers to 'Those Charged with Governance' rather than specifically the board and directors. This ensures it will include organisations which don't have directors and/or boards as part of their governance model.

## **Monitoring and evaluation**

### **9. 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?**

We understand that businesses support the reporting requirement in order to create a level playing field. A central repository is key to be able to hold organisations to account, but this would only be effective if a list was published of all organisations expected to report. The absence of the complete list could actually increase scrutiny on those organisations who publish Statements, which would not create an environment where organisations feel 'safe'. (See additional comments under question 10 below.)

We consider it important to carefully determine what is reported into the central repository and how. Whilst we note the Attorney General's department have indicated they would like the repository to enable comparison, the purpose of the reporting is not with a specific audience in mind. Additionally, the four key requirements would have qualitative responses, rather than quantitative responses which would reduce the ability to compare statements.

We recommend the government look at how the UN Global Compact collects Communications of progress and Engagement from their signatories. In this example, organisations upload their statement but also include self-assessment as to which of the key requirements are included in the statement. Those who have not reported are identified as non-communicating. We consider this could be a good model to adopt for the modern slavery reporting.

We consider it most appropriate for the repository to be managed by government as they can ensure that the purpose and access to the repository are as they originally intended. They could also delegate to an appropriate independent body, such as the Australian Human Right Commission.

### **10. 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? What issues need to be covered in guidance material?**

In recognition of the primary objective, we support that there are no penalties for non-compliance, although we recommend that the Government keep this option available for potential use at a later stage. We also support statement 4.34 in the Committee's interim Report which states:

*The Committee gives in-principle support for the Australian Government to publish a list of companies, organisations, businesses and governments to which the Modern Slavery Act supply chain reporting requirements apply.*

By publishing the list of organisations, those accessing the repository can identify those who have not reported, rather than focusing their efforts on those organisations who have reported. This will enable investors and other stakeholders to contact the organisations who have been identified as non-communicating to encourage them to publish their Modern Slavery Statement.

The Attorney-General's discussion paper states examples of best practice (or words to that effect) will be made available. We consider it important for the guidance and best practice to focus on identification of modern slavery risks in business operations and extended supply chains. We consider sector specific and country specific guidance to be particularly important.

We recommend Government identify the business case for organisations to report on their processes and procedures to address modern slavery. This could include shareholder and stakeholder perspectives. This would provide compelling reasons for organisations within the threshold to communicate their modern slavery statement and help the Government achieve their primary objective. This would also encourage organisations outside the threshold to also consider reporting.

## **11. 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?**

We consider there are three separate aspects to independent oversight;

- a) identification of those organisations who have not reported;
  - b) verification of the modern slavery statements reported and;
  - c) the role of an Anti-Slavery Commissioner, which could include support for organisations when modern slavery has been identified.
- a) As noted above, those organisations who have not reported can be identified through the central repository. There is a role for Government or those managing the central repository to follow up with those organisations to remind them of the need to share their statement. We also recommend consideration be given to publish a list of non-communicating organisations when they have been given plenty of time and opportunity.
  - b) We consider independent assurance to be an important factor for users in determining the reliability of information disclosed by entities. We note that the initial period of reporting is to create a 'safe' environment for organisations to publish their statements and improve awareness. We don't consider assurance to be appropriate during this initial period.

However, we consider that demand for assurance is likely to increase overtime as stakeholders engage and find value in the published Modern Slavery Statements. It is reasonable to anticipate that stakeholders will start to question the reliability and credibility of the information they are receiving. Demand for assurance may also increase as a result of instances if the Modern Slavery Statement was found not to be credible or reliable, particularly where stakeholders are negatively impacted by this information.

We therefore recommend independent assurance over Modern Slavery Statements published be considered as part of a future review of the legislation. This would provide organisations with the necessary time to implement processes and procedures to address modern slavery and adopt their own due diligence processes, which might include internal audit. Some organisations may choose to have independent assurance over their Modern Slavery Statement even in the absence of regulation to enhance their reputation. The central repository could enable organisations to identify if their statement has been subject to assurance.



# Appendix A

- c) We also consider there is a role for an Anti-Slavery Commissioner. We don't consider this would be a compliance or oversight role, but rather a support and advocacy one. The Commissioner could provide support for organisations who identify modern slavery in their supply chains or operations. We consider a help line for organisations would be helpful. This could also operate as a confidential reporting line, enabling the commissioner to report on the instances of modern slavery identified and those resolved, rather than this being company specific.

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