



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Modern Slavery Act 2018 – Draft Guidance for Reporting Entities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welcomes the opportunity to provide feedback to the Department of Home Affairs on the *Modern Slavery Act 2018 – Draft Guidance for Reporting Entities* (the Guidance).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 concerning the matters discussed above or wish to discuss them in further detail, please contact Karen McWilliams via email at karen.mcwilliams@charteredaccountantsanz.com or phone (+612) 8078 5451.

Yours sincerely,

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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

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.