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13 September 2019

Modern Slavery Team
NSW Department of Premier and Cabinet
GPO Box 5341
Sydney NSW 2001

Via email: anti.slavery@dpc.nsw.gov.au

Dear Sir/Madam

Draft Modern Slavery Regulation 2019

We welcome the opportunity to provide feedback to the NSW Department of Premier and Cabinet (DPC) on the Draft *Modern Slavery Regulation 2019* ("the Draft Regulation").

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).

Key points

- In our opinion, a single, national modern slavery reporting regime under the Commonwealth Act is sufficient in Australia. We recommend that the proposed reporting requirements under the Draft Regulation are put on hold.
- We strongly support the important role of the independent NSW Anti-Slavery Commissioner and consider that their role provides a leading example to other states in Australia.
- Dependant on the outcome of the Legislative Council Standing Committee on Social Issues Inquiry into the Modern Slavery Act 2018 and associated matters, we recommend any planned guidance material supporting the regulations be clear and provide practical examples, in particular outlining the reporting thresholds and interaction with the Commonwealth Act.

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

Simon Grant FCA
Group Executive
Advocacy & Professional Standing

Karen McWilliams FCA
Business Reform Leader
Advocacy & Professional Standing

Appendix A

General Comments

We strongly support the essence and intent of the Act which is 'to take action to combat all forms of modern slavery in the state'. However, we recommend the separate reporting scheme for an additional group of NSW organisations with between \$50—\$100m annual turnover be put on hold.

The NSW and Commonwealth Acts have significant overlap, which we have observed has caused confusion with many of our members and the wider business community. This confusion has taken focus away from the fundamental objective of both Act's and we are concerned of potential adverse policy outcomes in Australia as a result.

In our opinion, a single, national modern slavery reporting regime under the Commonwealth Act is sufficient in Australia. We recognise it was a deliberate decision to have a lower reporting threshold in the NSW Act. However, we suggest the DPC engage with the Commonwealth Government on the potential to lower reporting thresholds in the future once modern slavery reporting has matured.

We strongly support the important role of the independent NSW Anti-Slavery Commissioner and the role they will have in educating the business community and raising awareness of modern slavery within NSW. This role, as a state-based support system, complements the existing Commonwealth Act and would also provide a leading example for other states in Australia.

Dependant on the above considerations and the outcome of the Legislative Council Standing Committee on Social Issues Inquiry into the Modern Slavery Act 2018 and associated matters, we have provided our feedback on some of the specific consultation questions below.

Specific Consultation Questions

General

1. How can the Anti-Slavery Commissioner best support businesses to comply with the reporting requirement under the Act? What guidance would businesses find helpful in preparing their statements?

Although we recommend that the NSW reporting requirements are put on hold, we consider there remains an important role for the Commissioner. We suggest that the guidance from the Commissioner could focus on the activities and processes that NSW organisations will need to undertake to identify, understand and manage the risks associated with modern slavery in their operations and supply chain. Further, organisations will need guidance to help them handle modern slavery if/when it is discovered.

Preparing modern slavery statements

2. Does the option of preparing joint statements provide businesses with enough flexibility to accommodate their different circumstances and corporate structures?

Yes. However, we recommend clear, practical examples of common corporate structures that would have the option to prepare a joint statement are included in supporting guidance material.

3. Should the NSW scheme enable voluntary reporting from businesses falling below the \$50 million turnover threshold and who choose to comply with its requirements?

We note that the draft regulations do not define 'annual turnover' which is considered an integral component of the regime. The Commonwealth Act clearly defines consolidated revenue with reference to

the *Corporations Act 2001*. We recommend including a clear definition of ‘annual turnover’ as it relates to the draft regulations and suggest reference to AASB 15, Appendix A Defined Terms.

Further, some of our members have expressed confusion about the interaction between the NSW Act, the Commonwealth Act and their respective reporting thresholds. Many have questioned if there will be a requirement for businesses to “report” their annual turnover and justify their non-reporting if they fall below the \$50m one year but are above the \$50m the next. We recommend practical guidance is published to outline pathways for reporting and the interaction with the Commonwealth reporting requirements.

Subject to our earlier comments regarding the NSW reporting scheme, we do not oppose the NSW scheme enabling voluntary reporting for those businesses that fall below the reporting threshold and choose to comply with requirements.

Exemptions for certain businesses

8. What are stakeholder views on the exemptions in the draft Regulation for charities, not-for-profit organisations and small businesses? Are these appropriate to reduce regulatory burden and at the same time ensuring businesses take seriously their responsibility to combat modern slavery?

Subject to our earlier comments regarding the NSW reporting scheme, we do not object to the proposed exemption for small business (with less than 20 employees) in the draft Regulation. However, we do not believe that all charities and not-for-profits should be exempt. We suggest that the small business exemption is extended to charities and not-for-profits with particular consideration of the definition and criteria of an employee as it applies to these sectors.

Charities and not-for-profits are not immune to modern slavery risks. Many will have complex supply chains, with some extending overseas. In addition, as charities and not-for-profits are organisations that typically handle public funds either through donations or grants, we consider it is in the public interest for them to take action to eradicate modern slavery in their supply chains. This was the view taken by the Commonwealth Government in the application of its modern slavery reporting regime. If the NSW reporting scheme is not put on hold, we suggest the DPC carefully consider whether a wider exemption for all charities and not-for-profits is appropriate.

Other

11. What other issues does the Commissioner need to consider to implement a workable system of supply chain reporting under the Act?

We note in Clause 11 of the draft regulations that it “may be preferable for the first reporting period to be aligned with the 2019-20FY with first reports due by December 2020, even if the Act commences later than 1 July 2019. This will align with the first reporting period under the Commonwealth Act”. We do not support the retrospective application of the NSW Act and believe the inclusion of this statement in the explanatory paper causes confusion.

There has been little communication and engagement with organisations, particularly those smaller entities who would be captured by the NSW Act, therefore they may not be aware of their obligations. Further, we note that the reporting under the Act is to report on activities undertaken during the reporting period. The NSW reporting scheme should allow sufficient time prior to its commencement for the development of guidance material and awareness raising activities to enable businesses to prepare.

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.