



20 July 2018

Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600

via email: legcon.sen@aph.gov.au

Dear Sir or Madam

Modern Slavery Bill 2018

Chartered Accountants Australia and New Zealand welcomes the opportunity to provide a submission to the Legal and Constitutional Affairs Legislation Committee on the Modern Slavery Bill 2018 (the Bill). We support the introduction of the Bill and the establishment of a modern slavery reporting requirement. We are pleased to note that feedback made by us during the 2017/18 consultation process on the modern slavery reporting requirement, in particular government organisation participation, has been considered and included within this Bill. We have therefore focused our comments in this submission on matters we consider require further attention. Appendix A provides our detailed comments on the Bill and Appendix B provides more information about Chartered Accountants Australia and New Zealand.

Key points

- We note that the primary objective for the Bill is to equip and enable the business community to respond effectively to modern slavery and develop and maintain responsible and transparent supply chains. We consider it critical to keep this in mind when considering the practical application of the reporting requirement for business.
- We highlight that key aspects of the recommendations raised as a result of the Joint Standing Committee on Foreign Affairs, Defence and Trade's Inquiry into establishing a Modern Slavery Act in Australia have not been considered in this Bill such as the provisions for an independent Anti-Slavery Commissioner.
- We recommend that, in the absence of penalties for non-compliance, a list of all organisations expected to report is published. The publication of this list is critical to the effectiveness of the Bill.

Should you have any queries concerning the matters raised in the following questionnaire 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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Advocacy & Professional Standing
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Appendix A – Detailed Comments on the Bill

General comments

It is important to recognise the primary objective of the reporting requirement is to ‘equip and enable the business community to respond effectively to modern slavery and develop and maintain responsible and transparent supply chains.’ Therefore, we consider it important to keep in mind that the reporting output at this stage does not actually have a specific use or audience. It should 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 for modern slavery within their operations and supply chains and educate them on how to mitigate the risks and handle any incidences which arise.

Anti-Slavery Commissioner and Modern Slavery Committee

We recommend the establishment of an Anti-Slavery Commissioner and Committee in line with the Joint Standing Committee on Foreign Affairs, Defence and Trade’s Inquiry into establishing a Modern Slavery Act (the Committee’s) recommendations, the UK Modern Slavery Act and the NSW Modern Slavery Bill (NSW Bill).

In both the Committee’s recommendations and the NSW Bill, the Commissioner would undertake the functions (but not limited) to:

- Oversee implementation and any future plans to combat modern slavery;
- Advocate for, and promote, action to combat modern slavery;
- Co-operate with or work jointly with government and non-government agencies and other bodies and persons to combat modern slavery;
- Provide independent oversight of the response to combatting modern slavery across all sectors, and identifying gaps and solutions;
- Identify and provide assistance and support for victims of modern slavery
- Make recommendations and provide information, advice, education and training about action to prevent, detect, investigate and prosecute offences involving modern slavery

The NSW Bill will progress with the formation of a Modern Slavery Committee to act as an independent group that monitors and reviews the exercise of the Commissioner’s functions and provides reports as appropriate to Parliament.

Penalties for non-compliance with Modern Slavery Bill 2018

In recognition of the primary objective, we support that there are no penalties for non-compliance. However, we note that under the NSW Bill, penalties are applicable for non-compliance. We recommend that the Government keep this option available for potential use at a later stage.

Modern Slavery Statements Register

We note that recommendation 5.142 in the Committee's final report stated:

'The Committee recommends that the Australian Government publish a list of entities required to report under the proposed mandatory supply chain reporting requirement, as soon as possible after the commencement of the proposed Modern Slavery Act. The list should be published alongside the central repository of statements to improve accountability and transparency'

In the absence of penalties for non-compliance, we consider the publication of a list of all organisations expected to register a statement is critical to the effectiveness of the Bill. By publishing the list of organisations, investors and other stakeholders accessing the register can identify those who have not reported. This will enable them to contact the organisations who have been identified as non-communicating to encourage them to publish their Modern Slavery Statement.

There is a risk that the absence of the complete list could increase scrutiny on those organisations who publish statements. The existence of a list is vital to the establishment of a level playing field where organisations feel 'safe' to identify and disclose modern slavery risks and to facilitate a 'race to the top' by providing reputational incentives for businesses.

We encourage the Government look at how the UN Global Compact collects Communications of Progress and Engagement from their signatories when designing the Register. In this example, organisations upload their statement but also include self-assessment as to which of the key requirements are included in their 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 Statements register. There is a role for Government or those managing the register 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.

Regulatory impact of reporting requirements for entities

We note the explanatory memorandum includes a revised estimated cost of \$21,950 per entity (\$65.85 million) for implementing the Bill. This reflects only the cost to actually produce and lodge the statement. 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.

As the primary objective of the requirements is to eliminate modern slavery, this will be a necessary cost for organisations to bear. We consider 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. However, the timely publication of guidance for organisations to help them identify, assess and address modern slavery risks in their operations and supply chain will help to reduce these initial implementation costs.

We acknowledge that the NSW Bill was assented on the 27 June 2018 and contains requirements that are similar to those outlined in the Commonwealth of Australia Modern Slavery Bill 2018. While we recognise the distinction between the state and federal legislations, we consider it important for there to be consistency between related legislation to minimise the regulatory burden on reporting organisations.

In the guidance material, 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, which may provide compelling reasons for reporting entities to publish their modern slavery statement and help achieve the Bill's primary objective. This would also encourage organisations outside the threshold to consider reporting in a voluntary capacity.

Threshold

The reporting requirement under the NSW Bill is \$50 million for entities that supply goods and services for profit or gain. The same threshold was also proposed by the Committee in December 2017. We note that the reporting requirement in the UK applies to all companies considered 'large' under the UK Company law, where 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 is to review the legislation every three years. As part of this review, we encourage consideration be given to reducing this threshold 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.

Independent assurance

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 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 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.