

27 October 2017

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

via email: [slavery.consultations@ag.gov.au](mailto:slavery.consultations@ag.gov.au)

Dear Madam/Sir

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

Thank you for the opportunity to provide input on the Modern Slavery in Supply Chains Reporting Requirement Public Consultation Paper (**Consultation Paper**).

The Australian Institute of Company Directors (**AICD**) is committed to excellence in governance. We make a positive impact on society and the economy through governance education, director development and advocacy. Our membership of more than 41,000 includes directors and senior leaders from business, government and the not-for-profit sectors.

The AICD supports the Government's aims as set out in the Consultation Paper, including improving community awareness of modern slavery risks and creating an environment where businesses feel 'safe' to identify and disclose risks in their entire supply chain, supporting a 'race to the top' and improving information available to consumers and investors about what businesses are doing to combat modern slavery risks.

The AICD supports the introduction of a Modern Slavery Act with appropriately designed reporting requirements. To achieve the objectives above and maximise the benefits of the new regime, the AICD recommends that the following principles guide the design of the legislation:

- Reporting requirements should encourage and support disclosure, avoiding punitive measures that could discourage firms from bringing relevant issues and risks to light;
- The regime should prioritise flexibility for organisations to report on the most relevant criteria and issues most relevant to their organisations, and avoid excessive prescription;
- To the extent possible, the new law should be consistent with the existing UK Modern Slavery Act, including, where appropriate, recognising reporting under the UK regime as satisfying the Australian requirements;
- A phased roll-out should be adopted to allow an opportunity for small and medium-sized organisations to invest in systems and draw from the proposed Government guidance and experience of larger firms. Thresholds for reporting should be reviewed; and
- Government entities should also be subject to the reporting regime.

Given this is a new area for Australian business and civil society, the AICD also supports the recommendations of the *Interim Report of the Joint Standing Committee on Foreign Affairs, Defence and Trade's inquiry to establishing a Modern Slavery Act in Australia* for a legislated three yearly review to ensure the legislation is meeting the intended outcome.

We have included comments on selected questions asked in the Consultation Paper in Attachment A. If you would like to discuss any aspect of this submission, please contact Kerry Hicks, Senior Policy Adviser, on (02) 8248 6635 or at [khicks@aicd.com.au](mailto:khicks@aicd.com.au).

Yours sincerely



**LOUISE PETSCHLER**  
General Manager, Advocacy

**ATTACHMENT A: RESPONSES TO SELECTED CONSULTATION QUESTIONS**

**Q2: 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?**

The Consultation Paper proposes defining ‘entity’ to include body corporates, unincorporated associations or bodies or persons, superannuation funds and approved deposit funds. The AICD does not object to this approach, although we note that it would capture a very large range of organisations including not-for-profit organisations and associations.

The AICD encourages consultation with these sectors to determine any specific issues this may raise. If a broad definition of entity is maintained, a phased transition will be important (see below). The Consultation Paper currently proposes exempting government entities from the definition. We consider that there is benefit in leading by example in this area, noting that government procurement is significant and may influence broader change. Therefore, the AICD recommends that government entities be included in the definition.

The AICD considers that the requirement to publish a modern slavery statement should apply if the threshold is met on either an individual level or a group level.

The requirement could be operationalised similar to the test for a ‘large proprietary’ company in the *Corporations Act 2001* and be assessed on ‘consolidated revenue’.

We recommend that the definitions provide flexibility to allow entities to publish the Modern Slavery Statement at a whole group level or at a subsidiary level.

**Q3: How should 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 AICD supports using a total revenue measure to set the reporting threshold. Revenue should be defined consistently with section 45A of the *Corporations Act 2001*.

In the AICD’s view, the reporting threshold should aim to capture large organisations that have complex supply chains and operations, or those with substantial purchasing power (given their capacity to influence supplier practice). Given the broad definition of ‘entity’ proposed the AICD is concerned that a \$100 million threshold may be too low. In our view the Consultation Paper likely under-estimates the number of organisations that would be captured by the threshold, particularly if charities and other not-for-profits are included. A \$100 million threshold could also capture a large number of medium-sized entities where it may be more appropriate to transition mandatory reporting and incentivise voluntary adoption, given the Government’s aims. We encourage the Government to give more consideration to the number and type of organisations that would fall within the scope of the proposals in finalising the threshold.

**Q6: 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?**

The following areas provide opportunities to reduce the regulatory impact of the new reporting requirements without significantly limiting the effectiveness of the reporting requirement:

- Organisations should have the flexibility to report against the criteria that are most relevant to their operations and supply chains, rather than against all criteria. The criteria would provide strong guidance while allowing organisations to focus on areas of most relevance to their organisations, and drive deeper engagement with modern slavery risks and responses rather than a more superficial compliance focus (see Q7);
- Flexibility regarding determining the most appropriate timing on which to report (see Q10);
- Phase-in and a transition prioritising large, complex businesses (see Q9); and

- The regime should allow recognition of reporting made under the UK Modern Slavery Act.

The AICD also supports the proposal to require an organisation's Modern Slavery Statement to be approved by the board, or the equivalent of the board (this may vary for different organisation types outside corporates, including government entities and authorities).

The AICD believes that consideration of modern slavery risks is a governance matter and that it is appropriate for an entity's review of and reporting on modern slavery risks to be subject to consideration by the board, or board equivalent. This would anchor the requirement within normal governance processes with existing extensive directors' duties applying.

As a practical matter, the AICD considers that this obligation should be expressed so that the statement is made in accordance with a board resolution (or other appropriate mechanism, depending on the governance model of the entity). In our view, this is preferable to a model requiring the statement to be signed by individual director(s), as this better recognises the collective decision-making and authority of boards (or their equivalent).

The AICD also considers that it is important that the requirement for board approval be drafted to be consistent with the Government's policy aims of creating an environment where businesses feel 'safe' to identify and disclose risks and supporting a 'race to the top'. In legislative drafting, care should be taken to remove any technical risk of attracting further liability risks, consistent with the Government's intent for no penalties to apply for non-compliance and for the regime to proactively encourage and promote fulsome reporting.

Australian directors face significant risks of personal liability, particularly given the rise of shareholder class actions and the growing litigation funding sector. In this environment, care must be taken not to inadvertently enable claims by opportunistic litigants should there be inaccurate or incomplete information in an entity's Modern Slavery Statement. This could limit the scope of reporting by companies and increase compliance costs, counter to the aims of the reform. The AICD would be pleased to consult on relevant drafting, if useful.

**Q7: 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 AICD supports the criteria and notes the broad alignment with the UK requirements. We recommend that the reporting framework allow entities to select the criteria against which they report, to enable organisations to focus on the criteria that are materially relevant to their supply chains and operations. This would provide entities with better scope to target reporting on the most relevant aspects of their operations and, in the AICD's view, support proactive engagement on modern slavery risks and reporting. The AICD also supports providing organisations with flexibility to determine the best format for reporting (for example, aligned with other corporate reports or in separate format or timing).

We note comments in the *Interim report of the Joint Standing Committee on Foreign Affairs, Defence and Trade's inquiry into establishing a Modern Slavery Act in Australia* that a prescriptive requirement could risk becoming a 'tick-box' exercise and that what is important is first addressing awareness of the issue with a 'light touch' model.

The proposed criteria offer a sound basis for introducing reporting obligations in Australia. Given reporting on modern slavery will develop and evolve, we support reconsideration of criteria at the three year review period.

**Q8: How should a central repository for Modern Slavery Statements be established? Should the repository be run by the Government or a third party?**

The AICD considers that a central repository should be searchable, accessible and inclusive of all relevant entity reporting. The AICD sees merit in the repository being managed by Government, and coordinating with Government efforts to educate and support reporting.

**Q9: 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?**

The AICD is supportive of a regime that encourages and supports transparency in reporting and the sharing of effective initiatives to combat modern slavery risks. We consider the proposed approach to penalties appropriate and consistent with these policy aims. Further consideration could be given to:

- Including government entities in the scope of the regime, to allow leadership by example;
- Tailored guidance materials relevant to sectors and organisations of different sizes, to assist organisations to identify and respond to modern slavery risks. Guidance should highlight examples of good practice, practical application of the reporting criteria and examples of policies and processes that are considered effective in reducing risks; and
- Transparency of reports, framing comprehensive reporting positively not punitively.

**Q10: 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 the entities' financial years?**

We do not object to the five month deadline for entities to publish Modern Slavery Statements, but would support a six month timeframe for consistency with the UK regime. The AICD recommends flexibility for organisations to choose the most appropriate timing and format for reporting. We consider that it should be the entity that determines whether reporting should be linked to the end of the entity's financial year, subject to meeting the five month deadline.

**Q11: Should the reporting requirement be 'phased-in' by allowing entities an initial grace period before they are required to publish Modern Slavery Statements?**

The AICD supports a phase-in period for the regime overall and staged commencement for entities of different sizes. We anticipate that businesses will need to introduce new policies, systems and processes to collect, aggregate and report the data required, and where supply chains are overseas considerable time may be required. Even larger, multinational firms already reporting under the UK requirements will require time to adjust to the nuances of the final Australian regime. An initial phase-in period of one to two years may be appropriate.

The AICD encourages the Government to give consideration to a phased transition for entities of different sizes, to provide smaller businesses with time to understand and prepare for the new reporting requirements as well as learning from the reporting and practice of larger firms. A phased implementation program will be particularly important if the definition of entities remains broad, and the threshold for revenue remains as proposed.

**Q13: 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?**

The AICD considers that the responsibility for oversight of modern slavery could exist within the Attorney-General's Department or an appropriate government entity. In our view, oversight should be on guidance and education, working with business and civil society to support awareness of and strategies to reduce modern slavery risks in supply chains and operations.