

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](mailto:legcon.sen@aph.gov.au)

Dear Sir/Madam

## **Modern Slavery Bill 2018**

Thank you for the opportunity to provide a submission in relation to the *Modern Slavery Bill 2018 (Bill)*.

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 43,000 includes directors and senior leaders from business, government and the not-for-profit sectors.

The AICD supports the introduction of legislation that will require entities to publicly disclose their actions to address modern slavery risks in their operations and supply chains. We support such a step in furtherance of the *United Nations Guiding Principles on Business and Human Rights* and so as to assist Australia in meeting its international legal obligations with respect to human trafficking, slavery and slavery-like practices.

We have been pleased to see the extent of consultation by the Attorney-General's Department and the Department of Home Affairs over the last year on this topic, and have actively engaged in providing input wherever possible.

### **1. Executive Summary**

Overall, we support the Bill, subject to our key concerns documented below. In particular, the following features of the proposed legislation are sensible and appropriately balanced:

- the inclusion of the Commonwealth government in entities subject to the reporting requirements;
- the establishment of a register to be made available to the public;
- the definition of revenue to be based on accounting standards;
- the six month deadline for lodgement of the modern slavery statement; and
- the consistency with the UK legislation regarding the approval required by the principal governing body and the no penalty regime.

However, our remaining key concerns with the Bill are as follows :

- fixed mandatory reporting criteria (unlike the UK legislation which is not mandatory); and
- the low monetary threshold for application (being \$100 million across a broad range of entities).

It is important to highlight that for many businesses the costs and administrative burden of this important reform will be significant, therefore additional time should be provided to comply with the requirements for the smaller organisations captured by the reporting requirements.

Accordingly, we strongly recommend that the legislation allows for a staged commencement for entities of different sizes.

## **2. Staged commencement required**

The AICD considers a staged commencement necessary, given the \$100 million threshold is very low and that the regulatory impact statement estimate of 3000 entities, in our view, likely under-estimates the number of organisations that will be captured. This would allow the smaller entities captured by the reporting requirements additional time to build capacity and resources to adopt the requirements in an effective manner, noting the policy object of the bill is to assist the business community in Australia to take proactive and effective actions to address modern slavery risks.

A staged commencement could require entities at a higher threshold (perhaps using the Australian Taxation Office usage of the term 'large entities' having revenues of at least \$250 million) to prepare and lodge a modern slavery statement for the first reporting period beginning on or after commencement of the Act. Other entities could then adopt the requirements one year later, having the benefit of learnings from the reporting and practice of larger organisations that had already undertaken work on their supply chains and produced a modern slavery statement in the previous year. This would also facilitate the Commonwealth to prepare guidance to entities, drawing on a review of statements made by these larger entities.

## **3. Promoting best practice**

For the following reasons, we support the Bill's approach of not attaching penalties for non-compliance with the reporting requirement:

- It would be consistent with legislation in the United Kingdom, France and California, all jurisdictions that have been leading efforts to address modern slavery risks.
- It will create an organisation-driven response, rather than a compliance-driven response which will more likely lead to lasting and impactful changes in businesses.
- It supports transparency in reporting and the sharing of effective initiatives to combat modern slavery risks.
- It creates a culture of 'encouragement' which will look to positively change corporate behaviour.
- It will foster a 'race to the top' culture as highlighted by The Hon Alex Hawke MP, Assistant Minister for Home Affairs in his media release dated 28 June 2018.

In particular, the AICD considers that a punitive regime could drive a compliance behaviour with a "tick box" approach to reporting, thereby limiting the usefulness of modern slavery statements. This risk was observed in the 2017 report of the Joint Standing Committee on Foreign Affairs, Defence and Trade *Hidden in Plain Sight – An inquiry into establishing a Modern Slavery Act in Australia*. Further, a penalty regime would run the risk of driving the crime of modern slavery underground in contrast to the proposed open and transparent approach favoured by the Bill.

It is also important to highlight that the principal deterrent to non-compliance will be the potential reputational damage and investor response if entities fail to meet their obligations. Heightened scrutiny of business practices, combined with the increased use of social media, means that most entities are acutely aware of the potential reputation risk, and damage to shareholder value, attached to poor or unethical supply chain practices.

This notwithstanding, in order to achieve high compliance rates, the Department of Home Affairs must actively encourage implementation and evaluation as outlined in Section 5 of the Regulatory Impact Statement. This includes the development of detailed guidance, delivering targeted education, training and awareness raising initiatives, providing advice to support compliance, monitoring compliance and promotion of best practice trends, administering the on-line register, co-ordinating Australian Government's annual Modern Slavery Statement, and supporting research into modern slavery risks in supply chains.

In addition to those activities outlined in Section 5 outlined above, we recommend that the Department of Home Affairs compile a list of those entities which they believe are captured by the reporting requirements and conduct targeted engagement with those organisations directly (for example by writing to them notifying them of their new obligations). Further consideration could also be given as to whether such a listing should be available to the public through the public register.

#### **4. Nationally consistent framework**

The AICD considers that a further role of Government should be to actively encourage a nationally consistent framework for reporting on modern slavery. While we understand that NSW sought to take the lead on this issue by recently passing its own legislation, it is far preferable to have nationally consistent Commonwealth laws that will help to effectively tackle modern slavery rather than differing, potentially duplicative State and/or Territory regimes.

To ensure that the application of modern slavery obligations is comprehensive, and captures all economically significant entities in Australia, we recommend the Government encourage State and/or Territory Governments to adopt the Commonwealth requirements in respect of their own operations and supply chains.

#### **5. Next steps**

We hope our comments will be of assistance and look forward to working with the Department of Home Affairs as further guidance is developed on this topic. In order for the reforms to be successful, it is essential that entities have a clear understanding of their new obligations and how best to meet them.

If you would like to discuss any aspect of this submission, please contact Ms Kerry Hicks, Senior Policy Adviser, on 61 (0) 2 8248 6635 or at [khicks@aicd.com.au](mailto:khicks@aicd.com.au).

Yours sincerely



**LOUISE PETSCHLER**  
General Manager, Advocacy