

17 May 2019

Department of Home Affairs
Australian Government

Via Email: slavery.consultations@homeaffairs.gov.au

Dear Sir/Madam

Modern Slavery Act 2019 - Draft Guidance for Reporting Entities

Thank you for the opportunity to provide a submission on the draft guidance for reporting entities applying the *Modern Slavery Act 2018* (the **Draft Guidance**).

The Australian Institute of Company Directors (**AICD**) has a membership of more than 44,000 including directors and senior leaders from business, government and the not-for-profit (**NFP**) sectors. The mission of the AICD is to be the independent and trusted voice of governance, building the capability of a community of leaders for the benefit of society.

The AICD recognises that the issue of guidance on the new modern slavery reporting requirement is critical to its effective implementation. We consider the guidance would benefit from some amendments, including further detail in some areas, the inclusion of a chapter on definitions, and the incorporation of case studies.

Detailed comments

We have identified the following areas where drafting could be improved:

1. Chapter 2: How to calculate the consolidated revenue of your entity? – We do not consider this section contains sufficient guidance on the term ‘consolidated revenue’. It currently refers to the Australian Accounting Standards to determine ‘control’ and to calculate revenue. However, we consider the guide needs to provide some simple information on these concepts and then refer to the accounting standards for further detail. The explanatory memorandum accompanying the legislation provides more detail on these concepts and this should be incorporated into the guidance. However, we note that the explanatory memorandum refers to an outdated revenue standard: AASB 118 *Revenue* and does not refer to the revenue standard applied by many not-for-profits: AASB 1004 *Income of Not-for-profit entities*. The new standards should be referred to instead - AASB 15 *Revenue from contracts with customers* and AASB 1058 *Income of Not-for-profit entities*.

2. Chapter 5: Inclusion of customers – Chapter 5 describes the risks of modern slavery practices and recommends the entity review its business relationships. The Draft Guidance notes that business relationships include business partners and customers. One of the examples provided relates to funding provided to a customer. We consider that further clarification is needed on this matter and whether consideration of customers is only considered relevant where funding is provided, or whether it involves any goods or services sold to customers. We consider that most entities (except perhaps institutions that are providing capital based on knowing the use to which the funds will be directed) would not be able to determine the use of their products or services by customers and therefore would find this area difficult to assess. Therefore, we would request further clarification on the recommendation to consider customers and further examples in this area.
3. Chapter 6: Board approval processes – Chapter 6 would benefit from further information about how a board would practically provide oversight on assessing the entity's response to the *Modern Slavery Act 2018*. This could include example questions the board (or a relevant board committee) may ask as part of its oversight role. The publication *Modern Slavery Risks, Rights & Responsibilities*¹ includes checklists for boards on each of the mandatory reporting criteria. It would be useful referring to these within the Draft Guidance.
4. Chapter 6: Why is this a requirement in the Modern Slavery Act? – We do not consider that section 154.1 sufficiently explains why the requirement exists for the board to approve the modern slavery statement. We consider the explanation in the UK guidance *Transparency in Supply Chains, etc – A practical guide* is preferable, with similar language drawn upon. The UK guide explains that the statement is to be approved and signed by an appropriate senior person in the business - 'This ensures senior level accountability, leadership and responsibility for modern slavery and gives it the serious attention it deserves. An organisation's top management will be best placed to foster a culture in which modern slavery is not tolerated in any form. They need to lead and drive the measures required to address this problem throughout the business'.
5. Chapter 6: Key terms explained – We consider this section should also clearly define the term 'responsible member' in both the heading and contents. The definition should note specifically the exception relating to a trust or an entity under administration. Further, the examples provided in this section are useful but each of them should clearly indicate the identity of the responsible member.
6. Chapter 6: How do I approve the statement? – we do not consider it is necessary to include paragraph 162.1 in the guidance. This paragraph indicates that it is best practice for the chair of the board or the Chief Executive (if they are a member of the board) to sign the statement. However, we consider this to be a matter for the board to determine in accordance with a board resolution or policy.

¹ Published by the Australian Council for Superannuation Investors in February 2019.

Next steps

We hope our comments will be of assistance to you. If you would like to discuss any aspect of this submission, please contact Kerry Hicks, Senior Policy Adviser, on 028248 6635 or at khicks@aicd.com.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Christian Gergis', with a stylized, cursive script.

CHRISTIAN GERGIS
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