

1 September 2025

Attorney-General's Department

Via online consultation portal:

Dear Attorney-General's Department,

Strengthening the Modern Slavery Act 2018 (Cth)

Thank you for the opportunity to provide a submission on the consultation (**Consultation**) regarding strengthening the *Modern Slavery Act 2018 (Cth)* (the **Act**).

The Australian Institute of Company Directors (**AICD**)'s mission 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's membership of more than 53,000 includes directors and governance leaders of not-for-profits, large and small businesses and the public sector.

The AICD strongly supports the objectives of the modern slavery reporting regime in Australia; that is, to increase transparency in business operations and supply chains, and to require organisations to undertake due diligence on their modern slavery risks and address issues identified. We have participated in earlier consultations, including the independent review of the Act by Professor McMillan AO, and supported engagement by the Commonwealth Anti-Slavery Commissioner with the director community.

Enclosed at **Attachment A** are our detailed responses to key questions relevant to the AICD and its members in the Consultation paper. We have not sought to respond to each question but rather focus on those of greatest relevance to Australian directors. We would welcome the opportunity to be involved in the Stream B targeted consultations. In particular, we are keen to contribute to discussions on the declaration of high-risk matters¹ and the development of due diligence system obligations.

Given the implications for directors and governance practice, we believe the AICD can provide valuable perspectives on how these issues interact with the existing framework. We are also conscious that the Government is focused on reducing regulatory complexity and that there is a risk, that if poorly designed, new obligations will only add further drag to enterprise productivity.

1. Executive Summary

The AICD supports many of the proposed reforms to the Act in principle, particularly measures that provide clarity, strengthen enforcement in a proportionate way, and reduce unnecessary administrative constraints. Reforms must avoid excessive compliance burdens that distract board attention, particularly given the Government's broader productivity agenda. Importantly, proposals should be directed towards improving the quality of disclosures, so that reporting meaningfully enhances transparency and

¹ In our [submission](#) on the Anti-Slavery Commissioner's Strategic Plan 2025-2028, the AICD supported the Commissioner being authorised to make a written declaration of a region, location industry product, supplier or supply chain that is regarded as carrying a high modern slavery risk. We are of the view that publishing such a list would serve as an important reference point for entities.

supports better governance outcomes. Where possible, we encourage harmonisation of reporting obligations across jurisdictions, noting many Australian entities are already subject to varying international requirements.

The AICD also encourages the Anti-Slavery Commissioner to focus on targeted education and tailored guidance to support modern slavery reporting more broadly, particularly for NFPs and SMEs. Guidance should outline simple, low-cost steps they can take to assess and address risks within their operations and supply chains within existing governance frameworks. We also encourage an education and awareness-raising first approach for the changes proposed by this Consultation and that guidance also captures these changes.

We provide the following comments on key areas:

Changes to mandatory reporting criteria

- *Clarification of reporting criteria:* The AICD supports clarifying reporting criteria on identifying modern slavery risks and describing due diligence actions on the basis that this should improve consistency, enhance transparency, and reinforce best practice.
- *Grievance mechanism:* The AICD supports reporting on the existence of grievance mechanisms, limited to an entity's process. This additional reporting criteria should be supported by guidance to help entities establish or integrate them into existing frameworks (e.g. whistleblowing policies). Guidance will be particularly valuable for SMEs and NFPs with limited resources. We do not support mandatory reporting on the use of grievance mechanisms (e.g. complaints lodged).
- *Reporting on remediation:* The AICD does not support including remediation as a separate mandatory reporting criterion. Requiring disclosure of processes and actions could compromise victim privacy, ongoing investigations, or criminal proceedings, and may expose entities and employees to legal liability where allegations are contested.

Compliance and enforcement framework

- *Regulatory oversight:* The AICD supports an independent body to oversee enforcement, with judicial exclusivity in the application of penalties and enforcement powers for failure to comply with the Act. Enforcement powers should not be exercised by the Anti-Slavery Commissioner or through Ministerial direction.
- *Enforcement measures and broader information gathering powers for the regulator:* The AICD supports the introduction of enforceable undertakings (preferred over infringement notices) and broader information-gathering powers. We note that enforcement responses should be proportionate to the size and capacity of the business, with a graduated approach from corrective to punitive measures.
- *Civil penalties:* The AICD supports the introduction of civil penalties for (a) failure to submit a statement; (b) providing false or misleading information; and (c) failure to comply with remedial requests. Civil penalties should be subject to a 'reasonable steps' defence for diligent entities and a 'mistake of fact' defence to protect against inadvertent non-compliance. Penalty units should also reflect the severity of the breach and align with comparable corporate reporting frameworks to ensure fairness and credibility. Consideration could be given to a staged introduction of penalties to ensure that inadvertent or technical breaches are not penalised during a transition period post the implementation of any reforms, and that the focus remains on awareness building and promoting reporting improvement through engagement and education.

Joint reporting

- *Greater flexibility for corporate groups:* The AICD supports efforts to enhance clarity and accountability in corporate group reporting under the Act. While the proposed model may be appropriate for some large corporate structures, it may not suit all entities captured by the Act. We recommend greater flexibility for corporate groups to determine their reporting approach internally, based on their governance structures. We also recommend consulting with the Payment Times Reporting Regulatory who has sought to address similar issues.

2. Next Steps

We hope our submission will be of assistance. If you would like to discuss any aspects further, please contact Christie Rourke, Climate Governance Initiative Australia Lead and Senior Policy Advisor (crourke@aicd.com.au).

Yours sincerely,

A handwritten signature in dark ink, appearing to be 'C. Gergis', with a stylized, flowing script.

Christian Gergis GAICD

Head of Policy

Attachment A: Detailed responses to consultation questions

Changes to mandatory reporting criteria

1. Do you support the potential changes to the reporting criteria? Are any further changes needed to the reporting criteria?

The AICD supports proposals to clarify criteria (d) and (e) of Section 16(1) of the Modern Slavery Act 2018 (Cth), which currently require reporting entities to describe:

- (d) The risks of modern slavery practices in the operations and supply chains of the reporting entity and any entities it owns or controls.
- (e) The actions taken by the reporting entity and any entities it owns or controls to assess and address those risks, including due diligence and remediation processes.

We believe that clearer guidance and more precise language in these criteria will reduce compliance costs and improve consistency across entities. Our support is grounded in the following considerations:

- Current reporting under criteria (d) and (e) varies widely in depth and quality, due in part to ambiguity around expectations.
- Clarifying these criteria would help entities better understand what constitutes meaningful disclosure, reducing uncertainty and improving comparability across statements.
- Existing government guidance already encourages entities to disclose due diligence processes. Formalising these expectations within the Act would reinforce best practice and encourage more robust engagement with modern slavery risks.

The AICD does not support requiring entities to list all owned and controlled entities in modern slavery reporting. This information is already available through financial reporting and tax filings, and duplicating it would not advance the Act's objective of improving transparency on reporting entities. Including exhaustive corporate structures will increase the length of statements and may distract from the core purpose of the Act – identifying and addressing modern slavery risks – by shifting attention to structural details that are not directly relevant to risk mitigation. The AICD recommends allowing entities to cross-reference their annual reports or other public filings to satisfy this requirement, thereby maintaining brevity and relevance in modern slavery statements.

Please see our comments on grievance mechanisms and processes and actions to remediate modern slavery incidents in response to questions 6 to 8 below.

4. Should additional guidance be developed to assist reporting entities to comply with the proposed changes to the mandatory reporting criteria? If so, what topics should be addressed by new guidance?

Yes, the AICD supports additional guidance being developed to support entities to comply with the revised criteria. We recommend additional guidance in the following areas:

- Set clear expectations on the level of detail required in disclosures, with illustrative, worked examples;

- Include specific examples for the consolidated criteria (d) and (e), showing what additional information is expected; and
- Provide sample disclosures/checklists to guide preparers.

The AICD notes that additional guidance regarding how an entity should establish grievance mechanisms should be a priority.

As noted in the Consultation, such guidance should set out the core principles of an effective grievance mechanism, including accessibility, transparency, independence, and protection from victimisation. It should provide practical direction on how mechanisms can be designed proportionately to an entity's size, sector and risk profile, while ensuring they are credible and trusted by affected stakeholders.

Guidance should also outline good practice in embedding grievance processes into existing governance and risk frameworks (e.g. whistleblowing policies), adequate board oversight and appropriate escalation channels. This is particularly important for smaller organisations and NFPs, which often have limited time, resources and internal expertise to conduct extensive supply chain analysis.

4. Should additional guidance be developed to assist reporting entities to comply with the proposed changes to the mandatory reporting criteria?

5. Should a new criterion be added that requires entities to report on key actions or changes since their previous statement?

The AICD is cautious regarding this proposed new criterion as it seems to imply that that more work will be done by reporting entities on modern slavery each year, compared with the last, when this may not be necessary. Such an addition also risks repeating mandatory disclosures elsewhere in the statutory report.

It should be recognised that modern slavery reporting is already complex and creates a significant compliance burden for a vast number of reporting entities. Accordingly, given the Treasurer's focus on regulatory complexity and its connection with Australia's productivity challenges, we would caution against creating new reporting obligations unless absolutely necessary.

6. Should reporting entities be required to report information about grievance mechanisms?

The AICD is supportive of the requirement to disclose information about an entity's grievance mechanisms, provided additional guidance is developed to support entities establishing a process for grievance mechanisms or incorporating into existing risk frameworks (such as whistleblowing policies). This will be particularly critical for smaller entities or NFPs with limited resources and internal expertise, who would otherwise have to seek legal advice.

Again, the Government, should it proceed with this requirement, must be mindful of not creating a material new compliance burden.

7. Are there any sensitivities with requiring an entity to report on grievance mechanisms? Please consider any sensitivities relating to quantitative or qualitative information about grievance mechanisms that might be captured.

The AICD is of the view that there are sensitivities that should be considered if requirements are imposed requiring an entity to report on the use of grievance mechanisms. For example, disclosing data may risk discouraging use of grievance mechanisms. Further, disclosing the raw number of grievances (e.g. complaints lodged) may be misleading without context.

Of most relevance, for smaller entities or those with less mature systems, extensive reporting could be burdensome and risk shifting focus from building effective mechanisms to meet compliance requirements and reducing modern slavery in supply chains.

For these reasons, we recommend any requirement be accompanied by clear guidance on the type of information expected (e.g. description of processes, governance oversight and accessibility) rather than disclosure of individual grievance details. Encouraging entities to report on how they use insights from grievances to improve practices may be more meaningful than raw data.

8. Should reporting on remediation be a separate mandatory reporting criterion? If so, what specific information about remediation actions and processes should entities report on? Notably, the review explored requiring entities to report on the number of matters referred to law enforcement or other bodies, as well as to report on details of modern slavery incidents or actual risks.

The AICD is of the view that reporting on remediation should not be included as a separate mandatory reporting criterion. There may be challenges with requiring entities to report on processes and actions to remediate modern slavery incidents. Disclosure risks could conceivably compromise victim privacy, ongoing investigations, or criminal proceedings, and may expose entities and employees to legal liability where allegations are contested. Any obligation should therefore balance transparency with other safeguards.

9. Are there any sensitivities with requiring an entity to report on remediation, noting information about remediation may include quantitative or qualitative information?

See response to question 8 above.

Compliance and enforcement framework

14. Should the existing compliance powers be amended? If so, how?

In recognition of concerns with the quality of reporting over past reporting cycles and to promote accountability, the AICD supports, in principle, additional enforcement measures. We support using the *Regulatory Powers (Standard Provisions) Act 2014* (Cth) to provide standard monitoring, investigation and enforcement powers.

However, further clarity is needed regarding which body will serve as the regulator going forward. The AICD is of the view that the imposition of penalties and regulatory tools should be subject to judicial exclusivity and not applied by an Anti-Slavery Commissioner or Ministerial direction. An independent section or body should have responsibility for the imposition of such additional regulatory tools.

Any additional powers should also be applied flexibly, with responses proportionate to the size and capacity of the business.

15. Under section 16A of the Modern Slavery Act, the regulator can request an entity provide an explanation for the failure to comply with reporting requirements. Would broader information gathering powers be more effective to address non-compliance?

The AICD is of the view that providing the regulator with broader information-gathering powers would help strengthen compliance and improve best practice reporting under the Act. However, further clarity is needed on which body will serve as the regulator going forward (see response to question 22). Any additional powers should also be applied flexibly, with responses proportionate to the size and capacity of the business, and with regard to the objectives of the Modern Slavery Act.

16. Should additional regulatory tools be introduced into the Modern Slavery Act to penalise non-compliance?

The AICD supports additional regulatory tools that respond *proportionately* to non-compliance. We are of the view that enforceable undertakings are preferable to infringement notices, which have limited scope to address underlying governance or systems issues and may risk being seen as a "tick-the-box" penalty rather than driving genuine improvement in modern slavery reporting and transparency.

Enforceable undertakings are more appropriate to lift practice and embed better modern slavery reporting. We also note that enforceable undertakings represent a more constructive compliance tool than the simple publication of non-compliance, as they encourage genuine remediation rather than solely reputational sanction.

17. If yes, which of the following additional regulatory tools should be introduced to respond proportionately to non-compliance?

See response to question 16 above.

18. Should civil penalties be introduced into the Modern Slavery Act?

In recognition of concerns with the quality of reporting over recent reporting cycles, the AICD supports, in principle, these additional enforcement measures. However, regarding penalties, we strongly urge that:

- any penalties are confined to those proposed in the consultation;
- a 'reasonable steps' style defence attach to ensure that organisations that take appropriate measures to fulfil their due diligence obligations under the Act are not subject to liability;
- a graduated approach to enforcement be taken, ranging from 'soft corrective' measures initially to more 'punitive sanctions' that could be reserved for recalcitrant conduct (for example, if an entity has not reported because they were unaware of their obligations, but they commit to reporting during the next reporting cycle, a civil penalty may not be appropriate);
- the imposition of penalties should be subject to judicial exclusivity (not applied by an Anti-Slavery Commissioner or Ministerial direction); and
- a staged approach be considered to reduce the risk that inadvertent or technical breaches are penalised and ensure that the focus remains on education, awareness and uplift of practices.

19. If yes, which of the following civil penalties should be introduced into the Modern Slavery Act?

Penalties should be limited to the following:

- a) Failure to submit a modern slavery statement;
- b) Providing false or misleading information; or
- c) Failure to comply with a request for remedial action.

20. Should any defences, such as mistake of fact, be considered for any proposed civil penalties?

Yes - a 'mistake of fact' defence should be applied and a 'reasonable steps' style defence should attach to any penalties to ensure that organisations that take appropriate measures to fulfil their due diligence obligations under the Act are not subject to liability.

21. What key considerations should be taken into account when considering the maximum penalty units for any penalty provisions?

Penalties should reflect the seriousness of the conduct being deterred or punished (e.g. higher penalties for false or misleading information than for late submission).

Penalty units should also be aligned with similar corporate reporting obligations to ensure fairness and credibility (e.g. the application of penalty units for the [Payment Times Reporting](#) regime).

22. There are a number of key subsidiary matters to consider when exploring the introduction of additional regulatory tools, including civil penalties:

If additional regulatory tools are introduced, who should carry out these new functions:

- (a) The current regulator who has an existing support and advisory role
- (b) An independent section or body

(c) Other (please specify)

The AICD is of the view that the imposition of penalties and regulatory tools should be subject to judicial exclusivity and not applied by the Anti-Slavery Commissioner or Ministerial direction. We would suggest that an independent section or body should have responsibility for the use of additional regulatory tools and imposition of penalties.

Joint reporting

26. Does corporate group reporting adequately resolve challenges experienced by reporting entities with the current joint reporting model?

The AICD supports the focus on improving clarity for entities regarding their approach to corporate group reporting and promoting accountability. While we consider the proposed corporate group reporting model to be sensible and likely effective in the context of some large corporate structures, it may not be suitable for all corporate groups – particularly large corporate groups that have complicated structures and overseas subsidiaries with varying levels of control (e.g. joint ventures).

We recommend the Attorney-General's Department engage with the Payment Times Reporting Regulator - that has been grappling with similar issues - to find an appropriate solution.

We acknowledge that the proposed reforms contemplate exemptions to corporate group reporting. However, the additional requirement for an entity to apply to the regulator for a determination that it is a 'subsidiary reporting entity' may increase administrative burdens at both the entity and regulator level.

As a general principle, we would support groups having the flexibility to report in a way that is most appropriate for their circumstances based on the governance structures that apply throughout the group, with an appropriate determination about the approach being made internally, and clearly stated in the relevant statements.

Other proposals

32. Should the requirement for voluntary reporting entities to notify the Minister of their intention to voluntarily report be removed altogether?

Yes. The requirement for voluntary reporting entities to notify the Minister of their intention to report should be removed. This obligation creates unnecessary administrative burden and offers little regulatory benefit, particularly where the entity is already choosing to prepare and lodge a modern slavery statement.

Removing the notification requirement would streamline the reporting process and may encourage more entities to participate voluntarily, without deterring them through additional procedural steps.

36. Are any changes needed to the proposal to amend the notification requirements to cease as a reporting entity?

While this may assist in maintaining the accuracy of the Register, the AICD does not support the change, as the Minister should already have access to this information through existing channels such as tax filings and corporate reporting, without the need to impose an additional administrative requirement.