



4 October 2017

FSC MODERN SLAVERY IN SUPPLY CHAINS REPORTING REQUIREMENT SUBMISSION

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

BY EMAIL: slavery.consultations@ag.gov.au

Dear Sir/Madam,

The Financial Services Council (FSC) welcomes the opportunity to make a submission to the consultation process on the Australian Government's proposed model examining issues related to the Modern Slavery in Supply Chains Reporting Requirement.

The FSC has over 100 members representing Australia's retail and wholesale funds management businesses, superannuation funds, life insurers, financial advisory networks and licensed trustee companies. The industry is responsible for investing more than \$2.7 trillion on behalf of 13 million Australians. The pool of funds under management is larger than Australia's GDP and the capitalisation of the Australian Securities Exchange and is the fourth largest pool of managed funds in the world.

The FSC is a strong supporter of disclosure and transparency in representing institutional investors, and we strongly support the eradication of Modern Slavery in all forms.

We take this opportunity to thank the Attorney-General's Department for leading the consultation process for Australia's legislative contribution required to globally eliminate Modern Slavery in all its forms, and for the substantial work that has already been put into developing this important regulatory reform to date.

The FSC makes recommendations to further refine the proposed model for Modern Slavery reporting within supply chains. These proposals have been developed in consultation with our members to ensure that a suitable balance is reached to enable instances of Modern Slavery within supply chains to be disclosed in a way that is sufficiently flexible to ensure appropriate reporting transparency is achieved, with the end objective that required reporting entities disclosure statements can be easily understood and compared.

Please contact me with any questions in relation to this submission on (02) 8235 2514.

Yours sincerely,

Catherine Chivers

Policy Manager - Investments and Global Markets

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Why the FSC has an interest in Modern Slavery in Supply Chains Reporting

As detailed above, the FSC represents a diverse number of member firms within the Australian financial services landscape. Of particular relevance to the concept of Modern Slavery, we represent institutional asset managers and investors – those being fund managers and superannuation funds. As stewards of approximately \$2.7 trillion (including being significant investors in many listed Australian companies), we take an active interest in ensuring increased transparency and disclosure by corporate Australia of the impact of Modern Slavery within corporate supply chains.

As stewards of such vast asset pools, Australian asset managers have a duty to manage a wide range of risks on their behalf of their investors/clients. Some of those many risks can be grouped into the 'Environmental, Social and Governance' (ESG) class. Within this broad construct, issues of human rights violations are beginning to attract increased focus and inquiry within the investment space - a substantial shift that has the potential to impact multiple asset classes.

It is our members' view that corporations have legal, moral and commercial responsibilities to respect human rights and manage the human rights impacts of their operations. Apart from being required to meet these responsibilities, we note there is the increased potential for them to face reputational, legal or other consequences if they fail to do so. As investors in these businesses on behalf of investors/clients, our members consider that such associated risks to be understood and suitably mitigated within the broader investment process.

However, being able to meaningfully achieve this outcome requires Australian corporations to adequately disclose the policies and processes they have in place to manage and avoid Modern Slavery within their supply chains and operations. This is important so that institutional asset managers and investors have sufficient knowledge to make an informed decision about where to appropriately direct their investment capital in order to achieve a suitable risk-adjusted outcome that adheres to their relevant portfolio mandate.

The irrefutable impact of Modern Slavery globally that needs to be acknowledged

Modern Slavery is a significant global issue – with more than 45 million people around the world trapped in some form of Modern Slavery, according to the 2016 Global Slavery Index.¹ Related areas include human trafficking, forced labour, wage exploitation, child labour and debt bondage. These practices should be removed from supply chains and operations through due diligence, research and remediation – and institutional investors are well placed to re-inforce these outcomes via their investment decision making processes.

Introduction of relevant legislation in Australia to combat Modern Slavery

As discussed above, the FSC strongly supports the introduction of relevant legislation to tackle Modern Slavery in all its forms, and within this construct, we are strongly supportive of a regulatory response centred upon the removal of Modern Slavery within supply chains and operations of Australian entities.

As institutional investors, our asset manager and superannuation fund members wish to see more transparency and disclosure on human rights from the companies they invest in. In the FSCs view,

¹ <https://www.globallslaveryindex.org/findings/>

Australia could be a world leader in this space if our Modern Slavery reporting in supply chains legislation appropriately strikes the correct balance of:

1. focussing on appropriately sized companies being required to report the existence of Modern Slavery within their supply chains
2. ensuring that such reporting is easily understood and has a compulsory common structure that enables straight-forward comparability of Modern Slavery supply chain impacts across different companies, and
3. Modern Slavery in supply chains reports being accessible in a timely fashion by the investment (and wider) community so that investment decisions can be made in regards to the risks that inadequate management of this issue poses and exercise our stewardship responsibilities by engaging with companies facing risks related to Modern Slavery and other human rights abuses.

We acknowledge that the Government is currently progressing consultations to develop global best practice legislation aligned to the *UN Guiding Principles on Business and Human Rights 2011*, in our view such Principles should ultimately be reflected within the Australian jurisdiction.

We reiterate our stance from previous submissions that provisions in the United Kingdom's legislation which have broadly proven effective in addressing information needs related to Modern Slavery should be introduced in Australia, albeit with some further improvements.

We address these key issues below, covering areas which are outlined within the comprehensive list of questions in the *Modern Slavery in Supply Chains Reporting Requirement Public Consultation Paper and Regulation Impact Statement* dated 16 August 2017.

The FSCs core recommendations on Modern Slavery in Supply Chains Reporting

Our specific responses/recommendations relating to consultation questions posed surrounding Modern Slavery in Supply Chains Reporting are as below.

1. Is the proposed definition of 'Modern Slavery' appropriate and simple to understand?

In our view, defining Modern Slavery in alignment with Subdivisions 270 and 271 of the *Criminal Code Act 1955* (Cth) makes broad sense.

We are, however, disappointed at the proposal that practices such as forced marriages will be excluded from a definition of Modern Slavery. We instead repeat our previous submission on this topic that practices such as forced marriage and 'other slavery-like exploitation' should be included within a definition of Modern Slavery in the Australian jurisdiction.

2. Definition of an entity's revenue for the reporting requirement, and whether a \$100 million total annual revenue is an appropriate threshold for the reporting requirement

We conceptually understand the premise that this benchmark threshold is aligned to other thresholds, such as those required for public companies to adhere to the Australian Taxation Office's (ATO/ATOs) corporate tax transparency requirements.

However, in our view, as such a threshold represents a population of less than 2,000 reporting entities based on 2014-15 ATO data² this threshold is limited in enabling issues of Modern Slavery occurring within supply chains and operations to be meaningfully tackled.

We submit that relevant significant non-listed companies, significant foreign companies with operations in Australia and public sector and NGOs which are large procurement entities that may not otherwise meet the \$100 million revenue threshold are in a position to positively advance the abolition of Modern Slavery generally. Therefore, such entities should be required to report on instances of Modern Slavery observed within their supply chains and operations.

In addition, we recommend the relevant definition for reporting requirement purposes cover all listed entities irrespective of revenue size, as this will capture smaller entities with global operations (e.g. small listed mining and exploration companies with operations in the Asian and African continents where Modern Slavery is a prevalent concern). We do accept that under this approach there will be many entities which do not have Modern Slavery issues in their supply chains. In such cases a statement to that effect can (and should) simply be able to be made. Penalties for false or misleading statements may be required should there be demonstrated non-compliance across reporting entities, as observed at the conclusion of the three-year period after introduction of relevant legislation.

To overcome such challenges, we instead recommend that:

- a. companies with overseas expenditure of over \$50 million (including capital expenditure) be included within the threshold, and
- b. the threshold be broadened to capture all listed companies (which is as per our previous submissions on Modern Slavery). Alternatively the Government can instruct ASIC to work with the ASX to ensure that these disclosures are included in listing rules or the ASX Corporate Governance principles, so as to capture listed companies which fall below the threshold, and
- c. lowering the overall revenue threshold to \$50 million

The FSC does not see such additional reporting requirements as a net material increase in costs to the reporting entity. Rather, we submit that any entity with observably robust policies which clearly illustrate how it is taking effective action to combat slavery will be a much more attractive investment prospect to new clients, investors, and business partners. We believe this to especially be the case where they are listed.

Anecdotally, our members report that their clients are becoming increasingly aware of the possible impact of their investment dollars/mandates on society at large, and are asking more and more questions each year about how their investment processes align with these principles. They also report that they see this as a trend which will only become more pronounced with time, especially given the 'viral' nature of social issues on social media and the presence more generally of a '24/7' news cycle in the mainstream media. Such a trend appears to be also emerging globally at the highest of levels, with wealthy 'affluenza kids' striving to create a lasting impact for their families' wealth.³

² <https://www.ato.gov.au/Business/Large-business/In-detail/Tax-transparency/Corporate-tax-transparency-report-for-the-2014-15-income-year/?anchor=Changestothepopulation#Changestothepopulation>

³ <http://www.news.com.au/finance/money/wealth/super-rich-kids-create-the-impact-network-to-change-the-world/news-story/fb02fa53a5eb898955c198a9a0eff50b>

3. With the proposed reporting requirements not providing penalties for non-compliance, what other actions should occur to support entities to comply with reporting requirements

While we broadly support the proposed position on not including fines and penalties for reporting non-compliance, we recommend that it be clear to relevant companies that non-compliance will (and should) come with some associated consequences.

In our view, this can be achieved by two related initiatives:

- a. Publishing the names of companies who have not complied via a suitably accessible central public repository as proposed, and
- b. Not allowing Commonwealth procurement from companies who have not complied with Modern Slavery in supply chains and operation reporting requirements, with minimum compulsory standards being established for Government procurement processes over the short to medium term. We believe that including Government procurement in the legislation will act as a significant positive signal to drive reporting compliance.

Should a high standard of reporting compliance not be achieved with these twin measures at the conclusion of the three-year period after introduction of relevant legislation, we recommend that as part of the review that is scheduled to occur at that time, that the Government consider legislating to introduce penalties for non-compliance with reporting requirements.

4. Are the proposed four mandatory criteria for entities to report against appropriate?

We submit that the four reporting areas to be considered (which we note essentially mirror UK legislation) are broadly appropriate, though we are concerned by the proposed ability to enable entities with ... *'the flexibility to determine what, if any, information they provide against each of the four criteria and whether to include any additional information'*.

We instead respectfully submit (as detailed above) that a common reporting structure be developed to capture all relevant information to a minimum legislative standard on instances of Modern Slavery observable/occurring within supply chains and operations, but also with the flexibility that additional information over and above this threshold can be provided by reporting entities on a voluntary basis, should they choose to do so.

We note that in an era where the various forms of social media penetrate across all corners of the globe, and that the use of this medium by social justice (including human and animal rights) activists is increasing rapidly, that instances of voluntary self-reporting will become in an entity's best interests over time.

5. 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?

We support a provision mirroring the UK Act to establish an Independent Anti-Slavery Commissioner. We would like to see such a Commissioner provide an annual report detailing the companies that have identified Modern Slavery as an issue in their operations and reported accordingly. We further believe that such a process would improve compliance and monitoring.

Should this be unachievable, then we alternatively support the creation of an oversight function that creates a Modern Slavery Commissioner as part of the Australian Human Rights Commission to

provide oversight of compliance with the relevant legislation, and recommend changes to Government as necessary on a regular basis.

Under this model, a Modern Slavery Commissioner should also be given the function of running the Modern Slavery Reporting repository.