

Ai GROUP SUBMISSION

**Statutory review of the
*Modern Slavery Act 2018 (Cth)***

**Attorney-General's
Department**

Australian Government

22 November 2022

Ai
GROUP

About Australian Industry Group

The Australian Industry Group (Ai Group) is a peak industry association in Australia which along with its affiliates represents the interests of more than 60,000 businesses in an expanding range of sectors including: manufacturing, engineering, construction, automotive, food, transport, information technology, telecommunications, call centres, labour hire, printing, defence, mining equipment and supplies, airlines, health, community services and other industries. The businesses which we represent employ more than one million people. Ai Group members operate small, medium and large businesses across a range of industries. Ai Group is closely affiliated with many other employer groups and directly manages a number of those organisations.

Introduction

Ai Group welcomes the opportunity to lodge a submission to the statutory review of the *Modern Slavery Act 2018 (Cth) (MS Act)*, led by Professor John McMillian AO.

The basis for the statutory review is section 24 of the MS Act which has informed the terms of reference and relevant issues canvassed in the *Review of the Modern Slavery Act – Issues Paper*.

Crimes of modern slavery have no place in society and should be eradicated. Ai Group supports effective and targeted measures to eradicate modern slavery crimes in the community. Any measures imposed on business to combat modern slavery should be realistic, workable and sustainable.

As part of this review, it is Ai Group's position that:

- The Australian Government clarify the relationship between this review and its own policy announcements in respect of the MS Act and/or other measures;
- After three years of operation, the MS Act is creating a significant impact in how various commercial and supplier practices identify and address modern slavery risks.
- Due diligence is not an identified area of non-compliance and reporting of this is already contained in the MS Act. Any consideration of increasing obligations should be resisted when more remedial guidance may be given.
- Non-reporting businesses are already impacted by the MS Act as supply chain businesses for reporting entities. Lowering the reporting threshold would result in an inequitable burden (relative to reporting entities) of both preparing a modern slavery statement and responding to head contractor due diligence models.
- The significant increase in forced marriage as a proportion of modern slavery crimes and its more removed proximity from business control and influence should not be considered reasons to increase reporting obligations on business under the MS Act.
- A co-operative approach with other reporting frameworks to facilitate an easier concurrent application of multiple internal reporting frameworks is needed.
- The compliance data and trends by reporting entities under the MS Act do not warrant the imposition of civil penalties; to do so would be disproportionate to the nature of non-compliance areas reported in the Issues Paper.
- The review consider the detrimental impact of the pandemic on both reporting and non-reporting entities, with the effects of the pandemic remaining in parts of the economy.
- Any appointment of an Anti-Slavery Commissioner should draw on a model to support

compliance with MS Act, rather than to enforce the MS Act as a punitive tool (such as through civil penalties).

Ai Group's work in anti-slavery initiatives

Slavery is a crime and must be eradicated. Businesses, governments, community groups and individual consumers all have a role to play to stop slavery continuing both in Australia and around the world. Crimes of slavery often occur in "plain sight" but where limited knowledge and understanding of modern slavery risks inhibit actions to intervene and stop its occurrence.

As a peak national employer association, Ai Group has played a constructive role in the development of the MS Act, including by providing:

- [Ai Group's response to the MS Act's Draft Guidance Material, May 2019](#)
- Ai Group's submission into the [Senate Legal and Constitutional Affairs Committee Inquiry relating to the *Modern Slavery Bill 2018*](#); and
- [Ai Group's submission](#) in response to the Federal Government's proposed [Modern Slavery in Supply Chains Reporting Requirement Consultation Paper, November 2017](#)

Ai Group is an appointed member of the Australian Government's Modern Slavery Expert Advisory Group where we provide an informed industry perspective to the Government's anti-slavery response and administering of the MS Act.

In addition, Ai Group operates an Anti-Slavery Industry Network designed to lift awareness of modern slavery risks in business operations and supply chains and to build industry capacity to address and reduce these risks. The Anti-Slavery Industry Network complements our educative and advisory programs to the business community about modern slavery risks and the MS Act's reporting framework.

Ai Group business members (including both reporting and non-reporting entities) routinely provide constructive feedback and insights about the practical impacts of reporting and the effects on commercial dealings with other organisations. Much of this feedback, combined with our work in the Government's Modern Slavery Expert Advisory Group has informed this submission to the review.

Relationship between the statutory review and current Government policy

The review of the MS Act is triggered and framed by section 24 of the MS Act. Section 24 is set out below:

- (1) The Minister must cause a report to be prepared reviewing:
 - (a) the operation of this Act and any rules over the period of 3 years after this section commences; and
 - (aa) compliance with this Act and any rules over that period; and
 - (ab) whether additional measures to improve compliance with this Act and any rules are necessary or desirable, such as civil penalties for failure to comply with the requirements of this Act; and
 - (ac) whether a further review of this Act and any rules should be undertaken, and if so, when; and
 - (ad) whether it is necessary or desirable to do anything else to improve the operation of this Act and any rules; and
 - (b) whether this Act or any rules should be amended to implement review recommendations.
- (2) The review must be:
 - (a) started as soon as practicable after the end of the period of 3 years after this section commences; and
 - (b) completed within 12 months after it starts.
- (3) The Minister must cause copies of the report to be tabled in each House of the Parliament within 15 sitting days of that House after the completion of the report.

Section 24 was a late amendment to the development of the MS Act in its passage through Parliament; largely to address different views about whether the MS Act should operate as a penalty regime for reporting entities who failed to comply with the MS Act's reporting requirements.

In its inquiry into the Modern Slavery Bill, the Senate Legal and Constitutional Affairs Committee recommended that:

Recommendation 4

The committee recommends that the statutory three-year review consider all aspects of the Act, with particular attention to compliance thresholds and compliance standards, and that the review be required to consider whether a mandatory penalty regime is required, drawing on the evidence and data gathered through the first three years of the Act's operation. The committee acknowledges it may be shown that penalties are not needed.

The Australian Government accepted this recommendation in its Response and accordingly sought an amendment to the MS Bill (section 24) to clarify the focus of the review and whether additional measures to improve compliance are required, including civil penalties. The terms of reference for this statutory review are clearly based on section 24 but also propose specific items for consideration such as the appointment of an Anti-Slavery Commissioner and the lowering of the reporting threshold.

Despite the statutory review's terms of reference, the Commonwealth Attorney-General in announcing the review, confirmed its policy decision to introduce penalties for non-compliance:

The Albanese Government has committed to introducing penalties for non-compliance, which aim to hold eligible companies to account. The implementation of this policy will be worked through with businesses, civil society groups and NGOs.¹ (emphasis added)

¹ Media Release, Review of the Modern Slavery Act, The Hon. Mark Dreyfus, KC MP, 22 August 2022

This raises questions about the relationship between this independent statutory review and the implementation of Government policy on how the MS Act should operate. Specifically, it is unclear as to whether any independent statutory review in its consideration of whether the imposition of civil penalties is warranted would have any bearing on the Government's established policy. It is also unclear as to whether this statutory review is in fact the Government's intended process to "work through" the implementation of its already established policy position.

The Government can assist by providing this clarification.

If, despite Ai Group's concerns (as set out further below), the Government proceeds with its policy, it would be beneficial for separate consultations be held with the business, civil society and NGOs, beyond this independent statutory review.

The mandatory reporting criteria is appropriate and has framed commercial dealings

While many submitters to this review are likely to focus on modern slavery statements lodged by reporting entities, a proper assessment of the MS Act's effectiveness should consider the impact the MS Act has on non-reporting businesses, many of which operate in multiple supply chains. In this regard, the MS Act's mandatory criteria is appropriate and has been effective in framing commercial dealings around slavery due diligence in business operations and supply chains.

Ai Group has observed a substantial and diverse range of commercial practices and dealings that have adopted the need to address modern slavery risks in business operations and supply chain as part of doing business. This particularly extends to commercial dealings with small to medium businesses who engage with reporting entities as suppliers.

Many commercial arrangements are framed by the MS Act's mandatory criteria and/or the strict policies adopted by reporting entities for suppliers to demonstrate due diligence efforts in identifying and addressing modern slavery risks. Effectively the MS Act has produced a growing industry of anti-slavery service providers that engage with a large number of commercial and labour arrangements to ensure risks of slavery are addressed.

Common commercial tools to require suppliers and others to demonstrate how they address modern slavery risks include:

- Specific terms and conditions in commercial agreements requiring adherence to anti-slavery standards and reporting;
- Adherence to supplier codes of conduct and/or anti-slavery policies that address modern slavery risks;
- The rapid expansion of pre-qualification service providers to veto new suppliers in respect of modern slavery risks and other matters relating to ethical practices and labour rights;

- The development and application of anti-slavery and labour rights policies across supply chains;
- The development of and expansion of contractor management systems to cater specifically to modern slavery risks;
- The rapid expansion of third-party auditing services in respect of slavery risks and ethical practices where submitting to auditing and providing satisfactory results is a commercial requirement for business dealings.

No doubt the range of commercial tools to focus business on eradicating slavery will continue to evolve as a normal path of doing business with the continued operation of the MS Act.

The use of commercial leverage to embed anti-slavery due diligence in commercial dealings was a key objective of the MS Act. Ai Group considers that the MS Act in this regard is working as intended in engaging in commercial change.

We note however that the experiences of small to medium or supply chain businesses is a matter that requires further support and guidance from Governments in respect of the MS Act and modern slavery generally. We refer below to our comments in respect of any appointment of an Anti-Slavery Commissioner and further measures the Australian Government can take.

Substantially changing the mandatory criteria after the three years is premature

Given the MS Act has only been in operation for a three-year period and efforts are needed to support compliance by business in discrete areas of reporting, it would be premature and destabilizing for the MS Act to increase obligations on reporting entities or other businesses impacted by the reporting requirement.

Ai Group has not identified any need to change the mandatory criteria.

The Issues Paper appropriately recognizes that the full range of regulatory models, *“including those that require a different approach such as such as imposing a mandatory due diligence planning obligation regarding any foreign purchases, or prohibiting the import of goods from declared regions”* are outside the scope of this review.

To the extent that the statutory review does in fact consider proposals to amend the MS Act to impose a due diligence obligation, it is appropriate that the full scope of the current mandatory criteria be considered carefully to ensure that businesses are supported in meeting current reporting obligations, including those that relate to due diligence.

In this respect, the MS Act's mandatory criteria for annual modern slavery statements already includes a requirement to report on due diligence measures implemented by reporting entities (see 16(1)(d), for the purpose of reporting in the statement.

The Explanatory Memorandum to the MS Act explained that:

'Due diligence' is intended to refer to an entity's ongoing management processes to identify, prevent, mitigate and account for how they address incidences of modern slavery.

The requirement to report on 'due diligence' and 'remediation' processes is intended to ensure reporting entities communicate their general approaches to prevent and address modern slavery. It does not require reporting on specific responses to particular incidences or cases of modern slavery. However, this is not intended to prevent entities from reporting on specific responses to incidences or cases where they consider it appropriate to do so.

Ai Group does not see the need to introduce any new separate obligation to satisfy a due diligence requirement when the requirement to report about it already exists in the MS Act.

Furthermore, the due diligence aspects in the compliance data reported in the Issues Paper at Figure 3 show that this area is not an area of high non-compliance in modern slavery statements. Figure 3 specifically identifies that the compliance area of "actions taken" that correlate to the criterion in subsection 16(1)(d) identifying due diligence is only at 2.38% of the statements identified as non-compliant, in significant contrast to the criteria relating to consultation and assessing effectiveness which sit at 59.7% and 23.8% respectively.

Notwithstanding, if the review concludes that more work is needed to extract business responses describing due diligence, Ai Group recommends that specific guidance be provided by the Government on the standard of responses expected. These include referencing the four pillars of due diligence outlined in Principle 17 of the United Nations Guiding Principles (UNGPs) as outlined in the Issues Paper. The guidance should also be made publicly accessible to business and promoted widely.

Non-reporting businesses are already significantly impacted by the MS Act

Non-reporting businesses are already significantly impacted by the operation of the MS Act. For reasons set out below, Ai Group does not support the lowering of the reporting threshold under the MS Act to entities with a consolidated annual revenue of less than \$100 million.

A key purpose of the MS Act is to drive modern slavery awareness and due diligence practices down and across supply chains using the commercial leverage exercised by larger businesses as a reporting entities. The MS Act's *Guidance for Reporting Entities* reiterates this intended operation by stating:

The reporting requirement is focused on large businesses and other entities that have the capacity and leverage to drive change throughout their supply chains.²

Lowering the reporting threshold has the potential to dilute and confuse anti-slavery measures imposed by larger entities on their supply chains, if a broader category of suppliers were required to devise their own independent approach to modern slavery due diligence that may take a different form to what may be required by a head contractor. To this end, lowering the threshold could undermine the MS Act's intent of engaging with, and using commercial leverage as a key driver for businesses to engage in slavery. It may also weaken the focus of targeted and sustained anti-slavery supply chain models that are evolving in industry.

In addition, the Regulation Impact Statement (**RIS**) to the MS Act estimated that the MS Act's mandatory reporting requirement on larger business would *"would have an average annual regulatory impact on the business community of approximately \$65.85 million (\$21,950 per reporting entity)."*³ Ai Group considers the quantum of this assessment to be substantially lower than the overall cost to the broader business community. The assessment does not consider the regulatory impact of the MS Act on the many more non-reporting supplier businesses who are impacted by modern slavery reporting requirements of their head contractors or other reporting business customers. Many of these anti-slavery measures are identified above, and while they are strong indicators that the MS Act is having its intended effect, the cost to non-reporting entities should be considered in the MS Act's review.

Specifically, many small to medium businesses below the reporting threshold do not have separate HR or sustainability teams to support modern slavery reporting and compliance, and regularly report that they are stretched in engaging with different anti-slavery supply chain models. Ai Group has made some recommendations to address this in our responses to the foreshadowed appointment of an Anti-Slavery Commissioner.

Lowering the reporting threshold to require entities with less than \$100m to report, would add to the regulatory and cost burden on small to medium employers who, in addition to being required to submit a modern slavery statement, would also be building due diligence frameworks around the various due diligence models required by larger head contractor businesses. The result would likely be that small to medium businesses would bear a significantly higher regulatory burden than the much larger reporting entities themselves. This regulatory inequity is inappropriate and should be avoided.

The increased prevalence of forced marriage in modern slavery crimes

Disturbingly, it has been reported that crimes of modern slavery around the world are increasing. Recent estimates from Global Estimates of Modern Slavery released in 2022⁴, show:

² Commonwealth Modern Slavery Act 2018, *Guidance for Reporting Entities*, Department of Home Affairs, p.13

³ Regulation Impact Statement, Explanatory Memorandum, *Modern Slavery Bill 2018*, p.35

⁴ Global Estimates of Modern Slavery; *Forced Labour and Forced Marriage*, ILO, WalkFree, IOM, 2022

- that global slavery has increased from 40.3m people in 2016 to 49.6m in 2021; and
- the increase has been attributed to the pandemic, armed conflict, increase in poverty, unsafe migration and gendered-based violence, but also a significant increase in forced marriage.⁵

The Global Estimates of Modern Slavery also show that the Asia-Pacific had the highest number of persons enslaved, while the Arab States, the highest prevalence.⁶

Many of these factors identified by the Global Estimates of Modern Slavery as contributing to the increase in slavery have also made it more difficult for businesses to identify and address modern slavery risks. The impact of the pandemic for instance, is described further below.

Modern slavery crimes are also increasing domestically. On 30 July 2022, the Australian Federal Police (**AFP**) reported that in the 2021-22 financial year, the AFP received 294 reports of modern slavery and human trafficking, an increase from 224 in the previous financial year.⁷ Of the 294 reports made to the AFP in the last financial year, the five most reported crime types were:

- 84 reports of forced marriage,
- 54 reports of sexual servitude and exploitation,
- 42 reports of forced labour,
- 37 reports of exit trafficking in persons,
- 21 of trafficking in children

The AFP cited the increased use of technology by perpetrators during the pandemic to recruit, threaten or coerce victims for the purpose of exploitation. Complaints of forced marriage were double that of forced labour.

Modern slavery crimes of forced marriage are more commonly perpetrated by families and community groups connected victims, rather than businesses. The significant proportion of modern slavery crimes consisting of forced marriage and the more removed proximity of that crime to business operations, should be relevant in any consideration given to evidence of increased slavery and any need to change obligations on business in the review of the MS Act.

We note that concern about the appropriateness of businesses in preventing forced marriage was reflected in a tabled amendment to the MS Bill by then Opposition member The Hon. Sen. O'Neill. That amendment sought to exclude forced marriage from the full definition of modern slavery in section 270.7B of the *Criminal Code* for the purposes of the MS Act's modern slavery reporting requirement on business. Ultimately the MS Bill was not amended in this way.

⁵ *ibid*

⁶ *ibid*

⁷ Media Release, *Reports of Human Trafficking and Slavery to AFP reach new high*, Australian Federal Police, 30 July 2022

Accordingly, while the definition of modern slavery in the MS Act still clearly includes forced marriage, the extent to which businesses can practically and/or *should* identify and remove risks of forced marriage in their operations and supply chains is far more challenging than other more labour-related practices of slavery. Examining personal relationships and marriages of workers in an operation and supply chain presents a range of other problems, including individual privacy, the types of questions asked, risks of unlawful discrimination, safety of individuals, what is done with the information disclosed, obligations to notify policing authorities, and of course whether this is information that should be asked and collected by businesses, particularly where it is likely that the requests for such information are likely to be systematically built into an organisation's due diligence framework.

Ai Group does not seek to change the definition of modern slavery in the MS Act for the purpose of the modern slavery reporting requirement on business as it is currently framed. However, if the Government is inclined to implement further changes to the MS Act, then the definition of modern slavery should be examined.

Ways to manage the concurrent application of the MS Act and other international reporting frameworks

The Issues Paper appropriately recognises that many reporting entities are, in addition to the MS Act, also reporting into different international slavery reporting regimes. Despite the variances between reporting frameworks, reporting obligations are generally in respect of the same global anti-slavery processes that have been established for all business operations and suppliers, including those that occur in Australia.

Consequently, the reporting requirement in the MS Act has the unintended impact of driving modern slavery reporting as a local compliance activity that does not sufficiently engage with, or operates independently to, improvements in global processes.

Specifically, Ai Group has observed that many global businesses required to report under the Australian MS Act and other jurisdictions have resulted in the preparation of various versions of modern slavery statements catered to different jurisdictions and requirements. Different statements often circulate throughout organisations and are displayed in various and often inconsistent ways globally (often to reflect the requirements of the relevant reporting jurisdiction). This can limit the effectiveness of both the process in preparing the statement, and its final content, from contributing to and driving improvements in organizational anti-slavery measures.

As outlined in the Issues Paper, international reporting models vary with many containing less onerous provisions than the MS Act but may be more directive and prohibitive on specific issues. This makes it difficult to wholistically benchmark Australia's MS Act against other reporting frameworks.

Ai Group recommends that to better streamline reporting obligations, consideration be given to how the MS Act can work with other comparable reporting frameworks in international jurisdictions, by:

- Co-operative approaches taken between comparable jurisdictions, including the sharing of resources and knowledge regarding slavery, including current information about particular modern slavery risks;
- Comparable jurisdictions adopting a mutual recognition mechanism in respect of specific, comparable criterion and recognizing the various forms in which the criterion is articulated;
- Amending the MS Act to enable the Australian Government to:
 - receive a modern slavery statement based on when the statement may fall due in another jurisdiction;
 - receive a modern slavery statement signed by the principal governing body of a global parent company responsible for establishing global anti-slavery processes relevant to the organisation.

For the purpose of these steps to better facilitate the co-existence of the MS Act and other reporting jurisdictions, Ai Group considers that a starting comparable jurisdiction be the UK *Modern Slavery Act 2015*.

As an interim measure, it would also be useful for the Australian Government to publicly identify and promote those areas of key and significant differences between the MS Act and other reporting jurisdictions. Ai Group understands that confusion between the requirements of different slavery reporting frameworks has contributed to instances of unintentional non-compliance with the MS Act, notwithstanding that many of these organisations have fairly mature and robust anti-slavery due diligence measures established at a global level.

The compliance trends in reporting do not support the imposition of civil penalties

Instances of non-compliance with reporting obligations are better and more appropriately addressed through targeted, remedial guidance and education, rather than through the imposition of more severe punitive measures, such as civil penalties.

The break-down of areas of non-compliance by reporting entities in the Issues Paper, clearly demonstrates non-compliance is occurring in more technical areas of reporting, rather than with the overall substance of what is reported (and the act of reporting itself). These specific areas of non-compliance in statements relate to describing consultation and describing effectiveness. The Issues Paper also show the proportion of non-compliant statements that were not published due to failure to meet signatory or principal governing body approval requirements.

The requirement to describe consultation arises from mandatory criterion s.16(1)(f) in respect of where an entity owns or controls another entity and an entity giving a joint statement under

section 14. Section 16(1)(f) has only limited application to reporting entities who fall under its provision.

The requirement to describe evaluating the effectiveness of a reporting entity's actions arises from criterion s.16(1)(e). In many respects it is not too surprising that this criterion featured in the areas of non-compliance because it invariably follows the very creation of due diligence actions that were very much the focus of modern slavery statements in first and second reporting cycles – particularly for those businesses who had not previously reported under other comparable jurisdictions.

Together, these areas of non-compliance do not reflect an intention to not comply with the MS Act or to lodge a statement but relate to whether the statement meets the technical requirements of section 16 and how businesses have (somewhat appropriately) prioritised key reporting criteria demanding more substantial responses and resources.

Similarly, reported non-compliance around signing the statement and the approval of a principal governing body do not go to the substance of the statement, or the intent to lodge the statement. This was another area, in Ai Group's experience, that businesses needed further clarification and guidance on.

The imposition of punitive compliance measures, such as financial penalties, based on this compliance data, is completely disproportionate to the specific nature of the compliance problems. More remedial guidance is what is needed to drive compliance in these discrete areas.

Moreover, Ai Group cautions against overlooking the specific areas and nature of non-compliance to bolster general characterisations about poor business compliance with the MS Act. Commentary by some proponents with long-standing views supporting a punitive MS Act have not detailed or examined why businesses have not complied in certain areas but have sought to re-assert the same case for financial penalties. The limitation of this approach obviously ignores the corrective and remedial approaches that may currently be available and further utilised by the Australian Government.

Disclosure and Compliance

A criticism that has been raised by some NGO reports concern the lack of disclosure of modern slavery risks by entities in their statements. While this feedback is useful in reducing the general stigma that still follows businesses who disclose modern slavery risks, limited disclosure does not mean that the business is unaware or has done nothing to identify and address that risk.

Reasons for non-disclosure may vary but frequently involve judgements about whether disclosure is harmful to either those suspected victims of slavery or those involved in identifying the risk, or whether the information relied upon has in fact been verified and how any disclosure would impact other parties (including local or national governments).

Effective slavery responses by businesses are not necessarily supported by public disclosure and while the argument for disclosure and transparency is often to motivate businesses to act on slavery risks, for many businesses that motivation is established in other legal frameworks (eg anti-bribery and anti-corruption laws) and for those that have a mature approach to slavery due diligence based on the duration in which the business has been engaged with the issue.

Ai Group cautions against any strong negative inference drawn against business efforts to address slavery based on levels of disclosure. This extends to relying on limited disclosure by business as the basis for imposing more punitive and interventionist models for reporting.

If there is a view to promote the disclosure of modern slavery risks more broadly, then this can be driven by Government information publicly identifying and verifying particular modern slavery risks. Promotion of this information will create greater confidence for businesses that disclosure is unlikely to cause further harm or place people at greater risk.

Ai Group does not support the imposition of civil penalties and considers it disproportionate to the compliance problems identified.

If, despite Ai Group's view, the Government proceeds with its policy of adopting stronger measures for non-compliance, it is essential that the Government consider other forms of remedial intervention that are likely to secure compliance with the MS Act, such as the role of directives and warnings from the Government.

The imposition of financial penalties is likely to significantly transform the purpose of modern slavery reporting to one of engagement and action throughout supply chains, to a written compliance activity framed around avoiding a contravention. Should the latter occur, the depth of inquiry and commercial innovation around how modern slavery due diligence is exercised is likely to become less of a priority with resources instead focused on legal compliance with a reporting process.

The appointment of an Anti - Slavery Commissioner

The terms of reference for this statutory review include consideration of whether the appointment of an anti-slavery commissioner would be desirable or appropriate.

Ai Group notes however that the Government intends to establish an Anti-Slavery Commissioner in some capacity. The Federal Budget 2022-2023 recently disclosed that it would establish a new unit within the Attorney-General's Department to scope options to establish an Anti-Slavery Commissioner, as set out below:

Tackling Modern Slavery

Payments (\$m)

	2021-22	2022-23	2023-24	2024-25	2025-26
Attorney-General's Department	-	-	-	-	-

The Government will establish a new unit within the Attorney-General's Department to scope options to establish an Anti-Slavery Commissioner to work with business, civil society and state and territory governments to support compliance with *Australia's Modern Slavery Act 2018* and address modern slavery in supply chains.

The cost of this measure will be met from within the existing resourcing of the Attorney-General's Department.

This measure delivers on the Government's election commitment as published in the *Plan for a Better Future*.

If the appointment of an Anti-Slavery Commissioner is to be established, the role of the NSW Anti-Slavery Commissioner is an instructive model that should be considered by the Federal Government.

The statutory review should also consider the following functions of the Anti-Slavery Commissioner:

- Promote and educate business and the community about how to identify modern slavery risks and how slavery may manifest in the broader community;
- Provide current information about particular modern slavery risks both internationally and domestically;
- Promote and educate business and the community about compliance with the MS Act's modern slavery reporting requirement and to provide resources to assist reporting entities with compliance;
- Identify leading practices within industry in respect of preventing, addressing and remediating cases of modern slavery;
- Provide tools and resources for non-reporting entities, including small business to assist their understanding of modern slavery risks and due diligence in business and supply chain operations, and to which reporting entities may have regard in implementing their own anti-slavery measures;
- Provide information to business and the community about what to do if slavery is discovered;
- Co-ordinate the sharing of resources and information with other anti-slavery jurisdictions (including internationally) with a comparable reporting requirement; and
- Work in consultation with business and community groups in respect of how modern slavery can be prevented, addressed and remediated.

As stated above, Ai Group does not see that there is any proportionate basis for the MS Act to be transformed into a punitive regime and accordingly the role of the Anti-Slavery Commissioner should not be one to enforce compliance of the MS Act other than to identify and publicly disclose those entities who have failed to report as contained in the MS Act's current provisions.

Ai Group would be pleased to engage further with the Federal Government about its scoped options for the role and purpose of an Anti-Slavery Commissioner.

Impact of COVID-19

Undoubtedly the pandemic exacerbated risks of modern slavery throughout the globe, but it also constrained the ability of many businesses to address modern slavery risks.

In assessing the effectiveness of the MS Act, it is essential the review consider the impact of the pandemic on business and supply chains. The pandemic has significantly impacted business throughout much of the MS Act's operation and its effects are still being experienced throughout the domestic and global economy.

The pandemic saw many businesses, including reporting entities and non-reporting suppliers, operate at reduced capacity while simultaneously facing significant supply chain and workforce disruptions. Moreover, significant resources within business were diverted to complying with evolving public health orders focused on the community's safety, such as mandatory vaccination requirements.

The presence of health restrictions and travel bans (both local and overseas) made it difficult for businesses to engage in consultation or communicate with suppliers and individuals across borders, while the reduced capacity in which many businesses operated (if they were operating at all) also constrained the quality of information received.

Australian Border Force recognised the difficulties of the pandemic on business reporting obligations by extending the original reporting deadline of 31 December 2020 to 31 March 2021; however this extension was prior to the extended Delta and Omicron waves and the very many associated public health orders in place as they varied from state to state. International restrictions, particularly those implemented in major cities of China in early 2022, also impacted business and communication arrangements in Australia as they related to certain reporting obligations under the MS Act.

Despite the sustained challenges of the pandemic, compliance with the MS Act by reporting entities reflects the efforts of business to comply with modern slavery reporting while simultaneously navigating changing public health information and orders. This should be a relevant consideration for the review.

Barriers to due diligence

The transfer of the administration of the MS Act to the Commonwealth Attorney-General's Department brings the opportunity for the review of the MS Act to engage with other law reform reviews. This includes the Attorney General's current review of the *Privacy Act 1984 (Cth)* (**Privacy Act**).

The MS Act can only operate effectively when businesses have the lawful ability to share information with other businesses that relate to the MS Act's mandatory criteria and resulting anti-slavery models created for various supply chains. Such information can include the sharing of data relating to workers and the conditions under which they work.

Specifically, the Federal Government's review of the Privacy Act should preserve the Act's employee records exemption to enable businesses to effectively engage in due diligence (eg such as audits) of their suppliers in respect of modern slavery risks. [Ai Group's submission to the review of the Privacy Act is contained here](#), with section 5 of that submission dealing with the need to preserve the employee records exemption.

In that review, there are several proponents seeking the complete removal of the employee records exemption, which if implemented, could be a significant barrier to the MS Act operating effectively and successfully.

Conclusion

Ai Group supports the role of business in adopting effective measures to eradicate modern slavery.

This review of the MS Act should consider the significant impact the MS Act already has on non-reporting entities and the framing of commercial supply chain dealings. The compliance data does not support the case for the imposition of civil penalties and any role for an Anti-Slavery Commissioner should focus on supporting compliance, rather than adopting punitive measures. Ai Group has also made recommendations that address the complexity of other reporting frameworks applying to reporting entities.

Ai Group would be pleased to discuss any aspect of this submission.



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