Australian Government Modern Slavery in Supply Chains Reporting Requirement: Response to Public Consultation Questions
Response from STOP THE TRAFFIK Australian Coalition

1. Is the proposed definition of ‘modern slavery’ appropriate and simple to understand?

We understand the proposed definition to be – ‘Human trafficking, slavery and slavery-like practices such as servitude, forced labour and debt bondage.’ These offences are set out in the Australian Criminal Code Divisions 270 and 271\(^\text{1}\). Any reporting requirements or legislation should use these terms (as they are defined in international agreements and Australian law) in preference to the term ‘Modern Slavery’ which does not have such a standing. A phrase like ‘Modern Slavery’ is useful for communication and has utility as an umbrella term but could be confusing if used in the substance of a Parliamentary Act or regulatory requirement.

Many businesses when addressing issues of human trafficking, slavery and slave-like practices also consider processes to address child labour and/or the worst forms of child labour. Whilst these are not necessarily slavery; the presence of these practices is often associated with and a precondition of slavery and are associated human rights violations. Entities often address these labour violations through similar and parallel processes. There would be value in the reporting mechanism including child labour and particularly worst forms of child labour.

Wherever possible any Act should reference existing definitions in legislation and practice to avoid confusion. This includes this question as well definitions of a reporting entity and groups of entities (Question 2), and size of a large company (Question 3).

2. How should the Australian Government define a reporting ‘entity’ for the purposes of the reporting requirement? Should this definition include ‘groups of entities’ which may have aggregate revenue that exceeds the threshold?

An entity should be any individual, business or organisation with an Australian ABN falling within the threshold or definitions for reporting. This should include companies, businesses, governments, partnerships, universities, organisations incorporating religious groups, not for profits and associations.

The definition should include ‘groups of entities’ and the threshold for reporting should be their aggregate revenue. This should be the case

- where the preparation of group accounts is required under the Australian Accounting Standards\(^\text{2}\)

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• when an entity has capacity to dominate, directly or indirectly, the decision making of another entity

It is particularly important that, given the size of the procurement, Governments (Local, State and Federal) should report. Government should show leadership and model best practice in relation to addressing slavery risks in their own supply chains.

3. How should the Australian Government define an entity’s revenue for the reporting requirement? Is $100 million total annual revenue an appropriate threshold for the reporting requirement?

There are broadly 2 types of risks the Act should mitigate for; general and industry specific risks of slavery.

The general risks of slavery can be identified in any corporation, no matter what the industry. These risks include (but not limited to):

• the risk of the procurement of finished goods for consumption that use slavery in their supply chain;
• the stocking of products for retail that use slavery in their supply chain; and
• the engagement of illegally indentured labour either directly or through subcontractors; either domestically or internationally.

The Corporations Act 2001 provides for a definition of a small and a large proprietary company, and recognises that a small proprietary company “generally has reduced financial reporting requirements”.

For consistency under law, all large proprietary companies should therefore be subject to reporting obligations for the general risks of slavery. Specifically, a large propriety company is defined as satisfying at least two of the following:

(a) the consolidated revenue for the financial year of the company and the entities it controls (if any) is $25 million, or any other amount prescribed by the regulations for the purposes of paragraph (2)(a), or more;

(b) the value of the consolidated gross assets at the end of the financial year of the company and the entities it controls (if any) is $12.5 million, or any other amount prescribed by the regulations for the purposes of paragraph (2)(b), or more;

(c) the company and the entities it controls (if any) have 50, or any other number prescribed by the regulations for the purposes of paragraph (2)(c), or more employees at the end of the financial year.3

Using just the “Large Proprietary Company” definition to address the industry specific risks of slavery is not reasonable. These risks could occur at high levels in a smaller company, but likewise large companies outside those industries may have absolutely no exposure to them.

The Interim report of the Joint Standing Committee on Foreign Affairs, Defence and Trade’s inquiry into establishing a Modern Slavery Act in Australia (August 2017) notes as follows

4.33 The Committee gives in-principle support for lists of at-risk industries, at-risk areas and at-risk groups in Australia and within Australian supply chains to be published by the Australian Government. The US Department of Labour already produces such lists in relation to child labour and forced labour. It is used for Federal Agencies to comply with the Executive Order intended to ensure that agencies do not procure goods made by forced or child labour. Such a list should be used to identify such high risk industries, and every proprietary company operating in those industries should be obligated to report against the specific risks associated with their industry.

Many of the companies in the Australian Tax Office listing of public and private companies over $100 and $200 million respectively are in the finance and banking, insurance, superannuation, mining and construction sectors. These are not the high risk industries. As an example, fashion, garments and cotton businesses are less represented in the list, and the issues for this industry would not be adequately addressed unless there was a lower reporting threshold and/or reporting required of risk industries and source areas.

Therefore, regarding revenue thresholds, we recommend the following:

<table>
<thead>
<tr>
<th>Risk Type</th>
<th>Reporting Requirement</th>
<th>Reporting Entities</th>
</tr>
</thead>
<tbody>
<tr>
<td>General Risks of Slavery</td>
<td>A simple questionnaire (as short as 30 minutes)</td>
<td>• Large proprietary companies under the Corporations Act 2001;</td>
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<td></td>
<td></td>
<td>• All federal, state and local government entities with more than 50 employees</td>
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<tr>
<td>Industry Specific Risks of Slavery</td>
<td>Risk specific questions and attestations.</td>
<td>Any entity operating in a high risk industry.</td>
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<tr>
<td>Industry example: Retail Clothes</td>
<td></td>
<td>• Industry specific questions</td>
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<tr>
<td>Industry</td>
<td></td>
<td>• Supply specific sourcing policies and controls</td>
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<tr>
<td>Industry example: Retail Clothes</td>
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<td>Any company retailing clothes in Australia.</td>
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<td>Industry example: Retail Clothes</td>
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4. How should the Australian Government define an entity’s ‘operations’ and ‘supply chains’ for the purposes of the reporting requirement?
A company’s supply chain should be defined as any materials, goods and/or services which contribute to the provision of the good or service by the entity. That is all activities which are connected with producing, selling and transporting products. An entity should be responsible for addressing human trafficking, slavery and slavery like practices in its direct supply chain and in its business relationships. This includes business partners in its value chain linked to their operations, goods, services and transportation of the same.

5. How will affected entities likely respond to the reporting requirement? As this is how the regulatory impact is calculated, do Government’s preliminary cost estimates require adjustment?

The regulatory impact should be minimised by providing entities with a simple way to manage their compliance (see response to question 8), and by making compliance level relevant to an entities risk (see response to question 3).

If these recommendations are adopted, then the platform will report on the regulatory impact by evaluating entity response times (quantitative) and surveying sentiment (qualitative). The compliance controls can then be adjusted to reflect what the government can accept as a reasonable regulatory impact.

However, we would like to note that taking action to address this crime in supply chains should be viewed as an investment in protecting brand reputation. The reputation risk to an entity of human trafficking, slavery and slave like practices being linked to its goods and services is enormous.

6. What regulatory impact will this reporting requirement have on entities? Can this regulatory impact be further reduced without limiting the effectiveness of the reporting requirement?

The introduction of mandatory reporting is of great benefit to business and creates a ‘level playing field’ across entities. Many large companies are already seeking to put in place the due diligence processes to ensure their supply chains are free from the conditions and practices which contribute to human trafficking, slavery and slave like practices. A framework for reporting enables them to show what they are doing.

As larger businesses comply, the need for smaller businesses (who are their suppliers) to report on measures they are taking, also increases. At the moment, suppliers are often required to report via different reporting frameworks to their buyers, resulting in duplicated compliance effort based on different requirements.

Therefore enabling reporting into a Modern Slavery Act framework, on a trusted platform, will in fact reduce the work needed by these businesses.

Note also answers to questions 5 and 8 highlight how to reduce regulatory impact while maintaining effectiveness.

7. Are the proposed four mandatory criteria for entities to report against appropriate?
Should other criteria be included, including a requirement to report on the number and nature of any incidences of modern slavery detected during the reporting period?

Australia has an opportunity to learn from, build on and improve the legislation of other countries. Both the California Transparency in Supply Chains Act and the UK Modern Slavery Act seek to offer greater transparency. They have been criticised for not also requiring the remedial action to address risks and occurrences in their supply chains. The French Duty of Vigilance and Dutch Child Labour Due Diligence Laws are more recent and improve on the UK and California laws by requiring companies have action plans to identify risks, mitigate for these risks and remediate instances of human trafficking, child labour or violation of fundamental freedoms.

In Australia, entities should be required to report the oversight mechanisms they have in place to identify and mitigate the occurrence of human trafficking, slavery and slave-like practices and communicate the impacts of these mechanisms. Entities should be required to have a plan to identify, mitigate and account for how they address human trafficking, slavery and slave like practices in their supply chains, especially in high risk industries. Best practice in this area would include:

- strong policies and codes
- traceability and transparency for suppliers and business relationships
- processes for monitoring supply chains and plans for continuous improvement
- systems for worker voice
- training of staff
- processes for remediation of victims

This will see entities having a more integrated approach to managing this crime and help businesses play their part in preventing this crime and protecting victims.

As noted in question 3, when an entity is operating in a high-risk industry or source country an additional layer of reporting would be appropriate and industry specific reporting templates should be developed.

Reporting incidences of human trafficking, slavery and slave like practices will greatly improve public awareness about the problem and build overall capacity to address it. It is STOP THE TRAFFIK’s practice to congratulate companies for reporting instances of human trafficking, slavery and slave like practices as this shows they have effective processes in places for its identification. We also publish online our campaigning approach so we are transparent with business about our own practices.\(^7\)

Our approach is a ‘name and fame’ not ‘name and shame.’ In the instance where it was recently discovered that workers were in slave like conditions in producing ingredients for Gummy Bears, we acknowledged that the owner (Haribo) had a Modern Slavery Statement and a remediation plan. We suggest the development a ‘code of practice’ for civil society groups in relation to the Modern Slavery Act reporting requirements and their interaction with businesses.

\(^7\) https://static1.squarespace.com/static/5600d036e4b056134c4419f3/t/598d13aa1e5b6cb9b27ad75/1502417920522/Campaign+approach+revised.pdf
8. How should a central repository for Modern Slavery Statements be established and what functions should it include?

To do this effectively we need to learn from the UK and first publish a list of entities which are required to report, in the 2 categories of general and industry specific risks of slavery. Voluntary reporting should also be available to entities who fall outside the thresholds and definitions.

The repository should also be a platform, providing

- A compliance framework with rules for applicable reporting requirements
- Streamlined process for entities to report, including delegating actions
- A knowledge base to research and view industry best practices
- A searchable database for consumers, investors and buyers
- An analytics capability for the commissioner to monitor compliance and risk
- Capacity for entities to update and publish the actions they are taking, particularly if slavery is found in their supply chains

It should collect the reports and analyse business sectors in terms of risk mitigation and prevention and identify hotspot regions and industries where human trafficking is occurring. It should be a key resource for the Independent Anti-Slavery Commissioner to assess how the Australian community is responding and identify areas of best practice and areas for development in addressing this crime.

The UK repository simply provides a link to a .pdf version of an entity's statement. STOP THE TRAFFIK has undertaken some market assessment of some of the technology platforms which are already available and would enable reporting at scale. The Australian Charities and Not for Profit Commission (ACNC)\(^8\) provides one model of regulatory compliance which sees 55,231 charities reporting on line. It provides a resource for the Australian community to search and view charities activities and allows the ACNC to monitor if Australian Charities are meeting their obligations.

In order to ensure effective streamlined collection, correlation of data and reporting, the Independent Commissioner will need to leverage readily available technology. As an example, the [ServiceNow Vendor Risk Management (VRM)](https://www.servicenow.com/content/dam/servicenow/documents/solutions-brief/sb-sn-vendor-risk-management-grc.pdf) cloud service could be easily configured to deliver the reporting of regulatory requirements, automated and scalable, to as many Australian companies as encompassed are by the regulations.

The ServiceNow cloud service is hosted in Australia, and recognised as suitable for government use to host sensitive data below the “protected” classification.\(^10\)

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✓ For entities, this means a single portal where they can assign tasks within their entities, and monitor their progress and compliance (see below)

✓ For the Independent Anti-Slavery Commissioner, the platform could deliver visibility of both the status of assessments, as well as a risk assessment based on any set of data collected.
It also manages the workflow associated with reviewing outstanding assessments and identified risks:

Should the repository be run by the Government or a third party?

It should be the responsibility of an Independent Anti-Slavery Commissioner, who may contract the process as appropriate. If it would assist the department, STOP THE TRAFFIK Australia can provide a costed proposal to establish and run the repository.

9. Noting the Government does not propose to provide for penalties for non-compliance, how can Government and civil society most effectively support entities to comply with the reporting requirement?

We do not understand how something becomes mandatory if there are no penalties for non-compliance and for false or mis-leading information. We do believe that there should be financial penalties which are not too onerous (relative to the entities size) in addition to an entity being publicly listed as non-compliant.

A clear framework of reasonable “extensions” for compliance should be put in place for entities in high risk industries who have higher compliance requirements. During an extension period they should be identified on the repository as “actively seeking compliance”, and no penalties should be applied. However, the framework should also provide for conditions for non-compliance if these reasonable extensions are not met, at which point penalties should apply and the repository should report the entity as non-compliant.

The UK experience shows that perhaps as many as 50% of entities are late in reporting. Penalties and clear guidance for reporting by the Government will assist in addressing non-compliance with the Australian Act. It is important we do not make the same mistake. If the Government does not make this important, then some businesses will not be motivated to comply.

Penalties do not need to be financial. The manner in which Government can address its own supply chain issues is through requiring any entity which receives Government

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funding or participates in tenders or panels to have satisfactorily completed their Modern Slavery Act regulatory requirements. Such a requirement will go a long way to Governments addressing their own supply chain compliance with the Act. An entity’s completion of its own due diligence will be rewarded by this eligibility.

10. Is the five-month deadline for entities to publish Modern Slavery Statements appropriate? Should this deadline be linked to the end of the Australian financial year or to the end of entities’ financial years?

This seems appropriate but may need to be adjusted in the first year depending on when the legislation is passed. See also our response to question 9 regarding extensions.

11. Should the reporting requirement be ‘phased-in’ by allowing entities an initial grace period before they are required to publish Modern Slavery Statements?

Reporting requirements should not be ‘phased-in’ however penalties may be. See also our response to question 9 regarding extensions.

12. How can the Australian Government best monitor and evaluate the effectiveness of the reporting requirement?

How should Government allow for the business community and civil society to provide feedback on the effectiveness of the reporting requirement?

The Independent Commissioner should undertake periodic reviews which includes business and civil society feedback. This can be automated through the repository proposed in our response to question 8.

13. 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?

The UK processes assume that civil society would be the main actor - and they are. However, it should not be the role of Civil Society to provide oversight of the reporting mechanism. This is the role of government through an Independent Commissioner to facilitate. Civil society should have the role in engaging business in best practice and shared learning and shared responsibility.

The context of Australia is different to the UK as our Criminal Code is stronger. Therefore, additional focus is required on the activation and implementation of the code. Australia is implicated in human trafficking and slavery, primarily through supply chains. Accordingly, an Independent Commissioner should have a key focus on supply chains.

14. Should Government reconsider the other options set out in this consultation paper (Options 1 and 2)?

No