FSC FINANCIAL SERVICES COUNCIL

31 May 2019

Modern Slavery Business Engagement Unit
Trade and Customs Division
Department of Home Affairs

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

MODERN SLAVERY ACT 2018: DRAFT GUIDANCE FOR REPORTING ENTITIES

The Financial Services Council welcomes the opportunity to make a submission in response to the Modern *Slavery Act 2018: Draft guidance for reporting entities* (**the Draft Guidance**).

The FSC is a leading peak body which sets mandatory Standards and develops policy for more than 100 member companies in Australia's largest industry sector, financial services.

Our Full Members represent Australia's retail and wholesale funds management businesses, superannuation funds, life insurers, financial advisory networks and licensed trustee companies. Our Supporting Members represent the professional services firms such as ICT, consulting, accounting, legal, recruitment, actuarial and research houses.

The financial services industry is responsible for investing almost $3 trillion on behalf of more than 14.8 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 and its members welcome the development of guidance to assist reporting entities to comply with their obligations under the Modern Slavery Act (**the Act**).

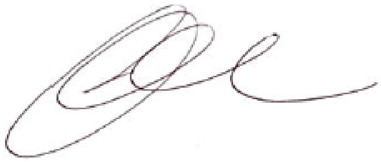
Investors will play an important role in the development of reporting capacity in Australian businesses. In addition to making use of the reports developed by entities they invest in, a significant proportion of investors will also be required to undertake their own reporting.

To this end, the FSC plans to work with our members and other stakeholders to provide additional guidance to assist investors who are required to report, and would welcome the opportunity to work with the Department on any further guidance it intends to develop.

The FSC and its members look forward to ongoing involvement in the implementation of the Act and ongoing process of improving monitoring and reporting capability across Australian businesses.

Should you wish to discuss this submission please do not hesitate to contact me on (02) 9299 3022.

Yours sincerely,



Jane Macnamara
Policy Manager

APPENDIX:
FSC COMMENTS ON *MODERN SLAVERY ACT 2018: DRAFT GUIDANCE FOR REPORTING ENTITIES*

INTRODUCTION

The FSC and its members welcome the development of guidance to assist reporting entities to comply with their obligations under the Modern Slavery Act (**the Act**).

We are generally supportive of the guidance provided as a tool for businesses to understand their reporting obligations.

The introduction of Modern Slavery reporting provides significant opportunities for investors who will gain increased visibility of the risks in supply chains of organisations they invest in.

Investors will play an important role in the development of reporting capacity in Australian businesses. In addition to making use of the reports developed by entities they invest in, a significant proportion of investors will also be required to undertake their own reporting.

Investors will play an important role in ensuring businesses are not unduly punished for reporting slavery in their supply chains, where they are actively involved in rectification and risk reduction activities.

We expect to see large investors actively working with the organisations they invest in, to improve monitoring and outcomes throughout supply chains.

CHALLENGES OF REPORTING FOR FINANCIAL SERVICES

While the Draft Guidance provides a large amount of information to help businesses comply, it does not provide a significant amount of direction specific to the financial services sector.

Exposure of financial services entities to modern slavery risk

FSC members recognise that they have direct exposure to modern slavery risks in relation to their own business operations and supply chains – for example, through outsourcing or offshoring of operational functions, procurement practices, activities of subsidiaries or controlled companies etc.

Most of the example scenarios in the Guidance Note reflect these types of situations, and are directly within the purview of our members' boards and management to identify and remediate in the manner envisaged in the legislation. FSC members will report like all other businesses with respect to these direct business operations, where they meet the reporting entity criteria (or may elect to do so voluntarily if they are outside those criteria).

However, the inclusion of the term "financial lending and investments" in the definition of "business operations" in the Guidance Note appears to go beyond these direct business operations, and to capture portfolio holdings of investment managers and superannuation funds (as well as lending institutions such as banks). In some circumstances, this will create significant complexity.

In the case of, say, an international share portfolio managed by one of our member organisations, investment exposures can entail many thousands of individual holdings in listed equity markets globally, in some cases replicating entire markets as represented by recognised indices. The extent of exposure is even higher if we include debt instruments such as sovereign debt, corporate bonds etc. which are also typically held in professionally-managed portfolios of fund managers and superannuation funds.

This means that Australian investment managers and their clients are in effect “directly linked” to the sum total of all modern slavery risks – and indeed all other ESG investment risks – across all sectors of the global economy, at least to the extent that those risks exist in entities trading in publicly-traded equity and debt markets.

This is a similar situation to other endemic risk factors that are embedded across multiple sectors of the economy (climate risk being a notable contemporary example) and has seen the emergence of the notion of “universal ownership” as a guiding principle of institutional investors’ role in the modern economy.

We believe that our industry can and does play a critical role in addressing modern slavery risks at a systemic level, through mechanisms such as:

- Company engagement and proxy voting;
- Advocacy for regulation to improve disclosure and management of material risks by companies (including the Modern Slavery Act);
- Investor collaboration;
- Where appropriate, exclusion of or divestment from recalcitrant companies.

But the nature of our members’ influence and ability to effect change in particular cases is quite different from the direct operational, corporate ownership or supply chain-based scenarios featured in the paper.

The level of influence investors have will also very based on their corporate structures and investment strategies. For example, actively managed funds investing in Australian companies (with their own disclosure requirements under the Act), can reasonably be expected to consider these disclosures. However, for investors with passive strategies (including ETFs) and global equities (where reporting may not be mandatory), it may not be possible or reasonable to expect direct investor influence.

It would be helpful for these issues to be more clearly noted in the guidance document.

Corporate Structures

In particular, the conglomerate structures of many large financial services organisations make it difficult to understand how their business should structure their reporting processes.

Some examples of situations where it is difficult for an organisation to determine the appropriate structure for their report include:

- Where an in-house fund management function acts as both an investor and supplier
- Where a Responsible Entity, an RSE Trustee and/or an IDPS operator operate and have separate regulatory reporting requirements to its parent

While it is not possible to develop a single prescriptive approach to defining organisational structures, we believe the sector could benefit from additional guidance to ensure a broadly consistent approach to reporting can be developed across the industry, and intend to engage closely with other industry stakeholders to ensure a common approach. This would significantly assist investors and other interested parties in reading and comparing reporting between financial services entities.

The FSC and its members are beginning to examine the opportunities to develop guidance specific to our membership in relation to both of the above issues. We would welcome the opportunity to work with the Department, as well as other relevant stakeholders, to develop additional compliance guidance for the finance sector.