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Modern Slavery Act Review Secretariat
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Review of Australia's Modern Slavery Act 2018.

The Financial Services Council welcomes the opportunity to contribute to the review of the *Modern Slavery Act 2018 (Cth)* (the Act).

Australian fund managers are committed to tackling the scourge of modern slavery. Investors have an important role to play as allocators of capital to use their influence via their stewardship activities to encourage their investee companies to be addressing the risks of modern slavery to their business operations and supply chains. Through the quality and frequency of their stewardship activities, they can help to increase the quality of modern slavery disclosures and actions taken to address risks by Australian businesses. Funds management businesses also have an important role to play in ensuring that their investments are, as much as possible, not contributing to growing the problem of modern slavery. Many fund managers and their clients are also reporting entities under the Act.

To properly manage the risk of modern slavery in their investments and make informed investment decisions, fund managers need good quality disclosures from investee companies on their management of modern slavery risks.

The overarching aim that should inform the Government when reviewing the Act is the need for companies to take meaningful steps to identify and address modern slavery risks in their operations and supply chains. Companies should be encouraged to continually improve on their disclosure and assess the effectiveness of their actions, and act to mitigate any role they may be playing in contributing to modern slavery. The legislation should incentivise companies toward best practice and a race to the top with greater quality and depth of disclosure and practice.

Our members observe that currently, many reporting companies are approaching the legislation with a mere compliance mindset. For instance, there are many companies reporting against the mandatory reporting criteria in the Act, but who identify modern slavery risks to their supply chains at a sector level rather than at an individual supplier level. While, as the Issues Paper notes, there is certainly improvement in the quality of reporting and assessment of actions to address risks, some companies are not improving in their quality of reporting or considering the effectiveness of actions to address the identified modern slavery risks.

There should continue to be focus on incentivising companies through cooperative rather than punitive measures (such as publication of best practice companies) to continue to improve reporting and take meaningful action to mitigate modern slavery risks that have been identified. We submit that any further obligations introduced at this stage should be focused on industries and large companies that meet the Act's current \$100 million threshold where there is a high risk of modern slavery practices arising directly in the

operations of the company or the production of the company's products (as opposed to indirect exposures through portfolio holdings). Where increased penalties are to apply, we submit that these should be focused on companies where there is heedless non-compliance with reporting requirements.

a) Has the Modern Slavery Act had a positive impact?

While it is difficult to quantify the impacts with meaningful statistics at this point, the Act has helped in growing awareness of modern slavery as a significant issue. This has been an important first step in being able to meaningfully address a systemic and difficult social issue. Building on the awareness that has been created by the Act is the critical next step in increasing the effectiveness of the regime. From an investor perspective, the register is functional and easy to navigate.

As the Issues Paper states, the quality of the published reports continues to vary. Our members have observed there are companies working to improve on their management of modern slavery risks. However, they are still the minority. The self-assessment approach requires businesses to identify potential or actual incidences of modern slavery, but some businesses may find it challenging to move to implement actions to address risks and implement remediation, as highlighting areas of risk and acting to address risks may result in large supply chain disruption or cost impacts. Government should consider ways to encourage businesses to move beyond this hesitancy.

We submit that any new measures that the Government wishes to legislate or implement should be guided by the overarching aim of encouraging improvement and increasing the positive impact of the Act. Measures should be proportionate to the risks of modern slavery in a particular industry or business. The Government could provide higher risk industries with guidance for due diligence steps in worked examples. Where higher risk industries can be better encouraged to provide greater detail on the actions they are taking to address risks, this would help investors make better informed decisions.

What constitutes a high-risk sector or company could be determined by the Commonwealth Anti-Slavery Commissioner, following consultation. The Commissioner could be empowered to identify which countries, industries and companies produce and distribute products that have a high risk of contributing directly via their activities and product manufacturing to modern slavery.

Recommendation

Further obligations should be focussed on sectors and companies where there is a proportionately higher risk of direct cause and impact on modern slavery. High risk sectors and companies could be determined by a Commonwealth Anti-Slavery Commissioner following consultation.

b) Modern Slavery act reporting requirements

Due to the voluntary nature of the Act, there is inconsistency in reporting standards. As noted above, many businesses may be hesitant to more fully disclose risks and actions taken due to the risk of disruption to their business operations.

We agree that larger organisations are likely to have the greatest impact and have greater capability to encourage change down the supply chain. Smaller firms will have less impact and reporting obligations would also be relatively more costly, stretching existing resource constraints. Further, lowering the threshold may not capture significantly different supply chains. While we do not oppose reducing the threshold from \$100 million, Government should carefully consider the cost impact of businesses. The primary focus at this stage should be increasing the quality of existing reporting from companies under the current threshold, where there is still much improvement to be made. Lowering the threshold may not further this goal substantially.

If the threshold were to be reduced, a \$50 million threshold would be appropriate, as it would align Australia to the reporting thresholds of other jurisdictions, particularly the UK (£36 million) and New South Wales. Government should consider the impact of lowering the threshold, including inevitably leading to a greater number of reports, but diluting the ability of the Government to undertake an adequate review of reports. As a lower threshold would lead to a greater volume of reporting entities, any lowering of the threshold should be accompanied with appropriate resourcing to the Department to allow them to properly review the modern slavery statements. A commitment to ongoing improvement in reporting quality and compliance should be maintained, even with an increase in reporting volume.

We submit there should be a particular focus on high risk industries. The Government should conduct an assessment of how many high risk industries and companies are captured by the current modern slavery reporting requirement. If the Government's assessment finds that a large portion of high risk industries and supply chains are not captured, there can be consideration of further steps such as lowering the threshold, taking into consideration the cost to the entity and resources available to the Government to manage increased reporting.

Greater guidance for the financial services sector on reporting on operational and supply chains would also be welcome, following a period of consultation. For investment funds in particular, guidance would be welcome on what constitutes good practice reporting for widely diversified portfolios and market indices, where modern slavery exposures are likely to be highly diffuse. Guidance on disclosure could be at a thematic or case-study level.

Recommendation

The Government's focus should be on improving the quality of reporting under the current Act's \$100 million threshold, where there will be more impact. Lowering of the threshold should only occur with due consideration for whether high risk industries have been adequately captured by current requirements, the additional cost a greater reporting volume would impose on the Government, and whether lowering the threshold would have a limited impact on improving reporting quality.

We would welcome the Government providing best practice guidance on modern slavery reporting, particularly for financial services.

c) Enforcement of the Modern Slavery Act reporting obligations

As we have noted, there has been an improvement in the number of participants reporting, but the quality of the reports has varied. One area of concern is that reports are not properly capturing relevant data but are submitted to fulfil what the entity may perceive as the bare minimum compliance requirements.

It is important to maintain the balance between ensuring compliance and encouraging improvement. To this end, we agree that Government should also be empowered to publicly identify companies that have failed to comply with their obligations to report under the Act. This should occur following two warnings. This could be accompanied by the publication of a list of companies required to report under the Act, imposing public accountability to those companies. This will help investors to identify companies that have failed to report according to their obligations. The Government could also consider providing more standardised reporting requirements to achieve greater consistency or providing best practice benchmark examples of good disclosure and practice.

We do not currently support civil penalties or sanctions for technical non-compliance, as industry needs more time to tackle this complex matter and continue to work toward increasing the quality of disclosures and actions. From the funds management perspective, we believe that engagement by Government and by funds with investee companies and further education will be more effective. However, we would be supportive of penalties being imposed on those entities currently required to complete a modern slavery statement but who have made little to no effort to comply, after receiving an appropriate number of reminders and warnings.

We do not consider that an annual review of statements is required. We are supportive of a two or three-year review or by exception with any new vendor/supply chain appointment to minimise the impact. We believe that pressure from asset owners and managers will have a greater impact than heavy enforcement and compliance requirements.

We also submit that the Act could include a stronger obligation for entities in high-risk sectors to be subject to due diligence requirements, demonstrating effectiveness in addressing risks on an ongoing basis. This would include a requirement to have an effective mechanism in place to provide appropriate remediation in line with the UN Guiding Principles. High risk sectors and companies should be consulting with relevant stakeholders, including workers and other affected populations. It is important that high risk entities in particular show that they are identifying potential and actual modern slavery risks and demonstrate that they are taking meaningful action to address the risks, as well as ongoing monitoring.

Recommendation

There should be a balance between ensuring compliance and encouraging improvement. There should be a public register of companies required to report under the Act, companies that are considered to have complied, and companies that have failed to comply with reporting obligations following two warnings. Government should also consider publishing best practice benchmark examples.

Government could consider introducing due diligence requirements for higher risk entities.

Civil penalties and sanctions should only apply where there is blatant and heedless non-compliance with reporting requirements.

d) Public sector reporting requirements

We continue to support a focus by Government on the stated strategic priorities of the regime to prevent, disrupt, support, partner and research. Government action and reporting requirements remains appropriate and useful in supporting the private sector, raising awareness and helping to combat modern slavery.

e) Modern slavery statements register

The online register promotes transparency and with its simple search function the reports are easily accessible. The register also provides a snapshot of statistics relating to the number of reports, countries and searches. As noted above, we submit that the register could be improved by including reporting on 'compliant' statements to assist with company due diligence.

f) Administration and compliance monitoring of the Modern Slavery Act

The overarching aim of the legislation at this stage should be for companies to have greater quality management of modern slavery risks, and increasingly better action in addressing these risks in the supply chain. The regime should avoid creating a compliance culture, but rather a culture where companies are actively engaged in eliminating modern slavery risks. It should encourage a 'race to the top'. In fulfilling the aim to encourage improvement in reporting and practices, the FSC is supportive of the establishment of a Commonwealth Anti-Slavery Commissioner. Like the NSW Commissioner, the Commonwealth Commissioner should be independent so that it is able to hold all relevant parties including Government to account. We point to the *Modern Slavery Act 2015* in the UK and the NSW *Modern Slavery Act* as providing appropriate functions for the Commissioner. We submit that functions could include:

- Providing education, awareness and training for Australian businesses on modern slavery risks,
- Monitoring the effectiveness of the Act, policy and administrative arrangements including the National Action Plan,
- Conducting research on modern slavery risks and publishing reports to provide industry with information and recommendations including identifying where there is a high risk of modern slavery in countries, regions, industries and products,
- Working with industry to ensure that victims of modern slavery have access to remedy and services,
- Collaborating with and coordinating relevant government (including law enforcement agencies), non-government and business stakeholders and industry bodies,
- Receiving complaints and being able to conduct investigations on entities suspected of non-compliance, and
- Supporting industry in improving modern slavery reporting and risk management practices.

To the last point, the Commonwealth Commissioner could take on the function of a consultative body, supporting industries with their modern slavery reports such as ways in which to report on their findings. This would help to bring consistency across different market segments and facilitate compliance.

As the issues paper notes, while there is improvement in the first two reporting cycles in modern slavery statements, there is still significant non-compliance with reporting requirements. There are powers currently available to the Government to encourage greater compliance such as requiring remedial action or the publication of non-compliance. We would be supportive of Government applying these measures to encourage greater compliance at this stage, before considering the need for heavier compliance measures. At this early stage, where the aim is to be working with industry to improve reporting and practice, we do not support fines being imposed for technical non-compliance with reporting requirements. However, we would be supportive of empowering the Government with tougher enforcement powers such as fines, civil penalties, and public procurement exclusions for situations where companies who are required to submit a report but fail to. While we would expect these to be used as a last resort, they are useful in ensuring that the worst examples of non-compliance are dealt with.

As it is important that companies are incentivised to continue to improve reporting, and that they take meaningful action to mitigate the identified risks of modern slavery, some 'carrot' measures could also be considered as argued above, such as through the publication/showcasing of best practice companies. This would have the added benefit of providing other companies with practical examples to uplift their current reporting. The Government should consider being the best practice example as the largest procurer in Australia with minimum requirements for suppliers.

As mentioned above, the Government should also consult on and release guidance for best practice disclosures for different sectors such as investment funds, when looking at the whole of the value chain including suppliers and customers.

Greater guidance, a focus on high-risk industries and penalties for non-compliance as a last resort will enhance the regime and help move from a compliance culture to one driven by continual improvement to reach best practice.

Recommendation

We support the creation of a Commonwealth Anti-Slavery Commissioner, with functions similar to the NSW and UK Commissioner.

Government should consider providing best practice in procurement.

Greater guidance, a focus on high-risk industries, publication of best practice and last resort penalties for non-compliance can work together to create a culture of continual improvement and drive toward best practice.

g) Future review of the Modern Slavery Act

Future statutory reviews of the legislation are important in ensuring that there is continual improvement made, given the size and scale of the issue globally, and that the design framework of the Act and its administration is meeting its purpose. Reviews can ensure appropriate amendments or modifications are made, or administrative arrangements are improved. We would welcome a fixed period for regular reviews of the operation of the Act with the next review in another 3 years. We submit that future reviews could be

led by an Anti-Slavery Commissioner.

The Government should consider allowance to instigate reviews when there are major developments in similar jurisdictions to Australia with a Modern Slavery Act (e.g. the UK's *Modern Slavery Act* due to be updated 2023) including additions to major international modern slavery legislation or actions domestically and internationally such as import bans. Given the global nature of investments, supply chains and the operations of Australian companies, international modern slavery regimes and policies need to complement one another, and Australia's framework needs to keep pace. With any review that is undertaken, companies will need appropriate time to adopt any new recommendations.

The Government's modern slavery guidance currently points to human rights due diligence. We would support greater clarification in the legislation on human rights due diligence. As noted above, we would welcome mandatory human rights due diligence requirements for high-risk industries and companies. If the Government deems obligations of this sort are too early for this review, the next review should consider exploring this, particularly as global Australian fund managers are subject to European requirements.

Recommendation

We would welcome a fixed period for reviews of the Act such as three years. Reviews could be led by a Commonwealth Anti-Slavery Commissioner. There could also be a mechanism to hold a review where major developments in other similar jurisdictions occur.

Greater clarification in legislation on human rights due diligence would be welcome.

If you wish to follow up on this submission or have any questions, please contact Chaneg Torres, Policy Manager at ctorres@fsc.org.au.

Kind regards,

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