

# Ai GROUP SUBMISSION

Australian Government  
Attorney- General's Department

**Modern Slavery in Supply Chains  
Reporting Requirement**

November 2017

**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.

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## Summary of Ai Group’s position

Ai Group welcomes the opportunity to provide its response to the Federal Government’s proposed Modern Slavery in Supply Chains Reporting Requirement (**Modern Slavery Reporting**).

Crimes of modern slavery have no place in society and should be eradicated. Ai Group supports the need for effective measures to be taken to achieve such an objective. Any measures implemented to combat modern slavery should be realistic, workable and sustainable.

Many large businesses already have policies, contract management systems and risk controls that reduce instances and risks of criminal conduct in their operations. Indeed, the force of the criminal law, in addition to commercial and reputational damage, are already effective incentives to eliminate criminal conduct from supply chains.

To further enable industry to combat modern slavery, Ai Group supports the development by the Federal Government of detailed guidance materials for businesses to assist them to improve supply chain management systems and to combat modern slavery. This non-regulatory approach would be effective in elevating awareness of modern slavery risks in business operations and supply chains. Combined with internal systems and corporate governance structures that already exist in larger businesses, materials to assist businesses to identify risks of modern slavery and to provide guidance on actions that they can take to eliminate this criminal conduct, would be of value.

Ai Group supports Option 2 (Non-regulatory Action) in the Public Consultation Paper. Option 3 would only be appropriate if Option 2 is implemented and found to be inadequate.

Ai Group does not consider that the imposition of a reporting regime on businesses would be an effective way to eradicate instances of modern slavery. We believe that an educative approach for businesses would achieve better results. However, if the Federal Government proceeds with a reporting regime, despite Ai Group’s views, there are some critical aspects of any modern slavery reporting regime that should be addressed as outlined in this submission.

Ai Group notes that a modern slavery reporting regime applicable to larger businesses exists in the United Kingdom (UK) under the *Modern Slavery Act 2015 (the UK model)*. If the Federal Government is to proceed with a modern slavery reporting requirement, Ai Group considers that such reporting requirements should not be more onerous than the UK model. A more onerous requirement would impose an excessive regulatory burden on Australian industry.

Any modern slavery reporting requirement should:

- ) Minimise the regulatory burden on business;
- ) Avoid mandatory disclosure of commercially sensitive or confidential business information;
- ) Not be more onerous, in terms of obligations and scope, than the reporting requirements in the UK;

- )] Enable mutual recognition of reporting in countries under similar schemes;
- )] Not take immediate effect; but provide industry with the opportunity to self-assess and prepare; and
- )] Positively engage with businesses and build on the current business momentum to improve supply chain management models.

Ai Group has identified some important and specific concerns with the reporting model proposed by the Federal Government. These are outlined below.

### **The value and complexity of supply chains**

The size and scale of global supply chains have grown rapidly in recent times. This has been enabled by technological advances, lower transport and communication costs and a greater fragmentation of the production process.<sup>1</sup>

Business outsourcing and supply chain growth of course bring many benefits to economies and communities for both developed and developing nations.

Supply chain growth enables businesses to focus and specialise on core functions creating greater efficiencies, while also enabling businesses to enter new markets, and have better access to raw materials, skilled workers and foreign knowledge.<sup>2</sup>

Supply chains are often diverse and not confined to vertical models of selected suppliers. Many supply chain arrangements:

- )] Vary in scale and size depending on industry (e.g. supply chains in the manufacturing and construction industries are subject to greater fragmentation and are typically lengthier than they were in the past);
- )] Are often transactional with limited interaction between principals and many suppliers (e.g. in circumstances involving seasonal sourcing or the sale of commodities).
- )] Are often transitory and infrequent (e.g. there may be a one-time delivery of a manufactured product);
- )] May be externally managed by a third party who engages with sub-tier suppliers;
- )] Exist across different business units and product lines within organisations and are often facilitated by multiple points of contact within organisations;

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<sup>1</sup> OECD, *Moving up the Value Chain; Staying Competitive in the Global Economy*, Main Findings, 2007

<sup>2</sup> OECD, *The Future of Global Value Chains, Business as Usual or a New Normal*, Science, Technology & Innovation Policy Paper, July 2017, No. 41

- J Exist in countries where relevant local laws apply but where such laws may not be effectively enforced.

Some larger businesses strategically invest in preferred suppliers to ensure that quality services and products are provided. In these arrangements, the opportunity for visibility and control is much greater; at least for first tier suppliers.

Due to the large variety and volume of supply chain arrangements across the globe and across industries, supply chain visibility is often very challenging. Notwithstanding this, many enterprises have taken initiatives to better manage and identify supply chain participants and to develop appropriate management systems that work within their organisational settings. Such initiatives could be built upon and broadened through collaboration with businesses. This could be achieved through initiatives to increase awareness, including through the provision of guidance materials to assist businesses to address modern slavery risks and practices.

### **Effective approaches to eliminating slavery in operations and supply chains**

Any measures implemented to combat modern slavery should be realistic, workable and sustainable.

Ai Group's preferred approach is for the Federal Government to adopt an initial non-regulatory approach, through the development and distribution of detailed guidance materials and information to assist businesses to combat modern slavery practices.

The industries of manufacturing and construction have more fragmented and longer supply chains than most other industries. Therefore, these industries would be disproportionately burdened by supply chain reporting requirements.

Laws and regulations are already in place, including recent legislative developments from State and Federal Governments, to address criminal conduct and breaches of workplace laws within supply chains.

Should, despite Ai Group's preference, the Federal Government proceed with a reporting requirement, then Ai Group proposes that the model adopted be no more onerous than the model established in the UK under the UK *Modern Slavery Act*.

### **Relevant existing laws and regulations**

In developing ways to engage with businesses in combatting modern slavery, the Government should ensure that any new framework, including any new reporting requirement, does not overlap with other regulated areas so as to increase the regulatory burden on businesses. Some relevant existing laws are outlined below.

**(a) Criminal Code**

While the modern slavery reporting requirement is proposed to be based on the *Criminal Code Act 1995 (Cth)*, the Criminal Code already has specific application to businesses, corporate behaviour and workplaces. Division 12 of the *Criminal Code* specifically applies to corporations in respect of criminal responsibility for offences under the Code and extends to offences where a body corporate has authorised or permitted the commissioning of the offence, expressly, tacitly or impliedly, including by:

- “(c) ...a corporate culture that existed within the body corporate that directed, encouraged, tolerated or led to non-compliance with the relevant provision; or
- (d) ...the body corporate failed to create or maintain a corporate culture that required compliance with the relevant provision.”<sup>3</sup>

The offences recognised under Division 12 extend to offences under Divisions 270 and 271 which deal with slavery, trafficking and debt bondages.

In directly applying to the conduct of businesses and prevailing business cultures, the Criminal Code is an effective driver of corporate behavior. The Code should ensure that business cultures and systems do not allow for criminal conduct in business operations, particularly if businesses are educated in the Code’s requirements and are provided with guidance materials to assist them in meeting those requirements.

**(b) The Vulnerable Workers amendments to the Fair Work Act**

The Federal Government’s *Fair Work Amendment (Protecting Vulnerable Workers) Amendment Act 2017 (Cth)* provides additional protection to vulnerable workers and increases obligations on employers. Following the amendments, the *Fair Work Act 2009*:

- ) Includes a new “serious contravention” penalty – up to \$630,000 per breach for a company (10 times the previous maximum penalty);
- ) Increases penalties for pay-slip and record keeping offences – up to \$63,000 per contravention (double the previous maximum penalty) and up to \$630,000 for a serious contravention (20 times the previous maximum penalty);
- ) Gives franchisors and holding companies more responsibility for breaches of workplace relations laws and instruments by franchisees and subsidiaries; and
- ) Grants the Fair Work Ombudsman (**FWO**) compulsory interrogation powers (similar to the powers of the Australian Building and Construction Commission)

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<sup>3</sup> s.12.3(c) and (d).

The Amendments impose supply chain obligations upon franchisors and holding companies, which operate in addition to the accessorial liability provisions of the Act. The accessorial liability provisions have been a focus for the FWO when educating employers on the need to manage their supply chains and address the risks associated with suppliers underpaying workers.

**(c) Moves by State Governments to implement labour hire licensing**

The State Governments in Queensland, South Australia and Victoria have decided to introduce onerous labour hire licensing schemes which will impose a substantial regulatory burden on a very large number of businesses in respect of supply chain labour.

These licensing schemes will require labour hire service providers to be licensed and for users of labour hire services to only use licensed providers. The definitions in the Queensland Act and the South Australian Bill are extraordinarily broad and cover most business to business arrangements that involve the supply of labour, even where that supply is secondary to, the main service or function of a business. The Victorian Government has announced its intention to shortly introduce a labour hire licensing Bill into Parliament, and a Parliamentary inquiry is also considering this issue in the ACT.

The *Labour Hire Licensing Act 2017 (Qld)* is to commence on 16 April 2018. Features of the licensing scheme under the Queensland Act include:

- ) the issuing of licences to applicants who meet a fit and proper person test;
- ) extensive and detailed reporting obligations by licence holders on a vast array of employment arrangement every six months;
- ) offences which include providing labour hire services without a licence, engaging an unlicensed labour hire services provider and entering into arrangements to avoid the legislation; and
- ) hefty civil and criminal penalties, including jail terms of up to three years.

The South Australian Government introduced its *Labour Hire Licensing Bill 2017* into Parliament in August. The Bill largely mirrors the Queensland scheme but with more onerous penalties, including up to five year jail terms.

These legislative changes will clearly require greater employer investment and resources in managing contractors and supply chains.

## Issues with the proposed reporting requirements

### *Definition of Modern Slavery for the purposes of business reporting*

Should the Government proceed with a reporting requirement, it is important that the definition of modern slavery be confined to relevant aspects of unlawful slavery as defined in Divisions 270 and 271 in the *Criminal Code Act 1995 (Cth)*. We note that the Government has proposed to exclude forced marriages from any reporting requirement and Ai Group considers this appropriate given the unlikely presence of this conduct occurring in business operations.

Ai Group opposes broader meanings of ‘slavery’ and ‘exploitation’ given the uncertainty and potentially subjective interpretations that may apply and the existence of current workplace laws, including those with criminal penalties, already in place.

### *Threshold for Reporting*

It is important that any reporting requirement rest only with larger businesses likely to be appropriately resourced to satisfy the reporting. The entity threshold for reporting should be no less than total annual revenue of \$100 million, as the Government has identified.

Given that large corporate groups frequently have multiple entities, reporting should be confined to the relevant parent company or businesses should be able to streamline reporting through including the operations of subsidiaries in a single reporting statement for the corporate group. In addition to increasing the regulatory burden on businesses, a requirement to prepare multiple reporting statements for the same corporate group would likely be confusing for the public and potentially onerous for the administrator of the reporting scheme.

### *Definitions of ‘Operations’ and ‘Supply Chains’*

For the purposes of reporting, Ai Group considers it unworkable to prescriptively define ‘operations’ and ‘supply chains’.

Many businesses operate under complex structures with a vast array of different supply chains across different business functions.

A supply chain is not simply a linear structure of different companies engaging with each other for the production of a particular product or service. Business to business arrangements are vast and multi-faceted.

Reporting requirements will have varying levels of impact on different industries and businesses based on what products and services a business provides, its method of operation, and the industry in which it operates.

It is essential that flexibility be provided for businesses to determine for themselves the risk of modern slavery and what steps should be taken to eliminate it. This would enable businesses to examine their differing operations and supply chain participants and identify those parts of their business operations that may be more vulnerable to incidences of modern slavery. We note that the UK model adopts this sensible approach, which enables reporting to be meaningful and recognises the complexity of industries and business structures.

Further, Ai Group strongly opposes any requirement that businesses trace supply chains back to source of origin. This would simply be unworkable and unfair on industries with high fragmentation and reliance on wide-scale supply of services, product components and materials. Many manufacturing and construction businesses have multiple supply chains across numerous divisions of the business. A requirement of this nature would force such companies to identify potentially thousands of supply chain participants; an exercise that would be administratively draining on resources that could be better utilised in strategic supply chain management, training or partnerships.

Moreover, Ai Group opposes a requirement to report against the criteria proposed by the Government (see below). This approach is at odds with the UK model and could require companies to disclose potentially commercially sensitive and confidential business structures that would have little if any bearing on the elimination of modern slavery. Moreover the sheer magnitude of global supply chain participants across industries would make such disclosure near impossible to comply with.

The complexity of many supply chains in which businesses operate, is largely a product of globalisation, rather than a deliberate cloak over suspected criminal conduct. For effective and direct preventative action on crimes of modern slavery, the enforcement of appropriate criminal laws and prosecution of offenders is the most appropriate mechanism. Industry has a role to play, but so too do Governments around the world in enforcing their own laws.

### ***The UK Model***

If reporting is to proceed, the following principles within the UK model should be adopted.

#### **Optional reporting criteria**

The UK model sensibly offers optional reporting criteria which ensure that businesses can report on the measures that are relevant to their operations and industry. This approach would mean that a manufacturing business is not required to disclose the thousands of participants in its supply chain but instead focus on publishing any policy it has to address modern slavery or steps it has taken to identify modern slavery risks in its operations.

A requirement to report against criteria proposed by the Australian Government, rather than optional reporting criteria, reflects an unworkable and prescriptive approach to extracting company information that may in fact have no relevance to modern slavery risks. Further, because of fundamental differences in what industries produce, and how industries operate and are structured,

any cross-industry comparison of reporting statements would largely be meaningless and offer little value to the public and other businesses. Flexibility over what businesses report on is essential to ensure that businesses focus on what they assess and prioritise as risks.

### **Penalties are not necessary**

The UK model importantly contains no punitive penalties for non-compliance with reporting, but relies on public scrutiny to hold companies to account. A similar approach should be adopted in Australia under any reporting regime.

### ***Industry needs time to prepare for implementation***

Should the Federal Government proceed with a reporting requirement, it is essential that businesses be given adequate time to adjust and prepare for the new reporting laws.

Ai Group proposes that industry be given at least 12 months from the date when the legislation comes into operation before any obligations under the legislation apply.

Industries such as manufacturing and construction that are highly fragmented with significant integration into global supply chains will face a substantial burden in satisfying reporting obligations and it is essential that businesses have enough time to prepare for the new obligations.

If the Government wishes to instil business and public confidence in its proposed reporting scheme, the implementation arrangements need to be fair and workable.

### ***Oversight of the reporting***

If a reporting requirement is to be established, it is Ai Group's view that the Federal Government through the Attorney-General's Department should oversee the reporting.

Further, given that many large businesses required to report under the Government's proposed model, would also be required to report under the UK legislation, mutual recognition for reporting should be granted in each reporting scheme to streamline the reporting requirements on business.



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