

Ai GROUP SUBMISSION

Department of Home Affairs

Modern Slavery Act 2018 (Cth) Draft Guidance Materials

17 May 2019



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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EXECUTIVE SUMMARY

Ai Group welcomes the opportunity to review and provide industry feedback on the Commonwealth Government's *Modern Slavery Act 2018 – Draft Guidance for Reporting Entities*.

Ai Group considers the Guidance Material to be a useful tool for businesses required to report under the *Modern Slavery Act 2018* (Cth) (**the Act**).

The Act provides businesses with the required flexibility to determine how modern slavery risks are best addressed in each operation and supply chain.

While lengthy, the Guidance Material is comprehensive, easy to read and follows a logical sequence. We anticipate that it would be read by many managers in businesses with responsibility for preparing a modern slavery statement.

Ai Group, has however, identified several areas that we consider could improve the effectiveness of the Guidance Material and the operation of the Act more broadly. We identify these areas below.

The Federal Act's interaction with the *Modern Slavery Act 2018 (NSW)* (page 16)

The interaction between the Act and the *Modern Slavery Act 2018 (NSW)* (**NSW Act**) is an issue Ai Group Members frequently question. In the same way that the Guidance Material (page 16), deals with reporting under other modern slavery laws, such as in the United Kingdom, we consider it useful for there to be reference to the NSW Act with cross-references and links to the relevant NSW Government resources.

Businesses that report under the Federal Act, either voluntarily, or because they are covered by a reporting entity's joint statement, should be alerted to possible obligations under the NSW Act that may still apply.

Reporting Periods (page 21)

Ai Group welcomes the Guidance Material's information on page 21 about reporting periods for the purpose of preparing modern slavery statements. In global industry, many organisations adopt different accounting periods, depending on where an organisation's head office, or parent company is located. While we note the Guidance Material's description of two different reporting periods, we request that clarity be given to other accounting periods (such as 1 April to 31 March, which is very common for businesses with head offices in Japan) in respect of whether such periods fall within the general meaning of a calendar year as is used to commonly described 1 January – 31 December. Presently, it is unclear as to whether a 1 April to 31 March accounting period will mean a 1 April 2019 to 31 March 2020 reporting period.

Preparing a modern slavery statement (page 23)

Provided the modern slavery statement complies with the requirements in the Act, businesses generally can determine the form of their modern slavery statement. This may suit many organisations that already report on modern slavery risks in another jurisdiction, have strong branding protocols, or which frequently publish and publicly report on company operations for other purposes.

For those businesses, however, that are required to prepare a modern slavery statement for the first time, visibility over what a statement should look like would be extremely useful. Ai Group has received regular feedback from Members that they would be assisted by a particular form for the purpose of preparing a statement.

Ai Group suggests that a default form be provided to reporting entities that wish to use it. The default form could set out, in sequence with the Act's mandatory criteria, a series of high-level open questions based on the Act's mandatory criteria. For instance: Please describe your entity's structure; please describe your entity's operations; please describe your entity's supply chains?

The default form could be attached to the Guidance Material as an Appendix.

Embedding the mandatory criteria in a simple default document also assists ease of understanding the Act's mandatory criteria for modern slavery statements, without the need for businesses to bookmark numerous pages of the Guidance Material or access legislation.

Key terms "structure," "operations" and supply chains" (page 25)

The break-down of information identified as relevant for reporting on a reporting entity is generally helpful. However, Ai Group is concerned that in some instances, the Guidance Material, perhaps inadvertently, refers to additional requirements for the content of modern slavery statements that are beyond what is contained in the Act.

For instance, the Act does not define the term 'structure', nor is the intended meaning dealt with in the Act's Explanatory Memorandum (unlike 'operations' and 'supply chains'). We question the basis and utility of expecting a reporting entity to disclose particular aspects or features of its structure, such as employee numbers, or detail its legal relationship with all other related entities. Many reporting entities are part of complex structures and may have a very large number of legal relationships with other entities, including those that contain no assets or employees (e.g. an entity may be created for financial reasons to address requirements of lending institutions).

While there may be some businesses that would be comfortable and willing to disclose particular features of a reporting entity's structure, there would also be many concerned about the disclosure of commercially sensitive information, particularly as it appears on a public register that may be viewed for purposes other than addressing modern slavery risks.

Ai Group recommends that in respect of explaining the term ‘structure,’ a statement to the effect of “*you may provide information about ...*” with the listed factors would be more appropriate

Describing modern slavery risks (page 30)

Ai Group has received questions from Members as to whether customers are included in a reporting entity’s operations or supply chains for the purposes of identifying and addressing modern slavery risks. It is unclear in the Guidance Materials whether this is the case.

Customers are generally end-users of a reporting entity’s product or service over whom, in many cases, very limited, if any, commercial leverage can be exercised. Conversely, it is the customer who exercises leverage over modern slavery risks in their purchase choice of products or services. The inclusion of customers in a reporting’s entity’s operations or supply chains would be extremely impracticable and unworkable for many reporting entities, particularly if customers are individual consumers of the general public (for example, a retailer selling to an individual consumer).

Ai Group recommends that further clarity on this point is needed in the Guidance Material.

Describing the risks of modern slavery practices (page 33)

Ai Group welcomes the inclusion of a list of risk indicators for modern slavery as outlined in Table 4 of the Guidance Materials and the “how to – scope your entity’s modern slavery risks” box on page 33. It is this information that provides a practical tool for industry and informs individuals about how modern slavery may manifest in operations.

Some of the risk indicators in Table 4, however, in part, appear subjective and arbitrary without any links to objective data or information. For instance, use of short-term contracts, outsourcing, and unskilled labour are present in almost every global value chain across industries– to the point that they may not be meaningful or reliable indicators of modern slavery risks.

It is not to say that these risk factors are irrelevant, but industry would be better guided by more objective data highlighting:

- Geographical prevalence of modern slavery, such as the Global Slavery Index Heat Map;
- Industry prevalence of modern slavery (as informed by past cases, or work of NGOs).

We understand that many Governments and NGOs have data that could be used by industry to inform an objective assessment of modern slavery risks in operations and supply chains.

Reputational damage arising from transparent disclosures on modern slavery risks (pages 28 and 29)

The avoidance of reputational damage is a significant driver for businesses to address and eliminate modern slavery risks in their operations and supply chains. The Guidance Materials also make this clear as one of the many business reasons why organisations should address modern slavery.

The transparency that reporting entities will be subject to, and how this influences future modern slavery statements and reporting will be an important issue with the reporting requirement.

Ai Group is concerned that in some instances, businesses may be demonized for being transparent, particularly if they decide to disclose in their statement a specific incidence of modern slavery uncovered by its due diligence processes. Uncovering modern slavery in supply chain operations is evidence that an internal system is generally working and effective. Further, for the benefit of other reporting entities that may be considering what systems to implement, businesses should be free to report on a system that works without risk of severe reputational damage.

For this reason, we recommend that a Guide be developed by the Department on how modern slavery statements should be read by civil society with a view to:

- Acknowledging the widespread nature of slavery around the globe;
- Encouraging transparency in reporting for reporting entities;
- Fostering continuous improvement in modern slavery due diligence processes;
- Avoiding public backlash against organisations which disclose incidences of modern slavery in their operations or supply chains.

Remediation; Appendix 3

Remedial responses to modern slavery are a complex area for many businesses. While a range of remedial responses and systems may be available to organisations, many may be filled with complex ethical dilemmas relating to local community values, living standards, local infrastructure, and how local or foreign Governments make or enforce their own laws.

While we acknowledge there is no one correct remedial response to uncovering modern slavery, Ai Group recommends that there be an area of the Guidance Material (specifically Appendix 3) which includes some recent examples or models that businesses have used to demonstrate what an effective remedial response or system looks like.

We also note that the Guidance Material at page 11 refers to Australia’s criminal justice response to modern slavery which includes a dedicated victim support program and a National Action Plan on Human Trafficking and Slavery. We would welcome relevant external victim support services, including hotlines, being identified in the Guidance Material or on the Department’s website so that they may be used by reporting entities to communicate support for modern slavery victims in an entity’s operations or supply chains via policies and processes. This is a valuable step that reporting entities could take as a part of any structure remedial response.

We anticipate that as modern slavery reporting continues, this will be a growing area for ongoing information and guidance.

Conclusion

Ai Group is supportive of the Guidance Materials. We propose some additional amendments as described above to make it a more effective resource for industry in combatting modern slavery.



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