THE LAW SOCIETY
OF NEW SOUTH WALES

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Dr James Popple
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PO Box 5350
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By email: [redacted]

Dear Dr Popple,

STRENGTHENING THE MODERN SLAVERY ACT

Thank you for the opportunity to contribute to the Law Council's submission to the Attorney-General's Department in response to its Consultation Paper on 'Strengthening the Modern Slavery Act' (**Consultation Paper**). The Law Society's Human Rights and Business Law Committees contributed to this submission.

It is vital for the integrity and effectiveness of the modern slavery regime, including for the protection of people who are at risk of, or have experienced modern slavery, that businesses are accurately and meaningfully identifying, addressing and reporting on modern slavery risks in their operations and supply chains. The Law Society therefore supports changes to the Commonwealth modern slavery scheme which will lead to an increased focus on due diligence and a greater emphasis on compliance and enforcement to better support the protection of those impacted by modern slavery.

The observations below are in response to select questions in the Consultation Paper under Parts A, B, C and D.

Part A – Mandatory Reporting Criteria

1. **Do you support the potential changes to the reporting criteria? Are any further changes needed to the reporting criteria?**

We support the proposals set out in the Consultation Paper, which we consider will assist reporting entities' understanding of and compliance with the reporting criteria contained in s 16 of the *Modern Slavery Act 2018* (Cth) (**Act**).

We also suggest that consideration be given to a new reporting criterion whereby a reporting entity would be required to provide details of modern slavery incidents or actual risks identified during the reporting period as well as information as to how the incidents and/or risks were addressed, for example through referral to a law

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enforcement agency or other regulatory body. In our view, this additional reporting criterion would enhance the transparency of the reporting scheme, which to date has focused on sector-wide supply chain risks.

We acknowledge, however, that it may not always be possible for an entity to report publicly on actual risk as, in some cases, this may pose a risk to the victim-survivor, who may experience further victimisation for having raised a complaint. Further, it is possible that disclosure of a risk, for example in relation to a supplier, could expose the reporting entity to a claim of reputational damage from that supplier. We therefore suggest that confidentiality concerns could be addressed by introducing a mechanism for reporting entities to provide a confidential annexure to a modern slavery statement in limited circumstances, for example where a law enforcement investigation is ongoing. It may also be appropriate in certain circumstances to describe the risk without identifying the entity.

We understand that the Attorney-General's Department is conducting separate, targeted consultations on how the Act could be amended to enhance its due diligence requirements. We suggest that these consultations should also consider how to enhance reporting on due diligence systems. In our view, a reporting entity should not only be required to describe its due diligence system, as currently prescribed by s 16(1)(d) of the Act, but also how the system is implemented and utilised.

4. Should additional guidance be developed to assist reporting entities to comply with the proposed changes to the mandatory reporting criteria? If so, what topics should be addressed by new guidance?

We support updating existing guidance to assist reporting entities to comply with any changes to the mandatory reporting criteria.

We also suggest that more specific guidance should be introduced against the mandatory reporting criteria at s 16(1)(d) of the Act, which requires companies to report on actions taken to assess and address modern slavery risks, including due diligence and remediation processes. Research from the Human Rights Law Centre et al. revealed that many companies adopt a 'cosmetic approach' when addressing this criterion, including a failure to undertake due diligence in relation to their own operations, and an absence of engagement with supply chain workers and/or their representatives.[1]

Additional guidance could assist companies in understanding the core tenets of human rights due diligence. It would be helpful to demonstrate stages in the due diligence process which should be reported, including the identification of risk, response to risk, monitoring/evaluation processes and remediation processes. We suggest it may also be helpful for such guidance to provide direction in instances where reporting entities

[1] Amy Sinclair and Freya Dinshaw, *Paper Promises? Evaluating the early impact of Australia's Modern Slavery Act* (Report, 2022) 56: https://www.hrlc.org.au/app/uploads/2025/04/Paper-Promises_Australia-Modern-_Slavery-Act_7_FEB.pdf. See also Freya Dinshaw, Justine Nolan, Christina Hill, Amy Sinclair, Shelley Marshall, Fiona McGaughey, Martijn Boersma, Vikram Bhakoo, Jasper Goss and Peter Keegan, *Broken Promises: Two years of corporate reporting under Australia's Modern Slavery Act* (Report, 1 November 2022): https://www.hrlc.org.au/app/uploads/2025/04/2211-Broken-Promises-Modern-Slavery-Report.pdf.

experience difficulties contracting with smaller entities who themselves are not reporting entities or voluntary reporting entities under the Act.

5. Should a new criterion be added that requires entities to report on key actions or changes since their previous statement?

The Law Society supports a new criterion which requires entities to report on key actions or changes since their previous statement. We suggest that this aligns with the objectives of the legislative scheme in encouraging a commitment by reporting entities to strive for continuous improvement. In particular, where an entity has outlined a future commitment in a previous statement, it should be required to report on its progress in relation to the commitment.

6. Should reporting entities be required to report information about grievance mechanisms? If so, what specific information about grievance mechanisms should entities be required to report on?

We support mandatory reporting about grievance mechanisms to assist whistleblowing and reporting of modern slavery risks and suspected modern slavery incidents. Such mechanisms are important as they allow for stakeholders, including those directly affected by modern slavery, to make reports to business before modern slavery risks escalate.

Principle 31 of the UN Guiding Principles on Business and Human Rights set out the features of an effective grievance mechanism as follows:

> In order to ensure their effectiveness, non-judicial grievance mechanisms, both State-based and non-State-based, should be:
>
> (a) Legitimate: enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes;
>
> (b) Accessible: being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access;
>
> (c) Predictable: providing a clear and known procedure with an indicative time frame for each stage, and clarity on the types of process and outcome available and means of monitoring implementation;
>
> (d) Equitable: seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms;
>
> (e) Transparent: keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake;
>
> (f) Rights-compatible: ensuring that outcomes and remedies accord with internationally recognized human rights;
>
> (g) A source of continuous learning: drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms;
>
> Operational-level mechanisms should also be:

> (h) Based on engagement and dialogue: consulting the stakeholder groups for whose use they are intended on their design and performance, and focusing on dialogue as the means to address and resolve grievances.[2]

In light of these principles, we suggest that at a minimum, it is important for reporting entities to identify responses to the following questions:

- Who can access the grievance mechanism and where does it operate?
  - Reporting should be required on whether the grievance mechanism is limited to direct workers, or whether it extends to contractors, subcontractors, supply chain workers and local affected communities.
- How is the existence of the grievance mechanism communicated to vulnerable cohorts?
  - Details should be provided about how grievance mechanism policies are promoted, and whether they are in different languages relevant to the entities operations.
- How does the grievance mechanism operate?
- How many grievances have been raised during the reporting period?
- How many grievances have been resolved, and in what timeframes?
- How does the grievance mechanism protect the identity of the person raising the grievance?

8. Should reporting on remediation be a separate mandatory reporting criterion? If so, what specific information about remediation actions and processes should entities report on?

We support amendments to the Act to require reporting on remediation outcomes in addition to the existing requirement to report on remediation processes. We suggest that businesses should be required to disclose the total number of incidents for which remediation was offered, the timeframes in which remediation was provided, and whether or not the remedy was to the satisfaction of affected individuals.

We also suggest that reporting on consultations with affected stakeholders in developing an appropriate approach to remediation is vital. As noted in recent Guidance issued by the UK Home Office on transparency in supply chains:

> There is no 'one size fits all' approach to remediation. It's imperative to seek the perspectives of individuals affected by the harm or their representatives to understand and decide on the appropriate remedial action. The individuals who have experienced harm, and their satisfaction with the remedy offered should be at the centre of the organisation's approach. This is why in some cases it may be more appropriate to ensure remediation of harms and better standards for workers over contract termination which could increase worker vulnerability to exploitation.[3]

We suggest that such reporting will enhance accountability for harms caused and violations of international human rights standards.

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[2] United Nations Office of the High Commissioner for Human Rights, 'Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework' (UN Publication, 2011), Principle 31: https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf.

[3] UK Government, Home Office. 'Transparency in Supply Chains (TISC)Statutory guidance' (Guidance Document, 2025) 44: https://assets.publishing.service.gov.uk/media/68873308cec9ccd515ae09b0/Transparency_in_supply_chains_a_practical_guide.pdf.

Part B – Compliance and Enforcement Framework

12. To date, the regulator has not used its power to request remedial action or publish information regarding non-compliance, focusing instead on education. Would additional or enhanced guidance be sufficient to address current non-compliance?

We recognise the importance of a focus on education, particularly given the concept of 'continuous improvement' is central to contemporary modern slavery frameworks, which encourage businesses to commit to progressing the effectiveness of their systems to counter modern slavery risks in their operations and supply chains. We note that the Australian Government has published extensive materials, which seek to guide organisations to meet the objectives of the Act.

Given that annual reporting under the Act is a familiar process for most corporate entities, we suggest that the regime has reached sufficient maturity for the regulator to address non-compliance in ways other than education. For example, s 16A of the Act empowers the Minister to request specified remedial action and, if the Minister is reasonably satisfied that an entity has failed to comply with a request, the Minister may publish information relating to the request. In our view, this power should be exercised in appropriate circumstances.

13. Will the use of these existing compliance powers be sufficient to address current non-compliance?

14. Should the existing compliance powers be amended? If so, how?

The Law Society does not consider that the existing compliance powers are sufficient to address current non-compliance, and we support Recommendation 20 of the Report of the statutory review of the Act by Professor John McMillan AO (McMillan Report) as follows:

> Recommendation 20
>
> The Modern Slavery Act be amended to provide that it is an offence for a reporting entity:
>
> - to fail, without reasonable excuse, to give the Minister a modern slavery statement within a reporting period for that entity
> - to give the Minister a modern slavery statement that knowingly includes materially false information
> - to fail to comply with a request given by the Minister to the entity to take specified remedial action to comply with the reporting requirements of the Modern Slavery Act
> - to fail to have a due diligence system in place that meets the requirements set out in rules made under s25 of the Act.
>
> The penalty offence provisions should not apply to an entity with a consolidated annual revenue of between $50-100M until two years after the entity has become subject to the reporting requirements of the Act.[4]

[4] Professor John McMillan AO, 'Report of the statutory review of the Modern Slavery Act 2018 (Cth): The first three years, report to the Australian Government' (Report, 2023) at 13: https://www.ag.gov.au/sites/default/files/2023-05/Report%20-%20Statutory%20Review%20of%20the%20Modern%20Slavery%20Act%202018.PDF.

As noted in the McMillan Report, the rationale for the introduction of penalties is to ensure that the reporting requirements under the Act are taken seriously by business as a core human rights duty and to enable a robust response where an entity fails to comply with its obligations. We note that the Government has already agreed in principle to the introduction of penalties for non-compliance with the Act (Recommendation 20), with the exception of penalties for a failure to have in place a due diligence system, pending further consultation on this issue.[5]

16. **Should additional regulatory tools be introduced into the Modern Slavery Act to penalise non-compliance?**
17. **If yes, which of the following additional regulatory tools should be introduced to respond proportionately to non-compliance?**
    a) Infringement notices
    b) Enforceable undertakings
    c) Redacting a statement
    d) Other [please specify]

We encourage the use of regulatory tools in addition to financial penalties to address non-compliance.

In addition to the proposed regulatory tools, we suggest that warning letters; exclusion from public procurement opportunities and disqualification from directorship could be appropriate sanctions to be applied using a staged approach. For example, the non-compliant entity could be sent a warning letter in the first instance, which would allow the entity to take steps within a reasonable timeframe, before further regulatory action is taken.

Exclusion from public procurement opportunities for non-compliant entities may be particularly effective, and would also help ensure that the Commonwealth manage and mitigate modern slavery risks within their own operations and supply chains.

18. **Should civil penalties be introduced into the Modern Slavery Act?**

We consider that civil penalties should be available for the following:

- failing to submit a modern slavery statement;
- knowingly providing false or misleading information in a modern slavery statement; and
- failing to comply with a request for remedial action.

In our view, the process for the introduction of civil penalties set out in the Consultation Paper is appropriate, including a transitional period before any changes take effect, and opportunities for internal and external review of decisions around the exercise of these powers.

[5] Australian Government, 'Australian Government response to the review report of the Modern Slavery Act 2018 (Cth)' (Publication, 2024) at 27: https://www.ag.gov.au/sites/default/files/2024-11/australian-government-response-review-report-of-modern-slavery-act-2018.PDF.

19. Should any defences, such as mistake of fact, be considered for any proposed civil penalties?

We suggest that it would be appropriate to include defences, such as mistake of fact, for any proposed civil penalties. It may also be helpful to align the defences with those included in s 733 of the *Corporations Act 2001* (Cth) in the context of disclosure documents, including reasonable reliance, withdrawal of consent and unawareness of new circumstances.

20. What key considerations should be taken into account when considering the maximum penalty units for any penalty provisions?

We suggest that penalties should be sufficiently sizeable so as to act as a genuine deterrent, for example based on a proportion of annual turnover up to a capped limit. Where an entity is found to have engaged in multiple contraventions of the Act, we suggest it may be appropriate for them to be exposed to greater penalties.

Part C – Joint Reporting

26. Does corporate group reporting adequately resolve challenges experienced by reporting entities with the current joint reporting model?

27. Are there any new challenges that may result from replacing the current joint reporting process with a corporate group reporting model (with exemptions)?

We suggest that replacing the joint reporting under s 14 of the Act with a corporate group reporting model, whereby corporate entities are required to report on behalf their corporate group, will assist in resolving some of the challenges currently experienced by reporting entities. These include separate identification requirements for each subsidiary within a group structure; reporting requirements for entities that do not produce anything or employ staff; and requirements around dormant entities within a complex group structure.[6] Importantly, we also support the corporate group reporting model, as it may produce more accurate and meaningful supply chain mapping within multi-national corporations.[7]

While we understand that the proposed exemptions to the corporate group reporting model for nominee or subsidiary reporting entities would be determined following an application to the regulator, we have some concerns that if multiple exemptions were to be granted, this could detract from the goal of effective supply chain mapping. Further, the proposed civil penalties regarding non-compliance would presumably be directed to the subsidiary (as the reporting entity) which may detract from the overall deterrence effect. Therefore, we suggest that there should be guidance around the circumstances in which an exemption is appropriate.

[6] McMillan Report (above n 4), 77.
[7] Ibid.

Part D – Voluntary Reporting

32. Should the requirement for voluntary reporting entities to notify the Minister of their intention to voluntarily report be removed altogether?

The Law Society supports the proposal to simplify the reporting process for voluntary reporting entities in the manner outlined in the Consultation Paper. This will still require an entity to provide notice to the Minister if they want to voluntarily comply with the requirements of the Act, but will provide further flexibility by allowing such entities to revoke their reporting status at any time.

33. Are any changes needed to what potential new regulatory powers should apply to voluntary reporting entities?

34. Should the regulator be provided a new power to revoke an entity's status as a voluntary reporter (for example, to manage non-compliant voluntary statements)?

We agree with the proposal set out in the Consultation Paper that any new regulatory powers to be applied to a voluntary reporting entity be limited to information gathering powers. While there may be circumstances in which it is appropriate for the regulator to revoke an entity's status as a voluntary reporter to maintain the integrity of the scheme, we suggest an emphasis on education and other less punitive remedies in the first instance to encourage wider commitment across small and medium sized businesses to understand and conduct their operations in line with the objectives of the Act.

Thank you for the opportunity to comment. Questions at first instance may be directed to Sophie Bathurst, Senior Policy Lawyer, at (02) 9926 0285 or Sophie.Bathurst@lawsociety.com.au.

Yours sincerely,

Jennifer Ball

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President