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Modern Slavery Act Review Secretariat
Attorney-General's Department
3-5 National Circuit, Barton ACT 2600

By email to: ModernSlaveryActReview@ag.gov.au

Dear Professor McMillan,

Property Council of Australia submission to the Modern Slavery Act 2018 Review

The Property Council of Australia welcomes the opportunity to provide a submission to the 2022 Review of the Commonwealth Modern Slavery Act 2018, and thanks Professor McMillan and the Review Secretariat for their active engagement during the consultation period.

The Property Council of Australia is the leading advocate for Australia's biggest industry – property. The property industry represents one ninth of Australia's GDP (the largest of any sector), employs 1.4 million Australians and generates \$72 billion in tax revenues to fund community services. The Property Council of Australia provides powerful advocacy and exceptional services for more than 2200 member companies that invest in, design, build and manage places that matter to Australians: our homes, retirement villages, shopping centres, office buildings, industrial areas, education, research and health precincts, tourism and hospitality venues and more.

On behalf of our members, the Property Council provides the research and thought-leadership to help decision-makers create vibrant communities, great cities and strong economies. The Property Council also supports smarter planning, better infrastructure, sustainability, and globally competitive investment and tax settings which underpin the contribution our members make to the economic prosperity and social well-being of Australians.

The Property Council has worked proactively with members on collaborative, industry wide approaches to addressing modern slavery risks, having convened a working group on the issue since 2017. Key initiatives include the production of education material, best practice guidance on grievance mechanisms and remediation, and a world first industry-wide

collaboration to launch an online platform engaging suppliers on modern slavery risks. As of 7 November 2022, 7,916 suppliers were engaged on the platform.

The [Issues Paper for the Review of the Commonwealth Modern Slavery Act 2018](#) was released on 22 September 2022, posing seven key areas of questions, to which the Property Council of Australia has the following responses set out over subsequent pages:

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The Property Council would welcome the chance to meet with the independent panel and discuss our views in further detail. Please reach out to Frankie Muskovic, National Policy Director on fmuskovic@propertycouncil.com.au or +614 1358 7898 should you wish to discuss this submission in more detail.

Yours sincerely



Ken Morrison
Chief Executive

i) Has the Modern Slavery Act had a positive impact in the first three years?

The Property Council believes that the Commonwealth Modern Slavery Act 2018 has had a positive impact in the first three years through:

- Increased reporting, with over 7,000 entities covered by over 5,000 statements visible online by November 2022
 - Improved transparency, with over 1.6 million individual searches of those statements by suppliers, clients, colleagues, peers, investors, academics, NGOs and many others by November 2022
 - Supplier data maturity, with positive improvements visible across issues including supplier knowledge, assessment of modern slavery risks, access to resources, approaches to grievance mechanisms and remediation, and collaboration, including:
Across the 6,257 suppliers engaged as of November 2022
 - 58% of respondents have assessed the modern slavery risks in their operations and supply chains in some way
 - 87% of respondents say that key stakeholders in their organisation understand the basic facts around modern slavery
 - 27% of respondents say that their organisation provides some form of training to employees and suppliers on human rights and modern slavery
 - A further 22% of respondents say their organisation is planning on offering some form of training to employees and suppliers on human rights and modern slavery over the next 12 months
 - 69% of respondents say their organisation has some form of grievance mechanism or process in place that provides an opportunity for employees, suppliers and the 'voice of the worker' to be heard
 - A further 12% of respondents say their organisation is planning on developing a grievance mechanism or similar process over the next 12 months
- [\(Source: Property Council Modern Slavery Supplier Platform, provided by Informed 365\)](#)
- Supplier knowledge, with modern slavery awareness-raising resources accessed thousands of times through the Property Council Modern Slavery Supplier Platform alone, as well as improvements to supplier knowledge tracked by the Supply Chain Sustainability School and the Modern Slavery Register Resources online
 - Comparison of Statements that has been enabled through the Modern Slavery Register, which allows for greater evaluation of suppliers, clients, peers and providers; the increased volume of data is certainly positive, although there is considerable scope for improved interpretation and analysis of Modern Slavery Statement data in future.

It is noted that September 2022 estimates from the International Labour Organisation, Walk Free Foundation and International Organisation for Migration show that 50 million people were living in modern slavery in 2021; of these, 28 million were in forced labour and 22 million were trapped in forced marriage. This data shows that the number of people in modern slavery has risen significantly in the last five years; 10 million more people were in modern slavery in 2021 compared to 2016 global estimates, and women and children remain disproportionately vulnerable. Although it is believed that the Modern Slavery Act 2018 has had a positive impact in the first three years, it would appear positive impacts have been felt across businesses, procurement practices and supply chains, rather than by the victims of exploitation.

It would be prudent to evaluate accurately whether the Modern Slavery Act has had a positive impact across the operations and supply chains reporting entities, with annual consolidated revenues over \$100 million, in order to consider positive impacts of the Act more broadly.

Is the 'transparency framework' approach of the Modern Slavery Act an effective strategy for confronting and addressing modern slavery risks, including the drivers of modern slavery?

The transparency framework would appear to represent the first part of an effective strategy for assessing and addressing modern slavery risks; raising awareness of the issue of modern slavery at every level of organisations has been a good starting point where there was little knowledge prior to the Modern Slavery Act 2018. However, considerably more work is required around addressing and remediating modern slavery risks and tackling the drivers of modern slavery through Australian supply chains, as well as around effective due diligence processes and transparency around due diligence.

It is noted that the transparency framework is restricted in its application in some instances due to conflicting regulation and obligations on reporting entities. For example, transparency around sharing the name of suppliers where modern slavery has been discovered by one organisation with a peer (competing) organisation so that they may investigate is prevented by anti-competition law. Similarly, if modern slavery is discovered and an organisation fulfills its obligation to prevent additional harm to victims by not reporting the crime to authorities, transparent reporting of this fact may increase the risk to both the victim and the organisation. Further clarification around the extent of transparency approaches would be welcomed.

Should the Modern Slavery Act be extended to require additional modern slavery reporting by entities on exposure to specified issues of concern? If so, what form should that reporting obligation take?

With only three years of reporting from larger entities, and uncertainty as to how many reporting entities have actually completed their reporting obligations, it may be seen as unwise to introduce additional reporting and better to refine what is currently in place so as to be as effective as possible in assessing, communicating and addressing risk of harm to people.

As part of this Review process, it would be helpful to clarify that the current reporting scope and requirements under the Act are maintained, and it is made explicit in supporting guidance material, whereby reporting entities are not required to report on modern slavery risks associated with how their customers use the products or services they purchase. For example, landlords and lessors are not required to report on modern slavery risks associated with the operations and supply chains of lessees or tenants.

Should the Modern Slavery Act spell out more explicitly the due diligence steps required of entities to identify and address modern slavery risks?

The Modern Slavery Act has been partly supported and promoted by government, but the provision of educational resources, training materials, awareness raising and learning metrics around due diligence processes and risk management needs substantially more

support and engagement over the coming years. It will be important to clarify what 'good' human rights due diligence looks like, with guidelines, templates, case studies and recommendations where possible.

It is advised to provide clarity around the due diligence steps required of entities to identify and address modern slavery risks, which is one of the reasons that [the Property Council of Australia has partnered with the Cleaning Accountability Framework](#) (CAF). [The Cleaning Accountability Framework](#) offers a unique human rights due diligence model that takes an approach to modern slavery risk identification and management centred around the worker voice, and which goes beyond social audits. CAF is seen as one of Australia's foremost anti-slavery mechanisms and a model that can translate across numerous sectors and industries.

Although the Property Council noted the provision of an Anti-Slavery Business Engagement Unit within the Department of Home Affairs, now within the Attorney-General's Department, the allocation of \$3.6million in the 2018/19 Federal Budget was insufficient for the Unit to produce enough education material for different sized businesses across all sectors of the economy, particularly material that might address due diligence issues. We therefore urge the Government to increase funding for the Unit and partner with and support existing organisations and initiatives that have deep understanding of specific sectors and the due diligence needed within them.

It is noted that, within the recent Budget, "The Government will establish a new unit within the Attorney General's Department to scope options to establish an Anti-Slavery Commissioner to work with business, civil society and state and territory governments to support compliance with Australia's Modern Slavery Act 2018 and address modern slavery in supply chains", and this is to be supported, funded and encouraged.

Has the Modern Slavery Act been adequately supported and promoted by government, business and civil society?

The Modern Slavery Act has been partly supported and promoted by government, but the provision of educational resources, training materials, awareness raising and learning metrics needs substantially more support and engagement over the coming years. With supply chains throughout Australia's property sector representing a complex mixture of large, medium-sized and small organisations, it is imperative that requirements, recommendations and best practice examples are communicated to the supply chains of sole traders, small businesses and medium-sized enterprises. This should spell out what competitive businesses should be doing for their clients, contracts, and projects.

Although the Property Council noted the provision of an Anti-Slavery Business Engagement Unit within the Department of Home Affairs, now within the Attorney-General's Department, the allocation of \$3.6million in the 2018/19 Federal Budget was insufficient for the Unit to produce enough education material for different sized businesses across all sectors of the economy, in addition to its other stated functions. We therefore urge the Government to increase funding for the Unit and partner with and support existing organisations and initiatives that have deep understanding of specific sectors.

It is noted that, within the recent Budget, “The Government will establish a new unit within the Attorney General’s Department to scope options to establish an Anti-Slavery Commissioner to work with business, civil society and state and territory governments to support compliance with Australia’s Modern Slavery Act 2018 and address modern slavery in supply chains”, and this is to be supported, funded and encouraged.

ii) Are the Modern Slavery Act reporting requirements appropriate?

Is AU\$100M consolidated annual revenue an appropriate threshold to determine which entities are required to submit an annual statement under the Modern Slavery Act? Does the Act impose an appropriate revenue test for ascertaining the \$100m threshold?

Acknowledging the data provided within the Issues Paper around the potential lowering of reporting thresholds, the Property Council believes that at this stage, with many reporting entities with annual consolidated revenues of over AU\$100million still struggling to submit compliant, accurate and meaningful Modern Slavery Statements, the reporting threshold should remain the same but it should be flagged that reporting thresholds will be lowered to AU\$50million after three years (i.e. in 2025).

However, sending an early signal to the market that reporting requirements will be changing, and allowing a three-year period for larger entities (\$100million and over) to reach a greater stage of reporting maturity, will provide a clear pathway to having medium-sized (\$50million to \$100million) entities reporting from 2025 onwards, whilst allowing leaders across the industry the opportunity to start reporting voluntarily and providing clear best practice examples. It will also be important to consider the impact of these reporting requirements on medium-sized supplier entities, and their ability to provide information to multiple clients, and streamline reporting processes for them so as to address the potential reporting burden.

At the same time, further development is needed on the Government’s response to forced labour concerns and potential import bans to address the products of forced labour, in order to complement and support the activities and actions of reporting entities in assessing and addressing the risks of modern slavery in their operations and supply chains.

Should the Modern Slavery Act require annual submission of a modern slavery statement? Does the Act contain appropriate rules for ascertaining the annual reporting timeline for entities?

The Property Council believes that annual submission of modern slavery statements is appropriate, given how quickly the operations and supply chains of reporting entities can change. The COVID-19 pandemic showed the degree and speed of disruption and change across international supply chains, and annual submission of modern slavery statements will reflect such variations.

Although the rules around reporting timelines are appropriate, the Property Council believes that these reporting timelines should be communicated more effectively so that entities of all sizes, including those with culturally and linguistically diverse workforces, can understand the timelines and requirements depending on their reporting years and capabilities. With

anecdotal evidence from across the property and construction sector showing that preparation of a Modern Slavery Statement can be a three-month process, often with high production values, consideration might be given to a standard 'plain' template for reporting entities to improve efficiency and offer less room for misinterpretation.

It is recognised that many property and construction organisations already undertake multiple initiatives for reporting, statements, certifications and ratings, and so consideration might be given as to how larger entities might integrate the Modern Slavery Statement into annual company or sustainability reporting over time. It is also suggested that future reporting requirements focus on elements and issues that have changed since the previous year's Modern Slavery Statement, to separate information repeated each year and any new details.

Does the Modern Slavery Act appropriately define 'modern slavery' for the purpose of the annual reporting obligation?

At this stage, the Property Council believes that the term 'modern slavery' is appropriately defined for the purpose of the annual reporting obligation.

Is further clarification required of the phrase 'operations and supply chains', either in the Modern Slavery Act or in administrative guidelines?

At this stage, the Property Council believes that the phrase 'operations and supply chains' has sufficient guidance around it for the purpose of the annual reporting obligation, as long as it remains clear that 'operations' does not include customers or tenants.

Are the mandatory reporting criteria in the Modern Slavery Act appropriate – both substantively and in how they are framed?

The Property Council believes that the mandatory reporting criteria in the Modern Slavery Act are appropriate, but more work is needed to provide clarity to reporting entities about the fifth criterion, *'Describe how the reporting entity assesses the effectiveness of actions being taken to assess and address modern slavery risks'*, as there remains some confusion and discrepancy around what organisations are actually reporting here; there has been too much misunderstanding about the intention of this criterion.

It would be helpful to clarify Mandatory Criterion Six around "consultation with any entities the reporting entity owns or controls" to focus on 'modern slavery risk governance', as well as whether there will remain a requirement to report on COVID-19 impacts. Although an information sheet was issued on this topic, it is not part of the mandatory reporting criteria and clarity on whether this will be removed or retained would be beneficial.

Lastly, while this may relate to the submission of Statements rather than the content per se, it has been pointed out by members that out of the seven Mandatory Criteria there are only three that are likely to change substantially each year (numbers three, four and five). For smaller organisations it might be easier to have this information replicated, with the ability to change it each year, if necessary, in order to focus on the most important three criteria around assessment, action and effectiveness. If the entity name, structure, operations and supply chains haven't changed from one year to the next, the reporting burden could be

eased if this information was replicated and 'approved' the next year, with more time able to be spent on elements relating to the risk of harm to people.

Should more be done to harmonise reporting requirements under the Australian Modern Slavery Act with reporting requirements in other jurisdictions, such as the UK?

Although the Property Council does not have a position on this issue at this time, it should be noted that any attempts to harmonise reporting requirements with other jurisdictions are likely to be welcomed by larger organisations currently required to submit multiple statements covering different entities within different reporting cycles.

Does the Modern Slavery Act contain appropriate requirements for approval of a statement by the principal governing body and responsible member of an entity?

The Property Council does not have a position on this issue at this time.

Should other reporting features of the Modern Slavery Act be revised – such as the provisions relating to joint statements, or voluntary reporting?

The Property Council does not have a position on this issue at this time.

iii) Are additional measures required to improve compliance with Modern Slavery Act reporting obligations?

Has there been an adequate – or inadequate – business compliance ethic as regards the Modern Slavery Act reporting requirements?

The Property Council does not have a position on this issue at this time.

Has government administrative action been effective in fostering a positive reporting and compliance ethic during the first three years of the Act? What other administrative steps could be taken to improve compliance?

It has been noted across the industry that a more responsive Business Engagement Unit would help to prevent problems and backlogs with reporting, especially around entities' understanding of why statements were not being accepted or were seen as non-compliant. It is hoped that the Business Engagement Unit will be able to do more active engagement around reporting processes during the coming year, and with an independent Modern Slavery Commissioner (see later comments) acting in the role of 'critical friend' provide more position encouragement towards continuous improvement in reporting.

In terms of fostering a positive reporting and compliance ethic, although the Modern Slavery Act has been partly supported and promoted by government, the provision of educational resources, training materials, awareness raising and learning metrics needs substantially more support and engagement over the coming years in order to improve this reporting and compliance ethic. With supply chains throughout Australia's property sector representing a complex mixture of large, medium-sized and small organisations, it is imperative that requirements, recommendations and best practice examples are communicated to the

supply chains of sole traders, small businesses and medium-sized enterprises. This should spell out what competitive businesses should be doing for their clients, contracts, and projects.

Although the Property Council noted the provision of an Anti-Slavery Business Engagement Unit within the Department of Home Affairs, now within the Attorney-General's Department, the allocation of \$3.6million in the 2018/19 Federal Budget was insufficient for the Unit to produce enough education material for different sized businesses across all sectors of the economy, particularly around positive reporting and compliance. We therefore urge the Government to increase funding for the Unit and partner with and support existing organisations and initiatives that have deep understanding of specific sectors.

Should the Modern Slavery Act contain additional enforcement measures – such as the publication of regulatory standards for modern slavery reporting?

The Property Council does not have a position on this issue at this time.

Should the Modern Slavery Act impose civil penalties or sanctions for failure to comply with the reporting requirements? If so, when should a penalty or sanction apply?

The Property Council supports modern slavery legislation that actively encourages engagement and capacity building within businesses, and which makes it safe to find slavery and then take steps to remedy, so there is incentive to detect, correct and remediate, rather than cover up. We don't believe that financial penalties will act to motivate corporate engagement, but that the Modern Slavery Register, acting as a publicly available list of liable entities and a searchable central repository, will act as incentive to comply.

iv) Are public sector reporting requirements under the Modern Slavery Act adequate?

Should any alteration be made to the Modern Slavery Act as regards its application to Australian Government agencies?

At this stage, it is not believed that alterations should be made to the Modern Slavery Act as regards its application to Australian Government agencies, but close attention should be paid to the annual Commonwealth Modern Slavery Statement over the next three years to ensure continuous improvement in reporting and progress on addressing modern slavery risks.

Does the annual Commonwealth Modern Slavery Statement set an appropriately high reporting standard in the Foundation and Discovery Phases of reporting?

The Property Council does not have a position on this issue at this time.

What action, if any, should be taken to ensure a common standard of modern slavery reporting among Commonwealth, state and territory government agencies in Australia?

The Property Council does not have a position on this issue at this time.

v) Does the online Modern Slavery Statements Register adequately support scheme objectives?

Does the Register provide a valuable service?

The Property Council and its members believe that the Modern Slavery Register provides a valuable service and the 1.5million searches since the Register's launch would attest to that. The ability to search by name, by product or material, by industry and by revenue is highly valuable, especially when comparing statements, organisations and sectors.

Could improvements be made to the Register to facilitate accessibility, searchability and transparency?

The Property Council believes that the Register could be improved by allowing users to search by company name OR by statement content. For example, searching for company name 'XYZ Enterprises' currently shows not only the statement of XYZ but all statements which reference that organisation, and if the company name is a well-known or well-used brand then there may be dozens of search results; the ability to limit the search to company names and included entities only would streamline the search function considerably.

In addition, it would be helpful to be able to search the Register by Australian Business Number (ABN) to discover whether suppliers are indeed reporting entities, only under a separate ABN.

Lastly, it has been pointed out by members that the Register would benefit from having more accessibility and resources for Culturally and Linguistically Diverse (CaLD) representatives across organisations' operations and supply chains, as current accessibility and resources are limited to those using English.

vi) The administration of the Modern Slavery Act, and the role of an Anti-Slavery Commissioner

What role should an Anti-Slavery Commissioner play, if any, in administering and/or enforcing the reporting requirements in the Modern Slavery Act? What functions and powers should the Commissioner have for that role?

The Property Council supports the creation of a new statutory role for an Anti-Slavery Commissioner, modelled on highly supported elements of the UK Commissioner's role. This is distinct from the role of 'Independent Anti-Slavery Commissioner' provided for in the NSW Modern Slavery Act which is an executive level public servant and may lack the same degree of independence of the role prescribed in the UK. The role should:

- have no responsibility regulating business compliance with the reporting requirement, but rather focus on providing advice and support to business as they progress in implementing policy responses; consideration should be given to how the Commissioner might try to address failures over time, and focus on improving areas of weakness

- work with but separate to the Business Engagement Unit within Attorney-General's to advise business on what to do if they suspect they might have slavery in their supply chains. On this basis, the appointee would have special expertise in identifying and responding to slavery and slavery-like practices in supply chains
- lead in implementing a community engagement strategy to educate the public about the new legislation, particularly as it relates to fostering a culture of safety for business reporting on risks of modern slavery in supply chains
- provide new leadership in reviewing areas of strength and development under the current National Action Plan (NAP) and lead the development of Australia's next NAP. This leadership should include extensive consultation with members of the National Roundtable on Trafficking and Slavery as well as other stakeholders across the country, whilst remaining independent and apart from government or political decisions.

It is noted that, within the recent Budget, "The Government will establish a new unit within the Attorney General's Department to scope options to establish an Anti-Slavery Commissioner to work with business, civil society and state and territory governments to support compliance with Australia's Modern Slavery Act 2018 and address modern slavery in supply chains", and this is to be supported, funded and encouraged in order to be effective and successful.

Recent discussions within the Property Council Modern Slavery Working Group and across the industry, about key areas of modern slavery risk, would indicate that the Anti-Slavery Commissioner will need to be supported in their work by other government agencies. Many issues, and some of the emerging risks, may involve not just individual organisations or sectors but geopolitical concerns, and so although the Commissioner will need to play an important role in mapping out approaches to these risks, they will need to work with other agencies and departments to do so and to enable effective action and collaboration.

Responsibility within government for administering the Modern Slavery Act.

The Property Council does not have a position on this issue at this time.

vii) Future review of the Modern Slavery Act

Is a further statutory review (or reviews) of the Modern Slavery Act desirable? If so, when? And by whom?

The Property Council suggests that a further statutory review of the Modern Slavery Act be undertaken after three years, in 2025, when the threshold for reporting entities might be lowered and a further assessment of the impact of the regulation be undertaken to inform the administrative and educational resources necessary.

It is suggested that the second three-year review be undertaken in the same manner, or by the independent Anti-Slavery Commissioner. It should be clarified that, although the Modern

Slavery Act will undergo a further statutory review, the focus of the Act will remain on people and assessing and addressing the risk of harm to people.

Should a periodic review process (other than a statutory review) be conducted of the Modern Slavery Act and its implementation? What form should that review process take?

The Property Council does not have a position on this issue at this time.