

10 November 2017

Transnational Crime Branch
Attorney-General's Department
3-5 National Circuit
BARTON ACT 2600

By email: slavery.consultations@ag.gov.au

Dear Sir/Madam

CONSULTATION ON MODERN SLAVERY IN SUPPLY CHAINS REPORTING REQUIREMENT

The Property Council of Australia welcomes the opportunity to comment on the *Modern Slavery in Supply Chains Reporting Requirement* consultation paper and thanks the Attorney-General's Department for including the Property Council and our members in the recent consultation roundtables.

The Property Council is the peak body for owners and investors in Australia's \$670 billion property investment industry. We represent owners, fund managers, superannuation trusts, developers, and investors across all four quadrants of property investments: debt, equity, public and private.

As owners, managers, and developers, we recognise the property sector strongly influences and impacts on the community and our supply chains. The supply chains of leading property companies are complex and multi-tiered, and this can reduce their visibility of what is occurring, particularly where there is outsourcing or subcontracting.

Several countries known to have modern slavery occurring in parts of their labour market produce goods and services that are sold in the Australian market, including to the property and construction industry.

The property industry considers it has a responsibility to respect human rights and we are committed to playing our part in addressing modern slavery in supply chains. While it may be currently unrealistic for property companies with many-tiered supply chains to trace every product or service back to its origin, our members are committed to getting a better understanding of their supply chains and putting in place reasonable steps to address the risk of modern slavery.

The Property Council supports the introduction of a Modern Slavery in Supply Chains Reporting Requirement.

We have provided feedback on specific issues raised in the consultation paper in the attached submission and look forward to working collaboratively with the Attorney-General's Department to see the introduction of a reporting requirement that will positively engage, encourage, and support businesses to address this complex issue.

We would welcome the chance to meet with you and discuss the details of our submission further.

Yours sincerely



Ken Morrison
Chief Executive

Feedback on Design of the Reporting Requirement

The following feedback is provided on specific aspects of the proposed design of the reporting requirement, in no particular order or importance.

1. Education, training, and support around the topic of Modern Slavery

The consultation paper states that regulatory action will be supported by comprehensive guidance and awareness raising materials for the business community. We believe this is a critical measure and will impact significantly on the ability of businesses to engage with their supply chain.

Education and support material needs to be tailored to different industries and business size – a conversation about the impacts of modern slavery with an enterprise risk manager would look different to one with an equipment supplier. It is important that education material is targeted not just at liable reporting entities, but also at different tiers of suppliers so there is broad awareness of the issue. Assistance should also be provided as to how to respond to requests for information from reporting entities about modern slavery in a supplier's supply chain.

After consulting extensively with our members and more broadly with other businesses and not-for-profits, it is evident that there is widespread desire for a collaborative effort to ensure consistency of approach to this reporting requirement. This particularly extends to working with suppliers and ensuring that liable reporting entities are asking consistent questions of suppliers to limit the burden that will be placed downstream on companies' extended supply chains. We strongly urge the Government, in preparing educational materials to enable this collaborative where possible and support existing initiatives aimed at engaging extended supply chains within different industries.

The Supply Chain Sustainability School in Australia has already begun to educate the property, construction and infrastructure sector, both online and at specific events, about Modern Slavery in supply chains (<http://www.supplychainschool.org.au/resources/modern-slavery.aspx>), following in the footsteps of the UK's Supply Chain Sustainability School which has worked with the industry there following the introduction of the UK Modern Slavery Act in 2015 (<https://www.supplychainschool.co.uk/default/modern-slavery.aspx>). We would encourage support for this, and similar initiatives, in raising awareness of the issues and the actions.

2. Clear guidance and protocols for businesses who find slavery in their supply chains

Clear guidance and support should be provided for organisations that find modern slavery in their operations or extended supply chains so that they know how to respond safely and effectively. There should be access to appropriate information, remedies, and support for victims.

We note in our engagement with not-for-profits currently working with and supporting victims of modern slavery, that notifying law enforcement is often not the recommended immediate course of action. We believe there is limited awareness in the broader business community on what the safest, most effective response to finding instances of modern slavery is, therefore there is need for a concerted effort to educate and support businesses.

3. Central repository of statements

We believe there should be a requirement for statements to be placed in a prominent position on a liable entity's website. The location should be easily accessible and have a similar level of prominence to an entity's corporate governance statement.

In addition, all statements should be uploaded to a central, searchable repository. This will facilitate easier monitoring and tracking of compliance by government, but will also allow businesses to easily access statements from liable suppliers and the ability to benchmark against peers. The repository needs to function in a way that provides the necessary functionality for liable entities but also suppliers in their extended supply chains. Suggested functions for the repository of statements include:

- ability for entities to directly upload their statements through a portal
- ability to sort statements by industry type
- status of liable entities' compliance is shown according to the nominated reporting deadline of the organization

In addition to the repository having the function of housing the statements, there was a of discussion at the roundtable consultation sessions about the need for a central point to access guidance information, case studies and other resources to help entities make their statements and work towards continuous improvement. We support the suggestion that the repository should also function as a knowledge hub for business.

The consultation paper states that the Government is considering ways to support business and civil society to undertake analysis and benchmarking of Modern Slavery Statements. This implies that the central repository could be used for functions beyond maintaining a public register. If this is the case, the proposed functions for a central repository need to be clearly articulated and consulted on with the business community as part of the detailed design required to establish a central repository and any benchmarking capability.

Given the suggested functions of the repository, more thought needs to be given to who would manage this repository in practice. The proposed ownership and responsibility for maintenance and any other proposed function needs to be clarified and consulted on.

4. Government leadership and public procurement

We believe government must take a leadership role on this issue. Like large businesses, the significant market power of governments can be harnessed to affect change through the purchase of goods and services.

From 2015-2016, the Australian Federal Government reported public procurement spending of \$56.9Bn on approximately 70,400 contracts.¹ Without considering the additional impact of state and local government procurement, this demonstrates the impact governments can make through procurement processes.

We note and strongly agree with the position taken by the Joint Standing Committee's inquiry on establishing a Modern Slavery Act. The Committee provided in-principle support for the Australian Government to "introduce into its procurement requirements that it only engages with companies, businesses, organisations and other Australian governments that have submitted modern slavery statements. The Committee considers that this would encourage smaller companies to also report via the opt in options."

¹ <https://www.finance.gov.au/procurement/statistics-on-commonwealth-purchasingcontracts/>

Given the above, we strongly support the application of the Modern Slavery Act to federal, state, and local government entities and procurement processes. In fact, we believe the Government's proposal for a reporting requirement for the private sector would be hollow if it wasn't prepared to report on its own procurement and would query the full relevance and power of a regime that failed to capture governments.

5. Conditions for 'opt-in' reporting

Following on from the points raised on public procurement, there is the potential for large businesses to leverage their market power and require suppliers to 'opt-in' as a condition of procurement.

While the consultation paper notes the Government will allow entities to 'opt-in', there is very little guidance included in the consultation paper on how this would work in practice. For example, it is unclear whether once a company chooses to 'opt-in', they are subject to all the requirements of a liable entity, or whether they can choose to 'opt-out'. This includes whether specific guidance is required for statements if the entity has opted to participate, and whether compliance would be assessed any differently whether the entity is liable under legislation or chooses to report.

We suggest it is made clear that if an entity chooses to opt-in, they are subject to all the requirements of a liable entity and are treated no differently for assessing compliance. Further work is needed to define conditions for 'opt-in' entities, and how their statements should be displayed in the repository. This should be a priority part of the detailed design of the reporting requirement.

6. Penalties for non-reporters

We encourage the introduction of legislation that supports 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 find rather than cover up.

We don't believe the introduction of legislation along with immediate financial penalties will act to motivate corporate engagement. We believe a publicly available list of liable entities in the central repository would act as incentive to comply. Notwithstanding the challenge of compiling such a list, it could be used to highlight the status of compliance of each entity (compliant/non-compliant/statement due on X date etc.)

We also support a phased-in approach to any penalties under consideration, providing an introductory grace period of one year. Rather than contemplating financial penalties, the use of an enforceable undertaking is a measure that could be looked at as a last resort, and has provided a stronger incentive for reporting in other pieces of legislation.

It is crucial for companies reporting under legislation for the first time to be given the opportunity to address any compliance issues raised, and conversely, Government should also consider ways to reward companies which meet requirements within the first year of reporting.

7. Reporting Areas

Given the potential for companies of the size captured by the proposed legislation to have operations in multiple jurisdictions, this may impose reporting requirements in those jurisdictions. We believe that reporting requirements and guidance should, to the extent possible, be aligned with other international regulations and reinforce the United Nations Guiding Principles on Business and Human Rights.

The supply chains of property companies are global in scale and diverse in structure, often not confined to vertical models of selected suppliers. Arrangements with suppliers are often transactional with little interaction between principals and suppliers, can be transitory and infrequent, and may be externally managed by a third party who engages with sub-tier suppliers.

This complexity of property companies' supply chains will create some significant challenges to gaining a deeper understanding of what is occurring. We imagine this may also be the case across a range of other industries. To manage the reporting burden created, we suggest requirements are not mandated in detail so there is some flexibility on the content included by a company in its statement.

It is not currently possible for large companies with complex supply chains to trace the origin of every single product sourced. We therefore urge guidance is given to companies that will help them take a risk-based and materiality approach by identifying which parts of their supply chain have a higher risk of modern slavery occurring. In that context, we support the principle of including a requirement to report against the following criteria:

1. The entity's structure, its operations, and its supply chains
2. The modern slavery risks present in the entity's operations and supply chains
3. The entity's policies and process to address modern slavery in its operations and supply chains, including how the effectiveness of any controls put in place are assessed (such as codes of conduct, supplier contract terms and training for staff), and
4. The entity's due diligence processes relating to modern slavery in its operations and supply chains and their effectiveness.

We believe the structure proposed in the consultation paper is appropriate, however as outlined above in item 3, we suggest that entities are asked to report on how they assess the effectiveness of controls rather than an undefined quantified measure of effectiveness.

Detailed guidance is required to assist businesses in understanding the nature of information expected to be provided under these criteria. We suggest businesses should have the ability to determine what extent of information is provided against each of the criteria, informed by their risk assessment.

We note there is no specific proposal for the number of tiers to include in reporting, other than 'beyond tier one suppliers'. We suggest guidance is given for businesses to look at their extended supply chains, taking a risk and materiality focused approach.

8. Threshold for reporting

The choice of where to initially set a threshold for reporting entities is not an issue that the Property Council or its members can comment with great authority, suffice to say that the threshold should involve as many opportunities for tackling the problem of modern slavery as possible whilst minimising the burden of compliance. Beyond the preference for

consistency in requirements between Australian and foreign legislation i.e. alignment with UK Modern Slavery Act, we suggest this is subject to review after an initial 3-year implementation period.

After an initial period of implementation, the Government will have sufficient data on the level and cost of compliance to justify a lowering or raising of the threshold. We suggest this particular aspect of policy design is subject to a full review after 3 years.

9. Anti-slavery commissioner

Although not canvassed explicitly in the Government's consultation paper, we support establishing the office of an Independent Anti-Slavery Commissioner. The Commissioner's role should be based on the UK model which:

- has no role in regulating or policing business behaviour, nor in maintaining the repository nor in ensuring companies file statements in accordance with the legislation
- is firmly focused on public awareness raising, protection of victims and oversight of agency responses in implementing the Government's National Action Plan
- has independent oversight in any engagement with foreign jurisdictions (government and business) around the issue of modern slavery
- must submit a strategic plan for approval by the Attorney General and/or Minister for Justice
- should have a function of providing advice and support to businesses as they progress in implementing policy responses,
- facilitates two-way dialogue between business and government to support continuous improvement.

To ensure the role is independent, strategic, and proactive, it should not be placed within any government department or ombudsman's office, nor should it assume an ombudsman-like function. Doing so would largely relegate the role to a reactive, complaints-based mechanism, which is not how the role functions or is intended to function under the UK legislation.

10. Timeframe for reporting

The consultation paper proposes that entities will be required to publish Modern Slavery Statements under the reporting requirement within five months after the end of the Australian financial year. We strongly believe the requirement for reporting timeframe should relate to each company's annual reporting timeframes, as many companies do not compile their annual reports around end of financial year.

By allowing companies to nominate their annual reporting date and setting the reporting timeframe accordingly, this will dramatically limit the administrative burden of reporting.

11. Guidance and process for assessing compliance

Clear guidance is required on how compliance will be assessed and reported. In addition to the points raised under item 7 'Reporting Areas' on the content of report, the Government must clearly outline how compliance will be assessed. For example, a statement may be assumed compliant if information is provided under each of the four proposed criteria (regardless of the detail of information provided).

As outlined under item 9, we do not believe assessment of compliance should be the role of an independent commissioner and suggest this could be function of the Attorney-General's Department with the details subject to further consultation.

In addition to support for a phased-in approach to any penalties under consideration, we also suggest that for companies reporting for the first time, there are two rounds of submission. In the first round, if an entity is found to be non-compliant they can address any issues raised and re-submit a statement in the second round. This should apply for first-time reporters only to ease companies into the reporting requirement and compliance process.

12. Definitions

- The definition of 'modern slavery' should be consistent with definitions already used in the Criminal Code and should not exclude human trafficking or forced labour. While we understand from the roundtable consultations the intent of the narrower definition was to focus on specific situations and simplify the approach for business, we believe that in practice this will result in confusion and suggest consistency with the Criminal Code
- The definition of 'entity' needs consider how private companies are treated. This legislation should apply regardless of whether an 'entity' is publicly or privately owned. Similar to NGRS we suggest the definition of an entity be in accordance with S57A of the Corporations Act; however, reporting should be limited to instances of operational control,
- The definition of 'supply chain' should refer to an organisation's extended supply chain and clearly articulate whether upstream and downstream suppliers are relevant.

13. Regulatory impact of compliance and cost estimates

It is difficult to make an accurate assessment of the cost companies will incur in demonstrating compliance with the proposed legislation until further details are provided and finalised on some aspects of design. We do however note that the current estimate of \$11,500 per entity grossly underestimates the expected cost of compliance.

Property companies have expansive supply chains and gaining a much deeper understanding of this will involve a significant time investment from a resourcing point of view. Further to the cost incurred by reporting entities, there will be significant impacts downstream on suppliers who will be asked by multiple organisations how they are responding to the issue. This only reinforces the need for a comprehensive effort for reporting entities to collaborate and seek consistent inputs from suppliers, and to support suppliers with education. The better this is coordinated the less cost impact this will have for all involved.

We suggest this is tracked over the initial implementation period by asking for reporting entities to estimate the number of hours spent in preparing the statement and engaging with suppliers. This would provide crucially needed to input to justify any future change to the reporting threshold.

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