



SUBMISSION

Response to Modern Slavery in
Supply Chains Reporting
Requirement - Public Consultation
Paper

OCTOBER 2017

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The Business Council of Australia is a forum for the chief executives of Australia's largest companies to promote economic and social progress in the national interest.

About this submission

This is the Business Council's submission to the Attorney-General's Department's paper *Modern Slavery in Supply Chains Reporting Requirement – Public Consultation Paper and Regulation Impact Statement*.

Summary

The Business Council has vocally supported the introduction of a Modern Slavery Act in Australia.

Australians deserve to have confidence that the supply chains and production processes for our products and services have not been exposed to modern slavery. Our higher living standards should not come at the cost of human suffering.

Business has a responsibility to respect human rights and to work with governments and non-government organisations to address human rights abuses. Large businesses can play a leadership role in addressing modern slavery. Many companies already voluntarily disclose modern slavery issues and work to continuously improve the governance of their supply chains and operations.

An appropriately designed and efficient reporting requirement for modern slavery through a Modern Slavery Act can:

- improve governance for increasingly complex and often opaque global supply chains
- increase transparency of behaviour in global supply chains
- help level the playing field for companies who face a modern slavery reporting requirement in other jurisdictions.

From a business perspective, there are two key considerations for the design of a new modern slavery reporting requirement:

1. A new reporting requirement should encourage companies to continuously assess their supply chains and operations for evidence of modern slavery, not penalise businesses for exposing problems.

The approach to a new reporting requirement should be collaborative, not punitive, and focussed on lifting the performance of business in combatting modern slavery.

The Business Council would be open to independent oversight, like the UK Anti-Slavery Commissioner model, if it works constructively with businesses to lift performance.

2. A new reporting requirement should give businesses flexibility to combat modern slavery – and report on these initiatives – in the most effective way for that business.

Excessive prescription would incur unnecessary costs – and could also potentially incur unintended consequences. The compliance cost will be limited if the regime has sufficient flexibility for companies to align modern slavery reporting to best reflect their existing reporting processes, supply chains and operations.

New requirements should be consistent with the UK Modern Slavery Act, as much as possible.

To assist the Attorney-General's Department with designing a new reporting requirement in line with these considerations, five key recommendations are below. The remainder of this submission responds in more detail to the fourteen questions in the consultation paper.

Key recommendations

1. The criteria used for modern slavery reporting should be optional, similar to the UK reporting requirement.
2. Any deadline for the annual reporting requirement should allow companies flexibility to determine the most appropriate reporting timeframe for them. It should not set a common deadline for all companies regardless of reporting cycle (for example, a deadline linked to the end of the Australian financial year).
3. Transitional legislative arrangements should include a two-year phase-in period, to allow businesses time to adjust.
4. The legislation should recognise companies complying with the UK modern slavery legislation as compliant for Australian purposes.
5. The Australian Government should also take a leadership role on modern slavery, and agree to abide by comparable reporting requirements for public procurement.

Response to consultation questions

1. Is the proposed definition of 'modern slavery' appropriate and simple to understand?

The definition is sufficiently clear.

The Business Council supports the use of existing definitions of human trafficking, slavery and slavery-like offence provisions in the Commonwealth *Criminal Code*.

2. How should the Australian Government define a reporting 'entity' for the purposes of the reporting requirement? Should this definition include 'groups of entities' which may have aggregate revenue that exceeds the threshold?

An entity should be defined as a company, as per the *Corporations Act 2001*, that meets the revenue threshold.

Supplementary guidance should indicate that it is permissible for a group of entities to submit one statement for the entire group.

3. How should the Australian Government define an entity's revenue for the reporting requirement? Is \$100 million total annual revenue an appropriate threshold for the reporting requirement?

The Business Council supports using total annual revenue as the threshold for the reporting requirement.

The threshold will be most effective if it is set at a level of revenue that targets large businesses with a substantial presence in Australia and extensive supply chains. Large businesses have the resources and expertise required to develop a better understanding of their supply chains. Their purchasing power gives them the capacity to effect change throughout their supply chains.

Assets should not be counted in determining the threshold because of the complexity in valuing assets, and because it would expand the definition to capture businesses not sufficiently large to effect change in their supply chains.

There are a range of views among Business Council members on the appropriate level for a threshold. It is difficult to estimate the most appropriate threshold in the absence of more detailed information on the nature and number of businesses at different revenue thresholds. Although the Business Council reserves a position on our preferred threshold, we would not oppose a threshold of \$100 million.

4. How should the Australian Government define an entity's 'operations' and 'supply chains' for the purposes of the reporting requirement?

A definition of 'operations' or 'supply chain' may not be necessary for legislative drafting: for example, the UK Modern Slavery Act does not define either term.

It may not be possible to reach a legislative definition of each term that is meaningful and relevant for all businesses in Australia across all industries.

It would be more appropriate to include guidance on the intended scope of operations and supply chains. Such guidance could be consistent with existing key international standards, like the UN Guiding Principles on Business and Human Rights (the UNGPs).

If the Australian Government chooses to define the terms in guidance, we recommend a number of boundaries, to ensure reporting is practicable and fit-for-purpose. We would make the following recommendations:

- The guidance should recognise the complexity of supply chains. It is not realistic or practical to expect businesses to track every component of every product or service to its origin. In line with the UNGPs, if there is not a direct link between potential or actual allegations of modern slavery and the business' products, operations or services then there should not be an expectation that the business reports on related risks.
- The guidance should broadly define the terms as per their everyday meaning.
- The guidance should indicate an expectation that "supply chains" extend beyond tier one suppliers, but provide no further prescription.
- Companies should be encouraged to adopt a risk-based approach on reporting, and may (at their discretion) go to different levels of detail in different parts of the supply chain, focussing on the higher risk parts.
- Companies should have discretion as to the extent to which they report on activities that they do not directly operate (for example, joint ventures).

5. How will affected entities likely respond to the reporting requirement? As this is how the regulatory impact is calculated, do Government's preliminary cost estimates require adjustment?

The evidence indicates that modern slavery reporting is initially resource-intensive to establish and implement effectively. Businesses may need to introduce new reporting mechanisms to collect the relevant data. Businesses also may face difficulty in obtaining clarity on practices within supply chains, particularly when overseas outsourcing and sub-contracting arrangements are involved.

Business Council members estimate it takes between 6 and 18 months to establish processes for reporting on modern slavery. The time variance depends on the complexity of the organisation's supply chain, and the extent to which the business has already put in place risk management processes around modern slavery risks.

A significant amount of time is dedicated to interpreting new requirements into practices and processes on the ground, determining:

- the scope of the statement's coverage
- how to translate the broader intent of the legislation into practical measurement and reporting
- additional mechanisms required to fulfil the statement's reporting requirements.

Experience from Business Council members is that the estimated cost of \$11,500 per entity may not fully capture the regulatory impact. Adopting the recommendations in the

remainder of this submission may assist in ensuring the regulatory impact is not significantly higher.

6. What regulatory impact will this reporting requirement have on entities? Can this regulatory impact be further reduced without limiting the effectiveness of the reporting requirement?

There are opportunities to reduce the regulatory impact of the reporting requirement, in particular, through greater harmonisation with the UK Modern Slavery Act.

The Business Council makes the following recommendations:

- The criteria used for modern slavery reporting should be optional, similar to the UK reporting requirement, not mandatory.
- Any deadline for the annual reporting requirement should allow companies flexibility to determine the most appropriate reporting timeframe for them.

The regulatory regime can be designed in a number of ways to encourage companies to make timely reports, including:

- by identifying on the central repository when each company's last report was submitted. If the last report was submitted more than 12 months before, it will be clear that the report is overdue.
- by asking each company to nominate an individual reporting deadline, which is clearly outlined on the central repository.
- Transitional legislative arrangements should include a two-year phase-in period, to allow businesses time to adjust.
- The legislation should facilitate mutual recognition of reporting between statements made in Australia and the United Kingdom. However, this may not be possible if the Australian Government pursue significant deviations from the United Kingdom regime. For this reason, the Business Council has been supportive of alignment between the two jurisdictions.
- Supplementary guidance should indicate that it is permissible for a group of entities to submit one statement for the entire group.

7. Are the proposed four mandatory criteria for entities to report against appropriate? Should other criteria be included, including a requirement to report on the number and nature of any incidences of modern slavery detected during the reporting period?

The Business Council supports the broad intent to align criteria with the six areas recommended by the UK Modern Slavery Act.

The proposed criteria should be optional and represent guidance, rather than mandated reporting, for the following reasons:

- Businesses will be able to formulate a more effective response to modern slavery, if they have the flexibility to determine what activities they should undertake and how to report. Reporting will be more practical and meaningful if individual businesses can take a risk-based approach to determine what activities are reasonable and proportionate.

Mandating the reporting criteria risks driving a compliance mindset – a ‘tick and flick’ approach – instead of a culture of good governance, dedicated examination of supply chains and driving continuous improvement against industry peers.

- Mandating criteria risks imposing a rigid approach on each business that does not reflect their particular circumstances.
- The UK’s approach supports businesses by providing indicative criteria as guidance. This ensures sufficient commonality across all statements, without impinging on businesses’ flexibility.
- The compliance burden can be minimised by ensuring the regime has sufficient flexibility for companies to align modern slavery reporting to existing internal processes.

More detailed reporting will likely develop over time, as businesses become familiar with the reporting requirements and as business systems start to capture more data.

Effectiveness of this approach could be revisited when the reporting requirement is reviewed after three years.

The Business Council would not recommend:

- The designation of some factors as optional and other factors as mandatory. This would only increase complexity.
- The addition of other criteria not currently in the UK legislation.

The Business Council is pleased to see the consultation paper does not prescribe the structure of disclosure (for example, whether a statement should be included within a company’s annual report). We recommend the Department maintain this approach to retain flexibility and allow businesses to decide the most appropriate format and reporting process.

8. How should a central repository for Modern Slavery Statements be established and what functions should it include? Should the repository be run by the Government or a third party?

The Business Council supports the Government’s intention to establish a central, searchable repository for reporting. This will facilitate easier monitoring and tracking of

compliance by government and other interested parties, and will support businesses in benchmarking their statements.

The repository should be easily accessible, searchable and contain all reporting.

The repository should be run by Government, as an authoritative and neutral party. A third party may not have the same level of authority and neutrality.

The central repository is likely to be the most effective method for interested stakeholders to monitor the submission of modern slavery reporting. A reporting requirement should not prescribe where a modern slavery statement is available on an individual firm's website.

9. Noting the Government does not propose to provide for penalties for non-compliance, how can Government and civil society most effectively support entities to comply with the reporting requirement?

To support businesses to both comply with the reporting requirement and combat modern slavery, the Business Council recommends:

- Government should also take a leadership role on this issue, and agree to abide by comparable reporting requirements. Government has the ability to effect change through their role as a large purchaser of products and services, and should also operate in line with the community's expectations of supply chain governance arrangements.
- Government should undertake a broad education campaign and awareness-raising activities to ensure all regulated entities are aware of new obligations, and are prepared to identify potential signs of modern slavery.
- Government should develop guidance material to assist businesses in identifying and dealing with modern slavery. The UK Government's guidance would be an instructive starting point.¹
- Government should be sufficiently prepared to respond to tip-offs about potential modern slavery, if alerted by a business.

This may have resourcing implications for law enforcement agencies.

- Government should convene and coordinate groups of businesses to examine opportunities to share best practice and examine opportunities for information-sharing (for example, on suppliers with poor records of supply chain governance).
- In instances where civil society or other stakeholders becomes aware of the potential for modern slavery practices in a company's supply chain, they should raise concerns directly with the business in the first instance. It is important that all organisations

¹ UK Government, *Transparency in supply chains etc – a practical guide*, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/471996/Transparency_in_Supply_Chains_etc__A_practical_guide__final_.pdf.

collaborate in addressing modern slavery, rather than adopt a 'name and shame' style approach.

10. Is the five month deadline for entities to publish Modern Slavery Statements appropriate? Should this deadline be linked to the end of the Australian financial year or to the end of entities' financial years?

The Business Council recommends that any deadline for the reporting requirement should have some flexibility, to reflect the diversity of annual reporting timeframes among businesses in Australia.

Some businesses operate in a financial year basis, others operate on a calendar year basis. Businesses may face a range of different reporting timeframes, depending on where they are headquartered around the world.

Different businesses will prefer different timeframes, because they have different reporting cycles. While some will prefer to sign off on the statement during the annual reporting timeframe, others would prefer to schedule directors' consideration out of cycle, so they can properly focus on this statement.

The requirement should not set a common deadline for all companies regardless of reporting cycle (for example, a deadline linked to the end of the Australian financial year).

A six month deadline would be preferable, similar to the UK Modern Slavery Act.

11. Should the reporting requirement be 'phased-in' by allowing entities an initial grace period before they are required to publish Modern Slavery Statements?

The evidence indicates that modern slavery reporting is initially resource-intensive to establish and implement effectively. Businesses may need to introduce new reporting mechanisms to collect the relevant data. Businesses also may face difficulty in obtaining clarity on practices within supply chains, particularly when overseas outsourcing and sub-contracting arrangements are involved.

For this reason, the transitional arrangements should allow two years to put the new arrangements in place, and identify any concerns that arise through implementation.

The transitional arrangements could also commence at different times for companies with different revenue levels (for example, companies with revenue above \$500 million could commence earlier).

12. How can the Australian Government best monitor and evaluate the effectiveness of the reporting requirement? How should Government allow for the business community and civil society to provide feedback on the effectiveness of the reporting requirement?

The central repository proposed in the consultation paper will be the most effective mechanism to facilitate feedback on the effectiveness of the reporting requirement.

The Business Council also supports the Australian Government's commitment to review the legislation three years after introduction, with further public consultation.

An industry-facing contact should be designated within the government entity overseeing the reporting requirement, for business to raise any issues as new requirements are being implemented.

13. Is an independent oversight mechanism required, or could this oversight be provided by Government and civil society? If so, what functions should the oversight mechanism perform?

The Business Council is open to oversight as per the UK Anti-Slavery Commissioner model, provided that the focus is on working with business to build capacity and lift performance in fighting modern slavery.

14. Should Government reconsider the other options set out in this consultation paper (Options 1 and 2)? Would Option 2 impose any regulatory costs on the business community?

The Business Council supports Option 3 (targeted regulatory action through a Modern Slavery in Supply Chains Reporting Requirement).

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