



22 November 2022

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

By email: [ModernSlaveryActReview@ag.gov.au](mailto:ModernSlaveryActReview@ag.gov.au)

To: Modern Slavery Act Review Secretariat

### **Review of Australia's Modern Slavery Act 2018 – Issues Paper**

The Australian Financial Markets Association (AFMA) welcomes the opportunity to make comments on the Government's review of Australia's Modern Slavery Act 2018 – Issues Paper (Issues Paper).

AFMA represents the interests of over 125 participants in Australia's wholesale banking and financial markets. Our members include Australian and foreign-owned banks, securities companies, treasury corporations, and traders across a wide range of markets and industry service providers. Our members are the major providers of services to Australian businesses and retail investors who use the financial markets.

#### **General Comments**

In principle, AFMA members accept that modern slavery issues are a significant and important global challenge, and the role of governments in protecting workers' rights. In this context, private sector firms accept they have a role to play in promoting respect for workers' rights where they have the ability to do so.

The Issues Paper recognises that tackling slavery has become harder and is difficult to recognise. In light of this, it is important that the Government allow for practices to develop and improve continuously over time; given the many practical challenges in identifying slavery. As the Issues Paper identifies, slavery cannot be stopped simply by a law declaring that it is illegal; in a similar way, creating laws that simply shift the onus onto large entities also does not solve the issue.

**Australian Financial Markets Association**

ABN 69 793 968 987

Level 25, Angel Place, 123 Pitt Street GPO Box 3655 Sydney NSW 2001  
Tel: +612 9776 7993 Email: [secretariat@afma.com.au](mailto:secretariat@afma.com.au)

It is specifically difficult for international business operations to ensure that slavery is not occurring within global operations or supply chains (including those of their clients), for example, especially when:

- Financial Institutions are dealing with a multitude of parties to a transaction and supporting financing needs across large sections of the modern economy including agriculture, construction, electronics, extractives, fashion and hospitality where supply chains are particularly complex.
- Irrespective of sector, entities are also dealing with supply chains in parts of the world with different standards, definitions of human rights, or limited supply chain data needed for identifying instances of slavery (this is particularly the case in emerging markets and Asia Pacific).
- Despite their obligations under the Modern Slavery Act 2018 (MS Act), firms do not have a legal basis for requiring first or second order supply chain data from clients; resulting in limited transparency to identify slavery. This is particularly challenging in an international commercial context, where practices on this differ so greatly.

To promote evolution of best practices, it is important that the Government take a pragmatic view, working with industry to help develop methodologies appropriate to each sector and regions, while taking a phased rather than punitive approach.

It remains impractical and disproportionate for an Australian entity to report on the status of international business operations to ensure that slavery is not occurring within global operations or supply chains; other jurisdictions focus on domestic operations and overseas supply chains of goods and services entering the country, which is more proportionate particularly as best practices continue to evolve. By creating a large or impractical requirement, the MS Act would create a compliance risk first management, 'tick-the-box' approach rather than innovative best efforts to tackle these issues.

### **Integration into ESG Reporting framework**

An important area where the Issues Paper is deficient is in addressing how modern slavery is a subset of ESG reporting and how it will integrate seamlessly into statutory reporting standards that are likely to be adopted by Australia under the International Sustainability Standards Board reporting standards framework, that were foreshadowed in this year's *ISSB Exposure Draft IFRS S1 General Requirements for Disclosure of Sustainability-related Financial Information* consultation. This is a crucial area of development and particularly important to the financial services industry. This is a very important issue that needs to be taken forward as part of the review of the MS Act and with consideration to Australia's ESG commitments.

### **MS Act Impact**

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

A potential critique of the Issues Paper is that it does not appear to evaluate the impact of the MS Act on the incidence of modern slavery itself, perhaps due to the same problems in identifying and measuring it, faced by firms required by the MS Act to identify and measure its incidence in their supply chains.

It is also not clear whether steps have been taken to determine a baseline so that the actual impact of these laws and measures adopted by firms can be measured over time.

## **Due Diligence**

### ***Q4, page 32***

*Should the Modern Slavery Act ("MS ACT") spell out more explicitly the due diligence steps required of entities to identify and address modern slavery risks?*

No, because amending the MS Act to include a positive, prescriptive due diligence obligation could be challenging for local businesses and multi-national corporations to comply with and may create practical difficulties with operationalisation. Rather, we support continuing to allow entities to develop reporting appropriately and proportionately to the nature of their respective businesses and supply chain, and continue with a reporting-based regime which is focused on transparency, encouraging vigilance and continual improvement.

There is also a concern that a more explicit due diligence obligation may undermine the effort invested in organisations producing comprehensive MS Act statements. AFMA members would be concerned if the MS Act was amended to include prescriptive due diligence obligations (vis-a-vis the current requirement for firms to state how they carry out due diligence). This extraterritoriality will be challenging for multinationals to comply with (particularly non-Australian headquartered, which a large number of Australian financial market participants are), with the obligation on in-scope Australian entities while requiring a compliant global approach across supply chains.

The ideal balance will be for the great majority of organisations conducting MS due diligence to focus on a firm's MS Act statement, with only target due diligence questions covering topics not otherwise addressed in a firm's MS statement. We have already seen evidence that firms who conduct MS due diligence assessments are already doing this completely independently of the MS statement.

In addition, if everyone is required to do extensive due diligence, then notwithstanding that an entity has prepared a MS statement, if a firm unilaterally considers an entity forms part of their supply chain, they may send their own due diligence questionnaire to their own standard and ignore everything already published in a MS statement. This undermines the importance of the MS statement and is extremely inefficient due to the bilateral nature of due diligence processes.

## **Reporting**

For efficiency purposes, harmonised reporting requirements internationally are preferable; if this is not possible, there should be measures to enable mutual recognition of other jurisdictions' laws in relation to cross-border transactions and supply chains.

**Q8, page 36**

*Does the MS ACT appropriately define modern slavery for the purpose of the annual reporting obligation?*

AFMA supports dropping forced marriage (the example on page 37 of the paper) from the definition and other conduct which is Not Applicable and/or difficult and impractical to report on in the context of corporate entity reporting.

**Q9, page 36**

*Is further clarification required of the phrase ‘operations and supply chains’, either in the MS ACT or in administrative guidelines?*

Generally, this question is more appropriate for industries in product supply businesses rather than the finance sector.

The finance sector has already received some guidance (for example, lending activities versus customer activities) as noted in the Issues Paper. However, providing too much prescriptive guidance leads to the same concerns about due diligence noted above. It also needs to be borne in mind that clarifications have to be appropriate for a wide range of different business types.

**Q10, page 36**

*Are the mandatory reporting criteria in the MS ACT appropriate – both substantively and in how they are framed?*

Yes, based on member feedback from experience with MS Act Statements since 2017 (for the first years, based on UK law only). The matter of harmonisation addressed in question 11 needs to be taken into account when considering the reporting criteria.

**Q11, page 37**

*Should more be done to harmonise reporting required under the Australian MS ACT with reporting requirements in other jurisdictions, such as the UK? How should harmonization be progressed?*

Yes, we are supportive of harmonising given the common global goal of combatting modern slavery.

One suggestion is that to the extent a multi-national group statement adheres to the laws of another comparable jurisdiction or intergovernmental forum e.g. UK or UN, then the entity’s conduct should not be viewed in isolation and reprimanded/penalised for failing to comply with the prescriptive Australian regime.

More broadly, we are supportive of harmonisation across the global approach of how to deal with workers’ rights (which may be beyond the scope of this consultation’s remit). For example, some countries have legislation pertaining to modern slavery, others to child labour and conflict minerals (Switzerland) – while the EU is working on Corporate Sustainability Due Diligence legislation. The real divergence is therefore not among countries that have modern slavery / human trafficking legislation, but in the global approach of how to deal with human rights.

## Enforcement

### **Q16 and Q17, page 42-45**

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

AFMA does not support amendments to include additional enforcement measures. As with other reporting regimes, this is about promoting information flows and transparency. Mere reporting lapses are not an evil in themselves and should not be confused with the harm actually being combatted and the acts of perpetrators against workers' rights. At this early stage, the focus should be on development of best practices and open sharing of challenges faced by industries in identifying and evaluating risks. A punitive focus also emphasises compliance risk management over actual information flows.

The Australian experience with the MS Act (compared to the UK Modern Slavery Act) suggests Australian organisations are taking the process of producing and assessing their modern slavery risks within their supply chains very seriously, reflecting a “race to the top” (based on the observations from page 7 of the Issues Paper).

The MS Act, by requiring firms to report and publish a MS statement, focuses on getting firms to map out their modern slavery risks and to take steps to minimise those risks (both internally and within their broader supply chain). Penalties or sanctions for writing a report that does not tick all the boxes by covering the required topics undermines the benefits of the MS Act and instead redirects focus and efforts on the administrative content requirements of the report.

Please contact David Love either on 02 9776 7995 or by email at [dlove@afma.com.au](mailto:dlove@afma.com.au) in regard to this letter.

Yours sincerely



**David Love**  
**General Counsel & International Adviser**