

## ARA AND NRA JOINT SUBMISSION

### STRENGTHENING AUSTRALIA'S MODERN SLAVERY ACT

AUGUST 2025

The Australian Retailers Association (ARA) and National Retail Association (NRA) welcome the opportunity to contribute to the Australian Federal Government's consultation on *Strengthening the Modern Slavery Act* – a critical area for lifting participation, productivity, and economic resilience across Australia.

The ARA and NRA, which propose to amalgamate into the Australian Retail Council (ARC), represent a **\$430 billion sector**, and employs **1.4 million Australians** – making retail the largest private sector employer in the country and a significant contributor to the Australian economy.

Our membership spans the full spectrum of Australian retail, from family-owned small and independent retailers that make up 95% of our membership, through to our largest national and international retailers that employ thousands of Australians and support both metropolitan and regional communities every day.

#### EXECUTIVE SUMMARY

The ARA and NRA (The Associations) recognise that due to the very complex nature of business-to-business relationships and supply chains, regulations need to be outcomes based, rather than prescriptive. Effective regulations will be those which require companies to assess, and take steps to minimise, the risk of modern slavery occurring in their operations and supply chains, coupled with reporting requirements that provide transparency and accountability.

Furthermore, we are committed to engaging where appropriate with all government and wider community initiatives responding to, and seeking to mitigate, the incidence and impact of modern slavery occurrences in Australian retail operations and supply chains.

This submission addresses the issues raised in the consultation paper, and primarily, on key priority areas including:

1. Feedback relating to the prescriptive reporting criteria
2. Support for high-level remediation reporting
3. Proportionate compliance and enforcement
4. Joint and Corporate Group reporting concerns
5. Investment in capacity building
6. Supporting for voluntary reporting and simplified notifications

### **Amendments to the Mandatory Reporting Criteria**

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

The Associations share concerns that the proposed changes to the reporting criteria require specific details about grievance mechanisms and remediation efforts, especially rules mandating reports on the number of modern slavery grievances and their effectiveness, or the number and types of remediated matters.

These measures could unfairly increase legal risks for businesses. Instead of promoting transparency, they may create confusion or discourage honest reporting, and should be replaced with a focus on general, high-level information supported by a multi-year education campaign to help small and medium-sized businesses (SMEs) address modern slavery without excessive burdens.

Requiring specific data, like the number of grievances or remediated cases, does not provide clear insight into modern slavery risks and could lead companies to limit grievance channels or opt for quick fixes to avoid scrutiny, rather than thorough solutions.

Companies use varied methods to track these issues, so mandated reporting could cause inconsistent data and public misunderstanding. Since remediation is already covered in current requirements, adding more detailed rules risks exposing sensitive information. A long-term education campaign for SMEs would better strengthen the Act by encouraging collaborative, transparent efforts to combat modern slavery without punitive or overly detailed regulations.

**2. Do you support the matters the department proposes to include in delegated legislation (such as rules)? If not, what changes are needed?**

The proposal to add a new requirement for reporting entities to share information about their processes for addressing modern slavery incidents is a good step, as long as it focuses on high-level, summarised data. This approach keeps things transparent without risking workers' privacy or sensitive business details. Detailed reporting could deter workers or suppliers from speaking up, pushing problems out of sight instead of fixing them. To make the Modern Slavery Act stronger, this change should come with a long-term education campaign to help small and medium-sized businesses (SMEs) understand and tackle modern slavery without heavy-handed rules or punishments.

Grievance mechanisms are vital for workers and suppliers to safely raise concerns, and the Act should encourage trust in these systems without forcing overly specific disclosures. Publicly shaming businesses for issues, they are working to fix could discourage honesty and harm efforts to improve conditions. Instead, the Act should promote teamwork between businesses and suppliers, using broad, trend-based data to show progress. A multi-year education campaign for SMEs can support this by teaching them how to address modern slavery effectively, ensuring the Act drives real change without unnecessary burdens or penalties.

**3. Are there any challenges associated with including details about reporting criteria in delegated legislation? If so, what are they?**

One potential challenge is that delegated legislation could lead to frequent updates, causing confusion and increased administrative burdens for businesses already navigating complex supply chains. To mitigate this and strengthen the Act effectively, any delegated rules should be introduced gradually with ample notice, avoiding undue punishment for minor infractions, and supported by a comprehensive, ongoing education campaign. Therefore, we recommend that any amendments to the Act regarding remediation reporting enables transparency on overall program effectiveness, while explicitly protecting worker privacy and fostering collaborative, rather than punitive, remediation approaches.

**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?**

Yes, additional, non-binding guidance should be developed to assist reporting entities, focusing on practical examples of how to increase reporting effectiveness, describe risks, actions for due diligence, grievance mechanisms, and remediation processes, tailored to different sectors and entity sizes. Quantitative indicators are helpful but are insufficient by themselves – high quality, meaningful reporting should be the goal. It is important that this guidance does not introduce new legal obligations.

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

No, a new criterion requiring reporting on key actions or changes since the previous statement should not be added, as it could impose redundant compliance efforts on businesses already detailing ongoing risks and actions in their statements, potentially overwhelming businesses with additional documentation. However, to allow reporting entities to implement and report on meaningful change, we would encourage the regulator to consider introducing a requirement to report every two years (rather than each year).

**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?**

Yes, reporting entities should be required to report on grievance mechanisms, but only basic information such as their existence, accessibility to staff and suppliers, and general effectiveness metrics, to avoid overly detailed disclosures that could increase compliance costs unnecessarily. Amendments for reporting criteria should require high-level, aggregated data on remediation processes and outcomes, rather than granular details that could identify individuals or commercially sensitive information. Additionally, potential victims and exposure to risks must be mitigated, in addition to ensuring judicial processes take precedence for any potential criminal charges.

**7. Are there any sensitivities with requiring an entity to report on grievance mechanisms? Please consider any sensitivities relating to quantitative or qualitative information about grievance mechanisms that might be captured.**

Sensitivities include potential privacy risks for individuals involved in grievances, as quantitative data like the number of complaints or qualitative details on resolutions could inadvertently expose vulnerable workers or lead to reputational harm for businesses if misinterpreted. To strengthen the Act responsibly, reporting should be high-level to minimise these issues, with guidance for SMEs on handling such information ethically, ensuring compliance without unnecessary regulation or punitive consequences.

**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? Notably, the Review explored requiring entities to report on the number of matters referred to law enforcement or other bodies, as well as to report on details of modern slavery incidents or actual risks.**

Ensure that any legislative amendments regarding remediation reporting align with the flexible nature of remedies outlined in the *UN Guiding Principles on Business and Human Rights (UNGPs)*, acknowledging that not all grievances should lead to termination of commercial relationships. Reporting on remediation must balance the need for compliance and allowing businesses general descriptions of processes and high-level actions taken (to protect potential victims), without mandating specifics like the number of referrals to law

enforcement or detailed incident reports. In doing so, preventing sensitivities around confidentiality and legal liabilities.

**9. Are there any sensitivities with requiring an entity to report on remediation, noting information about remediation may include quantitative or qualitative information?**

Sensitivities arise from the risk of revealing commercially sensitive information or compromising ongoing legal matters through quantitative data like incident counts or qualitative details on outcomes, which could deter honest reporting or expose businesses to undue scrutiny. Strengthening the Act must encourage transparency; thus, requirements should be minimal, bolstered by an extensive, multi-year education campaign for businesses on remediation's role in combating modern slavery, and ensuring there is no unnecessary regulation or harsh penalties.

**10. Are there any specific safeguards we should consider to protect workers in relation to reporting on grievance mechanisms and remediation?**

Safeguards should include anonymising worker data in reports, allowing redaction of sensitive details, and providing clear guidelines on what constitutes sufficient disclosure to avoid endangering individuals. These measures would strengthen the Act by promoting safe reporting; importantly, they must be accompanied by a thorough education campaign over several years to inform SMEs about protecting workers while addressing modern slavery, preventing any undue compliance burdens or punitive actions on businesses.

**11. Do the proposed changes to the consultation criterion address the lack of clarity currently experienced by reporting entities?**

We share concerns that, if not constructed with care, the changes to the Act as proposed in the discussion paper could lead to public expectations that result in much worse long-term outcomes for workers.

To support entities in their compliance and reporting activities, we would encourage consideration of:

- Evaluation of the range of modern slavery certification models which many companies use (e.g. Eco Vadis)
- Development of a “risk-based” ranking of countries with high modern slavery risk (and reporting compliance focus should correspond to the level of risk).
- Explore opportunities to streamline compliance requirements by adopting use of AI as appropriate to reduce compliance burden at the expense of driving positive outcomes for workers.

## **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?**

While enhanced guidance will assist businesses in addressing current non-compliance and will build on the regulator's educational focus by providing clearer, sector-specific examples and templates, we recommend implementing measures to prevent vague *no risk* statements by requiring detailed methodology for risk assessments, and invest in business capacity building, guidance, and training for reporting entities.

Additionally, the regulator should enforce a level-playing field approach by ensure that international ultra-low cost operators adhere to the same standards as Australian based businesses. This includes ensure that they publish annual Modern Slavery Statements to disclose measures taken to identify and remediate instances of modern slavery within their supply chains.

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

Yes, the existing compliance powers, such as requesting explanations and remedial actions or publishing non-compliance information, will be sufficient if applied more actively alongside enhanced guidance. This will allow for proportionate responses without over-regulating. It is unclear whether the regulator will have new enforcement powers to direct entities to take specific remedial action to address MS risks, or whether it will be limited to the mere production of the modern slavery statement. It should be confined to the latter – i.e. the regulator can direct remedial action in relation to the modern slavery statement only.

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

Statements claiming *no modern slavery risks* without explaining the methodology or due diligence processes behind them are of little value and may indicate weak supply chain oversight, undermining the Modern Slavery Act's reporting integrity. Instead, we support requirements that acknowledge all supply chains carry risks and encourage entities to view risk identification positively, mandating detailed descriptions of risk assessment steps taken. This approach would improve reporting quality, build trust among entities, and strengthen risk management in complex supply chains.

**15. Under section 16A of the Modern Slavery Act, the regulator can request an entity provide an explanation for the failure to comply with reporting requirements. Would broader information gathering powers be more effective to address non-compliance?**

Yes, broader information-gathering powers would be more effective, allowing the regulator to request documents or data for compliance verification without immediate escalation. We also believe reform efforts should focus on supporting existing reporting entities to improve the overall quality and transparency of modern slavery reporting before extending requirements to a further cohort.

**16. Should additional regulatory tools be introduced into the Modern Slavery Act to penalise noncompliance?**

Additional regulatory tools will add unnecessary compliance, cost and resourcing for businesses. We support increased government investment in capacity building to address the varied quality of modern slavery statements, through practical guidance, feedback to reporting entities, tailored training, and industry-specific advisory services that focus on unique risks. This approach would equip businesses, especially SMEs, with the skills and knowledge to improve anti-slavery practices effectively, ensuring the Modern Slavery Act's reporting framework drives meaningful change rather than just adding compliance burdens.

The Associations do not support punitive enforcement. Excessive penalties may deter companies from engaging in high-risk regions where multinational influence can drive positive outcomes in raising local labour and human rights standards. Regulatory powers should be proportionate, clearly defined, and designed to encourage responsible engagement.

**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]

Other - We support a proportionate, risk-based approach to compliance and enforcement, prioritising support and encouragement for entities to improve their modern slavery reporting over time, rather than immediate punitive measures that could deter honest disclosures, especially for SMEs.

Initial responses to non-compliance should include government-issued warnings, administrative orders for specific actions, and mandatory reporting improvement plans, with publication of non-compliance by the Attorney-General or Anti-Slavery Commissioner serving as a strong deterrent due to reputational risks. Civil penalties should be reserved for serious, repeated failures or blatant disregard for the Modern Slavery Act's requirements. A multi-year education campaign should guide SMEs in understanding and meeting expectations without excessive regulatory burdens.

Existing laws under the Australian Competition and Consumer Commission already address false or misleading sustainability claims, so additional measures are unnecessary; any new provisions should limit enforcement to deliberate, egregious misstatements in Modern Slavery Statements, with a safe harbor for entities demonstrating reasonable due diligence efforts. However, further enforcement of compliance requirements for offshore ultra-low-cost operators should be a priority for the regulator.

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

Civil penalties should not be introduced as they could impose undue punishment on businesses, particularly SMEs, potentially deterring engagement rather than encouraging it. Strengthening the Act can be achieved through enhanced guidance and existing powers; a better alternative is a comprehensive education campaign running for several years to teach the importance of addressing modern slavery, fostering compliance without adding unnecessary regulatory layers. Modern slavery is a global, systemic issue that no single business can address on their own, highlighting the need for collaboration throughout the supply chain.

#### **19. If yes, which of the following civil penalties should be introduced into the Modern Slavery Act?**

- a) Failure to submit a modern slavery statement**
- b) Providing false or misleading information**
- c) Failure to comply with a request for remedial action**

The ARA and NRA do not support the introduction of civil penalties. However, should civil penalties be introduced, we recommend the following:

- Limiting penalties to reporting non-compliance with severity proportional to the infraction, avoiding links to complex and sensitive remediation efforts;
- Clarifying that penalties for failure to comply with remedial actions apply only to correcting non-compliant statements, not broader remediation issues beyond the Act's scope;
- Clearly defining "*false or misleading information*" to reduce uncertain legal liability and downstream risks, such as consumer claims, with supplementary guidance;
- Applying penalties for false or misleading statements only to intentional acts, as exemplified in the Consultation Paper, excluding unintentional errors; and
- Restricting penalties to material statements required by the Act

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

Yes, defences like mistake of fact should be considered for any proposed civil penalties to protect businesses from undue punishment due to genuine errors, especially SMEs new to the requirements. This safeguard would strengthen the Act by promoting fairness; it must be supported by an extensive education campaign

over a few years to educate on addressing modern slavery, reducing the likelihood of such mistakes without excessive regulation.

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

Key considerations include proportionality to the entity's size and revenue, with lower maximums for SMEs to avoid undue financial strain, and factoring in intent or repeat offenses to differentiate from inadvertent non-compliance. Strengthening the Act requires balanced penalties; crucially, emphasize a multi-year education campaign to teach businesses about modern slavery, ensuring penalties do not add unnecessary compliance burdens.

**22. If additional regulatory tools are introduced, who should carry out these new functions:**

- a) **The current regulator who has an existing support and advisory role**
- b) **An independent section or body**
- c) **Other [please specify]**

A - The current regulator, with its existing support and advisory role, should carry out new functions to maintain a consistent, education-oriented approach without fragmenting oversight.

**23. For the regulator to effectively identify, investigate and litigate alleged noncompliance, the regulator will require:**

- a) **Access to relevant information and data to identify regulated entities**
- b) **Sufficient powers and access to relevant information to identify false or misleading information**
- c) **Sufficient funding for investigation and litigation costs**
- d) **Other [please specify]**

The regulator will require access to relevant information and data to identify regulated entities, sufficient powers for verification, and funding for investigations, but with safeguards to prevent overreach.

**24. Are there any other subsidiary issues to be considered?**

Other subsidiary issues include ensuring transparency in regulator decisions and providing appeal mechanisms to avoid undue punishment, as well as integrating feedback loops from businesses on tool effectiveness.

**Joint Reporting**

**25. Are there any additional difficulties encountered with joint reporting under the Modern Slavery Act?**

Additional difficulties include complexities in coordinating approvals across unrelated entities and ensuring consistent data from diverse supply chains, which can burden SMEs within groups.

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

While the corporate group reporting model could address some challenges with joint reporting by having the highest parent entity submit a single statement for all owned and controlled entities, it risks improperly pulling non-Australian parent companies and subsidiaries that do not operate in Australia into the Modern Slavery Act's scope, creating new compliance and enforcement burdens, including potential penalties and information-gathering actions against entities not intended to be covered. To maintain the Act's focus on Australian entities or those operating in Australia, joint reporting should remain an option for entities that prefer it.

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

The discussion paper's proposed model of corporate group reporting, combined with a mechanism for exemptions, provides a workable solution. The default position should be that the highest parent entity reports for the group. However, it is crucial that entities can apply for an exemption in specific circumstances.

**28. Should a corporate group reporting model be adopted, do the proposed exemptions (via application to the regulator) for subsidiary and nominee reporting entities provide appropriate and sufficient accommodations for different business structures?**

No, without a continued joint reporting option, the proposed exemptions are not sufficient. The subsidiary and nominee exemptions apply to entities that are otherwise non-reporting entities. There does not seem to be any vehicle for one reporting entity in a corporate group to report on behalf of all other reporting entities in a corporate group, consistent with the current joint reporting model.

**29. Should a corporate group reporting model be adopted, should any additional exemptions be considered to alter the default reporting arrangements of corporate group reporting?**

If the proposed corporate group reporting model is adopted, the joint reporting model that allows one entity to report on behalf of others in the corporate group should remain as an option or should be included as an exemption.

**30. Are there alternative mechanisms to improve or amend the current joint reporting processes?**

While adopting a default for the highest parent entity to report for the group, ensure that entities retain flexibility and clear exemption pathways, particularly for 'subsidiary reporting entities' like joint ventures or highly independent subsidiaries, to report separately when they have direct operational control.

## **Voluntary Reporting**

**31. Are any changes needed to the proposal to amend notification requirements for voluntary entities?**

No major changes are needed but allow revocation at any time with minimal paperwork to encourage participation without long-term commitments. This refines the Act's voluntary aspect; and to strengthen it, launch a multi-year education campaign for SMEs on voluntary reporting's benefits in addressing modern slavery, ensuring no unnecessary compliance or punitive elements.

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

No, the notification requirement should not be removed, as it enables targeted support and tracking; however, streamline it digitally for ease.

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

Changes should limit powers to information-gathering only, avoiding any penalties to preserve the voluntary nature and encourage participation.

**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)?**

Yes, but only for egregious non-compliance after educational interventions, to maintain scheme integrity without deterring volunteers.

**35. Will voluntary reporting entities use guidance designed to support small and medium-sized entities to engage with modern slavery risks in operations and supply chains and support compliance with the Modern Slavery Act? What topics should the guidance address and what form should it take?**

Yes, voluntary reporting entities, especially SMEs, will use tailored guidance if it is practical and accessible, covering topics like basic risk assessment, simple due diligence steps, and grievance handling, in formats such as online modules, webinars, and checklists.

**Notification requirements to cease as a reporting entity**

**36. Are any changes needed to the proposal to amend the notification requirements to cease as a reporting entity?**

Minor changes could include simplifying the form and allowing digital submissions to reduce administrative effort.

**37. Are any changes needed to the proposed requirement for an entity to provide notification they will cease as a reporting entity within 6 months following the end of the reporting period?**

The 6-month window is reasonable, but extend it to 12 months for flexibility, especially for SMEs facing revenue fluctuations.

## RECOMMENDATIONS

The ARA and NRA thank the Attorney General and the Federal Department and Commissioner for the opportunity to contribute to this important consultation and stand ready to support the Government in developing practical, industry-led reforms that will strengthen the Modern Slavery Act.

To support this, the ARA and NRA recommend the following:

1. High-level, aggregated data should be prioritised, and businesses require support to understand their obligations under the Act.
2. Support high-level remediation reporting, especially for Small and Medium Enterprises (SMEs).
3. Proportionate compliance and enforcements – civil penalties should be reserved for serious, intentional non-compliance, if at all.
4. Addressing Joint and Corporate Group reporting concerns – joint reporting should remain an option, with clear exemption pathways for subsidiaries.
5. Investment in capacity building – Government can support and invest in practical guidance, industry specific training and feedback loops too educate, enhance and streamline effective modern slavery compliance and assist businesses in understanding their obligations under the Act
6. Support for voluntary reporting and simplified notifications - voluntary reporting should be encouraged with streamlined digital notifications and limited regulatory powers to maintain its voluntary nature

As industry navigates and complies with potential changes to the *Modern Slavery Act*, it is critical to educate and support businesses in understanding their obligations, reporting procedures and due diligence.

Thank you again for the opportunity to provide a submission on the potential reforms to the *Modern Slavery Act*.

Any queries in relation to this submission can be directed to our policy team at [policy@retail.org.au](mailto:policy@retail.org.au).