

SUBMISSION

REVIEW OF MODERN SLAVERY ACT

22 NOVEMBER 2022

The Australian Retailers Association (ARA) is the oldest, largest and most diverse national retail body, representing a \$400 billion sector that employs 1.3 million Australians – making retail the largest private sector employer in the country. As Australia’s peak retail body, representing more than 120,000 retail shop fronts and online stores, the ARA informs, advocates, educates, protects and unifies our independent, national and international retail community.

We represent the full spectrum of Australian retail, from our largest national and international retailers to our small and medium sized members, who make up 95% of our membership. Our members operate across all categories - from food to fashion, and hairdressing to hardware and everything in between.

INTRODUCTION

The ARA welcomes the opportunity to engage in the Commonwealth Government Review of the *Modern Slavery Act (2018) (the Act)*.

The retail supply chain is complex, with ARA members sourcing from local and overseas suppliers along the global retail supply chain.

The ARA is supportive of the legislative framework in place to ensure transparency of supply chains and discourage the drivers of modern slavery from impacting on Australia’s retail sector. Ensuring products for sale in Australia are free from modern slavery is of critical importance to both retailers and consumers who rely on them to act with due diligence.

This review provides an opportunity to refine the legislation, to ensure that it remains fit-for-purpose and delivers the social impact it intends to deliver at the least-cost to business. The ARA has consulted with members of our Sustainability Advisory Committee, and their feedback has informed responses to the questions set out in the Issues Paper.

SUMMARY OF ACTIONABLE RECOMMENDATIONS

1. Increase in industry and government cooperation to drive progress towards common objectives
2. Retain the current reporting threshold
3. Implementation of a less frequent or standardised reporting cycle
4. Maintain due diligence obligations
5. Elaborate and streamline on reporting requirements under the Act
6. Provide prescriptive feedback on Statements to drive for continuous improvement
7. Introduce conditional penalties over time

Rationale for these recommendations is outlined below, in response to some of the questions posed in the Issues Paper.

IMPACT OF THE MODERN SLAVERY ACT

1.1 Has the Act had a positive impact on people’s understanding of modern slavery?

The Act has had a positive impact by improving the transparency around reporting entities’ operations and supply chains, as well as people’s understanding of modern slavery in industry and the broader public.

However, the impact that the Act has had on a reduction of modern slavery is harder to measure. In this submission, the ARA will explore the way in which elements of the Act inhibit the capacity of organisations to implement tangible change in relation to modern slavery and human rights abuses.

1.2 Has the Act fulfilled its purpose? What could be done to drive progress?

The ARA suggests that the Act has not yet fulfilled its policy purpose. Now that awareness of the issue has been raised, the next iteration of the Act needs to be focussed on improving the effectiveness of collective action and impact; ensuring that it has a strong risk-based approach whilst endeavouring to avoid unnecessary duplication of effort through the supply chain.

Risk based approach	<p>Whilst some entities are adopting a risk-based approach in responding to the Act, many are employing a ‘tick the box’ compliance methodology resulting in inefficiencies through the supply chain with no tangible impact.</p> <p>An example of a ‘tick the box’ compliance approach is the number of self-assessment questionnaires on modern slavery that are distributed across retail supply chains, imposing a huge administrative burden on the entity, as well as on smaller suppliers who may not be adequately resourced to respond.</p> <p>There is little evidence that these questionnaires have any impact in addressing modern slavery.</p>
Prescriptive feedback	<p>Our consultation with members outlined that progress in meeting the purpose of the Act is limited by the lack of government support and lack of feedback in reviewing Statements for compliance. As current requirements of the Act are non-prescriptive, it allows companies to do very little, yet still achieve compliance. This creates a competitive disadvantage for those entities initiating change.</p> <p>More detailed feedback on Statements would be useful to promote understanding of what valuable and effective actions to mitigate modern slavery risks looks like. We suggest feedback could include practical advice through one-on-one consultations or through the online register, as well as through an assertion of industry best practice.</p> <p>Our members tell us that while this area is priority for them, they are unsure of what they should be working towards and how improvement can be driven.</p> <p>More prescriptive recommendations around what ‘satisfactory’, and ‘excellent’ actions look like in submitting Modern Slavery Statements would also be welcomed by the retail industry.</p>
Industry and government cooperation	<p>The ARA recommends that there is potential to include a mechanism to facilitate cooperation and transparency in the revision of the Act to drive progress. Currently, entities do not share resources due to fear of competitive disadvantage, as well as insufficient government support in providing a mechanism to achieve this.</p>

	<p>There are also legal hurdles which make engaging with suppliers and obtaining information on what is really happening on the ground challenging - unless an entity has substantial leverage over the supplier. Government needs to take a more active role in ensuring these legal hurdles are removed, and that entities have a mechanism for transparent communication.</p>
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These recommendations would not only drive progress in terms of the effectiveness of the Act but would also provide organisations with the tools needed to put better programs in place that genuinely assist in the mitigation of modern slavery.

DUE DILIGENCE

2.1 Do you think entities are mature enough to comply with broader due diligence obligations?

No. If the goal of the Act is to mitigate modern slavery throughout the supply chain, broader reporting requirements are not appropriate at the current time.

As the Act is still in its infancy, broader due diligence obligations would limit entities capacity to comply. The Act does not need broader due diligence obligations, but rather more prescriptive due diligence obligations to assist in reporting and feedback mechanisms to drive continuous improvement.

Entities must take a risk-based approach, and government should provide clearer guidance on what constitutes an effective due diligence process. A less frequent or adjusted reporting cycle would allow entities to make improvements and see tangible results in their mitigation targets.

REPORTING REQUIREMENTS

REPORTING THRESHOLD

3.1 Should the reporting threshold stay at \$100 million or be lowered?

The ARA recommends that the reporting threshold should not be lowered at this time. All businesses along the supply chain have a responsibility to address modern slavery but larger organisations, with the capacity to invest time and resources, remain best placed to achieve tangible change.

While there could be potential benefits in lowering the threshold, including increased visibility of supply chains as smaller businesses hold valuable information to different tiers of supply, there is a risk that this would place a disproportionate burden on smaller retailers who do not have sufficient resources or leverage to influence suppliers due to commercial realities.

The ARA suggests that a light-touch, voluntary reporting facility for smaller companies, such as a predefined or simplified template with less frequent reporting recurrence may assist smaller entities in responding to the legislation if the threshold is lowered.

However, at this time we submit that the reporting and investment burden is too great to be placed onto smaller organisations who do not have the capital, nor the leverage to achieve substantial change.

3.2 Is there benefit in having smaller suppliers having to report to aid big business in reporting?

To an extent, yes. Smaller suppliers potentially hold valuable information regarding modern slavery and processes throughout the supply chain. The cooperation of big and small suppliers in reporting is fundamental to the mitigation of modern slavery risk factors in the supply chain.

However, expanding this reporting requirement onto smaller suppliers would only increase the burden on organisations that have fewer resources. This is also outlined in point 1.2 through the compliance burden that the numerous modern slavery due diligence questionnaires have created.

REPORTING REQUIREMENTS

REPORTING PERIODS AND DEADLINES

3.3 Are current reporting periods and deadlines appropriate?

The ARA believes that the annual reporting timeframe is appropriate. However, the current reporting approach is resource intensive and not sustainable in its current model. We recommend a lighter reporting approach, such as the standard template outlined in 3.1, to allow for the measurement showcasing of improvements made year on year.

Our member consultation established that organisations are reporting similar content each year and it is the input of data that changes annually. Members acknowledged that they can at times spend more time reporting to comply with the legislation, rather than working on modern slavery initiatives.

In addition, members highlighted a difficulty in accessing and providing up to date information, given the complex and changing nature of the global supply chain. This again complicates the process and inhibits transparency, as the data that is available for public consumption can quickly become out-dated as suppliers change.

Government should work with industry on a model structure and format of these Statements so that entities are able to continuously improve year on year and achieve tangible action in the space.

REPORTING REQUIREMENTS

REPORTING CRITERIA

3.4 Are the reporting criteria fit-for-purpose? Should they be better elaborated?

There is a need to improve clarity of mandatory reporting requirements to allow entities to achieve tangible change. For example, some suppliers are at a higher risk of employing modern slavery and these organisations should have stronger requirements to be more transparent around social compliance audits and oversight over factories, including overseas factories.

The ARA suggests that minimum standards on the type, frequency and independence of audit processes undertaken on factories and overseas locations where product originates could be helpful here. Further, this could be supported by Border Force advice on what types of checks are effective in ensuring importers of product from high-risk countries have appropriate controls in place.

Due to the lack of specific guidance provided by the Act under each reporting criteria, entities have largely identified their own versions of what is appropriate under the legislation and sensed their way through the process. If more prescriptive guidance was provided under each section e.g., due diligence and suggested actions, then reporting would be more consistent and compliant across the board. This lack of guidance means entities are hypothesizing what an appropriate action to take is, which works to the detriment of the Act.

Our member consultations also highlighted the need for elaboration on how to best "measure effectiveness" of modern slavery initiatives and reporting. Without prescriptive feedback on relevant sections of the Act, measuring the effectiveness of actions is challenging.

This requires further work on the part of the entity to understand what effective risk assessment or mitigation looks like in their industry, and the adaptation of their model to fit. We suggest this is not only laborious, but counterproductive to the Act, as no one is cross-checking the effectiveness of these actions in the first instance. Not only does this leave gaps in entities' Statements but it leads to large gaps in industry in reporting under the Act.

ADMINISTRATION, COMPLIANCE AND ENFORCEMENT

4.1 Do you see any issues with how the Act is currently administered?

The ARA believes that greater government administrative action is required to enhance compliance ethics of reporting entities. As explored above, government should consider a 'best practice guide' or 'model response guide' to enhance the obligation of businesses, and provide further context to areas of focus or improvement. An avenue for providing feedback on Statements would also substantially increase the value of reporting and identifying areas of focus or improvement.

In addition, harmonisation of legislation across countries would provide a more aligned and consistent global approach, particularly for those retailers that report internationally. The ARA promotes consideration of deemed compliance if a statement has been submitted under an international act (e.g., UK). If the goal is to reduce modern slavery, ease of reporting should be the desire of the government in creating this legislation.

4.2 Should penalties be introduced and if so, what should entities be penalised for?

Our member consultations indicate that penalties or sanctions would drive progress, as it will enhance compliance, reduce competitive disadvantage for misleading conduct, and further incite executive accountability.

However, these penalties should only be applied if the government adopts clearer requirements for effective risk assessment and due diligence. As the Act is in its infancy, initial penalties could be for failure to submit a statement, or for making a deceptive or misleading statement.

Entities should not be penalised for failing to comply with specific sections of the Act. Instead, reporting entities should be provided prescriptive guidance and feedback on the parts of their Statement that are inadequate, so they are able to make appropriate changes. Where an entity fails to acknowledge non-compliance or fails to remediate a concern, a penalty could be enforced. Where an entity faces a financial penalty, this could be in the form of a donation to a human rights or anti-slavery organisation, rather than a penalty paid to government.

Assessment should also be made on whether penalties could be covered by the existing consumer protection legislation, rather than creating additional compliance requirements.

4.3 What should the role of an Anti-Slavery Commissioner be?

The ARA recommends that an Anti-Slavery Commissioner should play a role in overseeing and enforcing the Act's reporting requirement.

The Commissioner's role would be to provide legitimacy to the outcomes of the Act, as well as encouraging executive accountability within organisations. The Commissioner would also provide feedback and guidance to organisations on the proposed changes outlined above, as well as the publication of a summary of findings of Statements made under the Act.

While public consultation is inherently limited from a format perspective, the Commissioner could also facilitate cross-industry discussions to define how to improve and or change the Act.

As outlined in our consultation with the Department, the role of the Anti-Slavery Commissioner could be modelled on the eSafety Commissioner in terms of framework and powers.

ONLINE REGISTER

5.1 Are there any reflections on the online register?

The register provides a valuable service, as it allows for the public analysis of work being done by organisations regarding modern slavery. However, the ARA considers it unlikely that a member of the public would actively seek

out the register, unless they were also involved in the industry. The unstructured nature of Statements also makes it difficult to compare one organisation to another.

Overall, the site could be improved to enhance user experience. As the register is updated annually the data becomes quickly out-dated, which provides stakeholders with information that may no longer be relevant.

Additionally, the register could be enhanced through the use of a standard summary template, the identification of all organisations that have provided a Statement and a status report on each criteria. The ARA would again like to highlight the importance of working with industry to establish a standard reporting template. Only when such a summary template is completed, could a status such as “complies” or “does not comply” be incorporated as a summary for each Statement.

DEFINITIONS

1.1 Have you encountered any definitional issues with the Act?

The ARA is of the view that whilst there has been greater understanding of the term modern slavery since the inception of the Act, the phrase has a very specific definition that makes responding to it increasingly difficult.

A broader definition of modern slavery to include human rights would be more beneficial in responding to the legislation. Our members expressed interest in the definition focussing on human rights being present, which could in turn mean that the risk of modern slavery is higher. This expansive definition would allow for those risks which are not captured under the definition of modern slavery to also be included in the Statement.

However, any definitional changes should refer to those agreed upon in international standards such as the International Labour Organisation (ILO) or United Nations Guiding Principles of Business and Human Rights (UNGP).

CONCLUSION

Thank you for the opportunity to provide comments on the review of the Act.

The ARA strongly supports the policy objectives underlying the legislation and ARA members are highly engaged in the conversation around the development and continuous improvement of the Act. We look forward to continued involvement in the review process and are open to further discussion on the recommendations made in this submission.

Please contact our policy team at sustainability@retail.org.au in relation to this submission.

Yours sincerely,



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