



AUSTRALIAN
LAWYERS
FOR
HUMAN RIGHTS™

Review of the Modern Slavery Act 2018 (Cth) Response to Issues Paper

Modern Slavery Act Review Secretariat
Commonwealth Attorney-General's Department

NOVEMBER 2022

Australian Lawyers for Human Rights Inc

PO Box A147, Sydney South NSW 1235
president@alhr.org.au alhr.org.au

By email: ModernSlaveryActReview@ag.gov.au

Response to Issues Paper on the Review of the *Modern Slavery Act 2018* (Cth)

Acknowledgement

Australian Lawyers for Human Rights (**ALHR**) acknowledges the traditional owners and custodians of the lands on which we work in the Australian Capital Territory as the first people of this country. We recognise that the land belonging to these peoples was never ceded, given up, bought, or sold. We pay our respect to Elders past, present and emerging and express our strong support for the Uluru Statement from the Heart.

Introduction

ALHR is grateful for the opportunity to provide this submission in response to the Australian Government Review of Australia's *Modern Slavery Act 2018* (Cth) Issues Paper (**Issues Paper**).¹

ALHR welcomes the statutory review as an ongoing commitment of the Australian Government to its whole-of-government strategy to address and respond to modern slavery. ALHR has previously made submissions regarding the Modern Slavery Act (**MSA/the Act**) and continues to support and advocate for the effective implementation of the Act as a means of strengthening Australia's domestic response to modern slavery.²

According to the most recent estimates, 49.6 million people worldwide, including some 15,000 in Australia, are trapped in forms of modern slavery, with 86% of those in forced labour being exploited in the private sector.³ This makes modern slavery more prevalent today than ever in human history. Therefore, ALHR welcomes the Government's commitment to considering whether the operation of the MSA over the first three years has been effective, and to look at options for improved operation and compliance. It is vital that the MSA reflects the current issues facing individuals, the community, businesses and the nation as a whole regarding modern slavery in order for the Act to be relevant, effective and responsive to the national, regional and global developments in this space.

¹ Australian Government, *Review of the Modern Slavery Act 2018* (Issues Paper, 2022) <https://consultations.ag.gov.au/crime/modern-slavery-act-review/user_uploads/review-modern-slavery-act-issues-paper.pdf>.

² Australian Lawyers for Human Rights), *Submission on the Public Consultation Paper on the National Action Plan to Combat Modern Slavery 2020 – 2024* (Submission, 31 January 2020) <<https://alhr.org.au/wp/wp-content/uploads/2020/02/31-01-20-ALHR-Submission-NAP-Modern-Slavery-1.pdf>>; Australian Lawyers for Human Rights, *Submission on the Modern Slavery Act 2018 Draft Guidance for Reporting Entities* (Submission, 19 May 2019) <<https://alhr.org.au/submission-modern-slavery-act-2018-draft-guidance-reporting-entities/>>; Australian Lawyers for Human Rights, *Submission to the Senate Legal and Constitutional Affairs Committee on the Commonwealth Modern Slavery Bill 2018* (Submission, 20 July 2018) <<https://alhr.org.au/wp/wp-content/uploads/2018/07/20-7-18-ALHR-Submission-Feedback-on-Cth-Modern-Slavery-BillF.pdf>>; Australian Lawyers for Human Rights, *Submission on Inquiry into Establishing a Modern Slavery Act in Australia* (Submission, 27 April 2017) <<https://alhr.org.au/inquiry-establishing-modern-slavery-act-australia/>>.

³ International Labour Organization and Walk Free, *The Global Estimates of Modern Slavery: Forced Labour and Forced Marriage* (Report, 2022) <<https://www.walkfree.org/reports/global-estimates-of-modern-slavery-2022/>>.

Table of Contents

Response to Issues Paper on the Review of the Modern Slavery Act 2018 (Cth)	2
1. Recommendations	4
2. Impact of the Modern Slavery Act: Questions 1 – 5	5
3. Modern Slavery Act reporting requirements: Questions 6 - 13	9
4. Enforcement of the Modern Slavery Act reporting obligations: Questions 14 – 17	13
5. Public sector reporting requirements under the Modern Slavery Act: Questions 18 – 20	15
6. Modern Slavery Statements Register: Questions 21 – 22	15
7. Administration and Compliance Monitoring of the Modern Slavery Act: Questions 23 – 24	18
8. Review of the Modern Slavery Act: Questions 25 – 26	19
9. Other issues: Question 27	20
10. About Australian Lawyers for Human Rights (ALHR)	21

1. Recommendations

1.1 ALHR makes the following recommendations:

- 1.1.1 **The Act be amended to require reporting entities to undertake robust human rights due diligence to address modern slavery**
- 1.1.2 **A compensation fund should be established to provide an appropriate remedy for people subjected to exploitation through Australian companies' operations and supply chains**
- 1.1.3 **Mandatory reporting criteria should be extended through a two-stage iterative approach which will assist entities in improving the quality of their reporting, engaging more meaningfully by speaking directly to specific modern slavery risks and enabling reporting to be a more beneficial tool in combatting modern slavery**
- 1.1.4 **Relevant Commonwealth trafficking laws should be amended to introduce an offence that captures the conduct of trafficking in human tissues and organs which occurs overseas, in particular, the illicit removal of organs and/or tissues from living or deceased persons and the solicitation of commercial organ transplants**
- 1.1.5 **The Act should be amended to specifically prescribe the entities to take reasonable and effective steps to map their supply chains, with heightened expectations for risk-prone sectors**
- 1.1.6 **The Act should further harmonised, as far as possible, with the reporting requirements as well as approaches adopted in other jurisdictions by working closely with regional and global counterparts and sharing data and information to address the global nature of modern slavery**
- 1.1.7 **Voluntary reporting under the Act should be retained**
- 1.1.8 **There should be penalties and sanctions for noncompliance with the Act**
- 1.1.9 **Australian state and territory government bodies and local councils should be required to report under the Act**
- 1.1.10 **Providing an indication of the compliance or noncompliance of a reporting entity will provide an effective, non-punitive accountability mechanism**
- 1.1.11 **ALHR recommends a number of improvements to the Register to make it more user-friendly and to improve navigation throughout the website**
- 1.1.12 **An office of a well-resourced and independent regulator, such as a Commonwealth Anti-Slavery Commissioner, should be established and should not be subject to the control or direction of any Government agencies in the exercise of its functions and powers**
- 1.1.13 **A continuous three-yearly review of the Act should be introduced for the entire duration of the Act's operation to ensure that the Act is achieving its aims and objectives and that it keeps up with contemporary and emerging challenges**
- 1.1.14 **The federal government should introduce a ban on the import of goods produced by forced labour wherever it may occur**

2. Impact of the Modern Slavery Act: Questions 1 – 5

Question 1: Has the Modern Slavery Act had a positive impact in the first three years?

- 2.1 As of 22 November 2022, more than 5,500 Modern Slavery Statements have been lodged on the public Modern Slavery Statements Register since the MSA came into force.⁴ Around 7,000 entities are reported to be covered by these statements – a significant capturing of businesses in Australia. Significantly, over one and a half million searches have been performed on the Modern Slavery Statements Register, roughly equivalent to one in 15 Australians conducting a search. This indicates that the Act has had an impact on rising awareness of modern slavery and how it can be addressed, including in Australian companies' global supply chains.
- 2.2 However, the positive impact of the MSA remains limited. In June 2021, the Australian Council of Superannuation Investors opined that businesses in Australia are generally attempting a “race to the middle” and a means of “cosmetic compliance” for the purpose of satisfying the Act.⁵ In February 2022, an independent review of the early impact of the MSA was published, indicating that “less than a quarter (23%) of companies fully addressed the mandated reporting requirements, with areas such as risk assessment, remediation, measuring effectiveness, and consultation particularly poorly handled”.⁶ More recently, in November 2022, a follow-up report indicates that the MSA fails in instigating a ‘race to the top’ by companies averaging a 7% improvement in two years in addressing modern slavery and 66% of companies failing to comply with the basic reporting requirements mandated by the Act.⁷
- 2.3 While the research demonstrates less than satisfactory engagement with the MSA, 27% of companies appeared to be taking some effort to address modern slavery risks.⁸ Although this equates to just over a quarter of reporting entities taking effective action, it is an encouraging start and efforts must be made to build on and further improve the initial impetus created by the MSA for it to achieve its aim of addressing modern slavery in Australian entities' operations and supply chains and for the Act to remain fit for purpose.

Question 2. Is the ‘transparency framework’ approach of the Modern Slavery Act an effective strategy for confronting and addressing modern slavery threats, including the drivers for modern slavery?

- 2.4 Australia has followed a similar approach to that of the United Kingdom (UK) by adopting the transparency approach via reporting requirements in yearly intervals, with section 16(1)(d) of the MSA making a reference to due diligence and remediation processes. The Act has facilitated improving transparency in supply chains, including beyond the entities required to report under

⁴ Australian Government, Online Register for Modern Slavery Statements (Web Page, 2022)
<<https://modernslaveryregister.gov.au/>>.

⁵ Australian Council of Superannuation Investors, Moving from Paper to Practice: ASX200 Reporting under Australia's Modern Slavery Act (Report, 20 July 2021)
<<https://acsi.org.au/research-reports/moving-from-paper-to-practice-asx200-reporting-under-australias-modern-slavery-act/>>.

⁶ Human Rights Law Centre, *Paper Promises? Evaluating the Early Impact of Australia's Modern Slavery Act* (Report, 7 February 2022)
<https://static1.squarespace.com/static/580025f66b8f5b2dabbe4291/t/6200d3d9db51c63088d0e8e1/1644221419125/Paper+Promises_Australia+Modern+_Slavery+Act_7_FEB.pdf> at 2.

⁷ Ibid.

⁸ Ibid at 5.

the Act, as well as has been instrumental in engaging businesses in the conversation. However, this approach is limited in its application, given it functions predominantly as a corporate social disclosure law. Also, in practical terms, it differs from the direction taken by an increasing number of jurisdictions globally, which explicitly mandate or are in the process of developing legislation requiring due diligence to identify, prevent and address human rights (and increasing environmental) harms, and to provide access to remedies for affected individuals and communities once such harms arise.

- 2.5 For example, the French Law on the Corporate Duty of Vigilance (*Loi de Vigilance*)⁹ adopts a positive obligation-focused approach where companies issue a ‘vigilance plan’ to address modern slavery risks as part of human rights and environmental due diligence by risk mapping (from identification and analysis to prioritisation of those risks), developing specific procedures of assessment of subsidiaries or suppliers, action taking to mitigate risks or prevent serious harm, developing mechanisms for altering of existing risks, and monitoring actions taken and measuring their effectiveness. Thus, it provides a more comprehensive set of requirements to not only identify the risks but also to address them and measure the effectiveness of those actions.
- 2.6 Most recently, a Bill for Responsible and Sustainable International Business Conduct was presented to the Dutch House of Representatives that, should it be adopted in its current format, will require companies to address human rights, environment and climate harms across the entire value chains, will provide for administrative penalties, introduce additional offences, as well as reverse the burden of proof onto companies to show that they have complied with the law.¹⁰ Thus, it is going to offer more stringent requirements than those currently proposed under the European Union directive on corporate sustainability due diligence.¹¹ Also, the current developments in New Zealand indicate that the approach taken will be towards the requirements of due diligence across the operations and supply chains of *all* types of organisations in New Zealand, with more responsibilities for larger organisations, to address modern slavery and worker exploitation.¹²
- 2.7 In light of these global developments, the MSA in its current format remains limited as reporting entities are only asked to describe the due diligence and remediation processes that they put in place to tackle risks of modern slavery in their supply chain, rather than act upon them. Section 16(1)(d) of the Act is centered on an assumption that each reporting entity can and will adequately build and describe its own due diligence processes. Based on the existing evidence and lessons learned so far, the ‘tick-box’ approach — given the often middle-of-the-road aspirations of many

⁹ Law 2017-399 of 27 March 2017.

¹⁰ For an unofficial translation of the Bill, see: MVO Platform, English Translation of the Bill for Responsible and Sustainable International Business Conduct (Web Page, 1 November 2022) <<https://www.mvoplatform.nl/en/english-translation-of-the-bill-for-responsible-and-sustainable-international-business-conduct/>>.

¹¹ European Commission, ‘Just and Sustainable Economy: Commission Lays Down Rules For Companies to Respect Human Rights and Environment in Global Value Chains’ (Press Release, 23 February 2022) <https://ec.europa.eu/commission/presscorner/detail/en/ip_22_1145>.

¹² See New Zealand Ministry of Business, Employment and Innovation, *Consultation on Modern Slavery and Worker Exploitation* (Report, 2022) <<https://www.mbie.govt.nz/have-your-say/modern-slavery/>>. See also Szablewska N, Kingi R, Armstrong R and Lake Q, *An Opportunity for Impact: Recommendations for Regulating Modern Slavery in Supply Chains in Aotearoa New Zealand* (Report, 2022) <<https://modernslaveryrecommendations.nz/Recommendation%20paper%20-%20An%20Opportunity%20for%20Impact.pdf>>.

businesses — is not sufficient compared with an obligations-focused and outcomes-oriented due diligence approach.

2.8 Recommendation: ALHR recommends that the Act requires reporting entities to undertake robust human rights due diligence to address modern slavery.

2.9 There are a number of key features that the mandatory human rights due diligence approach should entail:

- i. Entities would need to take actual action rather than simply report on risks and how they intend to address those risks. Such a duty should be imposed on both companies operating in Australia as well as Australian companies operating overseas;
- ii. What would be considered to be ‘effective’ and ‘reasonable’ due diligence would depend on entities’ unique operations, size and risk profiles and be assessed objectively in accordance with the applicable international human rights due diligence standards set out in the United Nations Guiding Principles on Business and Human Rights (**UNGPs**);
- iii. The MSA should be further amended to place the burden on the entities to prove that they acted within the law by undertaking appropriate due diligence. Penalties for non-compliance should also be introduced to encourage compliance (*more on this point in our response to Question 17 below*);
- iv. In keeping with the UNGPs and recognised good practice, the Act should provide for access to justice to victims of modern slavery. In the context of labour exploitation, workers should not need to rely exclusively on voluntary remediation processes offered by businesses. The MSA should be amended to include a specific cause of action for workers subjected to modern slavery to seek redress, in a form of compensation as well as other forms of support, in the event that reporting entities have failed to exercise due diligence to prevent modern slavery in their operations and supply chains;
- v. **Recommendation: To facilitate remediation processes, ALHR calls for an establishment of a compensation fund to provide an appropriate remedy to people subjected to exploitation through Australian companies’ operations and supply chains.** The benefits and urgency of such a scheme have been already raised within the Australian context.¹³

Question 3. Should the Modern Slavery Act be extended to require additional modern slavery reporting by entities on exposure to specified issues of concern? If so, what form should that reporting obligation take?

2.10 ALHR contends that the mandatory reporting criteria in the Act should be further expanded to encompass exposure to specified modern slavery concerns through a two-stage approach.

2.11 The first stage would focus on improving compliance with the existing mandatory criteria under the Act, in particular sections 16(1)(c) and (d) requiring describing the risks of modern slavery instances in operations and supply chains and actions taken to assess and address those risks. Through further guidance and other policy measures, the Government should set out its

¹³ Anti-Slavery Australia, ‘Justice for All: Establishing a National Compensation Scheme for Survivors of Modern Slavery’ (Web Page, 7 July 2022) <<https://antislavery.org.au/justice-for-all/>>.

expectations in relation to what reporting entities need to report on in order to comply with the mandatory reporting criteria. This would require reporting entities to self-identify (potential or actual) slavery risks in their operations and supply chains using the ‘cause’, ‘contribute’ and ‘directly linked’ continuum for assessing the entity’s connection to the negative impact and a subsequent duty to provide a remedy, as set out under the UNGPs. This would enable the entity to undertake a proactive, self-driven risk identification assessment which aligns with the Government’s expectations for entities to take a ‘continuous improvement’ approach to compliance.

2.12 The second stage would build on the existing mandatory reporting criteria in the Act to include reporting against specific types of modern slavery, based on the data from the first phase. ALHR notes some jurisdictions have introduced legislation addressing specific types of modern slavery such as child labour and forced labour. Canada, for example, is currently in the process of enacting modern slavery legislation. Once this comes into force, it will prescribe a form of ‘supplementary information’ that must be submitted with each annual report, covering activities that carry a risk of forced labour or child labour and steps taken to assess and manage that risk. By taking a data-driven approach, it will provide scope for self-assessment by reporting entities and facilitate information gathering in the first phase, which would then inform the types of specific risks that should be part of mandatory reporting in the second phase.

2.13 As noted in research, there is a tendency for entities not to report against specific types of slavery risks and rather offer an ‘excessively general’ discussion of modern slavery risks without disclosure of specific types of risks relevant to that entity.¹⁴

2.14 **Recommendation: ALHR recommends extending the mandatory reporting criteria through a two-stage iterative approach will assist entities in improving the quality of their reporting, engaging more meaningfully by speaking directly to specific modern slavery risks, and enabling reporting to be a more beneficial tool in combatting modern slavery.**

Question 4. Should the Modern Slavery Act spell out more explicitly the due diligence steps required of entities to identify and address modern slavery risks?

2.15 ALHR strongly supports moving beyond relevant entities being required to report on due diligence processes to the introduction of due diligence requirements in the Act. The proposed requirements should be consistent with the widely accepted standards contained in the UNGPs and the OECD Guidelines for Multinational Enterprises.¹⁵ (Please see our response to Question 2 above for further details)

¹⁴ Human Rights Law Centre, *Paper Promises? Evaluating the Early Impact of Australia’s Modern Slavery Act* (Report, February 2022) <<https://www.hrlc.org.au/reports/2022/2/3/paper-promises-evaluating-the-early-impact-of-australias-modern-slavery-act>> t; International Justice Mission, *Spot Fires in Supply Chains* (Report, 2022) <https://ijm.org.au/wp-content/uploads/2022/04/IJM_Spotfire_Report-FA-WEB.pdf> at 32; Monash University Business School - Centre for Financial Studies, *Measuring Disclosure Quality of Modern Slavery Statements* (Report, December 2021) <https://www.monash.edu/_data/assets/pdf_file/0011/2781281/MSD-White-paper-ASX300-WITH-COLOUR-KEY.pdf> at 22.

¹⁵ Organisation for Economic Co-operation and Development, *OECD Guidelines for Multinational Enterprises* (2011 Edition) <<https://www.oecd.org/corporate/mne/>>.

- 2.16 ALHR notes the potential challenges with prescribing mandatory due diligence requirements, including increased compliance burden for entities, potential disengagement by entities and/or duplication or inconsistent implementation of requirements across various jurisdictions. Nevertheless, this should not prevent the adoption of an outcomes-oriented due diligence approach.
- 2.17 Policy measures will need to be considered to mitigate these challenges, including providing the entities with adequate resources to assist with compliance, as well as a reasonable transitional timeframe for implementation to allow the entities to build up their capabilities to fulfil their due diligence obligations.¹⁶

Question 5. Has the Modern Slavery Act been adequately supported and promoted by government, business and civil society?

- 2.18 ALHR notes the extensive efforts and advocacy by Australian civil society organisations in this space, as well as many businesses and their representative bodies along with the government agencies, which attests to the importance of cross-sectoral collaboration and partnerships.
- 2.19 It needs to be noted, however, that the monitoring burden of compliance often falls disproportionately on the civil society and academic communities, which is neither appropriate nor sustainable.¹⁷ More appropriately, monitoring of compliance should be undertaken by a relevant regulatory body. (Please see also our response to Question 23 below)
- 2.20 It needs to be further acknowledged that the Federal Government has taken wide-ranging steps to raise awareness of modern slavery amongst the general public and to educate businesses about their requirements under the Act. However, further guidance and education, paired with stricter compliance measures, are required so that businesses can better map their supply chains and implement an appropriate and robust due diligence framework. The role of the Government, supported by civil society as well as businesses themselves, is critical in clearly outlining paths to compliance and taking practical steps to reduce modern slavery in Australia and beyond.

3. Modern Slavery Act reporting requirements: Questions 6 - 13

Question 6. Is AU\$100m consolidated annual revenue an appropriate threshold to determine which entities are required to submit an annual statement under the Modern Slavery Act? Does the Act impose an appropriate revenue test for ascertaining the \$100m threshold?

¹⁶ For example, the French Duty of Vigilance Law provided that legal action can take place only after the submission of the reports for the 2018 financial year, following the law coming into effect in March 2017.

¹⁷ For example, the UK Modern Slavery Policy and Evidence Centre found that such oversight, in relation to the *Modern Slavery Act 2015* (UK) s 54, is ineffective and more appropriately should be done a state-based body. See Modern Slavery & Human Rights Policy and Evidence Centre, *Effectiveness of Section 54 of the Modern Slavery Act: Executive Summary* (Report, February 2021)
<<https://modernslaverypec.org/assets/downloads/TISC-effectiveness-report-summary.pdf>>.

- 3.1 As ALHR indicated in its earlier submission,¹⁸ the threshold of AU\$100m was considered to be appropriate at the time of the introduction of the anti-modern slavery regime in Australia to prevent the regime from becoming ineffective and counterproductive, as well as to avoid overburdening the civil society with monitoring compliance with transparency requirements until sufficient resourcing and oversight was provided by the Government .
- 3.2 Given the relatively low standards of reporting by entities so far, lowering the threshold might be counterproductive at this point in time. However, and in accordance with UNGPs that apply to *all* enterprises irrespective of their size, the MSA should recognise that all businesses should respect human rights, with the Government further encouraging voluntary reporting by entities that are not currently required to report under the MSA. As the awareness of modern slavery and mitigating practices increases, a greater number of entities should be captured by the requirements and the Government should reconsider the current threshold to increase the positive impact across the private sector.

Question 7. Should the Modern Slavery Act require annual submission of a modern slavery statement? Does the Act contain appropriate rules for ascertaining the annual reporting timeline for entities?

- 3.3 In order to maintain the momentum and to ensure that entities can improve their transparency and reporting practices on the steps taken to mitigate modern slavery risks, ALHR is of the view that the annual reporting for entities should be maintained.

Question 8. Does the Modern Slavery Act appropriately define 'modern slavery' for the purpose of the annual reporting obligation?

- 3.4 There is no internationally agreed definition of modern slavery, which is most often used as an 'umbrella term' for practices ranging from human trafficking and forced labour to forced marriage, which are defined under various international instruments.¹⁹
- 3.5 ALHR considers that the definition of modern slavery currently provided in the Act is sufficient and in line with global developments but urges the introduction of a specific offence in relation to human organ trafficking, both domestically and internationally, in line with the *Modern Slavery Act 2018* (NSW).
- 3.6 **Recommendation: As we submitted on previous occasions,²⁰ ALHR calls on the Government to introduce an offence by amending relevant Commonwealth trafficking laws that would capture**

¹⁸ Australian Lawyers for Human Rights, *Submission on the NSW Modern Slavery Bill* (Submission, 20 June 2018) <<https://alhr.org.au/alhr-calls-formal-consultation-nsw-modern-slavery-supply-chain-reporting-regulations/>>.

¹⁹ Including human trafficking: see United Nations Convention against Transnational Organized Crime, GA Res 55/25, UN Doc A/RES/55/25 (8 January 2001, adopted 15 November 2000) annex 2 (*Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime*); forced labour: International Labour Organization, *Forced Labour Convention* (No. 29, 1930); worst forms of child labour: International Labour Organisation, *Worst Forms of Child Labour Convention* (No. 182, 1999).

²⁰ Australian Lawyers for Human Rights, *Submission to the Legislative Council Standing Committee on Social Issues inquiry into the Modern Slavery Act 2018 and Associated Matters* (Submission, 3 October 2019) <https://alhr.org.au/wp/wp-content/uploads/2019/11/2019.10.03_ALHR-Response-NSW-Modern-Slavery-Act_Final.pdf> at 6.1-6.6.

the conduct of trafficking in human organs which occurs overseas, in particular the illicit removal of organs from living or deceased persons and the solicitation of commercial organ transplants.

3.7 Specifically, Recommendation 7 of the Government's Report: *Compassion, not Commerce: An Inquiry into Human Organ Trafficking and Organ Transplant Tourism*,²¹ calls for amendments to the *Criminal Code 1995* (Cth) in relation to the solicitation of commercial organ transplants with the effect that such laws have extraterritorial application.

3.8 The recent findings by the China Tribunal,²² as well as in line with the Legal Advisory Report and Policy Guidance²³ developed by Global Rights Compliance in response to the Tribunal's findings, highlight Australia's need to have adequate legal protections regarding trafficking in human organs.

Question 9. Is further clarification required of the phrase 'operations and supply chains', either in the Modern Slavery Act or in administrative guidelines?

3.9 As indicated in international research, most entities fail to identify suppliers beyond the immediate/first tier of their supply chains and display a wide range of approaches to mapping their supply chains.²⁴ It is, however, the lower tiers where modern slavery risks are the greatest.²⁵ In Australia, only 16% of reporting entities disclosed their supplier lists during the last reporting cycle, with only 13% disclosing the countries of suppliers beyond Tier 1 or to raw materials stage.²⁶ This requires transforming current business models to take into account, and to further develop, relevant supply chain human rights due diligence management plans.²⁷

²¹ The Parliament of the Commonwealth Australia, *Compassion, Not Commerce: An Inquiry into Human Organ Trafficking and Organ Transplant Tourism* (Report, November 2018) <https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Foreign_Affairs_Defence_and_Trade/HumanOrganTrafficking/Tabled_Reports>.

²² Independent Tribunal into Forced Organ Harvesting from Prisoners of Conscience in China, Judgment (7 June 2019) <<https://chinatribunal.com/final-judgement-report/>. Accessed 1 October 2019>.

²³ Global Rights Compliance, *Do No Harm: Mitigating Human Rights Risks when Interacting with International Medical Institutions & Professionals in Transplantation Medicine* (Legal Advisory Report, 2022) <https://globalrightscpliance.com/wp-content/uploads/2022/07/LEGAL-ADVISORY-REPORT_Do-No-Harm_GR_C_July2022_.pdf>; and (Policy Guidance 2022) <<https://globalrightscpliance.com/wp-content/uploads/2022/04/Policy-Guidance-Do-No-Harm-April-2022.pdf>>.

²⁴ Human Rights Law Centre, *Paper Promises? Evaluating the Early Impacts of Australia's Modern Slavery Act* (Report, 7 February 2022) <https://static1.squarespace.com/static/580025f66b8f5b2dabbe4291/t/6200d3d9db51c63088d0e8e1/1644221419125/Paper+Promises_Australia+Modern+_Slavery+Act_7_FEB.pdf>.

²⁵ Organisation for Economic Co-operation and Development, *Costs and Value of Due Diligence in Mineral Supply Chains* (Position Paper, 2021) <https://mneguidelines.oecd.org/costs-and-value-of-due-diligence-in-mineral-supply-chains.pdf?_ga=2.100875716.415343382.1620903284-492042189.1619176786>.

²⁶ Human Rights Law Centre, *Broken Promises: Two years of corporate reporting under Australia's Modern Slavery Act* (Report, 16 November 2022) <<https://www.hrlc.org.au/reports/broken-promises>>.

²⁷ See, e.g., Norton Rose Fulbright and the British Institute of International and Comparative Law, *Making Sense of Managing Human Rights Issues in Supply Chains* (Report, 2018) <https://www.biicl.org/documents/1939_making_sense_of_managing_human_rights_issues_in_supply_chains_-_2018_report_and_analysis_-_full_text.pdf?showdocument=1> at 2.

- 3.10 **Recommendation: Consequently, ALHR recommends that the Act is amended to specifically prescribe the entities to take reasonable and effective steps to map their supply chains, with heightened expectations for risk-prone sectors, along with the provision of specific guidelines to facilitate modern slavery risk assessment across entities' operations and supply chains.**

Question 10. Are the mandatory reporting criteria in the Modern Slavery Act appropriate – both substantively and in how they are framed?

- 3.11 We refer to paragraphs 2.4 to 2.9 above where we outline that a positive obligations-focused approach is more appropriate, particularly with respect to due diligence requirements. The ALHR supports the improvement of the Act by expanding the current reporting criteria to due diligence requirements under section 16(1)(d) so that businesses can report against it rather than report on what they think is sufficient.

Question 11. Should more be done to harmonise reporting requirements under the Australian Modern Slavery Act with reporting requirements in other jurisdictions, such as the United Kingdom? How should harmonisation be progressed?

- 3.12 Given the global nature of modern slavery, every effort should be made to harmonise reporting requirements and adopt best practice approaches across jurisdictions to tackle modern slavery in the most efficient and least burdensome manner to increase compliance amongst entities. As such, harmonisation with jurisdictions requiring the due diligence approach would be more appropriate than with the UK approach.
- 3.13 ALHR further encourages the sharing of information and, where appropriate, foreign intelligence by the Australian Government with different agencies within Australia – as well as with global and regional counterparts – to assist in addressing the prevalence of modern slavery, increase transparency, and allow for greater accountability in combating modern slavery risks in global supply chains.
- 3.14 ALHR is of the view that the Government should consider the methodology developed by the International Labour Organisation (**ILO**), Walk Free Foundation and the International Organization for Migration (**IOM**). Such methodology underpins the key statistical document *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage*.²⁸ This statistical document has had the benefit of input from the Office of the High Commissioner for Human Rights (**OHCHR**).
- 3.15 Also, keeping with Australia's historical commitments to and ratification of ILO instruments,²⁹ the Government should consider more broadly the resolutions and guidelines that form the statistical standards adopted by the International Conference of Labour Statisticians (**ICLS**).³⁰ For example, in 2013, following the 19th ICLS, a Resolution was adopted to create a working group to

²⁸ International Labour Organization and Walk Free, *The Global Estimates of Modern Slavery: Forced Labour and Forced Marriage (Report, 2022)* <<https://www.walkfree.org/reports/global-estimates-of-modern-slavery-2022/>>.

²⁹ Parliament of Australia, *The International Labour Organisation's Core Labour Standards and the Workplace Relations Act 1996* (Research Paper No. 13, 29 November 2007) <https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/RP0708/08rp13#_ednref28>.

³⁰ International Labour Organisation, *Methods in labour statistics*, <<https://ilostat.ilo.org/resources/methods/standards>>.

share best practices for improving forced labour surveys. This led to the establishment of the ILO Data Initiative on Modern Slavery, which incorporates the ICLS guidelines into best practice norms.³¹

- 3.16 Recommendation: ALHR submits that the Government should ensure that the Act is further harmonised, as far as possible, with the reporting requirements as well as approaches adopted in other jurisdictions by working closely with regional and global counterparts and sharing data and information to address the global nature of modern slavery.**

Question 13. Should other reporting features of the Modern Slavery Act be revised – such as the provisions relating to joint statements, or voluntary reporting?

- 3.17 As of 21 November 2022, 646 voluntary statements were launched under the Act,³² which is an important aspect of raising awareness and facilitating know-how across the business sector.

- 3.18 Recommendation: Consequently, ALHR urges the Government to retain voluntary reporting under the Act, especially if the reporting threshold of AU\$100m consolidated annual revenue is not lowered in the immediate future.**

- 3.19 In relation to joint statements, ALHR submits that the framework for joint reporting is appropriate. However, in response to concerns of ‘hidden non-compliance’ in joint reports covering multiple reporting entities, as assessed by the Australian Council of Superannuation Investors, ALHR agrees with its recommendation that statements should describe how owned or controlled entities were consulted and explain where they were not.³³

- 3.20 It is further recommended the issuance of additional guidance to address these shortcomings and clarification that statements must name all reporting entities within corporate groups via providing, for example, a table or an appendix that identifies every reporting entity, including their ABN/ACN together with an overview of their operations.³⁴

4 Enforcement of the Modern Slavery Act reporting obligations: Questions 14 – 17

Question 14. Has there been an adequate – or inadequate – business compliance ethic as regards the Modern Slavery Act reporting requirements?

³¹ International Labour Organisation, *ILO Data Initiative on Modern Slavery* (Report, 27 April 2015) <https://www.ilo.org/global/topics/forced-labour/publications/WCMS_364025/lang--en/index.htm>.

³² Australian Government, Online Register for Modern Slavery Statements (Web Page, 2022) <<https://modernslaveryregister.gov.au/>>.

³³ Australian Council of Superannuation Investors, *Moving from Paper to Practice: ASX200 Reporting under Australia’s Modern Slavery Act* (Report, 20 July 2021) <<https://acsi.org.au/research-reports/moving-from-paper-to-practice-asx200-reporting-under-australias-modern-slavery-act/>> at 16-17.

³⁴ Australian Council of Superannuation Investors, *Moving from Paper to Practice: ASX200 Reporting under Australia’s Modern Slavery Act* (Report, 20 July 2021) <<https://acsi.org.au/research-reports/moving-from-paper-to-practice-asx200-reporting-under-australias-modern-slavery-act/>> at 39.

4.1 We refer to our response in paragraphs 2.2 to 2.14 above and 4.2 to 4.3 below and note that evidence indicates that there has been inadequate business compliance with reporting requirements, as well as superficial reporting under the MSA.

Question 17. 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?

4.2 The ALHR welcomes the commitment made by the Government to introduce penalties for non-compliance. Research from earlier this year shows that companies fail to report on how they meet the ‘mandatory’ reporting criteria:

- 77% of companies reviewed had failed to report under each of the mandatory reporting criteria
- 52% of companies failed to identify obvious modern slavery risks in their operations or supply chain
- 52% of food companies sourcing Australian horticultural products failed to identify this as a sector with high modern slavery risks
- 40% of seafood companies sourcing from Thailand failed to identify this as a sector with high modern slavery risks
- 78% of companies failed to explain how the COVID-19 pandemic affected their modern slavery risk profile.³⁵

4.3 Updated data from a report published in November 2022 demonstrates that:

- 56% of commitments made by companies in their first round statements to improve their modern slavery responses remained unfulfilled in the second round of reporting
- 66% of companies did not address all of the mandatory reporting requirements prescribed by the MSA (a mild improvement from the 77% above)
- 43% of companies still failed to identify obvious modern slavery risks in their operations or supply chain (down from 52% in the previous report)
- The average company improved its score by just 7% between first and second rounds of reporting, with some companies substantially recycling or ‘rolling over’ first round statements without any qualitative improvement.³⁶

4.4 For the reporting to fulfil its function, it is required that those who do not address the mandatory reporting criteria or provide false or misleading information or fail to report (or within the deadline) should face consequences in a form of financial penalties, being listed on the Register as a non-compliant entity and/or being excluded from public tenders.

4.5 There is a comparable practice elsewhere. By way of example, Brazil has published a list of companies (‘Lista Suja’ or ‘Dirty List’) who have engaged in unlawful labour practices since 2004.³⁷ The companies are held under review and investigation for two years after being listed and are

³⁵ Human Rights Law Centre, Paper Promises? Evaluating the Early Impacts of Australia’s Modern Slavery Act (Report, 7 February 2022)

<https://static1.squarespace.com/static/580025f66b8f5b2dabbe4291/t/6200d3d9db51c63088d0e8e1/1644221419125/Paper+Promises_Australia+Modern+_Slavery+Act_7_FEB.pdf> at 2.

³⁶ Human Rights Law Centre, Broken Promises: Two years of corporate reporting under Australia’s Modern Slavery Act (Report, 16 November 2022) <<https://www.hrlc.org.au/reports/broken-promises>>.

³⁷ Government of Brazil, Ministry of Labor and Employment, Decree No. 540/2004; Ashley Feasley, ‘Deploying Disclosure Laws to Eliminate Forced Labour: Supply Chain Transparency Efforts of Brazil and the United States of America’ (2015) 5 *Anti-Trafficking Review* 4-5.

forced to pay reparations to victims. Companies may also suffer financial penalties which restrict their ability to obtain loans.³⁸

4.6 ALHR maintains that under the standards set up under the UNGPs, it is advisable to use a smart mix of measures – national and international, mandatory and voluntary – to foster business respect for human rights. The Act has been in force for three years now, so the ALHR contends that entities have been given a reasonable amount of time to familiarise themselves with the obligations under the Act. Penalties for non-compliance are a reasonable next step towards ratcheting up compliance to fulfil the objectives of the Act.

4.7 **Recommendation: As such, ALHR recommends that there should be penalties and sanctions for non-compliance with the Act.**

5 Public sector reporting requirements under the Modern Slavery Act: Questions 18 – 20

Question 18. Should any alteration be made to the Modern Slavery Act as regards its application to Australian Government agencies?

5.1 **Recommendation:** In line with the *Modern Slavery Act 2018* (NSW), **ALHR calls for all Australian state and territory government bodies and local councils to be required to report under the Act.** This is both justifiable and necessary given the power they hold, including in relation to Australian Government procurement alone; in 2021-22, according to the 92,303 contracts published, the combined value was \$80.8 billion.³⁹ Further arrangements might be put in place if such reporting is covered elsewhere, as is the case in NSW.

6 Modern Slavery Statements Register: Questions 21 – 22

Question 21. Does the Register provide a valuable service?

6.1 Overall, the Modern Slavery Statements Register (**Register**)⁴⁰ provides a valuable service. However, ALHR submits that the Register could be improved with regard to public reporting on non-compliant reporting entities. The ALHR recommends that the Register is updated firstly to indicate which published reports have been assessed as non-compliant, and secondly to include a list of reasons alongside the non-compliant report which outlines the reasons why, and how, a reporting entity failed to meet reporting requirements.

³⁸ Ibid.

³⁹ Australian Government Department of Finance, *Statistics on Australian Government Procurement Contracts* (Web Page, 2022)
<<https://www.finance.gov.au/government/procurement/statistics-australian-government-procurement-contracts>>.

⁴⁰ Australian Government, Online Register for Modern Slavery Statements (Web Page, 2022)
<<https://modernslaveryregister.gov.au/>>.

Publishing Compliance Status

- 6.2 ALHR has made submissions previously on the importance of maintaining a public register of reporting entities.⁴¹ In order to ensure that the objectives of the Act are met, it is recommended that in addition to publishing a list of non-compliant statements, the Modern Slavery Business Engagement Unit (**MSBEU**) or other appropriate body administering the Act should publicly indicate whether the statement is compliant with the Act.
- 6.3 In examining a statement submitted by a reporting entity, the MSBEU will determine whether the statement is likely non-compliant due to a failure to address all mandatory reporting criteria of section 16(1) of the Act.⁴² Despite non-compliance, this statement is published on the Register, and the MSBEU ensures the entity is aware of the status of its report and provides guidance on future preparation of statements.⁴³ As noted in the Issues Paper, in the first reporting cycle, 41% of the published statements were assessed as likely non-compliant under section 16(1). In the second cycle, 28% were assessed as non-compliant.⁴⁴
- 6.4 Although the Act does not require the Government to indicate the non-compliance or compliance status of a reporting entity, section 26(1)(c) of the *Modern Slavery Act 2018* (NSW) does require the Anti-Slavery Commissioner to identify government agencies and state-owned corporations who fail to comply with their obligations to prepare modern slavery statements. The ALHR recommends that an identical provision be implemented into the Federal Scheme. ALHR notes the objectives of transparency in the Act and considers that disclosure of non-compliance would ensure that entities are held accountable for their failures and are incentivised to make changes due to practical and reputational considerations.
- 6.5 The ALHR understands that discrete methods of reporting were necessary during the immediate reporting cycle following the introduction of the Act. However, ALHR considers that a more robust enforcement mechanism is now appropriate, which is particularly relevant should no penalties for non-compliance be prescribed.
- 6.6 ALHR notes that the burden of enforcement is currently placed on consumers and civil society. Given that enforcement is dependent on the information available to the public,⁴⁵ ALHR considers that providing a public list of non-compliant organisations would allow consumers and civil society to readily access the information they need to make ethical consumer decisions, and ‘boycott’ certain organisations.

⁴¹ Australian Lawyers for Human Rights, Submission on the Modern Slavery Act 2018 Draft Guidance for Reporting Entities (Submission, 19 May 2019)

<<https://alhr.org.au/submission-modern-slavery-act-2018-draft-guidance-reporting-entities/>> at 11; Australian Lawyers for Human Rights Australian Lawyers for Human Rights, Submission to the Senate Legal and Constitutional Affairs Committee on the Commonwealth Modern Slavery Bill 2018 (Submission, 20 July 2018) <<https://alhr.org.au/wp/wp-content/uploads/2018/07/20-7-18-ALHR-Submission-Feedback-on-Cth-Modern-Slavery-BillF.pdf>> at 5.

⁴² Australian Government, Review of the Modern Slavery Act 2018 (Issues Paper, 2018) <https://consultations.ag.gov.au/crime/modern-slavery-act-review/user_uploads/review-modern-slavery-act-issues-paper.pdf> at 20.

⁴³ Ibid 41.

⁴⁴ Ibid.

⁴⁵ See, e.g., Erin O’Brien, ‘Human Trafficking and Heroic Consumerism’ (2018) 7(4) *International Journal for Crime, Justice and Social Democracy* 51-66.

- 6.7 ALHR also recommends that MSBEU should prepare and publish a statement of reasons outlining the particular reasons why the entity was non-compliant and providing a link to further information on this reporting requirement under the Act.
- 6.8 ALHR recommends that the Government, when publishing a non-compliant statement, should also prepare and publish a statement alongside it which (a) identifies the requirements which were not met; (b) explains why these requirements were not met; and (c) provides further information relating to compliance with, and reasons for, the requirements.
- 6.9 ALHR considers that providing a statement of reasons would assist other reporting entities, in particular entities reporting for the first time, in understanding the content, scope, and quality required to meet the requirements imposed under the Act. Providing a statement of reasons would also improve transparency and accountability in reporting requirements because the public is able to readily access information about which entities, and why, have failed in meeting their obligations.
- 6.10 Recommendation: ALHR submits that providing an indication of the compliance or non-compliance of a reporting entity will provide an effective, non-punitive accountability mechanism.**
- 6.11 ALHR notes that the Registry website contains information and guidelines on the requirements of the Act on their ‘Resources’ page.⁴⁶ However, further to the recommendation above on compliance reporting, the ALHR recommends that the Government include updated resources and guidelines which outline the mandatory reporting requirements of section 16(1) and provide a broader context for the implications of non-compliance.
- 6.12 The ALHR notes that in ensuring transparency and accessibility, the public should be able to easily understand how and why reporting entities fulfil their mandatory reporting requirements. To do so, the public should be able to understand in each particular case of non-compliance why this occurred, and the reasons why this requirement is in place.
- 6.13 ALHR is of the view that, at all stages, plain language should be used when promoting, educating, and empowering the Australian community on modern slavery as this will lead to greater dissemination of knowledge and to increased victim support.

Question 22. Could improvements be made to the Register to facilitate accessibility, searchability and transparency?

- 6.14 ALHR recommends several improvements to the Register to facilitate accessibility, searchability and transparency and ensure that the public is easily able to retrieve and comprehend materials relevant to the Register. ALHR notes that the UK established a voluntary register for modern slavery statements in March 2021 under the *Modern Slavery Act 2015* (UK).⁴⁷

⁴⁶ Australian Government, Online Register for Modern Slavery Statements (Web Page, 2022)
<<https://modernslaveryregister.gov.au/statements/>>.

⁴⁷ UK Government, Modern Slavery Statement Registry (Web Page, 2022)
<<https://modern-slavery-statement-registry.service.gov.uk>>.

- 6.15 To reflect the considerations raised above, the ALHR recommends that the headers of the Resources page be updated to reflect more clear sub-categories. The current Registry resource page contains the headings: e-learning modules; website archive; guidance material; Australian Government’s Response to Modern Slavery, including procurement, annual report to Parliament, and legislation.⁴⁸ To ensure that the website is easy to access, the ALHR recommends that, similar to the UK register, categories are used instead labelled with headings such as “Guidance for Reporting Entities”, “Guidance on the Modern Slavery Act”, “Training”, and “Reporting Requirements under the Act”. Links can then be provided under these headings to the relevant material. ALHR considers that this would provide a more accessible user interface and better navigation throughout the website, ensuring that the public can easily find all relevant material related to the Act. Additionally, it is recommended that a quick link is available on every page to resources like ‘Modern slavery: how to identify and support victims’⁴⁹ to ensure that the public has easy access to these important and relevant materials.
- 6.16 Further, when providing a statement of reasons as indicated in the recommendation above, the ALHR considers it would be practical to provide a link to further resources on non-compliance, and guidance on those particular reporting requirements within the statement. Doing so would allow members of the public to easily access and understand the function and practical application of the mandatory reporting provisions of the Act.
- 6.17 Lastly, in furtherance of the recommendation above, ALHR recommends including a search function on the Register for finding ‘compliant’ and ‘non-compliant’ statements. The current website contains search filters for revenue, reporting period, industry, report date, location of headquarters, and entities with overseas reporting obligations.⁵⁰
- 6.18 **Recommendation: Subsequently, ALHR recommends a number of improvements to the Register to make it more user-friendly and to improve navigation throughout the website.**

7 Administration and Compliance Monitoring of the Modern Slavery Act: Questions 23 – 24

Question 23. What role should an Anti-Slavery Commissioner play in administering and enforcing the reporting requirements in the Modern Slavery Act? What functions and powers should the Commissioner have for that role?

- 7.1 ALHR welcomes the commitment by the Government to introduce an independent Federal Anti-Slavery Commissioner (**FASC**), which aligns with the UNGPs which prescribes that states are to “provide effective and appropriate non-judicial grievance mechanisms...alongside judicial mechanisms” (Guiding Principle 27), and that states “should consider ways to facilitate access to effective non-State-based grievance mechanisms dealing with business-related human rights harms” (Guiding Principle 28).

⁴⁸ Australian Government, Online Register for Modern Slavery Statements (Web Page, 2022) <<https://modernslaveryregister.gov.au/statements/>>.

⁴⁹ UK Government, Modern Slavery: How to Identify and Support Victims (Web Page, 2022) <<https://www.gov.uk/government/publications/modern-slavery-how-to-identify-and-support-victims>>.

⁵⁰ Australian Government, Online Register for Modern Slavery Statements (Web Page, 2022) <<https://modernslaveryregister.gov.au/statements/>>.

7.2 ALHR considers it appropriate that in the creation of the role, the FASC should have broad functions in the administration and enforcement of the reporting requirements of the Act. These include functions suggested in the Issues Paper, being: (1) examining whether (through a complaint or an own motion basis) a particular entity is properly in compliance with their reporting requirements; (2) maintaining a public list of entities that are assessed as not complying with Act's reporting requirements; (3) power to recommend the imposition penalties on individual entities for non-compliance with the Act's mandatory requirements; and (4) conduct periodic reviews of the Act.⁵¹

7.3 The FASC's appointment should be between five (5) and seven (7) years to ensure that the Commissioner can speak freely and utilise its powers fully and not be constrained by the immediacy of the renewal of their contract by the Government.

7.4 Recommendation: It is noted that in line with similar approaches in the UK, NSW and in relation to regional bodies,⁵² ALHR recommends that an office of a well-resourced and independent regulator, such as a Commonwealth Anti-Slavery Commissioner, is established and should not be subject to the control or direction of any Government agencies in the exercise of its functions.

General Functions

7.5 ALHR recommends that a function of the FASC be "to monitor reporting concerning risks of modern slavery occurring in supply chains of government agencies and commercial organisations".⁵³ It is noted that this provision reflects the version of section 9(e) of the *Modern Slavery Act 2018* (NSW) prior to its amendment by the *Modern Slavery Amendment Act 2021 No 39* (NSW). ALHR notes that a primary function of the Act is to identify and monitor supply chains in both government industry and within the private sector. It is therefore justified that a function of the Commissioner would be to monitor risks of modern slavery occurring in both government and commercial entities and would ensure that large corporate entities do not escape accountability and monitoring.

7.6 ALHR suggests that a provision similar to section 44 of the *Modern Slavery Act 2015* (UK) be avoided. This section prevents the Commissioner from exercising "any function in relation to an individual case". The UK regime is voluntary, and thus compliance is not a necessary consideration in the functions of the Anti-Slavery Commissioner. However, given Australia's mandatory reporting requirements, ALHR considers that the FSAC could function as an independent review body for individual entities assessed as, or reasonably suspected to be, non-compliant.

7.7 ALHR notes that in NSW, the Commissioner has the power to impose up to an AUD \$1.1 million penalty for entities who are non-compliant with reporting obligations.⁵⁴ Given that the

⁵¹ Australian Government, Review of the Modern Slavery Act 2018 (Issues Paper, 2018) <https://consultations.ag.gov.au/crime/modern-slavery-act-review/user_uploads/review-modern-slavery-act-issues-paper.pdf> at 49.

⁵² See, e.g., *Modern Slavery Act 2018* (NSW) s 7; *Modern Slavery Act 2015* (UK); at the Organization for Security and Co-operation in Europe (OSCE) Special Representative and Co-ordinator for Combating Trafficking in Human Beings, and National Rapporteurs established under the OSCE Action Plan to Combat Trafficking in Human Beings.

⁵³ *Modern Slavery Act 2018* (NSW) s 9(e), as repealed by *Modern Slavery Amendment Act 2021 No 39* (NSW) sch 1 [15].

⁵⁴ *Modern Slavery Act 2018* (NSW).

Commonwealth threshold for reporting entities is double that in NSW, ALHR considers it appropriate to double this penalty to AUD \$2.2 million, which acts as a deterrence to the community and is consistent with the NSW modern slavery legislation, thereby ensuring a commensurate enforcement standard across both legal regimes.

8 Review of the Modern Slavery Act: Questions 25 – 26

Question 25. Is a further statutory review (or reviews) of the Modern Slavery Act desirable? If so, when? And by whom?

- 8.1 Given the challenges of COVID-19 and recent global instability leading to disrupted supply chains, it is necessary for the Government to be responsive and capable of addressing issues related to modern slavery. A statutory review will consider the effectiveness, scope and appropriateness of provisions in the context of the specific needs of that period of time.
- 8.2 **Recommendation: ALHR supports a continuous three-yearly review of the Act** by either (a) the Department administering the Act (the Attorney-General's Department); (b) an Independent Modern Slavery Committee; or (c) the FSAC **for the entire duration of the Act's operation to ensure that the Act is achieving its aims and objectives and that it keeps up with contemporary and emerging challenges.** The body undertaking the review should gather and collate evidence from a range of sectors and interest groups.

Question 26. Should a periodic review process (other than a statutory review) be conducted of the Modern Slavery Act and its implementation? What form should that review process take?

- 8.3 In line with our response to Question 24, ALHR calls for the FSAC to be empowered to conduct an ongoing periodic review of the Act to ensure its effectiveness and administration.
- 8.4 ALHR recommends that the FASC undertake this periodic review every five years, given that a nominated function of the FASC would be to "monitor the effectiveness of all federal and state institutions to tackle modern slavery". As the FSAC should also be authorised to conduct research and coordinate with other bodies on matters relevant to modern slavery, the review would be informed by that data to ensure it accurately reflects any discrepancies or issues with the Act in its practical operation.

9 Other issues: Question 27

Question 27. Is there any other issue falling within the Terms of Reference for this review that you would like to raise?

- 9.1 **Recommendation:** In order for businesses to undertake effective due diligence of their operations and supply chains, including identifying and addressing the salient risks, **ALHR urges the Government to introduce a ban on the import of goods produced by forced labour wherever it may occur.** Amending the *Customs Act 1901* (Cth), to be modelled on the US *Tariff Act*, would complement and enhance the effectiveness of the MSA by driving corporate action on modern slavery.

9.2 Further, to better enforce modern slavery victims' rights and provide wider society with a broader legal lens through which to view this insidious issue, ALHR strongly supports the introduction of a federal Human Rights Act akin to the legislation passed in Queensland, Victoria and the Australian Capital Territory as critical for promoting and operationalising fairness and equality in Australia.

9.3 ALHR was established in 1993 and is a national association of Australian solicitors, barristers, academics, judicial officers and law students who practise and promote international human rights law in Australia. ALHR has active and engaged National, State and Territory committees and specialist thematic committees.

10. About Australian Lawyers for Human Rights (ALHR)

10.1 ALHR was established in 1993 and is a national association of Australian solicitors, barristers, academics, judicial officers and law students who practise and promote international human rights law in Australia. ALHR has active and engaged National, State and Territory committees and specialist thematic committees.

10.2 ALHR seeks to utilise its extensive experience and expertise in the principles and practice of international law and human rights law in Australia to:

- Promote Federal and State laws across Australia that comply with the principles of international human rights law;
- Engage with the United Nations in relation to Australian human rights violations;
- Promote and support lawyers' practice of human rights law in Australia;
- Engage internationally to promote human rights and the rule of law.

10.3 Through advocacy, media engagement, education, networking, research and training, ALHR promotes, practices and protects universally accepted standards of human rights throughout Australia and overseas.

If you would like to discuss any aspect of this submission, please email me at: president@alhr.org.au

Yours faithfully



Kerry Weste

**President
Australian Lawyers for Human Rights**

Contributors:

Dr Natalia Szablewska

Lara Douvartzidis

Christina Hey-Nguyen

Emily Browell

Millie Jones

Any information provided in this submission is not intended to constitute legal advice, to be a comprehensive review of all developments in the law and practice, or to cover all aspects of the matters referred to. Readers should take their own legal advice before applying any information provided in this document to specific issues or situations.