

Review of Australia's Modern Slavery Act 2018

Consultation response

November 2022

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Executive Summary

Executive Summary

KPMG Australia (KPMG) welcomes the opportunity to provide a submission in response to the Issues Paper released as part of the statutory review of the *Modern Slavery Act 2018* (Cth) (**Modern Slavery Act**) being conducted by Professor John McMillan AO.

Since Australia's modern slavery regime came into force there has been a promising trajectory in the business response to modern slavery risk in Australia. While there are gaps in compliance – as noted in the Issues Paper – many reporting entities have responded constructively to the requirements in the Act by making quality disclosures and showing growth and leadership in successive statements.

The global business and human rights landscape is fast-changing, with a growing number of jurisdictions adopting or considering legislative requirements for companies to undertake human rights due diligence. The current review provides an important opportunity to harmonise the Modern Slavery Act with reporting requirements in other jurisdictions and provide a level playing field for Australian reporting entities that wish to operate internationally.

Our experience tells us that clarity and support is required for businesses to effectively engage with the complex and endemic issues that arise when seeking to address and mitigate the risk of human rights abuses such as modern slavery in their operations and supply chains. We recommend that clarity in the Modern Slavery Act be improved through clearer due diligence steps and suggest that any amendments to the Act be subject to a transitional period of 12-18 months to enable reporting entities to build necessary capabilities to meet their new obligations.

Business responses to human rights risk can be further supported through an adequately resourced Modern Slavery Business Engagement Unit and/or an independent Commonwealth Anti-Slavery Commissioner with a remit that includes supporting reporting entities by developing good practice guidelines and promoting cross-sector collaboration.

If you would like to discuss the contents of this submission further, please do not hesitate to reach out.

Yours sincerely,



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Background

About KPMG

KPMG is a global organisation of independent professional firms, providing a full range of services to organisations across a wide range of industries, governments and not-for-profit sectors. We operate in 146 countries and territories and have more than 227,000 people working in member firms around the world. In Australia, KPMG has a long tradition of professionalism and integrity combined with our dynamic approach to advising clients in a digital-driven world.

KPMG Banarra

KPMG Australia has an experienced, dedicated business and human rights consultancy, KPMG Banarra. Our human rights specialists work with business, government, and not-for-profit organisations to identify the risk of harm to people, build internal capability to understand these risks and potential harms, design practical solutions to address and prevent harm and, where appropriate, give our clients confidence that their approaches are effective in action. We have first-hand experience reviewing and preparing modern slavery statements for our clients focusing on high quality, evidence-based disclosures, and forward-looking commitments.

Our service offerings include supporting clients across the full life cycle of human rights risk management, integrated sustainable procurement, and strategic approaches to the identification, management and evaluation and reporting of social impacts. As an entity commences or embeds its responses to the Modern Slavery Act we also support with specific elements to enhance good practice in areas such as risk identification, mapping and assessment, the development of human rights due diligence tools, high-risk supplier assessments, supplier engagement, investigation and assessment against standards, capability building at all organisational levels from workers in the supply chain through to boards, and design and assessment of grievance mechanisms. These service offerings complement the KPMG Modern Slavery Benchmark, a digital tool developed by KPMG Banarra that guides clients through a self-assessment of the maturity of their modern slavery risk management for their operations and supply chain by benchmarking their approach against leading practice, and providing clear insights and practical recommendations based on their responses and industry risks.

KPMG Banarra also leads KPMG's Global Business and Human Rights Network, bringing together sustainability professionals from around the world. Our international work in collaboration with other KPMG member firms gives us a global perspective as we support clients implementing responses to multiple legislative requirements on modern slavery and human rights, as well as evolving stakeholder expectations in different jurisdictions and contexts.

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Summary of Recommendations

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The Modern Slavery Act should be amended to include a positive duty on reporting entities to undertake and report on human rights due diligence to identify, assess, and manage risks of human rights abuses, including modern slavery practices, in their operations and supply chains.

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Recommendation 2

The due diligence steps reporting entities are obliged to complete should be clearly articulated in the Modern Slavery Act, with additional guidance material developed by the Modern Slavery Business Engagement Unit and/or an independent statutory officer such as a Commonwealth Anti-Slavery Commissioner.

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Recommendation 3

There should be a transitional period of 12-18 months between the introduction of new due diligence requirements into the Modern Slavery Act and the commencement of these provisions, to enable reporting entities to build necessary capabilities to meet their obligations.

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Recommendation 4

An independent, adequately-resourced statutory officer such as an Anti-Slavery Commissioner should be established through amendment to the Modern Slavery Act or by a separate Act.

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Recommendation 5

The functions of the independent Commonwealth Anti-Slavery Commissioner should include: monitoring compliance with the requirements of the Modern Slavery Act; providing assistance to survivors of modern slavery including facilitating access to support services; providing support to reporting entities; promoting compliance with the Modern Slavery Act; developing good practice guidelines; supporting efficiency and good data in modern slavery responses by developing standard supplier questionnaire templates; and facilitating collaboration between government, business, civil society, and academia to combat modern slavery.

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Recommendation 6

The Commonwealth Government should commission a further review of the Modern Slavery Act no more than three years after the current review is tabled.

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KPMG Insights

Introduction

In our October 2017 submission in response to the Commonwealth Government's proposed modern slavery in supply chains reporting requirement, KPMG stated that:

// The introduction of Australian modern slavery reporting requirements is likely to lift engagement, awareness and increase internal competence in understanding and responding to rights-based risks.¹

Five years later, and over three years after Australia's modern slavery regime came into force, there has been a promising trajectory in the response of business to modern slavery risk in Australia. While there are gaps in compliance amongst reporting entities, many have responded constructively to the requirements in the Act, some showing a willingness to go beyond its minimum requirements, including by undertaking comprehensive due diligence and supply chain risk assessments beyond the first tier.

The Modern Slavery Act was among the first pieces of legislation worldwide to codify transparency in supply chains and human rights due diligence principles into hard law. Since its passage, there has been a proliferation of new laws and legislative proposals in international jurisdictions mandating due diligence by businesses for human rights and/or modern slavery risks. The current review provides an important opportunity to harmonise the Modern Slavery Act with emerging international leading practice and provide a level playing field for Australian reporting entities that wish to operate in other jurisdictions.

In addition to new legislative requirements, there are growing expectations on businesses from investors, employees, consumers, and other stakeholders concerning respect for human rights and sustainable practices in operations and supply chains. This includes emerging specificity on how to define and measure 'social' risks as part of the accelerated visibility on Environmental Social Governance (ESG) implementation and reporting. Human rights considerations are at the heart of social performance. A robust legislative framework mandating due diligence for human rights and modern slavery risks can support businesses in meeting these expectations.

Our experience tells us that many businesses are open to regulation in this space. However, greater clarity and support is required for businesses to effectively engage with the complex and endemic issues that arise when seeking to address and mitigate the risk of human rights abuses such as modern slavery in their operations and supply chains. Clarity can be improved through amended reporting criteria setting out the due diligence steps reporting entities are obliged to complete.

We suggest in this submission, which responds directly to specific parts of the review's Terms of Reference, that any amendments to the Act be subject to a transitional period of 12-18 months to enable reporting entities to build necessary capabilities to meet their new obligations. Business responses to human rights risk can be further supported through an adequately resourced Modern Slavery Business Engagement Unit and/or an independent statutory officer such as a Commonwealth Anti-Slavery Commissioner with a remit that includes supporting reporting entities by developing good practice guidelines and promoting cross-sector collaboration.

¹ KPMG Australia, 'Modern Slavery in Supply Chains Reporting Requirement' (October 2017), submission to the Commonwealth Attorney-General's Department.

Three years of the Modern Slavery Act: operation and compliance

In 2018, the Parliament of Australia passed the Modern Slavery Act. The core objective of the Modern Slavery Act is to increase transparency regarding modern slavery risks in the supply chains of goods and services in Australia. In line with this objective, the Act requires some entities to report on whether and how their operations and supply chains are at risk of contributing to modern slavery, and the steps they are taking to address any identified risks.

Upon introducing the Modern Slavery Bill in 2018, the responsible minister said it would strengthen Australia's response to modern slavery and "drive a 'race to the top' as reporting entities compete for market funding and investor and consumer support."² Three years on, the response to and impact of the Modern Slavery Act has been mixed. There is a wide range of maturity in modern slavery statements, with some reporting entities making quality disclosures and showing growth and leadership in successive statements, while others are lagging behind by failing to adequately address the mandatory reporting criteria.

There are, however, elements of the current Modern Slavery Act that have enabled substantial progress towards greater transparency, which we outline below.

Impact of mandatory reporting criteria

The Modern Slavery Act has a predecessor in the form of the United Kingdom's *Modern Slavery Act 2015 (the UK Act)*. While commercial organisations that fall within the scope of the UK Act must prepare an annual modern slavery statement, the Act does not stipulate the information that must be included in the statement, merely outlining a list of topics that the organisation "may include". This list includes information about the organisation's structure and supply chains, policies in relation to slavery and human trafficking, due diligence processes, risk assessment and management, key performance indicators to measure effectiveness of steps being taken, and training on modern slavery and trafficking.³ By contrast, the Modern Slavery Act contains mandatory reporting criteria that must be addressed by reporting entities.

² Commonwealth, *Parliamentary debates*, House of Representatives, 28 June 2018, 6754 (Alex Hawke, Assistant Minister for Home Affairs).

³ *Modern Slavery Act 2015* (UK), s 54.

Our analysis of a selection of modern slavery statements prepared to comply with the UK Act, as compared with a selection of statements available on the Australian Modern Slavery Statements Register, suggests that the mandatory reporting criteria under the Modern Slavery Act is leading to more mature and comprehensive modern slavery responses from reporting entities overall. We note, however, that as identified in the Issues Paper, not all entities required to report in Australia address all the mandatory reporting criteria.

Case studies:

Clients looking beyond compliance to comprehensively assess risks.

1. Integrating human rights into broader risk consideration processes.

Our client engaged KPMG to support it with modern slavery compliance readiness. Beyond designing an approach to progress our client towards compliance with the requirements of the Modern Slavery Act, we assisted our client with integrating human rights into its broader consideration of risk. To achieve this, KPMG assessed our client's existing approach to modern slavery risk management, used a group-level case study to build a picture of our client's group-level procurement activities, and systematically identified modern slavery risk hotspots and ways to enhance control points in their existing systems.

2. Modern slavery risk data analytics tool.

Our client, a provider of entertainment and hospitality services in Australia, underwent a comprehensive review of its internal processes to identify, assess and remediate modern slavery risks. As part of this review, our client identified an opportunity to streamline its approach to assessing supply chain risks using data analytics. KPMG developed a set of supplier risk assessment criteria for our client to integrate into its existing risk assessment processes. Working with KPMG's internal data analytics team, the project team developed a data analytics enabled tool to help the client visualise supplier risk on an ongoing basis. The tool overlaid external data sources and indicators for modern slavery onto the client's supplier data to provide an initial overview of supplier risk, which could be built on and improved over time.

Impact of approval requirements

Executive leadership and Board oversight are important factors in ensuring that human rights related risks are effectively prioritised and acted upon. It is our view, therefore, that the approval requirements for modern slavery statements at s13(2) and s14(2) of the Modern Slavery Act are appropriate and beneficial.

These requirements have prompted some businesses to engage in training and capability building at the Board and C-suite level, in addition to function-specific training to operationalise modern slavery commitments within the business. In our view, this is a very positive step towards embedding a human rights culture within an organisation that can go beyond a risk-based approach to modern slavery.

Case study:

Client taking responsibility by building internal and external capability.

Our client, a leading national commercial real estate business, made a Board decision to renew the 'social' focus of its ESG strategic pillar. Our client was aware that the cleaning and security sectors had in general been identified as high-risk sectors for modern slavery, and wanted to work with its workers and suppliers to understand the potential impacts of its own providers of cleaning and security services. KPMG assisted the business by designing a bespoke framework for pilot supplier assessments to distil thematic domains for review, identify data sources to support assessment and determine risk ratings based on the potential harm to people. KPMG human rights specialists also undertook an assessment of eight sites in three cities which involved interviews with more than 70 workers to identify instances of modern slavery-like practices. These findings were socialised in workshops with senior representatives and presented to the Board. With the support of C-suite executives, our client was able to better understand and take responsibility towards tackling modern slavery. The client is now determining immediate future actions to address their modern slavery risks, with a priority of collaborating with suppliers to improve current practices and protect vulnerable workers.

Quality of disclosures

As noted above, based on our analysis of a selection of modern slavery statements, there is significant divergence in the quality of statements on the Modern Slavery Statements Register.

Emerging leading practices we have identified in reporting include:

Modern slavery commitment	Management systems & controls	Grievance mechanisms & remediation
Foreword or message from senior leadership.	Understanding, assessing, and addressing modern slavery risk in entirety of supply chain – beyond tier one.	Practical plans on timeframes, remediation, and progress requirements.
Use of <i>UN Guiding Principles on Business and Human Rights</i> to guide modern slavery response.	Detailed list of suppliers including location and types of products/ services.	Site visits and independent audits of cases requiring remediation.
Year-by-year comparison.	Due diligence conducted prior to onboarding suppliers.	Independent whistleblower services for all workers and suppliers.
Statements with honest and realistic reflections.	Supplier training, questionnaires, and onsite visits.	
Statements prominently available on company website.	Training at senior leadership level.	
	Collaboration with stakeholders, including civil society and NGOs.	

Examples of inadequate practices include:

Modern slavery commitment	Management systems & controls	Grievance mechanisms & remediation
<p>Use of strong language without detail on what actions will be taken.</p> <p>Lack of transparency.</p> <p>Concerns speak to reducing business risks rather than risk to people.</p> <p>Statements shifting responsibility to suppliers.</p>	<p>Lack of detail on modern slavery risk.</p> <p>Lack of engagement with stakeholders with close connection to rightsholders such as NGOs and unions.</p> <p>Lack of meaningful consultation with entities across complex business structures.</p> <p>Only addressing tier one suppliers.</p> <p>Lack of reference to vulnerable workers.</p> <p>Lack of understanding of available resources to guide modern slavery response.</p> <p>Lack of demonstrated maturing of newly established systems and controls.</p> <p>Lack of integration of modern slavery risk controls into more comprehensive human rights due diligence and operational and procurement processes.</p>	<p>No reference to allegations or incidents of modern slavery – this is typical of the majority of statements we have reviewed.</p> <p>Lack of grievance mechanisms designed to appropriately handle modern slavery or human rights issues.</p>

In our experience, when it comes to the substantive content of disclosures made under the Modern Slavery Act, reporting on risk assessment and management systems and controls has the most maturity overall. By contrast, the approach to reporting on grievance mechanisms and effective actions taken to address the risk of modern slavery in supply chains is least mature overall.

We suggest in the section below how these shortcomings in reporting practices can be addressed through changes to the reporting criteria and through guidance material issued by the Modern Slavery Business Engagement Unit or an independent statutory officer such as a Commonwealth Anti-Slavery Commissioner.

Modern Slavery Statements Register

When Australia’s modern slavery legislation was introduced, the Commonwealth Government described the establishment of a register of modern slavery statements as a “world-leading initiative [that] will promote transparency and ensure that the community can easily access and compare statements”.⁴ The register, which now houses over 5,000 statements, has in our view proven to be a useful service. It assists in promoting the transparency objective of the Modern Slavery Act through providing a central, searchable repository of statements for perusal by customers, investors, civil society advocates, and in-house business and human rights practitioners. The register is also key to facilitating the analysis and scrutiny of all statements, and supports the ability of researchers to benchmark reporting entities and compare their respective approaches and practices. This is critical to the accountability and transparency function the register is intended to serve.

As the quantity of information contained in the register continues to grow, its utility would be improved through the development of an advanced search function, to complement the existing search function. An advanced search function could allow for searches on the basis of criteria including reporting entity name, reporting period, industry, and annual revenue.

⁴ Commonwealth, *Parliamentary debates*, House of Representatives, 28 June 2018, 6754 (Alex Hawke, Assistant Minister for Home Affairs).

Concluding remarks on the operation of the Modern Slavery Act so far

It is too soon to determine whether the Modern Slavery Act will drive a 'race to the top' in business responses to identify and address modern slavery. The Australian Council of Superannuation Investors has noted that to date there appears to have been a 'race to the middle' in that the majority of reporting entities seek to satisfy their minimum legal obligations under the Modern Slavery Act without disclosing more information than their industry peers.⁵ Anecdotally, the majority of our clients express an ambition to 'stay with the pack', while some are global leaders and innovate to stay there and others are commencing their responses and are notably constrained by resources and the level of priority they place on modern slavery risk management. We also still receive inquiries from entities that have triggered reporting requirements but are yet to make statements under the Act. In this sense, the elements of the Modern Slavery Act that reporting entities perceive to be the central requirements have shaped their response.

Given this, there is a risk that any early progress could plateau under the weight of complacency and a reluctance to fully interrogate and disclose modern slavery risks. In our experience, some entities have introduced surface level 'controls' to meet the initial compliance requirement to report, but these will not be effective in identifying or responding to modern slavery risks. There is a need to consider additional measures to improve compliance with, and the impact of, the Modern Slavery Act. Our experience with the Modern Slavery Act in practice so far suggests there are key areas for improvement to promote higher quality disclosures and effective action. It is vital, in our view, that these additional measures provide Australian reporting entities with greater clarity and a comprehensive roadmap to enable them to achieve continuous improvement in their human rights and modern slavery response.

⁵ Australian Council of Superannuation Investors, *Moving from paper to practice: ASX200 reporting under Australia's Modern Slavery Act* (July 2021).

Improving the operation of the Modern Slavery Act: opportunities for reform

In this submission, we suggest the following measures would improve the operation and impact of the Modern Slavery Act:

- mandatory human rights due diligence obligations;
- amending the mandatory reporting criteria in the Modern Slavery Act; and
- establishment of an independent statutory officer such as a Commonwealth Anti-Slavery Commissioner.

Mandatory human rights due diligence obligations

Under the current Modern Slavery Act, a reporting entity must “describe the actions taken... to assess and address” the risk of modern slavery practices in their operations and supply chain “including due diligence and remediation processes”⁶. There is no express requirement that reporting entities undertake any due diligence processes or otherwise take effective actions towards identifying and mitigating the risk of modern slavery practices in their operations and/or supply chains. We recommend this be addressed through an amendment to the Modern Slavery Act placing a positive duty on reporting entities to undertake human rights due diligence to identify, assess, and manage risks of human rights abuses, including modern slavery practices, in their operations and supply chains.

In general, a requirement to undertake ‘due diligence’ in this context would require reporting entities to:

- **identify** and **assess** the risk of human rights abuses, including modern slavery practices in their operations and supply chains;
- **take effective actions** to prevent and mitigate any identified risks;
- **evaluate** and **document** the effectiveness of any actions taken, with the view to continuously improve performance in this regard; and
- be **transparent** and **communicate** on these matters with all relevant internal and external stakeholders.

Several other jurisdictions require or will soon require companies to undertake human rights due diligence. Companies covered by these laws will be required to go beyond identifying and mitigating the risk of modern slavery practices to instead undertake due diligence on risks of human rights abuses more broadly. To give three examples: Norway’s *Transparency Act*, which came into force on 1 July 2022, obliges larger companies to conduct human rights due diligence; Germany’s *Supply Chain Due Diligence Act*, which will take effect in 2023, imposes a similar due diligence requirement on large companies; and the European Commission in February 2022 adopted a proposed Directive on Corporate Sustainability Due Diligence, which will be presented to the European Parliament and the European Council for approval. If enacted in its current form, the European Commission proposal will establish a due diligence duty for large companies – including non-EU companies active in the EU with turnover and staffing levels above a specified threshold – to identify, prevent, bring to an end, mitigate and account for adverse human rights and environmental impacts in the company’s own operations, its subsidiaries and their value chains.

These obligations to undertake broader human rights due diligence reflect that modern slavery does not occur in a vacuum, and situations where modern slavery takes place are likely to involve a range of other violations of human rights. It is for this reason that KPMG Australia’s own commitments relating to modern slavery are situated within our broader Human Rights Policy.

While the level of transparency achieved by the Modern Slavery Act to date is an important step forward, the scale and increasing prevalence of modern slavery worldwide⁷ demand an elevated response. We suggest that mandating human rights due diligence in the Modern Slavery Act will build on early progress under the Act while better supporting reporting entities to respect human rights. Requiring reporting entities to consider the full spectrum of human rights risks and impacts in their activities and relationships will enhance the credibility and strength of their modern slavery response, and encourage a holistic and whole-of-business approach to managing human rights risks and impacts.

⁶ *Modern Slavery Act 2018* (Cth), s 16(1)(d).

⁷ International Labour Organisation, Walk Free, and the International Organization for Migration, *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage* (Geneva, 2022).

Mandating human rights due diligence will encourage reporting entities to properly identify and assess the risk of human rights abuses and modern slavery practices in their operations and supply chain. It is not an end in itself, but rather another necessary step to support reporting entities to mature their modern slavery response by providing a framework for mitigating risks that will, ultimately, help prevent the human rights harms associated with modern slavery.

The due diligence requirements in an amended Modern Slavery Act should be consistent with the standards in the *UN Guiding Principles on Business and Human Rights (UNGPs)* and the *OECD Guidelines for Multinational Enterprises*, and require an assessment of the risk of harm to people, not the business. As the UNGPs emphasise, human rights due diligence will vary in complexity according to the size and circumstances of the business, the salience of the risks, and the connection between the organisation and those risks.

The due diligence requirements should also be consistent with emerging international best practice, to the greatest extent possible, to support reporting entities operating internationally in complying with due diligence regimes in other jurisdictions. In this regard we note that the European Commission's proposed Directive on Corporate Sustainability Due Diligence, in its current form, will apply to Australian companies with a significant presence in the EU.

While mandatory human rights due diligence would represent a new and more onerous obligation on reporting entities, we note that any amendments to the Modern Slavery Act would be accompanied by a regulatory impact statement. As outlined below, we recommend that reporting entities be afforded a transitional period and provided with detailed guidance to support compliance with new mandatory human rights due diligence requirements.

Case study:

Client beginning their human rights due diligence journey.

Our client, a peak agricultural body, set out to establish a shared language for understanding human rights given the increased focus on modern slavery. This would support industry-specific human rights due diligence practices to start identifying their human rights risks and taking appropriate action. KPMG was engaged to conduct detailed research across the industry value chain using KPMG Banarra's Human Rights Risk Area Identification methodology. Identified human rights risk areas across the industry value chain were then validated in workshops with key industry representatives. Our client has been able to translate complex human rights concepts and reconcile different understandings of their human rights risks to continue maturing their human rights due diligence commitments into impactful action.

Recommendation 1

The Modern Slavery Act should be amended to include a positive duty on reporting entities to undertake and report on human rights due diligence to identify, assess, and manage risks of human rights abuses, including modern slavery practices, in their operations and supply chains..

Recommendation 2

The due diligence steps reporting entities are obliged to complete should be clearly articulated in the Modern Slavery Act, with additional guidance material developed by the Modern Slavery Business Engagement Unit and/or an independent statutory officer such as a Commonwealth Anti-Slavery Commissioner.

Recommendation 3

There should be a transitional period of 12-18 months between the introduction of new due diligence requirements into the Modern Slavery Act and the commencement of these provisions, to enable reporting entities to build necessary capabilities to meet their obligations.

Amending the mandatory reporting criteria in the Modern Slavery Act

If our recommendation above relating to mandatory human rights due diligence is accepted, this would necessitate an amendment to the mandatory reporting criteria in the Modern Slavery Act.

Additionally, based on our analysis of a selection of modern slavery statements, there is a need for further guidance in the Modern Slavery Act's mandatory reporting criteria on grievance mechanisms and effective actions taken to address the risk of modern slavery in supply chains.

We suggest there be separate mandatory criteria requiring reporting entities to address:

- their human rights due diligence process and outcomes for the reporting year;
- a reporting entity's grievance mechanisms, including the number of reports made and resolved for the reporting year; and
- any actions taken to address the risk of modern slavery, and an assessment of their effectiveness.

We recommend below that these adjustments to the mandatory reporting criteria be accompanied by further guidelines to support compliance with these measures.

Establishment of an independent Commonwealth Anti-Slavery Commissioner

KPMG supports the establishment of an independent statutory officer such a Commonwealth Anti-Slavery Commissioner to promote compliance with the Modern Slavery Act, including with any further human rights due diligence obligations, and facilitate collaboration between government, business, civil society, and academia to combat modern slavery. The Commissioner's independence will be important for the credibility and transparency of the position. We therefore recommend that the Commissioner carry out its functions independent of government, have security of tenure, and be empowered to scrutinise and publicly comment on the actions of government departments and

agencies, as well as other entities captured by the reporting requirements of the Act.

The functions of an independent Commonwealth Anti-Slavery Commissioner should include: monitoring compliance with the requirements of the Modern Slavery Act; providing assistance to survivors of modern slavery including facilitating access to support services; providing support to reporting entities; developing good practice guidelines; promoting and facilitating cooperation between relevant government agencies, industry associations, labour associations, and civil society; and undertaking research, including case studies from high-risk sectors. As part of their mandate to support reporting entities, the Commissioner should be empowered to develop questionnaire templates that can be adapted as needed and provided to suppliers as part of a reporting entity's due diligence process. The development and use of standard questionnaire templates should assist in lessening the administrative and compliance burden on smaller suppliers, many of which regularly receive questionnaires from clients and customers seeking similar information in different formats. These should address inherent and residual risk and promote better and smarter data to improve modern slavery risk management.

The independent Commonwealth Anti-Slavery Commissioner should also play an educational role, ensuring reporting entities are aware of how different forms of modern slavery and related human rights abuses can manifest. This role should include publication of an annual list of countries, regions, industries, and products with a high risk of modern slavery, including forced labour.

Another important function of an independent Commonwealth Anti-Slavery Commissioner should be to hold the Commonwealth Government and its agencies to account on their obligations under the Modern Slavery Act, the governments' own forward commitments to improvement, and the National Action Plan to Combat Modern Slavery 2020-25. The Commissioner should also lead discussions on a revised National Action Plan at a suitable time.

The likely remit of an independent statutory officer such as a Commonwealth Anti-Slavery Commissioner is significant, particularly if reporting obligations are expanded following this review. The office of the Commissioner should be both adequately resourced and given appropriate mandate, functions and powers to allow it to carry out its statutory functions effectively and without undue delay.

Recommendation 4

An independent, adequately-resourced statutory officer such as an Anti-Slavery Commissioner should be established through amendment to the Modern Slavery Act or by a separate Act.

Recommendation 5

The functions of the independent Commonwealth Anti-Slavery Commissioner should include: monitoring compliance with the requirements of the Modern Slavery Act; providing assistance to survivors of modern slavery including facilitating access to support services; providing support to reporting entities; promoting compliance with the Modern Slavery Act; developing good practice guidelines; supporting efficiency and good data in modern slavery responses by developing standard supplier questionnaire templates; and facilitating collaboration between government, business, civil society, and academia to combat modern slavery.

Appropriateness of the current reporting threshold

The Issues Paper prepared for the review of the Modern Slavery Act queries whether “the Act impose[s] an appropriate revenue test for ascertaining the \$100m threshold”.

In our view, the current test for ascertaining whether an entity is a reporting entity contained at section 5 of the Modern Slavery Act is appropriate. We have found that the threshold of annual consolidated revenue is less complex to calculate than revenue thresholds in some other Commonwealth legislation, including the *Payment Times Reporting Act 2020* (Cth)⁸, the *Taxation Administration Act 1953* (Cth),⁹ and the *Income Tax Assessment Act 1997* (Cth).¹⁰

The Issues Paper also queries whether “AU\$100m consolidated annual revenue [is] an appropriate threshold to

determine which entities are required to submit an annual statement under the Modern Slavery Act”.

The reporting threshold is a complicated issue and KPMG does not have a settled position on it. Many of the arguments for and against a lower reporting threshold that were raised during the development of the Modern Slavery Act remain valid.¹¹ In particular, we note that companies with annual consolidated revenue below \$100 million may find effective compliance more challenging compared to larger reporting entities as they are less likely to have designated officers managing an established human rights and modern slavery response. For this reason, if the reporting threshold is lowered, smaller companies will benefit from support and guidance to promote their effective compliance, which will likely require dedicated resourcing for the Commonwealth Government’s Modern Slavery Business Engagement Unit and/or an independent Commonwealth Anti-Slavery Commissioner. Specific consideration should also be given to the potential impact of a lower reporting threshold on resource-constrained NGOs.

We also note that while aligning the reporting threshold in the Modern Slavery Act with international best practice would be desirable, there is not yet a consistent global approach to this issue. For example, the UK Act and the California Transparency in Supply Chains Act 2010, provide for reporting thresholds of £36 million and US\$100 million. Proposals currently being debated in New Zealand and Canada would provide for reporting thresholds of NZ\$20 million and CA\$40 million in annual revenue respectively. Norway’s Transparency Act, Germany’s Supply Chain Due Diligence Act, France’s Corporate Duty of Vigilance Law, and the draft European Commission Corporate Sustainability Due Diligence directive each take a different approach to assessing reporting requirements, based on either annual revenue or turnover, number of employees, or a combination of both.

While KPMG Australia does not present a concluded view on this matter, we acknowledge that the overall objective of the Modern Slavery Act is supported by requiring more entities to comply with its requirements over time, and

⁸ *Payment Times Reporting Act 2020* (Cth), s 7.

⁹ *Taxation Administration Act 1953* (Cth), s 3C.

¹⁰ *Income Tax Assessment Act 1997* (Cth), Division 355.

¹¹ See for example: Parliament of Australia, Joint Standing Committee on Foreign Affairs, Defence and Trade, *Hidden in Plain Sight: An inquiry into establishing a Modern Slavery Act in Australia* (December 2017), 5.40-5.48; Parliament of Australia, Senate Legal and Constitutional Affairs Legislation Committee, *Modern Slavery Bill 2018 [Provisions]* (August 2018), 3.35-3.50.

by harmonising the requirements of the Modern Slavery Act with its international counterparts which may have a lower reporting threshold. However, if this route is chosen, it is imperative that this occurs in a supported and phased manner, noting that smaller reporting entities will require assistance and guidance to achieve meaningful compliance.

Further review of the Modern Slavery Act

The global business and human rights landscape is fast-changing, with a growing number of jurisdictions adopting or considering legislative requirements for companies to undertake human rights due diligence. As evidence of the effectiveness and impact of these regimes emerges, there will be opportunities for Australia to learn from international experience and shape its own Modern Slavery Act accordingly. We therefore recommended a further review of the Modern Slavery Act be conducted no more than three years after the current review is tabled.

If the current review results in amendments to the Modern Slavery Act requiring broader mandatory human rights due diligence from reporting entities, phased in following a transitional period – as we have recommended in this submission – the next review should consider as parts of its terms of reference whether the name of the Act and any associated statutory officer positions should be updated to reflect the new remit.

Recommendation 6

The Commonwealth Government should commission a further review of the Modern Slavery Act no more than three years after the current review is tabled.

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