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Submission to the Department of Home Affairs

*Modern Slavery Act 2018 (Cth)*

Draft Guidance for Reporting Entities

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*Anti-Slavery Australia is a specialist legal research and policy centre at the University of Technology Sydney working to end human trafficking, slavery and slavery-like practices such as forced labour and forced marriage in Australia. Anti-Slavery Australia provides legal advice and representation to men, women and children who have experienced human trafficking, slavery and slavery-like conditions in Australia.*

### **Acknowledgements**

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## EXECUTIVE SUMMARY

Anti-Slavery Australia welcomes the opportunity to provide comments on the Draft Guidance for Reporting Entities (Guidance) to the *Modern Slavery Act 2018* (Cth).

Anti-Slavery Australia recommends 12 amendments to the Guidance primarily focused on expanding guidance on the definition of modern slavery, motivators for voluntary reporting and further examples of how civil society organisations can support entities and respond to cases of modern slavery in Australia.

This submission draws upon Anti-Slavery Australia's research and advocacy as well as Anti-Slavery Australia's extensive experience for over 10 years in working with, and providing legal and migration advice to, survivors of human trafficking and slavery within Australia.

### 1. GENERAL COMMENTS

The Guidance provides a comprehensive framework for reporting entities. In particular, Anti-Slavery Australia welcomes the Guidance's use of the United Nations Guiding Principles on Business and Human Rights.

Anti-Slavery Australia suggests that overall, the Guidance could:

- a) reword parts of the Guidance to use language that is focused more on the worker or potential victim and their needs, rather than the entity or supplier;
- b) include more case studies or examples on modern slavery in Australia, and
- c) hyperlink internal references to sections, appendices or figures within the document for ease of use.

### 2. COMMENTS ON CHAPTER 1: INTRODUCTION

*Amend Figure 1, page 9 – How does modern slavery impact your entity?*

Anti-Slavery Australia welcomes and supports the Guidance's acknowledgment that collaboration between business, government, civil society, investors and consumers is vital in combating modern slavery. Civil society organisations have spent many years collaborating and engaging with business, government, consumers and survivors to end modern slavery.

In recognition of that crucial role, Anti-Slavery Australia suggests that 'civil society' in Figure 1 include an additional point of 'supports survivors' to acknowledge the work that civil society plays in directly supporting people affected by modern slavery.

### 3. COMMENTS ON CHAPTER 2: DO I NEED TO REPORT?

*Amend the heading 'Why is this requirement in the Modern Slavery Act?', page 16*

For the sake of clarity, Anti-Slavery Australia suggests amending 'Why is this requirement in the Modern Slavery Act?' (on page 16) to 'Why is reporting a requirement in the Modern Slavery Act?'

*Expand on the explanations at paragraphs 39.1 or 40.1, page 16*

Anti-Slavery Australia recommends that this chapter acknowledge (at 39.1 or 40.1) that all businesses have a responsibility to respect human rights before going on to outline that the reporting requirement only applies to businesses with consolidated revenue of at least \$100 million. This is consistent with Principle 14 of the UN Guiding Principles on Business and Human Rights:

14. The responsibility of business enterprises to respect human rights applies to all enterprises regardless of their size, sector, operational context, ownership and structure. Nevertheless, the scale and complexity of the means through which enterprises meet that responsibility may vary according to these factors and with the severity of the enterprise's adverse human rights impacts.

*Provide further guidance to help business understand the meaning of 'carries on business in Australia', page 17*

Currently, the "How to: Determine if your entity is an Australian entity or a foreign entity carrying on a business in Australia" box on page 17 does not provide any guidance on how an entity (which is not a foreign corporation) might determine it meets the definition of section 21 of the *Corporations Act 2001* (Cth).

Anti-Slavery Australia recommends including a reference to:

- a. guidance materials issued by the ASIC or the ATO, or
- b. examples taken from recent case law on the interpretation of section 21,

to assist entities in understanding this threshold. For example, "[Regulatory Guide 235 - Registering your business name](#)" issued by ASIC includes a section at RG 235.31-34 that provides a plain English explanation of what 'What does 'carrying on a business' mean?'

## **4. COMMENTS ON CHAPTER 3: CAN I REPORT VOLUNTARILY?**

### *Additional reasons for reporting voluntarily*

Anti-Slavery Australia welcomes the opportunity provided to entities of any size, who conduct business in Australia, to be able to report publicly on their actions in assessing and addressing their modern slavery risks. However, Anti-Slavery Australia suggests that this chapter highlight how:

- a. voluntarily reporting is an opportunity to demonstrate leadership, and
- b. modern slavery can occur in the operations and supply chains of entities of any size.

For example, paragraph 49.1 could be expanded to include the following statement:

Smaller entities who do not meet the reporting requirements may be more aware of modern slavery risks in their business operations and may be better equipped to respond or support communities at risk where they operate. Entities who identify these risks proactively and support measures to prevent or reduce the risk of modern slavery display admirable corporate citizenship.

## **5. COMMENTS ON CHAPTER 4: WHEN DO I REPORT?**

### *Amend title of Figure 4, page 21*

Anti-Slavery Australia suggest amending the title of Figure 4 to ‘Timeline for reporting *for entities operating on an Australian Financial Year*’ (amendments in italics) to acknowledge and clarify that entities will have a variety of reporting periods.

## **6. COMMENTS ON APPENDIX 1: WHAT IS MODERN SLAVERY?**

### *Include references to additional definitions of modern slavery, page 59*

The appendix refers to ‘clear legal definition[s] in international or Australian law’. Anti-Slavery Australia suggests including an additional appendix or table below the description that lists the Australian laws and international treaties that have definitions of modern slavery, for example:

- a. *Criminal Code Act 1995* (Cth)
- b. *Modern Slavery Act 2018* (Cth)

- c. *Modern Slavery Act 2018 (NSW)*
- d. *International Convention to Suppress the Slave Trade and Slavery (1926)*
- e. *ILO Convention (No. 29) concerning Forced or Compulsory Labour (1930)*
- f. *Supplementary Convention on the Abolition of Slavery, the Slave Trade and Practices similar to Slavery (1956)*
- g. *Protocol to Suppress, Prevent and Punish Trafficking in Persons, Especially Women and Children (2000)*
- h. *ILO Convention (No. 182) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (1999).*

*Include an additional example of forced marriage in Table Three: Types of Modern Slavery, page 61*

Anti-Slavery Australia anticipates that many reporting entities will struggle to identify how their supply chains could cause or contribute to a forced marriage due to the private and personal nature of marriage practices amongst their workers. The example of forced marriage listed on page 61 of the Guidance should include an additional example that is specific to the Australian context and focuses on entities whose core activities in their supply chain could be found to cause or contribute to forced marriage.

Religious institutions are the most likely entities to be at risk of causing or contributing to forced marriage because they are directly involved in the performance of marriages and training of marriage celebrants. One of the case examples should highlight religious institutions' unique role in being involved potentially with both the families and parties to a marriage prior to, and during, a ceremony through the oversight of marriage ceremonies or marriage preparation courses with parties.

An example of a forced marriage within this context is as follows:

A girl is sponsored on a prospective marriage visa to come to Australia to marry her a man chosen for her by her parents. When she arrives, she lives with her fiancé and his family who attend the local church. The girl's parents arranged this marriage without her knowledge or consent, forged her identity documents to increase her age from 16 years old to 18 years old and paid large amounts of money to the fiancé hoping that he will look after their daughter well in Australia.

When the girl arrives, she is not allowed to contact her parents, access any money given to her by her parents or leave the home. She pleads with her fiancé to allow her to return to her parents and break the engagement. He refuses.

The marriage celebrant who is to perform the ceremony tries to meet with the couple a few months before the wedding is planned but the fiancé keeps cancelling the appointments and eventually comes to an appointment alone to provide the documents needed to notify authorities about the upcoming marriage.

At the wedding, the marriage celebrant observes that the girl looks very young, speaks limited English and is unsteady on her feet. During the ceremony, the fiancé's mother insists that she will interpret the questions asked by the marriage celebrant to the woman and will interpret the girl's responses on her behalf. The marriage celebrant observes that the girl is escorted by the fiancé's family members wherever she goes.

## **7. COMMENTS ON APPENDIX 3: HOW DO I RESPOND TO A CASE OF MODERN SLAVERY?**

*Include examples to help illustrate considerations in responding to a case of modern slavery, page 67*

Anti-Slavery Australia recommends that more examples accompany each of the bullet points in this appendix.

For example, '[r]ecognise that you may not be aware of all the victims involved or the extent of the exploitation' (on page 68) could include an example that states 'you have identified that one of your contractors uses forced labour at their farm; however this contractor may also have forced labourers on neighbouring farms that you're not aware of'.

Similarly, examples of '[r]eputable international and local organisations and civil society groups' could be listed to help entities '[c]onsider opportunities to collaborate with international and local organisations or civil society groups' (on page 68).

In order to provide guidance to entities on civil society organisations who have worked closely with government and businesses over the last decade, a list of civil society organisations in Australia could be included in this appendix, drawn from the Referral Guide in the National Action Plan to Combat Human Trafficking and Slavery 2015-2019 or membership of the National Roundtable on Human Trafficking and Slavery. A list of international civil society organisations could be drawn from a [list provided by the United Nations Human Rights Office of the High Commissioner](#).

*Include an additional bullet point that identifies Anti-Slavery Australia's services and provides guidance on how to respond to a case of modern slavery in Australia, page 68*

Drawing on the content of the bullet point "Consider whether and how to involve law enforcement" (bottom of page 67), the Guidance should include a separate bullet point that outlines a best practice response to identified cases of modern slavery in Australia, consistent with pillar four, victim support and protection, of the National Action Plan to Combat Human Trafficking and Slavery 2015-19.

Anti-Slavery Australia suggests amending the current bullet point to refer to considerations relevant to working with law enforcement overseas and include an additional bullet point to outline the specific response NGOs, like Anti-Slavery Australia, can provide in response to cases of modern slavery identified in Australia. For example:

## **If the case of modern slavery is in Australia, consider local support options and law enforcement**

In Australia, there are a number of government agencies and civil society organisations that can assist you in assessing and reporting cases of modern slavery and seeking support for victims. Your response to a potential case should ensure that any actions you take do not harm any victim or survivor of modern slavery. Victims are often scared to report their situation to authorities for fear they will be harmed or deported.

You should consider the needs of the victim including giving them the opportunity to seek independent, confidential advice or legal and migration assistance. Anti-Slavery Australia offers a confidential, national advice line (Mon-Fri, 9am-5pm AEST) to support entities and victims in understanding what migration, legal or support options are available for victims in Australia. They work closely with government and civil society partners.

If someone is at risk of immediate harm, call Triple Zero (000). Any suspected situations of modern slavery can be reported to the Australian Federal Police on 131 237. The Australian Federal Police can refer victims to an Australian Government funded support program run nationally by the Australian Red Cross.

### **Example of a response to a case of modern slavery in Australia**

May was trafficked to Australia, lured by the prospect of making money to help her sister study nursing. The recruiter/trafficker obtained her passport and visa and travelled with her on the plane to Sydney. He made her work from 7.30am-11.00pm in a local factory, 7 days a week and paid her \$10 per hour. He threatened to cancel the woman's visa and hurt her family back home if May went to the authorities. May called Anti-Slavery Australia, who provided advice and connected her to specialised services and supports. Anti-Slavery Australia also referred her to the Australian Federal Police, who then linked her in with the Australian Red Cross who provide the Support for Trafficked People program. Anti-Slavery Australia helped her obtain a personal protection order against the recruiter/trafficker and a permanent visa to stay in Australia. She is now an Australian citizen and secure emotionally and physically.



## 8. COMMENTS ON APPENDIX 5: HELPFUL RESOURCES

Anti-Slavery Australia suggests that the helpful resources include Anti-Slavery Australia's e-learning course (pages 71 to 73). Developed through a previous grant provided by the Australian Government, over 60,000 lessons have already been completed by users and feedback has continued to be extremely positive. Following the enactment of the *Modern Slavery Act 2018* (Cth), Anti-Slavery Australia has seen increased interest in the course, particularly from business.

Title	Overview	Why should I read this?
Anti-Slavery Australia e-learning course	Online course with separate modules covering different forms of modern slavery.	To learn more about modern slavery.