

17 May 2019

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Ms Rebecca Mills
Director, Modern Slavery Business Engagement Unit
Department of Home Affairs
Canberra ACT 2600

By email: slavery.consultations@homeaffairs.gov.au

Dear Rebecca,

Re: International Justice Mission's submission on the Modern Slavery Act 2018: Draft Guidance for Reporting Entities

Thank you for the opportunity to provide a submission on the Modern Slavery Act 2018: Draft Guidance for Reporting Entities (Draft Guidance).

We wish to congratulate you and your team for all your efforts on both the Modern Slavery Act 2018 (the Act) and the Draft Guidance (Guide). International Justice Mission Australia (IJM) is pleased to see the Australian Government (the Government) taking a leading role in the effort to eradicate modern forms of slavery from the supply chains of Australian corporate and governmental entities. We are hopeful that this legislation and the Guide will have a real impact on ending modern slavery.

As the largest anti-slavery organisation in the world, IJM brings a unique voice to the modern slavery discussion in Australia. We have seen the real and potential benefits business can have on modern slavery in the developing world. Globally, IJM partners with corporations to both raise awareness of the problems of modern slavery and to fuel the work we do with local authorities to rescue victims, restore survivors, to strengthen criminal justice systems and to bring an end to impunity for perpetrators of crimes of modern slavery. We believe a stronger justice system in those places will not only help protect the poor from violence, it will also provide a more stable environment in which Australian (and other) businesses can operate.

Please find attached our submission on the Draft Guidance. Feel free to contact us if you have any questions or require further information.

Yours faithfully,

A handwritten signature in blue ink, appearing to read 'Caroline Best'.

Caroline Best
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International Justice Mission’s submission on The Modern Slavery Act 2018: Draft Guidance for reporting entities

Overview

1. The Draft Guidance is a clear and practical guide to the Act, designed to assist certain entities fulfil their reporting requirements on modern slavery. We recognise that the reporting requirement may seem daunting to some entities, but we believe the Guide will provide those entities with a practical path to reporting.
2. We understand the Guide will be considered a “living document” in that the Government may choose to amend or add further information to the document. We are in support of this concept and process, and consider that it fits well with the planned review process for the Act and associated rules.¹ In the following submission we have taken the opportunity to outline some small suggestions for the Guide.
3. We would also like to encourage the Government to take advantage of the opportunity presented by this Act and Guidance to highlight and encourage business to take a best practice approach to the reporting requirement. We believe the positive portrayal of case examples of actual business making a positive impact on modern slavery could help build momentum and interest in the process. This could occur through case studies or spotlight articles in the Guidance or on the Government’s Modern Slavery webpage.

The Reporting Requirement as part of Australia’s broader response to modern slavery (p11)

4. We suggest the addition of a separate paragraph (after paragraph 19.1) that reminds entities that:

“The reporting requirement is a tool that businesses can use to assess how they can best facilitate business practices which respect human rights and contribute to the reduction in prevalence of modern slavery.”

We consider this will further frame the reporting requirement as a helpful and positive lever for businesses as they seek means to improve their potential modern slavery risks, particularly in the context of human rights obligations.

5. We appreciate the reporting requirement is just one part of the Government’s response to modern slavery domestically and overseas, fitting into a larger framework that includes a functioning domestic criminal justice system and a National Action Plan of Human Trafficking and Slavery. We encourage the Government to continue to pursue measures that develop the criminal justice system response to modern slavery in overseas jurisdictions.

¹ Modern Slavery Act 2018, section 24

How to work out which Act to comply with? (p16)

6. Directions provided on reporting across international jurisdictions seem straightforward, but we are unclear as to how the Act and the Modern Slavery Act (NSW) will interact.² Given the title of the text box, it may be useful to add some further details as to where NSW businesses should look for further information, for example, to the NSW Government or the NSW Interim Anti-Slavery Commissioner.

Real life, best practice examples (pps10 & 25)

7. We understand that the hypothetical case studies have been provided to encourage business to think about their reporting requirements, without being too confrontational or prescriptive. However, we have some concerns that examples like Blue Sky Construction and AlphaBeta Resources make the requirement too vague. Working towards the 'race to the top' notion, we suggest that later iterations of the Guide include examples of businesses demonstrating best practices, or businesses demonstrating a thorough approach to initiating organisational change or identifying and addressing areas of risk. We are hopeful that this information may be provided in compliant Modern Slavery Statements.
8. The Guide and Modern Slavery webpage represent significant opportunity for the Government to showcase not only the utility of the legislation, but the potential for business best practice in Australia and overseas. The UK report "Modern Slavery Reporting: Case Studies of Leading Practice", published by the Business and Human Rights Centre³ provides and celebrates some examples of how entities have responded to reporting requirements.

Supply chains (p27)

9. In addition to the suggested ways to describe supply chains (Table One, page 27), we suggest an additional bullet point to:
 - Provide facts and figures about the entity's supply chains, such as the total quantity of goods sourced from different countries and regions.

We believe this will encourage greater specificity of the details provided, in turn requiring companies to know more about their supply chains and hopefully increases the likelihood they will identify and remedy risks.

Learn More box: Reporting on Modern Slavery Cases (p29)

10. This section deals with a sensitive topic, and we are encouraged by the Government's victim-centric approach. We would suggest that a further bullet point under the "DO" list could note:

² P 16 "Learn More" box.

³ <https://www.business-humanrights.org/sites/default/files/Modern%20Slavery%20Act%20-%20Positive%20Actions%20-%20FINAL2.pdf>

- consider partnering with or supporting NGOs / civil society organisations with relevant experience of modern slavery cases

Mandatory Criterion 7: Other relevant information (p48)

11. From our perspective, we are hopeful that this section will be used by business to outline how it has gone beyond the reporting requirements to address modern slavery. The details contained in this section may feed our suggested concept of spotlighting and applauding business efforts to assess and address modern slavery risks.

Appendix 1: What is modern slavery (p59)

12. In regard to the final paragraph of this Appendix, we would suggest that the definition could be strengthened and improved if it included language articulating that cases of human slavery are caused by a perpetrator, and the most effective solution to addressing the root cause is a predictable law enforcement response that ends impunity and creates criminal deterrence. We suggest:

“Modern slavery can happen in any industry and any country. Modern slavery victims are often vulnerable to exploitation **by perpetrators** due to their background, migration status ...”⁴

Table Three: Types of modern slavery (definitions) (p60)

13. We would propose the definition of “debt bondage”(page 61) be slightly altered to read:

“Describes situations where the victim’s services **and/or forfeiture of freedoms** are pledged as security for a debt, **often established or maintained through coercion or deceit**. The debt may be manifestly excessive, or the victim’s services may not be **limited, defined, or rightly** applied to liquidate the debt.”⁵

This definition is based on IJM’s work on bonded labour slavery in India, aligned with India’s *The Bonded Labour System (Abolition) Act 1976*.

14. We would also propose an amendment to the definition of “trafficking in persons” as follows:

Describes the recruitment, **transport**, harbouring **or receipt of a person by improper means** for the purpose of exploitation or forced labour.”⁶

This suggestion is based on the definition provided in the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

⁴ IJM suggested additional words in bold.

⁵ As above for footnote 4.

⁶ As above for footnote 4.

This definition guides our work across countries such as Thailand, Cambodia, India, The Philippines and the Dominican Republic.

Conclusion

15. We are encouraged by the Government's efforts to develop the law and guidance materials on modern slavery. We believe that the Act and the Guide will provide a tangible way for Government and business to make a positive impact in the fight against modern slavery.