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I. INTRODUCTION

International Justice Mission (IJM) welcomes this opportunity to provide comments and recommendations in response to the **Review of Australia's Modern Slavery Act 2018 Issues Paper**. As the largest global anti-slavery organisation, IJM brings a unique voice to the modern slavery discussion in Australia. For over 20 years, IJM has been working to combat modern slavery in communities around the world by partnering with local authorities to rescue victims, restore survivors to safety and strength, bring criminals to justice and help strengthen justice systems.

The lived experience and expertise of survivors of modern slavery provide critical insight and should inform policy, strategy, legislation and development programming concerning modern slavery and human trafficking. The Annex to IJM's Submission is a Statement from the Leadership Council of the Global Survivor Network, an international group of survivor leaders shaping and leading a movement to protect people from violence.

The review of the *Modern Slavery Act 2018* ("MSA") comes at a time when there is evident need for heightened global effort to end the scourge of modern slavery. The Covid-19 pandemic saw widespread reports of increases in forced labour and millions of workers exposed to heightened vulnerability to modern slavery.¹ Current levels of extreme poverty, which is one important metric of forced labour risk, remains much higher than the pre-pandemic trajectory.² The recent *Global Estimates of Modern Slavery*³ indicate that the number of enslaved people has increased in recent years – from 40.3 million in 2016 to 49.6 million in 2021. This is despite recent efforts globally to address modern slavery and the implementation of supply chain transparency and due diligence legislation in many jurisdictions.

The persistence of slavery in the world today calls for a collaborative effort by governments, corporations, civil society and other stakeholders, to use all measures at their disposal – including regulatory tools – to work to eliminate modern slavery. The review of Australia's Modern Slavery Act presents a timely opportunity to strengthen Australia's response to more adequately respond to this worsening situation.

II. SUMMARY OF RECOMMENDATIONS

IJM makes the following specific recommendations while mindful that greater transparency reporting and robust due diligence measures have limited impact in reducing prevalence of slavery on the ground. We wish to emphasise that along with relying on regulatory tools and compliance measures, there is need for governments and corporates to invest in proven solutions that address the *drivers* of slavery.

In relation to the Modern Slavery Act regime, IJM recommends:

1. That the Act confer authority to the regulator to **publish reporting standards and guidelines** that reporting entities are expected to follow in their modern slavery statements, including specific due diligence measures with respect to high-risk sectors, products or regions. (*Question 15, 16*)

¹ See discussion in *Global Estimates of Modern Slavery*, pp. 27-28.

² As cited in *Global Estimates of Modern Slavery*, the World Bank Estimates an additional 75M to 95M people living in extreme poverty in 2022, compared to pre-pandemic projections (p. 27).

³ *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage*, Geneva, 12 September 2022 [Global Estimates of Modern Slavery 2022 | Walk Free](#)

2. That the transparency reporting regime be expanded to impose **mandatory due diligence** obligation on reporting entities. These obligations would be phased in, depending on the size of the company. *(Issues Paper Question 4)*
3. That reporting entities in identifying their modern slavery risks, be required to **focus on the portions of their supply chain that carry the greatest risk** of modern slavery and the steps taken to address those risks. *(Question 3)*
4. That entities be required to **report on the effectiveness of their modern slavery due diligence** measures. *(Question 10)*
5. That the Act implement a robust and diverse **civil penalty** scheme – comprising of monetary fines, infringement notices, enforceable undertakings, public listing for non-compliance and debarment from public procurement – for failure to comply with mandatory requirements of the Act. *(Question 17)*
6. That the Act provide for a **mechanism to investigate non-compliance** of obligations, that can be initiated either through a complaint or by the regulator. *(Question 16)*
7. That **funding and resourcing** for the implementation of the Act be increased to adequately provide for enforcement and investigation capabilities. *(Questions 15, 16, 17)*
8. That the MSA be amended to **require the Commonwealth to submit modern slavery statements for each government department** or submit one statement that clearly delineates the modern slavery risks and due diligence measures taken, according to each government department. *(Question 18)*
9. That the Modern Slavery Statements Register **publish an annually updated list of entities within the scope of the obligations of the Act** and that its functionality be improved to allow better searchability and aggregation of data. *(Question 22)*
10. That an **independent Anti-Slavery Commissioner** be established to administer and enforce the *Modern Slavery Act* and given authority to carry out enforcement actions and investigations, as well as play coordinative/educational functions. *(Question 23)*

III. RECOMMENDATIONS AND OPPORTUNITIES FOR REFORM

International Justice Mission makes the following recommendations in response to the questions in the Issues Paper. Our comments and recommendations are arranged according to the six main headings in the issues paper, and under each heading, we have indicated which questions in the Issues Paper we are addressing.

a. Impact of the Modern Slavery Act

Questions in Issues Paper

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| <ol style="list-style-type: none"> 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? 3. Should the MSA 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? 4. Should the MSA spell out more explicitly the due diligence steps required of entities to identify and address modern slavery risks? |
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The MSA has had a positive impact in increasing the visibility and relevance of modern slavery in Australian society. However, the Act focuses on basic transparency reporting, and in the absence of accountability and action to combat the roots of the problem, the regime's impact on the issue itself is limited.

The operation of the MSA has had the effect of creating greater awareness of modern slavery and has elevated its profile and importance as an issue, especially for corporations and government. The entities required to do transparency reporting are examining their supply chains for modern slavery risks and many entities have modern slavery policies and have incorporated supplier codes of conduct into contracts with suppliers.

Despite that, various independent reviews of statements published in the Modern Slavery Register found, in general, that the level of reporting was inadequate.⁴ Common themes across these assessments included insufficient detail in reporting of company risk assessments, grievance mechanisms for vulnerable workers, response strategies, and assessment of the effectiveness of their strategies. One study found that over half of the statements failed to identify known modern slavery risks in particular high-risk sectors.⁵

As cited and summarised on page 58 of the Issues Paper, IJM's review, *Spot Fires in Supply Chains*, found that Australian corporations do not have a good understanding of modern slavery risks in their operations and supply chains. For example, despite over 90% of the companies identifying potential modern slavery risks, more than 72.3% did not provide any details of those risks identified beyond the first tier of their supply chain.

Simply looking at Tier 1 of an entity's supply chain will not identify the most salient modern slavery risks; most modern slavery occurs much further down the supply chain. There is a big gap between tier 1 of the supply chain of an Australian company and, for example, the person in forced labour on a fishing boat in the Thai fishing industry, catching fish that eventually ends up on an Australian dinner table. (See case example, box) Unless legislation requires companies to go much further than tier 1, and take effective measures where there is the most severe risk of modern slavery impacts on vulnerable people, legislation will not effectively reduce prevalence of slavery.

Further, consistent with findings in these other studies, IJM's review of modern slavery statements found that Australian companies were not taking adequate action in response to modern slavery risks. They were limited in their

Case study: Dom's story

Dom was an impoverished farmer with few sources of income in his rural Cambodian village. He followed a recruiter to Thailand with the promise of a lucrative job working on fishing vessels. After a long journey, he was handed over to a boat captain. Dom didn't realise at first, but later came to understand that he had been long.

Days were long with no rest, and workers often spent 18-20 hours hauling heavy nets full of fish. Men were forced to work even when they were sick. Simple mistakes resulted in being beaten, thrown overboard and left for dead. Dom only received a fraction of the wages he was promised.

He remembers: "When I was on the boat, I was suffering...I got thrown on with hot water or hit with a stingray tail even. I was scared for my life as they also carried guns with them. Some seamen even got killed and thrown overboard. I even saw some headless corpses."

Dom didn't know if he would ever see his family again or make it out alive. Dom was finally able to return home after six years, when his fishing vessel was seized by Indonesian authorities for fishing in illegal waters.

⁴ See, for example, Australian Council of Superannuation Investors, *Moving from paper to practice: ASX200 reporting under Australia's Modern Slavery Act* [ACSI ModernSlavery July2021.pdf](#); Monash University Business School, Centre for Financial Studies, *Measuring Disclosure Quality of Modern Slavery Statements* (Dec 2021) [MSD-White-paper-ASX300-WITH-COLOUR-KEY.pdf \(monash.edu\)](#); Walk Free, *Beyond Compliance in the Garment Sector: Assessing UK and Australian Modern Slavery Act statements produced by the garment industry and its investors* (Feb 2022) [Walk-Free-Beyond-Compliance-Garment-Industry.pdf \(walkfree.org\)](#)

⁵ Human Rights Law Centre, *Paper Promises? Evaluating the early impact of Australia's Modern Slavery Act* [Paper+Promises Australia+Modern+ Slavery+Act 7 FEB.pdf \(squarespace.com\)](#)

remediation measures and slow to establish trusted grievance mechanisms for people in modern slavery. Less than 20% of the corporations consulted, or had meaningful engagements, with people who are at risk of, or who are survivors of, modern slavery.

There is little evidence to indicate that requiring transparency reporting is having an impact on shielding vulnerable people against threats of enslavement.

The transparency framework approach to addressing modern slavery has not, to date, been effective at mitigating or reducing modern slavery risks to vulnerable people. It would seem that the focus has been on mitigating the risk to *companies*.

A more effective strategy for combating the risks to vulnerable people (as opposed to risk to companies) would require

- i. Identifying and prioritising modern slavery risk - *ie* to understand where the risk of the most severe modern slavery impacts on people is, with respect to the gravity of the potential harm, its prevalence, and how/whether it can be remediated;⁶
- ii. Compelling companies to take action to address incidents of modern slavery and mitigate modern slavery risks; as well as
- iii. Companies and government investing in proven solutions that address the drivers of slavery in source countries.

i) Identifying and prioritising risk

The MSA framework can be strengthened by providing more specific guidance to help reporting entities better understand and address modern slavery risks associated with their operations and supply chains. IJM, after releasing its assessment of modern slavery statements, ran a series of roundtable discussions with corporations. We found that in general, corporations do not know what is an acceptable standard for reporting under the Act, and those corporations who want to do better are asking for more direction.

IJM recommends that the legislation mandate an agency, such as an independent Anti-Slavery Commissioner, to provide regular updates and guidance to corporations that highlight modern slavery risks in high-risk regions and high-risk sectors. This could take the form of:

- Industry-specific or country-specific guidance, similar to those developed under the illegal logging regime. *Country Specific Guidelines*⁷ under the illegal logging regime identifies the particular information gathering and risk assessment that should be carried out depending on the country of origin of the timber.
- Compiling and maintaining a list of high-risk products, commodities, sectors, suppliers and/or sourcing regions goods, classes of goods and industry sectors at high risk for forced labour and child labour. This could draw upon, or be similar to the *US Department of Labor's List of Goods Produced by Child Labor or Forced Labor*. Reporting entities who have exposure to those products/sectors/supplies/regions on the list would have heightened reporting and due diligence obligations.

⁶ See Office of the NSW Anti-Slavery Commissioner, *NSW Public Procurement and Modern Slavery*, Discussion Paper #001 (October 2022) [Strategic plan and discussion paper \(nsw.gov.au\)](https://www.nsw.gov.au/strategic-plan-and-discussion-paper).

⁷ [Resources for importers - DAWE](#)

Recommendation #1: that the Act require the regulator (such as an Anti-Slavery Commissioner) to issue regular guidance and directives on specific reporting or due diligence obligations on industries/sectors/regions that have high risk of modern slavery.

ii) Require companies to take action to address modern slavery (not just report risk)

The transparency reporting requirements in the MSA are an important first step in addressing modern slavery in supply chains, but it is clear (based on the experience of other countries such as the UK) that transparency alone will not bring about the changes needed to eliminate forced labour from supply chains. IJM's study on modern slavery statements found that Australian corporations, for the most part, conducted only limited due diligence on suppliers and have been slow to provide remedy for people in modern slavery. For example, 84.7% of company statements did not indicate a single instance where a company responded to instances or allegations of modern slavery in their operations or supply chains.

MSA should explicitly set out due diligence steps required of entities

The transparency premise of the Act should be extended to place a clear due diligence obligation on entities, beyond simply describing its "due diligence and remediation processes" (s. 16(1)(d)). There is need for legally binding and enforceable standards requiring corporations to carry out robust due diligence across the entire supply chain to identify risks, take action to prevent and mitigate adverse impacts and provide remedies. International momentum and stakeholder consensus is moving towards adopting mandatory due diligence frameworks, which is an obligation under the UN Guiding Principles on Business and Human Rights (UNGPs). International precedents exist currently in France, Germany, the Netherlands, Switzerland and Norway. Domestically, the *Illegal Logging Prohibition Act 2012 (Cth)* is an example of a due diligence framework.

Recommended model

Elements of such a mandatory due diligence law should include:

- a. Formal list, annually updated, of in-scope companies, set out in a central public repository (such as the modern slavery statement register) (*See section III.e. in this Submission*)
- b. Direction from the regulator (Anti-Slavery Commissioner) on specific modern slavery risks that companies are required to address in the current reporting year, based on a list updated annually, as referenced above at (i).
- c. Mandatory duty on entities to carry out robust due diligence to identify, bring to an end, prevent, mitigate and account for modern slavery across their entire value chain (including in their own operations, parent company, subsidiaries, suppliers and business relationships).
 - o This includes requiring companies to identify actual occurrences of modern slavery and potential modern slavery risks, to prevent and mitigate potential modern slavery impacts, and to bring to an end actual instance of modern slavery and to minimise their extent.
- d. Guidance from the regulator on undertaking risk assessments based on an analysis of modern slavery risks in supply chains, with a focus on portions of the supply chain that carry the highest risks of forced labour.

- e. A duty on corporations to take concrete action to address human rights infringements and forced labour drivers that corporations cause, contribute to or which are linked to their commercial practices.
- f. Regulatory body (such as an Anti-Slavery Commissioner) that exercises oversight, with powers to
 - i. Investigate accuracy and completeness of disclosed risks and adverse impacts
 - ii. Compel businesses to correct and complement the disclosure
 - iii. Impose sanctions for misleading and incomplete disclosures (*See section III.f.*)
- g. Enforcement measures, including civil penalties, enforced by a well-resourced regulator with investigative and sanctions powers clearly defined by legislation. (*See section III.c.1.*)
- h. Financial penalties could be applied to a fund that can be used for reparations to individuals or communities affected adversely by the acts and omissions of the penalised company.

Phased implementation recommended

We recommend that due diligence obligations be phased in, in a manner similar to the German *Law on Supply Chain Due Diligence* or the model in the proposed New Zealand legislation. Larger entities could be subject to due diligence requirements, with a grace period, while the obligations would commence for medium-sized entities at a later specified date.

The scope of the due diligence regime should, theoretically, require broader human rights due diligence, similar to jurisdictions that have implemented a due diligence model. Given the intersectionality and indivisibility of human rights, it is conceptually more cohesive to report instances of human rights violations when they arise in the supply chain, as opposed to only identifying and acting on modern slavery risks. However, we recommend an incremental approach in expanding transparency reporting requirements to due diligence obligations, in order to not overwhelm reporting entities who are not adequately meeting reporting obligations and mandatory criteria, and to allow time to assess compliance and develop more detailed and nuanced guidance.

Recommendation #2: that the transparency reporting regime be expanded to impose mandatory due diligence obligation on reporting entities. These obligations would be phased in, depending on the size of the company.

iii) Addressing drivers of slavery in source countries

It should be noted that transparency reporting and compliance with due diligence obligations by companies, without more, will have limited impact on actually reducing slavery amongst those most at risk. A truly effective modern slavery response must tackle slavery at its source. Specifically, governments and corporations should implement measures that deter criminals from continuing to enslave people.

IJM has seen, through casework experience, that where there is a public justice system that actually enforces the law and holds slavers and traffickers to account, the prevalence of slavery and human trafficking falls dramatically. For example,

- In Cambodia, from 2012 to 2015, the overall prevalence of commercial sexual exploitation of children declined by 73% across the three areas in which IJM worked

(Phnom Penh, Siem Reap, and Sihanoukville).⁸ The closure of brothels and “clean out” of former red-light districts like Svay Pak highlights the structural change that is possible when justice systems are strengthened.

- Similarly, an end-of-program evaluation of IJM’s work in addressing forced labour in the state of Tamil Nadu, India, from 2001-2021, found that the prevalence of bonded labour in the state had been drastically reduced from 29.9% to 5.4% (a relative reduction of 81.9%).

Although technically outside the scope of this Review, we urge both corporates and the government to invest in proven solutions that will address impunity of traffickers, strengthen justice systems and reduce the prevalence of slavery on the ground.

b. Modern Slavery Act Reporting Requirements

Question from Issue Paper

10. Are the mandatory reporting criteria in the MSA appropriate – both substantively and how they are framed?

The current mandatory reporting criteria outlined in s. 16(1) of the MSA give rise to a number of issues:

- The reporting criteria do not yield ‘meaningful’ reporting – many entities front-load their reports on company structure, operations and generic information on supply chains, or describe in opaque detail measures they have taken throughout the reporting year but not any further goals and roadmaps.
- Corporations can comply with reporting requirements without altering the commercial practices that lead to forced labour and exploitation. The reporting criteria theoretically allow for companies to report they have made no progress, or regressed in their approach. To date, transparency has sparked disclosure with little action towards meaningful change.
- Section 16(1)(f) only requires consultation with related entities, but does not require consultation with any other stakeholder – such as potentially affected workers, unions or survivors – that could assist in improving transparency.

To ensure greater transparency and to move entities towards meaningful action, additional mandatory reporting criteria could include:

- An analysis of modern slavery risk with particular focus on the parts of the reporting entity’s operations and supply chains that carry the highest risks of modern slavery, and the steps being taken to assess and manage that risk.
- Any measures taken to remediate any actual instances of modern slavery.
- Greater disclosure and analysis of the effectiveness of the entity’s modern slavery due diligence measures. These include
 - reviewing ethical supplier agreements, modern slavery policies, staff training and evaluating whether they are helping to protect workers
 - reviewing an entity’s performance against their metrics used to track progress against modern slavery goals (possibly including audit findings, de-identified

⁸ The full report on IJM’s work tackling commercial sexual exploitation of children in Cambodia between 2004-2014 can be found here: [2015-Evaluation-of-IJM-CSEC-Program-in-Cambodia-Final-Report.pdf](#)

whistleblower findings, published policies and where they have been used, etc).

- Greater disclosure and analysis on the specific measures actually taken (e.g. the difference between stating ‘training’ was undertaken, and the specifics of this training).
- An evaluation of the effectiveness of the reporting entity’s monitoring and certification tools in relation to forced labour and reporting on the effectiveness and outcomes of these tools rather than merely disclose that they are using them.
- Consultation with survivors of slavery and/or stakeholders from vulnerable groups, to inform and improve a corporation’s modern slavery response.

Recommendations

#3: that reporting entities in identifying their modern slavery risks, be required to focus on the portions of their supply chain that carry the greatest risk of modern slavery and the steps taken to address those risks.

#4: that entities be required to report on the effectiveness of their modern slavery due diligence measures.

c. Enforcement of the Modern Slavery Act Reporting Obligations

Questions from Issues Paper:

15. Has government administrative action been effective in fostering a positive compliance ethic? What other administrative steps could be taken to improve compliance?
16. Should the Modern Slavery Act contain additional enforcement measures – such as the publication of regulatory standards for modern slavery reporting?
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?

Experience from other jurisdictions has made clear that voluntary measures to identify and address modern slavery in supply chains are not effective in compelling change to corporate behaviour.⁹ Independent studies assessing modern slavery statements of Australian companies published in the Modern Slavery Statements Register – some of which are referenced in the Issues Paper – found that there was wide divergence among the statements in the quality of reporting and inadequate detail on how entities identified and responded to modern slavery risks. There is need for enforcement measures to provide “teeth” to mandatory requirements, and not simply rely on market forces (such as customer demand, civil society organisations) to compel such change. Thus, IJM recommends that the MSA make provision for penalties and sanctions to be imposed for failure to comply with mandatory requirements of the Act.

An examination of analogous regimes under Australian law indicate that a smart mix of regulatory options is required to compel changes in corporate behaviour. An example of an enforcement regime that can serve as a model for penalties under the MSA is the *Anti-*

⁹ Business and Human Rights Resource Centre report on the UK Modern Slavery Act concluded: “The UK Modern Slavery Act has been an important experiment in ‘nudge’ strategies to encourage voluntary corporate transparency to drive systemic change in company operations and supply chains. All the evidence now points to the fact that this fails: transparency is necessary but relying on voluntary disclosure is insufficient to prevent even the worst forms of labour abuse.”

Germany’s move towards a mandatory HRDD regime was initiated after voluntary measures were found to be ineffective in securing respect for rights. “According to the results of a survey of larger German companies conducted by the Federal Foreign Office, only 22 % of German businesses voluntarily monitor their foreign subsidiaries and contractors for human rights compliance.” [Towards a mandatory EU system of due diligence for supply chains \(europa.eu\)](#) p. 6.

Money Laundering and Counter-Terrorism Financing Act 2006 (Cth) (AML/CTF Act), which imposes civil penalties in relation to a variety of different reporting obligations, including for transaction thresholds, suspicious matters, international fund transfer instructions, cross-border movements and AUSTRAC compliance. This is supplemented by a range of enforcement actions available to AUSTRAC including civil penalty orders, enforceable undertakings, infringement notices and remedial directions.¹⁰

In the last two years, AUSTRAC has engaged in high-profile regulatory actions, from financial institutions (e.g. NAB, Westpac, CBA) to gambling institutions (Star Entertainment, Crown, Entain Group Pty Ltd). AUSTRAC also provides regular guidance on specific matters to assist reporting entities with regulatory compliance. The dual approach of providing resources to work collaboratively with reporting entities, as well as enforcement action, seem to be effective in driving material change in anti-money laundering and terrorism financing efforts. For example, the development of particular guidance such as financial crime guidance published by Fintel Alliance have resulted in increases in suspicious matter reports from reporting entities.¹¹

IJM recommends that the MSA adopt this two-pronged approach of enforcement action and providing guidance and resources to reporting entities (administrative measures) to improve compliance.

i. Penalties and Sanctions:

Type of penalties:

IJM recommends that the MSA similarly incorporate a range of escalating penalties and enforcement measures, including:

- pecuniary penalties (payable periodically or as a lump-sum);
- infringement notices;
- public listing of non-compliance (for reporting obligations or other breaches);
- remedial directions;
- enforceable undertakings;
- debarment from government procurement (or alternatively, incentives to reward companies addressing modern slavery and human rights risks)

Monies from financial penalties could be applied to a fund that can be used for reparations to individuals or communities affected adversely by the acts and omissions of the penalised company.

Conduct to be penalised:

Where the primary obligation remains unchanged and remains limited to just reporting, penalties should apply for:

- failure to submit a modern slavery statement by the deadline of the reporting period. This would require that there be a list of in-scope entities required to submit a statement under the MSA¹²
- failure to submit a modern slavery statement that addresses all of the mandatory reporting criteria
- knowingly providing false or misleading information in statements

¹⁰ *Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (Cth)* Part 15.

¹¹ [Case study: Real outcomes resulting from financial crime guides | AUSTRAC](#)

¹² See discussion under “e. Modern Slavery Statement Register”, below.

- failure to comply with Minister’s request under s. 16A(1) to explain why entity has not adequately complied with reporting requirement
- failure to comply with Minister’s order under s. 16A(1) to take specified remedial action.

Additionally, where the primary obligation expands to due diligence, penalties should also apply to:

- failure to meet the due diligence obligations
- conduct that causes harm, loss and damage arising from the entity’s failure to prevent modern slavery harm in their operations, supply and value chains.

Who should apply the penalty:

As noted in the Issues Paper, under Chapter III of the Australian Constitution the imposition of a monetary fine is classified as an exclusively judicial function that can only be exercised by a federal court. We recommend that the regulator (Anti-Slavery Commissioner or the relevant Minister) be given authority under the MSA to apply to the Federal Court (or a court with federal jurisdiction) for an order to enforce monetary fines, injunctions, orders for specific performance or breaches of enforceable undertakings, under a provision similar to the authority given to the AUSTRAC CEO to apply for a civil penalty order under the AML/CTF Act.¹³

An alternate route would be to make provision under the MSA to have civil penalty provisions made enforceable under Part 4 of the *Regulatory Powers (Standard Provisions) Act 2014*. This would be consistent with the approach taken for the enforcement of civil penalty orders under the *Online Safety Act 2021*, the *Illegal Logging Prohibition Act 2012* and the *Privacy Act 1988 (Cth)*.¹⁴

For other ‘administrative penalties’ that do not require judicial power, the regulator (Anti-Slavery Commissioner or relevant Minister) could apply the relevant penalty.

Procedure to be followed:

Procedurally, the enforcement scheme should follow an escalating penalty model. Breaches of obligations would first incur an infringement notice, and failure to remedy this would enable the regulator to apply for penalties such as fines, remedial directions or enforceable undertakings, as well as list the entity on a public register for non-compliance. Repeated breaches of obligations would facilitate for steeper punishments and potentially debarment from public procurement processes.

Recommendation #5: that the Act implement a robust and diverse civil penalty scheme – comprising of monetary fines, infringement notices, enforceable undertakings, public listing for non-compliance and debarment from public procurement – for failure to comply with mandatory requirements of the Act.

ii. Investigation and Complaints Process

Transparency and due diligence with respect to modern slavery risks can be further strengthened by providing for an investigation and complaints process. Under the MSA, the

¹³ See sections 175-176, AML/CTF Act.

¹⁴ See *Online Safety Act 2021*, s. 162; *Illegal Logging Prohibition Act 2012*, s. 23; *Privacy Act 1988 (Cth)*, s. 80U.

regulator (the Anti-Slavery Commissioner or Minister) should be given powers to start investigations *ex officio* or by complaint.

An investigation and complaint process in relation to reporting obligations could encompass a variety of measures, including requests for further information, complaints for suspected misleading material or inaccuracies in reports, investigative powers in relation to the accuracy and completeness of reporting/due diligence obligations, powers to compel entities to produce evidence or furnish further particulars, and referrals.

To enable such investigations on reporting obligations, the regulator should have powers to request further information, compel evidence, documents and testimony.¹⁵ The regulator should also be empowered to publish findings of investigations, order specific performances and impose penalties, as outlined above.

Provisions should be made for stakeholders and interested parties to

- (i) request information from reporting entities about their modern slavery risks and due diligence program; and
- (ii) initiate complaints regarding suspected discrepancies and inaccuracies in reporting.

An example of the first measure is set out in Norway's *Transparency Act*, where any person is able to request (in writing) further information pertaining to a company's due diligence program, and this information is to be provided within a reasonable timeframe.¹⁶

Other jurisdictions provide for a complaints process. Under the Dutch *Child Labour Law*, any stakeholder with concrete evidence that a company's goods or services were produced with child labour can submit a complaint to the company, and if not resolved, can submit the complaint to the regulator. The regulator may issue a legally binding instruction ordering the company to conduct the required due diligence and make the appropriate declaration.

Recommendation #6: that the Act provide for a mechanism to investigate non-compliance of obligations, that can be initiated either through a complaint or by the regulator.

iii. Resourcing

Increased funding is necessary to implement these enforcement measures. Enforcement and implementation of the MSA must be prioritised and adequately resourced to ensure that the legislation achieves its intended effect. Adequate resourcing is particularly relevant where the regulator has investigative powers. These enforcement capabilities will only be effective where there is a commensurate in funding for the regulator. For example, the Australian Transaction Reports and Analysis Centre (AUSTRAC) was only able to significantly increase its enforcement capacities following federal funding of \$104 million and an additional 67 new staff in the 2020-21 Federal Budget.¹⁷

Recommendation #7: that funding and resourcing for the implementation of the Act be increased to adequately provide for enforcement and investigation capabilities.

¹⁵ See for example, the powers of the eSafety Commissioner under Part 14, *Online Safety Act 2021*.

¹⁶ Under the *Norwegian Transparency Act*, a request for information can be denied where it (i) does not contain sufficient information to identify what information is sought; (ii) is patently unreasonable; (iii) for personal information; or (iv) is commercially sensitive information.

¹⁷ [Federal Budget funding boost for AUSTRAC | AUSTRAC](#)

iv. Administrative compliance

Guidance

The MSA should confer authority to the regulator (Anti-Slavery Commissioner or Minister) to publish guidelines or standards that reporting entities are expected to follow for their modern slavery statements.

As set out earlier in section III.a.i), this might take the form of industry-specific or country-specific guidance, similar to those developed under the illegal logging regime. A review of the *Illegal Logging Prohibition Regulation 2012* and its associated due diligence regime has indicated that the regulatory community has itself taken proactive steps to comply with the illegal logging framework. For example, industry groups such as the Australian Timber Importers Federation or the Timber Development Association were proactive in organising seminars on the laws and compliance, which has also been combined with continued education and outreach from the regulator.¹⁸ The content of this guidance appears to generally be consistently adopted and authoritative.

Other forms of guidance provided by regulators have been generally effective – such as AUSTRAC guidance, referred to in section III.c., above.

The guidance may also take the form of prescriptive guidance on heightened reporting requirements and specific due diligence measures required for entities operating in or sourcing from high-risk regions and industry sectors, or sourcing goods with high risk of being produced with forced labour or child labour, based on an annual list of such high-risk products, commodities, sectors, suppliers and/or sourcing regions.

See Recommendation #1: that the Act confer authority to the regulator to publish reporting standards and guidelines that reporting entities are expected to follow in their modern slavery statements, including specific due diligence measures with respect to high-risk sectors, products or regions.

Debarment

Another administrative compliance measure that can be considered is using debarment from government procurement. This measure would use the public procurement process as an incentive and enforcement tool to reward companies that address modern slavery risks, to

- Debar non-compliant companies from bidding on public contracts
- Prioritise companies that can demonstrate meaningful measures to address human rights and modern slavery risks.

An example of such a scheme is Western Australia's *Procurement (Debarment of Suppliers) Regulations 2021*,¹⁹ which bars companies from eligibility from contracts with the government of Western Australia for non-compliance with the requirements of the *Modern Slavery Act (Cth)*.

d. Public sector reporting requirements under the Modern Slavery Act

Questions in Issues Paper

18. Should any alterations be made to the MSA as regards its application to Australian Government agencies?

¹⁸Department of Agriculture, Water and the Environment, *Sunsetting Review of the Illegal Logging Prohibition Regulation 2012* (Consultation Paper, 6 July 2021) 11, [4.6.6]

¹⁹ [Procurement \(Debarment of Suppliers\) Regulations 2021 - \[00-bo-00\].pdf \(legislation.wa.gov.au\)](#)

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| 19. Does the annual Commonwealth Modern Slavery Statement set an appropriately high reporting standard? |
| 20. What action, if any, should be taken to ensure a common standard of modern slavery reporting among Commonwealth, state and territory government agencies in Australia? |

Australia (and New South Wales) are the only jurisdictions, to date, where modern slavery reporting provisions apply to government departments and Commonwealth- and state-owned corporations. With Australia projected to be the 12th largest economy in the world in 2023²⁰ and with government procurement comprising 34.8%²¹ of the Australia's GDP, public procurement has great potential as a lever in addressing modern slavery in supply chains.

The Australian government should be a leader in addressing modern slavery in its own operations and supply chains and demonstrate best practices in its procurement practices, transparency reporting and due diligence. The government is one of the largest procurers in the Australian market: in 2021-22, there were 92, 303 government contracts, with a total combined value of \$80.8B.²² Arguably, one of the most impactful measures that the Australia can take to address modern slavery in our region is to eliminate modern slavery in the government's operations and supply chains.

As set out previously in section III.a.ii), IJM recommends expanding MSA obligations from transparency reporting to a robust due diligence regime. The due diligence requirements should apply to all in-scope entities, including Commonwealth-owned corporations and government departments. The role of an independent Anti-Slavery Commissioner becomes critical in ensuring accountability for the government to meet their obligations under the Act, as penalty provisions would not apply to the Crown.

The transparency reporting obligations on the Commonwealth should also be strengthened. Section 15 of the MSA requires the Minister to prepare a modern slavery statement for the Commonwealth that covers all non-corporate Commonwealth entities – *ie* a single statement for all government departments. However, some of the government's spending is in high-risk sectors. These include textiles and ICT, as identified in the Commonwealth Modern Slavery Statement 2020-21. Procurement spends in high-risk sectors should be identified and reported in greater details – by product/sector/country, dollar amount, and government department or agency. The modern slavery risks should be assessed and prioritised based on the gravity of potential harm to people, its scope and remediability, and actions taken to address those risks. This level of reporting is needed for meaningful transparency in the government's modern slavery statement.

Recommendation #8: that the MSA be amended to require the Commonwealth to submit modern slavery statements for each government department or submit one statement that clearly delineates the modern slavery risks and due diligence measures taken, according to each government department.
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e. Modern Slavery Statements Register

Questions in Issues Paper

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| 21. Does the Register provide a valuable service? |
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²⁰ International Monetary Fund, 2022, World Economic Outlook.

²¹ As of December 2021. [Australia Government Spending To GDP - 2022 Data - 2023 Forecast \(tradingeconomics.com\)](https://tradingeconomics.com/australia/government-spending-to-gdp-2022-data-2023-forecast)

²² [Statistics on Australian Government Procurement Contracts | Department of Finance](https://www.dfat.gov.au/procurement/statistics)

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

A strong feature of the MSA is the requirement for a Modern Slavery Statements Register that publishes modern slavery statements submitted by entities. This repository has allowed consumers, researchers, consultants, NGOs and other members of the public to review modern slavery statements filed by reporting entities, helping to further the objective of increased transparency.

Several additional features and requirements would increase the functionality of the register.

i. Improved searchability

Despite the search functions, it has often been difficult to locate the modern slavery statement of specific entities. For example, if the modern slavery statement is a joint statement filed by a parent company, it can be difficult to find a company's modern slavery statement. The name of the entity in the statement may be different from the trade name known to consumers.

- The search function should be improved to allow for searches based on any of the trade names of the entity.
- As well as publication in the Register, entities should be required to publish its modern slavery statement (and include a link to it) on its company website.
- Entities should be required to include their modern slavery statement in their annual report.

ii. Formal list of in-scope entities

A penalty regime would require an official list of entities within the scope of the MSA's reporting requirements – as the most basic obligation for which a penalty would apply is the requirement to file a modern statement. The current Modern Slavery Statements Register could have the additional function of making publicly available an annually updated list of entities that are within the scope and obligations of the MSA. This would provide more clarity to the regulator and to entities themselves as to whether they are caught by the MSA as well as to stakeholders and the public.

Another function of the Register would be to make publicly available a list of non-compliant entities.

iii. Standardised reporting

The Register would have increased utility if it allowed for meaningful comparisons between modern slavery statements and if it served the function of increasing the data available on, and improving overall understanding of, modern slavery risks in Australian supply chains.

- A valuable feature would be the ability to aggregate data from multiple modern slavery statements would provide insights on modern slavery by sector, industry, product, country.
- The ability to compare the modern slavery statements of a particular entity, from one reporting period to the next, would also provide valuable insight and transparency on the progress an entity is making in addressing modern slavery risks.

One method for accomplishing these objectives would be to create a template modern slavery statement, the answers to which can feed into providing aggregate data that can be analysed for industry/sector or regional insights. A template modern slavery statement would also enable smaller businesses to complete modern slavery statements without the resource expenditure that entities with larger budgets are able to expend.

Recommendation #9: that the Modern Statements Register publish an annually updated list of entities within the scope of the obligations of the Act and that its functionality be improved to allow better searchability and aggregation of data.

f. Administration and Compliance Monitoring of the Modern Slavery Act and Role of the Anti-Slavery Commissioner

Question in Issue Paper

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?

Recommendations set out in previous sections of this Submission provide for investing “the regulator” with certain powers in order to administer and monitor compliance with the Act. IJM recommends the establishment of an independent Anti-Slavery Commissioner to carry out the role of “the regulator”, whose mandate would encompass both coordinative/educative functions and enforcement functions, and that this role be adequately funded.

Independence:

The Anti-Slavery Commissioner should have independence and objectivity, with the ability to monitor all institutions and maintain exchange with civil society and relevant stakeholders. We recommend that the Commissioner should be set up as a statutory office holder under the MSA, who would

- be appointed for a fixed term (eg. 5 years, as in the case of the NSW Anti-Slavery Commissioner)
- be able to be removed from office only under certain conditions – such as incapacity, incompetence, misbehaviour, conviction of criminal offence;
- not be subject to the control and direction of the Attorney General or any other Minister in the exercise of the Commissioner’s functions.

Coordinative/educational functions:

Efforts to effectively combat modern slavery and human trafficking are hampered by a number of challenges, including the hidden and insidious nature of modern slavery, the lack of complete and objective data, and inadequate implementation of anti-slavery measures both domestically and internationally. A further challenge is the multiplicity of stakeholders, including from Commonwealth government agencies, state and territory government agencies, civil society organisations, academics, business, unions and industry associations.

The Anti-Slavery Commissioner could be tasked with the following coordinative/educational functions:

- Collect and analyse reliable data on modern slavery;
- Carry out empirical research into problematic areas for modern slavery and publish findings;
- Facilitate access to survivor testimonies and recommendations (e.g. through webinars, seminars, newsletters etc), to improve corporations’ understanding of real-life cases of slavery;

- Evaluate objectively the implementation and effectiveness of anti-slavery legislation and strategies, identify gaps and make comprehensive policy recommendations to improve anti-slavery efforts;
- Provide periodic reports to Parliament;
- Coordinate good practice in the prevention, detection, investigation and prosecution of modern slavery offences between various stakeholders;
- Provide practical guidance to corporations on implementing effective due diligence practices, remediation measures and responsible disengagement with suppliers or business partners, and providing principles and/or frameworks for assessing the effectiveness of those measures;
- Have authority to request and access comprehensive information and data, including files on individual cases held by police, judicial and prosecution authorities.

Enforcement functions:

As outlined earlier in section III.c, there are several key enforcement functions of the regulator. The Anti-Slavery Commissioner should be given the following investigation and sanction powers:

- Start investigations of their own volition or by complaint from stakeholders or a person with a legitimate interest in suspected inaccuracies or discrepancies in reports;
- Investigate accuracy and completeness and compel reporting entities to correct or supplement their disclosure;
- Compel evidence, documents and testimony;
- Authority to impose financial penalties (by the power to apply to the Federal Court for a civil penalty order) for failure to meet obligations of reporting, due diligence and addressing harmful impacts;
- Authority to impose administrative penalties.

As well as the above roles of administering the MSA, another function that would properly fall within the mandate of the Anti-Slavery Commissioner would be to identify and provide assistance and support for victims of modern slavery.

Recommendation #10: that an independent Anti-Slavery Commissioner be established to administer and enforce the *Modern Slavery Act* and given authority to carry out enforcement actions and investigations, as well as play coordinative/educational functions.

IJM appreciates this opportunity to participate in the Modern Slavery Act Review process and is available for further consultation on these recommendations. We look forward to working with policy makers on further strengthening Australia's regime to counter modern slavery.

IV. ABOUT IJM

International Justice Mission (IJM) is a global organisation that protects people in poverty from violence. As the largest global anti-slavery organisation, IJM partners with local authorities in 29 program offices in 17 countries to combat slavery, violence against women and children and other forms of abuse against people who are poor. IJM works with local authorities and governments to rescue and restore survivors, hold perpetrators to account and help strengthen public justice systems. IJM Australia, as the Australian arm of IJM, supports the global mission and works locally to engage communities, corporates and governments to take action to end modern slavery.

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V. ANNEX 1



Global Survivor Network

Comments on Australia's Modern Slavery Act

November 2022

The Global Survivor Network (GSN) welcomes this opportunity to comment on Australia's Modern Slavery Act. The GSN has a keen interest in the issues of corporate oversight and reporting that are at the heart of the Act. Many local members of survivor groups affiliated with the GSN are survivors of forced labour, as are several of GSN's Global Leadership Council.

Australia is playing a leadership role in combatting modern day slavery, particularly in the South and Southeast Asia regions where the bulk of its trading partners are located. Yet those regions are home to the largest number of the world's forced labour population.²³ Moreover, the number of children, women and men who are in situations of forced labour has grown significantly – to over 50 million, according to the most recent global estimate.²⁴ Governments, corporations, and civil society can and must do more. Our recommendations for Australian legislation and policy are as follows:

- 1) **“b. Modern Slavery Act reporting requirements”:** GSN strongly recommends that companies engage with and listen to the people most affected by exploitation in Australia's supply chain: both survivors of forced labour and members of the vulnerable community. When companies assess risk of modern slavery in their supply chain and develop due diligence and remediation policies, the experience and voice of workers and survivors of violence are crucially important. Advice from survivors, workers, and migrants are also needed to inform policy changes, repatriation and remediation strategies.

We note that International Justice Mission (IJM), with which GSN is affiliated, analyzed corporate reporting pursuant to the Modern Slavery Act and found that less than 20% of companies had consulted with workers and/or survivors of modern slavery.

- 2) **“b. Modern Slavery Act reporting requirements”:** GSN recommends that industries identified to have higher risks of child labour and/or forced labour

²³ <https://reliefweb.int/report/world/which-countries-have-highest-rates-modern-slavery-and-most-victims>

²⁴ <https://publications.iom.int/books/global-estimates-modern-slavery-forced-labour-and-forced-marriage>

receive added scrutiny. Corporations in industries including but not limited to textiles and garments, rubber manufacturing, palm oil, cocoa, and seafood should be required to report on the safe migration journey of workers from home to repatriation, freedom of association, absence of child labour and forced labour, and options for workers to freely access reporting and remediation mechanisms. We note with concern the analysis by the Human Rights Law Centre²⁵ that these and other high-exploitation industries had low compliance under the Modern Slavery Act's report requirement.

- 3) **"b. Modern Slavery Act reporting requirements":** GSN recommends that corporations report on their contribution to upholding laws prohibiting forced labour in the countries where they operate or source from, in keeping with the priorities in Australia's National Action Plan to Combat Modern Slavery, 2020-25: "Modern slavery practices, particularly human trafficking, are transnational crimes that take place across national borders. We will work closely with overseas partners to build the capacity of government officials to develop and implement effective laws and policy to identify and support victims and survivors, and to investigate and prosecute modern slavery crimes."²⁶ The Global Survivor Network represents survivors, many of whom want to see their cases move forward against those who exploited them and continue to exploit others. *For example, the Indian survivor group, the Released Bonded Labour Association, works with the government to advocate for victim identification and rescue, compensation, and investigation and accountability for offenders.*
- 4) **"b. Modern Slavery Act reporting requirements":** The International Justice Mission analysis of corporate reporting revealed that 59 percent of the reporting corporations did not provide details about a remediation mechanism in corporation supply chains that is available to the suppliers' workers.²⁷ Remediation for abuses, including forced and child labour, suffered in the workplace is a high priority for the Global Survivor Network. GSN strongly recommends increased surveillance of corporate reporting and transparency on their remedies for such offenses for all their suppliers.

The Global Survivor Network appreciates this opportunity to contribute to Australia's review of the Modern Slavery Act.

Submitted by: Leadership Council members of the [Global Survivor Network \(GSN\)](#)

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²⁵ Human Rights Law Centre, *Paper Promises? Evaluating the early impact of Australia's Modern Slavery Act* [Paper+Promises_Australia+Modern+ Slavery+Act_7_FEB.pdf\(squarespace.com\)](#)

²⁶ [National Action Plan to Combat Modern Slavery 2020–25 \(homeaffairs.gov.au\)](#)

²⁷ [Review of the Modern Slavery Act - Issues Paper \(ag.gov.au\)](#) [Review of the Modern Slavery Act - Issues Paper \(ag.gov.au\)](#)

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