

2 June 2019

Modern Slavery Business Engagement Unit
Department of Home Affairs
6 Chan Street
Belconnen ACT 2617

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

Dear Modern Slavery Business Engagement Unit,

Modern Slavery Act 2018 – Draft Guidance for Reporting Entities

The [Global Compact Network Australia \(GCNA\)](#) welcomes the opportunity to make a submission in relation to the Department of Home Affairs' ("**the Department**") Draft Guidance for Reporting Entities ("**Draft Guidance**") who are subject to the Commonwealth Modern Slavery Act ("**the Act**").

The GCNA was pleased to be a member of the multi-stakeholder advisory group supporting completion of the Draft Guidance and would like to recognise the Department's significant efforts in ensuring a variety of stakeholder voices contributed to its contents.

The GCNA is supportive of measures aimed at improving the understanding of the Act's reporting requirement, and mechanisms that will enable business to effectively report. We also commend the Department for including guidance on how to prevent and address modern slavery in practice as many companies will be looking at these issues for the first time as they prepare their first statements under the Act. We note that this submission has been informed by engagement with GCNA members and various stakeholders, however it represents the GCNA's views and not the views of any particular GCNA member or members.

Broad Commentary

The Department's Draft Guidance provides a clear and practical guide that should enable all businesses (including smaller businesses who wish to voluntarily report) to have clarity as to what is expected of them. The Draft Guidance, in its current form, should also act as an aid to support businesses to build their internal capacity to report against the Act and as a tool for other stakeholders including investors, consumers, business partners and civil society organisations to know what they can ask of business regarding modern slavery reporting.

The GCNA's submission to the Senate Legal and Constitutional Affairs Committee on 25 July 2018 (attached to this submission) outlined the areas that the Guidance should incorporate. This included:

1. What modern slavery is, so that companies understand what they are looking for.
2. Helping companies to identify red flags, both for modern slavery itself as well as the factors that may lay the groundwork for modern slavery.
3. Explaining how modern slavery fits into the broader human rights risk management framework.
4. Good practice examples around due diligence and remediation processes relating to conduct at home and abroad.
5. Clarity on expectations around reporting on the actions of subsidiaries and other business partners (e.g. what is expected in the requirement to "consult with each reporting entity" for joint statements).
6. Good practice examples of how to engage different corporate functions as well as the board including expectations around approval processes by governing bodies.
7. Good practice examples of multi-stakeholder partnerships to manage modern slavery risks and to reduce preconditions for modern slavery.

It is our opinion that the Draft Guidance generally provides insights and resources to support the items listed above. The GCNA is particularly encouraged to see strong links between the Act and core international human rights standards so as to encourage consistency as well awareness by Australian businesses of the foundations of modern slavery. This includes the Draft Guidance's clear efforts to align the Act with the [UN Guiding Principles on Business and Human Rights](#).

However, there are also areas where the Draft Guidance could be strengthened. For example, the Draft Guidance could say more about how businesses could engage different corporate functions and the board, not only on obtaining necessary reporting approvals but also on modern slavery risk management. Practitioners responsible for implementing the Act and responding to the Act's reporting requirement will need to ensure that they can effectively engage different corporate functions and explain the requirements of the Act to senior management and the board. As such, the Draft Guidance could be strengthened by including case study examples of how to engage different business units on the Act and human rights more broadly including functions such as legal, risk, procurement, sustainability and human resources. This might include suggestions on how to ensure that discussions are relevant to a cross-section of corporate functions.

In addition, the Draft Guidance could be strengthened by including stronger examples/case studies of:

- Factors to identify modern slavery in the context of broader human rights impacts such as failure to pay a living wage and other poor labour conditions including by referencing external sources in relation to the list at Appendix 1. For example, including stronger reference to the [US Department of Labour's List of Goods Produced by Child or Forced Labour](#), the [Transparency International Corruption Perception Index](#) and the [Global Slavery Index](#) all of which might provide good indicators of underlying human rights and modern slavery risks.
- How modern slavery fits into the broader human rights risk management framework, including by referencing other international standards, such as the [OECD Guidelines for Multinational Enterprises](#) and their associated due diligence and sector-specific guides.
- How business should undertake due diligence and remediate involvement in modern slavery, including more examples of what might be items to report under each element of human rights due diligence as defined in the UN Guiding Principles on Business and Human Rights. This might include specific case studies demonstrating how to undertake different elements of human rights due diligence, and a few case studies that provide insights on how different businesses have remediated an adverse human rights impact, including labour rights impacts that may lay the foundations for modern slavery. The examples should demonstrate both an Australian and global context and could reference the [Corporate Responsibility to Respect Human Rights: An Interpretative Guide](#).

Inclusion of the UN Guiding Principles on Business and Human Rights

In our submission to the inquiry into a Modern Slavery Act, we emphasised that any legislation should be consistent with – and be implementing of – the UN Guiding Principles on Business and Human Rights (*UNGPs*).

As the authoritative global standard for preventing and addressing the risk of adverse impacts on human rights linked to business activity, and the best practice framework for governments and businesses to follow to implement business respect for human rights we commend the Department for their inclusion of the UNGPs into the Draft Guidance.

The GCNA remains strongly of the view that modern slavery risk management should be situated within a broader human rights framework in line with the UNGPs. To that end, while as noted above, we encourage some further case studies and examples around these concepts, we also commend the Department for the inclusion of guidance on the terms *due diligence* and *remediation processes* in the context of the UNGPs. This will be important to ensure consistency, avoid confusion and encourage a more holistic approach to modern slavery risk management. Ultimately, this will also drive better performance around all internationally recognised human rights.

Specific Commentary

Whilst the GCNA is supportive of the Draft Guidance, we felt it prudent to provide some specific feedback about certain paragraphs and sections in the Draft Guidance. Whilst this feedback is not exhaustive, it captures what we interpret as the main considerations for the Department.

Paragraph 9.1: As the level of sophistication of businesses required to report under the Act will vary, and with due consideration for those businesses who may voluntarily report, it would be beneficial to include case studies that demonstrate how modern slavery impacts are linked to other crimes, such as bribery and corruption and environmental damage. This includes looking out for red flags relating to modern slavery when bribery is suspected or found, given the correlation that can occur between the two, as well as potential partnerships companies could enter into to address some of the root causes of modern slavery including corruption. This is particularly pertinent when the Act is considered in the light of changes to the Australian legislative environment on matters surrounding bribery and corruption including, for example, the recent changes to the [Whistleblower Protections Bill](#) (2018) and the impending failure to prevent foreign bribery offence which is currently being considered by Parliament. This will also assist practitioners with having more meaningful engagement with different corporate functions across their business.

Paragraph 10.1: As with the suggestions above, it would be beneficial to have specific case studies on how modern slavery has affected victims both from an Australian and global perspective. Lived experience examples are crucial for driving social change, provide businesses with an understanding of the need for due diligence and remediation for human rights risks and would also assist the Modern Slavery Business Engagement Unit with enhancing awareness raising about modern slavery and its implications.

Paragraph 12.1: As discussed above, we welcome the inclusion and reference to the UNGPs, however these should be mentioned in the context to broader human rights risks. For example, the sentence could be rewritten to state: “This includes taking action to prevent, mitigate and, where appropriate, remedy adverse human rights impacts, including modern slavery, that might occur in your entity’s operations and supply chain...” The introductory sentence to this paragraph could reiterate too that freedom from slavery is an internationally recognised human right. This paragraph should also mention other relevant international guidance, such as the OECD Guidelines for MNEs.

Paragraph 14.1: The GCNA welcomes the reference to the Sustainable Development Goals (SDGs), particularly Target 8.7. Whilst there is growing awareness and understanding of the SDGs in business, it is the GCNA’s experience that many businesses are not engaged with the SDGs, nor are they aligning their strategies, processes and reporting to the SDGs. As such, the Department would benefit from referencing guidance material on the SDGs, including the Australian Government’s SDG site – www.sdg.org.au, with potentially specific reference to positive projects carried out by business to help address the foundations of modern slavery.

Paragraphs 19.1 to 26.1: Noting that there is more detail in Chapter 2 about who is required to report, these paragraphs would benefit from clarifying, up front, that the reporting requirement only applies to entities whose consolidated revenue is at least AUD \$100 million. This section would also benefit from noting that the Department encourages businesses of all sizes to submit a Modern Slavery Statement.

Paragraph 26.1: The Department could strengthen this paragraph by referencing the work of other Commonwealth Departments, for example the work undertaken by the Department of Foreign Affairs and Trade on the Bali Process.

Part 5 – Paragraph 81.1: In this paragraph, and elsewhere the Draft Guidance, it could be clearer that while the reporting entity may choose to exclude certain parts of its business, such as a joint venture, from its reporting in line with the Act, in terms of reporting directly on the joint venture’s supply chain or management of modern slavery risks, the reporting entity is still strongly encouraged to report on **its own** efforts to set clear expectations of the joint venture to manage those risks. This would presumably be part of reporting on the entity’s steps within its operations and supply chains consistently with the Act. In discussions with investors and civil society organisations in particular we have found that it is increasingly less acceptable for a company to simply say it cannot comment on the activities of its business partners when asked what it itself has done to set expectations of that partner, especially in a joint venture scenario. The Department can play an important role in helping businesses to understand these emerging views from external stakeholders and build their capacity to effectively respond.

Paragraph 100.1 and the associated ‘How to’ box: The GCNA is concerned that the use of the term “basic” in reference to scoping exercises might dilute the effectiveness of how companies subsequently undertake due diligence on their human rights risks. We are also concerned that it does not given adequate attention on the requirements underpinning the Act and the expectations outlined in the UNGPs about how a company can assess its human rights risks. Whilst we acknowledge that there is a section on due diligence, our recommendation is to remove the term “basic” from the scoping process. The ‘How to’ box could be strengthened by referencing other global sources for identifying sectors and countries that have high modern slavery risks including the *US Department of Labour’s List of Goods Produced by Child or Forced Labour*, the *Transparency Corruption Perception Index*, the *Global Slavery Index* and the [Responsible Sourcing Tool](#). The Department might also consider providing a definition for scoping and due diligence in the appendix to avoid confusion between the two terms.

Mandatory Criterion Four – Paragraphs 102.1 to 108.1: With due consideration for the inclusion of specific case studies, as mentioned above, the Department would benefit from describing the Australian National Contact Point (“AusNCP”) as an option for companies to engage with in the event of an adverse human rights risk. The AusNCP can not only support business to understand due diligence but may provide a forum for resolution of grievances. While complaints are usually initiated by civil society organisations representing affected stakeholders, companies may also use the AusNCP mechanism if they do not feel that their operational level mechanisms would suffice to consider a complaint. It should also be clear that if a company has been the subject of an AusNCP complaint relating to modern slavery then they would be encouraged to discuss this process under mandatory criterion four. The Department might also consider referencing the AusNCP in Appendix 3.

Mandatory Criterion Five - Paragraphs 122.1 to 130.1: The effectiveness criteria of the Act is, in the GCNA's experience, the least understood section of the Act. Whilst the Draft Guidance highlights clearly that the aim is not to confirm the effectiveness of the company's response but rather to show how the company will determine effectiveness, there could still be more examples of best practice in this regard. More case study examples of effectiveness tools might be useful for this section of the Draft Guidance and/or a commitment to provide more examples of good reporting under this criterion after the first twelve months of reporting has been made public.

Part 6 – Paragraph 159.1: We are supportive of the requirement to have the statement approved as a stand-alone document and not part of a larger document, such as a sustainability report. The Draft Guidance could strengthen this point by explaining the benefits to business of not subsuming a modern slavery statement's approval into another reporting document. This includes that the governing body will have a more meaningful opportunity to consider the company's modern slavery risks and identify any gaps in risk management which could result in negative reputational, legal and operational consequences for the business.

Appendix 1, Table Four – Risk Indicators: The list of risk indicators provided in the Draft Guidance is a useful basis for companies to understand and identify modern slavery risks. The table could be strengthened by referencing other sources to identify modern slavery and broader human rights risks (including those mentioned in Appendix 5) and should note that the list is not exhaustive. The list should also include other responsible business conduct risks associated with adverse human rights risks such as examples of environmental degradation and bribery and corruption.

Appendix 2 and 4: These examples, whilst beneficial to building awareness and knowledge of how to work with suppliers and would benefit from some lived experience case studies. The Department might also consider listing the [Responsible Sourcing Tool](#).

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The GCNA has been pleased to provide an avenue of consultation for the Department on the Draft Guidance through forums such as our [Modern Slavery Community of Practice](#) and looks forward to continuing to work with the Department to provide a business voice on both reporting and modern slavery risk management in practice. The GCNA thanks the Department for the opportunity to make this submission.

Warm regards,



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