

10 November 2017

The Manager
Transnational Crime Unit
Attorney-General's Department
3 – 5 National Circuit
BARTON ACT 2600

Email: slavery.consultations@ag.gov.au

Dear Sir

Modern Slavery in Supply Chains Reporting Requirement

Governance Institute of Australia (Governance Institute) is the only independent professional association with a sole focus on whole-of-organisation governance. Our education, support and networking opportunities for directors, company secretaries, governance professionals and risk managers are unrivalled.

Our members have primary responsibility for developing and implementing governance and risk frameworks in public listed, unlisted and private companies. They are frequently those with the primary responsibility for dealing and communicating with regulators such as the Australian Securities and Investments Commission (ASIC) and the Australian Prudential Regulation Authority (APRA). In listed companies, they have primary responsibility for dealing with the Australian Securities Exchange (ASX) and interpreting and implementing the Listing Rules. Our members have a thorough working knowledge of the *Corporations Act 2001* (the Corporations Act). Our members also play an important role in the external reporting by public listed, unlisted and private companies. We have drawn on their experience in our submission.

Governance Institute welcomes the opportunity to comment on the Modern Slavery in Supply Chains Reporting Requirement Consultation Paper (consultation paper). We support the objective of enabling the business community to respond effectively to modern slavery and develop and maintain responsible and transparent supply chains. We broadly support Option 3 outlined in the consultation paper and we have provided comments on the consultation questions below.

As a preliminary comment we consider that where possible, the Australian legislation should align with the requirement for domestic companies in the UK Modern Slavery Act 2015. Given the global nature of business and investment, it would be beneficial for there to be alignment between reporting requirements across various jurisdictions, where possible, so that shareholders, investors and other legitimate stakeholders are able to form a view about organisations' global supply chain practices. It would also simplify reporting for these entities and therefore reduce compliance costs.

Approach to governance disclosures

Governance Institute considers that any mandatory modern slavery supply chain reporting requirement should be non-prescriptive about what steps entities should take to address modern slavery in their supply chains and should allow flexibility in disclosure. Any guidance should be illustrative and principles-based. This would enable entities currently reporting on these issues in a way that is acceptable to their shareholders, investors and other legitimate stakeholders to continue what they are doing currently and make improvements. It would also

enable organisations not currently reporting to start reporting on their supply chains and encourage innovation in reporting. A prescriptive approach to reporting may also have unintended consequences.

For entities in Australia, the principal reference and reliance for corporate governance disclosures rests in the statutory provisions of the *Corporations Act 2001* and the *3rd edition of the ASX Corporate Governance Council's Corporate Governance Principles and Recommendations* (Principles and Recommendations). While the Principles and Recommendations were developed for listed companies, they have become the model for other organisations, such as government agencies and not-for-profit organisations, when considering corporate governance frameworks.

Governance Institute is a founding member of the ASX Corporate Governance Council, which develops and issues the Principles and Recommendations. We have been involved in the drafting of all three editions as well as the amendments to the second edition (concerning diversity). The Principles and Recommendations have played a vital role in improving corporate governance in Australian listed companies since the release of the first edition in 2003. Their history is one of practical statements on governance which have brought meaningful change to governance practice and behaviour.

Supply chain and employment practices are already referred to in the Principles and Recommendations. While the supply chain practices referred to in the Principles and Recommendations are not as detailed as those set out in the proposed definition in the consultation paper, there is a recognition that practices such as slavery, servitude, forced labour, debt bondage and deceptive recruiting for labour and services are not ethical. For example, the commentary to Principle 3 of the Principles and Recommendations encourages listed entities to be 'good corporate citizens':

'by [respecting the human rights of ... employees (for instance, by not employing forced or compulsory labour or young children even where that may be legally permitted); ...and only dealing with business partners who demonstrate similar ethical and responsible business practices.'

Ethics are important to Australians. The recent Governance Institute 2017 Ethics Index indicates that 84 per cent of respondents rated ethics as important or very important to a well-functioning society. There is regular media coverage of controversial ethically charged events, and debate both about the ethics of individuals and organisation. Supply chain practices clearly fall within the realm of ethics. Consumers and civil society increasingly expect organisations to behave ethically in this area.

Recommendation 7.3 of the Principles and Recommendations refers to listed entities disclosing material exposures to a range of non-financial risks – 'economic, environmental and social sustainability risks' and how they intend to manage those risks. Examples of social factors that impact on a company's reputation (if not its financial bottom line), and consequently how its securities are valued by the market and to which disclosure requirements may apply, would include the use of sustainably and ethically sourced products. There have been a number of highly publicised incidents where organisations have suffered significant reputational damage as a result of modern slavery in their supply chains.

While many listed entities already make the type of disclosure referred to in the consultation paper as part of their sustainability, corporate social responsibility or environmental, social and governance reporting, we consider this is still likely to be a new area for a number of entities.

Consultation questions

Is the proposed definition of ‘modern slavery’ appropriate and simple to understand?

Governance Institute considers that the proposed definition should be aligned with that in the UK legislation. This would reduce the impost on organisations currently complying with that legislation and make it easier to compare organisations’ disclosures across jurisdictions. We consider the provisions should apply to entities on a group basis. Entities incorporated outside Australia with operations in Australia should only be required to report in Australia on their Australian operations. We note that the definition in the UK Act includes forced marriage which will be excluded from the proposed Australian definition with the result that the pieces of legislation may not be aligned.

We also consider that any modern slavery reporting requirement should apply to Commonwealth and State and Territory procurement and that this would be an opportunity to demonstrate leadership to business and civil society.

How should the Australian Government define an entity’s revenue for the reporting requirement? Is \$100 million total annual revenue an appropriate threshold for the reporting requirement?

We note the advice at the recent Attorney General’s Department consultation meetings that approximately 2,000 entities would be captured by the proposed threshold. This would include larger listed entities, large charities and co-operatives, larger proprietary companies, aged care and healthcare providers and educational institutions. We also note that the proposed threshold is higher than in the UK. This means there are potentially entities operating both in the UK and Australia which would be required to report in the UK, but not required to report in Australia.

We consider it is important for the threshold to be included in Regulations rather than in the legislation. This allows the threshold to be adjusted over time, particularly if the proposed review of the legislation and experience from the first years of reporting indicates it would be beneficial to lower or raise the threshold. Whatever threshold is adopted, it is important for it be clear and unambiguous.

Governance Institute supports entities being able to opt-in to the reporting requirement given many of them may wish to report on these issues to their stakeholders or may consider it a source of competitive advantage. Where entities chose to opt-in to the Modern Slavery reporting requirement they should follow the proposed Modern Slavery legislation and guidance.

How should the Australian Government define an entity’s ‘operations’ and ‘supply chains’ for the purposes of the reporting requirement?

Once again, we consider the proposed definition should align with that in the UK legislation both to reduce the impost on those currently reporting against that legislation and for ease of comparison of reports. Where and how an entity looks for modern slavery in its operations or supply chains will depend on its assessment of the risks of modern slavery in these areas. Discussion about assessing these risks would be an appropriate area for guidance to the business community. This guidance should also include detail about the definitions of operations and supply chains.

What regulatory impact will this reporting requirement have on entities? Can this regulatory impact be further reduced without limiting the effectiveness of the reporting requirement?

Based on discussions with our members we consider that the cost estimate of \$11,500 per entity is conservative. For those entities currently reporting on these issues in the context of a

larger report or by way of a stand-alone report, the cost is substantially more than \$11,500 per entity.

If an entity is reporting on modern slavery for the first time the cost of management time alone to investigate these issues, which may involve investigations outside Australia, and then to produce a meaningful statement for board sign-off, would be substantially greater.

Are the proposed four mandatory criteria for entities to report against appropriate? Should other criteria be included, including a requirement to report on the number and nature of any incidences of modern slavery detected during the reporting period?

Governance Institute considers the mandatory reporting criteria are appropriate. We recommend that the criteria be aligned with the reporting criteria in the UK Act accompanied by appropriate guidance giving entities the flexibility to report on modern slavery in the context of their operations and enabling reports to be compared across jurisdictions. We consider that it is critical that entities are able to report against the criteria in a flexible way that takes into account individual business models and supply chain arrangements. We note that it may take time for some entities to implement reporting. For example, if an entity is at the beginning of implementing a policy and undertaking due diligence in its operations and supply chains it may take time for these policies and practices to be established in the entity.

We do not recommend that entities be required to report on the number and nature of any incidences of modern slavery detected during the reporting period due to concerns that entities may potentially be exposed to legal liability if this information is part of any mandatory reporting requirement. This could act as a disincentive to entities to conduct the appropriate due diligence necessary to report against the mandatory criteria.

We recommend that guidance for the reporting requirement be non-prescriptive, principles-based and illustrative. For example, the Australian Securities and Investments Commission *Corporate Plan 2017 – 18 to 2020 – 21* contains a helpful section on page 5 entitled 'What good looks like for the sectors we regulate'. Guidance for this legislation could adopt a similar approach. Other matters which could also be part of guidance may include the type of risks that can be present in operations and supply chains and 'red flags'.

How should a central repository for Modern Slavery Statements be established and what functions should it include? Should the repository be run by the Government or a third party?

Governance Institute is not opposed to the introduction of a central repository for modern slavery statements. However, we consider that posting statements or reports on company websites provides sufficient disclosure. We observe that while Australian listed entities are required to provide their corporate governance statements to ASX there is no central repository for these documents and the system works well.

Noting the Government does not propose to provide for penalties for non-compliance, how can Government and civil society most effectively support entities to comply with the reporting requirement?

Investors and civil society are increasingly interested in this information and the market is increasingly interested in ethical issues such as modern slavery in supply chains. Internet based communication and commentary, favourable and unfavourable, means most entities are acutely aware of the potential reputation risk attaching to poor or unethical supply chain practices. There have been a number of highly public cases of entities knowingly and unknowingly being involved in manufacturing or distributing products involving unethical labour practices either within their own operations or their supply chains whose reputations and share prices have been badly damaged. The market has penalised entities for their behaviour.

We consider Government can play an important role in raising awareness of the reporting requirement and the profile of these issues generally and in publicising any guidance. There is also scope for Government to undertake education and provide guidance and to work with high risk sectors to increase awareness.

Is the five month deadline for entities to publish Modern Slavery Statements appropriate? Should this deadline be linked to the end of the Australian financial year or to the end of entities' financial years?

The deadline for reporting under the UK legislation is 31 December each year and we consider that it would be difficult for entities reporting under both regimes to publish separate reports (even if they contain substantially similar material). Our preference would be for an entity to report once in any year and for there to be a six month deadline for publishing Modern Slavery Statements tied to the end of entities' financial years. Given that most entities have a 30 June year end this should allow most entities reporting in both the UK and Australia to produce a single report. As a matter of good governance, Governance Institute supports board sign-off on Modern Slavery Statements. Providing for board sign-off means the issue is elevated to the attention of the board and enables appropriate board oversight of this important issue.

Should the reporting requirement be 'phased-in' by allowing entities an initial grace period before they are required to publish Modern Slavery Statements?

We recommend that the reporting requirements should be phased in over a two-year period which would enable entities to prepare and issue their first report and take any further action required. This would still allow entities to early adopt and publish these Statements earlier than required. Given that many entities captured by the reporting requirement may not be currently reporting on these matters, they may need this additional time to comply. We also recommend that entities be able to opt-in to the reporting regime if they consider it appropriate, similar to the way in which a number of entities report against the Principles and Recommendations even though they are not listed entities.

How can the Australian Government best monitor and evaluate the effectiveness of the reporting requirement? How should Government allow for the business community and civil society to provide feedback on the effectiveness of the reporting requirement?

Governance Institute considers that market forces will drive improvements in Modern Slavery Statements, particularly given increased investor and other stakeholder interest in the area. We also consider that a post-implementation review of the legislation three years after implementation would enable an assessment of the effectiveness of the reporting requirement. A public consultation process could be part of the post-implementation review process which would enable the business community and civil society to provide feedback on its effectiveness.

We consider an Anti-Slavery Commission or Office could usefully be established within the existing Human Rights Commission or as a unit within the Attorney-General's Department. This body could play a significant role in raising awareness of the reporting requirement and educating the business community and civil society.

Is an independent oversight mechanism required, or could this oversight be provided by Government and civil society? If so, what functions should the oversight mechanism perform?

Governance Institute does not consider there is a need for independent oversight mechanism other than the post-implementation review referred to above.

Should Government reconsider the other options set out in this consultation paper (Options 1 and 2)? Would Option 2 impose any regulatory costs on the business community?

Given our support for Option 3 we do not think Government should reconsider the other options.

Governance Institute would welcome the opportunity to be involved in further deliberations.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Burrell', with a stylized flourish at the end.

Steven Burrell
Chief Executive Officer