

Rebecca Mills
Director
Modern Slavery Business Engagement Unit



24 May 2019

Dear Ms Mills,

Submission on the Modern Slavery Act 2018 Draft Guidance for Reporting Entities

This submission is made on behalf of the Australian Corporate Accountability Network (ACAN). ACAN is a network of Australian civil society organisations, academics and trade unions working to promote accountability and respect for human rights by Australian businesses wherever they operate.¹

Thank you for the opportunity to comment on the Australian Modern Slavery Act 2018's Draft Guidance for Reporting Entities. ACAN appreciates the significant work that was put into this Draft Guidance and we welcome it as a positive development. We would make the following recommendations in order to further strengthen the Guidance and ensure that reporting entities clearly understand their obligations.

1. Provide further advice about how to respond to a case of modern slavery

Appendix 3 of the Guidance should draw further attention to the complex range of considerations that should be taken into account when deciding how to respond to modern slavery, including the interests of victims, their families and local community, the potential for improvement in business partner practices towards the elimination of slavery and the feasibility/ desirability of engaging with local government and/or non-government agencies in the locality where modern slavery has been discovered. The Guidance should also where possible include resources and details of organisations able to provide advice on relevant issues.

In cases where modern slavery is detected outside of Australia, entities should be guided against automatically reporting cases to police/authorities due to the potential risks to victims. Expert advice should be sought on the appropriate course of action and potentially DHA can assist in providing direction.

¹ For further information, see <https://www.corporateaccountabilitynetwork.net/>

2. Encourage Ongoing Stakeholder Engagement

Chapter 5 of the Guidance describes stakeholder engagement as a way for entities to become more aware of what is happening in their supply chains and investment portfolios. We believe that stakeholder engagement is important throughout the entire reporting process, including in stages leading to the issuing of statements, such as during the identification of risks and the design of measures to prevent and mitigate such risks. Reports are most effective when reporting entities work in partnership with stakeholders who can provide a more comprehensive account of risks in their supply chains and of possible measures to prevent and address risks, including remedial measures, and who can help assess the effectiveness of modern slavery procedures and policies. Stakeholders, including civil society organisations, local worker and union representatives and affected individuals, are allies in addressing modern slavery and should be consulted on an ongoing basis.²

Reporting entities should therefore be encouraged to consult with relevant stakeholders when designing and reporting on their policies and processes to prevent and address modern slavery in their operations and supply chain. The Guidance should also explicitly encourage reporting entities to form or join in multi-stakeholder sectoral or regional initiatives, which generally have good risk control in a given sector or region and facilitate the exchange of useful information between the companies concerned.

3. Include Effectiveness Criteria for Grievance Mechanisms

The Guidance refers to ‘grievance mechanisms’ a number of times in Chapters 5 and 8 but it does not provide advice to businesses on what an appropriate and adequate grievance mechanism might look like. Such mechanisms can be effective ways for companies to receive information about issues within their operations and supply chain and to undertake targeted action to resolve them in a timely fashion, rather than wait for and rely upon broader auditing processes.

The Guidance should describe the key criteria to ensure the effectiveness of grievance mechanisms, drawing on the UN Guiding Principles on Business and Human Rights, principle 31. These criteria should include worker confidentiality, the availability of translation in relevant languages, the availability hours which should enable workers to use the mechanism alongside their working hours, and timely follow up action.

4. Encourage a Gender Sensitive Approach

The Guidance should include gender considerations in each section to address gender-specific impacts. Companies should be aware that women are disproportionately affected by modern slavery in many sectors and regions and that over half of all victims of modern slavery are women. They are often exposed to high levels of violence, including sexual harassment and abuse, and threats of

² That said, we note that civil society organisations are often poorly funded and should not be expected to play the role of an unpaid advisor or modern slavery consultant for reporting entities. Both government and business need to consider adequate funding for advocacy and consultation for the sector to make this recommendation in the guidance more meaningful. It may be useful to include reference in the Guidance to the definition of civil society as set out in Office of the High Commissioner for Human Rights, Working with the United Nations Human Rights Programme: A Handbook for Civil Society (2008).

other harm or termination if they lodge a complaint. Such gendered harm is not only a consequence of forced marriage but present in other forms of contemporary slavery.

The Guidance should encourage reporting entities to integrate a gender sensitive approach when seeking to describe and explain modern slavery risks under the Mandatory Criterion Three, and to describe the actions taken by the entity to assess and address those risks under Mandatory Criterion Four. A gender-sensitive approach may include conducting gender-sensitive human rights due diligence, collecting and disclosing gender disaggregated data, and providing gender-sensitive training throughout supply chains. Collaboration and discussion with women’s rights organizations may help companies in identifying concealed gender-specific risks of modern slavery. The Unit should also consider highlighting ‘at risk’ groups, such as women, in “Table Four: Risk Indicators for Modern Slavery”.

5. Provide clearer guidance as to what constitutes a supply chain and how to address it

In Chapter 5, where entities are required to describe their structure, operations and supply chains, the Guidance should encourage entities to provide specific, meaningful information about their operations and suppliers rather than simply identifying, for example, the ‘region’ where their operations or supply chains are located. It is only through the provision of greater detail that external stakeholders such as investors, workers or customers will be able to use the reports to independently gauge whether a company is accurately assessing and acting on its modern slavery risks. We would recommend that text is inserted in the preamble to Table One on page 27 and that the Table also make clear that it is best practice to identify suppliers by publicly disclosing the names and addresses of suppliers or factories

Many businesses will be concerned with how many tiers of their supply chain they should examine and what constitutes ‘enough’ due diligence. Companies should also be encouraged to conduct their due diligence in accordance with the guidance provided in the UN Guiding Principle and the OECD Guidance documents on due diligence. The Guidance should encourage entities to demonstrate continuous improvement in the scope and nature of their supply chain human rights due diligence. It should recognise that standard expectations will differ depending on the sector and sector specific guidance under the OECD’s Proactive Agenda.

Further specific guidance should be provided on page 25 to reporting entities from the financial services sector concerning what concerns ‘operations’, ‘suppliers’ or ‘business relations’, so as to capture lending and other types of business relations within the financial sector. See <https://mneguidelines.oecd.org/RBC-for-Institutional-Investors.pdf> p 13-15.

6. Additional resources

We would recommend that the following additional resources be added to Appendix 5 of the Guidance:

- International Labour Organisation, *Combating forced labour: a handbook for employers and business* (2015) https://www.ilo.org/global/topics/forced-labour/publications/WCMS_101171/lang--en/index.htm

- International Labour Organisation, *Child Labour Guidance Tool for Business* (2015), https://www.unglobalcompact.org/docs/issues_doc/labour/tools_guidance_materials/ILO-IOE-child-labour-guidance.pdf

7. Small edits to make the Guidance more useable

A small number of changes to the Guidance would make it more useable:

- Where other documents are referred to, a link can be provided for ease of access.
- The 2018 Global Slavery Index report is mentioned as a resource, but more recent publications will be available during the lifecycle of the guidelines. The link to the GSI should be provided so readers can access the most recent report: <https://www.globallslaveryindex.org/>.
- The case studies and examples provided throughout the Guidance provide important direction for businesses, particularly concerning sector-specific risks. An index would greatly assist reporting entities and others to more rapidly pinpoint relevant Guidance and ensure that essential nuances are not missed due to the current length and complexity of the Guidance.

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