

22 January 2024

Senate Legal and Constitutional Affairs Committee  
PO Box 6100  
Parliament House  
Canberra ACT 2600

Via email: [legalcon.sen@aph.gov.au](mailto:legalcon.sen@aph.gov.au)

Dear Committee Secretary

### **Modern Slavery Amendment (Australian Anti-Slavery Commissioner) Bill 2023**

Thank you for the opportunity to provide a submission on the Modern Slavery Amendment (Australian Anti-Slavery Commissioner) Bill 2023 (**Bill**).

The Australian Institute of Company Directors' (**AICD**) mission is to be the independent and trusted voice of governance, building the capability of a community of leaders for the benefit of society. The AICD's membership of 51,000 reflects the diversity of Australia's director community, comprised of directors and leaders of not-for-profits (**NFPs**), large and small and medium enterprises (**SMEs**) and the government sector.

The AICD has participated in Government's previous consultations on the *Modern Slavery Act 2018* (Cth) (**Act**). This includes supporting the Act's introduction and draft guidance for reporting entities, and most recently the review of the Act led by Professor McMillan AO (**McMillan Review**).<sup>1</sup>

#### **1. Executive Summary**

The AICD strongly supports the establishment of an independent Anti-Slavery Commissioner and its proposed functions outlined in the Bill with a clearly defined focus on education, awareness raising and coordination.

A key finding of the McMillan Review is that, since the Act commenced, there has been positive improvement in the quality of modern slavery statements from one reporting period to the next. Professor McMillan however concluded that this change is not significant enough and reporting "resembles a tick-box exercise by a number of entities".

The AICD considers that there is an opportunity for the Anti-Slavery Commissioner to play a pivotal role in supporting entities meet their reporting obligations under the Act through a

---

<sup>1</sup> AICD Submission, Review of Australia's Modern Slavery Act 2018, available [here](#).

range of initiatives to assist entities in monitoring and remediating identified risks of modern slavery.

To enhance the role's effectiveness, our submission recommends that the remit and functions of the Anti-Slavery Commissioner include:

- Developing codes of practice and certification measures for suppliers to reduce duplicative supplier due diligence and verification processes within sectors, and provide greater certainty and assurance for entities on compliance within supply chains;
- Publishing an annual list of high risk regions, locations, industries, products, suppliers or supply chains to serve as a reference point for entities in undertaking due diligence activities;
- Developing practical guidance for high-risk sectors, NFPs, Aboriginal and Torres Strait Islander organisations and small and medium enterprises (**SMEs**), including by promoting best practice and drawing on successful domestic and international examples;
- Conducting thematic or sectoral assessments of modern slavery statements to provide real-world insights into current practices and highlight areas of due diligence and reporting that require improvement; and
- Facilitating collaboration across industry, Government and civil society to alleviate geopolitical and other barriers to robust supply chain analysis.

We provide further detail on these points below.

## 2. Education and capacity building

As highlighted in the AICD's submission to the McMillan Review, our consultation with directors suggests there is significant demand for further guidance, codes of practice for suppliers, training, Government advice and support on identifying and addressing modern slavery risks, both here in Australia and abroad.

### **Codes of practice and certification**

The AICD considers that the Anti-Slavery Commissioner could play a central role in leading the development of sector-based codes of practice and certification measures for suppliers.

At present, individual companies are required to assess supply chain risks across what can, in some industries, be a common pool of suppliers. There are also limitations to the verifications that internal audit within organisations can carry out due to the specialised nature of the risk and limited personnel capabilities.

In the AICD's view, there is an opportunity to reduce the regulatory burden on companies through the development of sector-based codes of practice which could be used as a basis for certification of suppliers. For example, where supplier compliance with the code is assessed and verified by the office of the Anti-Slavery Commissioner.

A code of practice and certification system for suppliers would not only remove duplicative due diligence processes, but also provide greater certainty and assurance around

organisations' procurement arrangements.

### **Declaration of high risk matters**

The AICD supports Recommendation 27 of the McMillan Review for either the Minister administering the Act or the Anti-Slavery Commissioner to be authorised under the Act to make a written declaration of a region, location, industry, product, supplier or supply chain that is regarded as carrying a high modern slavery risk.<sup>2</sup> Professor McMillan suggests this declaration could suggest how entities should respond in preparing their annual modern slavery statement.

While the Bill does not include this power within the Anti-Slavery Commissioner's proposed functions, we strongly encourage the Committee to consider its inclusion within the Anti-Slavery Commissioner's remit.

Publishing an annual list of regions, locations, industries, products, suppliers or supply chains that carry a high risk of modern slavery would serve as an important reference point for entities - not only when undertaking due diligence on existing supply chains in accordance with the Act, but also before entering into new supplier arrangements where the degree of risk may be less well understood.

This function would require the Anti-Slavery Commissioner to work collaboratively with Australian Government departments and agencies to consider whether trade obligations or bilateral sensitivities are relevant to a declaration.

### **Targeted guidance**

The AICD strongly encourages the development of tailored guidance, in particular, for NFPs, Aboriginal and Torres Strait Islander organisations and SMEs that are reporting entities under the Act which often have limited time, resources and internal expertise to conduct extensive supply chain analysis.

It is critical that the Government together with the Anti-Slavery Commissioner support these entities to ensure that the compliance burden is a manageable rather than a daunting task that promotes a 'tick a box' compliance approach. Guidance could outline low cost, simple steps that entities can take to investigate their operations and supply chains and corrective actions to remediate any risks identified.

We also encourage the Anti-Slavery Commissioner, once established, to consult with Aboriginal and Torres Strait Islander organisations about the impact of the Act and meeting certain reporting criteria, given the unique challenges they face in certain supply chains.

### **Thematic assessments**

Although not expressly included in the Bill, the AICD recommends that the Anti-Slavery Commissioner's functions include an ability to conduct thematic or sectoral assessments that would provide valuable, real-world insights into current practices and highlight areas requiring improvement.

By reviewing statements in certain sectors or relating to certain products, the Anti-Slavery Commissioner would gain significant insight on key challenges and be best placed to provide

---

<sup>2</sup> Professor John McMillan AO, *Report of the statutory review of the Modern Slavery Act 2018 (Cth): The first three years*, p. 107, available [here](#).

timely and practical guidance for navigating these.

Thematic assessments would complement the Modern Slavery Business Engagement Unit's (MSBEU) monitoring activities, which includes examining all statements for compliance with the Act before they are published on the public register.

### 3. Coordinating whole of government response to modern slavery

Australian directors and their organisations are, in the majority, spending significant time and resources on modern slavery governance. Ensuring transparency around work practices in operations and supply chains through reporting on identified risks and/or prevalence of modern slavery, as well as taking steps to address those risks, are levers within organisations' control. However, given the endemic nature of modern slavery in many parts of the world, significant global economic coordination and collaboration is critical.

In feedback to the AICD, directors have cited significant barriers for organisations to undertake the requisite due diligence on their organisations' operations and supply chains. Gaining access to, and engagement with, suppliers beyond tier 1 and 2 suppliers in certain countries and regions is a common challenge in practice. Directors consistently report geopolitical and other risk factors that hinder robust supply chain analysis on an ongoing basis.

Industry requires greater support from the Government to remediate these issues at an international trade and political level. The AICD strongly recommends that the Anti-Slavery Commissioner play an important function in facilitating cross-Government agency coordination to ensure a whole of government response to modern slavery.

### 4. Resourcing

The Bill proposes that the role of the Anti-Slavery Commissioner have a broad mandate and require engagement with a wide range of stakeholders. It is critical, in our view, that Government adequately resource this office to ensure it can be an effective pillar to Australia's response to modern slavery.

### 5. Next steps

We hope our submission will be of assistance to the Committee. If you would like to discuss any aspects further, please contact Laura Bacon, Senior Policy Adviser, at [lbacon@aicd.com.au](mailto:lbacon@aicd.com.au).

Yours sincerely,



**Louise Petschler**

GM Education & Policy Leadership