

23/11/2022

Professor John McMillan, AO
Modern Slavery Act Review Secretariat
Attorney-General's Department
3-5 National Circuit, Barton
ACT 2600

By email: ModernSlaveryActReview@ag.gov.au

Dear Professor McMillan,

AustralianSuper Submission on Review of Australia's Modern Slavery Act 2018 Issues Paper

AustralianSuper welcomes the opportunity to provide a submission in response to the Review of Australia's *Modern Slavery Act 2018* (the Act).

AustralianSuper is Australia's largest superannuation fund and is run only to benefit members. Almost 3 million Australians are members of AustralianSuper and we invest over \$260bn in member assets on their behalf.

Modern slavery is a systemic issue and companies that rely on modern slavery in their supply chains and operations ultimately have an unsustainable business model.

As a significant investor in Australian and international markets, we believe we have a responsibility to advocate for companies to address this risk. We actively engage with investee companies to ensure modern slavery risk is appropriately managed.

In addition, AustralianSuper is a large procurer of products and services. We have an obligation to identify the risk of modern slavery in our own portfolio and acknowledge the importance of addressing this risk in our operations and supply chains.

AustralianSuper considers the review of the Modern Slavery Act to be important and timely. Our submission addresses a number of the consultation questions as set out in the Issues Paper. These are contained in the attachment.

It is important that the Act continues to improve and evolve to ensure that modern slavery is highlighted, minimised and ultimately abolished. To achieve this AustralianSuper recommends:

- Going beyond a voluntary compliance regime. While important in raising awareness, a voluntary regime can lead to inconsistent practices and information. The Act should now evolve to have enforceable reporting requirements to ensure uniformity;
- Introducing a due diligence obligation on entities to describe their approach to identifying, preventing and mitigating the risk;
- Supporting an Anti-Slavery Commissioner with adequate powers and resourcing to monitor and enforce the Act;
- Creating a knowledge hub within the Commissioner's office to provide information, advice, stakeholder engagement and training to support reporting entities.
- Reviewing the Act in three years to ensure continuous improvement.

We would be pleased to provide additional information or to discuss this submission in further detail. If that would be of assistance, please do not hesitate to contact Nick Coates, Senior Manager, External Affairs (ncoates@australiansuper.com).

Regards



Sarah Adams
Group Executive
Strategy, Reputation and Corporate Affairs

Impact of the Modern Slavery Act – time to moving beyond compliance

Q1 - Has the Modern Slavery Act had a positive impact in the first three years?

Yes. AustralianSuper supported the introduction of the Act in 2018 and we believe it has been effective in increasing awareness of modern slavery risks and improving transparency about how businesses are identifying and addressing the risks.

The mandatory disclosure requirement of the Modern Slavery Act Statements (MSAs) has increased action in the private sector by creating better supply chain transparency. We view this as a positive first step.

Timely, accurate and transparent reporting on modern slavery provides useful qualitative information about how companies are addressing modern slavery risks and provides deeper understanding of the company supply chain beyond Tier 1. It also enables investors to assess whether businesses are taking steps and making progress to improve their modern slavery risk management.

The information contained in MSAs is integrated into AustralianSuper's investment decision -making process and stewardship activities. Access to public disclosures supports our efforts to assess investment risk and manage the portfolio in accordance with our investment strategy and principles.

Effectiveness of the transparency framework

Q2 - 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?

In the first few years of operation, the Modern Slavery Act has been effective in raising awareness of modern slavery and business practices. Self-disclosure has been a valuable first step; however, from AustralianSuper's perspective, the quality of transparency in MSAs could be improved. Research by ACSI¹ and Monash University² has shown that many statements do not properly engage with the risks or do not provide information on activities taking place to ameliorate any risks identified.

The transparency framework underpinning the Act relies on voluntary compliance by businesses with their reporting obligations which has created a divergence in the quality of reporting. This has resulted in a 'race to the middle' for many companies aiming to meet their minimum reporting obligations without adequately demonstrating continuous improvement to address the risk from one reporting cycle to the next. It has also led to inconsistent and incomplete disclosure by other companies.

Improvements in the quality of MSAs would make the Act more effective by making the disclosures consistent and reliable, and from the perspective of a significant institutional investor, assist our decision making and stewardship activities. There are numerous current statements that do not provide enough information for investors to clearly understand the steps companies are taking to combat modern slavery.

¹ ACSI, *Moving from paper to practice: ASX200 reporting under Australia's Modern Slavery Act*, July 2021: https://acsi.org.au/wp-content/uploads/2021/07/ACSI_ModernSlavery_July2021.pdf

² *Modern Slavery Disclosure Quality Ratings: ASX100 Companies Update 2022* [Research brief]. Monash Centre for Financial Studies, Monash Business School. https://www.monash.edu/data/assets/pdf_file/0004/3073135/Research-Brief-ASX100-FY21.pdf

Recommendation

- Going beyond a voluntary compliance regime. While important in raising awareness, a voluntary regime can lead to inconsistent practices and information. The Act should now evolve to have enforceable reporting requirements to ensure uniformity.

Due diligence requirements

Q4 - Should the Modern Slavery Act spell out more explicitly the due diligence steps required of entities to identify and address modern slavery risks?

The Act should introduce a due diligence obligation on entities to identify, assess, prevent, remedy and report on modern slavery risk in their own operations and supply chains. The purpose of this due diligence obligation is twofold:

- Provide entities with clarity about their obligations under the Act, which will increase understanding and improve action to address the risk, and
- Encourage a race to the top as companies who are already leading in their approach to managing modern slavery continue to improve with positive flow-on effect for smaller entities down the supply chain.

The changes proposed must be drafted with consideration of:

- Ensuring the requirements are clearly articulated to provide companies with clarity to enable compliance and uplift due diligence practice.
- A materiality consideration should also be applied to ensure companies focus their resources on the areas of their supply chains that have the greatest potential to impact human rights.
- The provisions should include a requirement for companies to identify the risk, take meaningful action to address the risk and conduct ongoing monitoring to prevent it from occurring.

Beyond addressing the significant harms to the individual from human rights exploitation, the introduction of due diligence obligations presents an opportunity for companies to improve their own understanding of their supply chains. This awareness can improve company management of suppliers, reduce costs and create better supplier relationships. These multifaceted benefits would have positive flow-on outcomes for company performance and ultimately improve members' retirement outcomes.

Recommendation

- Introducing a due diligence obligation on entities to describe their approach to identifying, preventing and mitigating the risk.

Q23 - 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?

We note the Australian Government has committed to establishing an independent Anti-Slavery Commissioner which is supported by AustralianSuper. We believe the Commissioner should play an active role in administering and informing the reporting requirements of the Act and should have adequate powers to enforce compliance.

Penalties

In line with evolving international practice, for example in the UK and New Zealand, we believe the Anti-Slavery Commissioner should be provided with powers to address non-compliance with the reporting obligation in the form of civil penalties. It is AustralianSuper's view that this enforcement capability will significantly improve the standards of disclosure. Penalties could cover a range of non-compliance including the failure to submit a statement or to address the mandatory criteria. In addition, there should be a requirement to continuously improve reporting against the criteria from one cycle to the next. This will ensure that companies remain vigilant, and action is taken to combat the risk.

Knowledge Sharing Hub

The Commissioner can also play an important role in providing advice, analysis, stakeholder engagement and training to help companies improve their management of the risk.

AustralianSuper suggests that the Commissioner could also create and oversee a knowledge hub that would be a central repository of shared information and resources to support reporting entities compliance and improved practice. This would help address the quality of MSAs as discussed above.

As previously mentioned, there is significant room for improvement in the quality of MS reporting especially in the ASX200 companies. Reviewing the MS Statements of investee companies, AustralianSuper identified that statements were developed to satisfy the legal reporting requirements but did not provide deep disclosure on operational risks. In addition, many of the companies were reluctant, or did not have the resources, to search beyond Tier 1 suppliers. There was a lack of disclosure on the risk assessment, internal training, effectiveness, grievance mechanisms for vulnerable workers or response to incidents or allegations of violations.

Recommendation

- Supporting an Anti-Slavery Commissioner with adequate powers and resourcing to monitor and enforce the Act; and
- Creating a knowledge hub within the Commissioner's office to provide information, advice, stakeholder engagement and training to support reporting entities.

Review of the Modern Slavery Act

Q25. Is a further statutory review (or reviews) of the Modern Slavery Act desirable? If so, when? And by whom?

AustralianSuper supports a review of the Act again in three years in a similar fashion to the current Review.

Recommendation

- Reviewing the Act in three years to ensure continuous improvement.