Review of Australia's Modern Slavery Act 2018

HIA Submission to the Australian Government

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About the Housing Industry Association

The Housing Industry Association (HIA) is Australia's only national industry association representing the interests of the residential building industry.

As the voice of the residential building industry, HIA represents a membership of 60,000 across Australia. Our members are involved in delivering more than 180,000 new homes each year through the construction of new housing estates, detached homes, low & medium-density housing developments, apartment buildings and completing renovations on Australia's 9 million existing homes.

HIA members comprise a diverse mix of companies, including volume builders delivering thousands of new homes a year through to small and medium home builders delivering one or more custom built homes a year. From sole traders to multi-nationals, HIA members construct over 85 per cent of the nation's new building stock.

The residential building industry is one of Australia's most dynamic, innovative and efficient service industries and is a key driver of the Australian economy. The residential building industry has a wide reach into the manufacturing, supply and retail sectors.

Contributing over $100 billion per annum and accounting for approximately 6 per cent of Gross Domestic Product, the residential building industry employs over one million people, representing tens of thousands of small businesses and over 200,000 sub-contractors reliant on the industry for their livelihood.

HIA exists to service the businesses it represents, lobby for the best possible business environment for the building industry and to encourage a responsible and quality driven, affordable residential building development industry. HIA's mission is to:

> *"promote policies and provide services which enhance our members' business practices, products and profitability, consistent with the highest standards of professional and commercial conduct."*

HIA develops and advocates policy on behalf of members to further advance new home building and renovating, enabling members to provide affordable and appropriate housing to the growing Australian population. New policy is generated through a grassroots process that starts with local and regional committees before progressing to the National Policy Congress by which time it has passed through almost 1,000 sets of hands.

Policy development is supported by an ongoing process of collecting and analysing data, forecasting, and providing industry data and insights for members, the general public and on a contract basis.

The association operates offices in 22 centres around the nation providing a wide range of advocacy, business support services and products for members, including legal, technical, planning, workplace health and safety and business compliance advice, along with training services, contracts and stationery, industry awards for excellence, and member only discounts on goods and services.

1. Introduction

The Modern Slavery Act 2018 (Cth) (the Act) commenced on 1 January 2019. The Act requires a review be undertaken three years after commencement. On 31 March 2022, a statutory review of the Act was announced.

On 2 December 2024, the Government released its response to the *Statutory Review – Strengthening the Modern Slavery Act* (the Response).

The Response agrees in full, in part, or in principle, to 25 of the 30 recommendations from the Review. This includes consulting on the introduction of penalties for non-compliance and providing enhanced guidance to support businesses to understand and meet their obligations under the Modern Slavery Act.

We note that many of the recommendations are significant and complex. They will require careful consideration in consultation with business and broader community stakeholders. Consequently, the Government is progressing consultations in two streams:

- Stream A is being progressed through this public consultation paper, and outlines options to strengthen the transparency framework, simplify and improve reporting, and target non-compliance.

- Stream B will be progressed through targeted consultations with relevant specialists in Government, business and the non-government sectors on complex policy issues, including declarations of high-risk matters (recommendation 27) and obligations for due diligence systems (recommendation 11).

HIA's experience with the Modern Slavery Act

Since the introduction of the legislation, we have supported appropriate actions being taken by the business community to address the risks of modern slavery in their supply chain. However, we continue to hold major concerns that the residential building industry is at risk of being disproportionately burdened by the obligations under the Act due to the complex nature of supply chains across the industry.

These concerns are warranted as supply chains in the residential building industry are longer, and often more complex, than many other industries. The heavy reliance on the use of independent contractors, many of which are small businesses, in conjunction with the inordinate number of participants involved in the production of a building product from the raw material to its ultimate inclusion in a house, makes reporting extremely challenging.

Accordingly, any regulatory intervention must give due weight to the burden that will be imposed on businesses in that supply chain at a time when our industry is plagued by increasing regulation and cost that adversely impacts housing supply and affordability.

2. Response to the Issues Paper – Stream A

HIA provides the following responses to the questions posed in the *Issues Paper – Strengthening the Modern Slavery Act.*

a. Identification of the reporting entity

We oppose any change which would extend the reporting requirements to additional entities owned or controlled by the reporting entity. The Act already captures entities which were not intended to be captured.

Additionally, the regulatory burden the current reporting requirements have imposed on reporting entities is significant, and additional reporting seems unnecessary.

b. Terminology of 'operations' and 'supply chains'

We support the Government's decision to retain the current 'supply chain' terminology under the Modern Slavery Act. This term is more synonymous with the residential building industry. Whereas the term 'supply networks' risks casting a much broader net leading to increased regulatory burden and unintended consequences.

Furthermore, altering definitions without proper analysis, and particularly in relation to what is essentially new legislation, can cause uncertainty and confusion in relation to compliance and reporting obligations.

We also endorse the development of more industry specific guidance material with practical examples of the application of the Act to operations and supply chains. This should be complemented by training and education with our association well positioned to assist those building, supply and manufacturing businesses captured by the Act to better understand their requirements.

c. Description of risks of modern slavery practices in operations and supply chains

It is never a straightforward process in identifying and describing the risks of modern slavery practices in the operations and supply chains of the reporting entity operating in the residential building industry. This is due to the multitude of inputs and locations involved in the manufacture of building product through to final installation on a residential building site, using a significant number of trades and specialists (we estimate 25 or more).

It is important that if this requirement is retained, it not be strict or prescriptive, and only applied where it is reasonably practicable to do so at the time of reporting.

d. Actions to address modern slavery risks

We support moves that would more explicitly identify the obligations and due diligence steps required of reporting entities. Our association has previously provided feedback in relation to the necessary information that should be provided to reporting parties regarding what 'due diligence' means for their business.

For example, the guidance material in the United Kingdom (UK) provides some 'starting questions' to assist in addressing due diligence obligations. Questions such as *'Are there ways that our business is affecting, or could affect people negatively? For instance, could requiring high-volume orders to be delivered in a short timeframe lead to abuse of workers?'* provides an opportunity to consider the businesses' approach

and query the consequences of those decisions without the implication that such an approach will automatically lead to modern slavery risks.

We support the inclusion of questions, specific industry guidance material, and further clarification in the Act, to assist reporting entities to identify and respond to modern slavery risks.

e. New criterion on grievance mechanisms

The Review recommended consideration be given to adding a new criterion to require entities to report on grievance, complaint or hotline mechanisms put in place by an entity to receive notifications from its staff, the staff of suppliers or possibly members of the public.

We would support a less prescriptive approach that encourages the implementation of grievance mechanisms, rather than adoption of additional mandatory reporting criteria adding a further layer of regulation.

f. Elevation of remediation reporting requirements

The Review explored the merits of requiring entities to report on the number of matters referred to law enforcement or other bodies, as well as to report on details of modern slavery incidents.

As a voluntary requirement our association is supportive of remediation reporting. The development of further guidelines on remediation, provision of case studies and availability of government support would assist with this objective.

However, adding remediation as a strict reporting requirement creates further administrative burden on entities.

g. Clarification of consultation requirements

The Government proposes to amend criterion (f) to require an entity to describe its process of consultation with those entities that it owns or controls where a joint statement is being prepared.

As previously stated, we oppose the extension of reporting requirements to additional entities owned or controlled by the reporting entity.

Notwithstanding our position, if this amendment was to occur clear clarification of the consultation requirements of those entities would be welcomed. Naturally, these consultation requirements should also avoid placing an unreasonable and significant impost on these entities through specification of regularity and level of documentation, as this will vary.

h. Reporting requirements

While regular and timely reporting is important, annual reporting can impose a significant time and cost burden for businesses.

While aligning reporting requirements with an entity's financial year is logical, we submit that annual reporting on these matters is cumbersome. A statement every two years, whilst still maintaining the current flexibility and aligning with the entity's financial year, would reduce cost and regulatory burden, whilst still meeting the primary goal of the Act, including providing reporting and other entities with the opportunity to respond to modern slavery risks in their supply chains.

i. Voluntary reporting

We contend in the interest of fairness and consistency, that any entity seeking to provide a voluntary statement to demonstrate their commitment to identifying and addressing modern slavery risks, must meet the same requirements as entities subject to mandatory reporting under the Act.

j. Compliance and enforcement framework

We do not support any additional enforcement measures that includes penalties. Our association submits there is no justification or evidentiary basis for the introduction of penalties.

This position is prefaced on the following grounds:

- Business compliance should not be driven by a fear of being penalised but by a commitment to understanding and addressing modern slavery risks. A punitive regime will encourage a compliance culture rather than a supportive and openminded culture.

- The Act implicitly encourages a collaborative and multi-stakeholder approach. Penalties will work against that objective.

- Penalties that apply too broadly could discourage entities from full reporting and undertaking a probing analysis of their supply chains.

- Full disclosure could expose an entity to criticism for not taking stronger action against its suppliers. Entities may similarly be pressured to dispense with particular suppliers rather than work with them to eradicate modern slavery practices and pose consequential exploitation risks for vulnerable workers.

- There are constitutional limitations in creating a punitive framework in a Commonwealth law. The imposition of a monetary fine is classified as an exclusively judicial function that can only be exercised by a federal court under Chapter III of the Australian Constitution. Consequently, prosecution action would be required to levy a penalty for failure by an entity to comply with the Act's reporting requirements.

In contrast, we commend the Government on its current approach to compliance using powers contained in section 16A of the Act. Where an entity fails to comply with their obligations under the Act, these powers allow the Minister to:

- request the entity explain within 28 days why the entity has not complied with the reporting requirement, or request the entity to take specified remedial action to ensure compliance; and

- where an entity fails to comply with this request, the Minister may publish information relating to the non-compliance on the Register.

In their current form these powers are robust enough to compel compliance and remedial action. It also allows Government to work with non-compliant entities to ensure they understand their obligations and provide relevant support to enable them to reach compliance. It is our understanding that this focus on education and awareness raising activities has improved compliance over each reporting period since the Act's commencement.

Despite our vehement opposition to a compliance and enforcement framework, if penalties were to be introduced, an approach similar to the UK Act which includes warning notices and other precautionary steps before the entity receives a financial or other penalty would be appropriate. The use of enforceable undertaking is also preferred to penalties.

3. Other Comments

Monetary threshold

We have held concerns with the monetary threshold since the introduction of the Act, in particular the potential for it to capture small and medium sized businesses. Notably, the $100 million threshold was arrived at to ensure those larger businesses and other entities in Australia, including those with extensive, complex and/or global operations and supply chains, were captured by the reporting requirements.

Further, it was determined those entities with a turnover of $100 million would have the *'capacity to meaningfully comply with the reporting requirements and have the market influence to effect change to their supply chain'*. Despite this initial intention, the monetary threshold does not prevent smaller businesses from being captured by obligations under the Act.

As outlined above, the supply chain in the residential building industry is complex and involves many industry participants. Reporting and non-reporting entities can and will operate within the same supply chain. For example, it is likely that a reporting entity builder will have small and medium sized subcontractors providing products and materials to their housing projects. While not required to provide a Modern Slavery Statement, obligations will be placed on those smaller contractors so that the reporting entity can ensure compliance with their reporting obligations.

There are builders, suppliers and manufacturers operating in the residential building industry that are caught by the requirements, which does not appear to be the intention of the Act.

We are supportive of intervention and compliance requirements to prevent modern slavery occurring, however, they should be focused on the groups and entities that present the highest level of risk.

Entities with revenue below the current threshold are unlikely to have the resources and capabilities to prepare annual Modern Slavery Statements. This regulatory burden would be considerable and have a significant cost for businesses from both a time and cost perspective.

Accordingly, we strongly oppose any proposal to lower the threshold noting that the Review and Government Response does not identify any reason, or cause for change in Australian businesses, to justify a change in the reporting threshold.

Red, Green and White Tape

The residential building industry is plagued by red, green and white tape that cumulatively, has a significant impact on our industry's ability to deliver homes faster and at an affordable price.

At the recent Economic Reform Roundtable[1] housing was a feature, with unanimous support on the need to reduce the excessive regulatory burden that is crippling businesses operating in our industry. While there was a specific focus on the roles that the NCC and Environmental Protection Biodiversity and Conservation Act play in causing delays and cost impots, there are a raft of building, OHS and workplace laws that also make it hard to do business.

In this context, it is imperative that careful consideration be given to the regulatory impact of new laws or changes to existing laws that seek to introduce additional requirements on residential building businesses.

[1] Economic Reform Roundtable, Treasury, Australian Government, 19 – 21 August 2025