



Submission on the Department of Home Affairs' Draft Guidance
for Reporting Entities under the Modern Slavery Act 2018

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1. Executive Summary

The Human Rights Law Centre (**HRLC**) welcomes the opportunity to comment on the Department of Home Affairs' (**DHA**) Draft Guidance for Reporting Entities under the *Modern Slavery Act 2018* (Cth) (**MSA**) (the **Guidance**). We congratulate the DHA for preparing this detailed draft Guidance and, in particular, for clearly situating MSA compliance within the global context of corporate respect for human rights and the UN Guiding Principles on Business and Human Rights (**UNGPs**).

This submission makes a number of recommendations to further strengthen the Guidance, relating to the following areas:

- Chapter 5: reporting against the mandatory criteria
- Appendix 3: how to respond to cases of modern slavery
- Appendix 5: helpful resources

2. Chapter 5: Reporting against the mandatory criteria

Chapter 5 of the Guidance outlines the concepts on which entities must report in line with the mandatory reporting criteria legislated in the Act.

Mandatory criteria 1 & 2 require reports under the MSA to identify the reporting entity and describe the reporting entity's "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 to encourage this approach. We would suggest that Table One also makes clear that it is best practice to identify suppliers by publicly disclosing the names and addresses of suppliers or factories.
- Further guidance should also be provided in this section on how entities should analyse and review their own business operations as opposed to just managing their supply chains. For example, in the 'Blue Sky Construction' case study on page 25, the company's operations extend beyond what is currently listed to include Blue Sky's customer contracts, the ways in which Blue Sky obtains finance for its activities, and its upstream and downstream contractual arrangements. Understanding the breadth of what is entailed by 'operations' also impacts how reporting entities report on operational risks. For example, in the Blue Sky example, modern slavery risk could arise where Blue Sky negotiates unreasonably low pricing and short timeframes with a principal in relation to a construction contract, carrying subsequent implications for the working conditions of subcontractor. Another example of a customer-related risk would be where Blue Sky Construction enters into a contract for the construction

of a private prison where prisoners are required to work excessive hours without pay. Without further guidance on the breadth of the meaning of 'operations', some of this analysis is likely to be lost as entities prepare their initial statements.

- It would also be useful to include a further case-study here relating specifically to financial sector entities (such as project financing of a mine operating in a jurisdiction where there is high-risk of child labour) to illustrate the different considerations relevant to those entities. While page 33 notes the need to consider 'investment and lending portfolios', it should be stressed that financial sector entities carry substantial risks through contributing or being directly linked to the modern slavery risks of their customers – thereby exposing them to risks across a multitude of sectors and geographic regions.

Mandatory criteria 3 requires entities to describe the risks of modern slavery practices in their operations and supply chains.

- The Guidance should emphasise that modern slavery rarely occurs in isolation and often arises in a context of generalised exploitative or dangerous employment practices or practices which violate other human rights. We would recommend that in addressing criteria 3, entities are encouraged to consider and report on broader human rights risks within their operations and supply chains and in particular, on risks of poor labour practices that may create the conditions in which situations of modern slavery develop.

Mandatory criteria 4 & 5 require entities to describe the actions they are taking to address risks and how they assess the effectiveness of those actions.

- Page 35 of the Guidance (para 104.1) states that entities should only describe actions taken during the 12 month reporting period for the reporting entity. We believe the Guidance should also encourage entities to set out what actions they propose to take in the future to address risks identified during the current reporting period. This would enable measurement of entities' performance over time and encourage a commitment by reporting entities to develop longer-term plans to fully map their supply chains and address the risks within them. Further, commitments as to future steps can be referred to in subsequent statements when evaluating effectiveness and improvements in approach year on year.
- Page 37 of the Guidance provides information on what constitutes 'remediation' for the purposes of the mandatory reporting criteria under the MSA. In our view, this part of the guidance could better highlight the central importance of remediation in circumstances where violations are found to have occurred, as well as from the standpoint of encouraging entities to develop effective grievance and remediation mechanisms. It would be useful to include a case-study here, as well as links to guidance on what constitutes effective grievance mechanisms (such as the Shift report on 'Remediation, Grievance Mechanisms and the Corporate Responsibility to Respect Human Rights' (2014)).

- Some of the suggested KPIs set out on page 45 appear to list measures that emphasise process rather than actual effectiveness in detecting or protecting persons who may be adversely impacted by an entity's activities (eg, number of contracts including modern slavery clauses - without including qualitative information on the nature of contractual controls included, and how much of the entity's supply chain is impacted). Other appropriate KPIs might include some of the following:
 - Proportion of suppliers screened for modern slavery risks;
 - Proportion of suppliers audited for evidence of payslips and working hours;
 - Number of workplaces in a company supply chain that have collective bargaining agreements or recognised trade union representation.

KPIs should be used to hold entities accountable to their own standards for continual improvement, and should assist civil society and government regulatory entities to assess the progress being made by a reporting entity year by year.

We would also recommend the inclusion of a further case study to demonstrate the effectiveness of actions taken by a company when cases of forced labour or human trafficking have been identified.

3. Appendix 3: Responding to cases of modern slavery

Appendix 3 deals with how entities should respond to situations of modern slavery identified in their operations or supply chains.

- The Guidance should encourage entities to consider responses that go beyond how to resolve an individual instance of modern slavery and consider systemic improvements to address underlying causes. It should be emphasised that instances of modern slavery should be viewed as structural rather than isolated instances of abuse, and that responses to uncovering instances of modern slavery will often require complex solutions that address root causes of exploitation, including an examination of how an entity's own practices may be contributing to the conditions that create forced labour.
- We also recommend that references to unions are expressly included on page 68 and elsewhere in the Guidance where entities are encouraged to consider opportunities to collaborate with international and local organisations or civil society groups, given the central importance, deep experience and effectiveness of unions in addressing issues of labour exploitation on behalf of workers.

4. Appendix 5: Further resources

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

1. 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
2. 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