



Modern Slavery Act Review

National Retail Association Submission

> Overview

As an industry association representing approximately 60,000 Australian retail shops, the National Retail Association (NRA) welcomes the opportunity to respond to the *Review of Australia's Modern Slavery Act 2018*. In 2021, the NRA formed a working group with a number of national and multi-national retailers, to provide education, information and collaboration, with the goal of improving industry response to the Modern Slavery Act (Act). The NRA's Modern Slavery Committee (Committee) is a non-competitive and collaborative forum across the retail industry, bringing together retailers in FMCG, QSR, Apparel, electronics and other durable goods to share best practice and leverage the expertise of members, academics and industry experts to establish an industry-led standard of best practice in modern slavery.

Specifically, the Committee aims to:

- Establish and share best practice in industry Ethical Sourcing programs.
- Share learnings on due diligence and traceability beyond the 1st tier of supply chains.
- Share best practice and achieve collaboration for remediation of modern slavery incidents identified, in both domestic and international contexts.
- Identify ways to collaborate on, or improve, domestic and international grievance mechanisms and audit programmes.
- Consider emerging issues and potential increased risk of modern slavery.
- Promote education of suppliers and domestic workers throughout the supply chain.
- Create an Australian retailer agreement in line with eliminating modern slavery.

Based on our experience, we would recommend more formalised opportunities for businesses to collaborate on grievance mechanisms, audits, and remediation, to avoid working in parallel and to maximise human rights outcomes. We would encourage the government to consider possible amendments to Competition Law to offer better clarity and facilitation in this area.

Feedback from both member and non-member retailers has been that the information required for setup of due diligence activities and preparation of reporting (particularly during the first year), has been extensive and more-costly than anticipated by Government (up to four-fold more expensive, on average). The NRA anticipates that entities are investing between \$50,000 to \$100,000 annually to adequately fulfil their obligations under the Act – much of which are new expenses – and require significant additional supply chain management activities.

The NRA does note, however, that retailers (and other entities) have made considerable progress over the past two years toward understanding and addressing the complexities of modern slavery in their supply chains and operations. The NRA notes that some media coverage of modern slavery assumes that many businesses are not doing enough to tackle modern slavery and we caution that reporting of the matter may lead to businesses being perceived negatively if modern slavery cases are identified within their supply chain, as reported in their statements. Given statements are made public on the register, there may be little incentive for businesses to reveal identified cases within their supply chains.

The NRA would support the appointment of an Anti-Slavery Commissioner, similar to the model in NSW, to be a point of contact for reporting entities and the public. Retailers have advised they have experienced a number of challenges that could have been minimised with better industry-specific guidance, which we believe a Commissioner could provide. We don't recommend that this role be empowered as an enforcement agency – but rather educational and investigative agency, to encourage optimal human rights outcomes.

We believe that more entities should be incentivised to use established supplier management platforms to more accurately identify, manage and remediate their modern slavery risks particularly beyond first-tier suppliers, and see more efficiencies between suppliers – to ultimately lead to a higher level of compliance and human rights outcomes. We would support the Australian government providing a tax offset for the cost of engaging platforms (e.g., SEDEX, Amfori), so that they are cost-neutral for entities (reporting entities and suppliers) to use.

> SECTION ONE: Impact of the Modern Slavery Act

Impact of the Modern Slavery Act

The NRA acknowledges that Australia has achieved significant progress in its goal of tackling the scourge of modern slavery since the introduction of the Act. Australian entities, including retailers, have introduced a raft of new accountability, auditing and remediation measures throughout their supply chains and operations to identify and mitigate the risks of modern slavery. While many retailers operating nationally and internationally had rigorous supply chain management processes in place prior to the introduction of the Act, since this time, ethical sourcing management (across not only modern slavery but also sustainability and animal welfare) has become more integrated into businesses' practice. We have seen the Act works somewhat to create similar requirements to other international jurisdictions such as the United Kingdom and the United States, which means that global efforts are more effective.

The impact of the is seen in specific instances of modern slavery remediation. The increasing number of modern slavery cases that have been identified and remediated, as identified in reporting, indicates that the Act is having a positive influence on the incidence of modern slavery.

The requirement to prepare and submit annual statements, as outlined in the Act, has also enabled businesses to benchmark their practices against leaders in their industry and other sectors. This is resulting in continuous improvement in the quality of their own modern slavery mitigation efforts, and we believe will continue to do so.

In attempts to best fulfil due diligence requirements under the Act, the NRA has established a working group Committee of key retailers and retail partners across FMCG, QSR, apparel, electronics, other durable goods, and services, to progress best practice in the management of modern slavery risks and remediation. This group seeks to identify and promote best practice for Australian entities to identify and respond to modern slavery in their supply chains and operations. The NRA believes that these collaborative groups are an important part of helping achieve long-lasting change and reduction in modern slavery globally.

Transparency Framework

The NRA supports the transparency framework of the Act and believes this performs an important role in the public accountability of entities. While this transparency framework has been successful to date, and we do not advocate a move away from this, we believe it is important to balance this with better public understanding of the modern slavery landscape, which is often lost in the current debate.

Since the first modern slavery statements have been made publicly available, there has been significant media interest around specific identified instances of modern slavery within supply chain – including second, third or fourth tier suppliers – leading to confusion and potentially negative media reporting that may impact the entity. Public understanding of modern slavery often does not differentiate between instances within an entity's operations (such as wage theft), and instances within supply chains (such as systemic underpayment of workers at factories operated by second or third-tier suppliers, which may not have a direct relationship with the entity). The risk of negative publicity could result in commercial impacts to brand equity, influence share prices or compromise commercial in confidence supplier information. Given these risks, there is sometimes little incentive for entities to reveal identified cases of modern slavery. The transparency framework remains critical to the overall success in combating modern slavery, however, we caution that these risks should be considered as work in this space evolves.

> SECTION TWO: Reporting Requirements

Revenue threshold test

The NRA supports the use of a revenue test as a mechanism to determine participation in obligations under the Act. We believe that the current \$100 million threshold has been appropriate in early years of activity, however, we would support lowering these requirements as Australia's modern slavery endeavours mature and evolve – with the intent that managing modern slavery risk becomes a cost of doing business in Australia.

As such, we believe that businesses with a turnover of between \$50-\$100 million should be required to participate with a lower due diligence standard. Resourcing this work to be effective may be a concern and to prevent undermining the integrity of the requirements, we recommend that businesses within this bracket are only required to focus on their first-tier suppliers and operations – and submit an annual statement. We recommend that this threshold be reviewed five years after commencing. We also note that the now repealed NSW Act had a threshold of \$50 million for participation and we would urge for national consistency with any reporting requirements between State, Territory and Federal Governments.

We believe that this will result in more effective identification and remediation work further down supply chain – as awareness grows and suppliers become more accustomed to providing transparency to purchasing partners. Lowering the threshold will create better fairness and remove financial advantage for businesses operating below the current threshold as well as assist with the quality of supplier reporting.

The NRA does note the sizeable investment involved in undertaking modern slavery risk identification and remediation – and appreciates that smaller entities may need time to become resourced and implement measures to meet obligations.

Annual Statements

The NRA supports continued annual reporting obligations, in line with an entity's financial year reporting. Modern Slavery Statements are a summary of the annual work undertaken by entities and are an indication of continuous improvement, we believe that bi-annual reporting would create unnecessary reporting burden without any human rights benefit.

It is important to acknowledge that reporting entities are embedding processes and practices in their supply chain management and operations to identify risks and remediate them as they occur. Their efforts to tackle modern slavery are not limited to the preparation of an annual Statement. We estimate that the costs for businesses to undertake compliance with the Act are much higher than suggested in the Regulatory Impact Statement. The NRA believes costs are more likely between \$50,000-\$100,000 annually (including investment in a management platform, audit activity, grievance mechanisms, preparing statements and internal staffing costs).

Modern slavery statements allow investors, government, and partners to be aware of risks and activities, and keep entities accountable, similar to many other public reporting requirements. We note the current lack of integration of reporting with other government agencies and regulatory bodies and we would support better disclosure requirements with the ASX and ASIC.

Defining Modern Slavery

The NRA supports the current definition of modern slavery, as included in the Act. We support periodic review to capture any additional types of modern slavery that emerge as our understanding of these risks continues to evolve.

Defining Supply Chain and Operations

While we support the current definitions of supply chain and operations, we believe that further guidance could be made available to entities to understand the best method of treating reporting requirements for complex company structures, and changes to company structures, such as, demerged companies or joint ventures.

Reporting Criteria

The NRA largely supports the current reporting criteria; however, we would recommend the separation of "due diligence" and "remediation" into separate reporting criteria, rather than under the umbrella criterion of actions taken to address risks.

Due diligence activities to identify, monitor and investigate modern slavery risks are different from remediation once a modern slavery case has been confirmed. We believe that as entities' modern slavery

journeys mature, more focus will be placed on these two separate processes, and they should be treated with a greater attention within the modern slavery statement.

Harmonising Reporting

The NRA supports measures to harmonise reporting requirements, both between Australian governments, government agencies and bodies, and with other international jurisdictions. One of the key challenges faced by entities has been achieving transparency further down their supply chain, where no direct relationship exists. Extracting relevant information from these second, third or fourth-tier suppliers can be resource intensive, made even more difficult due to the nature of varying requirements between countries. We believe better harmonisation between international jurisdictions would improve the quality of reporting from supplier partners.

Many entities currently required to report under the Act are also required to report in other jurisdictions and harmonisation would help improve the quality of reporting and effectiveness of supply chain management for these entities, ultimately improving human rights outcomes.

As discussed above, the NRA would also support greater disclosure and integration of modern slavery reporting to regulatory bodies within Australia, such as the ASX and ASIC.

Reporting Approvals

The NRA believes current reporting approvals processes as adequate and do not require amendment.

Voluntary Reporting

The NRA would like to see modern slavery due diligence better integrated into the operations of all entities in Australia and we believe that voluntary reporting is an opportunity to achieve this. We would support the continued provision for voluntary reporting under the Act and would also support an Anti-Slavery Commissioner supporting entities to submit modern slavery statements voluntarily.

> SECTION THREE: Enforcement of the Modern Slavery Act reporting obligations

Compliance with the Act

Since the adoption of the Act, the NRA has seen an enormous investment by businesses into reviewing their operations and Codes of Conduct, as well as managing their supply chain to uphold their obligations. Overall, we believe that there is strong evidence of commitment to compliance and continuous improvement. The NRA is aware that businesses made wide-ranging changes as part of establishing their responses to modern slavery and are now making ongoing annual investments into this work. In the UK, only 75% of businesses required to report their work to identify and address modern slavery were doing so ([ref](#), p16). Information suggests this has been higher in Australia and continues to improve. We acknowledge that for many entities the first and second reporting cycles included many learnings, however, the rate of compliance is now much higher and continues to grow.

The work involved to comply with the criteria of assessing and addressing risks is significant. In many cases this obligation adds an extra level of complexity to supply chain management and may involve employing additional internal resources or seeking external consulting support. We note that some entities may have hundreds of suppliers, with thousands of second-tier suppliers. Many entities also have non-ongoing seasonal or contract suppliers. This work is personnel and time intensive work.

The NRA believes that the experience of the first two reporting cycles delivers some important learnings for consideration as part of this review. We believe that while the commitment to compliance is strong, in the initial reporting cycles additional support would deliver a higher rate of compliance and higher quality of reporting. The NRA notes that government support and engagement with reporting businesses was limited, with retailers reporting that most engagement came from feedback after the submission of the first statement – indicating which areas require further improvement. Many businesses reported feeling unclear

on what best-practice management is or specifically the standards required by government. We anticipate that as more businesses are included in the reporting threshold (in line with above recommendations to lower the revenue test), these businesses will encounter the same challenges and could benefit from more hands-on training run by the Department or an Anti-Slavery Commissioner, in the form of webinars, in-person events, practice notes and case studies. We believe the focus should be sharing expertise and understanding of due diligence and remediation, rather than risk analysis.

Enforcement

The NRA supports the development of a regulatory standard to help businesses better understand their due diligence requirements and expectations under the Act. While compliance is growing, one of the key challenges experienced by businesses as they have embarked on the preparation of their statements, is understanding the government's expectations on the content of their statement. We believe that this could be achieved through a regulatory standard developed and managed by an Anti-Slavery Commissioner. We acknowledge that a standard is inherently difficult to create to the variability between reporting entities (domestic vs international; services vs products; types of operations), but we believe that this would provide entities with better guidance, specifically around the due diligence and remediation activities.

We do note that moving toward a regulatory standard should be treated with caution, to prevent it detracting from the continuous improvement approach, which we believe is essential to delivering better overall outcomes, rather than meeting a minimum standard.

The NRA does not support the introduction of financial penalties, as this unduly encourages a culture of compliance, rather than focus on human rights outcomes. We believe businesses have largely demonstrated a willingness to continuously improve their actions in response to modern slavery risks, without the need for penalties or sanctions. The first two years of reporting have been spent by businesses understanding their obligations and implementing internal measures and process changes – we expect to see even better compliance in the coming reporting periods as businesses work their way further into identifying and addressing new risk areas and concerns. The UK has found enforcement under the Anti-Slavery Commissioner has been ineffective to date. Rather than reinforcing a minimum standard to achieve through civil penalties, we believe encouraging continuous improvement would achieve better outcomes. We believe more support and better guidance could be provided to businesses in their early stages of reporting, through the establishment of an Anti-Slavery Commissioner.

> SECTION FIVE: Modern Slavery Statements Register

The NRA supports the Register continuing in the current format to promote accountability across industry, government, and the Australian public. In spite of the adoption of the Act, we believe a lack of public awareness remains about the challenge of modern slavery and the work businesses are undertaking to minimise the risk in their own operations and supply chain. The Register provides a publicly accessible platform to research and understand the work of reporting entities, including governments.

The Register, and more specifically submitted Modern Slavery Statements, also provide opportunities for reporting entities to benchmark their work against other entities in their industry, and to learn emerging best practice supply chain management techniques. This is a tool that is particularly valuable for entities that are within their first and second reporting cycles, which may still be establishing internal practices and processes.

We do note, however, that while the Register provides many advantages (which do outweigh any potential disadvantages), we acknowledge the opportunity for this information to be misused. This may take the form of negative media reporting which may focus on identified modern slavery cases (rather than the positive work of an entity to identify and remediate cases). It is important that entities are incentivised continue to be transparent in their work as much as possible (without compromising Commercial in Confidence information).

> SECTION SIX: Administration and Compliance Monitoring of the Modern Slavery Act

Anti-Slavery Commissioner

The NRA supports the introduction of an Anti-Slavery Commissioner (Commissioner) to support the administration and compliance with obligations under the Act. We would support this role operating with an educational focus, rather than as an enforcement agency, given the high level of commitment to compliance that has been evidenced.

We would support key functions of the Commissioner including:

- Training and information for reporting entities, particularly entities required to report for the first time, or failing to adequately address all reporting requirements.
- Development of regulatory standards for statements to adhere to (as outlined above);
- Public advocacy and understanding of modern slavery and actions to combat it (including community awareness);
- Oversight of all government policies and legislation relating to modern slavery to ensure harmony and effectiveness (e.g. sanctions/importing restrictions) as well as period reviews of the Act;
- Maintaining a public register of statements (moving this responsibility from the Department of Home Affairs);
- Receiving public complaints or tip-offs about potential modern slavery activity, both in Australia and overseas, for referral to appropriate investigation agencies or entities.
- Ability to issue public findings against entities failing to comply with due diligence requirements (under a regulatory standard), if they are not demonstrating continuous improvement; and
- Maintaining a database with a list of Australian and international entities (including trading partners/suppliers) that have been found to have modern slavery cases in their own operations. These entities could be removed from the database when they have demonstrated rectification, providing an incentive to ensure rectification is undertaken.

We would not support key functions of the Commissioner including:

- Ability to issue financial penalties; or
- Identification of victims of modern slavery.

We believe the Commissioner's focus should follow the model of the NSW Anti-Slavery Commissioner, rather than the UK model, with an educational and informational focus. We also believe that a Commissioner whose success is measured on enforcement will not be able to fulfil an educational role. We do not believe it would be an effective use of resources for the Commissioner to identify victims of modern slavery and may create liabilities for government and Australian businesses.

> SECTION SEVEN: Review of the Modern Slavery Act

The NRA supports the periodic review of the Act and its obligations on entities, on a five-yearly basis. Periodic reviews are critical to capture any emerging challenges and incorporate learnings. We do acknowledge that these reviews do not necessarily need to be statutory reviews.

Of particular note, we believe that the threshold for mandatory reporting should be considered regularly to determine whether this threshold should be continually lowered, particularly if our recommended changes to the threshold are implemented. While we do not support the introduction of financial penalties for entities failing to meet their due diligence (due to the evidence of continual improvement), we believe this matter should be reviewed in line with overarching reviews.

> Summary

The National Retail Association welcomes the opportunity to provide feedback for the review of the Modern Slavery Act. We believe that Australia's work toward tackling modern slavery has made considerable

advancement since the introduction of the Act, however, given recent data shows that global modern slavery continues to grow, more can be done.

Australian retailers and other entities are making important progress in their individual efforts to identify and address modern slavery and we believe many learnings and best practice could be better shared for the benefit of all. The NRA would like to see more opportunities for businesses to collaborate on delivering grievance mechanisms, audits, and remediation to improve outcomes and would support expanding reporting requirements to entities with a turnover of between \$50 million-\$100 million. The NRA would also support updates to the Act including provision for an Anti-Slavery Commissioner, the introduction of regulations to support more clarity in reporting obligations, and the consideration of due diligence and remediation separately under the Act's reporting criteria.

