

17 May 2019

Rebecca Mills
Director
Modern Slavery Business Engagement Unit
Department of Home Affairs
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Dear Rebecca

[Modern Slavery Act 2018: Draft Guidance for Reporting Entities](#)

On behalf of the Australian Council of Superannuation Investors (ACSI), I am pleased to make this submission in relation to the Modern Slavery Act 2018 Draft Guidance for Reporting Entities (Draft Guidance).

Established in 2001, ACSI exists to provide a strong, collective voice on environmental, social and governance (ESG) investment issues on behalf of our members. Our members include 39 Australian and international asset owners and institutional investors. Collectively, they manage over \$2.2 trillion in assets and own, on average, 10 per cent of every ASX200 company, on behalf of millions of beneficiaries.

As a representative of long-term investors, we welcome the Modern Slavery Act 2018. Beyond its devastating human impact, slavery threatens business sustainability and shareholder value. We seek to contribute positively to the discussion and use our collective influence to drive businesses to proactively identify and manage modern slavery risk.

In February 2019, we released our report '*Modern Slavery Risk Rights and Responsibilities*' which contains valuable tools for companies and investors in the fight against slavery. Beyond identifying high-risk factors and sectors, it includes practical checklists to diagnose companies' modern slavery readiness and the effectiveness of their response. It may be useful to include our report in the 'Helpful Resources' section in Appendix 5 to the Draft Guidance.

Our further comments are set out over the page. In summary, our view is that the Draft Guidance would benefit from additional focus on continuous improvement. In addition, we think the treatment of investments should be clarified. I trust that our comments are of assistance. Please contact me or Kate Griffiths, ACSI's Executive Manager -Public Policy and Advocacy, should you require any further information on ACSI's position.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Louise Davidson', is written in a cursive style.

Louise Davidson
Chief Executive Officer

Overview

ACSI supports the Modern Slavery Act and the accompanying Draft Guidance. We consider that increased transparency can provide valuable information to investors and stakeholders. Transparency provisions are designed to drive continuous improvement. Concerted peer support will move everyone towards leading practice more quickly.

Should a company choose not to take genuine steps to address modern slavery it will risk unfavourable market comparison, investor scrutiny and find it increasingly difficult to maintain public trust. Annual public modern slavery statements will allow stakeholders – including investors, civil society and others – to compare year-on-year progress.

Guidance should promote continuous improvement

We recognise that human rights reporting requirements, such as those embedded within the Australian modern slavery legislation, are designed to promote continuous improvement. The Draft Guidance properly focuses on what an entity needs to do to comply with the legislation. While we think that approach is helpful, it focuses on ‘first time reporting’. ACSI is concerned that this approach may lead to minimal or legalistic compliance, which is unlikely to yield change, and over time, will not meet the aims of the legislation.

Therefore, we recommend that the Draft Guidance state that there is an expectation that modern slavery statements will develop over time as approaches evolve and mature. This would encourage reporting entities to demonstrate how they have matured their capacity to identify, manage, address and remediate modern slavery risks and impacts. To drive consistent improvement over subsequent years, we believe that the Draft Guidance could go further in emphasising this approach. This could be done throughout Chapter 5 or in an additional section in that Chapter. We think that examples would be helpful in this respect. Such examples could involve entities setting work plans for the coming years and reporting back in their subsequent modern slavery statements.

Investments

The legislation provides that a modern slavery statement should describe the risk of modern slavery practice in the ‘operations and supply chains’ of the reporting entity and any entity that the reporting entity ‘owns or controls’.

We think that there is opportunity to clarify how investments should be treated. For example, on plain reading ‘operations and supply chains’ would not ordinarily include investments, and the box on page 25 ‘Key Terms Explained’ does not mention investments. Similarly, paragraph 81.1 outlines the example of excluding non-managed joint ventures from an entity’s modern slavery statement, on the basis that they will be covered in the managing entity’s statement, which is analogous to many investment scenarios. However, the table on page 27 suggests that investments should be considered part of an entity’s operations, and the box on page 38 outlines actions to address risks in investment portfolios.

Further clarification of the term ‘owns or controls’ may be useful to distinguish owned or controlled entities from investments. For example, reference could be made to the *Corporations Act* definition of ‘control’ which incorporates the capacity to determine the *outcome* of decisions on financial and operating policies. Should this be the intention, this would make it clear that investments are to be considered as part of a reporting entity’s ‘operations and supply chains’ for the purposes of their modern slavery statements.

We think that this clarification would be helpful as it would form a basis for clear reporting. This is because the action taken to address modern slavery risks will be different for investments than it might be for owned or controlled entities.

For many of our members, engagement is an effective way of responding to modern slavery risks in investments. In fact, there are many examples of such engagement already taking place. In this respect, the information in the boxes on page 38 and page 40 is helpful, however it could be supplemented with examples as contemplated above. In addition, we think it would be helpful to outline that investors could, as part of mapping their investments in the first instance, consider prioritising those investments where they have larger holdings.

We think it would also be helpful to supplement the references on pages 38 and 40, perhaps with examples mapping an investment portfolio and identifying risks by industry and/or geography. In addition, we

recommend further information outlining that as investee entities start to provide their own modern slavery statements, investors will, in turn, be able to further consider the risks and appropriate responses. Such guidance would support continuous improvement and evolution of best practice over time as reporting matures.