



Australian
Retailers
Association

Transnational Crime Branch
Attorney-General's Department
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MODERN SLAVERY REPORTING REQUIREMENT: RETAIL PERSPECTIVE

Friday 20 October 2017

Background:

The Australian Retailers Association (ARA) is the retail industry's peak representative body representing Australia's \$310 billion sector, which employs more than 1.2 million people. The ARA works to ensure retail success by informing, protecting, advocating, educating and saving money for its 7,500 independent and national retail members, which represent in excess of 50,000 shop fronts throughout Australia.

The ARA is by far Australia's largest retail organisation with coverage from the country's very largest retailers to small and medium retail businesses.

The ARA represents some of the most at-risk sectors for Modern Slavery, especially retailers trading in the apparel and footwear space. Therefore, it is of particular importance that a carefully balanced, light-touch approach be undertaken when attempting to address modern slavery in the supply chains of Australian businesses and organisations.

Many Australian retailers already apply ethical sourcing audit programs and have ethical sourcing guidelines and statements in place. It is important that measures pre-dating any *Modern Slavery Act* in Australia be accounted for, and that any additional measures are reasonable and flexible.

After undertaking a range of consultations with retailers, industry stakeholders and universities, the below principles should be taken into consideration when considering a *Modern Slavery Act*.

Reporting Requirements:

The ARA notes the proposal to introduce mandatory Modern Slavery reporting for all organisations in Australia with turnover exceeding \$100 million, and voluntary reporting for all other businesses operating under this threshold. Any requirements of a *Modern Slavery Act* in Australia should be light touch and broad in scope to ensure flexibility and minimise the complexities associated with reporting.

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We feel that anti-slavery reporting should be encouraged, rather than compelled. The ARA and industry stakeholders believe that mandatory regimes do not encourage compliance, as this merely mandates organisations meeting a minimum reporting threshold. A market-based, competitive model would serve as a better method to encourage transparent and detailed slavery reporting, with companies encouraged to report and be publicly acknowledged for doing so.

This would create a 'race-to-the-top,' motivating, rather than compelling, companies to exceed reporting requirements rather than simply to meet them. Under a market-based incentive model, businesses who do not produce modern slavery statements will be incentivised to change their reporting practices or lose business to their competitors. Market-motivation and reputational risk would be the primary motivators for businesses to achieve regular and transparent reporting on their supply chains.

Many retailers and other organisations already employ ethical sourcing strategies and policies in their dealings with suppliers. Given the work already undertaken by these companies, outside of a legal requirement to do so, pre-existing ethical sourcing guidelines and policies should be considered as a part of the proposed reporting regime. This will allow retailers to continue the work already undertaken to address ethical issues in their supply chains, as well as reducing complexities and duplication, which pose unnecessary administrative and financial costs.

Supply Chain:

According to the International Labour Organisation, elements of slavery are most prevalent in regions outside of Australia. Therefore, it would be beneficial for any reporting requirement to favour reporting on international supply chains ahead of domestic practices. This is not to say that instances of slavery may not exist within Australia's borders, more-so that Australia's employment laws, specifically regarding the Fair Work Act 2009, are well-developed and effective in preventing the spread of slavery in Australia.

The *Adidas Group* recently made a submission to the Joint Standing Committee on Foreign Affairs, Defence and Trade's inquiry into establishing a Modern Slavery Act in Australia. This submission details the importance of reducing complexities for organisations in navigating international supply chain operations to meet proposed reporting obligations.

This submission noted the preference of identifying key areas or locations which are of greater risk to modern slavery. The ARA agrees, as this approach will assist retailers in focusing on the most important areas where the greatest impact can be made in addressing modern slavery. Additionally, providing key focus points for organisations will assist in unwinding their often-complex supply chain structures and achieving greater transparency.

The ARA is fully supportive of the concept of 'risk-mapping,' which identifies areas where companies can focus their attention when reporting on slavery in their supply chains. This is more practicable than full

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traceability, as the interconnectedness, scope, and complexity of supply chains pose significant challenges to retailers to manage slavery risks and employ ethical sourcing models.

This would also assist and encourage small businesses to undertake investigation and reporting on modern slavery in their supply chains. It is of note that small businesses often do not have sophisticated oversight mechanisms, expertise, or sufficient resources to pore-over their supply chains. Identifying key risk-areas will assist small businesses to pinpoint areas of focus whilst avoiding additional administrative and financial costs.

Whilst full traceability is an ideal, this is not practicable, especially for larger organisations with more complex supply chain operations. Often, information on the operations and practices of suppliers is not easily accessible, especially where record-keeping and documentation are not accurate and/or complete. Many supply chains also operate in tiers, adding further complexities in sourcing accurate and well-documented information on their practices. Multiple suppliers may be involved at every step of production for some items, yet the Australian business may only have a relationship with the end-stage supplier.

Therefore, further clarification is needed as to how-deep into a supply chain an organisation should investigate. Whilst full traceability is an ideal, this is not necessarily practicable, especially for larger organisations with more complex supply chain operations. The ARA believes a 'best-efforts' approach must take priority over a mandated hurdle requirement, or a whole-of-chain investigation.

Application and Disclosure Requirements:

Retailers and the ARA also seek further clarification on the nature of reporting for retailers where concession businesses operate within their stores. It is of note that concession businesses operate under a variety of conditions; thus, the onus for investigating and reporting on the supply chain is unclear. The operational structure of many organisations is varied, especially in the retail industry. This includes concession agreements between large and small retailers, and the prevalence of resellers.

Concession retailers are small businesses operating within a larger business and contributing to their turnover. In a case where the concession does not meet the turnover threshold for reporting, it is unclear as to whether the larger business must still account for the concession's supply chain in their reporting. Clarification on this point will be essential for the retail industry, as concession models are widespread.

Furthermore, the ARA also seeks clarification on the reporting requirements of resellers. It is of note that businesses who re-sell second-hand items, factory seconds, or provide platforms for other retailers to on-sell their goods, may encounter great difficulty in investigating their supply chains. More detail is needed for reseller businesses, who do not have the capability to investigate historical cases dating back over decades in some cases, for items sourced and sold second-hand.

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Complexities and Costs:

The ARA is concerned at the anticipated costs to business of auditing and investigating their supply chains in order to meet their proposed reporting requirements. The floated estimate of A\$11,000 per organisation to engage an auditor to thoroughly investigate their supply chain is an underestimation.

Undertaking additional auditing processes poses a cost-burden to small, medium and large businesses alike. Engaging an external auditor is estimated to cost in the region of \$100,000 in many cases, in what will be a new and recurring expense which many organisations will struggle to bear. Any additional costs will ultimately need to be passed onto consumers, which will be unwelcome.

It is important to emphasise the link between ethical sourcing, supply chain and price pointing to clarify an increase in costs to consumers. Many consumers will not be able to meet the higher price point for a product which is guaranteed to be ethically sourced, in comparison to a lower-priced item without such guarantees. The cost of discovery and certification must be accounted for in the price of goods.

This is not to say that ethical practices and combatting slavery in supply chains should not be a priority for the retail or other industries. However, consumers need the low-cost market to exist and it is unfair to punish them with increasing costs due to strict regulatory requirements. Hence, any new regulations need to be light-touch, flexible, and easily achievable at a low-cost burden to retailers and other organisations.

Additionally, the ARA would like clarification on the prescriptive elements of Australia's legal definition of slavery and slavery practices and their application to overseas jurisdictions. It is of note that working conditions and minimum standards differ across borders. A company may source goods from a supplier in a country whose minimum working standards do not align clearly with Australia's, which creates a grey area for Australian organisations in investigation and reporting.

It is also important to ensure that any proposed Australian *Modern Slavery Act* and associated reporting requirement works in consort with external laws. Organisations may require assistance from the Australian Government in reporting on supply chain elements which operate outside Australia's borders. The nature and complexity of navigating differing legal principles, especially for organisations which source goods from multiple countries, will present unique challenges to Australian organisations when reporting.

Furthermore, reporting on slavery should be consistent with other jurisdictions where similar requirements exist. Consistency is necessary, especially for organisations which operate across borders. Duplication in reporting will create unnecessary burdens for these organisations.

Finally, clarification over how retailers might apply Australian workplace and human rights laws and definitions to an external jurisdiction which may operate under different definitional and legal mechanisms is desired.

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Support and Guidance:

While the ARA is broadly supportive of introducing a Modern Slavery Act in Australia, it is important that sufficient guidance and support is given to organisations, especially to small retailers, to assist them to meet their proposed reporting obligations.

As previously mentioned, identifying key locations or areas where modern slavery is most at risk will assist retailers in prioritising areas in their supply chains for investigation. The development of a 'risk-mapping' strategy is important in making the biggest impact in addressing slavery.

Information and guidance for organisations will be crucial in achieving quality and consistency. Thorough guidance on due-diligence requirements is necessary, however, any guidelines need to be flexible and non-prescriptive. Flexibility is important as every supply chain is different, and every business has different resource capacity in investigating and reporting on their supply chains.

Furthermore, many retailers and organisations will require information and support to understand what may constitute an instance of slavery, and where slavery may lie within their supply chain operations. Small retailers especially must be provided with clarity and guidance on what to look for and how to address such instances when and where they occur.

Thus, the varied and differentiated nature of Australia's business landscape must be taken into account when developing standards and guidance for slavery reporting requirements. The development of strong, yet flexible guidelines, as well example statements or statement outlines, for example, would be beneficial for retailers.

Summary:

The ARA is broadly supportive of the introduction of a Modern Slavery Act in Australia. Retailers are increasingly concerned about guaranteeing ethical practice within their supply chains and their overall operations. Recent times have seen many retailers implement ethical sourcing guidelines and practices in order to prevent slavery and other linked practices from occurring in their businesses.

A proposed reporting requirement under a Modern Slavery Act must be flexible and easy to implement, as well as the following:

- Encouraged by market-based mechanisms, not by prescriptive regulation;
- Regulation should be light-touch and broad in scope in order to encourage adherence;
- Practical and achievable at minimal cost to retailers and other organisations;
- Tied to pre-existing ethical sourcing policies and practices;
- Supported by strong, flexible guidance and information from Government.

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In addition to this, clarity is needed around the following points:

- Application of Australian laws and definitions in external jurisdictions where the aforementioned may differ;
- Depth and scope of supply chain investigations;
- Reporting obligations where concessions operate within, and contribute to the revenue of, larger businesses;
- Obligations of re-seller businesses, where supply chain information is not clear, or easily accessible;
- Proposed costs to retailers and other businesses in undertaking auditing of supply chains;
- Associated costs to consumers and the viability of the low price-point market stemming from increased cost-burden of audit processes.

Without clarity on these points, it is likely that the additional time, resource and cost-burdens associated with adhering to the proposed reporting requirements will detract from combatting instances of slavery in practice.

If implemented, these principles will encourage broad participation by retailers, large and small, across the industry. Given the complexities, depth, and interconnectedness of supply chains across the globe, encouraging a cohesive effort across industry will produce a greater impact to slavery practices in some of the highest-risk areas across the globe.

Thank you for the opportunity to contribute to this inquiry. For further information, please do not hesitate to contact ARA Director of Policy, Government and Corporate Relations, Heath Michael, by email at heath.michael@retail.org.au.

Kind regards,

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