THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

MODERN SLAVERY BILL 2018

EXPLANATORY MEMORANDUM

(Circulated by authority of the Assistant Minister for Home Affairs, the Honourable Alexander Hawke, MP)
MODERN SLAVERY BILL 2018

OUTLINE

1. The Modern Slavery Bill 2018 (‘the Bill’) will establish a Modern Slavery Reporting Requirement. This will require certain large businesses and other entities in Australia to make annual public reports (Modern Slavery Statements) on their actions to address modern slavery risks in their operations and supply chains.

2. The Modern Slavery Reporting Requirement supports the Bill’s primary objective to assist the business community in Australia to take proactive and effective actions to address modern slavery. This will help mitigate the risk of modern slavery practices occurring in the supply chains of goods and services in the Australian market.

Modern slavery risks in Australia

3. Modern slavery practices are major violations of human rights and serious crimes. Modern slavery practices include trafficking in persons, slavery, slavery-like practices (including forced labour and forced marriage) and the worst forms of child labour (including using children for prostitution or in hazardous work).

4. Modern slavery can affect any country and the United Nations estimates there are more than 40 million victims of modern slavery worldwide.\(^1\) Over half of these victims are exploited in the Asia-Pacific region, in which the supply chains of a significant number of large businesses operating in Australia are based. Modern slavery can occur in any sector or industry, and at any point in a supply chain. Internationally, high-risk industries include agriculture, construction, electronics, extractives, fashion and hospitality.

5. There is a high risk Australian businesses are exposed to modern slavery risks and that Australian goods and services are tainted by modern slavery. This risk may be heightened for large companies and other entities with extensive, complex and/or global supply chains.

Support for the Australian business community to address modern slavery

6. There is currently no formal mechanism in Australia that directly targets modern slavery in business operations and supply chains, or supports the business community to take action to address modern slavery.

7. The Bill will support large businesses to identify and address modern slavery risks and to develop and maintain responsible and transparent supply chains. It will drive a ‘race to the top’ as reporting entities compete for market funding and investor and consumer support. The Bill also aims to increase awareness of modern slavery risks among the Australian business community, and assist investors and consumers to make more informed decisions when using, buying and selling goods and services.

---

Modern Slavery Reporting Requirement

8. The Bill will establish a Modern Slavery Reporting Requirement, requiring reporting entities to provide annual Modern Slavery Statements to the responsible Minister to be published online on a central register.

9. Australian entities and foreign entities carrying on business in Australia are required to submit Modern Slavery Statements for every twelve month period that they have annual revenue of at least 100 million Australian dollars. The Australian Government must also publish an annual Modern Slavery Statement. Entities that are not required to report can volunteer to provide annual public Modern Slavery Statements.

10. A Modern Slavery Statement must cover mandatory criteria by describing:
   - the entity’s structure, operations and supply chains;
   - the potential modern slavery risks in the entity’s operations and supply chains;
   - actions the entity has taken to assess and address those risks, including due diligence and remediation processes; and
   - how the entity assesses the effectiveness of those actions.

11. Modern Slavery Statements must also identify the reporting entity, describe consultation with other entities and details of approvals, and can include other relevant information. A Modern Slavery Statement must be signed by a responsible member for the entity, approved by the principal governing body of the entity and provided to the Minister within six months from the end of the entity’s financial year.

12. The Bill provides for a review of the legislation three years after commencement to ensure the Modern Slavery Reporting Requirement remains effective and responsive to the Australian context.

Financial impact statement

13. The measures in this Bill have no financial impact on Government revenue.

Statement of compatibility with human rights

14. The statement of compatibility with human rights appears at the end of this explanatory memorandum.

Regulation impact statement

15. The regulation impact statement appears at the end of this explanatory memorandum, after the statement of compatibility with human rights.
NOTES ON CLAUSES

Part 1: Preliminary

Section 1: Short Title

16. Section 1 is a formal provision specifying that the Bill, when enacted, is to be cited as the Modern Slavery Act 2018 (‘the Act’).

Section 2: Commencement

17. Section 2 provides for the different commencement dates for different parts of the Bill.

18. Item 1 of the table provides that sections 1 and 2 of the Bill commence on the day the Bill receives Royal Assent. This gives effect to the Bill’s title and commencement.

19. Item 2 of the table provides that the remaining sections of the Bill (sections 3 to 10 and Parts 2 to 4) commence on a day to be fixed by Proclamation.

20. A fixed date by Proclamation, or the day after six months from Royal Assent, is appropriate for commencement of the Bill. Fixing the date of commencement by Proclamation will enable the Australian Government to align the Modern Slavery Reporting Requirement to commence at the beginning of either the Australian calendar year or the Australian financial year. This will also allow entities time between passage and commencement of the Act to identify whether they are a reporting entity and become familiar with their obligations to comply with the Modern Slavery Reporting Requirement. For the definition of reporting entity, refer to section 5.

21. The Proclamation period is limited to a period of six months. If Proclamation does not occur within six months after the Bill receives Royal Assent, the Bill will automatically commence the day after six months from Royal Assent. The six month period is a finite period and is intended to ensure that commencement is not delayed beyond what is reasonably necessary to establish arrangements to support the operation of the Modern Slavery Reporting Requirement.

Section 3: Simplified outline of this Act

22. Section 3 provides a simple outline of the Bill to assist readers to understand the substantive provisions in general. The simplified outline is not intended to be comprehensive and readers should rely on the substantive provisions.

Section 4: Definitions

23. The purpose of section 4 is to define key terms used in the Bill. Terms in section 4 are explained below. Some key terms are explained in other sections of the Bill. Refer to the definitions of: ‘reporting entity’ and ‘carries on business in Australia’ in section 5; ‘modern slavery statement’ in section 12; and ‘higher entity’ in section 14.
**Accounting standards**

24. ‘Accounting standards’ is defined as having the same meaning as in the *Corporations Act 2001* (Cth) (Corporations Act) and refers to the accounting standards made by the Australian Accounting Standards Board. For the purposes of the Bill, the Australian Accounting Standards apply to all entities. This means the Australian Accounting Standards apply to an entity, even if those standards do not otherwise apply to that entity.

25. For the purposes of the Modern Slavery Reporting Requirement, the ‘accounting standards’ are to be used to determine whether a reporting entity controls another entity and to determine a reporting entity’s consolidated revenue. For further explanation, refer to the definitions of ‘control’ and ‘consolidated revenue’ below.

**Australia**

26. ‘Australia’ is defined to include all external Territories of Australia.

**Australian entity**

27. ‘Australian entity’ is defined broadly to include a wide range of Australian-based entities, including commonly used business structures such as companies, partnerships and trusts. The definition includes, but is not limited to, entities that are Australian residents for tax purposes. The purpose of defining ‘Australian entity’ broadly is to comprehensively address the risks of modern slavery in the supply chains of goods and services in the Australian market. It will also ensure the Bill creates a level playing field by covering as many entity types as practicable.

28. For an entity to be an ‘Australian entity’ for the purposes of the Modern Slavery Reporting Requirement, the entity needs only to fit the definition of ‘Australian entity’ under either item (a), (b), (c), or (d). The entity is not required to meet more than one of these definitions.

29. **Items (a), (b) and (c)** make it clear that an ‘Australian entity’ includes a company, trust, or corporate limited partnership, that is an Australian resident for tax purposes. In most cases, these entity types will be able to readily identify themselves as an ‘Australian entity’ using these definitions.

30. **Item (d)** defines an entity or partnership as an ‘Australian entity’ where it is formed, incorporated, or centrally managed or controlled in Australia. The entity or partnership may be incorporated or unincorporated. For example, an unincorporated partnership will be an Australian entity if it is formed in Australia (including any of the external Territories).

31. Item (d) is intended to ensure that entities that are not specifically covered by items (a), (b) and (c) are able to identify whether they are an ‘Australian entity’. This definition applies regardless of whether the entity is an Australian resident for tax purposes. This means entities covered under items (a), (b) and (c) may also rely on this test to identify as an ‘Australian entity’, including where they may be exempt from income tax.

32. Determining whether an entity fits the definition of ‘Australian entity’ is an important consideration in establishing whether the entity is a ‘reporting entity’ and therefore must comply with the Modern Slavery Reporting Requirement. For further
Carries on business in Australia

33. ‘carries on business in Australia’ is defined in section 5.

Consolidated revenue

34. ‘consolidated revenue’ means the total revenue of the reporting entity plus the revenue of any other entities it controls, when these entities are considered as a group in accordance with the Australian Accounting Standards. In effect, this means the downstream revenue of the entity, including revenue earned in Australia and overseas. Requiring ‘consolidated revenue’ to be assessed on a group basis ensures that revenue from intercompany transactions within the group is excluded. ‘Consolidated revenue’ is to be calculated based on the reporting entity’s own financial year (or equivalent reporting period).

35. The definition of ‘consolidated revenue’ makes it clear that revenue is to be determined in accordance with the Australian Accounting Standards. For the purposes of the Bill, the Australian Accounting Standards apply to all entities. This means an entity must apply the Australian Accounting Standards to determine its ‘consolidated revenue’, even if those standards do not otherwise apply to that entity.

36. Using existing definitions in the Australian Accounting Standards means that entities are able to more easily determine their ‘consolidated revenue’. For example, an existing definition of revenue in AASB 118: Revenue states:

Revenue is the gross inflow of economic benefits during the period arising in the course of the ordinary activities of an entity when those inflows result in increases in equity, other than increases relating to contributions from equity participants.

37. Determining an entity’s ‘consolidated revenue’ is one consideration in establishing whether the entity meets the revenue test for a ‘reporting entity’ and therefore must comply with the Modern Slavery Reporting Requirement. The Bill only requires an entity to determine if it has annual consolidated revenue of at least 100 million Australian dollars and does not necessarily require an entity to calculate its exact annual consolidated revenue.

38. For example, Trust A needs to determine its consolidated revenue to identify if it is a ‘reporting entity’. Trust A is a member of a larger consolidated group. Trust A must apply the Australian Accounting Standards to determine its consolidated revenue, even though Trust A would not normally have to prepare consolidated financial statements in accordance with those standards.

39. For further explanation about the revenue test, refer to the meaning of ‘reporting entity’ in section 5. Refer also to the definition of ‘accounting standards’ above and the definitions of ‘control’ and ‘reporting period’ below.

Control

40. ‘control’ of an entity is defined by reference to the definition of control in the Australian Accounting Standards. For the purposes of the Bill, the Australian
Accounting Standards apply to all entities. This means the Australian Accounting Standards apply to an entity, even if those standards do not otherwise apply to that entity.

41. Using existing definitions in the Australian Accounting Standards ensures reporting entities can consistently determine whether they ‘control’ another entity for the purpose of the Modern Slavery Reporting Requirement. For example, an existing definition of control in AASB 10: Consolidated Financial Statements states:

   an investor controls an investee when the investor is exposed, or has rights, to variable returns from its involvement with the investee and has the ability to affect those returns through its power over the investee.

42. For example, Company A is a member of a larger consolidated group. Company A does not have to prepare consolidated financial statements in accordance with the Australian Accounting Standards. However, Company A must still apply the definition of control in the Australian Accounting Standards to determine whether it controls Company B. If Company A controls Company B according to the Australian Accounting Standards, then Company A has control of Company B for the purposes of the Modern Slavery Reporting Requirement.

43. Determining whether a reporting entity controls a second entity is relevant to establishing the consolidated revenue of the reporting entity. It also determines whether the reporting entity reports on the second entity in its statement. For further explanation, refer to the definitions of ‘consolidated revenue’ and ‘accounting standards’ above and refer also to section 16.

Entity

44. ‘entity’ has the definition under section 960-100 of the Income Tax Assessment Act 1997 (Cth). This means an ‘entity’ includes a wide range of persons and bodies, including an individual, bodies corporate, bodies politic, partnerships, unincorporated associations or bodies of persons, trusts, superannuation funds and approved deposit funds. An unincorporated joint venture is excluded from the definition of ‘entity’.

45. The purpose of defining entity broadly is to comprehensively address the risks of modern slavery in goods and services in the Australian market. It also ensures the Bill creates a level playing field by covering as many entity types as practicable. For further explanation, refer to the definitions of ‘Australian entity’ above and ‘reporting entity’ in section 5.

Modern slavery

46. ‘modern slavery’ is not clearly defined in existing international or Australian domestic law. For the purposes of the Modern Slavery Reporting Requirement, ‘modern slavery’ is defined broadly to include all forms of trafficking in persons, slavery and slavery-like practices, and the worst forms of child labour.

47. The definition of ‘modern slavery’ determines the scope of conduct that reporting entities will be required to report on under section 16. The Australian Government will provide detailed explanatory information about the definition of ‘modern slavery’, including case studies, in formal administrative guidance.
48. **Item (a)** defines ‘modern slavery’ in the Bill to include conduct which would be a criminal offence under Division 270 (slavery and slavery-like offences) or Division 271 (trafficking in persons and debt bondage) of the *Criminal Code*. This ensures the definition of modern slavery encompasses slavery and the slavery-like practices of servitude, forced labour, forced marriage, debt bondage and deceptive recruiting for labour or services. These offences involve varying degrees of limitations on a person’s freedom.

49. ‘Modern slavery’ in the Bill also includes trafficking in persons, trafficking in children, trafficking in persons for the purpose of organ removal, and harbouring a victim. These offences involve the movement of a person by use of threat, force or coercion, for the purpose of exploitation.

50. The offences in Divisions 270 and 271 of the *Criminal Code* apply irrespective of the purpose for which a person is trafficked, or the industry or context in which they are exploited. For example, these offences could apply to exploitation in mining and agricultural contexts, as well as the trafficking and/or exploitation of children in orphanages.

51. For conduct to amount to any of these offences (other than slavery) under Division 270 or 271 of the *Criminal Code*, the conduct (or result of the conduct) must occur in Australia or be performed by an Australian citizen, resident or body corporate. The slavery offences in Division 270 of the *Criminal Code* apply to conduct by any person or body corporate that occurs anywhere in the world.

52. **Item (b)** defines ‘modern slavery’ in the Bill to include overseas conduct that would constitute an offence under Division 270 or 271 of the *Criminal Code*, if that conduct had taken place in Australia. Item (b) is intended to overcome the jurisdictional limitations of the *Criminal Code* offences under item (a). Item (b) means that the definition of ‘modern slavery’ includes trafficking in persons, slavery and slavery-like offences that occur outside Australia and are not perpetrated by an Australian citizen, resident or body corporate. For example, this ensures that the Bill would cover a forced labour offence in a foreign country, where this conduct takes place in a reporting entity’s overseas supply chains.

53. **Item (c)** defines ‘modern slavery’ in the Bill to include trafficking in persons as defined in Article 3 of the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* (Trafficking Protocol). Article 3 defines trafficking in persons as:

> the recruitment, transfer, harbouring or receipt of persons, by means of the threat or use of force or coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

54. The trafficking offences under Division 271 of the *Criminal Code* are limited to movement across Australian borders or within Australia. The purpose of item (c) is to ensure the definition of ‘modern slavery’ is not limited only to domestic trafficking in Australia, or trafficking into or out of Australia, but also encompasses trafficking in persons anywhere in the world. For example, this will ensure the Bill covers the trafficking of exploited labourers within or between foreign countries, where this conduct takes place in a reporting entity’s overseas supply chains.
55. Australia ratified the Trafficking Protocol in 2005. The definition in Article 3 of the Trafficking Protocol is well understood and commonly used internationally.

56. **Item (d)** defines ‘modern slavery’ in the Bill to include the worst forms of child labour, as defined in Article 3 of the *International Labour Organization Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour* (Worst Forms of Child Labour Convention). Article 3 defines the worst forms of child labour as:

   (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;

   (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;

   (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;

   (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

57. Item (d) expands the definition of ‘modern slavery’ to encompass each of the forms of conduct specified in Article 3, occurring anywhere in the world. In some cases, the worst forms of child labour may already be covered by the trafficking in persons, slavery and slavery-like offences under items (a) and (b) above. However, specifically including the worst forms of child labour in the definition of ‘modern slavery’ sends a clear normative signal that this conduct is unacceptable. It also makes it clear that entities need to report on hazardous child work as defined in Article 3(d) of the Worst Forms of Child Labour Convention.

58. Australia ratified the Worst Forms of Child Labour Convention in 2006. The definition in Article 3 of the Worst Forms of Child Labour Convention is well understood and commonly used internationally.

**Modern Slavery Statement**

59. ‘modern slavery statement’ is defined in section 12.

**Principal governing body**

60. ‘principal governing body’ is a generic term used to describe the various governance mechanisms of different entity types covered by the Modern Slavery Reporting Requirement.

61. **Item (a)** defines ‘principal governing body’ broadly to cover a person, body or group of persons responsible for, and with control over, the entity. For example, a company’s board of directors is a ‘principal governing body’ of the company.

62. **Item (b)** provides that the definition of ‘principal governing body’ may be prescribed by rules, in accordance with section 25. This enables the responsible Minister to make a rule or rules to clarify what is the ‘principal governing body’ of a specific entity type,
if further clarification is needed. For further explanation about the use of rules, refer to section 25.

63. Determining the ‘principal governing body’ of a reporting entity is an important consideration because the ‘principal governing body’ is responsible for approving a reporting entity’s Modern Slavery Statement. This ensures senior management are accountable for the information provided through Modern Slavery Statements. For further explanation about approval requirements, refer to sections 13 and 14.

**Register**

64. ‘register’ is defined as the Modern Slavery Statements Register that the Minister establishes and maintains under section 18.

**Reporting entity**

65. ‘reporting entity’ is defined in section 5.

**Reporting period**

66. ‘reporting period’ is defined as an entity’s financial year or other annual accounting period. This allows for equivalent yearly accounting periods to be considered ‘reporting periods’. The entity’s financial year or equivalent accounting period must commence after section 4 commences. The definition of ‘reporting period’ is linked to an entity’s financial or accounting year to minimise the regulatory impact of the Bill by aligning the Modern Slavery Reporting Requirement with entities’ other reporting processes.

67. A reporting entity must provide a Modern Slavery Statement for each reporting period. For further explanation, refer to sections 13, 14 and 15.

**Responsible member**

68. ‘responsible member’ is a generic term used to describe the various decision-making members of different entity types.

69. Item (a) specifies that, for entities that have a ‘principal governing body’, the ‘responsible member’ will be a member of that body. Two examples are provided in item (a):

- A director of a company is a ‘responsible member’ of that company.
- A trustee on the board of trustees for a superannuation fund is a ‘responsible member’ of that superannuation fund.

For further explanation, refer to the meaning of ‘principal governing body’ above.

70. Item (b) specifies the ‘responsible member’ of a trust administered by a sole trustee. The sole trustee is the ‘responsible member’ of that trust.

71. Item (c) specifies the ‘responsible member’ of a corporation sole. A corporation sole is a legal entity occupied by an individual. The individual is the ‘responsible member’ of that corporation sole.
72. **Item (d)** specifies the ‘responsible member’ of an entity under administration, within the meaning of the Corporations Act. The administrator is the ‘responsible member’ of an entity under administration.

73. **Item (e)** provides that the definition of ‘responsible members’ for different entity types may be prescribed by rules, in accordance with section 25. This enables the responsible Minister to make a rule or rules to clarify who is the ‘responsible member’ for a specific entity type, if further clarification is needed. For further explanation about the use of rules, refer to section 25.

74. Determining the ‘responsible member’ of a reporting entity is an important consideration because the ‘responsible member’ must sign a reporting entity’s Modern Slavery Statement. For further explanation, refer to sections 13 and 14. For responsible members acting on behalf of unincorporated entities, refer to section 22.

**Rules**

75. ‘rules’ is defined as any rules that the Minister makes under section 25.

**Section 5: Meaning of reporting entity**

76. Section 5 is the main section for entities to determine whether they must comply with the Modern Slavery Reporting Requirement. Section 5 sets out a range of tests for determining whether an entity is a ‘reporting entity’, and is therefore required to provide an annual Modern Slavery Statement.

**Revenue test**

77. Subsection 5(1) sets a revenue test that requires reporting entities to have annual consolidated revenue of at least 100 million Australian dollars. This revenue test is calculated based on the entity’s own reporting period. The Bill only requires an entity to determine if it meets the revenue test by having annual consolidated revenue of at least 100 million Australian dollars. It does not necessarily require an entity to calculate its exact annual consolidated revenue. For further explanation, refer to section 4 for the definitions of ‘entity’, ‘consolidated revenue’, ‘control’ and ‘reporting period’.

78. The revenue test of at least 100 million Australian dollars covers large businesses and other entities in Australia, including those with extensive, complex and/or global operations and supply chains. This is intended to cover those entities that have the capacity to meaningfully comply with the Modern Slavery Reporting Requirement, and have the market influence to effect change in their supply chains.

**Test for ‘carries on business in Australia’**

79. Subsection 5(2) sets a test to determine whether an entity ‘carries on business in Australia’. This test draws on the existing meaning of ‘carries on business in Australia’ in the Corporations Act and applies it to all entities, regardless of type. Under section 21 of the Corporations Act, an entity ‘carries on business in Australia’ if it:

- has a place of business in Australia
• establishes or uses a share transfer office or share registration office in Australia, or

• administers, manages, or otherwise deals with property situated in Australia as an agent, legal personal representative or trustee, whether by employees or agents or otherwise.

Types of ‘reporting entities’

80. Paragraph 5(1)(a) identifies an entity as a ‘reporting entity’ where, during its reporting period, the entity meets both the revenue test and the definition of an ‘Australian entity’. For further explanation about the definition of ‘Australian entity’, refer to section 4. Paragraph 5(1)(a) also identifies a foreign entity as a ‘reporting entity’ where, during its reporting period, the foreign entity meets both the revenue test and the test for ‘carries on business in Australia’. This includes a foreign entity that meets the revenue test and carries on business in Australia through an Australian subsidiary.

81. Paragraph 5(1)(b) identifies the Commonwealth of Australia as a ‘reporting entity’. The note makes it clear that the Commonwealth must produce a consolidated annual Modern Slavery Statement on behalf of all non-corporate Commonwealth entities. For further explanation about Commonwealth Modern Slavery Statements, refer to section 15.

82. Paragraph 5(1)(c) identifies a corporate Commonwealth entity or Commonwealth company as a ‘reporting entity’ where, during its reporting period, it meets the revenue test. This makes it clear that these entities will not be covered by the consolidated Commonwealth Modern Slavery Statement and must report separately.

83. Paragraph 5(1)(d) identifies an entity that volunteers to provide an annual Modern Slavery Statement as a ‘reporting entity’. A volunteer entity must comply with the Modern Slavery Reporting Requirement in the same way as any other reporting entity. For further explanation about voluntary Modern Slavery Statements, refer to section 6.

84. For explanation about how a single reporting entity can report, refer to section 13. For explanation about how multiple reporting entities can report jointly, or an entity can report on behalf of one or more reporting entities, refer to section 14.

Section 6: Voluntary modern slavery statements

85. Section 6 enables entities to voluntarily comply with the Modern Slavery Reporting Requirement. This section is intended to ensure that entities not otherwise covered by the Modern Slavery Reporting Requirement are able to participate if they wish to do so. For example, an entity may decide to voluntarily provide a Modern Slavery Statement as a way to demonstrate their commitment to identifying and mitigating modern slavery risks in their operations and supply chains.

86. Once an entity volunteers to report, they are taken to be a ‘reporting entity’ and must comply with all aspects of the Modern Slavery Reporting Requirement. This includes the requirements in section 13 for Modern Slavery Statements to address the mandatory criteria (in section 16) and to be submitted six months from the end of their reporting period.
87. Subsection 6(1) sets out the process by which an entity can volunteer to comply with the Modern Slavery Reporting Requirement. In order to volunteer for a reporting period, an entity must give written notice to the Minister prior to the end of that reporting period. An entity can volunteer to report for a single reporting period. Alternatively, an entity can volunteer to report on an ongoing basis for all future reporting periods.

88. Subsection 6(2) sets out the types of entities that can voluntarily comply with the Modern Slavery Reporting Requirement. In order to volunteer to comply, an entity must be either an Australian entity or a foreign entity carrying on business in Australia.

89. Subsection 6(3) allows an entity that has volunteered to report to ‘opt out’ from voluntary reporting on future reporting periods. An entity can opt out by notifying the Minister before their next reporting period starts. This is intended to prevent an entity that volunteers to comply from withdrawing during a current reporting period to avoid their obligations to report on modern slavery risks identified during that period.

90. For the definitions of ‘Australian entity’ and ‘reporting period’, refer to section 4. For the definitions of ‘reporting entity’ and ‘carries on business in Australia’, refer to section 5.

Section 7: Constitutional basis

91. Section 7 clarifies the constitutional basis for the Bill. Subsection 7(1) outlines the legislative powers the Commonwealth relies on to enact the Act. Subsection 7(2) outlines the various international agreements that form the basis for the Commonwealth to rely on the external affairs power to enact the Act.

Section 8: Act binds the Crown

92. Section 8 provides that the Act will bind the Crown in right of the Commonwealth. The effect of this is that the Commonwealth must comply with the Modern Slavery Reporting Requirement. For Commonwealth Modern Slavery Statements, refer to section 15.

93. Section 8 makes it clear that the Act will not bind the Crown in right of each of the States, the Australian Capital Territory nor the Northern Territory. The effect of this is that the Australian States and Territories are not required to comply with the Modern Slavery Reporting Requirement. The States and Territories are, however, able to opt in to voluntarily provide annual Modern Slavery Statements.

Section 9: Extension to external Territories

94. Section 9 makes it clear that the Bill extends to all external Territories of Australia. This means reporting entities should consider acts, omissions, matters and things occurring in the external Territories when preparing Modern Slavery Statements. For example, reporting entities will need to consider modern slavery risks in any operations and supply chains existing in any of the external Territories. This also means an entity based or carrying on business in any of the external Territories must comply with the Modern Slavery Reporting Requirement if it fits the definition of ‘reporting entity’. For the definition of ‘reporting entity’, refer to section 5.
Section 10: Extra-territorial application

95. **Section 10** makes it clear that the Bill extends outside Australia. This means reporting entities may consider acts, omissions, matters and things that occur outside Australia in preparing Modern Slavery Statements. For example, reporting entities will need to consider modern slavery risks in their global operations and supply chains, not only their operations and supply chains in Australia. This also means that a foreign entity must comply with the Modern Slavery Reporting Requirement if it fits the definition of a ‘reporting entity’. For the definition of ‘reporting entity’, refer to section 5.

Part 2: Modern Slavery Statements

Section 11: Simplified outline of this Part

96. **Section 11** provides a simple outline of Part 2 of the Bill to assist readers to understand the substantive provisions in relation to Modern Slavery Statements. The simplified outline is not intended to be comprehensive and readers should rely on the substantive provisions.

Section 12: Meaning of modern slavery statement

97. **Section 12** identifies a Modern Slavery Statement as:

- a statement prepared by one reporting entity, as required under section 13; or
- a joint statement prepared by one entity on behalf of one or more reporting entities, as required under section 14; or
- a Commonwealth statement prepared by the Minister on behalf of the Commonwealth, as required under section 15.

Section 13: Modern slavery statements for single reporting entities

98. **Section 13** and section 16 are the main sections for single reporting entities (except the Commonwealth) to determine how to comply with the Modern Slavery Reporting Requirement. If a reporting entity is preparing a Modern Slavery Statement only covering itself, the entity is a single reporting entity and must comply with section 13. For example, Partnership A is a reporting entity and prepares a Modern Slavery Statement which covers itself and no other reporting entities. Partnership A must comply with section 13 as it is a single reporting entity.

99. If an entity is preparing a Modern Slavery Statement on behalf of one or more reporting entities, it is not required to comply with section 13 and must instead comply with section 14 (joint Modern Slavery Statements). The Commonwealth is not required to comply with section 13 and must instead comply with section 15.

Requirements for single reporting entities

100. Subsection 13(1) requires single reporting entities to give a Modern Slavery Statement to the Minister for the entity’s reporting period.
101. Subsection 13(2) sets out the requirements for single reporting entities to submit a Modern Slavery Statement. The Modern Slavery Statement must:

- address the mandatory criteria in section 16
- be prepared in a form approved by the Minister (the form will be determined administratively, for example a PDF document)
- be approved by the principal governing body of the entity
- be signed (electronically or otherwise) by a responsible member of the entity, and
- be given to the Minister within 6 months from the end of the entity’s reporting period.

For further explanation, refer to section 4 for the definitions of ‘responsible entity’, ‘principal governing body’, ‘responsible member’ and ‘reporting period’. Refer to section 5 for the definition of ‘reporting entity’.

**Section 14: Joint modern slavery statements**

102. Section 14 allows for Modern Slavery Statements to be submitted on behalf of one or more reporting entities. Where an entity (except the Commonwealth) prepares a Modern Slavery Statement on behalf of one or more reporting entities, section 14 and section 16 are the main sections to determine how those reporting entities must comply with the Modern Slavery Reporting Requirement. For example, Company A is a reporting entity and controls Trust B, which is also a reporting entity. Company A prepares a Modern Slavery Statement which covers itself and Trust B. Company A must comply with section 14 as it will submit a joint Modern Slavery Statement. The statement must cover the mandatory criteria in section 16 for both Company A and Trust B.

103. If a reporting entity is preparing a Modern Slavery Statement covering only itself, it is not required to comply with section 14 and must instead comply with section 13. The Commonwealth is not required to comply with section 14 and must instead comply with section 15.

104. Section 14 is intended to minimise the regulatory impact of the Bill and makes it easier for investors, consumers and the public to access a single Modern Slavery Statement covering a corporate group or other collection of entities. Section 14 provides flexibility for multiple entities to report jointly, while maintaining the integrity of the Modern Slavery Reporting Requirement. For example, this section allows a parent entity (whether or not it is a reporting entity) the flexibility to prepare a single statement on behalf of multiple subsidiaries that are reporting entities. Section 14 is also intended to enable an entity to report on behalf of other entities that are reporting entities and are within the same corporate group. This section does not prevent all reporting entities in the same corporate group from preparing single Modern Slavery Statements under section 13.

**Requirements for joint Modern Slavery Statements**

105. Subsection 14(1) requires an entity to give a joint Modern Slavery Statement, which covers one or more reporting entities, to the Minister. The joint Modern Slavery
106. Subsection 14(2) sets out the requirements for an entity to submit a joint Modern Slavery Statement. A joint Modern Slavery Statement must:

- address the mandatory criteria in section 16
- be prepared in a form approved by the Minister (the form will be determined administratively, for example a PDF document)
- be prepared in consultation with every reporting entity that is covered by the statement
- be approved by the principal governing body of at least one reporting entity covered by the statement; or by the principal governing body of a higher entity (that is, an entity that has direct influence or control, or indirect influence or control, over each reporting entity covered by the statement)
- be signed (electronically or otherwise) by a responsible member of at least one of the reporting entities; or by a responsible member of a higher entity
- be given to the Minister within 6 months from the end of the reporting period that applies to all reporting entities covered by the statement.

107. Subparagraph 14(2)(f)(ii) provides that the timeframe for providing Modern Slavery Statements to the Minister for registration may be prescribed by rules, in accordance with section 25. This enables the responsible Minister to make a rule or rules to clarify the timeframes, if further clarification is needed. For further explanation about the use of rules, refer to section 25.

108. For further explanation, refer to section 4 for the definitions of ‘responsible entity’, ‘principal governing body’, ‘responsible member’ and ‘reporting period’. Refer also to section 5 for the definition of ‘reporting entity’.

**Consultation, approvals and signatures**

109. Subsection 14(2) requires joint Modern Slavery Statements to be developed in consultation with all reporting entities, approved at the level of principal governing body, and signed by a responsible member. These requirements are intended to ensure senior management is accountable for the information provided through Modern Slavery Statements and that Modern Slavery Statements are subject to appropriate scrutiny.

110. The term ‘in consultation with’ is not defined in the Bill and is intended to take its ordinary meaning. The term ‘in consultation with’ includes the process of discussing and liaising with reporting entities about the content of Modern Slavery Statements.

111. Paragraphs 14(2)(d) and 14(2)(e) require approvals and signatures by key entities covered by a joint Modern Slavery Statement. There are three different options for approvals and signatures of a joint Modern Slavery Statement. These options are intended to provide important flexibility for different reporting entities to determine the most practical way to seek approvals and signatures within their corporate
structure. However, these options do not negate the requirement for all reporting entities to be consulted in developing a joint Modern Slavery Statement.

112. The three options for approvals and signatures of a joint Modern Slavery Statement are:

1. The principal governing body of each reporting entity covered by the joint statement must approve it, and a responsible member of each of those reporting entities must sign it.

2. The principal governing body of a higher entity (that can, directly or indirectly, influence or control each reporting entity) must approve the joint statement on behalf of all of the reporting entities covered by the statement, and the responsible member of the higher entity must sign it. This option is intended to allow a parent entity in a corporate group to provide a single statement on behalf of the group without needing to have the statement approved by the principal governing bodies of each reporting entity in the group.

3. If neither of these two options are practical, the principal governing body of at least one reporting entity must approve the statement, and a responsible member of that reporting entity must sign it. If this option is chosen, the joint statement must explain why the other reporting entities have not approved the statement at principal governing body level. This option is intended to cover situations where an entity may wish to provide a joint statement on behalf of related reporting entities, such as sibling entities in a corporate group. For further explanation, refer to subsection 16(2).

Section 15: Commonwealth modern slavery statements

113. **Section 15** and section 16 are the main sections for the Commonwealth to determine how to comply with the Modern Slavery Reporting Requirement.

114. Subsection 15(1) requires the Minister to prepare a Commonwealth Modern Slavery Statement for a reporting period. The relevant reporting period for the Commonwealth is the Australian financial year. The Commonwealth must prepare a consolidated annual Modern Slavery Statement on behalf of all non-corporate Commonwealth entities, as defined in the Public Governance, Performance and Accountability Act 2013 (Cth) (PGPA Act).

115. Corporate Commonwealth entities and Commonwealth companies are treated like any other entity. If those entities meet the revenue test in section 5, they are a ‘reporting entity’ and must comply with the Modern Slavery Reporting Requirement under section 13 or 14.

116. Requiring Modern Slavery Statements from the Commonwealth, corporate Commonwealth entities and Commonwealth companies helps to create a level playing field by covering as many entity types as practicable. It will also help ensure that potential modern slavery risks in Government procurement are assessed and addressed.

Requirements for Commonwealth Modern Slavery Statements

117. Subsection 15(2) sets out a range of requirements for how the Commonwealth must submit a Modern Slavery Statement. A Commonwealth Modern Slavery Statement must:
• meet the mandatory criteria in section 16, and
• be prepared within 6 months from the end of the Australian financial year.

118. The Commonwealth Modern Slavery Statement will address the mandatory criteria in section 16 on a whole-of-government basis. The statement will focus on potential modern slavery risks in Commonwealth procurement at a whole-of-government level and the operations of the Australian Government, including its investments. Consistent with its strategic, whole-of-government focus, the statement will not necessarily refer to specific Commonwealth entities or provide entity-specific details about procurement.

Section 16: Mandatory criteria for modern slavery statements

119. Section 16 is the main section for a reporting entity to determine what needs to be included in a Modern Slavery Statement. Section 16 sets out the mandatory criteria that all reporting entities, including the Commonwealth, must address in a Modern Slavery Statement. The mandatory criteria are intended to clearly focus the content of all Modern Slavery Statements and give clarity to reporting entities about their obligations. The mandatory criteria will also help ensure that statements are consistent and can be easily compared. For the definition of ‘modern slavery’, refer to section 4.

Mandatory criteria for single reporting entities and the Commonwealth

120. Subsection 16(1) requires that Modern Slavery Statements prepared by single reporting entities or the Commonwealth must address the mandatory criteria by identifying the reporting entity and describing:

- the reporting entity’s structure, operations and supply chains
- modern slavery risks in the reporting entity’s operations and supply chains, including in the operations and supply chains of any entities it owns or controls (subsidiary entities)
- actions the reporting entity has taken, and any of its subsidiary entities have taken, to assess and address those modern slavery risks, including due diligence and remediation processes
- how the reporting entity assesses the effectiveness of those actions,
- the process of consultation with subsidiary entities in preparing the Modern Slavery Statement, and
- any other information the reporting entity considers relevant.

121. The note in subsection 16(1) provides examples of actions an entity may take to assess and address modern slavery risks in its operations and supply chains. These actions may include, but are not limited to, developing and implementing policies and processes, and providing training to staff.

122. Subsection 16(2) requires that a Modern Slavery Statement prepared by a single reporting entity must also include details of the approval by that entity’s
principal governing body. For example, a statement from a reporting entity that is a company must specify the statement was approved by the board.

123. It is not expected that a reporting entity would ordinarily identify no modern slavery risks in their operations or supply chains. If an entity does not identify any modern slavery risks, the entity must still respond to the mandatory criteria. In doing so, the entity must explain its actions taken to assess for modern slavery risks, and to prevent modern slavery practices from occurring in their operations and supply chains. The entity must also explain how they assess the effectiveness of those actions.

**Mandatory criteria for joint Modern Slavery Statements**

124. All joint Modern Slavery Statements must address all mandatory criteria in section 16 for each and every reporting entity covered by the joint statement. Subsection 16(1) requires that a joint Modern Slavery Statement must identify all reporting entities covered by the joint statement and must describe:

- the structure, operations and supply chains of each reporting entity
- modern slavery risks in the operations and supply chains of each reporting entity, including any entities owned or controlled by each reporting entity (subsidiary entities)
- actions each of the reporting entities have taken (and any of their subsidiary entities have taken) to assess and address those modern slavery risks, including due diligence and remediation processes
- how each reporting entity assesses the effectiveness of those actions
- the process of consultation between each reporting entity and the entity preparing the joint statement, and any subsidiary entities of each reporting entity, and
- any other information the entity preparing the statement, or any of the reporting entities, consider relevant.

125. Subsection 16(2) requires that a joint Modern Slavery Statement must also include details of the approval by the relevant principal governing body or bodies of the reporting entities, or of a higher entity (that can, directly or indirectly, influence or control each reporting entity). If these requirements for approval are not practicable, the joint Modern Slavery Statement must be approved by the principal governing body of at least one reporting entity covered by the statement (in accordance with subparagraph 14(2)(d)(iii)). In this case, the Modern Slavery Statement must include an explanation about why it was not practicable for the principal governing body of all of the reporting entities, or of a higher entity, to approve the joint statement.

**Definitions of terms in mandatory criteria**

126. The Australian Government will clearly explain and clarify the terms ‘risks’, ‘operations’, ‘supply chains’, ‘due diligence’ and ‘remediation processes’ in formal administrative guidance. This will provide flexibility by ensuring different terms can be appropriately applied to the broad range of reporting entities, with varying structures, that are covered by the Modern Slavery Reporting Requirement. The Australian Government will issue the guidance before the Act commences.
127. The mandatory criteria draw on terminology and concepts used in the business and human rights context, particularly in the 2011 United Nations Guiding Principles on Business and Human Rights (UNGPs). The Australian Government will encourage entities to make use of the UNGPs and other relevant frameworks to help them identify, prioritise and respond to modern slavery risks.

128. The ‘risks’ of modern slavery practices are intended to mean the potential for an entity to cause, contribute to, or otherwise be directly linked to, modern slavery practices through their operations and supply chains. It is not intended that entities must necessarily report exhaustively on all modern slavery risks. The Australian Government recognises that entities may need to prioritise their modern slavery risk management, especially in the early years of implementation. Entities will be encouraged to identify, prioritise and respond to those risks that are the most severe, including because of their scale, scope and irremediable character. The requirement to report on modern slavery risks is not intended to require entities to report on identified incidences or cases of modern slavery. However, this is not intended to prevent entities from reporting on incidences or cases where they consider it appropriate to do so.

129. ‘Operations’ is intended to cover any activity undertaken by the entity to pursue its business objectives and strategy. These activities may include research and development, construction, production, distribution, purchasing, sales, and financial lending and investments.

130. ‘Supply chains’ is intended to refer to the products and services that contribute to the entity’s own products and services and is not restricted to ‘tier one’ or direct suppliers.

131. ‘Due diligence’ is intended to refer to an entity’s ongoing management processes to identify, prevent, mitigate and account for how they address incidences of modern slavery.

132. ‘Remediation processes’ is intended to cover any process or mechanism to remedy incidences of modern slavery. For example, ‘remediation processes’ could include establishing and maintaining an entity-level grievance mechanism.

133. The requirement to report on ‘due diligence’ and ‘remediation’ processes is intended to ensure reporting entities communicate their general approaches to prevent and address modern slavery. It does not require reporting on specific responses to particular incidences or cases of modern slavery. However, this is not intended to prevent entities from reporting on specific responses to incidences or cases where they consider it appropriate to do so.

**Part 3: Access to Modern Slavery Statements**

**Section 17: Simplified outline of this Part**

134. **Section 17** provides a simple outline of Part 3 of the Bill to assist readers to understand the substantive provisions in relation to accessing Modern Slavery Statements. The simplified outline is not intended to be comprehensive and readers should rely on the substantive provisions.
Section 18: Modern Slavery Statements Register

135. **Section 18** requires the Minister to establish and maintain a Modern Slavery Statements Register. The Modern Slavery Statements Register will be a freely accessible, public website that contains all registered Modern Slavery Statements. The Modern Slavery Statements Register is intended to contribute to the transparency and effectiveness of the Modern Slavery Reporting Requirement by ensuring that entities’ Modern Slavery Statements are easily identifiable and accessible. The Modern Slavery Statements Register will not prevent entities also making their statements available through other means, including on their webpages.

Section 19: Registration of modern slavery statements

136. **Section 19** sets out the process for registering Modern Slavery Statements on the Modern Slavery Statements Register.

137. Subsection **19(1)** requires the Minister to register a Modern Slavery Statement that:

- is a Modern Slavery Statement for a single reporting entity and meets the requirements set out in section 13
- is a joint Modern Slavery Statement and meets the requirements set out in section 14, or
- is a Commonwealth Modern Slavery Statement and meets the requirements set out in section 15.

138. Subsection **19(2)** allows the Minister to register a single or joint Modern Slavery Statement that does not fully comply with the requirements set out in section 13 or section 14 respectively. However, the **note** clarifies that the Minister has the discretion not to register a Modern Slavery Statement that does not comply with these requirements. This would allow the Minister to decline to register a statement in cases of egregious noncompliance. For further information about the Minister’s discretion to decline to register a statement, refer to section 20.

Section 20: Registration of revised modern slavery statements

139. **Section 20** allows an entity to revise and re-publish its Modern Slavery Statement. The intention of allowing registration of revised Modern Slavery Statements is to allow entities to correct any false or misleading statements, or other errors. It also allows entities to revise information that may be market sensitive.

**Revised single and joint Modern Slavery Statements**

140. Subsection **20(1)** allows an entity (except the Commonwealth) to write to the Minister to replace that entity’s previously published Modern Slavery Statement with a revised version.

141. Subsection **20(2)** requires a revised Modern Slavery Statement to include the date of revision and describe the changes made to the previously published Modern Slavery Statement. There is no time limit on when an entity may revise a Modern Slavery Statement.
142. Subsection 20(3) makes it clear that a revised Modern Slavery Statement must meet the minimum requirements for an original Modern Slavery Statement, then the Minister must register it. The only difference in minimum requirements for original Modern Slavery Statements and revised Modern Slavery Statements is the deadline for providing the statement to the Minister. For further explanation, refer to section 13 for the minimum requirements for single Modern Slavery Statements and section 14 for the minimum requirements for joint Modern Slavery Statements.

143. Together, subsections 20(2) and 20(3) require that the revised single or joint Modern Slavery Statement must:

- include the date of revision
- describe the changes made to the previously published statement
- address the mandatory criteria in section 16
- be prepared in a form approved by the Minister
- if it is a joint statement – be prepared in consultation with all reporting entities covered by the statement
- be approved by the relevant principal governing body or bodies; and
- be signed by the relevant responsible member or members.

144. Subsection 20(4) states that the Minister may or may not register a Modern Slavery Statement where it does not comply with these requirements. This would allow the Minister to decline to register a statement in cases of egregious non-compliance. This provision is consistent with the process for registering single Modern Slavery Statements set out in subsection 19(2).

**Revised Commonwealth Modern Slavery Statements**

145. Subsection 20(5) allows the Commonwealth to publish a revised Modern Slavery Statement on the Modern Slavery Statements Register. A revised Commonwealth Modern Slavery Statement must:

- include the date of revision
- describe the changes made to the previously published statement, and
- address the mandatory criteria in section 16.

**Additional information about registration of Modern Slavery Statements**

146. Subsections 19(2) and 20(4) provide the Minister with the discretion to decline to register a Modern Slavery Statement that does not comply with minimum requirements.

147. It is appropriate that this discretion is not subject to formal external merits review due to the nature of the decision-making power. Any decision not to register a Modern Slavery Statement would only be made in limited cases of egregious non-compliance. Such a decision would only be taken after reasonable attempts were made to engage in dialogue and work with the affected entity to ensure their
Modern Slavery Statement meets the minimum legislated requirements. It is also unlikely that a decision not to register a Modern Slavery Statement would directly affect the rights or interests of an individual.

**Part 4: Miscellaneous**

**Section 21: Simplified outline of this Part**

148. **Section 21** provides a simple outline of Part 4 of the Bill to assist readers to understand the miscellaneous substantive provisions. The simplified outline is not intended to be comprehensive and readers should rely on the substantive provisions.

**Section 22: Unincorporated entities**

149. **Section 22** applies only to unincorporated associations or bodies of persons. As an unincorporated entity is not a separate legal entity, section 22 allows a responsible member of the unincorporated entity to act on behalf of that entity. For further explanation, refer to section 4 for the definition of ‘responsible member’.

150. For example, a responsible member of an unincorporated entity may be an individual that is a member of the principal governing body of that entity, such as member of the entity’s management committee. That member can act on behalf of that unincorporated entity. For the definition of ‘principal governing body’, refer to section 4.

**Section 23: Delegation**

151. **Section 23** allows for the delegation of any or all of the Minister’s powers and functions under the Act. It is appropriate for the Minister to be able to delegate his or her powers and functions to ensure the Modern Slavery Reporting Requirement can be effectively administered. For example, requiring the Minister to personally exercise all of the powers and functions of the Modern Slavery Reporting Requirement could lead to delays receiving, processing and registering new and revised Modern Slavery Statements.

152. **Section 23(1)** allows the Minister to formally delegate the powers and functions under the Act to be undertaken by a Departmental employee at the level of Senior Executive Service (SES) (or acting SES employee). For example, this would mean the responsible Minister may delegate the receipt and registration of Modern Slavery Statements, including revised statements, to an SES employee within the Minister’s Department.

153. **Section 23(2)** makes it clear that, where an SES employee is carrying out delegated powers or functions under the Act, the employee must comply with the Minister’s directions.

154. **Section 23(3)** clarifies that the rule-making power cannot be delegated. Only the responsible Minister can make, vary or revoke the rules. For further explanation about the use of rules, refer to section 25.

**Section 24: Review of this Act**

155. **Section 24** requires a review of the legislation after three years.
156. Subsection 24(1) requires that the Minister must prepare a report to review the operation of the Act and any rules over the first three years, and determine whether amendments are needed. The intention of providing for a review is to ensure the Modern Slavery Reporting Requirement remains effective and responsive to the Australian context.

157. Section 24(2) sets the timing of the review. The Minister must start the review as soon as practicable after the first three years. The review is intended to start after reporting entities have published at least two Modern Slavery Statements to ensure there is a sufficient evidence base to inform the review. This will facilitate an effective review of the practical operation and implementation of the Act, including the levels of compliance by reporting entities and the quality of Modern Slavery Statements. The Minister must then complete the review within 12 months.

158. Section 24(3) requires the report of the review to be tabled in the Parliament of Australia within a set timeframe. The deadline for tabling the report in each House of Parliament is within 15 sitting days of that House once the review is completed.

Section 25: Rules

159. Section 25 is a formal rule-making power. Section 25 enables the responsible Minister to make rules that prescribe matters required or permitted by the Act to be prescribed by rules, or necessary and convenient to be prescribed for carrying out or giving effect to the Act.

160. The Bill enables a number of matters to be specified by rules made by the Minister, if not otherwise identified with certainty by the Bill:

- principal governing bodies of entities (section 4)
- responsible members of entities (section 4), and
- the annual due date for giving joint Modern Slavery Statements to the Minister (section 14).

161. Specifying these matters in rules rather than regulations is in accordance with the Office of Parliamentary Counsel's Drafting Direction No. 3.8 – Subordinate Legislation. Paragraph 2 of that Drafting Direction states that "OPC's starting point is that subordinate instruments should be made in the form of legislative instruments (as distinct from regulations) unless there is good reason not to do so". Consistent with paragraph 16 of the Drafting Direction, the approach of including these matters in rules (rather than regulations) has a number of advantages including:

a) it facilitates the use of a single type of legislative instrument being needed for the Bill, thereby reducing the complexity otherwise imposed on the regulated community if these matters were to be prescribed across a number of different types of instruments;

b) it simplifies the language and structure of the provisions in the Bill that provide the authority for the legislative instruments; and

c) it shortens the Bill.
Due to these advantages, paragraph 17 of the Drafting Direction states that drafters should adopt this approach where appropriate with new Acts.

162. Section 22(2) provides limitations on the power to make rules. Specifically, any rules could not:

- create an offence or civil penalty,
- provide powers of arrest, detention, entry, search or seizure,
- impose a tax,
- set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in the Act, or
- directly amend the text of the Act.

163. Paragraph 3 of the Drafting Direction No. 38 states that matters such as compliance and enforcement, the imposition of taxes, setting amounts to be appropriated, and amendments to the text of an Act, should be included in regulations unless there is a strong justification otherwise. This is clarified by section 25 of the Bill, which specifically prevents the rules from including these matters.

164. Section 25 clarifies that the rules made under the Bill are a legislative instrument for the purposes of the Legislation Act 2003 (Cth) (Legislation Act). All legislative instruments and their explanatory statements must be tabled in both Houses of the Parliament within 6 sitting days of the date of registration of the instrument on the Federal Register of Legislation (refer to sections 38 and 39 of the Legislation Act). Once tabled, the rules will be subject to the same level of Parliamentary scrutiny as regulations (including consideration by the Senate Standing Committee on Regulations and Ordinances), and a motion to disallow the rules may be moved in either House of the Parliament within 15 sitting days of the date the rules are tabled (refer to section 42 of the Legislation Act).
STATEMENT OF COMPATIBILITY FOR A BILL THAT RAISES HUMAN RIGHTS ISSUES

Statement of Compatibility with Human Rights
Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Modern Slavery Bill 2018

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.

Overview of the Bill

1. The Modern Slavery Bill 2018 establishes a Modern Slavery Reporting Requirement to strengthen Australia’s approach to combating modern slavery.2 The Modern Slavery Reporting Requirement will support Australian businesses to respond to modern slavery and will increase information available to consumers and investors by providing a practical, risk-based framework for transparency.

2. Reporting entities will be required to publish annual Modern Slavery Statements detailing their actions to address modern slavery. The purpose of Modern Slavery Statements is to increase business awareness of modern slavery, reduce modern slavery risks in Australian goods and services, and encourage business to improve workplace standards and practices.

3. The Bill applies to a broad range of entities, including foreign entities carrying on business in Australia and the Australian Government. The Bill establishes the Modern Slavery Reporting Requirement, which requires reporting on modern slavery practices that are criminalised under Commonwealth law, wherever they occur. This includes slavery, trafficking in persons, servitude, forced labour and forced marriage. The Bill also requires reporting on trafficking in persons internationally and the worst forms of child labour as defined in relevant international instruments.

4. The Bill establishes mandatory reporting criteria that require entities to provide information about:
   - their structure, operations and supply chains
   - potential modern slavery risks
   - actions taken to assess and address these risks, and
   - how they assess the effectiveness of these actions.

5. Modern Slavery Statements will be published online on a Government-administered, public register.

Human rights implications

2 Modern slavery is an umbrella term used to describe trafficking in persons, slavery and slavery-like practices, such as forced labour and forced marriage, as well as the worst forms of child labour.
6. This Bill protects a number of key human rights, including:

- The absolute right to freedom from slavery and forced labour contained in Article 8 of the International Covenant on Civil and Political Rights (ICCPR)
- The absolute right to freedom from torture and other cruel, inhuman or degrading treatment or punishment, contained in Article 7 of ICCPR and Articles 1, 2, 3, 13, 14, 15 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT)
- The right to work and rights at work located in Articles 6 and 7 of the International Covenant on Economic, Social and Cultural Rights (ICESCR)
- The right to protection from exploitation, violence and abuse located in Article 20 of ICCPR, Article 19 of the Convention on the Rights of the Child (CRC) and Article 16 of the Convention on the Rights of Persons with Disabilities (CRPD)
- The right to freedom of movement contained in Articles 12 and 13 of ICCPR
- The right to health contained in Article 12(1) of ICESCR, and
- The right to privacy and reputation contained in Article 17 of ICCPR.

**Human rights engaged by the Bill**

7. By strengthening Australia’s response to modern slavery, this Bill engages and promotes a number of key human rights. The paragraphs below discuss the key human rights promoted by this Bill. The human rights identified and discussed are not an exhaustive account of the rights promoted by this Bill, but focus on those rights most directly protected by this Bill.

**Right to freedom from slavery and forced labour**

8. Article 8 of ICCPR conveys that no one shall be held in slavery or servitude and that no one shall be required to perform forced or compulsory labour. The right to freedom from slavery and forced labour is an absolute right, meaning that it cannot be limited or qualified under any circumstance.

9. The Bill engages and protects the right to freedom from slavery and forced labour by establishing a Modern Slavery Reporting Requirement to encourage large businesses in Australia to take action to combat modern slavery (which includes slavery and forced labour). The Bill aims to equip and enable business to respond effectively to modern slavery, and to develop and maintain responsible and transparent supply chains.

10. Section 16 of the Bill establishes mandatory criteria for Modern Slavery Statements. Mandatory criteria include reporting on risks that modern slavery practices are, or may be, occurring within the operations or supply chains of a reporting entity or an entity it owns or controls, describing the entity’s actions to assess and address these risks, and describing how the entity assesses the effectiveness of their actions.

11. By strengthening Australia’s response to modern slavery, this Bill will further Australia’s commitment to upholding the absolute right to freedom from slavery and forced labour set out in Article 8 of ICCPR. Adopting legislative measures to give
effect to Article 8 is consistent with Australia’s obligations as a State Party to ICCPR, as set out in Article 2.

**Right to freedom from torture and other cruel, inhuman or degrading treatment or punishment**

12. Article 7 of ICCPR conveys that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

13. UNCAT also establishes the absolute right to freedom from torture and other cruel, inhuman or degrading treatment or punishment.

14. Combatting modern slavery protects the right to freedom from torture and other cruel, inhuman or degrading treatment or punishment. Modern slavery is fundamentally concerned with exploitation. It robs people of their dignity and their liberty. Exploitative practices can lead to serious physical and psychological harm, and even death.

15. By strengthening Australia’s response to modern slavery, this Bill will further Australia’s commitment to upholding the absolute right to freedom from torture and other cruel, inhuman or degrading treatment or punishment as set out in Article 7 of ICCPR and in UNCAT. Adopting legislative measures to give effect to Article 7 is consistent with Australia’s obligations as a State Party to ICCPR and to UNCAT, as set out in Article 2 of both treaties.

**The right to work and the rights at work**

16. Article 6 of ICESCR conveys that State Parties will recognise the right to work, which includes the right of everyone to the opportunity to gain their living by work which is freely chosen or accepted, and will take appropriate steps to safeguard this right.

17. Article 7 of ICESCR further specifies the right of everyone to the enjoyment of just and favourable conditions of work, including to rest, leisure and reasonable limitation of working hours.

18. Modern slavery severely curtails a person’s right to work and their rights at work by robbing a person of the freedom to freely choose and accept work, and in many cases, severely curtailing the conditions of work, including regarding rest, leisure and reasonable limitations on working hours.

19. The Bill engages and promotes the right to work and rights at work by strengthening Australia’s approach to combating modern slavery in businesses’ operations and supply chains. Increasing transparency around modern slavery in operations and supply chains will drive businesses to improve their practices around identifying and responding to instances of modern slavery, and to risks of modern slavery.

20. By strengthening Australia’s response to modern slavery, this Bill will further Australia’s commitment to upholding the right to work and the rights at work, as set out in Article 2 of ICESCR.

**Right to protection from exploitation, violence and abuse**

21. Article 19(1) of CRC conveys that State Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of
physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse.

22. Article 32 further states that State Parties recognise the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development.

23. The right to protection from exploitation, violence and abuse is also articulated in Article 32 of CRPD, which specifies that State Parties shall take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse, including their gender-based aspects.

24. Modern slavery is fundamentally concerned with exploitation. Australia’s Commonwealth legislation criminalises the exploitation of individuals, including through offences criminalising trafficking in persons, slavery, servitude, forced labour, debt bondage and forced marriage. Offences involving the exploitation of children are particularly serious and carry maximum penalties of up to 25 years’ imprisonment.

25. The nature and extent of modern slavery means that there is high risk that Australian businesses’ operations and supply chains may be affected by modern slavery and therefore impinging upon the right to protection from exploitation, violence and abuse.

26. The Bill engages and promotes the right to protection from exploitation, violence and abuse by strengthening Australia’s response to modern slavery. By requiring businesses to report on modern slavery risks in their operations and supply chains, including the worst forms of child labour, the Bill supports businesses to take action to respond to modern slavery risks.

27. A strengthened response to modern slavery will further Australia’s commitment to upholding the right to protection from exploitation, violence and abuse, as set out in Article 2 of CRC and Article 4 of CRPD.

The right to freedom of movement

28. Articles 12 and 13 of ICCPR specify that a person must be able to move freely and choose a place of residence within a country without restrictions. Articles 12 and 13 of ICCPR further specify that State Parties have a duty to ensure that a person’s freedom of movement is not unduly restricted by others, including private persons and companies.

29. Modern slavery can severely limit a person’s right to freedom of movement. Exploitative practices can restrict a person’s freedom of movement in numerous ways, including through debt bondage, physical restraint and other methods of control and coercion.

30. The Bill engages and promotes the right to freedom of movement by strengthening Australia’s response to modern slavery. By requiring business to report on modern slavery risks in their operations and supply chains, the Bill supports business to take action and respond to modern slavery risks. A strengthened response to
modern slavery promotes Australia’s commitment to uphold the right to freedom of movement, as set out in Article 2 of ICCPR.

**The right to health**

31. Article 12(1) of ICESCR requires State Parties to recognise the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

32. The United Nations Committee on Economic Social and Cultural Rights has stated that the right to health includes the right to control one’s health and body, including sexual and reproductive freedom, and the right to be free from interference, such as the right to be free from torture.

33. The right to health also includes the right to a system of health protection for people to enjoy the highest attainable level of health.

34. Modern slavery can severely limit a person’s right to health. Persons that experience modern slavery are commonly subject to physical or psychological abuse and hazardous working conditions, and the experience of modern slavery can have ongoing implications for a person’s mental and physical wellbeing.

35. The Bill engages and promotes the right to health by strengthening Australia’s response to modern slavery. By requiring business to report on modern slavery risks in their operations and supply chains, the Bill supports business to take action and respond to modern slavery risks. A strengthened response to modern slavery supports Australia’s commitment to uphold the right to health, set out in Article 2 of ICESCR.

**Human rights limited by the Bill**

**Legitimate objective of the Bill**

36. Under international human rights law, any limitation on rights and freedoms must be reasonable, necessary and proportionate for the pursuit of a legitimate objective. For an objective to be legitimate, it must address a pressing or substantial concern, and not simply seek an outcome regarded as desirable or convenient.

37. Collectively described as ‘modern slavery,’ trafficking in persons, slavery, slavery-like practices and the worst forms of child labour are severe violations of human rights and serious crimes. In an increasingly globalised and interconnected world, there is a high risk that Australian businesses’ operations and supply chains may be tainted by modern slavery. Modern slavery can occur in any industry and at any stage of a business supply chain.

38. The Australian Government established a comprehensive response to modern slavery in 2004. Since 2004, the Australian Government has identified more than 350 suspected victims of modern slavery. Victims have been identified in a range of industries, including domestic service, hospitality, construction and sex work. Modern slavery is often underreported and not all cases of modern slavery in Australia may be identified.

39. Although Australia’s response to modern slavery is strong, it is primarily focused on identifying and supporting victims and deterring and prosecuting offenders. Australia’s current legislative framework does not directly target modern slavery in business operations and supply chains or support the business community to take action to combat modern slavery.
40. There is currently no formal Australian Government mechanism to support businesses to combat modern slavery in their operations and supply chains. There is also currently no formal Australian Government mechanism to support the business community to inform consumers, investors and other bodies about their efforts to address modern slavery.

41. This Bill has a legitimate objective, to strengthen Australia’s approach to modern slavery by equipping and enabling Australia’s business community to respond effectively to modern slavery and develop and maintain responsible and transparent supply chains.

Right to privacy and reputation

42. Article 17(1) of ICCPR states that no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. The United Nations Human Rights Committee have interpreted the right to privacy as comprising freedom from unwarranted and unreasonable intrusions into activities that society recognises as falling within the sphere of individual autonomy. The right to privacy may be limited where the limitation is lawful and not arbitrary and where it is reasonable, necessary and proportionate to achieving a legitimate objective.

43. The Bill limits the right to privacy in that it will require disclosure of information pertaining to the structure, operations and supply chain of the reporting entity. Information about businesses can be considered personal information if information can be linked to an individual. In some cases, an individual’s personal information can be so interconnected to information about their business or company, that information about that business or company can constitute personal information about the individual.

44. This limitation to the right to privacy is reasonable and necessary as the disclosure of certain information is required to achieve the legitimate objectives of the Bill.

45. In General Comment No.16, the United Nations Human Rights Committee noted that the protection of privacy is necessarily relative, as all persons live in a society. However, authorities should only be able to call for information relating to an individual’s private life, where the knowledge of that information is essential to the interests of society.

46. Allowing information to be made publically available fulfils the transparency objective of the Bill and encourages businesses to strive to improve practices regarding identifying instances and risks of modern slavery in their operations and supply chains. The collection and retention of information relevant to this Bill is carefully regulated, with only limited information required to be disclosed. Section 16 of the Bill specifies mandatory reporting criteria, and requires that Modern Slavery Statements:

- identify the reporting entity,
- describe the structure, operations and supply chains of the reporting entity,
- describe the risks of modern slavery practices in the operations and supply chains of the reporting entity, and any entities it owns or controls,
• describe the actions undertaken by the reporting entity, and any entities it owns or controls, to assess and address those risks,

• describe how the reporting entity assesses the effectiveness of such actions

• describe the process of consultation to develop the statement, and

• describe the relevant approvals undertaken.

47. There is also a very small risk that Modern Slavery Statements made in accordance with the reporting criteria could identify victims or potential victims of modern slavery, compromising their right to privacy and reputation. For example, a business might voluntarily provide too much specificity about identified modern slavery risks in their statement (for example about a specific case) resulting in a victim or potential victim being identified.

48. The reporting criteria set out in section 16 of the Bill do not mandate the provision of any information that would identify victims or potential victims of modern slavery. Extensive and detailed guidance will also be issued prior to the commencement of the Bill, underscoring the importance of ensuring Modern Slavery Statements do not identify individual victims or potential victims of modern slavery. The Australian Government will also monitor Modern Slavery Statements to help ensure that victims and potential victims are not, and cannot be, identified.

49. The Bill’s limitation to the right to privacy has a clear legal basis. The legislation will be publicly accessible and accompanied by detailed guidance so that affected persons have adequate information about how the Bill may limit their right to privacy. Information provided through the Bill and accompanying guidance is also sufficiently precise to enable affected persons to regulate their behaviour accordingly.

50. The Bill does not confer unfettered discretion on those charged with the Bill’s execution. Information can only be collected by the Minister or the Minister’s delegates as specified in section 23 of the Bill. The information that can be collected is clearly prescribed and limited to that information of most importance to achieving the legitimate objectives of the Bill.

Conclusion

51. The Bill is compatible with human rights because it promotes the protection of a number of human rights, including absolute rights to freedom from slavery and forced labour and to freedom from torture and other cruel, inhuman or degrading treatment or punishment. To the extent that the Bill may limit the right to privacy and reputation, those limitations are reasonable, necessary and proportionate to the legitimate objective of the Bill, which is to strengthen Australia’s approach to modern slavery by equipping and enabling the business community to respond effectively to modern slavery and develop and maintain responsible and transparent supply chains.
REGULATION IMPACT STATEMENT

Modern Slavery Reporting Requirement

Prepared by the Department of Home Affairs
EXECUTIVE SUMMARY

This Regulation Impact Statement (RIS) assesses options to address modern slavery risks in the operations and supply chains of Australian businesses and other entities. This RIS identifies the problem to be solved, outlines the possible policy options considered and assesses the costs and benefits of each option. This RIS also includes an overview of the proposed Commonwealth Modern Slavery Business Engagement Unit, including its purpose, functions, and details of how it will work with the business community.

This RIS has been prepared by the Department of Home Affairs in accordance with the Australian Government Guide to Regulation and guidance notes issued by the Office of Best Practice Regulation.

What is the problem that is being addressed?

Modern slavery practices are serious crimes and grave abuses of human rights. Modern slavery can occur in a variety of industries and recent United Nations (UN) estimates suggest that there are 40 million modern slavery victims globally. The nature and extent of modern slavery means there is high risk that Australian businesses’ operations and supply chains may be tainted by serious exploitation. This poses significant legal and reputational risks for the Australian business community.

Why is Government action required?

The Australian Government is committed to combating modern slavery practices and has implemented a strong strategy to combat these crimes.

However, the Government’s strategy does not directly target modern slavery in business operations and supply chains or support the business community to take action to combat modern slavery. This makes it difficult for the Australian business community to assess, disclose and respond to modern slavery risks and contributes to a lack of public awareness.

What policy options are being considered?

The Government’s primary objective for reform is to equip and enable the business community to respond effectively to modern slavery and develop and maintain responsible and transparent supply chains. This RIS considers the following three possible options for Government action:

1) Continue with a ‘business as usual’ response: This option would not meet the Government’s objective for reform, is unlikely to result in changes to business behaviour and is inconsistent with business support for regulatory action.

2) Take non-regulatory action, including awareness-raising, developing guidance materials and supporting voluntary business-led measures: This option may lead to limited behaviour change from business and would not have any regulatory compliance costs. Any measures introduced as part of this option may duplicate existing non-government initiatives and would likely have limited uptake – primarily from businesses already acting to address modern slavery risks. This option is also inconsistent with business support for regulatory action.
3) *Take targeted regulatory action through introducing a Modern Slavery Reporting Requirement:* This option would address the Government’s primary objective for reform and has the highest overall net benefit. This option would provide certainty and consistency for the business community, create a level playing field for large businesses in the Australian market, and facilitate a ‘race to the top’ amongst businesses competing for market funding and reputational reward. This option would have an average annual regulatory impact on the business community of approximately $65.85 million ($21,950 per reporting entity).

The Government also proposes to establish a new Modern Slavery Business Engagement Unit in the Department of Home Affairs to ensure business is appropriately supported to address modern slavery risks in their supply chains.

**Who was consulted?**

The Government has conducted an accessible and transparent consultation process to seek the views of business and civil society. The consultation process was structured to focus on key stakeholders, including businesses that would be impacted by proposed regulation. Opportunities were also provided for a broad range of stakeholders to provide their views to Government, including private individuals.

To ensure full public consultation, Government conducted a two-phase consultation process. The first phase of consultations involved a series of 12 stakeholder roundtables in Canberra, Melbourne, Sydney and Perth. More than 130 representatives from business and civil society attended these roundtables. The second phase of consultations involved seeking written submissions from interested stakeholders. The Australian Government received 99 written submissions addressing the key areas for feedback set out in the consultation paper. In addition to formal consultations, the Australian Government has held more than 50 direct meetings with interested stakeholders. The Australian Government also held targeted exposure draft consultations on draft legislation with over 40 expert stakeholders between 29-30 May 2018.

**What is the best option?**

This RIS recommends the Australian Government pursue Option Three by taking targeted regulatory action through introducing a Modern Slavery Reporting Requirement. This option is likely to deliver the greatest benefit, by addressing the Government’s primary objective for reform through raising business awareness of modern slavery and providing shareholders and consumers with information about modern slavery risks in entities’ operations and supply chains. This option also has strong business and civil society support. This RIS also recommends the Government establish a Modern Slavery Business Engagement Unit in the Home Affairs Portfolio to provide advice and support to business.
SECTION ONE
WHAT IS ‘MODERN SLAVERY’ AND WHY IS GOVERNMENT ACTION NEEDED?

This section of the RIS describes the policy problem the Australian Government is seeking to address. It explains why existing Government action is insufficient and sets out why additional action is required and the Government’s key objectives. This section of the RIS aligns with RIS Questions 1 and 2.

Overview of the problem: Modern slavery in business operations and supply chains

Human trafficking, slavery and slavery-like practices, such as servitude, forced labour and debt bondage, are severe violations of human rights and serious crimes. Collectively, these exploitive practices are often described as ‘modern slavery’. In a globalised economy and increasingly interconnected world, there is a high risk that Australian businesses’ operations and supply chains may be tainted by modern slavery. This poses significant legal and reputational risks for the Australian business community. Australian businesses must also compete in the global marketplace against other businesses that may be benefiting from modern slavery. This means that it is important for the Australian Government to consider how it can best support and equip the Australian business community to address modern slavery.

Understanding the problem: The extent of modern slavery

Globally, there is no single agreed estimate of the total number of modern slavery victims. Recent UN estimates suggest that there are 40 million modern slavery victims globally. Up to 25 million of these victims are exploited through forced labour.

Modern slavery can occur in any industry and exists in both the formal and informal economies. In contrast to the formal economy, the informal economy describes economic activities that are not directly regulated by governments. For example, the global informal economy can include unregulated manufacturing and service industries, such as construction work and cleaning, as well as home-based workers in industries like textiles and fashion. Key UN estimates suggest the informal economy includes more than half the global labour force and that workers in the informal economy are vulnerable to exploitation and abuse.

The complexity of formal and informal economies means that modern slavery can be present at all stages of the supply chain and in many different settings. For example, entities like corporations, charities and universities may be exposed to modern slavery risks through direct suppliers in the formal economy. These entities may also be indirectly exposed to modern slavery through trusts, investments and extended supply chains that involve informal economic activities. Internationally, key industries of concern include agriculture, construction, electronics, fashion, hospitality and extractives. The U.S. Government has identified 139 goods from 75 countries that it believes are produced through child or forced labour, including bricks, cotton, footwear, gold and garments.

No country is immune from modern slavery, including Australia. The Australian Government established its current comprehensive response to modern slavery in 2004. Since 2004, the Australian Government has identified more than 350 suspected victims of modern slavery. During this period, the Australian Government has prosecuted more than 55 individuals for human trafficking, slavery or slavery-like offences under the Commonwealth Criminal Code and has recorded 21 convictions. Victims of modern slavery in Australia have been identified.
in a range of industries, including domestic service, hospitality, construction and sex work. Modern slavery is often underreported and not all cases of modern slavery in Australia may be identified.

**Understanding the problem: How does modern slavery impact the Australian business community?**

Large businesses and other entities operating in Australia may be exposed to modern slavery risks through their operations and supply chains. Modern slavery risks can be particularly significant in high-risk industries with complex or changeable multi-national supply chains that make it difficult to monitor supplier practices. Industries with high proportions of migrant workers or where operations are based in countries with weak regulatory environments may also be vulnerable to modern slavery. Modern slavery can also occur in domestic operations and supply chains in Australia, including through contracted labour or service providers. A 2015 study by the Ashridge Centre for Business and Sustainability at Hult International Business School and the Ethical Trading Initiative found 71 per cent of companies believe there is a likelihood of modern slavery occurring at some point within their supply chains. Both small and large businesses can be exposed to modern slavery risks. However, the size and complexity of large entities’ operations can increase their possible vulnerability. Other types of entities such as universities and hospitals that have large supply chains or significant investments may also be exposed to modern slavery risks.

Modern slavery can impact the Australian business community in a number of ways. It is not possible to quantify the full impact of modern slavery on business due to the hidden nature of modern slavery crimes. However, it is clear that taking no action to address modern slavery would leave the Australian business community exposed to the following legal and reputational risks.

Modern slavery practices such as forced labour are serious crimes. As a result, businesses involved in modern slavery may face significant legal penalties, including criminal and civil sanctions. For example, a number of civil suits have been brought against businesses in the United States (US) in relation to exploitive supplier practices. Modern slavery can also occur in conjunction with other harmful and illegal practices, such as corruption.

In addition, the presence of modern slavery in business operations or supply chains poses substantial reputational risks for businesses and may impact shareholder and investor confidence. These risks have been highlighted by the United Kingdom (UK) Independent Anti-Slavery Commissioner. Modern slavery can also undermine the competitiveness of Australian businesses where competitors benefit from modern slavery, including through lower production costs. Taken together, these risks may result in negative financial impacts for businesses, including financial losses due to changes to share pricing and increased lending rates from financiers. In some cases, these impacts may affect the viability of the business. The UK Government, in its official statutory guidance for reporting entities, has emphasised that business action to address modern slavery can help to mitigate these risks, by improving investor confidence and enhancing businesses’ brand and reputation.

**Government’s response to the problem: What measures are in place to address modern slavery and why is additional action needed?**

The Australian Government is committed to combating modern slavery. Australia’s comprehensive strategy to combat modern slavery was established in 2004 and is led by the Commonwealth Department of Home Affairs. Key elements of Australia’s response include specialist police investigative teams, strong criminal offences, a dedicated victim support
program and partnerships with the community. Australia’s strategy to combat modern slavery is one of the strongest in the world. For example, the US Government’s annual * Trafficking in Persons Report* has consistently ranked Australia as a Tier One country since 2004. This means Australia is fully consistent with US minimum standards for the elimination of human trafficking. The measures in Australia’s strategy are also subject to continual review and improvement by the Government.

Although Australia’s strategy to combat modern slavery is strong and effective, it is primarily focused on identifying and supporting victims and deterring and prosecuting offenders. This means the strategy does not directly target modern slavery in business operations and supply chains or support the business community to take action to combat modern slavery. This is particularly the case where exploitation occurs offshore. For example, the Australian Government does not currently provide detailed guidance or awareness-raising materials about modern slavery specific to the business community. Nor is there a Government-sponsored mechanism to enable the business community to inform consumers, investors and other bodies about their efforts to address modern slavery. While there are some targeted initiatives at the state and territory level, such as the New South Wales Ethical Clothing Trades Extended Responsibility Scheme, these initiatives are generally limited to specific industries and locations.

This makes it difficult for the Australian business community to assess, disclose and respond to modern slavery risks and contributes to a lack of public awareness. A 2015 report by the Australian Human Rights Commission found that despite a clear ‘aspiration and commitment to address human rights impacts in their supply chains, many businesses lack clear strategies and processes to trace, monitor and address such risks.’ Baptist World Aid’s annual Ethical Fashion Report and Electronic Industry Trends Report also indicates that many fashion and electronics companies operating in Australia can do more to prevent exploitation. Since 2013, a number of major businesses operating in Australia have been criticised over allegations of exploitive conduct in their supply chains. Other businesses have independently acknowledged the presence of modern slavery in their supply chains and have taken remedial action.

**What is the basis for Government to intervene?**

Not every problem can be solved by the Government. However, there is a strong basis for the Australian Government to take action to address modern slavery in business operations and supply chains.

The Australian Government has a responsibility to ensure Australia’s response to modern slavery is as strong as possible. Australia’s international legal obligations require Australia to respond effectively to human trafficking, slavery and slavery-like practices. Under Sustainable Development Goal 8.7, Australia has committed to take immediate and effective measures to end modern slavery by 2030. Importantly, under international law, the Australian Government is also obliged to take necessary steps, including through the adoption of laws, policy and other appropriate measures, to prevent and combat human trafficking and slavery (including slavery-like practices) and ensure an effective remedy for victims. Such necessary steps may include regulating non-state actors under its jurisdiction, including businesses. Government intervention is consistent with the UN *Guiding Principles on Business and Human Rights* (UN Guiding Principles), which require companies to respond to human rights impacts that are ‘directly linked to their operations, products or services.’ The UN Guiding Principles are not legally binding on Australia as a matter of international law. However, Australia supports the UN Guiding Principles and encourages businesses to apply them in their operations.
The Australian Parliament, business community and civil society have expressed clear support for the Australian Government to take action to address modern slavery in business operations and supply chains. The Australian Parliament’s Joint Standing Committee on Foreign Affairs, Defence and Trade recommended in 2013 and 2017 that the Government legislate to improve transparency in supply chains. In 2016, the Australian Government National Roundtable on Human Trafficking and Slavery’s multi-stakeholder Supply Chains Working Group also recommended that Government take this approach. The Australian Government’s consultations with business and civil society have also demonstrated strong support for Government action (see Section Three). Key stakeholders have also made public statements of support for Government action.

Australian Government action in this area is also consistent with international best-practice. Internationally, governments are increasingly working with the business community to combat modern slavery, including by requiring improved supply chain transparency. A number of foreign jurisdictions are already taking targeted regulatory action to strengthen their domestic responses to modern slavery and other human rights abuses in supply chains. These include the United Kingdom, United States, France, the Netherlands and the European Union. The Australian Government is closely monitoring the effectiveness of these initiatives to ensure that any Australian Government action corresponds to international best-practice.

What are the Government’s objectives for reform?

The Australian Government’s primary objective for reform is to equip and enable the business community to respond effectively to modern slavery and develop and maintain responsible and transparent supply chains. The Government can achieve this by:

- improving the business community’s awareness of modern slavery risks, including at senior levels
- creating an environment in which businesses feel ‘safe’ to identify and disclose modern slavery risks by establishing a level playing field in the Australian market for large businesses covered by the reporting requirement. This will mean entities required to comply and smaller entities that opt in are not disadvantaged by disclosing modern slavery risks
- encouraging the business community to identify and address modern slavery risks beyond first tier suppliers (direct suppliers) and through their entire supply chains
- supporting businesses to use their market influence and leverage to work with suppliers to improve workplace standards and practices
- facilitating a ‘race to the top’ by providing reputational incentives for businesses to take action on modern slavery, including the possibility of positive treatment from investors and consumers for entities that take action, and
- improving the information available to consumers and investors about what businesses are doing to combat modern slavery.

Australian Government action on this issue, including the establishment of a Modern Slavery Business Engagement Unit, will support the Australian business community to meaningfully strengthen its response to modern slavery. Without this support, modern slavery risks in business operations and supply chains may not be addressed. As a result, Australian businesses and consumers may continue to be exposed to goods and services tainted by modern slavery.

There are a number of constraints that may impact the Australian Government’s ability to achieve these objectives. These constraints include the risk that further
Australian Government action may be ineffective or inappropriate due to poor design or implementation. There is also a risk that Australian Government action may cause unforeseen consequences, such as excessive costs for business. The Australian Government has mitigated these risks by engaging in a detailed public consultation process (see Section Three).
SECTION TWO

ASSESSMENT OF POSSIBLE POLICY OPTIONS

This section of the RIS assesses three possible options for Australian Government action and analyses the costs and benefits of each option. This section of the RIS aligns with RIS Questions 3 and 4.

Overview of possible policy options

The three possible options for Australian Government action considered in this RIS are:

Option One
The Government continues with a business as usual response and takes no further action.

Option Two
The Government takes non-regulatory action by developing measures to raise the business community’s awareness of modern slavery and provide guidance on ways to identify and address modern slavery risks. The Government could also ask the business community to address this issue through voluntary, business-led measures.

Option Three
The Government takes targeted regulatory action by introducing a Modern Slavery Reporting Requirement and provides supporting guidance to the business community.

Impact analysis of possible policy options

OPTION ONE: BUSINESS AS USUAL

The Australian Government Guide to Regulation requires the Australian Government to analyse a business as usual option as a benchmark.

<table>
<thead>
<tr>
<th>Benefits</th>
<th>Costs and limitations</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Allows the business community flexibility to address modern slavery risks.</td>
<td>• Does not meet the Government’s objectives for reform.</td>
</tr>
<tr>
<td>• No new regulatory compliance costs.</td>
<td>• Inconsistent with business support for Government regulatory action.</td>
</tr>
<tr>
<td></td>
<td>• Does not provide support for business and leaves the business community exposed to modern slavery risks.</td>
</tr>
<tr>
<td></td>
<td>• Likely domestic and international criticism.</td>
</tr>
<tr>
<td></td>
<td>• Unlikely to result in widespread changes in business behaviour or increased action to address modern slavery risks.</td>
</tr>
</tbody>
</table>
Possible benefits
A business as usual approach may have very limited benefits in some circumstances. The absence of Australian Government action (particularly regulatory action) could allow members of the business community to address modern slavery risks flexibly and as they see fit. Taking no action would also mean that businesses do not need to respond to new Government regulation and would not incur any compliance costs.

Possible costs and limitations
A business as usual approach would not meet the Australian Government’s objectives for reform and could have substantial costs. Maintaining the status quo would mean the Australian Government continues to provide inadequate support to the Australian business community to address modern slavery. This would be inconsistent with business support for Government action on this issue and may negatively impact Australian businesses if modern slavery is subsequently identified in their operations or supply chains. Taking no action would also lead to international and domestic stakeholder criticism. It could disadvantage Australian businesses competing for market share in foreign jurisdictions that have already taken regulatory action on this issue.

Some members of the business community have already taken steps to address modern slavery risks, including utilising non-government ethical certification schemes and updating policies and processes. It is likely some businesses would continue to take steps to address modern slavery in the absence of Australian Government action. However, these actions are generally ad hoc and are not widespread or consistent. Business action is also generally confined to sectors and companies that have been targeted by advocacy groups or where businesses can gain market advantage through ethical branding.

Summary of submissions
The Australian Government has not received any written submissions or verbal feedback during consultations in support of taking a business as usual approach.

OPTION TWO – NON-REGULATORY ACTION
The Australian Government could seek to support the business community to address modern slavery through non-regulatory initiatives. This could involve the Government developing and disseminating awareness-raising and guidance materials to the business community on modern slavery. The Government could also promote and support voluntary business-led measures to address modern slavery, such as codes of conduct and pledges. This option does not involve regulation so would not result in any additional costs to business.

<table>
<thead>
<tr>
<th>Benefits</th>
<th>Costs and limitations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Allows the business community</td>
<td>Does not meet the Government’s objectives for reform.</td>
</tr>
<tr>
<td>flexibility to address modern slavery</td>
<td>Inconsistent with business support for Government</td>
</tr>
<tr>
<td>risks.</td>
<td>regulatory action.</td>
</tr>
<tr>
<td>Allows the Government to set out</td>
<td>Likely domestic and international</td>
</tr>
<tr>
<td>expectations for business behaviour</td>
<td>criticism.</td>
</tr>
<tr>
<td>and raise awareness without imposing</td>
<td>Success contingent on business</td>
</tr>
<tr>
<td>new regulatory compliance costs.</td>
<td>engagement.</td>
</tr>
<tr>
<td>Could be targeted to high risk sectors.</td>
<td></td>
</tr>
</tbody>
</table>
• May lead to limited behaviour change from business.
• Unable to create a level playing field for business.
• May duplicate existing international and business-led initiatives.
• Business-led initiatives like certification schemes may still impose costs on business.

Possible benefits
Taking non-regulatory action could have a number of benefits and may assist businesses to respond more effectively to modern slavery risks without imposing additional compliance costs through new regulation.

Non-regulatory action could take a number of forms, including producing guidance and awareness-raising materials. Government guidance and awareness materials would allow the Australian Government to clearly set out its expectations for how the business community should respond to modern slavery risks. This would also ensure the business community has access to materials to help them more effectively address modern slavery risks. This could lead to improved awareness of modern slavery amongst the business community and increase the number of businesses taking action to combat modern slavery. Developing guidance and awareness materials in consultation with business would be likely to improve their effectiveness and uptake.

Voluntary business-led measures may also provide a mechanism for parts of the business community to collectively address modern slavery. This could include codes of conduct, industry certification schemes or other measures. Promoting voluntary action would allow businesses to work collaboratively to design and implement business-led responses. In some cases, it is possible that a business designed and led response may be more effective than Government regulation. Voluntary actions could also be focused on sectors with the highest modern slavery risks. This would mean businesses in low risk sectors would not be required to take action that may be unnecessary.

Possible costs and limitations
The effectiveness of non-regulatory Government action is limited by a number of factors. In particular, the success of voluntary, non-regulatory measures is contingent on business engagement. This means the most likely businesses to adopt voluntary mechanisms or utilise guidance material are those already acting to increase transparency and address the risk of exploitation within their supply chains. Voluntary initiatives may also have limited uptake as competitive tensions may mean some businesses choose not to collaborate with others. Businesses may also opt not to take voluntary action because this may expose them to more scrutiny from media and civil society than businesses that take no or little action. As a result, the Australian Government would not be able to use non-regulatory action to create a level playing field for business. The reliance of non-regulatory action on business engagement also means any non-regulatory initiatives would be unlikely to substantially increase information available to consumers and investors.

Another disadvantage of non-regulatory action is that any Australian Government initiatives are likely to duplicate existing initiatives. Importantly, international bodies, business groups and civil society already produce a range of guidance and awareness-raising materials for the
business community. Additional Government guidance may not add value to this existing information if it is not tied to a regulatory framework. There are also a range of existing business-led initiatives to address modern slavery across various industries, including cocoa and palm oil. It is unlikely the Australian Government would be able to improve on these existing initiatives through non-regulatory measures.

**Summary of submissions**

The Australian Government has received very limited feedback in support of non-regulatory action. Over 90% of written submissions support the Australian Government taking regulatory action.

**OPTION THREE: TARGETED REGULATION THROUGH A MODERN SLAVERY REPORTING REQUIREMENT**

The third option available to the Australian Government is to take targeted regulatory action by introducing a Modern Slavery Reporting Requirement, tailored to the Australian context. This would require entities operating in Australia with total annual revenues over a set threshold to report annually on their efforts to address modern slavery in their operations and supply chains. An outline of the key features of the Australian Government’s proposed model reporting requirement is set out at Appendix A.

<table>
<thead>
<tr>
<th>Benefits</th>
<th>Costs and limitations</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Addresses the Australian Government’s objectives for reform.</td>
<td>• Will impose a regulatory cost on business and other entities (estimated at $65.85 million or $21,950 per reporting entity annually).</td>
</tr>
<tr>
<td>• Will reduce modern slavery risks in Australian goods and services.</td>
<td>• Will require action from large businesses that meet the threshold.</td>
</tr>
<tr>
<td>• Provides certainty for businesses by setting clear standards for action and creating a level playing field in the Australian market for businesses covered by the reporting requirement.</td>
<td></td>
</tr>
<tr>
<td>• Will facilitate a ‘race to the top’ amongst business.</td>
<td></td>
</tr>
<tr>
<td>• Aligns with business expectations for Government action.</td>
<td></td>
</tr>
<tr>
<td>• Consistent with Australian Government regulatory action on gender and illegal logging.</td>
<td></td>
</tr>
<tr>
<td>• Will prompt flow on change down supply chains.</td>
<td></td>
</tr>
</tbody>
</table>

**Possible benefits**

Targeted regulation through introducing a Modern Slavery Reporting Requirement would address the Australian Government’s primary objective for reform. The primary objective is to equip and enable the business community, led by large business, to respond effectively to
modern slavery, and develop and maintain responsible and transparent supply chains. This form of regulation will also send a clear message to the business community that the Australian Government will work with businesses to address modern slavery and will not tolerate Australian businesses benefiting from modern slavery in their operations and supply chains.

This type of regulation would have a number of key benefits. Importantly, a reporting requirement would provide certainty and consistency for the business community because it would set clear standards that apply to all entities above the set revenue threshold. This will create a level playing field in the Australian market for large businesses covered by the reporting requirement and smaller businesses that opt in to reporting by ensuring that they are not disadvantaged by taking action to disclose and address modern slavery risks. It will also contribute to the creation of an emerging international level playing field by complementing existing disclosure legislation in jurisdictions like the UK and California. Importantly, Government’s consultations indicate that the current absence of a requirement for all large business to report means that businesses that publicly disclose modern slavery risks are likely to face increased scrutiny from investors and civil society. This means competitors may gain a market advantage by not disclosing modern slavery risks.

The reporting requirement will also facilitate a ‘race to the top’ amongst businesses competing for market funding and investment and consumer support. For example, investors are increasingly considering human rights issues as part of responsible investment processes. Government’s consultations indicate this may mean businesses that provide high quality and comprehensive statements could receive more favourable lending rates and attract more investment because they can show they are addressing potentially costly modern slavery risks. Producing a Modern Slavery Statement may also have a positive impact on consumer purchasing where consumers choose to buy from businesses seen as ‘ethical’.

Importantly, the UK Independent Anti-Slavery Commissioner has noted the UK reporting requirement is driving positive change, including significant increases in involvement on modern slavery issues from CEOs and senior executives as well as businesses tracing and mapping supply chains, establishing collaborative partnerships and receiving recognition from civil society award programs. However, the effectiveness of the UK legislation in creating a race to the top may be limited by the absence of a Government-designated central register for statements produced under the reporting requirement and mandatory reporting criteria. This affects the accessibility and quality of statements, which may limit the ability of investors and consumers to identify and support businesses that take a best-practice approach. The Australian reporting requirement will address this issue by including mandatory criteria and a Government-designated, publicly available central register to improve the quality and accessibility of statements.

The targeted nature of the reporting requirement means it will only directly impact large business that have the market leverage and influence to foster change in their supply chains. This means it will only impact those businesses best prepared to comply with the reporting obligation and that this regulation is unlikely to restrict competition or entry to markets for new businesses. Modern slavery risks are not necessarily confined only to large businesses and importantly, the reporting requirement will include an ‘opt in’ provision to allow smaller entities below the set revenue threshold to provide statements on a voluntary basis. This will ensure small and medium businesses are able to benefit from the reporting requirement if participation provides them with material benefits. For example, a small business may wish
to voluntarily comply with the reporting requirement as a way to heighten its reputation and promote its products and services.

Introducing new regulation through a reporting requirement accords with business and community expectations that the Government will lead on this issue. Implementing targeted regulation is also consistent with the Australian Government’s response to other supply chain-related or social issues, including illegal logging and gender equality. The Commonwealth *Illegal Logging Prohibition Act 2012* requires importers to implement risk management systems to address the risk of illegally harvested wood being used in imported products. More broadly, the Commonwealth *Workplace Gender Equality Act 2012* requires certain non-public sector entities to submit annual reports to the Workplace Gender Equality Agency under a range of gender equality indicators. The Department of Home Affairs has consulted with the agencies responsible for both these measures to identify ‘lessons learned’ and key feedback.

**Possible costs and limitations**
Targeted regulation through a reporting requirement has a number of costs and limitations. These need to be weighed carefully against the benefits of regulation identified above. Due to its targeted nature, the reporting requirement will only require action from large business and other large reporting entities. Small and medium businesses will not be directly covered by the regulation which means these entities may not take effective action to address modern slavery risks that may be present in their operations and supply chains. However, large businesses covered by the reporting requirement are likely to take steps to improve responses to modern slavery throughout their supply chains, including by working with small and medium suppliers. The Government recognises this may result in increased costs for suppliers. The Government will work with reporting entities in key industries to encourage them to engage with suppliers in a constructive and coordinated way to minimise any potential flow on costs.

Another potential cost of the reporting requirement is that its effectiveness may be undermined by low rates of compliance and poor reporting practices from business. This could be due to low business awareness of their obligations or wilful non-compliance. The Government has committed to developing clear mandatory criteria and comprehensive guidance for business to ensure reporting entities are able to understand their obligations. The Government will also work with peak bodies, industry groups and civil society to raise business awareness of the reporting requirement.

A further limitation associated with the proposed reporting requirement may be stakeholder perceptions that it is too strong or not strong enough. This could lead to calls for additional reform which may cause business uncertainty. The Government has taken steps to address this by undertaking extensive consultations to ensure the reporting requirement reflects community expectations. The Government will also review the reporting requirement after three years to assess its effectiveness.

All regulation involves new compliance costs. The reporting requirement will impose quantifiable new costs on large businesses required to comply. It will also impose costs on other large entities that have revenue in excess of the reporting threshold, including universities and charities. The Department of Home Affairs has carefully considered these costs and has consulted with key business and non-business stakeholders about possible impacts of new regulation.
Assessment of regulatory impact

In contrast to options one and two, the proposed reporting requirement will have a regulatory impact on business. The primary regulatory impact will be on large corporations and other entities required to comply with the reporting requirement. There may also be a secondary, flow-on regulatory impact on smaller entities that have business relationships with larger reporting entities.

The Government estimates the proposed reporting requirement will have an average, annual regulatory cost of $65.85 million or $21,950 per reporting entity.

<table>
<thead>
<tr>
<th>Change in costs ($ million)</th>
<th>Business</th>
<th>Community organisations</th>
<th>Individuals</th>
<th>Total change in costs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total, by sector</td>
<td>$65.85</td>
<td>$0</td>
<td>$0</td>
<td>$65.85</td>
</tr>
</tbody>
</table>

A detailed outline of the costings is at Appendix B. These costings estimate the minimum reasonable cost for reporting entities to comply with the reporting requirement. The costings only relate to actions reporting entities are required to take to comply with the reporting requirement. This means the costings do not cover additional discretionary actions that may be taken by reporting entities.

These costings are an estimate only. For the reasons set out below it is not possible to accurately determine actual compliance costs for individual reporting entities:

- Reporting entities will respond to the reporting requirement in different ways and with varying levels of effort. The way in which an entity responds to the reporting requirement is likely to be determined by a range of variables including: entity type; investor and consumer pressure; reputational risk; financial resources; and the perceived costs and benefits of compliance.
- Reporting entities’ compliance costs will not be uniform and will be contingent on a range of variables. These variables include: the entity’s existing staff profile; internal expertise; the size and complexity of the entity’s operations and supply chains; degree of reliance on external consultancy or legal services; and any existing human rights reporting processes undertaken by the entity. Compliance costs will also vary where reporting entities elect to take additional discretionary actions to improve their compliance, such as implementing new policies and processes.
- Reporting entities’ compliance costs will vary year on year. Some entities may incur initial one-off compliance costs, such as implementing new reporting systems and databases. Compliance costs in later years may also be reduced as efficiencies are identified. Other entities may incur additional costs in subsequent years if they decide to increase their efforts to comply with the reporting requirement.

Steps taken to minimise the regulatory impact

The Government is committed to ensuring it considers all possible options to reduce the regulatory impact associated with this option.

One key way the Government can reduce the regulatory impact on business is to design the reporting requirement to provide the greatest possible certainty to business about their
obligations and complement existing business reporting cycles. For example, the Government’s proposed reporting requirement includes simple definitions of key concepts and terms and four simple mandatory criteria that all reporting entities must address, instead of a series of recommended criteria as in the United Kingdom.

On the basis of feedback received during consultations, the Government will also align the reporting deadline to entities’ own financial years, rather than the Australian financial year. This will help to reduce compliance costs for business by ensuring Modern Slavery Statements can be developed and approved as part of entities’ broader reporting cycles.

The Government will also develop comprehensive guidance for reporting entities to help reduce compliance costs for business. Consultations and international experience have highlighted the importance of providing practical, clear guidance for business about how to comply with the reporting obligation, including case studies, best practice examples and clear definitions. The Government’s guidance will help to mitigate compliance costs by minimising business uncertainty about their obligations and providing business with a simple and practical pathway to implement the reporting requirement. This will also reduce the need for reporting entities to seek external legal advice and guidance.

The Government has also taken steps to reduce the regulatory impact on business by aiming for regulatory consistency across international jurisdictions. This will reduce compliance costs for businesses operating internationally by ensuring they do not have to comply with different requirements in different jurisdictions. The proposed reporting requirement has been designed to ensure the minimum necessary disruption for Australian entities already reporting on modern slavery issues in other jurisdictions, particularly the UK. As at February 2018, at least 21 Australian entities have complied with modern slavery reporting legislation in the UK.
SECTION THREE
OVERVIEW OF PUBLIC CONSULTATION PROCESS AND FINDINGS

This section provides an overview of the Australian Government’s public consultation process. This section explains the purpose and objective of the consultation process and provides detail about the Government’s consultation strategy. This section also provides a summary of key feedback from consultations, including written submissions. This section of the RIS aligns with RIS Question 5.

What did the consultation process involve?

The Australian Government has conducted an accessible and transparent consultation process to seek the views of business and civil society. The aim of the consultation process was to ensure that any Government action is: simple, sensible and as effective as possible; consistent with community expectations; and does not impose unnecessary regulatory impacts. The consultation process was structured to focus on key stakeholders, including businesses that would be impacted by proposed regulation. Opportunities were also provided for a broad range of stakeholders to provide their views to Government, including private individuals.

The consultation process commenced on 16 August 2017, when the then Minister for Justice, the Hon Michael Keenan MP, announced the Australian Government would hold national consultations on the proposed Modern Slavery Reporting Requirement. The then Minister for Justice also released a Public Consultation Paper and Regulation Impact Statement detailing the Australian Government’s proposal, other options for reform and highlighting key areas for feedback. This consultation paper was made available online.

The Commonwealth Attorney-General’s Department led the consultation process. On 20 December 2017, responsibility for the Modern Slavery Reporting Requirement transferred to the new Commonwealth Department of Home Affairs. To ensure full public consultation, the Government conducted a two-phase consultation process. The first phase of consultations involved a series of 12 stakeholder roundtables in Canberra, Melbourne, Sydney and Perth. Each roundtable was scheduled for three-and-a-half hours and included discussion of each of the key areas for feedback identified in the consultation paper. More than 130 representatives from business and civil society attended these roundtables. To ensure all relevant stakeholders were represented, the Australian Government worked with key industry and business groups to circulate invitations. The Australian Government also directly approached key stakeholders, including those that had made submissions to the 2017 parliamentary inquiry on modern slavery.

The second phase of consultations involved seeking written submissions from interested stakeholders. The Australian Government received 99 written submissions addressing the key areas for feedback set out in the consultation paper. The deadline for written submissions was set after the consultation roundtables concluded to ensure stakeholders could address matters raised during the roundtables in their submissions.

In addition to formal consultations, the Australian Government held over 50 direct meetings with interested stakeholders. Relevant Ministers and Australian Government representatives have also spoken about the proposed reporting requirement at civil society and industry events.
The Australian Government also held targeted exposure draft consultations on 29-30 May 2018 with over 40 expert stakeholders. The purpose of these consultations was to test that the proposed legislation was clear and practical for business to implement.

**What were the findings from the consultation process?**

To ensure the consultation process was as transparent as possible, the Government published a summary of the consultation roundtables online. The Government also published submissions online in early 2018. The Government is continuing to consider options for further consultation as required. The table below sets out key feedback and findings from the Government’s consultation process.

<table>
<thead>
<tr>
<th>ISSUE</th>
<th>Roundtables</th>
<th>Written submissions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Should the Government take regulatory action through a reporting requirement?</td>
<td>Almost all business and civil society roundtable attendees supported the Government taking regulatory action. Most attendees supported the proposed reporting requirement but some civil society attendees indicated a preference for stronger regulation that would create a legal requirement for due diligence.</td>
<td>Written submissions demonstrated strong support for regulatory action. Approximately 98% of submissions supported the Government introducing a reporting requirement or stronger due diligence legislation. The majority of these submissions favoured the proposed reporting requirement rather than due diligence measures.</td>
</tr>
<tr>
<td>Should the reporting requirement only cover large business?</td>
<td>Business and civil society attendees generally supported the use of a threshold but expressed differing views on where the threshold should be set. Generally, business participants supported an initial threshold of around $100 million annual revenue. Civil society attendees mostly supported a lower threshold of either $50-60 million, to align with existing UK legislation, or $25 million.</td>
<td>The clear majority of business submissions supported the application of the reporting requirement only to large businesses by establishing a threshold of $100 million or higher. In contrast, most civil society submissions supported a threshold of $50-60 million to align with existing UK legislation. Some civil society submissions advocated for a threshold of $25 million.</td>
</tr>
</tbody>
</table>

3 Copies of submissions received are available online at: [https://www.homeaffairs.gov.au/about/consultations/modern-slavery-supply-chains-reporting-requirement](https://www.homeaffairs.gov.au/about/consultations/modern-slavery-supply-chains-reporting-requirement)
<table>
<thead>
<tr>
<th>Would the reporting requirement have excessive or inappropriate regulatory impacts on business and other entities?</th>
<th>The majority of business participants did not express concerns about managing the regulatory costs for the proposed reporting requirement. The majority of participants suggested regulatory impacts would likely vary depending on an entity’s structure, industry and readiness to report on modern slavery. Some business participants also highlighted that the regulatory burden may be passed down through supply chains to smaller entities.</th>
<th>The majority of business and civil society submissions did not express concerns about the regulatory impact. Many submissions noted difficulties accurately estimating the total regulatory costs, which may vary widely between reporting entities.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Is the proposed scope of the reporting requirement appropriate?</td>
<td>Business and civil society participants supported the proposal to require entities to report on both their operations and supply chains. Many civil society participants and a small number of businesses suggested the Government consider requiring reporting on conduct that would not necessarily constitute modern slavery, such as all forms of child labour and hazardous working conditions for all labour.</td>
<td>Most business submissions supported limiting reporting only to modern slavery. A small number of business submissions and some civil society submissions supported including related conduct, such as all forms of child labour.</td>
</tr>
<tr>
<td>How can the Government best ensure compliance with the reporting requirement?</td>
<td>The majority of business participants noted that penalties could create a focus on compliance rather than sharing best-practice, and reputational risk and investor pressure are more effective drivers for compliance. Civil society participants generally supported penalties for non-compliance but expressed mixed views on their appropriateness during the first three years.</td>
<td>Almost all submissions from large businesses that would be covered by the proposed reporting requirement supported not including punitive penalties. In contrast, most civil society submissions argued for including penalties for non-compliance.</td>
</tr>
</tbody>
</table>
SECTION FOUR

RECOMMENDED OPTION

This section sets out why targeted regulatory action is the Australian Government’s recommended option. This section of the RIS aligns with RIS Question 6. This RIS recommends the Australian Government pursue Option Three by taking targeted regulatory action through a Modern Slavery Reporting Requirement. Modern slavery involves grave abuses of human rights and serious criminal misconduct. It is appropriate that the Government takes regulatory action to support the business community to combat this issue.

This RIS assesses that Option Three is likely to deliver the greatest benefit in terms of raising business awareness of modern slavery and providing shareholders and consumers with information about modern slavery risks in entities’ operations and supply chains. This will support business to better address modern slavery risks and may assist investors and consumers with their investing and purchasing decisions. Option Three will impose an average annual regulatory cost on reporting entities of approximately $21,950 per entity. However, the benefits arising from this cost are commensurate with: the Government’s objectives for reform; the nature and extent of modern slavery risks in business operations and supply chains; and the benefits of the regulation, including the creation of a level playing field for business. It is also consistent with the Australian Government’s international obligations to give effect to human rights within Australia’s jurisdiction and to prevent and suppress human trafficking, slavery and slavery-like practices, including as they are impacted by business.

Importantly, this option will achieve all of the Government’s objectives for reform. If implemented effectively, the reporting requirement will improve the business community’s awareness of modern slavery risks, including at senior levels, and create an environment in which businesses feel ‘safe’ to identify and disclose modern slavery risks. It will also encourage businesses and other reporting entities to identify and address modern slavery risks, and use their market influence and leverage to improve workplace standards and practices. The reporting requirement will facilitate a ‘race to the top’ by creating reputational incentives for businesses to take action on modern slavery. The reporting requirement will also improve information available to consumers and investors about actions businesses are taking to combat modern slavery.

Consultations have shown very strong business and civil society support for the Government to proceed with the development and implementation of the reporting requirement, and establishment of a mechanism to provide advice and support to business about complying with the reporting requirement. This includes strong support from large businesses that would be covered by the regulation. There is also clear Parliamentary support for the Government to take regulatory action.
SECTION FIVE

IMPLEMENTATION AND EVALUATION

This section sets out how the Australian Government proposes to implement and evaluate the Modern Slavery Reporting Requirement. This section addresses RIS question 7.

Implementation plan

Reporting Requirement

The Government aims to implement the reporting requirement in a way that ensures:

- the majority of reporting entities understand and meaningfully comply with their obligations
- reporting entities, investors, consumers, civil society and business peers collaborate together to drive a ‘race to the top’ and share best practice
- modern slavery risks in entities’ operations and supply chains are identified, assessed and mitigated, and
- reporting entities receive appropriate support and assistant from Government to comply with the reporting requirement.

The Department of Home Affairs is responsible for implementing the reporting requirement and will work closely with government, business and civil society stakeholders to achieve these implementation objectives.

The reporting requirement will apply to a reporting entity’s first full financial year after the legislation enters into force (expected late 2018). This means that there will be a period of time after the legislation entering into force where reporting entities are not required to publish statements. As part of the implementation process, the Australian Government will use this period to focus on ensuring that reporting entities understand their obligations and are prepared to comply with the reporting requirement. This is likely to include business forums, workshops and awareness-raising through key business peak bodies. The establishment of a Modern Slavery Business Engagement Unit will also ensure business has a single point of contact to seek guidance and non-binding advice on compliance with the reporting requirement, including how to remedy identified risks of modern slavery.

The Australian Government will also develop detailed guidance for business to facilitate the implementation of the reporting requirement. This guidance will include case studies, clear definitions, frequently asked questions, tips on best-practice and additional information about the Government’s expectations. The Government will draft this guidance in consultation with business and civil society. The guidance will be made available as soon as practicable after legislation is passed.

Entities will be required to provide their statements to Government for publication on a central register. Entities will also have discretion to publish their statements on their webpages or in annual reports or other relevant documents. Further detail on the key features of the Australian Government’s proposed model reporting requirement is set out at Appendix A.

Modern Slavery Business Engagement Unit

The Australian Government proposes to establish a new Modern Slavery Business Engagement Unit within the Department of Home Affairs to support the effective implementation of the proposed reporting requirement and strengthen the Australian Government’s engagement with business on modern slavery issues more broadly.
The Australian Government has committed $3.6 million through the 2018 Federal Budget to establish and run the Unit over January 2019 to June 2022.

The Unit’s primary role will be to work with the business community to support the effective implementation of the reporting requirement. To achieve this, the Unit will:

- develop and maintain detailed official guidance for the business community about the reporting requirement
- provide objective, non-binding advice to up to 3,000 individual businesses to support their compliance with the reporting requirement
- monitor compliance with the reporting requirement, including by identifying and promoting best-practice trends and initiatives
- deliver targeted education, training and awareness-raising initiatives for business, civil society and consumers to raise the profile of modern slavery
- develop and administer the online central register of Modern Slavery Statements
- coordinate the Australian Government’s annual Modern Slavery Statement
- lead broader work to address possible modern slavery risks in Government procurement, and
- support research into modern slavery risks in supply chains.

The Unit will report on its key strategic priorities and outcomes through the Interdepartmental Committee on Human Trafficking and Slavery’s annual report to Parliament, as well as through Senate Estimates processes.

A timetable for implementation and key tasks is set out below.

<table>
<thead>
<tr>
<th>Activity</th>
<th>Estimated date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legislation introduced to the Parliament</td>
<td>June 2018</td>
</tr>
<tr>
<td>Legislation likely to be passed by the Parliament</td>
<td>Prior to December 2018</td>
</tr>
<tr>
<td>Department of Home Affairs releases guidance for reporting entities</td>
<td>December 2018</td>
</tr>
<tr>
<td>Legislation expected to enter into force (subject to passage through Parliament)</td>
<td>January 2019</td>
</tr>
<tr>
<td>New Modern Slavery Business Engagement Unit established</td>
<td>November 2018</td>
</tr>
<tr>
<td>Department of Home Affairs establishes expert working group to guide implementation</td>
<td>January 2019</td>
</tr>
<tr>
<td>Department of Home Affairs establishes a central register for statements</td>
<td>September 2018 - September 2019</td>
</tr>
<tr>
<td>Department of Home Affairs works with business and civil society to raise awareness of the reporting requirement</td>
<td>September 2018 - December 2019</td>
</tr>
</tbody>
</table>
Most reporting entities release first statements | January - December 2020
Formal review of legislation commences | January 2022

**Evaluation process**

The Australian Government will carefully evaluate the proposed Modern Slavery Reporting Requirement in consultation with key stakeholders.

The Australian Government proposes to establish an expert reference group to help evaluate the effectiveness of the reporting requirement and ensure it is properly implemented. The Department of Home Affairs will lead the reference group as the agency responsible for the reporting requirement. Other reference group members will include key government agencies and business and civil society stakeholders. The reference group will provide a forum for the Government to seek feedback on implementation of the reporting requirement, promote best-practice and help to identify and address key risks and threats to success. Additional governance and accountability processes are not required because the reporting requirement does not establish any decision-making powers.

A formal evaluation of the reporting requirement will be undertaken three years after the legislation enters into force. This timeframe means that the review will take place after all reporting entities will have published at least one to two Modern Slavery Statements under the reporting requirement. This will provide a detailed evidence base for the review and allow for a rigorous assessment of the reporting requirement’s effectiveness and necessity. The Government will undertake the three year review in consultation with business and civil society. The outcomes of the review will be provided to the relevant Australian Government Minister for consideration.

The reference group and review will consider a range of data in assessing the effectiveness and success of the reporting requirement. This is likely to include quantitative data around the number of statements published and their consistency with the legislative requirements of the reporting requirement. Data is also likely to include qualitative information, including examples of changes in individual business behaviour and the development of collective best-practice trends within the business community.

Changes in individual business behaviour could include the development of new policies and processes, such as codes of conduct and training for suppliers. Best-practice trends could include situations where a number of reporting entities have taken the same or similar actions and this is seen by business, civil society and or government to be leading to a shift in broader business culture. For example, a best-practice trend might be businesses developing collaborative partnerships with civil society to combat modern slavery. Information about changes in business behaviour and best-practice trends will be primarily be gathered by assessing published Modern Slavery Statements. The review and reference group may also draw on reference group members’ expertise and consider independent benchmarking reports and assessments of entities’ reports, as well as evidence from formal and informal submissions and consultations with businesses, civil society and consumers.

The effectiveness of the Modern Slavery Business Engagement Unit will be assessed on an ongoing basis, including through the Interdepartmental Committee on Human Trafficking and Slavery’s annual report to Parliament, Senate Estimates processes and feedback from businesses.
APPENDIX A: OVERVIEW OF PROPOSED MODEL — REPORTING REQUIREMENT

The Australian Modern Slavery Reporting Requirement (reporting requirement) will require large corporations and entities operating in Australia to publish an annual statement detailing their actions to address modern slavery practices in their operations and supply chains. The reporting requirement will cover approximately 3,000 corporate groups and other relevant entities. This reporting requirement proposed model has been refined through public consultations and includes the key features set out below.

Legislative basis
The reporting requirement will be established through a new Act of Parliament.

Application
To help ensure a level playing field, the reporting requirement will apply to a broad range of entity types, including bodies corporate, unincorporated associations or bodies of persons, superannuation funds and approved deposit funds.

Terminology
For the purposes of the reporting requirement, modern slavery will be defined as incorporating the human trafficking, slavery and slavery-like practices criminalised and defined in Divisions 270 and 271 of the Commonwealth Criminal Code. This means modern slavery will encompass trafficking in persons, slavery, servitude, forced labour, forced marriage, debt bondage and deceptive recruiting for labour or services. The definition of modern slavery will also include the worst forms of child labour as defined in the 1999 Convention on the Worst Forms of Child Labour[^1] but will not include practices such hazardous working conditions for adults or broader human rights issues. Mandating reporting on these issues would substantially broaden the scope of the reporting requirement and be inconsistent with existing reporting requirements in other jurisdictions. The Australian Government will encourage entities to consider reporting on these issues where appropriate.

Threshold
The threshold for the reporting requirement will be set at $100 million total annual revenue. Revenue will include the consolidated revenue of the reporting entity and the entities it controls (if any) and will be calculated in accordance with the Australian Accounting Standards. To create a level playing field, the reporting requirement will apply to all Australian entities that meet the revenue threshold as well as all foreign entities with more than $100 million consolidated revenue that are carrying on business in Australia. A foreign entity will be considered to be carrying on business in Australia where its activities meet the test for carrying on a business set out in the Commonwealth Corporations Act 2001 (irrespective of whether the reporting entity is a body corporate). This secondary test will provide clarity for business by ensuring that foreign entities have certainty about whether they are required to report.

Timeframe for reporting
Reporting entities will be required to publish Modern Slavery Statements within six months after the end of the entity’s financial year. This will provide certainty for the business community by ensuring that entities cannot seek any competitive advantage by delaying publishing statements.

[^1]: See the Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, 1999 (No. 182)
Scope of reporting
Reporting entities will be required to report on their operations and supply chains as well as the operations and supply chains of any subsidiary entities and other relevant entities owned or controlled by the reporting entity (irrespective of whether the subsidiary or other relevant entity is operating in Australia or is part of the entity’s core business). Where a parent entity and subsidiary entity are both required to report, the parent entity will be able to choose whether to also report on behalf of the subsidiary.

Reporting content
Reporting entities will be required to address four key mandatory criteria. These criteria cover:

- the entity’s structure, operations and supply chains
- possible modern slavery risks
- actions to assess and address modern slavery risks, including due diligence and remediation process; and
- how the entity assesses the effectiveness of its actions.

These criteria will provide certainty to the business community about what information to include and ensure consistency of statements. Statements must be approved at the equivalent of board level and will need to be signed by a director.

Application to Government
The Australian Government recognises that it needs to show leadership in combating modern slavery and that government procurement is not immune from modern slavery risks. This is why the Australian Government will publish an annual Modern Slavery Statement covering Commonwealth procurement. Corporate Commonwealth entities and Commonwealth companies will be required to publish separate Modern Slavery Statements if they meet the revenue threshold. This will complement existing requirements for Australian Government agencies to undertake due diligence under the Public Governance, Performance and Accountability Act 2013, including by ensuring procurements are ethically sourced. The Australian Government will also encourage Australian State and Territory Governments to publish Modern Slavery Statements.

Guidance for business
The Australian Government will provide detailed guidance and awareness-raising materials for business before the reporting requirement enters into force. This guidance will be drafted in consultation with experts from business and civil society. The Modern Slavery Business Engagement Unit will also provide guidance and objective, non-binding advice to the business community to facilitate compliance with the reporting requirement.

Compliance mechanism
The Australian Government will not publish a list of entities required to report or introduce punitive measures for non-compliance with the reporting requirement. The Australian Government does not hold sufficient information to compile an accurate list of all entities required to report. The reporting requirement is also intended to facilitate a collaborative ‘race to the top’ amongst business and punitive penalties may lead to a tick box compliance approach from reporting entities.
Monitoring and Evaluation
The Australian Government will make entities’ Modern Slavery Statements available through a free, publicly accessible central register. Entities will be required to provide their statements to Government for publication on the central register. Entities will also have discretion to publish their statements on their webpages or in annual reports or other relevant documents. The register will be administered by the Department of Home Affairs. The Australian Government will also establish a business and civil society reference group to provide feedback to government about the implementation and operation of the reporting requirement.
### APPENDIX B: OUTLINE OF COSTINGS

#### Average annual regulatory costs (from business as usual)

<table>
<thead>
<tr>
<th>Change in costs ($ million)</th>
<th>Business</th>
<th>Community organisations</th>
<th>Individuals</th>
<th>Total change in costs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total, by sector</td>
<td>$65.85</td>
<td>$0</td>
<td>$0</td>
<td>$65.85</td>
</tr>
</tbody>
</table>

#### Action | Description | Costs |
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Drafting the statement</strong></td>
<td>These costings assume one full time employee (or equivalent) requires approximately five weeks (25 working days) to gather information and produce a draft statement. This is likely to include gathering information from suppliers and relevant business areas of the entity. This costing also includes time taken for the employee to provide the final statement to the Australian Government for lodgement in the central register (approximately 1.5 hours). For the purposes of this calculation, it is not possible to accurately account for likely differences in staff remuneration between reporting entities. Based on consultations with business, this calculation assumes the total wage of the employee is $120,000 per year. This equates to a weekly wage cost of approximately $2,300.</td>
<td>Cost = $11,500</td>
</tr>
<tr>
<td><strong>Finalising the statement</strong></td>
<td>These costings assume the draft statement is reviewed by up to four senior staff in the reporting entity for a combined total of 24 hours (equivalent to three standard working days). This review process is likely to include scrutiny from an entity’s legal area (where applicable). For the purposes of this calculation, it is not possible to accurately account for likely differences in approval processes between reporting entities. It is also not possible to accurately account for likely differences in staff remuneration between reporting entities. Based on consultations with business, this calculation assumes that the average total wage of the senior staff members that review the statement is $300,000 per year. This equates to a weekly</td>
<td>Cost = $3,450</td>
</tr>
</tbody>
</table>
wage cost of $5,770 per staff member and a daily wage cost of $1,150 per staff member.

| Approving the statement | These costings assume that, as required by the reporting requirement, the reporting entity’s board or equivalent approves the statement and that the statement is also signed by a director or equivalent. These costings assume this process requires two hours per board member. For the purposes of this calculation it is not possible to accurately account for likely differences in board sizes and remuneration between reporting entities. This calculation assumes that the average board size is 7 members. The average remuneration for directors in Australia for large companies is between $60,000 to $140,000 per year. Assuming directors have an average time commitment of 5 hours per week for 40 weeks each year, this equates to 200 hours at a maximum hourly wage of $700 per hour or minimum of $300 per hour. This calculation uses an average total wage of $500 per hour. | Cost = $7,000 |

| TOTAL COST PER ENTITY | $21,950 | TOTAL COST (assuming 3,000 reporting entities based on a revenue threshold of $100 million) | $65.85 million. |