AUSTRALIA'S REVIEW OF ITS GROUNDBREAKING COMMONWEALTH MODERN SLAVERY ACT 2018 AND WHAT IT MEANS FOR YOUR BUSINESS

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Australia Corporate Alert

Three years after the enactment of the *Modern Slavery Act 2018* (Cth) (Act), the Australian Government has released an Issues Paper for public consultation. It seeks to identify the effectiveness of the Act since its inception and identify key actions for the Act's future form.

WHY THIS CONSULTATION PERIOD?

The government is seeking submissions from businesses and individuals on a range of issues including compliance requirements under the Act and its general operation.

As modern slavery continues to draw attention with global environmental, social and corporate governance (ESG) efforts ever more in the spotlight, Australia is seeking to keep in line with other jurisdictions, such as the United Kingdom, who are consistently modernising their approach to tackling modern slavery.

The Human Rights Law Centre stated,

> *"that while compliance levels have improved [in Australia], the Act needs to set the bar higher in order to stamp out modern slavery in supply chains."*

COMPLIANCE A KEY FOCUS

As the government reviews the operation of the Act, in parallel it is looking at options available that can strengthen Australia's legislative framework to combat modern slavery.

Compliance is one of the key review areas that the government is looking at addressing.

Additionally, the Issues Paper reflects on a number of *potential* changes to the modern slavery response, including:

- An option for the government to adopt a policy where an entity that fails to meet its reporting obligations will become ineligible for a government contract;
- Requiring that businesses tendering for a government contract must affirm that they have met their modern slavery reporting obligations and will continue to do so as a condition of any contract;

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- A mechanism for a person to complain that a modern slavery statement lodged under the Act is non-compliant and for that complaint to be investigated by the Minister or Commissioner; and
- Lowering the reporting threshold under the Act from AU$100 million in annual consolidated revenue - specifically stating that "a much-debated issue is whether this threshold should be lowered. A figure of AU$50 million is commonly suggested, though intermediate suggestions are AU$60 million or AU$75 million, or even lower at AU$25 million".

WHAT DOES THIS MEAN FOR YOUR BUSINESS?

Essentially, while the Issues Paper is aimed to elicit responses, the sentiment in it provides a clear signal that the Australian government is giving serious consideration to increasing business accountability, increasing scrutiny, and potentially lowering the thresholds so that more businesses are caught under the Act.

This review comes at a time when corporate social responsibility, both in Australia and abroad, has been gaining accelerated traction with greater obligations being placed on companies to report on a range of ESG issues. The Australian Government's announcement of the Issues Paper comes three months after the European Council and European Parliament reached an agreement on a corporate sustainability reporting directive. The directive includes the provision of disclosing information related to forced labour (i.e. modern slavery) in businesses value chains.

The degree of changes that will be implemented to the current Act remains to be seen. The Issues Paper and consultation period however, provide businesses with the opportunity to reflect on their compliance with the Act over the last three years and provide comments to the Government on how they believe the legislative framework should be developed.

TIMELINE

The Issues Paper provides a range of questions, which can be used for the formulation of a submission. The consultation period for submissions closes at *midnight (AEDT) on Tuesday 22 November 2022.*

ACTIONS

As part of K&L Gates offerings, we can work with clients in the preparation of their submission and provide guidance on the issues to be addressed in any submission with advice tailored to the relevant client's commercial position.

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