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## **RE: Consultation Paper - Strengthening the Modern Slavery Act (Consultation Paper)**

### **About Governance Institute**

Governance Institute of Australia is the only fully independent professional association dedicated to the advancement of governance and risk practice in Australia. Our internationally recognised qualifications equip a diverse professional network of business leaders to make good decisions for the benefit of Australia's economy and society. With a history dating over 100 years, Governance Institute is Australia's leading and trusted voice of governance. Our fully accredited education and training is tailored to the meet the needs of governance professionals across public listed, unlisted, and private companies, as well as the public sector and not-for-profit organisations.

Governance Institute is committed to independent, evidence-based advocacy that is focused on strengthening the governance capability of Australian organisations. We believe that good governance is the foundation of organisational resilience, productivity, and public trust.

### **Introduction**

Governance Institute's members strongly support the Regime and consider the Act an important step towards eradicating modern slavery in Australia's supply chains. This Submission comments on the six (6) proposed recommendations being considered under stream A of the reforms. However, we emphasise the need for greater public scrutiny and expedited efforts to implement and consult on the bulk of recommendations proposed to strengthen the Act. We support most of the recommendations proposed in the Consultation Paper and have also suggested some minor amendments to improve the Act's effectiveness.

### **Changes to mandatory reporting criteria**

Reporting entities that would be required to identify all entities owned or controlled by the reporting entity should be able to provide that information by cross-referencing to other reporting documents where that information is typically provided such as financial reports lodged with ASIC to avoid unnecessary duplication.

Reporting entities in a transitional period during a merger or acquisition may or may not be captured over a reporting period and it is essential to understand that larger corporations may have a dynamic ownership and control structure over a typical reporting period. Newly incorporated entities in a reporting entity's structure may not possess the necessary data or governance arrangements to provide the scope and quality of information sought under mandatory reporting criteria. We recommend that a transitional period be considered for newly acquired entities or those coming into a reporting entity's structure for the first time.

Our members suggested there is a need for further clarity on the requirement to report on grievance mechanisms and note potential concerns raised over victim privacy. They consider there is a need to balance transparency with safeguards to ensure the reporting processes does not compromise proper processes. More guidance on how this information could be provided in a constructive way should be considered by the Department.

**Recommendation 1:** Reporting entities to cross-reference existing financial reports on ownership, control and structure to avoid duplication.

**Recommendation 2:** The introduction of a transitional period for newly acquired entities or entities that are having to report for the first time to provide sufficient time and scope for the collection and analysis of data.

**Recommendation 3:** Further guidance on the information sought about grievance mechanisms without compromising victim privacy and safety.

### **Compliance and enforcement powers**

Governance Institute members broadly support the regulator having additional powers to require entities to lodge reports and take actions where reports are materially flawed. Enforceable undertakings and powers to remedy breaches of the Act, may be a helpful way to compel laggards to provide the necessary information which will uplift transparency, accountability and information quality. Any powers should only be exercised where there is a clear failure to report or an intentional breach, particularly where there is intentional or reckless behaviour or lack of proper governance processes, rather than where there has been a minor or inadvertent oversight. There needs to be appropriate consideration for those entities having to report for the first time. Reporting entities may also be in a situation where some part of their supply chain withholds information requested by the reporting entity or the information provided is very limited. In these situations, the regulatory focus should be on efforts made and the processes in place to ensure full transparency and oversight. Infringement notices should be considered only for the most egregious behaviours, where there has been intentional misreporting.

**Recommendation 4:** Define the regulatory entity in the Act.

**Recommendation 5:** Adopt measured and proportionate powers to regulate entities focusing on entities that are failing to report, or report on compromised data, or lack appropriate governance processes to identify and assess risks.

### **Penalties for non-compliance**

Governance Institute members in principle support penalties, however, these powers should be proportionate and enforced following attempts at remedial action. Penalties should clearly focus on deliberate, sustained non-compliance or where information requested by the regulator is not provided in a timely manner. Defences should be available to reporting entities where they have made reasonable

endeavours to seek and locate the required information. Maximum penalty points should be consistent with the seriousness of the conduct including the size and complexity of the reporting entity and aligned to penalties for similar corporate wrongdoing. Penalties should apply where an entity has made a material misstatement defined as inaccurate information which impacts those who use those statements to make decisions.

Some of our members have expressed the view that that the proposed penalties may already exist under the directors' duties provisions of the *Corporations Act 2001*. We encourage the regulator to reference those duties and the attendant penalties for material misstatements and intentional recklessness and wrongdoing.

**Recommendation 6:** Penalties for non-compliance should be graduated according to the size and complexity of the reporting entity, the seriousness of the conduct and whether the wrongdoing is consistent with deliberate, sustained non-compliance and intentional misconduct.

### Joint reporting

Reporting entities may have inconsistent approaches to reporting by drawing on different data sets and supply chains which creates practical difficulties with joint reporting. Inconsistencies in approach across different reporting entities, locations and risk appetites creates practical difficulties. We recommend the Act provide entities with maximum flexibility for eligible entities to report what is most appropriate to their circumstances.

**Recommendation 7:** Provide maximum flexibility for entities to report under the approach that best suits their corporate structure and circumstances.

### Amendments to voluntary reporting

Governance Institute support the proposal to streamline reporting for entities reporting on a voluntary basis by allowing them to revoke their status as a voluntary reporting entity at any time by providing notice of their intention to do so.

**Recommendation 8:** Adopt the recommendation to allow entities reporting on a voluntary basis to revoke their status as a voluntary reporting entity at any time by providing notice

### Require entities to give notice when they will no longer be providing a statement

Requiring entities to give notice to the regulator when no longer providing a statement based on annual turnover or acquisition is an unnecessary compliance obligation as this information is generally publicly available. Additionally, there does not appear to be a strong justification made for entities that are voluntarily reporting to provide reasons for no longer reporting to the regulator as those reasons should be at the entity's sole discretion.

**Recommendation 9:** An obligation to provide notice when an entity is no longer providing a statement is inconsistent with other reporting frameworks and should be reconsidered.

If you have any questions, please contact me or Daniel Popovski, Senior Policy Manager at [daniel.popovski@governanceinstitute.com.au](mailto:daniel.popovski@governanceinstitute.com.au).

Yours faithfully,

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