1 September 2025

Attorney-General's Department
3-5 National Circuit,
Barton ACT 2600

Via email: Slavery.Reform@ag.gov.au

Dear Madam or Sir,

The Australian Financial Markets Association (**AFMA**) welcomes the opportunity to provide feedback to the Attorney General's Department (**AGD**) on its consultation paper *Strengthening the Modern Slavery ACT*. We welcome the AGD's efforts in implementing the recommendations of the Review with the aim of making the *Modern Slavery Act* ('the **Act'**) more efficient and effective.

About AFMA and its Members

AFMA is the peak industry body for Australia's financial markets industry – including the capital, credit, derivatives, foreign exchange, and other specialist markets. AFMA represents more than 130 industry participants from Australian and international banks, leading brokers, securities companies, government treasury corporations to asset managers, energy firms, carbon market participants, and industry service providers. A significant proportion of AFMA's members are reporting entities for the purposes of the Act and thus required to submit an annual Modern Slavery Statement.

Overall, AFMA is supportive of the aim of the AGD to further clarify and enhance the effectiveness of the Act. Our feedback centres on seeking further guidance and clarity on the AGD's amendments to assist and support reporting entities to adequately comply with the Act. We review the changes with the understanding the intention is to enhance the effectiveness of the existing framework and not unnecessarily burden entities with greater requirements which provide minimal positive impact – the principle underpinning the Act. For that reason, AFMA does not support introducing civil penalties into the Act.

Please refer to our response to the Consultation Papers questions below. The structure of our submission is to address Parts A, B and E and provide feedback on the relevant questions where applicable.

AFMA would welcome the opportunity to discuss this submission further and would be pleased to provide further information or clarity as required. Please contact Huda Hilole at hhilole@afma.com.au or 02 9776 7906.

Kind regards,

Huda Hilole
Policy Manager

Consultation Feedback

Part A – Mandatory Reporting Criteria

<u>Identification of the reporting entity</u>

Industry would appreciate the inclusion of a specified definition for the term "entities owned and controlled". To maintain consistency, this defined term should align with existing definitions in legislation i.e. *Corporations Act*. This definition should limit disclosures to operating entities to avoid the inclusion of long lists of dormant companies included in many group structures.

<u>New criterion on grievance mechanisms</u>

> ***6.** Should reporting entities be required to report information about grievance mechanisms? If so, what specific information about grievance mechanisms should entities be required to report on?*
>
> ***7.** Are there any sensitivities with requiring an entity to report on grievance mechanisms? Please consider any sensitivities relating to quantitative or qualitative information about grievance mechanisms that might be captured.*

This legislation forms a component in Australian labour standards protection and complaints handling mechanisms. Accordingly, the law should also consider integrating existing employee complaint and whistleblower mechanisms in current law, particularly the *Corporations Act 2001* which has well developed mechanisms for handling complaints[1] and the mechanisms under the *Fair Work Act 2019*. These complaint mechanisms should be seen in a holistic perspective for employees to complain about the failure of an employer to meet Australian labour standards under which they are employed.

In this context it is also important to bear in mind that employee grievances may have a number of paths to follow through existing law and that multiple complaints may be made under various laws in order to pursue a particular grievance. As such, it would be beneficial to adopt a broader definition of "grievance mechanism." This broader approach acknowledges that many organizations already maintain a variety of channels for addressing grievances and helps to streamline reporting by reducing the risk of unnecessary duplication or added administrative burden.

To better understand what is required to be reported, greater clarity on what is deemed to be a "grievance mechanism" is needed. A clear definition outlining what a grievance mechanism is, will enable members to determine the specific channels that require reporting as organisations are likely to have a wide range of formal and informal forums for capturing worker feedback. Furthermore, a broad scope would enable entities to tailor their grievance mechanisms and reporting obligations in proportion to the nature and significance of modern slavery risks within their operations and supply chains. Further clarity on expectations of how entities navigate reporting matters which may be subject to suppression or confidentiality obligations is also necessary to ensure the data that is reflective of the modern slavery landscape – inconsistent reporting amongst firms will make the collected data ineffective.

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[1] See for example the ASIC Guidance on whistleblower complaints mechanism on the ASIC website: https://www.asic.gov.au/about-asic/asic-investigations-and-enforcement/whistleblowing/

While we understand the need for transparency, there are concerns the required disclosure of specific information relating to grievance mechanisms could potentially lead to an entity being identified or an ongoing internal or external investigation being compromised. This risk is exacerbated if public channels are used for reporting grievance mechanisms; practical complexities such as increased volumes of duplicated or low-quality data impacting the efficiency of response teams, or the risk of these channels being misused by malicious actors with the intent of submitting opportunistic or false complaints simply to create reputational noise. In any case, where required disclosure is made, the information must be anonymised and communicated in a manner to which the entity cannot be potentially identified; or, in the case of an ongoing investigation at the time of reporting, exceptions to reporting requirements should apply to avoid undermining the effectiveness of the scheme.

When outlining specific reporting requirements for grievance mechanisms in delegated legislation, the sensitivity of each case must be considered. Any enhancement to the grievance mechanism disclosures should ensure reporting balances transparency, reputational and sensitivity concerns. Any disclosure obligations about grievances should be restricted to those that have been confirmed to have reasonable grounds.

<u>Elevation of remediation reporting requirements</u>

> ***8.*** *Should reporting on remediation be a separate mandatory reporting criterion? If so, what specific information about remediation actions and processes should entities report on? Notably, the Review explored requiring entities to report on the number of matters referred to law enforcement or other bodies, as well as to report on details of modern slavery incidents or actual risks.*
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> ***9.*** *Are there any sensitivities with requiring an entity to report on remediation, noting information about remediation may include quantitative or qualitative information?*

Any reporting requirement on actions taken to remediate modern slavery instances should be prepared with consideration to the sensitivities of the specific case – this approach should apply to any specification outlined in delegated legislation. When handling such matters, entities understand extra caution and awareness must be taken when remedying modern slavery cases as to avoid causing further detriment to the individuals involved. Considering this, we are of the view disclosure should not be required where it has the potential to negatively impact individuals involved. This approach reduces the risk of causing further harm to the involved individuals which aligns with the principles underpinning the Act.

Further if this requirement is implemented, practical examples of what is in and out of scope should be provided to ensure consistent understanding and reporting data.

<u>Part A – General Comments</u>

> ***11.*** *Do the proposed changes to the consultation criterion address the lack of clarity currently experienced by reporting entities?*

The criterion addressed some components of the AGD's expectations when complying with the Act; we have highlighted above the factors which remain unclear. Further clarity provided through guidance would be welcomed to support reporting entities to adequately comply with the Act and avoid the need for external subject matter experts to assist with interpretations of the obligations. To increase its effectiveness, the guidance should include definitions of key terms and example responses, as well as provide additional guidance on existing examples and not be limited to the new amendments.

It is important to ensure that any guidance provided remains clearly aligned with the scope and intent of the legislative requirements, and does not inadvertently expand or impose obligations beyond what is mandated under the legislation. This will help maintain legal clarity and avoid placing undue compliance burdens on reporting entities. Particularly, in light of potential non-compliance penalties for failures to address the mandatory Reporting Requirements.

Part B – Compliance and Enforcement Framework

<u>An enhanced compliance framework</u>

18*. Should civil penalties be introduced into the Modern Slavery Act?*

The existing approach to address non-compliance should remain with a focus on education and should not introduce civil penalties. Modern slavery is a global issue which requires collaboration and partnership with governments, businesses and individuals. Shifting the approach to greater enforcement and hostility may fracture the momentum in addressing the existing issues to combat modern slavery and discourage businesses from engaging openly with modern slavery risks for fear of legal consequences, leading to a box-ticking approach rather than meaningful action. The current model promotes a culture of continuous improvement, and adding penalties could undermine trust and shift the focus away from ethical reform towards legal compliance.

Civil penalties also could empower activist groups to aggressively target companies, sometimes based on limited or misinterpreted information – this risks creating a punitive environment where reputational damage and legal consequences are driven more by public pressure than by fair, evidence-based assessments. It could also lead to companies becoming overly cautious or secretive, undermining the Act's original goal of fostering transparency and constructive engagement in addressing modern slavery risks.

Civil penalties may also create class action risk for reporting entities, where funders/plaintiff law firms try to utilise regulator's findings/civil penalty decisions. We acknowledge that class actions can be beneficial in bringing justice and redress to people who might not otherwise have the means, however there are opportunistic parties in that space seeking financial gain[2].

While we note page 9 of the Consultation states due diligence requirements will be consulted separately, for the purposes of the Consultation's civil penalties proposal, it is important to highlight the recent EU experience and note that the Corporate Sustainability Due Diligence Directive (CSDDD), adopted by the EU in 2024, originally includes a provision for EU-wide civil liability. However, this provision is already being dismantled (even before this act has become applicable). In its February 2025 Omnibus proposal, the European Commission recommended the removal of the civil liability regime, and in June 2025 the Council of the EU supported this approach. The aim is to mitigate legal uncertainty and reduce administrative burdens on companies – measures aimed at preserving competitiveness. Notably, the revised package also reconfigures the framing of pecuniary penalties to decrease the maximum fines. This reflects a broader recognition that overly prescriptive liability frameworks can generate disproportionate compliance costs, create legal ambiguity, and undermine

[2] For example, see the ABC Four Corners episode, the Price of Justice https://www.abc.net.au/news/2025-08-04/the-price-of-justice/105612504.

the effectiveness of due diligence regimes by incentivising defensive rather than proactive corporate behaviour.

The outcome should focus on the continued uplift of operating standards of all entities via education and reputational drivers, as well as compliance with labour standards which will serve a greater benefit to employees rather than punitive penalties paid to the government. While non-compliance should be dealt with appropriately, labour standards have a degree of subjectivity in their assessment and a heavy-handed approach may prove to be counterproductive as it is the outcome of complex human interactions. Any penalties surrounding non-compliance should be proportional and consider the degree and impact of the non-compliance; the actions taken, or penalties should not deter generally compliant entities from cooperating with the AGD and should focus on entities with repeated non-compliance or non-observance.

> ***20.*** *Should any defences, such as mistake of fact, be considered for any proposed civil penalties?*

In the case civil penalties are introduced, we support defences. Specifically for providing false or misleading information, we suggest the following defences:

- Reasonable steps/adequate procedures and due diligence (like the “failure to prevent” offences);
- Mistake of fact or misinterpretation of reporting obligations;
- Lack of intent, no recklessness;
- Reliance in good faith on advice or information from others with no reason to doubt;
- Opinion honestly held based on reasonable grounds, a reasonable steps/adequate procedures/due diligence type defence.

Penalties should be triggered exclusively by non-compliance with the clear, binding obligations set out in the Act, and not by departures from the guidance issued by the relevant regulating body, which may outline best practices that constitute a standard of performance on organisations above and beyond the legislative scope. For example, penalties should not be raised in instances where there is evidence that organisations have addressed the mandatory reporting requirements in the statement, however such response falls short of the regulator’s good practice.

Part E – Notification Requirements to Cease as a Reporting Entity

Notification Requirements

The requirement for entities to notify if it ceases to be a reporting entity, despite no longer meeting the threshold, unnecessarily increases the administrative burden on entities – this is inconsistent with the Government’s aim of "*cutting red tape, cutting compliance costs and better regulation*”.[3]

The rationale surrounding this change states “*[failing to notify] inhibits the regulator’s visibility of who is a reporting entity, which impacts the regulator’s ability to undertake effective compliance action*”,

[3] See, https://ministers.treasury.gov.au/ministers/jim-chalmers-2022/transcripts/press-conference-canberra-26.

however it is unclear how the AGD pre-emptively receiving a notice provides greater insight – given notices to file would be issued irrespective.

In both cases, if the AGD fails to receive a submission for the year, a ‘please file’ notice can be submitted to which entities may respond. The expectation for this notice to be filed in cases where firms are no longer required to file a statement, within a 6-month time frame, unnecessarily burdens entities with a greater requirement which provides minimal positive impact.