



## **IAST APAC submission to the Australian Modern Slavery Act 2018 (Cth) three-year review**

The Investors Against Slavery and Trafficking Asia Pacific (**IAST APAC**) initiative is an investor-led, multi-stakeholder project. It was established in 2020 to engage with investee companies in the Asia-Pacific region to promote effective action in finding, fixing and preventing modern slavery in investee operations and supply chains. We believe that investors can achieve greater impact working collaboratively and drawing on various sources of knowledge and expertise to assess and address modern slavery risk in operations and supply chains.

The IAST APAC initiative comprises 37 investors representing A\$7.8 trillion in Assets Under Management (AUM). It is overseen by a Steering Committee (**SteerCo**) made up of First Sentier Investors (the Convener) and the following founding members: Aware Super, AustralianSuper, Fidelity International, Ausbil Investment Management, the Australian Council of Superannuation Investors (ACSI), Walk Free (as Knowledge Partner and Secretariat) and the Finance Against Slavery and Trafficking (FAST) initiative (as Knowledge Partner). Our membership is diverse, consisting of asset owners and managers from Australia, Hong Kong, Japan and Singapore. Two of our members are government-owned. Many of our members are reporting entities under the Australian Modern Slavery Act (Cth) (**Act**) and submit modern slavery statements, while several of them have elected to report voluntarily. The initiative engages with 24 companies – fourteen companies are listed on the Australian Securities Exchange (ASX) and ten of them are listed on Asian stock exchanges. The ASX-listed companies are reporting entities under the Act.

Accordingly, the IAST APAC initiative has significant collective experience complying with the Act and engaging with investees to improve their actions to find, fix and prevent modern slavery, including disclosing their actions through preparing and submitting modern slavery statements in line with the mandatory reporting criteria.

As investors, we encourage investee companies that are required to report under the Act to go above and beyond compliance, which means seeking to improve the effectiveness of their modern slavery risk identification and management (and corresponding reporting) continuously over time. We believe the Act should result not only in quality reporting, but also in genuine change to business practice to respect the human rights of workers and victims; and ultimately, to reduce the incidence of modern slavery cases in operations and supply chains. Moreover, we expect all investees to move expeditiously towards finding, fixing and preventing modern slavery regardless of their place of registration, listing or operation. We rely on comprehensive and accurate disclosure of social risks such as modern slavery to make well-informed investment decisions.

We welcome the opportunity to comment on the Act's design and administration through the three-year review process. We have reviewed the Issues Paper and consulted internally regarding the common responses we would like to share for the review. Our consultation process involved small group discussions to draft and revise our positions, followed by SteerCo approval of our final recommendations. The views expressed in this submission do not necessarily reflect those of each individual or member participating in IAST APAC.

## **Independent Anti-Slavery Commissioner**

We strongly support the establishment of an independent Commonwealth Anti-Slavery Commissioner. The UK Modern Slavery Act 2015 and NSW Modern Slavery Act 2018 provide models for the Federal Government to consider in designing the new role in terms of its functions, planning and reporting, and independence. Key functions should include providing awareness-raising and training, monitoring the effectiveness of law and policy, conducting research and publishing reports to provide information and recommendations, ensuring victims are aware of remediation pathways and support services, and collaborating with relevant government, non-government and business stakeholders. The Commissioner's scope should be wider than the Act and encompass all national law and policy responses including under the NAP. The role should be truly independent of government to ensure it can hold all stakeholders to account.

## **Lower monetary reporting threshold**

The current monetary reporting threshold of A\$100 million in annual consolidated revenue could be lowered to, for example, A\$50 million, to bring the Australian modern slavery reporting requirement into line with the UK requirement (and potentially other jurisdictions like Canada and New Zealand). However, any lowering of the threshold must be supported by further funding to allow government to manage the additional burden of reviewing and publishing more modern slavery statements. Lowering the threshold should not come at the cost of reducing ongoing improvement by existing reporting entities in statement compliance and quality, as well as the effectiveness of their actions in preventing or remediating modern slavery. We recognise that new reporting entities with revenue between A\$50-100 million might not have the knowledge or capacity to comply with the Act quickly. Consequently, we suggest that the reporting requirement be phased in over the course of one or two years to give them the opportunity to understand the requirement and allocate the resources.

## **A due diligence obligation**

IAST APAC believes the Act should now incorporate a stronger obligation on reporting entities from high-risk sectors to conduct ongoing due diligence in accordance with the UNGPs and OECD Guidelines for MNEs, than the current reference to it in the mandatory reporting criterion regarding taking action in response to risk assessment. Entities should be required to show they are identifying potential and actual impact, taking meaningful action to respond to it, and monitoring their action effectively. The due diligence required should be proportional to various factors, in particular entity size. As an alternative to a due diligence requirement being included in the Act, we recommend its inclusion in the revised guidance. If a stronger due diligence obligation is incorporated, penalties should be tied to it (taking into account if the due diligence required is proportional).

## **Compliance and enforcement**

We recognise from government and independent reviews of modern slavery statement compliance in the first two reporting cycles that there is a significant amount of non-compliance with the law. Reporting entities are either failing to report or reporting without complying with some of the legislative requirements. We encourage the government to start using the compliance measures available in the law to address the non-compliance issue. We recommend that the government also introduce new, tougher enforcement tools such as fines or exclusions. These tools should attach to the reporting requirements. If a stronger due diligence obligation is incorporated, penalties should be tied to it too (taking into account if the due diligence required is proportional). In addition, the

government should explore introducing incentives to improve reporting quality and take meaningful action such as using best practice examples or lists. We believe enforcement should be used not only for compliance, but to encourage practice change in a 'race to the top' to prevent and remediate modern slavery cases.

### **Further three-year review**

The current three-year review of the Act has given us timely pause to discuss and explain what could work better in the design and administration of the law. We believe it has been a useful process at this juncture, and we recommend a further three-year review be added to track progress and make improvements. We suggest the next review include a specific mandate to consider if Australia should introduce a standalone mandatory human rights due diligence (**mHRDD**) law to bring us into line with European developments. Many investors and companies - that are reporting entities under the Act - will be complying with new European mHRDD laws by then. Australia was at the forefront of legislative responses requiring corporate responsibility to respect human rights when it passed the Act in 2018, but we fear it is in danger of falling behind the global trend of adopting broader due diligence frameworks covering all international human rights standards. Some of these standards are also crucial in preventing modern slavery occurring; for instance, labour and human rights relating to freedom of association, collective bargaining and the minimum wage, and migrant workers and their families.