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Professor John McMillan, AO and the Attorney-General's Department

By email: [ModernSlaveryActReview@ag.gov.au](mailto:ModernSlaveryActReview@ag.gov.au)

22 November 2022

### **AGL Response to the Review of Australia's Modern Slavery Act 2018 Issues Paper**

AGL Energy (**AGL**) welcomes the opportunity to respond to the Review of Australia's Modern Slavery Act 2018 Issues Paper.

AGL is a leading integrated essential service provider, with a proud 185-year history of innovation and a passionate belief in progress – human and technological. We deliver 4.3 million gas, electricity, and telecommunications services to our residential, business and wholesale customers across Australia. We operate Australia's largest electricity generation portfolio and have the largest renewables and storage portfolio of any ASX-listed company, having invested \$4.8 billion over two decades in renewable and firming generation.

As a leading supplier of energy and other essential services to Australian customers, we understand that the nature of our business means that we are exposed to modern slavery risks in our operations and supply chain. We also recognise the growing awareness of modern slavery in the community, and welcome the increasing expectations placed on Australian organisations to understand and address this risk.

We also acknowledge that eradicating modern slavery is a complex task that requires a global response from governments, businesses, and the international community. As a proud Australian organisation with a history of more than 185 years, we are committed to playing our part in Australia's collective effort towards ending modern slavery.

AGL has considered the questions raised in the Issues Paper and responded based on our experience and dealings with the Modern Slavery Act. Our response to the consultation questions can be found in the table below.

If you have any queries about this submission, please contact Damien Schulze (Senior Manager, Group Compliance and Governance) at [DSchulze@agl.com.au](mailto:DSchulze@agl.com.au).

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Nick Andrews', with a large, stylized flourish at the end.

Nick Andrews

General Manager, Group Risk, Compliance and Insurance, AGL Energy



**1. Impact of the Modern Slavery Act**

<p>Has the Modern Slavery Act had a positive impact in the first three years?</p>	<p>Since the introduction of the Act, AGL has continued to improve the proactive steps we take to fulfill our human rights commitments to not only support the eradication of modern slavery from global supply chains and our operations, but also to help enable a just energy transition.</p> <p>As Australia’s largest electricity generator and leading energy retailer, we understand that it is our responsibility to respect, uphold and contribute to the realisation of human rights, and to take action to avoid complicity in human rights abuse - which includes taking steps to prevent modern slavery in our operations and supply chain.</p> <p>Set out below are examples of some of the initiatives that AGL has implemented over the last three years to manage the risk of modern slavery in our operations and supply chain. Whilst these initiatives have had a positive impact, we acknowledge that additional steps need to be taken to support the eradication of modern slavery across global supply chains.</p> <p>A summary of some of AGL’s initiatives are as follows:</p> <ol style="list-style-type: none"> <li>1. The establishment of well-defined policies approved by AGL’s Board that affirm our commitment to ethical behaviour and to the prevention of modern slavery in our operations and supply chain. Over the last three years these policies have been integral in driving our positive and proactive response to the reporting requirements set out in the Act. These include AGL’s <a href="#">Human Rights Policy</a>, <a href="#">Code of Conduct</a>, <a href="#">Supplier Code of Conduct</a> and <a href="#">Whistleblower Protection Policy</a>.</li> <li>2. The decision by AGL to integrate a modern slavery risk assessment into our sourcing processes has enabled AGL to determine if further due diligence initiatives are required before making the decision to onboard a supplier to ensure the risk is properly evaluated and managed.</li> <li>3. The due diligence process referenced in item 2 requires suppliers assessed as a moderate or higher risk for modern slavery to complete AGL’s modern slavery questionnaire. AGL developed the questionnaire to support the assessment of the residual modern slavery risk of suppliers by setting out a series of questions that provide AGL with information relating to how the supplier identifies, assesses and manages its own modern slavery risks. AGL’s assessment of the questionnaire, in addition to the reputational background check completed on the supplier, determines whether corrective actions are required before supplier engagement. In many cases this process has resulted in suppliers engaging in corrective actions that have a positive impact on their modern slavery risk</li> </ol>
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	<p>management practices. AGL’s supplier assessment process has also increased productive dialogue between AGL and its suppliers about modern slavery and human rights more generally, and as a consequence has resulted in greater awareness of the risk and the requirement for it to be proactively managed across AGL’s supply chain.</p> <p>4. AGL has conducted various awareness campaigns that have contributed to the effectiveness of processes and systems designed and implemented to address AGL’s modern slavery risks.</p> <p>Over the past three years AGL has employed various mechanisms to raise awareness within and outside our organisation, increasing our capability to manage the risk with greater effectiveness. For example, we have engaged in AGL-wide communication campaigns about modern slavery; maintained a Modern Slavery intranet site to ensure personnel can access information on Modern Slavery and how AGL manages the issue; engaged in targeted training across various areas of the business and engaged in supplier awareness campaigns.</p> <p>These initiatives have collectively contributed to the effectiveness of AGL’s modern slavery risk management practices and give emphasis to the positive impact the Act has had internally at AGL and externally.</p> <p>By way of summary, over the last three years, AGL has undertaken positive and proactive steps to manage its modern slavery risk exposure across its operations and supply chain, supported by the requirements of the Act. We contend that this management has had (and through the implementation of additional checks and balances will continue to have) a positive impact on the management of the modern slavery risk within our operations and supply chain.</p>
<p>Is the ‘transparency framework’ approach of the Modern Slavery Act an effective strategy for confronting and addressing modern slavery risks, including the drivers of modern slavery?</p>	<p>A transparency framework requiring the publication of a Modern Slavery Statement by reporting entities is an effective strategy for confronting and addressing modern slavery risks.</p> <p>In our view, the existing transparency framework approach is likely to be more effective than a less prescriptive or non-regulatory approach (such as general awareness raising or voluntary business-led measures).</p> <p>Without a prescribed approach, the management of modern slavery risk across Australian organisations would be likely to be inconsistent, with significant differences in the effort applied to managing this risk across organisations.</p> <p>With recent reporting estimating that more than 49 million people live in modern slavery today, an effective framework that supports transparency provides business with support to implement practices to improve their modern slavery risk management across their operations and supply chains and</p>



	<p>allows for comparison of the activities undertaken across organisations.</p> <p>The reporting requirements set out in section 16 of the Act provide a practical risk-based framework that supports a consistent and transparent approach across organisations to the management of the risk. The availability of Modern Slavery Statements on the Online Register for Modern Slavery Statements (Online Register) provides an opportunity for third parties to scrutinise the approach an organisation takes to managing its modern slavery risk exposure.</p> <p>In many instances AGL has had cause to access the register to view the Modern Slavery Reports of prospective suppliers as part of our sourcing due diligence assessment process. The online register has also provided various research bodies with the means to assess the performance of organisations against the reporting criteria set out in the Act, which has resulted in the Modern Slavery Statements of ASX 100 companies being assessed and ranked, with opportunities to improve identified. Without the transparency framework of the Act, critiques of this nature would be very challenging, and may result in underperforming organisations being able to avoid proper scrutiny over the steps taken to manage their modern slavery risks.</p>
<p>Should the Modern Slavery Act be extended to require additional modern slavery reporting by entities on exposure to specified issues of concern? If so, what form should that reporting obligation take?</p>	<p>In our view, the Government should avoid making any changes that would impact on the risk-based approach adopted by organisations for the management of the risk.</p> <p>AGL contends that organisations, using a risk-based approach, are best placed to determine the areas of concern in their specific operations and supply chains relating to the management of modern slavery risk. If the Government was to include a mandate for organisations to account for specified issues of concern, there is a risk that this would cause organisations to divert resources away from areas that they have already identified as high risk for modern slavery in their operations and supply chain.</p> <p>Notwithstanding the above position, AGL is supportive of the Government releasing periodic updates on those areas it understands to be afflicted with the risk of modern slavery, or where trends of modern slavery risk are evolving. Organisations could then consider these updates when formulating their risk assessment approach for the identification of modern slavery risk across their operations and supply chain.</p> <p>Where the Government does deem it necessary for the Act to prescribe specific issues that need to be reported on, we recommend that the Government is transparent as to the processes used to determine those specified issues, including clearly stipulating whether section 16 reporting requirements solely apply to those issues or alternatively if additional</p>



	<p>reporting requirements are required to report on the management of those specified issues.</p>
<p>Should the Modern Slavery Act spell out more explicitly the due diligence steps required of entities to identify and address modern slavery risks?</p>	<p>The definition of due diligence in the context of the Modern Slavery Act differs slightly to the financial transaction context.</p> <p>Due diligence under the Modern Slavery Act is aligned to the UN Guiding Principles on Business and Human Rights (UNGPs) which aims to ensure businesses know and show what they are doing to identify, prevent, and mitigate modern slavery risks in their operations and supply chains. As stated in the UNGPs, the due diligence process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed. The UNGPs provide the following clarification for completing human rights due diligence:</p> <ul style="list-style-type: none"> <li>(a) Should cover human rights impacts that the business may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships;</li> <li>(b) Will vary in complexity with the size of the business enterprise, the risk of severe human rights, and the nature and context of its operations;</li> <li>(c) Should be ongoing, recognise that the human rights risks may change over time as the business enterprise's operations and operating context evolve.</li> </ul> <p>Whilst the Commonwealth Modern Slavery Act 2018 – Guidance for reporting entities provides guidance on what due diligence steps need to be taken by an entity, and in doing so links back to the UNGPs, it is recommended that the Act is updated to provide additional clarity on the meaning of due diligence by incorporating a definition of the term.</p> <p>If the Act is updated to provide clarification of the term, the prescription should merely set out the factors an organisation should consider when conducting due diligence. In our view, a mandated due diligence position should be avoided to preserve a level of flexibility in the approach organisations apply to undertake due diligence.</p> <p>AGL contends that clarification of the term or its minimum requirements could provide greater consistency in reporting, result in an enhancement to the Act's transparency framework and support consistent comparisons to be made between statements when assessed by third parties.</p>



## 2. Modern Slavery Act reporting requirements

<p>Is AU\$100M consolidated annual revenue an appropriate threshold to determine which entities are required to submit an annual statement under the Modern Slavery Act?</p>	<p>AGL does not hold a definitive view on whether the reporting threshold prescribed under the Act at \$100M is correct or whether it should be amended. However, the risk of a compliance only response and its associated impacts need to be carefully considered before a decision is made to reduce the threshold.</p> <p>Whilst AGL acknowledges that a decrease will bring more entities into the scope of reporting and raise awareness and the profile of modern slavery risk management across the business community more generally, the following factors should also be considered:</p> <ul style="list-style-type: none"> <li>- It is likely that a reduced threshold would increase the compliance cost for current and new reporting entities. The Government would need to assess if this cost is offset from the utility gained from a decrease to the threshold.</li> <li>- The work and resource effort required to produce a Modern Slavery Statement is substantial, and as a result an organisation must have sufficient resources to ensure its Statement is satisfactorily prepared in accordance with the reporting requirements set out in the Act. Reducing the threshold may see a reduction in the quality of Statements published, reducing the utility of the Act's transparency mechanism.</li> <li>- An arbitrary decrease to the threshold to capture an increased number of reporting entities may drive a 'box-tick' style compliance response in some cases, as opposed to what some have called a 'race to the top' amongst businesses. A tick the box exercise could produce Statements that are poorly drafted due to a lack of resource or business commitment to the reporting requirement. AGL contends that the importance of effective consideration of the risk of modern slavery does not warrant the adoption of a compliance-only response. It requires businesses to engage with their operations and supply chains in a collaborative effort to manage the risk of modern slavery throughout the reporting period.</li> <li>- A number of suppliers who are not reporting entities are already inadvertently captured by the requirements of the Modern Slavery Act as they are required to provide reporting entities with due diligence information relating to their operations and supply chains. Before decreasing the threshold, consideration should be given to the extent to which entities are already inadvertently captured within the supply chains of current reporting</li> </ul>
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	<p>entities to determine if there is further utility associated with converting these entities to reporting entities.</p> <ul style="list-style-type: none"> <li>- Should the threshold be reduced, extensive training on modern slavery risk management and human rights more generally should be offered by the Government to those new entities captured by the revised threshold to ensure the quality of Statements overall are not materially impacted by the introduction of a new group of reporting entities with potentially lower levels of available resources to support compliance.</li> </ul>
<p>Should the Modern Slavery Act require annual submission of a modern slavery statement? Does the Act contain appropriate rules for ascertaining the annual reporting timeline for entities?</p>	<p>For the transparency model to be effective, an annual submission is considered appropriate and allows organisations to develop reporting timelines in alignment with financial reporting and other reporting requirements which typically occur on an annual basis.</p> <p>Whilst AGL is supportive of an annual reporting requirement, we contend that there may be some merit in the Government reviewing whether it remains necessary for organisations to report on information that remains static across periods. It may be more appropriate for the Act to provide a directive that organisations only need to report on certain criteria if there is a material change to avoid unnecessary repetition occurring in subsequent Statements. AGL has a clear view on its annual reporting timeline to meet the requirements of the Act and does not require any further guidance to ascertain its annual reporting timeline.</p>
<p>Does the Modern Slavery Act appropriately define 'modern slavery' for the purpose of the annual reporting obligation?</p>	<p>Whilst AGL can follow and apply the definition of modern slavery set out in the Act, we contend that there is an opportunity as part of the review process to consider how the term is defined in the Act. The review process should seek to reduce the current level of complexity associated with the current definition which sees a need to consult with both the Criminal Code and international covenants. Whilst the revised definition should still reference these resources, it should reference that the term is one that is widely used to cover a range of practices that use coercion, violence or the abuse of power to exploit and deprive people of their freedom. In doing so, the definition becomes more instructional, less legalistic and more easily operationalised by reporting entities that need to make sense of the definition as part of work undertaken to manage the risk.</p>
<p>Is further clarification required of the phrase 'operations and supply chains,' either in the Modern Slavery Act or in administrative guidelines?</p>	<p>AGL recognises that the terms 'operations' and 'supply chain' have been the subject of debate and conjecture amongst reporting entities since the Act's introduction. On this basis AGL recommends a review of these terms be undertaken to assess if additional clarity can be provided on their application in reporting processes. AGL contends that every effort should be made to remove uncertainty from the Act's application by reporting entities. Accordingly, AGL believes there is utility in</p>



	<p>undertaking a review of how these terms are defined in the Commonwealth Modern Slavery Act 2018 – Guidance for Reporting Entities and that the review should consider if these terms can be defined in the Act.</p>
<p>Are the mandatory reporting criteria in the Modern Slavery Act appropriate – both substantively and in how they are framed?</p>	<p>AGL considers the reporting criteria to be appropriate in forming a framework to drive transparency over the actions taken by an organisation to prevent and address human rights harm. As referenced above, AGL contends that there is an opportunity for the criteria to be amended in instances where there has been no change to information reported in a previous Statement.</p> <p>AGL contends that the framing of the reporting criteria can be improved. Specifically:</p> <ol style="list-style-type: none"> <li>1. Section 16(1)(d) in so far as it concerns the concepts of due diligence and remediation. AGL has recommended that the review should consider defining due diligence or at the very least, for the Act to provide some additional guidance on how due diligence is to be executed by reporting entities. AGL holds the same view regarding remediation and believes additional utility will be gained from the Act providing clarification on (a) when to take action to remediate and (b) what active engagement steps should be taken to effect remediation. In this regard, Principle 22 of the UNGPs can be consulted in an endeavour to clearly express the requirements of remediation under the Act. However, to the extent that the term is clarified, care should be taken to ensure the clarification process does not make the remediation process too prescriptive. AGL contends that it may be more helpful if the clarification is provided in the form of guidance rather than as a mandated requirement.</li> <li>2. Section 16(1)(e) in so far as it concerns how the reporting entity assesses the effectiveness of its actions. AGL contends that further guidance should be provided over how organisations are to interpret this requirement and how an organisation should describe how the entity assesses the effectiveness of its actions. Therefore, the Act should consider (particularly if the reporting threshold is decreased) how organisations can do more to satisfy this reporting requirement.</li> </ol>





### 3. Enforcement of the Modern Slavery Act reporting obligations

<p>Should the Modern Slavery Act contain additional enforcement measures – such as the publication of regulatory standards for modern slavery reporting?</p>	<p>The approaches taken to identify and address the risks of modern slavery vary between organisations and allow the reporting entity to determine the most effective and pragmatic means of identifying and addressing the human rights risks present within their operations and supply chain which align to their existing risk management approaches and governance arrangements which are specifically tailored to meet the requirements of their organisation.</p> <p>Noting the above, should regulatory standards be introduced, care should be taken to ensure the standards are not too prescriptive, resulting in organisations narrowing their modern slavery focus to comply with the regulatory standard. The flexibility of the Act should be maintained, meaning that organisations - via the application of a risk-based approach - should be free to determine how their modern slavery risks are to be identified, assessed and managed.</p>
<p>Should the Modern Slavery Act impose civil penalties or sanctions for failure to comply with the reporting requirements? If so, when should a penalty or sanction apply?</p>	<p>AGL contends that a penalty could be imposed for those organisations that fail to submit a Modern Slavery Statement.</p> <p>In circumstances where a penalty regime for non-compliance with the reporting requirements is to be introduced, clarity would need to be provided as to what would constitute a non-compliance against those reporting criteria.</p> <p>Any intention to introduce a penalty regime against the reporting criteria should undergo a thorough consultation process.</p> <p>To the extent that the legislation is amended to impose sanctions associated with reporting, care should be taken to ensure a sanction led approach continues to promote the object of the Act and does not inadvertently impede or stifle innovation in Modern Slavery reporting on account of reporting entities being overly concerned with sanctions in lieu of openly sharing steps taken to mitigate the risk of modern slavery in operations and supply chains.</p>

### 4. Modern Slavery Statements Register

<p>Does the Register provide a valuable service?</p>	<p>Notwithstanding the steps that AGL takes to promote the publication of its Modern Slavery Statement both internally and externally, AGL contends that the Modern Slavery Register provides an effective means by which interested third parties can have access to published Statements for the purpose of</p>
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	<p>reviewing and comparing registered Statements. Accordingly, the Register is an effective tool that supports the Act’s aim to increase transparency and to drive businesses to improve their practices around identifying and responding to instances of modern slavery, and to the risks of modern slavery in their operations and supply chains.</p> <p>AGL personnel on a regular basis access the Register as part of the due diligence process that AGL undertakes to assess prospective suppliers on their modern slavery management.</p> <p>As stated, the Register plays an important part in increasing the transparency of modern slavery management across the business landscape in Australia. Before the introduction of the Act and the operation of the Online Register, there was no compulsion on Australian companies to inquire and report on their exposure to modern slavery. Whilst the Modern Slavery Register is not a panacea for effective reporting on those items in section 16 of the Act, it does bring to light the steps businesses are taking to manage the risk, and therefore allows third parties including investors, customers and other stakeholders to apply pressure for greater change if they are not satisfied with reports disclosed on the Online Register.</p> <p>Ultimately, the success of the Modern Slavery Act in creating a ‘race to the top’ mentality relies on third parties having information to hand that can be used to motivate business to take more meaningful and appropriate steps to manage their modern slavery risks.</p>
<p>Could improvements be made to the Register to facilitate accessibility, searchability and transparency?</p>	<p>AGL supports actions being taken to improve the ongoing utility of the Online Register.</p>

**5. Administration and Compliance Monitoring of the Modern Slavery Act**

<p>What role should an Anti-Slavery Commissioner play, if any, in administering and/or enforcing the reporting requirements in the Modern Slavery Act? What functions and powers should the Commissioner have for that role?</p>	<p>AGL contends that an Anti-Slavery Commissioner’s functions could include:</p> <p>An advocacy role to promote action by reporting entities and the broader business community to combat modern slavery in their operations and supply chain. This advocacy role could extend to the general promotion and education of the issue to ensure there is increasing awareness and ownership of the issue of modern slavery in the broader community resulting in, for example, consumer buying decisions being made with a ‘slavery free’ focus.</p> <p>The advocacy role could focus on ‘a risk to people’ approach rather than a risk to business, ensuring businesses are taking steps to protect the agency and self-determination of people working in their operations and supply chains.</p>
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	<p>Providing assistance and support to victims of modern slavery.</p> <p>Undertaking and publishing research on high-risk areas with recommendations on what steps, including due diligence, an organisation should implement to manage the risk in these high-risk areas.</p> <p>Establishing a 'think tank' that would see business come together to collaborate on strategy and practices that can assist with the eradication of modern slavery from operations and supply chains.</p> <p>Develop a strategic plan with input from business that provides an outline for modern slavery eradication over the next 5 years.</p> <p>Develop and provide relevant guiding material that business can use for the development of their modern slavery statements and improve their modern slavery risk management. Such material would complement and further support the Commonwealth Modern Slavery Act 2018 – Guidance for Reporting Entities.</p>
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## 6. Review of the Modern Slavery Act

<p>Is a further statutory review (or reviews) of the Modern Slavery Act desirable? If so, when? And by whom?</p>	<p>In the spirit of continual improvement as a key mechanism to work towards the eradication of modern slavery, AGL supports further reviews of the Modern Slavery Act. These reviews should be ongoing and periodic to ensure the Act remains responsive to the actions that must be taken by business to address the risks of modern slavery over time. It is recommended that a further review be undertaken in the next three years to assess progress.</p>
<p>Should a periodic review process (other than a statutory review) be conducted of the Modern Slavery Act and its implementation? What form should that review process take?</p>	<p>AGL contends that the statutory review process should remain, and that a further review in three years is warranted given the importance associated with this issue. AGL would also be open to another form of review process if the Government contends it to be a more suitable means of driving improvement to the Modern Slavery Act, particularly the reporting requirements under the Act.</p>