

MODERN SLAVERY ACT

FACTSHEET

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Law Council
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MODERN SLAVERY ACT -

WHAT IS IT?

The [Modern Slavery Act 2018 \(Cth\)](#) (the Act) came into force on 1 January 2019. The Act requires larger companies and other entities in Australia to report on how they are preventing and addressing modern slavery risks in their operations and supply chains.

WHY?

Modern slavery affects millions of people worldwide and tragically, is a multi-billion-dollar industry.

Many Australian companies may be unaware that modern slavery practices are occurring in their supply chains or businesses - whether in Australia, where the Commonwealth Government provided a conservative count of 1,567 modern slavery victims between 2015 and 2017 (although, as modern slavery is a hidden problem, the real figure is likely higher, with some organisations estimating 15,000 current victims), or elsewhere in the world, where there are millions.

By managing and reporting on the risks of modern slavery in their operations and supply chains, Australian entities join the international effort to eliminate modern slavery. They also help to protect themselves from serious legal, reputational, operational and financial risks of being connected with modern slavery.

WHO NEEDS TO COMPLY?

The Act requires annual reports to be made by Australian-based entities and those operating in Australia that have a minimum consolidated revenue of \$100 million (**reporting entities**). Other entities can elect to report voluntarily.

The Commonwealth Government is also required to publish its own annual modern slavery statement, which may be relevant for suppliers to the government.

WHAT IS 'MODERN SLAVERY'?

The Act defines 'modern slavery' with reference to the Commonwealth *Criminal Code* and international law. It captures:

- conduct that would constitute slavery and slavery-like offences, whether or not the conduct took place in Australia;
- human trafficking; and
- the worst forms of child labour.

Slavery and slavery-like conduct would include forced labour, deceptive recruitment and debt bondage.

WHAT DOES THE ACT REQUIRE?

Each year, reporting entities must submit a 'modern slavery statement' to the Minister for Home Affairs. This will occur through a publicly accessible registry soon to be launched by Australian Border Force's Modern Slavery Business Engagement Unit.

The modern slavery statement must describe the risks of modern slavery in the operations and supply chain of the reporting entity (and entities it owns or controls). The statement must also include information about actions taken to address those risks.

In particular, the modern slavery statement must:

- identify the reporting entity;
- describe the structure, operations and supply chains of the reporting entity;
- describe the risks of modern slavery practices in the operations and supply chains of the reporting entity, and any entities that the reporting entity owns or controls;
- describe the actions taken by the reporting entity and any entity that the reporting entity owns or controls, to assess and address those risks, including due diligence and remediation processes;
- describe how the reporting entity assesses the effectiveness of such actions;
- describe the process of consultation with any entities the reporting entity owns or controls or with which it is issuing a joint modern slavery statement; and
- include any other information that the reporting entity considers relevant;
- be in a form approved by the Minister;
- be approved by the principal governing body of the entity - for example, the full board of directors;
- be signed by a responsible member of the entity - for example, a director, with most entities opting for their CEO to sign the statement; and
- be given to the Minister within 6 months after the end of the reporting period for the entity (its financial year), in a manner approved by the Minister.

WHERE TO START?

In order to produce a modern slavery statement, a reporting entity will need to engage various functions within the entity. The first step may be to build awareness of what modern slavery is in practice and how it may be relevant to the organisation.

The functions that procure finished goods, use contractors, hold events, provide food and supplies to the business, or invest, to name a few, must all examine their activities and supply chains to evaluate risk. Further, entities within the corporate group, and outside organisations such as suppliers, unions, contractors and other stakeholders should also be consulted.

Entities should conduct a risk assessment and response process, which may include:

- conducting due diligence on modern slavery risks, which may include:
 - mapping key parts of the organisation's operations and supply chain and assessing the risk of modern slavery occurring within them;
 - assessing risks of modern slavery in the organisation's investment portfolio;
- developing or amending policies and processes, which may include:
 - collating current policies, identifying gaps, adapting existing policies and formulating new policies, as needed, such as a human rights policy;
 - adapting contract terms and codes of conduct with suppliers;
 - engaging with suppliers and other entities to understand their approaches to modern slavery and to communicate the expectations held by the entity;
 - establishing processes to monitor the effectiveness of the steps taken to ensure that modern slavery is not taking place in the business or supply chains;
 - developing a process for response and remedy in the event modern slavery is identified, such as ensuring existing company-run grievance mechanisms are capable of receiving modern slavery related complaints, or establishing new ones;
 - developing training and materials for staff, contractors and others on modern slavery risks and impacts; and
- assessing the effectiveness of response plans where modern slavery is identified.

Managing modern slavery risks should be a cross-functional exercise, with reporting and managing risks often including a wide variety of functions such as legal, risk, procurement, human resources, company secretary and the sustainability team.

ARE THERE PENALTIES FOR NOT SUBMITTING A STATEMENT?

While the Act does not currently include penalties, it will be reviewed after three years, to ensure it remains effective and responsive to the Australian context.

A lack of penalties does not mean a lack of consequences. The Minister can publish information on the register about a reporting entity's failure to submit a statement, provided the Minister first makes a request to the entity for explanation or remedial action and the entity fails to comply. Entities' statements will also be the subject of public scrutiny by interested stakeholders including consumer and investor groups, non-governmental organisations, and the media.

DOES THE STATEMENT NEED TO BE ASSURED?

Currently, there is no requirement that statements be audited or assured. However, this may become best practice in the future. Reporting entities should in all cases seek to ensure their information is accurate.

WHERE DO THE STATEMENTS GO?

Reports are kept by the Minister in a public repository known as the Modern Slavery Statements Register. Statements on the register can be accessed by the public, free of charge, on the internet. You can also choose to share your statement with other publicly run databases such as the [Modern Slavery Registry](#), administered out of the United Kingdom, and it is likely to be best practice to also house the statement in a prominent place on your entity's website.

IS THERE ANY GUIDANCE?

The Commonwealth has issued [guidance for reporting entities](#). This includes guidance on how to lodge a joint statement if a reporting entity has multiple related entities that themselves fit the threshold.

Due to increased risks of modern slavery during Covid-19, the Commonwealth has published [additional specific guidance](#).

Many of the concepts in the Act, including the terms 'due diligence and remediation processes' are taken from the [UN Guiding Principles on Business and Human Rights \(UNGPs\)](#), the authoritative global standards to address business impacts on all human rights (including freedom from modern slavery), applicable to both governments and businesses. Understanding the UNGPs can provide entities with a framework for preventing and addressing their modern slavery risks in practice.

A FINAL TAKE-AWAY

The Act does not require reporting entities to certify that they are slavery free. However, it does require entities to show concrete steps towards understanding and managing their modern slavery risks in both their operations and supply chains and provides a clear framework for doing so.

ARE THERE ANY EXAMPLES OF MODERN SLAVERY STATEMENTS?

[Examples of reports](#) produced as a result of modern slavery reporting legislation in the United Kingdom and California legislation can provide useful insights, however, neither the UK nor Californian legislation has entirely the same requirements as the Act, and the quality of the statements produced varies greatly. As Australian entities begin to report under the Act, the government's registry will be a good source to view statements from different sectors.

BY WHEN?

A modern slavery statement must be submitted within six months after the end of the reporting entity's financial year. The reporting period is the entity's first full financial year that commences after 1 January 2019.

However, reporting entities due to submit their first modern slavery statement in 2020 have been granted an additional three months on top of the normal six months, because of the COVID-19 pandemic.

Example of Reporting Period	Original deadline for submission of modern slavery statement	Extended deadline due to the disruption of the COVID-19 pandemic
1 April 2019 - 31 March 2020	30 September 2020	31 December 2020
1 July 2019 - 30 June 2020	31 December 2020	31 March 2021
Reporting periods ending after 30 June 2020	The six-month deadline for reporting periods ending after 30 June 2020 remains unchanged.	