Modern Slavery; including servitude, forced labour, and child labour continue to be a serious problem in the operations and supply chains of businesses worldwide. Whether they are aware of them, or not.

What was historically an under-regulated area of corporate activity is now attracting increased attention from regulators globally.

The Road to Regulation
Since 2010 policies have been introduced in California, France, Italy, the EU and the UK.

Most recently, the Australian government has consulted on introducing a Modern Slavery Act – focused on supply chain transparency and corporate reporting.

The legislation would bring reporting requirements in closer alignment with other jurisdictions, particularly with the transparency provisions (s54) in the UK Modern Slavery Act. The UK Act requires organisations to publish a slavery and human trafficking statement that addresses information such as its due diligence processes in relation to slavery in its business and supply chains.

In February 2017 the Australian government commenced an enquiry into establishing a Modern Slavery Act in Australia. Around 200 submissions from corporations and organisations were received and considered prior to the release of an interim report.¹

A second round of consultation will precede the final recommendations report. Based on current predictions, legislation may be introduced mid-2018, with enactment expected in 2019.

What is the aim of the Modern Slavery Act?

The government has expressed that the proposed legislation is intended to “equip and enable the business community to respond effectively to modern slavery and develop and maintain responsible and transparent supply chains.”¹

Different forms of modern slavery and exploitation are already illegal in most jurisdictions, including Australia – pursuant to the Commonwealth Criminal Code. The Australian government will consider options to consolidate Australian law within a Modern Slavery Act (similar to the UK Act); however, the current focus of consultation is with regard to introducing new provisions to target corporate disclosures and reporting.

By requiring organisations to disclose what actions they are taking to identify, mitigate, and remedy incidents of modern slavery in their supply chains – the government says that its aim to initiate a “race to the top” and provide stakeholders with information to hold organisations accountable for managing human rights risks in their supply chains.

**What does it mean?**

Mandatory disclosures of steps taken by businesses to prevent modern slavery in the supply chain implicitly require them to ensure that their supply chain due diligence procedures will meet stakeholder expectations. The implication being that disclosure can invite comparison, scrutiny, and increased stakeholder demands if expectations are not met.

For businesses, greater transparency also facilitates industry collaboration and is expected to ultimately improve supply chain conditions – which may in turn help support security of supply and their own sustainable procurement practices.

**Who is required to report?**

The initial proposal suggests that reporting requirements will apply to all entities that carry out business in Australia with revenues over AUD$100m. However, there are other recommendations to reduce the threshold to closer to AUD$60m in line with the UK threshold, or potentially lower – as well as including an option for any entity to “opt-in” to report despite not being caught by the revenue threshold. The public sector is not currently included, however one possibility may be to include the public sector by requiring that they only procure from entities that have published a Modern Slavery Statement in accordance with the proposed legislation.

**What is to be reported?**

The current proposal is for entities to report against the following four criteria:

1. The entity’s structure, its operations and its supply chains
2. The modern slavery risks present in the entity’s operations and supply chains
3. The entity’s policies and process to address modern slavery in its operations and supply chains and their effectiveness (such as codes of conduct, supplier contract terms and training for staff), and
4. The entity’s due diligence processes relating to modern slavery in its operations and supply chains and their effectiveness

Further guidance will be required to understand what level of detail is required to achieve compliance.

**How will entities report the information?**

Disclosures should be made in a “Modern Slavery Statement” and it is proposed that it should be published within five months after the end of the Australian fiscal year. A requirement to include a link to the statement in a “prominent place” on the entities’ websites is likely, in line with expectations in the UK Act.

Reporting due diligence will involve disclosing how the entity has taken reasonable steps to avoid instances of modern slavery in its global operations and supply chain, and to what extent they are effective.
How will compliance be monitored?

Compliance provisions are not included in the initial proposal. However, there is a suggestion for the government to maintain a central repository of statements, which will aid benchmarking, identification and publishing the names of non-compliant entities.

In principle support has been given for establishing an Independent Anti-slavery Commissioner, who would have the ability to consult, advise, report on, and make recommendations with respect to modern slavery supply chain reporting. However, the position and role is yet to be determined.

Formal enforcement provisions are unlikely — however, a proposed central repository of statements would facilitate non-compliant companies to be “named and shamed”

How does it compare to other jurisdictions?

The UK Modern Slavery Act (2015) is a broader Act, which contains provisions confirming the offence of modern slavery. Reporting disclosures is one section (54) within a broader piece, whereby the criteria for reporting is only guidance and not mandated. The threshold for companies to report is GBP£36m. The Secretary of State can issue an injunction to require a company to publish a statement. At this stage, the public sector is not subject to reporting provisions.

The California Transparency of Supply Chain Act (2012), requires retailers and manufacturing companies with worldwide annual revenues of USD$100m or more that sell/operate in California to report on their specific actions to eradicate slavery and human trafficking from its direct supply chain.

More recently in the US, amendments to the Tariff Act of 1930 now forbid goods made with forced labour from entering the country.

The Corporate Duty of Vigilance Law was adopted by the French Parliament in February 2017. It requires approximately 150 of the largest French companies to assess, address, and report on the adverse impacts of their companies on people and the planet, including impacts linked to their companies and those of suppliers and sub-contractors. Concerned parties can bring allegations of non-compliance before the court, who can issue fines of up to EU€10m for failing to publish a plan or EU€30m where a failure has resulting in damages that would have otherwise been preventable.

What next for businesses?

Although we are still in the early stages of policy development, reporting requirements are inevitable. Further, the current global regulatory trend is illustrative of heightened societal and political expectation for the private sector to take responsibility for mitigating modern slavery in their operations and supply chains.

Due diligence is important as a short term focus

Currently many consumer-facing businesses procuring from developing countries, limit their supply chain human rights risk management to a tender checklist that requires their suppliers to provide a current certification or a signed commitment to the buyers/retailers “supplier code of conduct”. The question therefore is: Does this standard approach amount to effective “due diligence”, as the proposed Modern Slavery Act seeks to call out?

In our view it does not. Undertaking “due diligence” relies upon the reasonableness of the steps being taken to validate the presence of a risk. In an audit context this requires professional scepticism to test evidence which would lead the auditor to determine the likelihood of an event. This is not a common feature of standard social compliance-based approaches where there is a large amount of reliance placed on a self-declared representation of compliance by a supplier – often regardless of the availability of supporting evidence.

Accordingly, the short-term focus of companies likely to be captured by modern slavery measures is to implement due diligence measures that look to corroborate supplier representations via an objective appraisal of alternate sources of information.
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