

## July 2018 Policy Update: Human rights and Modern Slavery

What are the proposed changes in the policy landscape and what do they mean for business?

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Modern slavery; which includes servitude and forced labour continue to be a serious risk in the operations and supply chains of business.

What was historically an under-scrutinised area of corporate activity will now be subject to mandatory reporting.

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### Introducing two Acts

In June 2018, the Private Members Bill on Modern Slavery was passed into law by the NSW State Parliament. Concurrently, the Australian Federal Government introduced a Modern Slavery Bill to Federal Parliament.

This legislation seeks to significantly improve transparency in corporate and public sector activities, with the ultimate aim of eliminating modern slavery across Australian entities operations and their supply chains.

Both pieces of legislation have similar reporting provisions. The Federal Act will apply to entities that carry out business in Australia with annual revenue over \$100m. The NSW Act will apply to entities with employees in NSW that are not reporting under the Federal Act and have an annual revenue over \$50m. Both have specific provisions that relate to the inclusion of Government entities. The application of direct financial penalties for non-compliance is currently only included within the NSW Act.

## What does it mean?

Mandatory disclosures of steps taken by businesses to prevent modern slavery in the supply chain implicitly requires 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.

## Federal Reporting Requirements

Mandatory reporting requirements within the Bill will require businesses to prepare and publish a publicly available Modern Slavery Statement on the risks of modern slavery occurring within their operations and supply chains each financial year. Disclosure under the legislation must:

- ▶ Identify the 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 that the reporting entity owns or controls

Further guidance will be provided by the Government to support entities to understand what level of detail is required to achieve compliance.

## NSW Reporting Requirements

Entities reporting under the NSW Act will be required to disclose:

- ▶ The organisation's structure, its business and its supply chains
- ▶ Its due diligence processes in relation to modern slavery in its operations and supply chains
- ▶ The parts of its business and supply chains where there is a risk of modern slavery taking place, and the steps it has taken to assess and manage that risk and the training about modern slavery available to its employees

## How will entities report the information?

Disclosures should be made in a “Modern Slavery Statement”, published on the entities' websites and signed by a Director or equivalent.

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## How will compliance be monitored?

Formal enforcement provisions currently only apply at the State level – however, at the Federal level a central repository of statements would facilitate non-compliant companies to be publicly “named and shamed”

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## Requirements for Government entities

In both jurisdictions the legislation has highlighted the intention for public entities to take steps to ensure that publicly procured goods are not the product of modern slavery. Although not all departments and agencies will be required to produce individual statements (this will depend on the application of other related reporting legislation such as the NSW Government Sector Finance Legislation), however they will all be subject to review by the Auditor-General (NSW) or covered by the Commonwealth modern slavery statement.

Both alternatives lead to a similar outcome as the reporting requirements for private entities. That is, it creates the impetus for government departments and agencies to assess their operations and procurement processes, to consider the effectiveness of procurement controls and where necessary strengthen modern slavery due diligences processes.

## Where to start?

### Identify the risks

Entities will need to understand the sphere of their influence and the breadth of their often complex operations, related entities, and supply chains. Mapping their activities (and often decentralised procurement processes) is usually the first step to locating the potential risk areas for modern slavery.

### Deciding what to do

No entity can manage and mitigate risks throughout their full value chain on day one. Establishing a road map will usually require stakeholder engagement and an agreed risk-based approach. Levels of due diligence and commitment to remediation will need to be determined based on the risks that are present to the workforce, and prioritised based on other factors relevant to the entity.

### A focus on due diligence

Historically many consumer-facing businesses procuring from developing countries (or the Australian agricultural industry), have limited 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." More recently, there is growing acceptance that this approach has done little to improve standards in supply chains, and associated third party audits are unreliable and often ineffective at driving real change.

There is therefore work to be done for businesses to revisit their due diligence processes and consider the reasonableness of the steps being taken to determine the presence of a human rights risk.

## Going beyond compliance

Australia has now joined the global regulatory trend of heightened societal expectation for entities to take responsibility for mitigating modern slavery in their operations and supply chains.

Despite new regulation to address reporting, the way in which entities actually address modern slavery within their supply chains is unregulated. Like many other core human rights issues, modern slavery in Australia is not a matter for compliance alone, it remains an inherently moral issue managed through sound business practices and ethical accountability.

Investors, shareholder activists, employees, and NGOs are already having an impact on businesses by speaking out on these issues. Global companies, particularly within the European FMCG sector, are already starting to set a high bar on what good due diligence looks like and how to pro-actively address issues of vulnerability in their supply chains.

A recent report by the Australian Fair Work Ombudsman has highlighted that there is considerable work to be done to address worker exploitation onshore, in addition to the more well-known common cases of exploitation and slavery offshore.

Advancing technologies, software developments and greater digital connectivity is creating new opportunities to address some of the challenges of visibility and trust in supply chains. Similarly some Australian businesses are starting to recognise the opportunities they have to play a positive role in eradicating modern slavery by investing in new tools, programs, and collaborative initiatives.

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## How EY want to help

EY wants to support more organisations to not only meet the new reporting requirements, but to more fundamentally improve how they manage their human rights risks, and how they can contribute to improving the livelihoods of the workforce in their value chain.

Developing due diligence and remediation activities will enable better reporting under the new legislation and will help drive improvements within global supply chains that are long overdue.

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