



Modern Slavery

Over 150 years after the abolition of slavery and the trans-Atlantic slave trade...

What is Modern Slavery?

- An umbrella term for **exploitative practices**, including:



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What is Modern Slavery? cont.

Terms explained

- **Slavery** is defined under the United Nations Slavery Convention (1926) as *'the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised'*
- **Human Trafficking:** *'recruitment, transportation, transfer, harbouring, or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over a another person, for the purpose of exploitation'*

[Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime (2000)]

- **Forced Labour:** *'all work or service which is exacted from any person under the threat of a penalty and for which the person has not offered himself or herself voluntarily'*

[ILO Forced Labour Convention (No. 29) (1930)]

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Extent and impact of Modern Slavery

- It is estimated that **over 40 million people** around the world are victims of modern slavery
- Over half of the victims are in the Asia-Pacific Region
- An estimated **4,000 people in Australia** are victims of modern slavery
- It can be present in any sector or industry
- High risk industries include:
 - Agriculture
 - Electronics
 - Fashion
 - Construction
 - Extractive
 - Hospitality

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So what is Australia doing about it?

- The Australian Government has comprehensively criminalised human trafficking and slavery under the Commonwealth *Criminal Code*. See Divisions 270 and 271
- It is now seeking to address modern slavery in supply chain practices
- In 2018:
 - Commonwealth Parliament passed the *Modern Slavery Act 2018 (Cth)*
 - NSW passed the *Modern Slavery Act 2018 (NSW)*
- Legislation is aimed at **encouraging** the business community to take **proactive** and **effective actions** to address modern slavery
- NSW legislation provides for appointment of an Anti-Slavery Commissioner

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Timeline – Commonwealth Legislation

- **December 2017:** Joint Standing Committee report, *'Hidden in Plain Sight'*, recommended the establishment of a Modern Slavery Act, including an Independent Anti-Slavery Commissioner
- **May 2018:** Federal Budget committed A\$3.6 million over 4 years to establish an Anti-Slavery Unit in the Department of Home Affairs, to manage the implementation of a Modern Slavery Reporting Requirement
- **June 2018:** *Modern Slavery Bill 2018 (Cth Bill)* introduced and read in the House of Representatives. Third Reading on 17 September 2018
- **September 2018:** Cth Bill introduced and read in the Senate
- **November 2018:** Cth Bill passed
- **10 December 2018:** Assented – ***Modern Slavery Act 2018 (Cth)***
- **1 July 2019:** Operative provisions of the *Modern Slavery Act 2018 (Cth)* to commence

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Timeline – NSW

- **October 2017:** Legislative Council Select Committee, Report on Human Trafficking in New South Wales
- **March 2018:** Modern Slavery Bill 2018 (NSW) (**NSW Bill**) introduced in Legislative Council
- **May 2018:** NSW Bill passed Legislative Council with Amendments
- **May 2018:** NSW Bill introduced in Legislative Assembly
- **June 2018:** NSW Bill passed with amendments
- **27 June 2018:** Assented – ***Modern Slavery Act 2018 (NSW)***
- **21 December 2018:** Interim Anti-Slavery Commissioner Appointed
- **1 July 2019:** Operative provisions of the NSW Act to commence

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Commonwealth Act key features

- Applies to large corporations and other entities (including partnerships, trusts and super funds) based, or operating, in Australia with consolidated revenue of at least A\$100M for the reporting period
- The main requirement is to produce a 'Modern Slavery Statement' (annually) on modern slavery risks and remediation steps taken by entities
- Does not prescribe penalties for organisations that fail to comply with reporting requirements.
- Cth Act will apply to reporting periods from the Australian financial period (or other annual accounting period applicable to the entity) commencing on or after 1 July 2019

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NSW Act key features

- Requirement to provide an annual modern slavery statement
- Applies to commercial organisations with at least one employee in NSW and who have an annual turnover of not less than A\$50m.
- Includes significant penalties (up to A\$1.1M) for commercial organisations who fail to make their statement publically available and persons who provide false or misleading information related to the organisation's Modern Slavery Statement
- NSW Act will apply to each financial year of the organisation commencing on or after 1 July 2019
- Provides for the appointment of an Anti-Slavery Commissioner

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NSW Act – Anti-Slavery Commissioner

Functions of the Commissioner

- Advocate for and promote action to combat modern slavery
- Work with government and non-government agencies to combat modern slavery and provide assistance and support to victims of modern slavery
- Raise community awareness
- Monitor reporting – including keeping public register
- Education / advice / training – about action to prevent, detect, investigate and prosecute offences
- Monitor the effectiveness of legislation and governmental policies and action

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Overlap between Commonwealth and NSW Act

- The two Acts will operate in conjunction with each other
- The NSW Act exempts commercial organisations subject to obligations under a prescribed ‘corresponding law’ of the Commonwealth or another State or Territory (which we expect would include the Cth Act)
- Commercial organisations with turnover between \$50M - \$100M will be required to report under the NSW Act but not the Cth Act

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Overlap between Cth and NSW Act Cont.

- Commonwealth government organisations will be required to report under the Cth Act but not the NSW Act
- If the Cth Act is a 'corresponding law' under the NSW Act, it appears organisations can then choose to voluntarily report under the Cth Act and avoid the steep NSW penalties

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Differences between Cth and NSW Acts

Applies to...

NSW

All commercial organisations who:

- have an annual turnover of **A\$50 million or more**, calculated based on the entity's reporting period
- Have employees in NSW
- Supply goods or services for profit or gain

Not NSW government agencies

Federal

All entities with annual consolidated revenue of **A\$100m or more**

Includes entities based or operating in Australia

Extends to joint reporting by groups of entities

The Commonwealth and Corporate Commonwealth entities / Cwth Companies

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Differences between Cth and NSW Acts cont.

Penalties...

NSW

- A penalty of **up to \$1.1 million** applies for:
- failing to prepare a modern slavery statement;
 - failing to publish a modern slavery statement; or
 - providing false or misleading information in connection with a modern slavery statement.

Federal

- No monetary penalty
- Minister may request an explanation or remedial action
- Minister may publish information about an entities failure to comply with a request
- Bill provides that the three year review consider compliance rates and the need for civil penalties

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Differences between Cth and NSW Acts cont.

Other...

NSW

- Provides for appointment of Anti-Slavery Commissioner
- Public register – identifies any organisation/body that has disclosed that modern slavery may be taking place in a supply chain and whether the organisation has taken steps to address the concern

Federal

- No Anti-Slavery Commissioner: Minister for Home Affairs responsible for monitoring reporting and maintaining register
- Public register – is a register of the modern slavery statements

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Modern Slavery Statements

Commonwealth Statements

- Statements must, in relation to each reporting entity covered:
 1. identify the reporting entity;
 2. describe the structure, operations and supply chains;
 3. 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;
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4. 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;
5. describe how the reporting entity assesses the effectiveness of such actions; and
6. describe the process of consultation with:
 - any entities that the reporting entity owns or controls; and
 - in the case of a Joint Statements - the entity giving the statement; and
7. include any other information that the reporting entity, or the entity giving the statement, considers relevant

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Reporting Requirements – Modern Slavery Statements

Commonwealth Statements cont.

- Must be given for each financial year, or another annual accounting period applicable to the entity, which starts (on or after) 1 July 2019
- Must be in the approved form
- Must be approved by the principal governing body, usually the board
- Must be signed by a ‘responsible member’ usually a director
- Must be given to the Minister within 6 months after the end of the reporting period for the entity
- Will be made public on the Modern Slavery Statements Register

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Modern Slavery Statements

Commonwealth Statements – Joint Statements

- Reporting for corporate groups: one reporting entity may give a statement covering one or more entities ie. may report on behalf of related entities
- Must be prepared in consultation with each reporting entity covered by the statement
- Must be approved by the principal governing body of each reporting entity or of the ‘higher entity’ (unless not practical, in which case of at least one entity)
- Must be signed by a ‘responsible member’ (usually a director) of each reporting entity or of the ‘higher entity’

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Modern Slavery Statements

Commonwealth Statements – Voluntary Statements

- An Australian Entity or an entity that carries on business in Australia (even if it does not otherwise meet the monetary threshold) **may volunteer** to comply with the requirements of the Cth Act
- An entity volunteers by giving notice before the end of the reporting period
- Can revoke the notice by giving written notice before the start of a reporting period (or the earliest of the reporting periods)

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Reporting Requirements – Modern Slavery Statements

NSW Statements

- Statements will have to include information about:
 - the organisation's structure, business and its supply chains
 - its due diligence processes in relation to modern slavery in its business and supply chain
 - the parts of the business and supply chains where there is a risk of modern slavery taking place, and the steps taken to assess and manage that risk
 - the training available to employees in relation to modern slavery
- Note: Supply chain is not defined in either Act – ordinary meaning in the context of the business

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Modern Slavery Statements

NSW Statements cont.

- To be prepared for each financial year of the organisation – in accordance with Regulations within such period as provided for by Regulations*
- Statements must be made public
- Does not apply to a commercial organisation if the organisation is subject to obligations under a law of the Commonwealth or another State or a Territory that is prescribed as a corresponding law for the purposes of this section

*Note: Regulations are yet to be passed

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The overseas experience

- The UK has had a Modern Slavery Act in effect since 2015. The Cth Act is modelled on it. UK companies with revenue over £33.5M must report
- Reporting UK companies remain a useful model for Australian companies to observe best (and worst) practice
- France has a modern slavery regime which is stricter than the UK. The EU is looking at introducing legislation at a Union-wide level to harmonise national rules
- In the US, California introduced the Transparency in Supply Chains Act in 2010 requiring reporting of companies with global revenue over US\$100M although results are mixed

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Benefits to Organisations

- One of the intended purposes of the legislation is to 'drive a race to the top'
- A comprehensive Modern Slavery Statement can be:
 - a strategic reputational asset
 - used as a tool for competing for work or investment
- May receive more favourable lending rates and attract more cost-effective finance
- May have a positive impact on consumer purchasing

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How can we help?

- Preparation of a compliance plan, including identifying responsible teams and leaders, coordination with existing governance framework and reporting to senior management and the board
- Reviewing contracts – termination; interview, information and assessment rights; warranties
- Reviewing policies and plans – code of conduct, employment and procurement
- Training: initial awareness sessions, in-depth training, broader e-training for employees and suppliers (e.g. Safetrac); cross-disciplinary workshops; awareness seminars

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How can we help? cont.

- Evaluation of reporting process
- Accountability – embedding management and employee KPIs
- Due diligence / auditing of supply chains, identifying high risk areas
- Post due diligence: follow-up actions and remediation; reviewing remediation frameworks
- Crisis management framework
- Modern slavery reporting – preparation of the first report

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Remember

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Things to remember

- First, scope the obligation – determine which entities are covered
- Determine the legislation you need to report under – the statement can be customised to comply with more than one Act
- What are you aiming for? Minimum compliance or gold standard
- Draw up a compliance plan and timetable
- Allocate responsibilities between: legal, compliance, risk, people, procurement, Board
- Modern slavery reporting is a risk and governance issue – embed it into your risk and governance frameworks

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