



Modern slavery legislation in Australia:

Your guide to
responsible
compliance



Background

Australia now has modern slavery laws in place. These laws are designed to ensure Australia's largest businesses report publicly and responsibly on the risks of modern slavery in their operations and supply chains.

What is Modern slavery?

Modern slavery practices are a violation of human rights. Modern slavery is an umbrella term for a number of serious exploitative work practices that represents violations of human rights.

The Commonwealth **Modern Slavery Act 2018** defines 'modern slavery' under 8 heads of serious exploitation:

- trafficking in persons
- slavery
- servitude
- forced marriage
- forced labour
- debt bondage
- the worst forms of child labour
- deceptive recruiting for labour or services

Modern slavery is a grave problem affecting many people around the world:

- The UN estimates 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



UN Guiding Principles on Business and Human Rights

The UN Guiding Principles on Business and Human Rights (UNGPs) are an internationally recognised standard to prevent and address human rights abuses occurring in the context of businesses.

The UNGPs apply to all sovereign States and business enterprises regardless of size, sector, location, ownership and structure.

The most responsible businesses will be aware of the UNGPs and seek to implement them as a basic standard. The 3 pillars of the UNGPs are:

- Pillar One: States have a duty to respect, protect and fulfill human rights and fundamental freedoms
- Pillar Two: Business has a responsibility to comply with all applicable laws and respect human rights
- Pillar Three: There must be appropriate access to remedy for victims of human rights abuses connected to business

Australian developments - what you need to know

Australia's modern slavery reporting laws are: the **Modern Slavery Act 2018** (Cth) and the **Modern Slavery Act 2018** (NSW).

The introduction of modern slavery legislation puts Australia at the forefront of global legislative efforts around human rights reporting.

The Commonwealth Act requires corporations and other entities (including partnerships, trusts and other incorporated and unincorporated entities) with annual consolidated revenue of at least A\$100m to publicly report on, among other things, risks of modern slavery in their operations - including their investments - and supply chains. Reporting periods commence 2019 with statements due within 6 months after the end of a reporting period.

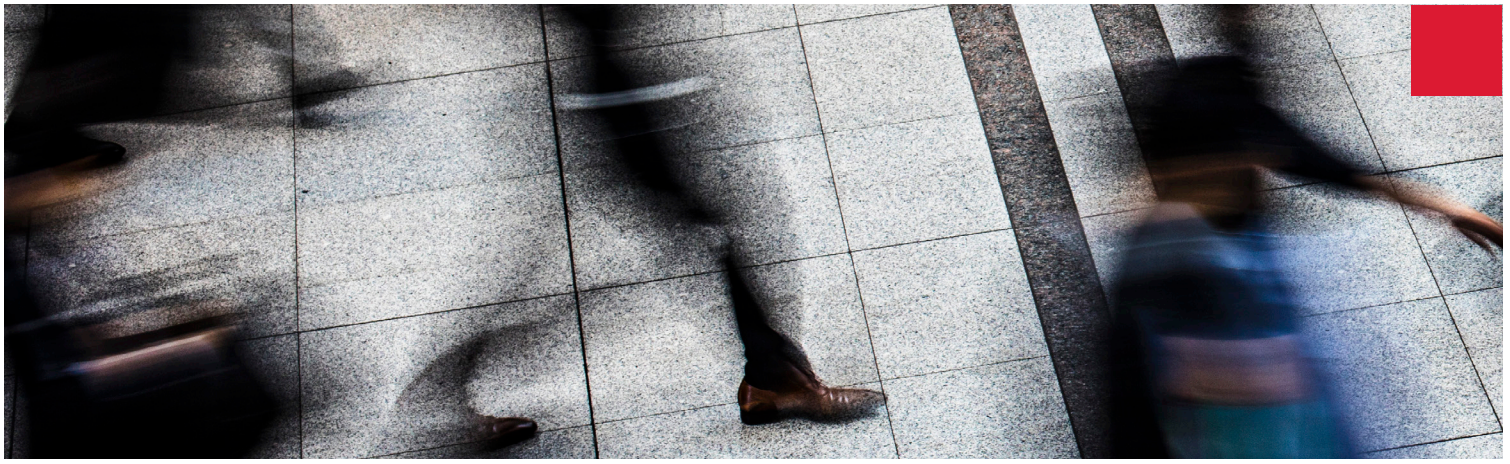
The NSW Act was originally expected to take effect on 1 July 2019, but an amending Bill and draft regulation has been referred to the Standing Committee on Social Issues for inquiry and report. Consequently the NSW Act is unlikely to commence in its current form. Under the current version of the Act the reporting periods will be prescribed by regulation.

The Act (as currently drafted) will require commercial organisations with at least one employee in NSW and annual turnover of at least A\$50m to report on, among other things, parts of their business and supply chains where there is a risk of modern slavery taking place.

Overseas developments

More sovereign States are taking steps to implement the UNGPs and introducing legislation to ensure businesses respect human rights:

- The United Kingdom introduced its Modern Slavery Act in 2015, requiring reporting on modern slavery for businesses with annual revenue of over £36m.
- California signed into law the Transparency in Supply Chains Act in 2010 requiring retailers and manufacturers doing business in California with annual worldwide gross receipts over US \$100m to disclose efforts to eradicate slavery and human trafficking from direct supply chains for tangible goods offered for sale.
- France's 2017 Duty of Vigilance Law established a legally binding obligation on France's largest companies to identify and prevent adverse human rights and environmental impacts resulting from their own activities, from activities of companies they control, and from activities of their subcontractors and suppliers.
- Modern slavery laws are under consideration in Hong Kong, Canada and Norway among other jurisdictions.



The Legislation

Key features of the Cth Act:

- Applies to large corporations and other entities (including partnerships, trusts and other incorporated and unincorporated entities) with consolidated revenue of at least A\$100m for the reporting period
- The entity must be either:
 - an Australian entity (resident for income tax purposes) or
 - carrying on business in Australia (as defined under the Corporations Act)
- The main requirement is to produce an annual 'Modern Slavery Statement' on modern slavery risks in operations and supply chains and actions to address those risks
- Does not prescribe penalties for organisations that fail to comply with reporting requirements
- Will apply to reporting periods (the Australian financial period or other annual accounting period applicable to the entity) commencing after 1 January 2019, with reporting within 6 months after the end of the period

Key features of the NSW Act (as currently drafted):

- Applies to commercial organisations with at least one employee in NSW and who have an annual turnover of not less than A\$50m
- Requirement to provide an annual Modern Slavery Statement
- Includes significant penalties (up to A\$1.1m) for commercial organisations who fail to prepare a public Modern Slavery Statement and persons who provide false or misleading information related to the the organisation's Modern Slavery Statement
- Provides for the appointment of an Anti-Slavery Commissioner
- Reporting periods to be presented by regulation

Overlap between Cth and NSW Acts*:

- 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 anticipate will include the Cth Act)
- If the Cth Act is a 'corresponding law' under the NSW Act, it may be possible to voluntarily report under the Cth Act – it remains to be seen if this will mean the reporting entity will not be subject to penalties under the NSW Act
- You are recommended to obtain legal advice on how to ensure an entity complies with both Acts

***Important Note:**

The NSW Act is under review and may not commence in its current form.



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Comparison between Cth and NSW Acts:

	COMMONWEALTH	NSW*
Who must report?	<ul style="list-style-type: none"> • All entities with annual consolidated revenue of A\$100m or more • Includes entities based or operating in Australia (i.e. resident for income tax purposes or 'carrying on business' in Australia under the Corporations Act 	<p>All commercial organisations who:</p> <ul style="list-style-type: none"> • have an annual turnover of A\$50 m or more, calculated based on the entity's reporting period • Have at least one employee in NSW • Supply goods or services for profit or gain
Joint reporting allowed?	Yes, allows for joint Modern Slavery Statements to be issued by an entity covering one or more reporting entities (which may include the entity issuing the statement)	Not expressly provided for reporting to be made by a qualifying 'commercial organisation'
Government covered?	<p>Extends to Corporate Commonwealth entities and Cwth Companies</p> <p>Minister to report on behalf of non-corporate Commonwealth entities</p>	Does not apply to NSW government agencies
Penalties and remedies	<ul style="list-style-type: none"> • No monetary penalty • Minister may request an explanation or remedial action • Minister may publish information about an entities failure to comply with a request 	<p>A penalty of up to A\$1.1m applies for:</p> <ul style="list-style-type: none"> • 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
Review	<ul style="list-style-type: none"> • Act provides that the three year review consider compliance rates and the need for civil penalties 	N/A
Anti-Slavery Commissioner	<ul style="list-style-type: none"> • No 	<p>Yes, Commissioners functions include to:</p> <ul style="list-style-type: none"> • 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
Public register	<ul style="list-style-type: none"> • Modern slavery statements will be published on a repository maintained by the Department of Home Affairs 	<ul style="list-style-type: none"> • Public register will identify 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



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Modern Slavery Statements

The main requirement under each of the Commonwealth and NSW Acts is to produce a 'Modern Slavery Statement' (annually) on modern slavery risks in operations and supply chains and actions to address those risks:

	COMMONWEALTH	NSW*
Modern Slavery Statement	<p>Statements must, in relation to each reporting entity covered:</p> <ol style="list-style-type: none"> 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 (under draft guidance, 'operations' includes 'investments') 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 6. describe the process of consultation with: <ul style="list-style-type: none"> - any entities that the reporting entity owns or controls; and - in the case of Joint Statements - the entity giving the statement; 7. include any other information that the reporting entity, or the entity giving the statement, considers relevant 	<p>Content of statements to be prescribed by regulations but may include information about:</p> <ol style="list-style-type: none"> 1. the organisation's structure, business and its supply chains 2. its due diligence processes in relation to modern slavery in its business and supply chain 3. 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 4. the training available to employees in relation to modern slavery
Joint statements	<ul style="list-style-type: none"> • Reporting for corporate groups: one entity ('higher entity') may give a statement covering one or more reporting entities – the entity issuing the statement need not be a reporting entity • 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 this is not practical, in which case of at least one reporting entity) • Must be signed by a 'responsible member' (usually a director) of each reporting entity or of the 'higher entity' 	<p>No, reporting to be made by a qualifying 'commercial organisation'</p>



How can we help you comply?

Due to the overlap between the Commonwealth and the NSW modern slavery legislation with differing thresholds and reporting frameworks complying with the laws is not necessarily straightforward.

We expect further updates to come: the Commonwealth government has issued draft guidance for reporting entities on how to comply; and the NSW Parliament has yet to issue regulations under its Act.

MinterEllison can assist you with the following steps on how to comply with the modern slavery laws:

Planning

- Reporting timeframes and deadlines
- Advice on whether overseas entities need to report
- Advice on who must report, e.g. whether to issue a joint statement or individual statements by entities within a group; whether to issue separate statements under Cth and NSW legislation
- Establishing a framework that reporting functions effectively within your entity's existing governance and risk management framework
- Allocation of modern slavery reporting responsibilities within your organisation, e.g. establishing a dedicated team and/or involving existing teams within management, legal, risk, compliance, corporate social responsibility, procurement, sourcing, human resources and finance

Scoping and mapping

- Frameworks to assist you in describing your entity's structure e.g. corporate form; entities owned and controlled
- Checklists to assist you with mapping your entity's business operations and supply chains in order to identify at-risk areas both in Australia and overseas

- If your entity undertakes investment or financial lending activities, the mapping should extend to investment and lending portfolios
- Risk categorisation of your operations, investments and supply chains: e.g. by sector; product; geography etc

Due diligence

- Due diligence checklists to enable you to further identify and assess modern slavery risks within your operations, investments and supply chains – different checklists may apply to different risk categories
- Embedding ongoing and periodic due diligence and reviews

Leveraging through your policies, processes and contracts

- Leveraging your contracts: reviewing your contracts and including appropriate safeguarding provisions such as making the contract subject to: (a) satisfactory audit of supplier working practices; (b) interviews with the supplier's personnel; (c) ongoing monitoring and auditing of the supplier through the life of the contract; and (d) termination rights and other remedies
- Leveraging through your policies: formulating or updating your employee policies and codes of conduct to address modern slavery including recruitment, grievance and whistleblower policies; formulating or updating your supplier and procurement policies and codes of conduct
- Notifications to suppliers of modern slavery reporting requirements.

- Customisation of your policies, processes and contracts through assessing the degree of your leverage: e.g. do you cause; contribute to; or have a direct link to the risk

Leveraging through training

- General training for employees on how to understand, identify and report modern slavery
- Targeted training for legal, compliance, procurement, HR, CSR and other teams including a detailed overview of the requirements under the legislation
- Training for senior management summarising the requirements
- Awareness seminars for boards and board committees from a risk governance perspective

Remediation framework

- Implementation of a modern slavery incident reporting process (including mechanics to foster whistleblowing and reporting within the business)
- Creating a remediation framework to address the management of suppliers who perpetrate, or are at high risk of perpetrating, modern slavery offences

Monitoring compliance initiatives

- Implementing regular audits and ongoing monitoring of your entity's modern slavery compliance measures
- Establishing Key Performance Indicators for employers to monitor the effectiveness of your entity's modern slavery and broader human rights strategy



Modern Slavery Statement

- Drafting and finalising your organisation's Modern Slavery Statement, in accordance with the requirements of the legislation and best practice
- High-level Modern Slavery Statement frameworks and drafting templates for your entity's Modern Slavery Statement and advising you on customisation (note: care must be taken with using templates)
- Approvals processes e.g. board resolutions and board papers, for approval of your entity's Modern Slavery Statement

Disclaimer

This guide sets out an overview of modern slavery legislation in Australia, as at the date of issue. It should not be relied upon as a substitute for tailored legal advice. In reviewing this guide, you should take into account your entity's specific nature, location, circumstances and activities.

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