



Preparing for Modern Slavery Legislation



SUSTAINABLE
BUSINESS MATTERS

Preparing for Modern Slavery Legislation

We've created this guide to:

- Help you understand what is modern slavery
- Introduce you to the Commonwealth Modern Slavery Act (2018) and the NSW Modern Slavery Act (2018)
- Prepare you for the modern slavery legislation requirements
- Offer resources that assist in addressing modern slavery

BACKGROUND

There is estimated to be 40.3 million people working in slavery worldwide. Modern slavery affects almost every sector, region and company.

The Walk Free Foundation proposes that just under two thirds of the estimated 40.3 million people in modern slavery are in the Asia-Pacific region. Many of the goods produced in the Asia-Pacific region are linked to the global supply chain of many businesses across the world, including Australia.

Australian companies that procure goods from the Asia-Pacific region may unwittingly be complicit in modern slavery and human and labour rights abuses.

To address the crime of modern slavery and broader human and labour rights issues, it is essential that we focus on global supply chains to bring about long-lasting, positive change.

WHAT is modern slavery?

According to the Walk Free Foundation, modern slavery is an extreme form of inequality and exists within a competing matrix of political, economic, social, cultural and religious pressures.

Modern slavery refers to situations where one person has taken away another person's freedom – their freedom to control their body, their freedom to choose to refuse certain work or to stop working. Freedom is taken away by threats, violence, coercion, abuse of power and deception.

Different countries use different legal terminologies, but modern slavery includes the crimes of human trafficking, slavery, and slavery-like practices such as servitude, forced labour, forced or servile marriage, the sale and exploitation of children, and debt bondage.

INTRODUCTION to the NSW Modern Slavery ACT 2018 (NSW)

New South Wales took the lead on modern slavery, thanks to the efforts of Paul Green MP, with the passing of the Modern Slavery ACT 2018 (NSW) on 21 June 2018.

Preparing for Modern Slavery Legislation

The legislation requires commercial organisations with earnings over AUD \$50 million to prepare a modern slavery statement that complies with the NSW Act.

A commercial organisation is a company, partnership or association that:

- supplies goods and services for profit or gain
- has employees in NSW
- has a total turnover in a financial year of not less than \$50 million
- is not a government agency

Modern Slavery Act (2018) NSW - Key points to the anticipated legislation:

1. Companies will be required to prepare a modern slavery statement outlining the steps taken to ensure that the goods and services they procure are not a product or service of modern slavery.
2. Modern slavery statements must be publicly available and in accordance with the regulation (Maximum penalty: 10,000 penalty units – \$AUD 1.1 million dollars).
3. Organisations' modern slavery statements are to include:
 - a) The organisation's structure, its business and its supply chains,
 - b) Its due diligence process in relation to modern slavery in its business and supply chains,
 - c) The areas of its business and supply chains where there is a risk of modern slavery taking place and steps taken to assess and manage risk,
 - d) Training of employees about modern slavery.
4. A person must not provide information in connection with a matter that the person knows, or ought to reasonably know, is false or misleading (Maximum penalty: 10,000 penalty units – \$AUD 1.1 million dollars).

The NSW Modern Slavery legislation requires NSW Government agencies to take reasonable steps to ensure goods and services procured by and for them are not the product of modern slavery. We have seen this reflected in NSW Government tender requirements which not only address modern slavery, but also the broader sustainability impacts of environmental and human and labour rights issues.

INTRODUCTION to the Commonwealth Modern Slavery Act

Entities, including foreign entities carrying on business in Australia with annual consolidated revenue of over \$AUD 100 million will need to produce an annual modern slavery statement outlining what actions they have taken to assess and address Modern Slavery risks in their business operations and their supply chains.

To ensure a high-level commitment, the statement must be approved by the board of directors or equivalent and signed by a director.

Preparing for Modern Slavery Legislation

The seven mandatory criteria require every statement to:

1. Identify the reporting entity
2. Describe the reporting entity's 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 it owns or controls
4. Describe the actions taken by the reporting entity and any entities it owns or controls to assess and address these risks, including due diligence and remediation processes
5. Describe how the reporting entity assesses the effectiveness of these actions
6. Describe the process of consultation with any entities the reporting entity owns or controls (a joint statement must also describe consultation with the entity giving the statement)
7. Any other relevant information

Other key features of the Commonwealth Modern Slavery Act (2018) include:

- The scope of the reporting entities includes partnerships, trusts, charities, companies and universities, regardless of whether they are incorporated.
- Corporate Commonwealth entities or Commonwealth companies which have a consolidated revenue of a least \$100 million for the reporting period will also be required to report.
- A Government-run, public central repository will ensure all modern slavery statements are freely accessible by the public.
- Smaller entities that fall under the reporting threshold of AUD \$100 million can opt-in and voluntarily report.
- The first relevant period for reporting will relate to the financial year 2019. Therefore, modern slavery statements will be due between January to December 2020, depending on each company's annual reporting period
- Modern Slavery statements will need to be published within six months after the end of each financial year.

The Federal law does not impose penalties for non-compliance or for providing information that is false or misleading in your modern slavery statements, unlike the NSW Modern Slavery Act, which does impose penalties – but I suspect most organisations understand the reputational risk to their brand, and shareholders and consumers will expect compliance to the legislation.

PREPARING for Modern Slavery Legislation

- **RISK ASSESSMENT** – Conduct a high-level risk assessment. Understand where the greatest risk of modern slavery could be occurring, consider where your goods and services are procured, and focus on high-risk industries. It may be that your tier 2 suppliers propose a greater risk than your tier 1 suppliers. (Tools that can assist in conducting a risk assessment include Verisk

Preparing for Modern Slavery Legislation

Maplecroft, US Dept. of Labour – List of Goods Produced by Child Labour and Forced labour).

- **DUE DILIGENCE** – Create a sound, sustainable supply chain due diligence system. Include policies, procedures, supplier’s questionnaires, codes of conduct, objectives, action plans, audit plans, schedules and remediation plans. When conducting supply chain due diligence, consider broader human and labour rights issues.
- **ENGAGEMENT** – Conduct modern slavery and human and labour rights training. Start with your internal procurement department. Also engage with your suppliers, give them an understanding of why this is important to your organisation and to your stakeholders. Addressing these types of issues takes time, effort and commitment from all parties.
- **COMPLIANCE** – Prepare your modern slavery statement to ensure compliance with Commonwealth Modern Slavery legislation or the NSW Modern Slavery legislation. Boards are held accountable by both the federal and NSW legislation.
- **SEEK ADVICE** – Obtain legal advice to ensure you are compliant with the current modern slavery regulations (when they become available).

DISCLAIMER – this is current at time of distribution (MAY 2019) and should be used as a guide only. We suggest you seek legal advice to ensure compliance with current modern slavery legislation.

RESOURCES to assist in understanding Modern Slavery

[The Global Slavery Index](#)

[Antislavery.org](#) - lots of facts and figures relating to modern slavery, plus fact sheets, leaflets and brochures

[50forFreedom](#) – great resource for creating change to eliminate forced labour. All the countries that have ratified the ILO Convention on forced labour are listed

Australian Government, Department of Home Affairs - [Draft Guidance for Reporting Entities: Modern Slavery Act \(2018\)](#)

[NSW Modern Slavery Act \(2018\)](#) – For a full list of requirements under Part 3, Section 24 – Transparency of supply chain

[UN Global Compact – It’s time to act](#)

[News article](#), Fortescue Metals

Preparing for Modern Slavery Legislation

So how can we help?

Addressing modern slavery impacts and broader human rights issues can be challenging and complex but we're here to help.

We can help you prepare for the modern slavery legislation by supporting you to:

- Create a roadmap with practical solutions and recommendations for stakeholders
- Understand current modern slavery legislation requirements
- Prepare your modern slavery statement
- Mentor and support internal staff with the modern slavery due diligence process
- Conduct an executive board presentation
- Train and bring awareness to internal stakeholders about human and labour rights issues and modern slavery practices
- Conduct a gap assessment of existing policies and practices and identify areas of implementation, compliance and improvement
- Establish a sustainable supply chain due diligence system, including:
 - * Conducting a high-level risk assessment of your suppliers and contracted services
 - * Mapping your suppliers and identifying modern slavery risks within your supply chain
 - * Setting objectives and action plans to address modern slavery risks and broader human rights impacts
 - * Creating a Suppliers Code of Conduct to meet company and stakeholders' expectations
 - * Developing policies, manuals and templates that give guidance in supply chain due diligence
 - * Modern slavery and human rights impact auditing advice

We also provide tools, guides and templates that you can use directly with your suppliers in the due diligence process – you don't have to create these from scratch!

Please contact us if we can help you prepare for the modern slavery legislation or if you need help with sustainable supply chain due diligence.

We offer a free initial consultation to discuss your sustainability needs.

Our Principal, Libby Staggs can be contacted on:

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