

The Modern Slavery Act 2018 (Cth) (MSA) requires entities that carry on business in Australia with an annual consolidated revenue of more than AU\$100 million to report annually on how they address modern slavery risks in their operations and supply chains. The Australian government has recently finished consulting on the first three-year review of the MSA, with a publicly available report to be tabled into Parliament. This update discusses the MSA generally, as well as selected consultation topics that may inform future legislative or administrative change in this area.

What Is Modern Slavery?

Modern slavery is an umbrella term to describe situations where offenders use coercion, threats or deception to exploit victims and undermine their freedom. According to 2021 Global Estimates, there are approximately 49.6 million victims of modern slavery worldwide.

The MSA defines “modern slavery” as conduct that is either a criminal offence under Divisions 270 or 271 of the Criminal Code Act 1995 (Cth) (Criminal Code) or that falls under one of two international instruments (the Trafficking Protocol and the Worst Forms of Child Labour Convention).

“Modern slavery” applies to a broad range of slavery practices, such as slave trading; servitude; forced labour; forced marriage; child marriage; child trafficking; domestic and global human trafficking; debt bondage; trafficking in persons; organ trafficking; and child labour.

Modern Slavery Act Requirements

One element of Australia’s National Action Plan to Combat Modern Slavery 2020-25 was the commencement of the MSA in 2019.

The dual aim of the MSA was to increase business, consumer and government awareness of modern slavery risks, and support entities to identify, report and address these risks. The MSA was also designed as a practical way of giving effect to Australia’s international treaty obligations to prevent and combat human trafficking, slavery and slavery-like practices.

Under the MSA, companies that carry on business in Australia and have a minimum annual consolidated revenue of AU\$100 million are required to report annually on how they address modern slavery risks in their domestic and global operations and supply chains. The statement must be approved by the principal governing body of the entity and signed by a responsible member of that body (ordinarily the board, with the chairman as signatory).

The annual statement must describe:

- The entity’s identity
- The structure, operations and supply chains of the entity
- The risks of modern slavery practices in the entity’s operations and supply chains and in any entities that the entity owns or controls
- The actions taken by the entity and any entities it owns or controls to assess and address those risks, including due diligence and remediation processes
- How the entity assesses the effectiveness of such actions
- The process of consultation between the entity and any entities it owns or controls
- Any other information considered relevant

Consequences for Non-Compliance

There are currently no financial penalties for non-compliance with the MSA. However, the minister has the power to name and shame entities and provide details of non-compliance to the public.

The state of Western Australia (WA) introduced Australia’s first debarment and suspension regime on 1 January 2022, where suppliers may be excluded from doing business with the WA government. Under the Procurement Act 2020 (WA) and the Procurement (Debarment of Suppliers) Regulations 2021 (WA), suppliers can be debarred from government work for up to two years if they have failed to comply with modern slavery reporting requirements in the last three years.

Effectiveness

Various academic and human rights groups have reported that Australian modern slavery statements largely adopt a minimum compliance approach.

A 2022 report, *Paper Promises? Evaluating the early impact of Australia’s Modern Slavery Act*, examined statements submitted to the government’s Modern Slavery Register by 102 companies operating or sourcing from certain high-risk sectors. It found that:

- 77% of companies failed to address all mandatory reporting criteria in their statements
- 52% failed to identify obvious modern slavery risks in their operations and supply chains
- Only 25% of companies disclosed the location of their suppliers, with most failing to identify suppliers beyond the first tier of their supply chain
- Just 27% of companies appeared to be taking some form of effective action to address modern slavery risks

Legislative Review

The MSA undergoes legislative review every three years, and the first review was completed on 31 March 2023, with a publicly available report being tabled into each House of the Parliament within 15 sitting days.

Key issues being explored in the review include:

- **Impact of the MSA** – Whether there has been a positive impact on combatting modern slavery.
- **Reporting threshold** – Whether to lower the reporting threshold below its current level of AU\$100 million in annual consolidated revenue, potentially to as low as AU\$50 million, to require a larger number of entities to report under the MSA.
- **Reporting criteria** – Whether to reframe the criteria that are currently less well complied with (i.e. the requirements to describe a reporting entity’s consultation process and how it assesses the effectiveness of its actions) and whether additional guidance should be provided on the scope of a reporting entity’s “operations and supply chains”.
- **Due diligence obligations** – Whether the concept of “due diligence” should be embedded more specifically in the MSA to more explicitly spell out the due diligence steps companies should take to identify and address modern slavery.
- **Enforcement measures for non-compliance** – Whether to introduce enforcement measures, such as giving courts power to grant injunctions to compel compliance, adopting a policy that non-compliant reporting entities will be excluded from government contracts, or introducing financial penalties.
- **Anti-slavery Commissioner** – The establishment of the independent Anti-slavery Commissioner and its role, functions and powers.

Actions to Take

There is an increasing focus on combatting modern slavery practices in Australia. Businesses should reflect whether their modern slavery risk management, due diligence and reporting frameworks are sufficient to respond to any changes, as the review suggests that Australia’s modern slavery reporting regime may be substantially strengthened. Businesses with complex and globalised supply chains, or those that operate in sectors and jurisdictions with an increased risk of modern slavery, should start preparing for potential legislative changes.

In light of the changing landscape, please speak with a member of our team if you would like to discuss how your business can improve its modern slavery risk management and reporting requirements.

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