

## **Mandatory reporting for businesses under proposed Modern Slavery Act**

In December 2017, the final report on modern slavery was released by the Australian Parliament's Joint Standing Committee on Foreign Affairs, Defence and Trade (the **Report**). To ensure that Australian businesses avoid profiting from modern slavery in their global supply chains, the Report recommended that mandatory reporting requirements be enacted as part of a new proposed Modern Slavery Act.

Whilst many Australians consider slavery to be largely historic, it is more widespread today than at any time in history. This is a concern for business and community leaders. Almost every country has strict laws against slavery. However, these laws are not being sufficiently enforced. The Walk Free Foundation's Annual Global Slavery Index showed that in 2016 there were around 45.8 million people, in over 167 countries, living in some form of modern slavery.<sup>1</sup>

Australia, as a developed nation, is primarily exposed to modern slavery by the global supply chain. The global supply chain enables businesses worldwide to stay competitive by reducing their production costs. However, sometimes these reduced costs are caused by modern slavery practices.

Mandatory reporting requirements have been proposed to break this connection by helping Australian businesses develop and maintain responsible and transparent supply chains.

### **What is 'modern slavery'?**

Identifying 'modern slavery' is sometimes difficult; the Report considered that it should be defined broadly in the proposed Modern Slavery Act to include:

- modern slavery crimes under the *Criminal Code Act 1995* (Cth) (such as slavery, servitude, forced labour, trafficking in persons, forced marriage, child trafficking, debt bondage, and other slavery like practices);
- child labour as defined by UNICEF and the International Labour Organisation;

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<sup>1</sup> <[www.globalslaveryindex.org/download](http://www.globalslaveryindex.org/download)>

- child exploitation (including in residential institutions and through orphanage trafficking); and
- other slavery like practices.

### **The proposed Modern Slavery Act and its primary objectives**

Governments have traditionally held the role of protecting human rights. However, industrialisation and globalisation allow Australian business to take an increasingly greater role in this area. They can create reform by reducing demand for inappropriate practices in the global supply chain.

Accordingly, the Australian Government, in a consultation paper, announced that the primary objective of a Modern Slavery Act would be to *“equip and enable the business community to respond effectively to modern slavery and develop and maintain responsible and transparent supply chains.”*<sup>2</sup>

The Government in the consultation paper, suggested that this can be achieved by:

- *“improving the business community’s awareness of modern slavery risks, including at senior levels;*
- *creating an environment in which businesses feel ‘safe’ to identify and disclose modern slavery risks in their operations and supply chains;*
- *encouraging the business community to identify and address modern slavery risks beyond first tier suppliers and through their entire supply chains;*
- *supporting business to use their market influence and leverage to work with suppliers to improve workplace standards and practices;*
- *facilitating a ‘race to the top’ by providing reputational incentives for businesses to take action on modern slavery; and*

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<sup>2</sup> Australian Government, ‘Modern Slavery in Supply Chains Reporting Requirement – Public Consultation Paper and Regulation Impact Statement’ (August 2017), page 10.

- *improving the information available to consumers and investors about what businesses are doing to combat modern slavery.*<sup>3</sup>

### **Which entities will be required to report?**

The Report recommended that the mandatory reporting requirements apply to the following entities:

- (a) companies;
- (b) organisations (such as religious bodies);
- (c) the Australian Government and Commonwealth government agencies;
- (d) incorporated and unincorporated associations;
- (e) trusts;
- (f) partnerships; and
- (g) superannuation funds,

with an annual turnover of \$50 million or more. By comparison, the UK's Modern Slavery Act has a turnover threshold of £36 million, which is roughly \$62 million.

Under the proposed reforms, the relevant entities will be required to produce a modern slavery statement which will address specific areas. The statements would have to be published in the last 5 months of the financial year and approved by the board.

Furthermore, in an effort to improve accountability and reward compliance by increasing transparency, the Report recommended that the Australian Government publish a list of entities required to make a modern slavery statement, as well as the past statements made by those entities. The Report also suggested that the Government publish a list of the entities that voluntarily made a modern slavery statement.

### **Compliance**

It is necessary that the proposed Modern Slavery Act contain appropriate compliance measures, to ensure relevant entities comply with the mandatory reporting requirements.

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<sup>3</sup> Ibid.

Proposed compliance methods include publishing a list of entities who have failed to report. However, questions remain as to other possible compliance methods and/or penalties and which Government agency would be responsible for compliance. The Report proposed that entities be exposed to non-compliance penalties from their second year of reporting onwards.

Perhaps unsurprisingly, the Report suggested that the Australian Securities and Investment Commission play a role in the enforcement of the proposed compliance methods and that any proceeds collected be used to support modern slavery victims. The Report also recommended that in 3 years' time the Government undertake a review of the penalty provisions.

To promote transparent and open reporting, the Report suggested that, at least initially, there should be no penalties for businesses that identify modern slavery risks in their supply chains. The Report suggested that any such penalties should be considered in the proposed review of the proposed Modern Slavery Act.

The Report also recommended introducing a requirement that the Australian Government only procure goods and services from entities that have complied with the reporting requirements. This will be a powerful incentive for many businesses to comply with the reporting requirements, because the Government has annual procurement activities of over \$56 billion.

### **Detailed government guidance**

To help assist Australian businesses respond to and reduce modern slavery, the Report recommended that the Government provide detailed guidance on how to deal with modern slavery. The guidance should include case studies, suggest minimum standards, identify high-risk industries and goods and explain how to respond to modern slavery, if discovered.

In the first few years, the Report suggested that the Government should focus on developing guidance, as well as best-practice sharing and collaboration between business and society to raise general awareness of modern slavery. This will help create an environment in which businesses feel 'safe' to identify and disclose modern slavery risks in their operations and supply chains.

## **Conclusion**

It is expected that a draft Modern Slavery Bill will be presented to the Commonwealth Parliament this year. The Act will be an important step in the fight against the exploitation of workers globally and could make Australia one of the leading countries in this fight.

For Australian businesses, the likely introduction of the Modern Slavery Act means that they should consider whether they may be subject to the mandatory reporting requirements and how they could take effective steps to address potential issues in their operations and supply chains.

Since it is likely that the proposed Modern Slavery Act will be complex, some entities may have difficulties implementing the reporting requirements in the Modern Slavery Act.

**Resolve Litigation Lawyers** specialise in regulatory investigations and commercial dispute resolution and can assist with disputes about the implementation of the proposed Modern Slavery Act. For more information and support please contact **Nicola Nygh** on **02 8298 6000**.

**Disclaimer:** Please note that this note is a summary only and therefore is general in nature. Specific advice should be obtained in relation to specific problems and issues.