

Modern Slavery

ACC Australia

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PART 1 – INTRODUCTION TO MODERN SLAVERY – LOCALLY AND GLOBALLY

Prevalence of Modern Slavery

As of 2018:

40.3 million

people in modern slavery



Female

71%



Male

29%



\$354 billion

at-risk products imported by G20 countries

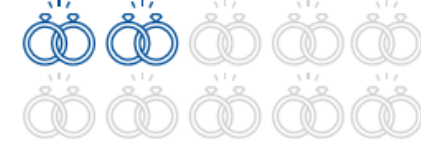


24.9 million

24.9 million in forced labour

15.4 million

in forced marriage

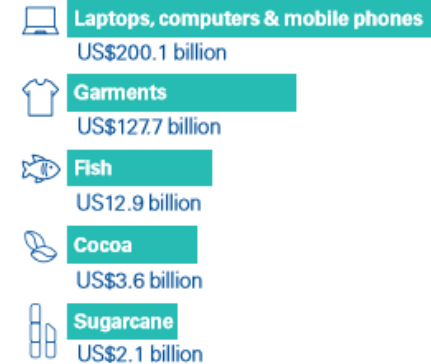


On any given day in 2018, there were



people living in conditions of modern slavery in Australia

Top 5 At-risk products of modern slavery imported into the G20:



Walk Free Foundation, Global Slavery Index (2018), <http://www.globalslaveryindex.org/>

The prevalence of modern slavery



The prevalence of modern slavery

- › 40.3 million victims globally
- › 26.7 million migrant workers
- › 18% of forced labour is exploited in the construction industry
- › 71% of victims are female
- › 25% of victims are children
- › Global Estimates of Modern Slavery (International Labour Office, 2017)
- › Modern Slavery revenue globally estimated at more than \$150 billion per year (report by the International Labour Office, UN)
- › USA Today 22 Jan 2016 “Modern-day slavery a multi-billion dollar business”

The prevalence of modern slavery - Sector

- › Domestic work – 24%
- › Construction – 18%
- › Manufacturing – 15%
- › Agriculture, forestries and fishing – 11%
- › Accommodation and food service activities – 10%
- › Wholesale and trade – 9%
- › Personal services – 7%
- › Mining and quarrying – 7%
- › Begging – 4%

Where does Modern Slavery fit?

MODERN SLAVERY

- Worker cannot refuse or cease work because of coercion, threats or deception.
- Worker may also be deprived of personal freedom

DANGEROUS OR SUBSTANDARD WORKING CONDITIONS

- Worker can refuse or cease work but doing so may lead to detriment.
- Worker is not paid fairly and does not receive some or all entitlements.
- Worker may be required to work excessive hours.
 - Workplace is unsafe.

DECENT WORK

- Workers' rights respected.
- Worker free to refuse or cease work.
- Worker paid fairly (at least the minimum wage).
 - Workplace is safe.



Part 2 – The Law in Australia

- › Overview
 - › Origins of the law and international landscape
 - › NSW Act
 - › Commonwealth Act and new Guidelines
- › Key compliance issues
 - › When to publish
 - › Consequences of non-compliance
 - › Other issues – Opting in / jurisdictional overlap / NSW Regulations
- › What is working in UK and lessons from 4 years of implementation
- › *Workshop 2 – Entity Reporting and Timeline*
- › Guest speaker: Jennifer Burn – NSW Interim Anti-Slavery Commissioner

Origins of the law

- › UK legislation – *Modern Slavery Act 2015* (UK)
 - › In response to UK Government 2014 Modern Slavery Strategy
 - › World’s first Modern Slavery Act
 - › “An Act to make provision about slavery, servitude and forced or compulsory labour and about human trafficking, including provision for the protection of victims; to make provision for an Independent Anti-slavery Commissioner; and for connected purposes.”



UK legislation – Modern slavery statement

- › Applies to “commercial organisation” with a total turnover of **£36 million** (including the turnover of its subsidiaries)
- › Commercial organisations must prepare a slavery and human trafficking statement each financial year
 - › A statement of the steps the organisation has taken to ensure that slavery and human trafficking is not taking place
 - › in any of its supply chains
 - › in any part of its own business



NSW legislation – *Modern Slavery Act 2018* (NSW)

- › First jurisdiction in Australia
 - › Act came into force on 21 June 2018
 - › Expected to commence on 1 July 2019
- › Applies to 'commercial organisations' with an annual turnover of more than \$50 million in a financial year



Modern slavery includes the following:

- a) any conduct constituting a modern slavery offence,
- b) any conduct involving the use of any form of slavery, servitude or forced labour to exploit children or other persons taking place in the supply chains of government agencies or non-government agencies

[Modern Slavery Act 2018 \(NSW\) section 5](#)



NSW legislation – Application

- › A ‘commercial organisation’ is a company, partnership or association that:
 - › has employees in NSW
 - › supplies goods and services for profit or gain
 - › has a total turnover in a financial year of not less than \$50 million
- › Section 24(1) of the Act

- › Note: does not include NSW government agencies – separate regime

NSW legislation – Modern slavery statement

- › Commercial organisations must prepare a modern slavery statement each financial year
- › The Regulations will prescribe:
 - › what the statement must include (guidance provided by the Act)
 - › when the statement must be published (likely to be within five months of the end of the financial year)
- › Section 24(2) – (6) of the Act

NSW legislation – Modern slavery statement

- › The Act provides the following guidance on what the Regulations may require for a statement - being information on:
 - › the organisation's structure, its business and its supply chains
 - › due diligence processes in relation to modern slavery in its business and supply chains
 - › the parts of its business and supply chains where there is a risk of modern slavery taking place, and the steps it has taken to assess and manage that risk
 - › the training about modern slavery available to its employees
 - › Section 24(5) of the Act

NSW legislation – Application to Government

- › Separate regime for NSW Government agencies
- › Government agency includes a:
 - › Government sector agency
 - › NSW Government agency
 - › State owned corporation
 - › incorporated company under which one or more shareholders are a Minister of the Crown
 - › a council, county council or joint organisation within the meaning of the *Local Government Act 1993* (NSW)
 - › any other public or local authority that is constituted by or under an Act or that exercises public functions

NSW legislation – Application to Government

- › Requirement to report annually
- › Separate regime – new provisions under the:
 - › *Public Works and Procurement Act 1912* (NSW)
 - › requires government agencies to take reasonable steps to ensure goods and services are not the product of modern slavery
 - › NSW Procurement Board (in consultation with Commissioner) may issue directions to government agencies re reasonable steps to be taken

NSW legislation – Application to Government

- › Separate regime – new provisions under the
 - › *Public Finance and Audit Act 1983 (NSW)*
 - › allow the Auditor-General to conduct audit to assess whether goods and services procured by government agencies are the product of modern slavery
 - › *Annual Reports (Departments) Regulation 2015* and *Annual Reports (Statutory Bodies) Regulation 2015*
 - › requiring annual reports to include:
 - › a statement of action addressing any issue raised by the Commissioner in the previous year
 - › a statement of steps taken to ensure goods and services procured were not the product of modern slavery

NSW legislation – Application to Government – Consultation with Commissioner

- › Regular consultation required between the Commissioner, Auditor-General and NSW Procurement Board to:
 - › monitor the effectiveness of due diligence procedures
 - › ensure that the procurement of goods and services by government agencies are not the product of modern slavery

- › Section 25 of the Act

NSW legislation – Role of Commissioner

- › Professor Jennifer Burn appointed as Interim Commission on 21 December 2018
- › Will lead the implementation of the Act before its full commencement on 1 July 2019

- › Role of Commissioner under the Act
 - › Public register
 - › Develop codes of practice
 - › Public awareness and advice

NSW legislation – Penalties

- › A penalty of up to \$1.1 million for:
 - › failing to prepare a modern slavery statement
 - › failing to publish a modern slavery statement
 - › providing false or misleading information in connection with a modern slavery statement
 - › Sections 24(2), 24(6) and 24(7) of the Act

NSW legislation – Public register

- › A public register of modern slavery disclosures of:
 - › any commercial organisation that has disclosed modern slavery in its supply chains
 - › any organisation that has voluntarily disclosed modern slavery in its supply chains
 - › any Government agency failing to comply with directions concerning procurement of goods and services that are the product of modern slavery
- › Kept by the Commissioner
- › Publicly available and free of charge to access

NSW legislation – Court orders

- › Court may make a modern slavery risk order if:
 - › a person is:
 - › convicted of a modern slavery offence
 - › poses a risk of engaging conduct constituting modern slavery; and
 - › the order:
 - › will reduce the risk
 - › is necessary for protecting persons generally or a particular person from harm
 - › Maximum penalty: \$55,000 or 2 years imprisonment

NSW legislation – Modern Slavery Offence

- › Modern Slavery Offence defined in Act
 - › Includes:
 - › Slavery and slavery-like offences (Crimes Act 1900)
 - › Slavery, servitude and forced labour offences (Commonwealth Criminal Code)
 - › Deceptive recruiting for labour or services (Commonwealth Criminal Code)
 - › Forced marriage (Commonwealth Criminal Code)
 - › Debt bondage (Commonwealth Criminal Code)

Commonwealth legislation - *Modern Slavery Act 2018* (Cth)

- › Assented to on 10 December 2018
- › Commenced on 1 January 2019

- › Recently released Draft Guidance for Reporting Entities

- › An Act to establish a Modern Slavery Reporting Requirement and require certain large businesses and other entities in Australia to make Modern Slavery Statements on their actions to address modern slavery risks in their operations and supply chains
 - › Explanatory memorandum



modern slavery means conduct which would constitute:

- (a) an offence under Division 270 or 271 of the Criminal Code; or
- (b) an offence under either of those Divisions **if the conduct took place in Australia**; or
- (c) trafficking in persons; or
- (d) the worst forms of child labour.

Modern Slavery Act 2018 (Cth) section 4

*First national legislation in the world to define modern slavery



Commonwealth legislation – Criminal Code

- › Divisions 270 and 271 include:
 - › Slavery offences – including exercising a right of ownership over a person arising from a debt or contract
 - › Debt bondage – where a person pledges their services (or services of another) as security for a debt if the debt is manifestly excessive
 - › Trafficking in persons – People smuggling – organising forced entry to or exit from Australia – reckless as to whether that person will then be exploited
- › The worst forms of child labour – extreme forms of child labour that involve the serious exploitation of children, including through enslavement or exposure to dangerous work – not all child work

Commonwealth legislation - Application

- › Will apply to Australian organisations with a revenue over **\$100 million** per financial year
- › Compare to:
 - › \$50 million – NSW Act
 - › £36 million – UK Act



Each of the following is a **reporting entity** in relation to a reporting period:

- (a) an entity with a revenue over \$100 million for the reporting period if:
 - (i) the entity is an Australian entity at any time in that reporting period; or
 - (ii) carries on business in Australia at any time in that reporting period
- (b) the Commonwealth
- (c) a Commonwealth entity or company with a revenue over \$100 million for the reporting period
- (d) an entity which has volunteered to comply with the requirements of this Act

Modern Slavery Act 2018 (Cth) section 5 – meaning of *reporting entity*



Commonwealth legislation – Application in closer detail

- › An entity will need to report if it:
 - › has a consolidated revenue of at least AUD \$100 million over its twelve month reporting period
- AND
- › is an Australian entity at any time in that reporting period
- OR
- › is a foreign entity carrying on business in Australia at any time in that reporting period

Application in closer detail – who is an entity?

- › Entities include:
 - › Individuals
 - › Partnerships
 - › Legal entities – companies / trusts / superannuation funds
 - › Non-for profit entities
 - › Charities

- › A foreign entity carrying on business in Australia meets the requirements of section 21 of the *Corporations Act 2001* (Cth)

Application in closer detail – how do I calculate revenue?

- › An entity's consolidated revenue is:
 - › the total revenue of that entity **and** any entity it controls
 - › to be determined using the Australian Accounting Standards
- › Excludes:
 - › revenue of entities that own or control it
 - › revenue from intercompany transactions between entities of the same consolidated group

Application in closer detail – Commonwealth entities

- › the Commonwealth
- › a Commonwealth entity or company with a revenue over \$100 million for the reporting period

- › NB: A Separate Guide will be provided for Commonwealth entities

Application in closer detail – Opting in

› An entity may volunteer to comply with the requirements of this Act

› Section 5 of the Act

› Three requirements:

1. Check if you are eligible to provide a voluntary statement
2. Notify the Department of Home Affairs that you will provide a voluntary statement
3. Prepare and submit a statement that complies with the requirements for statements under the Act

When do I report? (Aus Financial Year)

1 JAN 2019

1 JUL 2019

30 JUNE 2020

31 DEC 2020



MODERN SLAVERY ACT 2018
COMMENCES

FIRST REPORTING PERIOD
COMMENCES

FIRST REPORTING
PERIOD ENDS

FIRST MODERN
SLAVERY
STATEMENT
DUE

When do I report? (1 Apr to 31 Mar Fin Yr)

1 JAN 2019

1 APR 2019

31 MAR 2020

30 SEP 2020



MODERN SLAVERY ACT 2018
COMMENCES

FIRST REPORTING PERIOD
COMMENCES

FIRST REPORTING
PERIOD ENDS

FIRST MODERN
SLAVERY
STATEMENT
DUE

Commonwealth legislation – Penalties

- › None
- › Compared to significant penalties under NSW

Other issues

- › Opting in
- › Jurisdictional overlap
- › Independent NSW Commissioner v Cth Minister of Department of Home Affairs
- › NSW Regulations ... watch this space

UK lessons

Things going well

- › Improved data and statistics
- › Increased prosecutions under the Act
 - › 51 prosecutions in 2016
 - › 130 prosecutions in 2017

Key criticisms

- › Lack of compliance .. due to lack of tough consequences?
- › Generic statements
 - › *“Only a handful of leading companies have demonstrated a genuine effort in their reporting to identify and mitigate risks”* Business and Human Rights Resource Centre
- › Lack of central register – easy fix?

UK lessons

- › July 2018 - the Home Secretary announced an independent review of the Modern Slavery Act 2015
- › Final report ... watch this space

Commonwealth legislation – Modern Slavery Statement – Mandatory Criteria

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

*Criteria not currently required under the NSW Act (refer to comparison table in workbook)

How to: scope your entity's modern slavery risks

- › STEP 1:
 - › Map out the broad operations and overall supply chain structure of your entity
- › STEP 2:
 - › Check which of the sectors, types of products and services, countries and entities that you have identified may involve high modern slavery risks
 - › Sector and industry risks
 - › Product and services risks
 - › Geographic risks
 - › Entity risks

PART 4 – SUPPLIER ONBOARDING AND CHANGES TO SOURCING AND CONTRACT DOCUMENTS

- › The Engagement and Contracting Process
 - › Onboarding of New Suppliers and New Supplier Checklist
 - › Routine Updates of Onboarding Process with Existing Suppliers
 - › Company Policies and Modern Slavery
 - › Contract Clauses and Pitfalls

Onboarding of New Suppliers

› Tenders and Schedules

› Tender Form

- › More about the supplier – Revenue / Corporate Group
- › Add to Corporate Policies Schedule
- › Create whole new Questionnaire – Supplier Questionnaire
- › Add Modern Slavery and Supply Chain Schedule

Company Policies and Modern Slavery

Incorporating modern slavery procedures into relevant policies is an useful prevention measure. Policies that should address modern slavery include:

- › Procurement, Purchasing, Sourcing And Subcontracting Policies
- › Whistle-blowing Policy
- › Migrant Worker Policy
- › Human Rights Policy
- › Gender Policy
- › Recruitment Policy
- › Child Labour Policy
- › Child Protection Policy
- › Supplier Code Of Conduct
- › Employee Code Of Conduct
- › Grievance Policy
- › Human Resources Policy

Contract Clauses and Pitfalls

- › New Contract Clauses and Rights
 - › ***Warranties / Representations***
 - › Modern Slavery Statements
 - › Compliance with Law
 - › Information provided

Contract Clauses and Pitfalls

› New Contract Clauses and Rights (cont.)

› *Information and Disclosure*

- › Keeping of records sufficient to enable verification of source of supply (location, vendor entity etc)
- › Obligation of continual disclosure and provision of information (due diligence)
- › Ongoing obligation to report:
 - › An actual or suspected Modern Slavery Offence in its supply chain
 - › Any instance of an actual or alleged Modern Slavery or Human Rights violation (eg through Whistleblowing Policy etc)
- › Specific consent allowing for disclosure / reporting of information provided (release from Privacy and Confidentiality claims)

Contract Clauses and Pitfalls

› New Contract Clauses and Rights (cont)

› *Information and Disclosure (cont)*

- › Ongoing obligation to allow audits (social audits) including
 - › provision of information
 - › documents and details (eg employment contracts, wage slips etc)
 - › access to management, employees and subcontractors for interviews etc

Contract Clauses and Pitfalls

› New Contract Clauses and Rights (cont)

› *Training*

- › Supplier obligation to train personnel, contractors, consultants and others in its operation

› *Subcontractors*

- › Subcontractor compliance

› *Indemnities and Limitations*

- › Specific indemnity
- › Limitations of Liability?
- › Loss of Reputation and Consequential Loss Exclusions
- › Modern Slavery breach = specific termination right (material and essential term)



Any questions?



Thank you

Disclaimer

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