

# MODERN SLAVERY

A REPORT CARD ON MODERN SLAVERY  
STATEMENTS

Lessons for the **Construction Industry**

October 2021

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# 1.0. INTRODUCTION

## 1.1. COMMENCEMENT DATE

On 1 January 2019 Australia joined the international fight against modern slavery with the commencement of the Modern Slavery Act 2018 (Cth) (“the Modern Slavery Act” “the MSA”) [1].

As a result, under the MSA major Australian businesses entities with an annual consolidated revenue of more than \$100m are required to submit annual Modern Slavery Statements setting out the risks of modern slavery within their operations and supply chains, as well as the actions taken to address those risks.

## 1.2. RECENT SCORECARD RESULTS

After the inaugural deadline for reporting under the MSA the Monash Centre for Financial Studies released a report dated 5 August 2021 [2] (“the Report”) ranking the Modern Slavery Statements of the 100 largest listed companies on the ASX.

Those statements were given a score out of 100 based on the extent to which the statements met – or exceeded – the disclosure requirements of the MSA.

The Report revealed wide disparities in the quality and disclosure levels of the Modern Slavery Statements lodged by those companies under the MSA.

According to the Report, the top-ranking companies with the best scores had prioritised the management of modern slavery risks and were transparent in how they assessed the risk of modern slavery practices in their operations and supply chains.

The Report also identified companies that demonstrated a poor level of transparency where they described modern slavery risks within their business.

The Monash Report follows an earlier review by Australian Borderforce of the first tranche of statements, in which Borderforce identified good practice trends and areas for improvement.[3]

## 1.3. LESSONS AND GUIDANCE

There are many lessons in the Report for large businesses especially those businesses within the construction industry where the risk of modern slavery is high due to diverse, complex and fragmented supply chains.

This eBook unpacks some of the key findings of the Report and provides some guidance to large businesses within the construction and related industries relevant to the preparation of Modern Slavery Statements and to the improved effectiveness of modern slavery risk management.



# 2.0.

# WHAT IS MODERN SLAVERY?

'Modern slavery' is a global phenomenon which describes a range of activities that seriously deprive individual liberty and freedoms. These activities extend beyond mere unfair labour practices and unfair pay, as slavery violates fundamental human rights through coercion, threats, deception and physical control.

In the Commonwealth Government Guidance for Reporting Entities ("the Guidance Document") the term is defined to describe situations where:

***“coercion, threats or deception are used to exploit victims and undermine or deprive them of their freedom.” [4]***

The MSA defines modern slavery as including eight types of serious exploitation; trafficking in persons; slavery; servitude; forced marriage; forced labour; debt bondage; deceptive recruiting for labour or services; and the worst forms of child labour.

# 3.0.

# MODERN SLAVERY STATEMENTS

## 3.1. THE REPORTING REQUIREMENT

The MSA was developed through extensive consultation with business and civil society and investors and passed on 29 November 2018 with the MSA commencing and implementing the National Modern Slavery Reporting Requirement on 1 January 2019.

The MSA requires entities that meet the threshold of \$100 million in consolidated revenue (as well as voluntary reporting entities), to publish annual Modern Slavery Statements on an online central register.

Under the MSA; Modern Slavery Statements are required to describe the risks that may give rise to slavery abuses in both supply chains and operations, and demonstrate how reporting entities have managed those risks.

According to the Guidance Document the reporting requirement under the MSA is intended to:

- "increase business awareness of modern slavery risks,"
- "reduce modern slavery risks in the production and supply chains of Australian goods and services, and"
- "drive a business to 'race to the top' to improve workplace practices ...(and) ...also increase information available to consumers, investors and business partners." [5]

The Guidance document further states at [39] that:

- "The Government expects reporting entities to take a 'continuous improvement' approach to compliance."
- "This means that reporting entities' statements should improve in quality and demonstrate progress over time as the business community increases its understanding of modern slavery..."

## 3.2 IMPACT OF COVID

Australia Borderforce has published guidelines on how reporting entities can address the impact of COVID-19 in their modern slavery statements. [5A]

## 3.3 WHAT ARE THE REPORTING PERIODS?

There are different reporting periods and due dates for the lodgement of Modern Slavery Statements depending on the financial year or other annual accounting period applicable to the entity. [6]

Irrespective, Modern Slavery Statements are due within six months of the end of the relevant reporting period. [7]

The deadlines for submission of the 2021 Modern Slavery statements are fast approaching.

- For the reporting period of 1 July 2020 to 30 June 2021, the Statement is due 31 December 2021
- For the reporting period of 1 April 2020 to 31 March 2021, the Statement was due 30 September 2021
- For the reporting period of 1 January 2021 to 30 December 2021 the Statement is due 30 June 2022.

# 4.0.

# WHAT SHOULD STATEMENTS CONTAIN?

## 4.1. KEY AIM

A key aim of the MSA is to support business to identify and address their modern slavery risks and maintain responsible and transparent supply chains.

Major corporations are therefore held to a higher standard of good workplace practices, and media scrutiny is a major threat to commercial relationships and community trust.

## 4.2. MANDATORY CRITERIA

Under the MSA, Modern Slavery Statements are required to include the following 7 mandatory criteria and demonstrate continuous improvement in compliance with the Act over successive reporting periods.

- Criterion 1 - Identify the reporting entity;
- Criterion 2 - Describe the structure, operations and supply chains of the reporting entity;
- Criterion 3 - Describe the risks of modern slavery practices in the operations and supply chains of the reporting entity;
- Criterion 4 - Describe the actions taken by the reporting entity to assess and address those risks, including due diligence and remediation processes;
- Criterion 5 - describe how the reporting entity assesses the effectiveness of such actions;
- Criterion 6 - describe the process of consultation with any entities the reporting entity owns or controls; and
- Criterion 7 - provide any other relevant information.

# 5.0. CONSEQUENCES OF NON- COMPLIANCE

## 5.1. "NAMED AND SHAMED"

While the MSA does not impose financial penalties for non-compliance, the Minister for Home Affairs has the power under the Act to request non-compliant entities to provide an explanation for their failure to comply within 28 days and to undertake remedial action. [8]

Public access to the Statements otherwise aims to increase accountability to the community, and entities would do wisely to avoid being 'named and shamed' due to inadequate, 'bare minimum' and 'template' reporting.

## 5.2. BENEFITS OF COMPLIANCE

On the other hand, a clear anti-slavery procurement policy can improve investor and consumer confidence, build brand equity and increase employee loyalty.

Compliant and transparent design and construction companies can also be recognised by industry certification schemes such as the Infrastructure Sustainability Council of Australia (ISCA) rating system, [9] which will grant a competitive edge when tendering for projects.

As Commonwealth Government agencies are also required to report under the Modern Slavery Act, the risk levels of tenderers for Commonwealth projects will be assessed so agencies can demonstrate they have mitigated modern slavery within their own supply chains.

Additionally, the Modern Slavery Act 2018 (NSW) (which has not yet commenced) provides that the NSW Anti-Slavery Commissioner is required to monitor the effectiveness of the NSW Procurement Board's due diligence procedures in place to ensure that the procurement of goods and services by government agencies are not the product of modern slavery. [10]



# 6.0.

# THE MONASH UNIVERSITY REPORT

## 6.1. KEY FINDINGS

In assessing the performance of large business under the MSA, Monash University scored and ranked the level of supply chain disclosure and the mitigation strategies described in the published Modern Slavery Statements of ASX100 companies. [11]

Some of the conclusions and the key findings of the Report include:

- That is "there is a wide range in the disclosure quality of the published Modern Slavery Statements;"
- "Large companies with large number of employees and big supply spend scored well on slavery disclosure quality;"
- "Good modern slavery statements showed a history of continued effort in managing modern slavery and other human rights issues;"
- "The most common specific modern slavery risks addressed by statements are forced labour, child labour and debt bondage"

## 6.2. BEST MODERN SLAVERY STATEMENTS

At page 12, the Report found that the best Modern Slavery Statements provided:

- a clear description of the supply chain including suppliers by number, dollar spent, regions and countries,
- clear information about employees and details of number of direct hires, labour hire contracts, and the coverage of Enterprise Agreements,
- clear scoping and assessment of risk (based on materials/goods/services bought, or location of suppliers)
- substantial discussion of specific modern slavery risks that are firm-specific
- a systematic approach to assess supplier risks,
- information of supplier audits done, issues identified, and if they are resolved, a plan of further audits, and
- a clear set of KPIs for effectiveness assessment.

## 6.3. BOTTOM-RANKING STATEMENTS

Common issues of bottom-ranked statements as identified by the Report include:

- poor description of the supply chain, leading to unclear understanding of exposure to risks,
- risk assessment involving a general discussion of modern slavery risk in general and failing to examine the firm-specific risks,
- unclear description of governance structure to manage modern slavery risks ,
- unclear description of remediation process (such as grievance mechanisms),
- incomplete picture of how the company assesses the effectiveness of its actions in response to modern slavery risks ,
- no specific KPIs, and
- a lack of understanding of available resources and tools to learn about and assess risks.

## 6.4. RECOMMENDATIONS FOR COMPANIES

For Companies looking to improve their management of modern slavery risks, the report recommended that they should:

(a) improve their current due diligence and remediation processes as well as engage and educate their suppliers to reduce future supply chain risks.

(b) assess their exposure to modern slavery risks in the supply chains based on the demographics of their suppliers, the economic size of their supply spend and the nature of their transactions with each supplier.

## 6.5. RECOMMENDATIONS FOR INVESTORS

The Report recommended that Investors should engage with portfolio companies by:

- seeking to improve the disclosure quality of Modern Slavery Statements;
- communicating investor concerns about modern slavery risks,

- enhancing companies due diligence and remediation process and
- ensuring that the Board of the company has the ultimate responsibility to oversee modern and slavery and human rights.

## 6.6. RECOMMENDATIONS FOR REGULATORS

The Report recommended that Government should seek to:

- strengthen the Act;
- harmonise reporting requirements with the NSW Act; improve timeliness and quality of Modern Slavery Statements; provide more guidance to companies
- improve remediation mechanism and processes,
- adopt a more holistic approach and continue to engage with companies and investors.

# 7.0. MODERN SLAVERY RISKS IN CONSTRUCTION

## 7.1. DESCRIBING STRUCTURE, OPERATIONS AND SUPPLY CHAINS

Although the Report, considered large companies across a range of industries, it has particular relevance for the construction industry where the supply chain is inherently complex particularly as products and materials can travel through many jurisdictions from manufacture to installation.

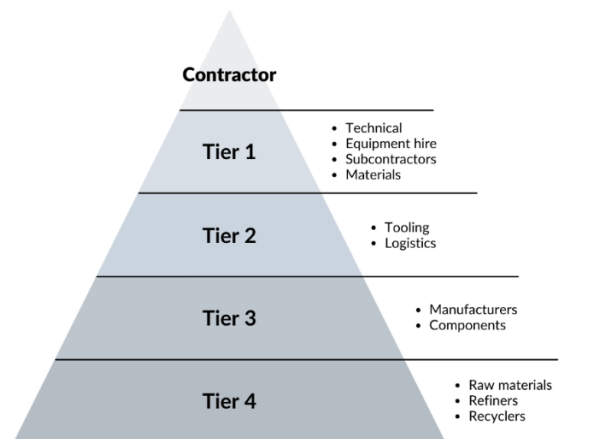
Where the construction, engineering or related industry participant is a reporting entity; the recommendations contained in the Report are particularly relevant for satisfying compliance with the 7 criterion prescribed by the MSA.

As a starting point; the Statement should describe both direct and indirect suppliers.

For a construction firm, direct suppliers may include specialist subcontractors, equipment hire and local labour.

To the extent possible, the use of suppliers should be categorised and weighted by type and region.

Figure 1: Example of the Tiered Supply Chain



If an entity has control of foreign subsidiaries, it should include descriptions of the operations of the other entities within the group and the products or services and source location of their respective suppliers.

The greater the understanding of the supply chain, the greater the ability to identify key modern slavery risks. Following are examples of key risks to the construction sector which should be considered when forming slavery risk mitigation strategies.



## 7.2. PRODUCT & SECTOR RISK

Reporting entities should identify high-risk goods and services used or manufactured in their supply chains.

For example, some high-risk products which have been flagged by the Global Slavery Index 2018 include raw materials such as timber, bricks, electronics and textiles.

High-risk sectors include manufacturing, forestry and mining. [12]

## 7.3. GEOGRAPHIC RISK

Products and services sourced from countries with a weak rule of law, poverty, ineffective law enforcement, conflict and a high occurrence of government corruption hold a greater risk of modern slavery abuses.

Construction entities should therefore identify instances where raw materials are sourced from overseas, which may require communication with suppliers downstream.

Geographical sources of materials and components should also be identified when contracting with new suppliers for the first time.

Entities may gain a clearer picture of this risk by engaging with participants in their supply chain

that operate at key control points' such as importers or manufacturers.

These supply chain participants may have more readily available information relating to the original source of materials.

## 7.4. BUSINESS MODEL RISK

Aggressive pricing combined with outsourcing labour decreases emphasis on responsible procurement in favour of efficiency and flexibility.

Strict project delivery timeframes may also require materials and labour quickly, and the fast-tracked engagement of suppliers is likely to impact upon due diligence procedures.

Reporting entities in construction should therefore identify this modern slavery risk due to the lack of transparency of product and labour sources during project delivery.



# 8.0. TAKING ACTION TO ADDRESS THE RISKS

Developing an action plan to manage modern slavery risks is an important way for reporting entities to keep on top of their "blind spots" and track progress in making substantive changes to their supply chains.

These strategies should be clearly identified in the Statement to communicate to the public a responsible, measured and proactive approach.

## 8.1. PROCUREMENT POLICIES

Entities that operate in design and construction should take action to address modern slavery risks in their procurement policies.

Design teams should assess whether products listed in their materials libraries are fabricated without forced labour.

Communication with suppliers regarding expectations, use of questionnaires and consideration of 3rd party audit reports and NGO findings on suppliers can build greater confidence in designs and product choices.

Construction teams should also modify procurement policies and incorporate a due diligence procedure that assesses the risk profile of suppliers.

This risk assessment should consider several factors including:

- Geographical source of products and/or materials;
- Level of training in relation to modern slavery risk;
- Any history of human rights violations;
- Whether low-skilled labour is used within the supplier's organisation or supply chains;
- Supplier policy statements, codes of conduct and modern slavery risk management protocols;

- Audit certificates;
- Industry and ethical standards certifications; and
- Supplier statements, reports or declarations regarding modern slavery, human rights or ESG.

## 8.2. CONTRACTS

Reporting entities should have their existing agreements and template contracts reviewed to include clauses that:

- Establish grievance reporting mechanisms and responses to instances of modern slavery;
- Establish communication channels between procurers and suppliers to enable support in relation to modern slavery risks;
- Ensure the parties have undertaken proper training;
- Oblige suppliers to provide information to the reporting entity in relation to its labour practices;
- Provide rights for the reporting entity to request information and conduct audits for the purposes of meeting requirements under the Act;
- Ensure that all sub-supply agreements contain provisions dealing with modern slavery.

If an entity controls operations in a high-risk country, it can build terms into their standard contracts that:

- require suppliers to submit modern slavery risk management plans, or
- enable termination if suppliers or subcontractors appear to have engaged in human rights abuses.

However, termination of supply contracts and relationships in response to instances of modern slavery should be used as a last resort, as this will not help to promote responsible business for high-risk suppliers.

## 8.3. MANAGING THE CHAIN OF POSSESSION

To the extent possible, reporting entities should trace the journey of products and raw materials from source to end user. Chain of custody certification schemes such as the Forestry Stewardship Council (FSC) [13] can also increase entities' understanding and confidence in their own supply chain.

Notably, in 2017 amendments to the Queensland Building and Construction Commission Act 1991 (Qld) introduced duties on supply chain participants (eg. manufacturers, importers and installers) to ensure that building products comply with regulations. [14]

This amendment was largely in response to the danger of combustible cladding products.

However, entities may seek to use this regime as a model to achieve confidence and promote accountability in their supply chains.

## 8.4. TRAINING

Management should receive education on how to mitigate modern slavery risks contractually, and how to effectively implement risk management strategies such as the implementation of grievance mechanisms, due diligence and internal audits.

Teams in charge of drafting the Modern Slavery Statement should also fully understand their obligations under the Act to ensure compliance, and boards should be made aware of key issues to assist with overall risk governance. Construction firms should also be particularly well-informed on industry-specific modern slavery risks.

Procurement teams should be trained in how to analyse supply chains and assess the risk level of their suppliers.

Procurers should be aware of key warning signs to look for when conducting due diligence or audits of suppliers, such as inefficient and opaque sourcing processes, restrictions on workers or poor complaints procedures.

Entities should also note which source countries are not signatory to international treaties and conventions relating to modern slavery and have weak governance and regulation.

## 8.5. REMEDIATION FRAMEWORKS

Reporting entities should develop action plans in case modern slavery is discovered in their supply chain and collaborate with suppliers to enable change.

As a priority, entities should develop grievance mechanisms which allow for the anonymous lodgement of a complaint to be followed up by an internal investigation and external advice if necessary.

# 9.0.

# ASSESSING EFFECTIVENESS

Reporting entities must demonstrate any progress made to address modern slavery risks. This requires entities to diligently track actions taken in the reporting year and compare them with outcomes identified in their action plans.

Internal and independent third-party audits are an effective way to increase accountability, and KPIs can be implemented and cited in modern slavery statements to provide a snapshot of progress made during the reporting year.

Some helpful questions for an internal self-assessment checklist include:

- What changes in operations or commercial relationships have occurred in your business to address modern slavery risks?
- Which levels of management received training on modern slavery risks and who provided that training?
- How many of your suppliers received training during the reporting period?
- What proportion of your existing supply contracts have modern slavery clauses?
- Have any grievances relating to modern slavery been lodged, and how were they dealt with?
- Have you received third party feedback or assessment of your modern slavery risk strategy or modern slavery statement?

# 10.0.

# CONSULTATION AND COMMUNICATION

Reporting entities are required to demonstrate that they have engaged with other entities that are under their control.

Entities will therefore need to demonstrate they have established effective communication channels and teams that meet on an organised basis to discuss and inform on issues such as:

- Changes to major suppliers and any shift in the modern slavery risk profiles of suppliers;
- Changes to procurement policies;
- Progress of training and the development of risk management plans; and
- Feedback necessary to produce a compliant Modern Slavery Statement.

# 11.0.

## STATUS OF THE NSW ACT

In mid-2018, NSW Parliament passed its own version of the Modern Slavery Act. That Act introduced an additional mandatory reporting requirement for NSW entities with over \$50 million annual turnover.

However, in October 2021, NSW Parliament tabled the Modern Slavery Amendment Bill 2021 (NSW) [15]. This Bill proposes to repeal the reporting requirement, which if passed, means that only NSW entities with annual consolidated revenue over \$100 million will be required to report under the Commonwealth Act.

Don Harwin, NSW Special Minister of State, and Minister for the Public Service and Employee Relations, Aboriginal Affairs, and the Arts, stated that the reason for the repeal was to:

*“...remove the regulatory burden on the New South Wales private sector and businesses of complying with two schemes” [16]*

The Bill provides that the NSW Act is to commence on 1 January 2022 [17]. Key amendments include:

- The introduction of an Anti-Slavery Commissioner with various powers and duties, including to ensure that goods and services procured by NSW government agencies are not the products of modern slavery;
- The creation of new offences such as child forced marriage;
- Making victims support generally available to victims of acts of modern slavery committed in NSW.

If the proposed amendments to the NSW Act are passed, businesses in NSW will be required to report only under the Commonwealth Act. The Commonwealth Act will undergo a statutory review in 2022 which will evaluate the efficacy of the current national modern slavery reporting regime.



# 12.0.

## KEY TAKE-AWAYS

- Entities should recognise the commercial advantage of proper modern slavery reporting as well as the potential consequences of 'bare minimum reporting'.
- As a priority, reporting entities should map the key areas in their operations and supply chains which hold modern slavery risks.
- Entities should establish effective and targeted risk mitigation strategies which can be clearly described in a Modern Slavery Statement.

# 13.0.

## HOW KREISSON CAN HELP

Modern slavery legislation in Australia is still new, and the construction industry must continue to learn about its obligations under law and to the broader community.

Kreisson can assist with this challenge through:

- Planning organisational strategy to manage modern slavery risks;
- Training on identification and mitigation of modern slavery risks for employees, procurement teams, management and suppliers;
- Review and amendment of supply contracts to incorporate reporting and remediation processes and bind parties to mitigate slavery risks;
- Review and assistance with development of a Modern Slavery Statement;
- Third party auditing, assessment of effectiveness of response to slavery risks and recommendations to improve compliance;
- Updating internal procurement, due diligence, recruitment, and grievance policies

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