

GOVERNMENT AND ACTIVISTS INCREASE FOCUS ON MODERN SLAVERY RISKS

06 September 2017 | Australia

Legal Briefings - By **Carolyn Pugsley, Myra Stirling, Michael Gonski, Amanda Lyras, Kristin Stammer and Amalia Stone**

On 16 August 2017, the Australian Government announced a proposal to introduce a modern slavery reporting requirement applying to all large Australian businesses.

The proposal, which enjoys broad support from a number of prominent Australian businesses, feeds into the growing emphasis on addressing modern slavery risks within the supply chains of Australian businesses. Prominent social activist, the Australasian Centre for Corporate Responsibility (**ACCR**), is currently pursuing a campaign to requisition resolutions regarding the same issue at upcoming listed company AGMs.

WHAT IS THE RATIONALE FOR THE NEW REPORTING REQUIREMENT?

'Modern slavery' is a broad term used to describe practices including human trafficking, forced labour, sexual slavery, child labour and trafficking, domestic servitude and debt bondage. Estimates suggest that there are 45.8 million people in modern slavery around the world, including 30.4 million victims in the Asia Pacific region.

The Government expects that Australian businesses are exposed to modern slavery risks in their operations and supply chains, recognising that a 2015 study found that 71 per cent of companies believe there is a likelihood of modern slavery occurring at some point in their supply chain.

The Government believes that large businesses are well placed to play a key role in addressing modern slavery given their size and market influence and is introducing reporting requirements for this reason. The reporting requirement is intended to equip and enable the business community to respond more effectively to modern slavery and develop and maintain responsible and transparent supply chains.

WHAT DUE DILIGENCE OBLIGATIONS WILL BUSINESSES HAVE?

The Government has expressly decided **not** to introduce any requirement on businesses to undertake due diligence to identify and respond to human rights abuses due to the associated compliance burden. This is consistent with the UK modern slavery legislative regime, but in contrast to equivalent regimes in jurisdictions such as France, The Netherlands and the EU.

Rather, the proposed regime is focused on enhancing transparency regarding an entity's supply chains through compulsory reporting requirements.

KEY FEATURES OF THE PROPOSED REPORTING REGIME

The proposed key features of the new reporting regime are:

<p>Threshold <i>Who needs to comply?</i></p>	<p>The reporting requirement will apply to entities with at least \$100 million total annual revenue that are headquartered in Australia or have any part of their operations in Australia. Entities below the threshold can opt-in to the reporting requirement.</p>
<p>Form <i>What form does reporting take?</i></p>	<p>Each entity covered by the reporting requirement must publish a Modern Slavery Statement annually on its webpage. The statement must be approved at the equivalent of board level and signed by a director.</p>
<p>Content <i>What does a statement need to cover?</i></p>	<p>At a minimum, a statement must include information about:</p> <ul style="list-style-type: none"> • the entity’s structure, its operations and its supply chains; • the modern slavery risks present in the entity’s operations and supply chains; • the entity’s policies and process to address modern slavery in its operations and supply chains and their effectiveness (such as codes of conduct, supplier contract terms and training for staff); and • the entity’s due diligence processes relating to modern slavery in its operations and supply chains and their effectiveness. <p>The prescription of minimum content requirements are a departure from the UK regime, which provides optional criteria that a statement may address. This departure is in response to feedback that the lack of prescribed requirements</p>
<p>Timing <i>When must a statement be published?</i></p>	<p>Each entity covered by the reporting requirement must publish its statement within 5 months after the end of the Australian financial year.</p>
<p>Repository <i>Will there be a central database of statements?</i></p>	<p>The Government will provide a free, publicly accessible central repository of statements. Provision for a central repository is in response to feedback that the lack of such a repository is a key shortcoming of the UK regime, and that including this feature would improve scrutiny by investors, consumers and NGOs and make it easy for comparisons to be made between entities.</p>
<p>Non-compliance <i>What happens if an entity does not comply?</i></p>	<p>There will be no punitive penalties for non-compliance. However, the Government will monitor compliance and entities that do not comply may be subject to public criticism.</p>
<p>Guidance <i>What guidance will be provided?</i></p>	<p>The Government intends to provide clear and detailed guidance and awareness raising materials for businesses. The materials are anticipated to include a reporting template, best practice examples and information about how businesses can remedy and report instances of modern slavery in their supply chains or operations.</p>

The full proposal is outlined in the Government's [Consultation Paper](#) titled 'Modern Slavery in Supply Chains Reporting Requirement'. The Consultation Paper builds on the findings and recommendations in the [Interim Report](#) of the Joint Parliamentary Committee tasked with considering whether a Modern Slavery Act, comparable to the modern slavery legislation adopted in the UK, should be introduced in Australia.

In the Interim Report, the Government has also signalled that it is considering introducing a Procurement Connected Policy on Human Rights, as well as procurement requirements that only apply to entities that have submitted a Modern Slavery Statement (including entities that opt-in to the reporting requirement).

WHEN WILL THE REPORTING REQUIREMENT BE INTRODUCED?

New legislation that will establish the reporting requirement is expected to be introduced in the first half of 2018. However, the proposal to introduce the reporting requirement has not yet been finalised, and public feedback is invited on the proposal with written submissions due by 20 October 2017.

WHAT HAS BEEN THE RESPONSE OF THE BUSINESS COMMUNITY?

Submissions to the Joint Parliamentary Committee suggest that there is significant business support for enhanced supply chain reporting in Australia.

A key benefit identified by the business community is that enhanced transparency with respect to companies' supply chains would create a level playing field for Australian businesses which are actively seeking to address modern slavery risks, or who may already be required to comply with reporting regimes in the UK, US or EU. By highlighting and making companies' policies regarding modern slavery risks public, it is expected that any 'competitive advantages' enjoyed by industry laggards would be eliminated over time - both as a result of increased external scrutiny from NGOs and customers, as well as a more proactive approach to the issue from the companies themselves.

This response from Australian businesses is consistent with the UK experience, where the equivalent reporting regime was the direct result of lobbying by businesses involved in the Ethical Trade Initiative and British Retail Consortium.

HOW CAN AUSTRALIAN BUSINESSES RESPOND TO THE REPORTING REQUIREMENT?

Australian businesses should:

- build awareness of modern slavery risks within the organisation recognising that the topic will be an area of focus for Boards, customers and shareholders in the future;
- if they do not have existing policies or codes of conduct in relation to modern slavery risks, develop or adopt a policy or code of conduct appropriate for the industry sector relevant to their business;
- investigate the extent to which existing policies and procedures, and supply contracts, address modern slavery risks in their operations and supply chains;
- have appropriate mechanisms in place to deal with reports of modern slavery risks that may be made through whistleblower channels;
- if supply contracts do not already address modern slavery risks, ensure that they do going forward. This includes obligations on suppliers to comply with anti-slavery and human trafficking policies and procedures, restrictions on sub-contracting, record-keeping obligations to allow for tracing of the supply chain, reporting and audit obligations, and a right to terminate immediately for breach of these obligations;
- consider auditing partners and suppliers in relation to compliance, including the extent to which those partners and suppliers require their sub-contractors to comply, and where its investigations or audit finds that a supplier, or its subcontractor, is engaging in modern slavery, take steps to change its supply chain;
- consider the extent of any existing reporting undertaken and whether it addresses the minimum content criteria in a Modern Slavery Statement (outlined above); and
- consider making a submission on the proposed reporting requirement.

What is the recent activist campaign in relation to modern slavery?

The Australasian Centre for Corporate Responsibility (**ACCR**) has recently announced its intention to requisition resolutions on human rights risks at the AGMs of some of Australia's biggest companies (see [link](#)). The ACCR campaign follows a survey it conducted of policies and procedures aimed at ensuring human rights are not violated within companies' supply chains. ACCR has stated its current intention is to target Woolworths and Wesfarmers for the 2017 AGM season, however, it is anticipated that more companies may be affected in future years.

Steps to address and comply with the Government's proposed reporting regime are anticipated to help companies respond to concerns regarding their practices in relation to human rights risks. However, as usual, the substance of companies' underlying procedures and the quality of disclosure are likely to be determinative in addressing NGO, shareholder or customer concerns.

The Committee is also considering whether legislative changes are required in regard to the relevant criminal offences and approach to detection and prosecution. We will continue to monitor the work of the Committee and will report on significant developments.

[Business and Human Rights hub](#)

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



CAROLYN PUGSLEY
MANAGING PARTNER,
CORPORATE,
MELBOURNE
+61 3 9288 1058
Carolyn.Pugsley@hsf.com



MICHAEL GONSKI
PARTNER, SYDNEY

+61 2 9225 5083
Michael.Gonski@hsf.com



KRISTIN STAMMER
PARTNER, SYDNEY

+61 2 9225 5572
Kristin.Stammer@hsf.com



AMALIA STONE
SPECIAL COUNSEL,
SYDNEY
+61 2 9225 5522
Amalia.Stone@hsf.com

LEGAL NOTICE

The contents of this publication are for reference purposes only and may not be current as at the date of accessing this publication. They do not constitute legal advice and should not be relied upon as such. Specific legal advice about your specific circumstances should always be sought separately before taking any action based on this publication.

© Herbert Smith Freehills 2022

SUBSCRIBE TO STAY UP-TO-DATE WITH INSIGHTS, LEGAL UPDATES, EVENTS, AND MORE

Close