

THE FEDERAL MODERN SLAVERY BILL BECOMES LAW

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Legal Briefings - By **Jacqui Wootton, Antony Crockett, Penny Brooke, Travis Gooding, Lucy McFarlane and Madeline Winterbottom**

The *Modern Slavery Bill 2018* (Cth) (**Bill**) was passed into law on 29 November 2018. It is expected to commence in January 2019.

The Bill creates an ongoing obligation for 'Reporting Entities' to file a modern slavery statement (**Statement**) - being a report on the steps the entity has taken to assess and address risks of modern slavery in its operations and its supply chains during a reporting period. It is the second piece of legislation creating such an obligation to be passed in Australia, with NSW passing its own *Modern Slavery Act 2018* earlier this year.

Companies should be taking steps now to determine:

1. if they are a Reporting Entity and are required to prepare a Statement (and if so, in which jurisdiction);
2. what steps they need to be taking during their next financial year in order to make a compliant Statement; and
3. when their first Statement needs to be prepared by (this will depend on when the Bill actually commences and will not be the same for all companies).

Further information on whether your organisation is required to report on modern slavery risks under the Bill and what must be included in a modern slavery statement can be found in our previous articles, [here](#) and [here](#). For advice specific to your organisation, we encourage you to contact one of the authors of this article.

Larger enterprises with a business presence in the United Kingdom may have already published a Modern Slavery Statement pursuant to the *UK Modern Slavery Act 2015*. While the Bill is similar to the UK legislation, it is not identical and organisations subject to both regimes will need to review their relevant policies and processes to ensure compliance with the requirements of the Bill.

KEY TAKEAWAYS

1. Entities which meet the required revenue and activity thresholds will be required to report on modern slavery risks within both their operations and their supply chain.
2. Assuming the Bill commences in January 2019, most Reporting Entities will be required to prepare and publish their first Statement in 2020, but may be as late as 2021.
3. Reporting Entities should start taking steps now to ensure they will be able to prepare a compliant first Statement.
4. The Minister for Home Affairs will have the power to request a Reporting Entity explain a failure to prepare a Statement and request the Reporting Entity take remedial action to prepare or rectify a Statement. Failure to prepare a Statement or comply with a request can result in the Minister for Home Affairs publishing details of the company and the non-compliance.
5. According to the Explanatory Memorandum, the Government is preparing detailed guidance on the reporting requirement, which is expected to be published prior to the commencement of the Bill.
6. The Statement will need to be signed by a director (or other responsible officer) and be approved by the board or other governing body of the reporting entity.

THE BILL IS EXPECTED TO BECOME LAW IN EARLY JANUARY 2019

The Government's explanatory memorandum indicates that the legislation is expected to enter into force in January 2019. This means that organisations will need to be able to prepare a modern slavery statement that covers the 2019/20 financial year. We anticipate that most reporting entities will be required to prepare and publish their first modern slavery statement in 2020 but the obligation may arise as late as 2021.

WHO HAS TO PREPARE A STATEMENT

Organisations that have an annual consolidated revenue of more than A\$100 million and which:

1. are Australian entities; or
2. are 'carrying on business in Australia',

will be required to make an annual Statement to the Minister of Home Affairs. The Minister is responsible for establishing an online Modern Slavery Statements Register, which will be publicly accessible.

While at first glance the criteria appear simple, a number of the relevant definitions are exceedingly technical. There is a risk that entities not obviously meeting these requirements will be captured and be obliged to prepare a Statement. Multi-national entities with complex corporate structures in particular should be carefully considering which of their entities are Reporting Entities.

CONSEQUENCE OF FAILING TO PREPARE A STATEMENT

Failing to prepare a Statement or failing to comply with a request of the Minister of Home Affairs will not result in a penalty. However, the Minister for Home Affairs will have the power to publish, on the register, details of such a failure.

In addition, Reporting Entities should be aware that entities that they supply to may also be Reporting Entities required to prepare a Statement (including the Commonwealth). The fact of having assessed and addressed modern slavery risks, or the fact of having issued a Statement, may become a more common feature of your customers' due diligence processes.

WHAT SHOULD REPORTING ENTITIES DO NOW?

To adequately report on modern slavery risks, Reporting Entities need to know whether their goods and services are sourced ethically and responsibly. To assist Reporting Entities prepare to report on modern slavery risks, organisations should consider the following:

1. **Awareness and training** – What training and awareness raising do you undertake internally and with suppliers?
2. **Risk assessment** – Do you know the areas of highest risk within your supply chain?
3. **Due diligence** – How do you select suppliers and contractors? Do you rely on first tier suppliers or contractors to undertake due diligence further down the supply chain?
4. **Engagement** – What protections and mechanisms do you include in your contracts?
5. **Monitoring** – What monitoring do you undertake on suppliers and contractors?
6. **Speak up mechanisms** – Do you have mechanisms to encourage concerns to be brought to your attention so that you have an opportunity to investigate and respond?
7. **Oversight** – Do senior management and the Board have adequate visibility and oversight over mitigation steps/potential issues?

AMENDMENTS WHICH MAY BE REVISITED AT THE THREE-YEAR REVIEW

Various amendments to the Bill were narrowly defeated in the Senate, and they may be revisited at the statutory three-year review. Those amendments include:

1. the introduction of penalties for non-compliance;
2. the introduction of an independent statutory officer to monitor and scrutinise the implementation of the Bill, and help address gaps in enforcement and victim support;
3. a review of the threshold for reporting (A\$100 million).

KEY CONTACTS

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



ANTONY CROCKETT
PARTNER, HONG
KONG
+852 21014111
Antony.Crockett@hsf.com



**JACQUELINE
WOOTTON**
PARTNER, BRISBANE
+61 7 3258 6569
jacqueline.wootton@hsf.com



TIMOTHY STUTT
PARTNER, SYDNEY
+61 2 9225 5794
Timothy.Stutt@hsf.com



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

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