

# TOOLS DOWN: A REVIEW OF MODERN SLAVERY OBLIGATIONS IN THE CONSTRUCTION SECTOR

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Legal Briefings - By **Nina O'Keefe**

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The term "modern slavery" covers a range of serious human rights violations, including human trafficking, slavery, forced labour, debt bondage, and the worst forms of child labour. Some may assume that such grave offences could only occur in the most extreme circumstances, perhaps in developing nations that have inadequate legal systems and lack human rights protection. What may be alarming, then, is that some of the most significant forms of systemic modern slavery impact on markets in which the Japanese construction sector is highly active.

More than 40 million people are in slavery today, according to the International Labour Organization and major industries, such as the construction sector, are fraught with modern slavery risk within their supply chain. Seemingly innocent practices can harbour complex, far-reaching instances of exploitation, which can carry significant commercial and legal risks including for Japanese construction industry participants with overseas operations.

There is not yet a single global approach to modern slavery, but the requirements for disclosure and the need to report mean that it is increasingly important that those in the sector are aware of, and are fully compliant with, the emerging rules. In this article we take the UK and Australia as examples of the approach being adopted; but many other jurisdictions such as France and California have brought in their own protections and the number of states doing so will only increase. It is essential to be ready.

***MODERN SLAVERY LEGISLATION: UK AND AUSTRALIA SNAPSHOT***

Companies that do business in the UK – this does not mean they need to be incorporated there – and have an annual turnover in excess of £36 million are required to report under the Modern Slavery Act 2015 (the "**UK MSA**"). Each financial year, they must disclose steps taken to ensure that slavery and human trafficking are not taking place in its business or supply chain.

In comparison to the UK MSA, Australia's Modern Slavery Act 2018 (the "**Australian MSA**") goes even further. The Australian MSA requires all Australian entities and non-Australian entities that carry on business in Australia with an annual consolidated revenue of at least AU\$100 million, to comply with prescribed reporting requirements. Reporting entities must submit a statement each financial year describing the risks of modern slavery, as well as the actions they have taken to assess and address these risks in their operations and supply chain (as well as in respect of any entities that they own or control).

### **HIGHER RISK OF MODERN SLAVERY IN THE CONSTRUCTION SECTOR**

By its very nature, construction is an industry full of risk. Common risks relate to delays, safety hazards, conflicts between parties, and cost overruns. Modern slavery risk is yet another risk for business to bear in mind. Modern slavery may be disguised in a number of forms, such as excessive working hours, debt bondage, wages below the minimum wage requirements, hazardous working environments, and deceptive and dangerous practices.

According to a report issued by the [UK Chartered Institute of Building](#), modern slavery generates revenue of US\$150 billion globally each year. More than 20% of that figure (roughly US\$34 billion) comes from the construction, manufacturing, mining and utilities industries. These four sectors are also responsible for approximately half of the world's forced labour population.

Much of the construction sector consists of a mobile workforce, which means high rates of staff and contractor attendance at sites as well as increased levels of employee turnover. These conditions, if not properly monitored and regulated, could lead to practices deemed to constitute modern slavery.

Other common risk factors of modern slavery in the construction sector include:

- pressure on costs and time schedules;
- a high concentration of migrant labour;
- a reliance on agency and subcontracted labour; and
- a lack of visibility over multifaceted supply chains.

## ***WHAT DO GOVERNMENTS EXPECT FROM THE CONSTRUCTION INDUSTRY?***

Modern slavery statements published by construction businesses to date in the UK and Australia have been criticised by some for their deficiency. For example, some statements are brief and fail to show any real evidence that a risk assessment has been undertaken.

The results of a recent survey of 169 British construction businesses showed that while the majority of businesses believe their organisation has made a commitment to tackle modern slavery, many have failed to take any further action to prevent modern slavery within their operations or supply chain.

Reviews of the first batch of published statements under the Australian MSA show that only a handful of businesses conducted risk assessments beyond the first tier of their supply chain. This can be a problem in industries with complex and extensive supply chains, such as the construction sector, where the risks may increase as you go further down the tiers of the supply chain.

Submitting statements under applicable legislation may not be enough without a thorough review of their supply chains, introducing modern slavery policies, and adequately training staff and other stakeholders on the purpose and implementation of such policies.

## ***FUTURE DEVELOPMENTS***

In the coming years, some industry experts believe that attitudes toward ethical business and procurement will have an even greater influence on the construction sector than they currently do. The construction industry may see the introduction of further reform to better protect vulnerable workers, as it did in relation to workplace health and safety legislation several decades earlier.

If businesses fail to properly engage with instances of modern slavery in their operations, they not only face grave risk to the safety of their workers, but other potential reputational and legal risks. Now more than ever, businesses are facing increased pressure from investors in relation to corporate social responsibility matters such as modern slavery, and these types of issues could be a source for claims by shareholders and investors in the future.

To actively manage modern slavery risk, businesses should engage frequently and consistently with internal stakeholders as well as suppliers, and ensure this practice becomes part of the organisation's broader risk management framework.

## ***CONCLUSION***

The construction sector is especially vulnerable to modern slavery risks. Increasing global focus on ESG issues (Environmental, Social and Governance) are likely to mean that companies looking for public sector contracts, or those looking to expand in developed markets or to acquire subsidiaries in those markets are going to need to have, and be seen to have, modern slavery policies in place. Businesses must now consider and assess the legal and commercial risks arising from modern slavery in their operations and supply chain. The legislative trends suggest the legal risks will only become greater for the industry, and the risk of reputational damage if businesses are seen to be turning a blind eye to modern slavery exists today.

If you would like to discuss modern slavery issues, please reach out to the authors of this article or your usual Herbert Smith Freehills contact. You can also check out our ESG, Sustainability and Responsible Business hub [here](#) for more details on how we can help manage the risks stemming from environmental, social and governance issues.



## KEY CONTACTS

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



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