



# Modern Slavery Risks, Rights & Responsibilities

A GUIDE FOR COMPANIES AND INVESTORS

February 2019

This survey was commissioned by the Australian Council of Superannuation Investors and conducted by KPMG

acsi

# ABOUT ACSI

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Established in 2001, the Australian Council of Superannuation Investors (ACSI) provides a strong, collective voice on environmental, social and governance (ESG) issues on behalf of our members.

Our members include 39 Australian and international asset owners and institutional investors. Collectively, they manage over \$2.2 trillion in assets and own on average 10 per cent of every ASX200 company.

Our members believe that ESG risks and opportunities have a material impact on investment outcomes. As fiduciary investors, they have a responsibility to act to enhance the long-term value of the savings entrusted to them.

Through ACSI, our members collaborate to achieve genuine, measurable and permanent improvements in the ESG practices and performance of the companies they invest in.

We undertake a year-round program of research, engagement, advocacy and voting advice. These activities provide a solid basis for our members to exercise their ownership rights.

We also offer additional consulting services including: ESG and related policy development; analysis of service providers, fund managers and ESG data; and disclosure advice.



# ACKNOWLEDGEMENTS

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## KPMG

This report was commissioned by ACSI and prepared by KPMG. KPMG wishes to acknowledge the contribution of the following human rights, supply chain, sustainability, risk, legal and internal audit specialists in producing this report:

**Richard Boele**

Partner, KPMG Banarra, Human Rights and Social Impact Services  
Head of the KPMG Global Business and Human Rights Network

**Dr Meg Brodie**

Human Rights Service Line Lead, KPMG Banarra  
Manager of the KPMG Global Business and Human Rights Network

**Tina Jelenic**

Manager and Senior Human Rights Specialist  
KPMG Banarra

KPMG's team also included: Adrian King, Partner in Charge, Sustainability Services; Prakash Wilson, Partner, Internal Audit, and Suneeta Kamdar, Philip Chan, Rita Fentener van Vlissingen and Timothy Stamp.

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## INTERVIEW PARTICIPANTS

Many business leaders, including those diligently working behind closed doors to improve their capacity to identify and manage modern slavery risks, also contributed valuable insights and expertise to this report. A select number were approached to reflect on their experiences for attribution, among them:

**Rosemary Bissett**

Head of Sustainability Governance and Risk  
National Australia Bank

**Jorge Chapa**

Head of Market Transformation  
Green Building Council of Australia

**Poonam Datar**

Chief Executive Officer  
Cleaning Accountability Framework

**Christian Ewert,**

Director General  
amfori – Trade with Purpose

**Sam Mostyn**

Non-executive Director  
Mirvac Group

**Margaret Taylor**

Group Company Secretary  
BHP

# FOREWORD

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The term 'modern' is commonly used to distinguish the present from the past. In this sense, 'modern slavery' is a misnomer. Slavery is as inhumane, pernicious and present as it ever was – a tragic conduit to a time most people assumed was behind us.

The reality is that forced labour, and related practices, likely exist in the operations or supply chains of most businesses. As noted in this report, slavery occurs in every region of the world, including Australia. The International Labour Organisation (ILO) estimated that in 2016 there were 40.3 million victims globally.

Due to their reliance on imported goods, particularly those from South-East Asia, Australian companies are significantly exposed.

As individuals, we buy, use and rely on products or services produced by sectors at high-risk of slavery. Its artefacts can be found in our homes, the streets we live on, at our local shops and workplaces. Even in those places we associate with the highest levels of concern for human welfare – healthcare facilities.

I firmly believe that people would shun businesses they thought relied on slave labour. Not only that, they would demand action against any individual who permitted it to occur. So how is it possible that slavery is still so endemic in our society?

The answer is that slavery remains hidden from view, concealed by complex global supply chains and operations. Until recently, there was no compulsion on Australian companies to inquire into its existence or their exposure. Consequently, investors and consumers had limited information about how companies manage this risk.

ACSI has been engaging with companies on labour and human rights (LHR) standards since its inception. A core focus of this work is encouraging greater public disclosure of LHR risk management. Most recently, we campaigned for the introduction of modern slavery legislation in Australia – which has now come to pass.

The new law requires Australian businesses to report on modern slavery risks in their operations and supply chains.

However, minimal or legalistic compliance is unlikely to yield change. I anticipate that investors will need to apply pressure to ensure meaningful reporting.

ACSI and our members consider labour conditions when forming investment recommendations and decisions and we do not want to be complicit in perpetuating slavery. Beyond its devastating human impact, slavery threatens business sustainability and shareholder value. We will use our collective influence and voting power to drive businesses to proactively identify and manage this risk.

This report contains valuable tools for companies and investors in the fight against slavery. Beyond identifying high-risk factors and sectors, it includes practical checklists to diagnose companies' modern slavery readiness and the effectiveness of their responses.

We will incorporate these questions into our surveillance activities and raise them in engagement meetings with companies. For some, this will be the start of a conversation; for others, an opportunity to refine their commitments and due diligence. For all companies, it is a chance to demonstrate corporate responsibility and earn their social licence.

Ultimately, finding evidence of slavery and acting to eradicate it will be viewed positively by investors. Failing to look or inquire fully will be judged harshly – like the slave traders of old.



Louise Davidson  
Chief Executive Officer

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# INTRODUCTION

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Corporate responsibility reporting has come a long way in the last decade, with vastly improved sustainability disclosure.<sup>1</sup> Australian companies, however, still fall short of their global peers on human rights reporting.<sup>2</sup>

Australian modern slavery legislation necessitates a rapid response by companies yet to prioritise human rights risks. Like many human rights violations, the practices which place people in slavery-like conditions often remain hidden from view.<sup>3</sup> Progressive change needs business, government, civil society – and, crucially, investors – to create and support a regulatory environment and social expectation that there can never be a good business case for modern slavery.

This report aims to increase the Australian business community's understanding of modern slavery risks in their operations and supply chains, and to help prepare businesses to meet new regulatory requirements for transparent public disclosure.

While there is no globally agreed definition of 'modern slavery', the term is widely used to cover a range of practices that use coercion, threats, violence or the abuse of power to exploit and deprive people of their freedom. This includes human trafficking, slavery and slavery-like practices such as servitude, forced marriage, forced labour and debt bondage, deceptive recruiting for labour or services and child labour.<sup>4</sup> These practices are crimes in international and domestic law.<sup>5</sup>

Modern slavery occurs in every region of the world. The International Labour Organisation (ILO) estimated that on any given day in 2016 there were 40.3 million victims of modern slavery globally.<sup>6</sup> Of those, 24.9 million people were estimated to be victims of forced labour, including 16 million in the private economy.<sup>7</sup>

The Global Slavery Index estimates that in 2018 there are 15,000 people living in Australia in modern slavery.<sup>8</sup> There is also an unquantifiable number of modern slavery victims working in the supply chains of Australian companies around the world.

There will be those tempted to take an approach of minimal compliance – but these companies will be quickly left behind.

The United Kingdom (UK) Home Office, in sharing its experience on the introduction of supply chain transparency reporting provisions with the Australian Parliamentary Inquiry, reflected that:

“*Business told us...that the single most useful thing government could do was to create a level playing field: an environment where responsible businesses (that take action to identify and prevent slavery in their supply chains) are rewarded and recognised, rather than being singled out for criticism or undercut by unscrupulous competitors.*”<sup>9</sup>

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It is an opportunity for business to look closely at how it manages risk and improve:

“*We have now had three years of reporting under the UK's Modern Slavery Act. We recognise that society increasingly expects businesses to respect human rights throughout their supply chains and we continue to work to understand opportunities to make a positive contribution towards human rights. We recognise that there is the potential for modern slavery and human trafficking risks in all jurisdictions, and are committed to building an ongoing dialogue with stakeholders, including suppliers and regulators, to improve our understanding of these risks. We also acknowledge the complexity associated with this commitment, and are prioritising improved transparency and integrity in higher risk jurisdictions.*”

*Margaret Taylor,  
Group Company Secretary, BHP Group*

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Putting this together will require coherence and sophistication. For many, the overarching regulatory standards will mean new ways of conceptualising risk and being prepared to openly discuss it. The underlying reason is simple – Australian businesses should not unwittingly condone or facilitate modern slavery.



# HOW TO USE THIS REPORT

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This report is divided into three parts:

## PART ONE: MODERN SLAVERY: CONTEXT

Part one provides a brief explanation of the corporate responsibility to protect human rights, the background of the United Nations Guiding Principles on Business and Human Rights, which were unanimously endorsed in 2011, and the current Australian and New South Wales modern slavery legislation. We also consider the maturing role of investors in interrogating Environmental Social Governance (ESG) risks, including human rights.

## PART TWO: HIGH-RISK SECTORS

Part two of this report examines the interrelated nature of modern slavery risks and hotspots. The fact that any given sector's supply chain will probably reach across into another sector can make separating issues difficult. This report addresses that complexity by first setting out likely high-risk areas for modern slavery, including:

- vulnerable populations
- business models structured around high-risk work practices
- high-risk product and service categories, and
- high-risk geographies.

We then focus on five ASX200 sectors considered to be high-risk for modern slavery:

- financial services
- mining
- construction and property
- food, beverage and agriculture, and
- health care.

We selected these sectors to ensure breadth of coverage as well as the relative need for particular sectors to enhance their modern slavery response. For example, significant attention on apparel supply chain risk, as well as higher levels of corporate engagement on labour standard issues in this sector meant that apparel was not selected for inclusion in this report.

While there are many themes that span across the sectors outlined above, the sector examples are intended to provide some practical guidance for entities to consider in assessing their modern slavery risks.

## PART THREE: RISK MANAGEMENT

ACSI's particular interest and focus is in supporting listed ASX200 companies to mature in their approach to non-financial disclosure, improve what is considered to be leading practice across corporate Australia, and facilitate conversations between investors, boards and executives as they prepare to publicly report on modern slavery risk.

The final part of this report offers investors, boards and executives guidance, including a series of checklists, to facilitate collaborative engagement, and discussions. These are practical tools, designed using leading global practice, allowing companies and investors to make preliminary assessments of readiness to respond to modern slavery risk.

## METHODOLOGY

ACSI partnered with KPMG Banarra – business and human rights specialists – to produce this report. A three-step methodology was adopted involving:

- desktop research and global benchmarking to identify key sectors and develop a robust evidence base for cross-cutting high-risk factors
- interviews and consultation with business executives and industry experts, and
- practical experience designing and delivering responses to human rights risks informed a series of company checklists to assist companies, investors and other stakeholders conduct a preliminary assessment of how ready they are to address modern slavery risk.

## TOWARDS LEADING PRACTICE

Where business, investors, government and civil society are committed to learning from each other and continuously improving our approach, we can and will reduce the incidence of modern slavery and the harm it creates.

# PART 1





# MODERN SLAVERY: THE CONTEXT

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Part one begins with a brief explanation of the corporate responsibility to respect human rights and demonstrates the importance of transparent reporting in nurturing public trust. Next, the provisions of the Australian legislation are explained. Finally, it concludes by considering the crucial role of stakeholders – particularly investors – in demanding better approaches to reporting and the practical actions which must underpin any genuine, public modern slavery statement.

## CORPORATE RESPONSIBILITY TO RESPECT HUMAN RIGHTS

Risk can no longer be calculated without consideration of the social impact of business operations or with disregard for where those risks lie across a supply chain.

In 2011, the unanimous endorsement of the United Nations Guiding Principles on Business and Human Rights (UNGPs) by the UN Human Rights Council firmly established the corporate responsibility to respect human rights. The UNGPs were designed in consultation with business and recognise that business may impact an individual or community's enjoyment of human rights just as much as governments.

BUSINESS IS  
EXPECTED TO LEAD

A bar chart with a single blue bar. The number '64' is written in large white font to the left of the bar.

64

percent who say that CEOs should take the lead on change rather than waiting for government to impose it

BUSINESS MUST SHOW  
COMMITMENT TO LONG-TERM

A donut chart with a blue outer ring and a darker blue inner circle. The number '56' is written in large white font to the left of the chart.

56

percent of companies that only think about themselves and their profits are bound to fail

Figure 1: Source: data from 2018 Edelman Trust Barometer: Global Report (2018) 29, 31.)

Businesses that fail to meaningfully acknowledge, act and honestly report on their responsibility to respect human rights, may find that they face a further erosion in public trust. The Edelman Trust Barometer Global Report characterised 2018 as “the battle for truth”.<sup>10</sup> The Edelman Report also found that the majority of people expect business to lead and to show commitment to long-term priorities.<sup>11</sup>

The UNGPs offer a framework for corporate leadership on human rights – a clear pathway for demonstrating commitment to long-term change.

Critically, the key UNGP requirements are reflected in recent domestic human rights transparency provisions – including in relation to modern slavery.

One thing is certain: it is increasingly untenable to ignore the corporate responsibility to respect human rights. Legislative human rights reporting requirements are proliferating worldwide.<sup>12</sup>

In September 2017, 37 states, including Australia, endorsed a UK-led ‘Call to Action’ at a side meeting of the UN General Assembly. Signatories affirmed their commitment to ‘eradicate forced labour [and] modern slavery... by developing regulatory or policy frameworks’.<sup>13</sup> The likelihood that any given company will be carrying on business in one or more reporting jurisdictions will only increase.

For Australian businesses – some of which are already reporting on human rights risk management under legislation in other countries, including the UK – the introduction of modern slavery legislation is a direct application of international business and human rights principles into law.<sup>14</sup> Importantly, it represents an opportunity to provide investors and other stakeholders with a clearer view of how well companies are managing their modern slavery risk, as well as a window into the processes they have in place to manage their social risks more generally.

## UNITED NATIONS GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS

The UNGPs require businesses to respect internationally recognised human rights by:

- Avoiding, causing or contributing to adverse human rights impacts through their own activities, and addressing such impacts when they occur, and
- Seeking to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.

Business are expected to fulfil their responsibility to respect human rights through:

- a. A policy commitment to meet their responsibility to respect human rights
- b. A human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights, and
- c. Processes to enable the remediation of any adverse human rights impacts.

*United Nations Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework* (2011) 13-35.

## THE AUSTRALIAN MODERN SLAVERY LEGISLATION

In November 2018, the Australian government passed the Modern Slavery Act 2018 (Cth) which mandates that business and government report on modern slavery in their operations and supply chains.<sup>15</sup>

The Act requires businesses that meet the determined financial threshold (\$100 million consolidated annual revenue) to produce an annual public Modern Slavery Statement approved by the board and signed by a director. Commonwealth procurement will also be covered.



*This legislation sends a clear message that modern slavery will not be tolerated in our community or in the supply chains of our goods and services."*

*Assistant Minister for Home Affairs,  
the Hon Alex Hawke MP Australian Government,  
Department of Home Affairs, Fact Sheet: Modern  
Slavery Reporting Requirement, released by  
Transnational Crime Policy Branch, 10 May 2018.*

The transparency mechanism is designed to require businesses to demonstrate continuous improvement, as their response to human rights issues matures. In the UK, benchmarking and league tables are already being issued by peak bodies and civil society, which aim to assess the adequacy of modern slavery statements.<sup>16</sup>

In Australia, Modern Slavery Statements will be published on a government-run central register, supported by a Business Engagement Unit in the Department of Home Affairs. Given the importance of public pressure in driving corporate action, the general consensus has been that a central repository will facilitate the direct comparison of statements.<sup>17</sup> Amendments passed with the Bill empower the responsible Minister to publish details of non-compliant entities.<sup>18</sup>

## MODERN SLAVERY REPORTING REQUIREMENTS

1. Identify the reporting entity.
2. The entity's structure, operations and supply chain.
3. Risks of modern slavery practices in the entity's operations and supply chain and any entities owned or controlled by the reporting entity.
4. Actions taken to assess and address modern slavery risks, including due diligence and remediation processes.
5. How the entity assesses the effectiveness of its actions.
6. The process of consultation with entities owned and/or controlled by the entity.
7. Any other information considered relevant.

*Section 16, Modern Slavery Act 2018 (Cth)*

Companies that are already identifying and managing their human rights risks are encouraged to refine their commitments and due diligence and consider how to leverage their sphere of influence for further adoption of good practice. Companies will need to report on the effectiveness of the measures they are taking to manage modern slavery risk.

Ultimately, the success of the Australian legislation will rely on stakeholder pressure for appropriate accountability and consequences for inaction. Investors have a key role in driving change in how companies prioritise their modern slavery readiness and their approach to the reporting requirements.



## STATE-BASED MODERN SLAVERY LEGISLATION: NEW SOUTH WALES

While the Commonwealth legislation was being finalised, one State pushed forward with its own efforts to regulate modern slavery. The *Modern Slavery Act 2018* (NSW) received assent in June 2018. Key features of the NSW Act include:

- Companies carrying on business in New South Wales (NSW) with annual consolidated revenue of \$50 million will be required to report.
- Failing to report or providing misleading information in statements carries a pecuniary penalty of over \$1 million.
- Mandatory reporting criteria cover similar ground. Companies will need to specify the structure, operations and supply chain of the reporting entity, explain due diligence processes, identify the parts of the business and supply chain where there is a risk of modern slavery and the steps taken to assess and manage that risk, and report on modern slavery training that is available to employees.
- An Anti-Slavery Commissioner will be established with functions including monitoring, reporting, providing assistance to victims of modern slavery and raising awareness. An interim Commissioner was appointed early in 2019.

The NSW Act is intended to operate in parallel with the Commonwealth law. Companies which meet the Commonwealth thresholds will be exempt from reporting under the NSW Act. It is anticipated that first reports are likely to need to cover actions an entity has taken to address modern slavery from 1 January 2019 onwards.



## INVESTOR ENGAGEMENT: ASSISTING COMPANIES TO PRIORITISE MODERN SLAVERY RISKS

The investor approach to ESG issues is increasingly sophisticated. In 2016, the Ethical Trading Initiative (ETI) surveyed more than 70 corporate members and found that investor interest in ESG issues had significantly increased.<sup>19</sup> ESG risks, impacts and opportunities have a material effect on companies' long-term sustainability and financial performance.

The Responsible Investment Association Australasia (RIAA) has found that 'funds that are implementing core responsible investment strategies are outperforming equivalent Australian and international share funds, and multi-sector growth funds, over most time horizons.'<sup>20</sup>

Historically in ESG reporting, the understanding of social issues has been the weakest. However, labour and human rights risks are being progressively included within ESG reporting issues and responsible investment considerations. For example, ACSI members 'consider that it is part of their fiduciary duties to engage with companies to ensure that modern slavery risks are mitigated.'<sup>21</sup>

Crucially, ACSI has previously found that labour and human rights contraventions can materially impact upon companies' reputations, disrupt operations, divert management and board resources, and potentially lead to long running costly legal consequences.'<sup>22</sup>

According to RIAA, the UN Principles for Responsible Investment and ACSI's Governance and Reporting Guidelines were found to be the most influential in shaping funds' policies, followed by the UN Global Compact's 10 Principles.<sup>23</sup> RIAA has also identified a dramatic 39 per cent increase in responsibly invested assets under management from 2016 to 2017.<sup>24</sup>

Members and customers of super funds are increasingly vocal about where, and how, their money is being invested. In November 2017, RIAA released research in relation to the attitudes which inform investment decisions. RIAA found that human rights violations were among the top three things which Australians want to avoid in their investments, and that 92 per cent of Australians expect their superannuation or other investments to be invested responsibly and ethically.'<sup>25</sup>

However, investors' exposure to modern slavery risks will continue to grow in an era of increasingly complex global supply chains, the prevalence of imports from countries with poor human rights track records, and the reliance on base-skilled workers across product and service procurement in Australia and overseas.

Despite these trends, there is limited information available to investors about how Australian companies are managing these risks. To date, ACSI has found that '[a] reliance on self-reporting is not leading to the level of transparency required by long-term investors'.<sup>26</sup>

Public reporting will put investors in a position to influence business action on modern slavery. In the context of the corporate responsibility to respect human rights, investors can raise legitimate questions about both risk and public trust as reasons for transparent reporting. Investors will also need to develop their own capability to understand and interpret what meaningful action to address modern slavery risks looks like.

# PART 2



# HIGH-RISK FACTORS AND SELECTED SECTORS

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The risk of modern slavery is real. Somewhere in the operations or supply chain of most businesses forced labour or other related practices are likely to be present. The purpose of part two of this report is to build awareness of modern slavery risk factors.

A key source of complexity in identifying and managing modern slavery risk is that supply chains typically reach across sectors. Isolating the issues and hotspots is a crucial first step – both in understanding risk and designing controls. Mature approaches will increasingly accommodate the interrelated connections and issues which cause and contribute to harm.

Acknowledging this complexity, we describe the key factors that increase the risk of modern slavery practices. Second, we identify common high-risk product or service categories for each of the selected sectors – financial services, property, food beverage and agriculture, mining and healthcare. These sectors were selected on the basis that, collectively, they

cover a significant proportion of the ASX200. Additional consideration was given to the maturity across sectors, for example, given the significant attention on apparel supply-chain risk, as well as existing higher standards of corporate engagement on labour standards relative to other sectors, apparel has not been included in this report.<sup>27</sup>

Companies need to be able to understand modern slavery risk. They must be able to recognise the practices which may constitute slavery-like conditions and have processes to identify where modern slavery is most likely to manifest in either their operations or supply chains. Evidence of other systemic human rights violations may also assist in identifying the circumstances that allow modern slavery to flourish.

# HIGH RISK FACTORS

Human rights risk refers to the potential adverse impact that a company can have on an individual or community's human rights and modern slavery risks, including the potential labour-related rights risks which restrict or remove someone's freedom.

The level of risk depends on a range of intersecting factors such as a company's business activities and labour force structures; the social, political and environmental conditions in the countries within which it and its suppliers operate; as well as its business relationships and sector-specific pressures which may drive cost-based decisions, seasonal work flows and reliance on sole sourced products or services. Some procurement categories may also have significant inherent modern slavery-related risks.

Where multiple high-risk factors co-exist, there is a higher likelihood of modern slavery, and additional controls are required to ensure that risk does not become harm.

The controls themselves (or their absence) may also contribute to heightened exposure. When a company's existing monitoring, prevention and mitigation measures are immature, inconsistent or lack clear accountabilities, modern slavery practices can stay hidden or allow internal stakeholders to remain wilfully blind because they are not supported to act.

Even a relatively robust supplier risk management system may be primarily designed to assess and control business risks which typically rely on metrics that are not always suitable indicators of rights risks or do not allow a business to adequately uncover risks to people in their supply chain. Positive efforts to consider broader social risks, or even human rights risks may still not be sufficiently granular to determine modern slavery risks.

This section identifies four key modern slavery risk factors:



Vulnerable populations



Business models structured around high-risk work practices



High-risk product and service categories, often sector specific, and



High-risk geographies.

Each of the sectors selected for this report experiences significant commonalities across these high-risk modern slavery factors. We then address the specific challenges faced, sector by sector.





## VULNERABLE POPULATIONS

### Migrant workers

The ILO defines international migrant workers as individuals who live and work across national borders and whose residency and citizenship status where they work is in some way temporary.<sup>28</sup> Internal migrants – those who move away from their place of residence to work but continue to live within their country of origin – may endure similar uncertainty, particularly when they are displaced.

Migrant workers are often subjected to poor working conditions such as underpayment or non-payment of wages, and fraudulent contracting through third-party labour hire arrangements. As many projects are short term in nature (such as construction or seasonal work), historically there have been few resources dedicated to monitoring, training and the management of human rights issues and workers' rights. This increases migrant worker vulnerability.

Globalisation has facilitated fluid, transnational trade and the movement of people, particularly for labour. A large majority (73 per cent) of Australia's trade is with countries in the Asia-Pacific Economic Cooperation (APEC) group.<sup>29</sup> Australia's geographic position places it amongst the most populous region of the world, with developing economies and emerging markets.

Migrant workers comprise a large proportion of the growing markets in China and India but are also very common throughout Africa and Asia as a whole.<sup>30</sup> In this context Australian businesses have access to regional markets with significant migrant labour. This availability of cheap labour attracts companies seeking cost-minimisation.

In addition, reports of migrant worker abuse in Australia have demonstrated that modern slavery is not just an 'offshore issue'. In 2016, when appointed to chair the Commonwealth Government's Migrant Workers Taskforce, Professor Allan Fels was reported as saying that the 'exploitation of migrant workers in Australia was "systemic...in that it is deeply embedded in the practices of some businesses."' <sup>31</sup>

Accordingly, Australian-based suppliers cannot be assumed to be low risk. Businesses operating in Australia have been exposed as exploiting vulnerable workers including foreign students and migrants – sometimes systematically – either through their own operations or their supply chain.<sup>32</sup>

The existence of migrant workers in a company's operations or supply chain – whether in Australia or overseas – should trigger further investigation to ensure higher controls are in place to manage the elevated risk of modern slavery.

### Base-skilled workers

Base-skilled workers, many of whom are from migrant, low socio-economic, or culturally and linguistically diverse backgrounds, are particularly vulnerable to systemic issues such as underpayment, withholding of wages and excessive working hours. Jobs that have lower barriers to entry may be more accessible to vulnerable populations excluded from other parts of the workforce. Companies across sectors generally procure base-skilled labour for services such as cleaning, security, catering, transport and maintenance. Such services are regularly procured through outsourcing arrangements. These intersecting risk factors are discussed further below.

Vulnerable and marginalised populations face additional barriers to reporting their experience of harm: language, level of education and literacy, visa insecurity and disability may all contribute.

Vulnerable populations are best supported when companies, civil society organisations, advocates and governments collaborate on joint initiatives to prevent harm. Clear and accessible avenues for raising grievances are core mechanisms for remediating harm, and also offer companies valuable information on trends and risk hotspots to support continuous improvement in managing modern slavery risks.



## HIGH RISK BUSINESS MODELS

Third-party labour arrangements, or the outsourcing of significant labour needs, introduce complexity into a company's supply chain. In many instances, engaging labour-hire companies or contractors to source workers can be an attractive business model for reducing cost and outsourcing administrative tasks such as commuting, recruitment, paperwork, and accommodation. In others, when time pressure or seasonal demand requires it, suppliers may have no choice but to introduce a third-party labour arrangement to meet business demands.<sup>33</sup>

However, using a third-party labour hire company to source workers increases risk by reducing visibility over recruitment practices. For instance, there have been reports of recruiters, often based overseas, fraudulently promising workers well-paid employment in Australia.

To secure engagement, workers are charged high fees that they are ultimately unable to repay, leaving them in a situation of debt-bondage.<sup>34</sup> These types of fees are often justified by recruiters (and employers) as payment to cover accommodation costs and visa or sponsorship arrangements. An Australian media investigation found that labour hire companies were 'systematically skimming off the payment owed to the workers'.<sup>35</sup> The schemes relied on paying workers cash in hand and failing to keep records to avoid auditor and regulatory scrutiny.

In 2016, inquiries into the labour hire industry conducted in Victoria, Queensland and South Australia, concluded that the exploitation of vulnerable workers was widespread.<sup>36</sup> For instance, the Victorian independent inquiry found that horticulture, meat processing and contract cleaning were three sectors where underpayment of wages and non-payment of superannuation were particularly prevalent.<sup>37</sup>

State-based legislation requiring accreditation for labour hire companies is progressively being introduced.<sup>38</sup> In Queensland, labour-hire companies must pass a 'fit and proper person' test, comply with strict workplace laws (payment of wages, superannuation and compensation), pay licence fees, report on their operations and divulge the number of employees, along with information about work visa arrangements.<sup>39</sup> Revocation of licences has begun.<sup>40</sup> Compliance with these regulatory accreditation schemes will add one layer of control to managing harmful practices in the labour-hire industry.



## HIGH RISK CATEGORIES

### Raw materials

For many companies in the ASX200, raw material procurement will not take place from a direct, tier one, supplier. This reduces the visibility over raw materials in the supply chain. Companies need to be aware that raw materials may be sourced from conflict-prone countries or geographies which are regarded as high risk.

For example, the exploitation of workers in mines in Democratic Republic of the Congo (DRC) is common, with men, women and children being subjected to forced labour and debt bondage by mining bosses, other miners, family members, government officials and armed groups.<sup>41</sup> According to the United Nations Children's Emergency Fund (UNICEF), approximately 40,000 children work in mines in the DRC.<sup>42</sup>

### Services procurement

Key modern slavery risks relevant to most sectors are found in services procurement, including building services, cleaning, travel, security and maintenance services. In recognition of the high-risk of exploitation, in Australia particular attention has been given to exposing and offering options for the management of the risks faced by cleaners.

In 2011, the Fair Work Ombudsman (FWO) found a non-compliance rate of 37.1 per cent in an audit of 315 cleaning companies.<sup>43</sup> Issues in the commercial property cleaning services industry include breach of workplace laws, proliferation of fraudulent contracting arrangements, below minimum wage payments and poor job security, work intensification leading to low service standards, occupational health and safety issues and poor ethical treatment of workers.

Further, in 2016 another FWO inquiry revealed that 1500 cleaners in four to five-star hotels were not being paid their minimum lawful entitlements.<sup>44</sup> Many of these workers were international students and backpackers from low-English speaking countries.

For companies, these issues present operational and reputational risks (e.g. disruption and harm to relationships with tenants, regulators and unions). In recognition of the high degree of risk associated with the cleaning service category, the Cleaning Accountability Framework (CAF) was established as a cross-sector collaborative effort to develop a responsible procurement model that encourages transparency and traceability.<sup>45</sup>

The CAF aims to drive compliance by incentivising companies to adopt good practice in pursuit of a certified star rating.

The high risk of slavery-like practices flourishing in services procurement, particularly where this intersects with base skill labour, will increasingly require the attention of regulators, as well as collaborative cross-sector approaches between business, property owners and managers, unions and statutory agencies for identifying and managing the risks.

### Branded and un-branded goods not for resale

Goods that are used for a company's internal or corporate functions are often housed within separate procurement teams or have decentralised procurement responsibilities. While the complexity of the supply chain is no different, there are frequently limited systems or controls in place to monitor the human rights risks that might be associated with the manufacture and sourcing of such products. These are often low-spend categories and therefore are not captured by other risk matrices.

While the risk of modern slavery can be just as high as other product categories, the risk for the business of modern slavery being found in the supply chain of a branded good not for resale is exponentially higher.<sup>46</sup> For example, in 2012 Australian company Qantas faced significant public scrutiny after it was found that branded in-flight headphones were made at a Chinese prison.<sup>47</sup>

These relationships are complex for business visibility: the headphone supplier for Qantas was based in Vietnam and they used a third-party supplier to help complete an order. Qantas has since put in place risk assessment and due diligence programs to identify and prevent instances of modern slavery, however the business acknowledged in its 2017 UK Modern Slavery Statement that solutions are not easy: '[g]iven our size and geographical reach, ensuring we avoid any involvement in modern slavery, particularly beyond our first-tier suppliers, is a discernable challenge.'<sup>48</sup>

Transparency takes courage. Qantas has publicly supported the introduction of modern slavery legislation, describing it as 'an opportunity for Australia and Australian companies to show leadership in our global region on this issue.'<sup>49</sup> Companies will have an important role in publicly acknowledging modern slavery when it is found, inspiring greater transparency and collaboration to improve risk management systems.



## GEOGRAPHIES

The country where a product is manufactured or processed, or where service delivery occurs, can present modern slavery risks.

High-risk geographies may include conflict-affected zones, countries where there is weak rule of law such as the absence of a functioning judiciary or just administration of law enforcement agencies, and high corruption. Where governments do not, or are unable to, fulfil their duty to protect human rights, modern slavery risks exponentially increase.

Countries where the workforce includes a large number of migrant workers, external or internal, and where third-party employment agencies are widely used, also present a higher risk of forced labour.

Other country factors that indicate risk include the existence of Economic Processing Zones, which are often not bound by national labour laws and therefore cannot be inspected by labour officials; and areas with large agricultural sectors, which are often found in isolated rural areas that are difficult to access and inspect. The existence of corruption and bribery, often measured by the perceived levels of corruption in the country's public sector, can also indicate higher human rights risks generally, and modern slavery risks in particular.<sup>50</sup>

For Australian businesses, high levels of trade with the Association of Southeast Asian Nations (ASEAN) countries increases the likelihood that the entity's supply chain will reach into a high-risk geography. The Asia-Pacific region has the largest concentration of people in slavery-like conditions in the world.<sup>51</sup> For example, in 2016, it was estimated that 0.29 per cent of Indonesia's population are victims of modern slavery, placing it within the top 10 nations for slavery.

Recording and interrogating the risks associated with the geography from which a service or good is procured (and not just a vendor's domiciled jurisdiction) is vital to identifying modern slavery risk in an entity's supply chain.

## THE COMPLEXITY OF HIGH-RISK FACTORS

Ultimately, the highest level of modern slavery risk exists at the intersection of each of these high-risk factors. One or more risk factors compound to elevate the likelihood of modern slavery risk. For example, the risk associated with vulnerable populations (including migrant and base-skill workers) is exacerbated by the limited regulation of labour practices in high-risk business models (such as the use of labour hire companies and seasonal work).<sup>52</sup>

Such labour practices are more likely in particular categories of procurement (including specific raw materials, manufacturing, services and goods not for resale), and the risks associated with these categories are further heightened in high-risk geographies where other external protections offered by rule of law, active civil society and similar supports are weak, or physical isolation makes monitoring and inspection difficult.





## HIGH RISK SECTORS

This section examines high-risk product and service categories that may exist within five selected sectors: financial services, property, food beverages and agriculture, mining and healthcare.

This discussion is not intended to exhaustively cover the types of risk that may be found in financial services, property, food beverages and agriculture, mining and healthcare. Categories are examples only. Companies will need to examine their structure and system in order to identify the full extent and nature of their risk profile. Performing a risk review is the only way to comprehensively identify where the modern slavery and intersecting human rights risks lie for a particular company.



The financial services sector represents over 35 per cent of the ASX200. The risk of modern slavery within the direct business operations of financial services companies tends to be low as they rely on a highly skilled professional workforce. However, financial services companies are increasingly acknowledging that they are in fact exposed to modern slavery risk through their supply chain.

Ultimately it is anticipated that financial services will need to address and report on modern slavery risks across their value chain, including their investments, insurance products and customers. These likely future trends are discussed further below in relation to current ESG risk management.

Right now, the immediate modern slavery reporting focus is likely to be on corporate and operational procurement. High-risk areas for the financial services supply chain include IT procurement, logistics and property and building services (such as facilities management, utilities, cleaning, waste management and security and print and promotional goods).

Corporate and operational procurement is the acquisition of products and services needed to manage financial services companies. These involve base skill roles such as cleaning, maintenance and security, which require closer monitoring to help ensure workers are not underpaid or exploited.

Workers in these occupations often have a lower understanding of the workplace rights to which they are entitled. Further, the procurement of products and services may exist in high-risk geographies where financial services have their offices. Financial services companies' tenancies in these jurisdictions bear elevated modern slavery risks.

Financial services companies need to consider how they can engage with their direct suppliers over their management approach and performance in relation to human rights and supply chain management and what implications that may have on IT hardware contracts.

IT procurement is vital to the operational functioning of financial services companies. Products and services procured include hardware such as computers, printers and scanners, and software such as mobile

banking software, servers and networks for data storage.

The modern slavery risks are most prevalent in the raw material extraction, manufacturing and disposal stages that often attract vulnerable populations in high-risk geographies. Australian banks face challenges monitoring their IT supply chains. For example, disposal of e-waste is notoriously difficult to track and will require additional resources to manage beyond first-tier suppliers.<sup>53</sup>

As such, visibility over the risks in the IT and related procurement categories will depend on suppliers demonstrating leading practice, through adherence to relevant supplier principles and transparency over their risk management processes, as well as the expectations implemented down their own supply chains. For example, Konica Minolta provides detailed information on its supply chain management, standards, participation in multi-stakeholder initiatives, and outcomes for non-compliance, including termination in some instances.<sup>54</sup>

Financial services companies also source promotional products and merchandise from suppliers overseas that may have little or no presence in Australia. Branded products and merchandise (such as clothing and stationery) pose a significant reputational risk to financial services companies. Extensive evidence exists of human rights issues in the garment manufacturing industry. The inherent human rights risks of this industry, the potential for reputational risk to financial services companies associated with these products and the lack of visibility of how direct suppliers or agents manage these issues on behalf of their customers, creates opaque structures that financial services companies need to take steps to mitigate.

## Sector maturity and action

Sustainability executives in the sector have started to publicly recognise that 'financial services firms have a responsibility to respect human rights wherever they do business.'<sup>55</sup> This is in recognition of the fact that modern slavery is also a risk in relation to the lending, investing, advisory and financing activities of financial services companies.

Advocates opine that ‘if a bank provides a general corporate loan to a company, it has a responsibility to use its leverage to prevent or mitigate that company’s adverse human rights impacts.’<sup>56</sup>

The perspectives of industry bodies and financial institutions are beginning to converge as responsible investment initiatives resonate.

For example, the CRO Forum acknowledges that ‘[t]here is often a strong correlation between respecting human rights and the quality of insured risks.’<sup>57</sup> Understanding the potential link between the provision of insurance to global clients implicated in human rights violations and the attendant risks to the insurer may motivate deeper change in risk assessment. Insuring a company found to have forced labour in its supply chain may ultimately lead to that company’s long-term negative business performance, loss of their social licence to operate, business interruptions and unexpected insurance claims.

In its 2017 Modern Slavery Statement under the UK legislation, the Commonwealth Bank reported that it has integrated ESG risk assessments, including human rights and labour conditions into its lending risk assessments as well as its responsible investing framework.<sup>58</sup> Other financial institutions have taken a similar approach to describing their management of human rights risks in modern slavery reporting.

There are limited case studies on the way in which modern slavery risk manifests in the financial services

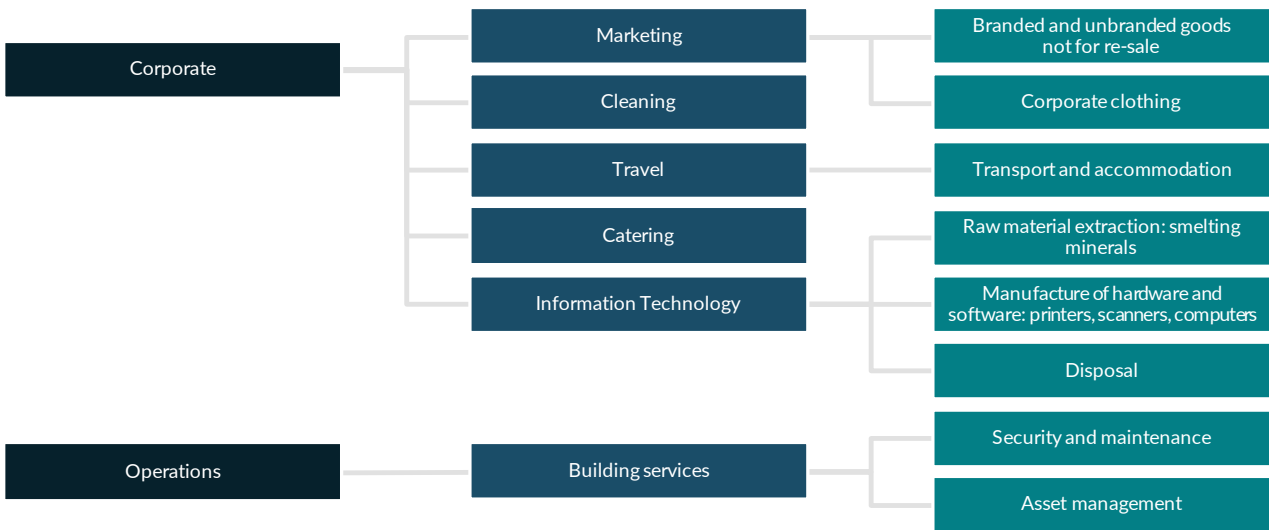
sector because the sector is in the very early stages of maturity in terms of identifying and managing risk. Australian financial services companies who already report under the UK modern slavery legislation are preparing for increased reporting on ESG more generally for the sector.

Views shared in industry workshops have focused on the need to allow the sector to develop its maturity before subjecting it to transparency benchmarks such as the Corporate Human Rights Benchmark. However, the reach of the sector into other high-risk sectors through its diverse supply chain suggests that reporting beyond tier one suppliers will be necessary. Accordingly, it will be vital for the financial sector to move beyond the view that it is a low-risk sector, to identify and manage the modern slavery risks that its operations and supply chains carry.

“ Understanding and identifying human rights risks arising from business relationships along our value chain, from suppliers through to customers, is the most significant area of human rights risk faced by NAB. This is because we cannot directly control or mitigate these risks ourselves – they are the responsibility of third parties.”

Rosemary Bissett,  
Head of Sustainability Governance and Risk,  
National Australia Bank

Figure 2: Typical financial services procurement functions responsible for high-risk categories







Property combines the Industrials and Real Estate ASX sectors, which together represent 16 per cent of ASX200 companies. Sub-industries include property development and management, construction and real estate investment trusts. The vertical integration of many property sector companies across both development and management leaves the sector exposed to modern slavery risks in construction and the procurement of services engaged in property management. Property faces particular challenges with complex supply chains where all of the high-risk factors described in the section above are present.

The construction industry employs around seven per cent of the global workforce and captures 18 per cent of the estimated number of victims of modern slavery.<sup>59</sup> This is partly a result of the high demand for base-skill and inexpensive labour, the complexity of subcontracting arrangements that lead to poor visibility of recruitment and employment practices of suppliers and subcontractors, and the short-term nature of projects.

Within the construction industry's highly competitive and cost-driven bidding process, social risks (including modern slavery and other human rights issues) are rarely prioritised in procurement risk frameworks. This is not for lack of knowledge of the challenges embedded in the Australian-based supply chain. For example, reports in 2010 indicated systemic issues with small contractors exploiting low cost migrant labour – and that principal contractors had an obligation to check the practices of their sub-contractors. The Construction, Forestry, Mining and Energy Union estimated at the time that 70 per cent of NSW tilers were from a Korean-speaking background.<sup>60</sup>

Australian companies commonly source raw building materials from Asia, from countries considered high risk for modern slavery, including India, Pakistan, North Korea, Cambodia, Myanmar, Bangladesh and the Philippines. Bricks, cement, granite, rubber and timber have been found to be produced by child and forced labour.<sup>61</sup>

The Cambodian League for the Promotion and Defense of Human Rights released a report in December 2016, about the 'modern-day slaves' in the brick production industry.<sup>62</sup> It found that many workers are trapped in a situation of debt bondage, where their low wages result in continuous debt, which they cannot pay off. Eventually, children are expected to work to help pay off these debts. The report revealed that local police and other authorities were privy to the practices occurring in the factories yet chose to ignore these violations of domestic and international law.

Operational procurement for asset management, along with corporate procurement requirements for services such as cleaning, security and maintenance, present the same base-skilled labour risks. Bonded labour, delayed wages, human trafficking, abysmal working and living conditions, withholding of passports and limitations of movement are forms of modern slavery that have been found to be present in Australian cleaning, security and asset and tenant maintenance operators. Property asset managers have faced particular scrutiny over tenants operating in hospitality, beauty and other services where forced labour and trafficking are rife.<sup>63</sup>

“ *At its best the property sector is about creating places for people - connecting Australians in reimagined ways to the environments where they live, work and play. However, our approach cannot ignore our responsibility to those in our operations and supply chains that make it possible. Collectively we must acknowledge that modern slavery exists - and property is no exception. Non-executive Directors of all companies need to ensure that our organisations are taking practical and accountable steps to reduce the risk of modern slavery. The property sector in particular must be one of the leaders in this regard.* ”

*Sam Mostyn,  
Non-executive Director, Mirvac Group*



Sector action and maturity

Nevertheless, historically, the property sector has been a positive adopter of new frameworks and initiatives and there is momentum in the sector which suggests that modern slavery reporting requirements will drive better management of social risks in the supply chain. There is clearly a desire to demonstrate leadership and collaboration.

The property sector has recognised its potential to have a positive influence on labour rights, particularly during the development phase, by creating work environments or engaging contractors to positively support good labour practices, including adequate training, non-discrimination, fair wages, safe working conditions, and programs that address the risk of forced or compulsory labour.<sup>64</sup>

The Property Council of Australia and Green Building Council Australia are advocating for action on modern slavery, driving pressure for reform in this sector.

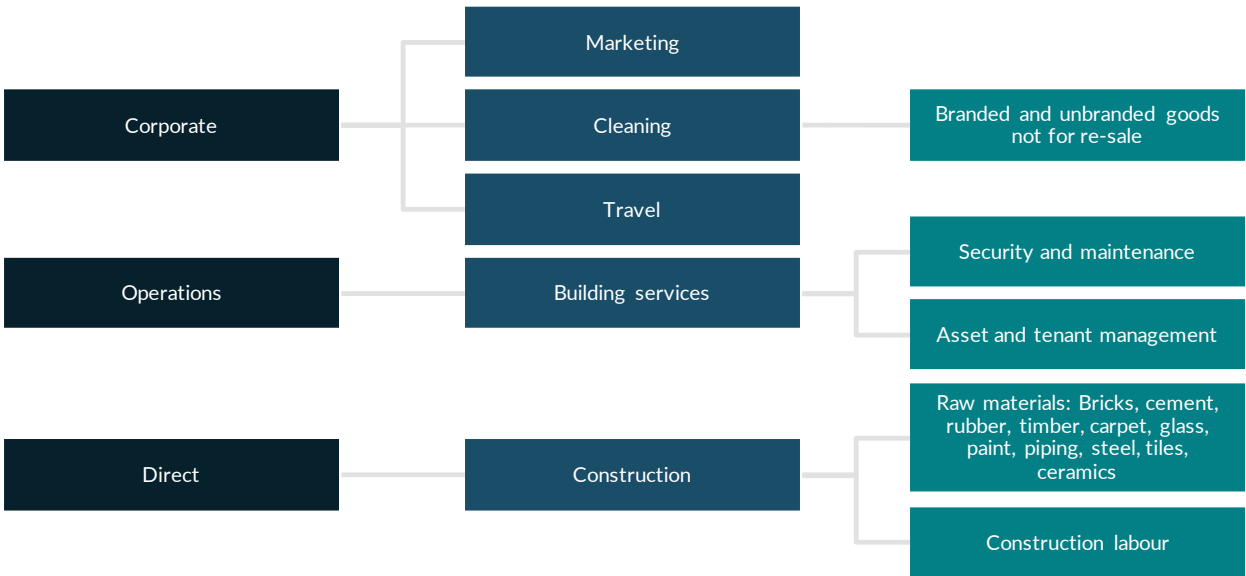
Success will depend on a willingness to reach into the complexity of property supply chains, acknowledging the differentiated risks across corporate, operations

and direct procurement, and demonstrating how collaborative efforts will meaningfully investigate modern slavery risk beyond tier one suppliers.

“Green Building Council Australia is committed to working with its members to increase their capacity to act on modern slavery risk. However, raising awareness cannot be where our actions as a sector end. Beyond the legislative reporting requirements, GBCA is currently revising our Green Star Ratings to encourage companies to go beyond compliance and take innovative steps to address human rights in the built environment. We anticipate that together we will drive best practice and incentivise ethical responses.”

Jorge Chapa,  
Head of Market Transformation,  
Green Building Council of Australia

Figure 3: Typical property procurement functions responsible for high-risk categories





# FOOD, BEVERAGE AND AGRICULTURE

The supply chains of the food, beverage and agriculture (FBA) sector have a high-risk of modern slavery due to the nature of the work necessary in the production, processing, packaging and transport of food and fibre. The ILO has identified that 11 per cent of forced-labour victims worldwide are within the agricultural and fishing sector.<sup>65</sup> In Australia, the impact of harm related to labour provision in the FBA sector has received significant national media and regulator attention.

Modern slavery risks are mostly present during the production, packaging and processing stages, which is when the highest amount of seasonal, base-skilled labour is required. The short-term nature of work in the FBA sector attracts migrant workers. A recent media investigation revealed that exploited temporary migrant workers were picking, packing and processing food in Australia.<sup>66</sup> While the investigation focused on labour-hire companies, it has led to criticism of the 'wilful blindness' of business. The investigation revealed examples of practices of labourers working up to 18 hours a day, gross underpayment of wages, payment of recruitment fees, deduction of wages for visa sponsorship, and bullying and harassment.

Similarly, in 2017 a national temporary worker survey identified that underpayment was 'prevalent in food services, and especially severe in fruit and vegetable picking'.<sup>67</sup> Passport confiscation, upfront 'deposits' for a job in Australia, and employers requiring employees to pay them back in cash after receipt of wages, were all experiences reported by survey participants.<sup>68</sup>

The focus on this sector is driving other sanctions. For example, Australian courts have upheld fines for exploitative work practices perpetrated against migrant workers brought to Australia and trapped in slavery-like conditions to provide labour on farms.<sup>69</sup> The FWO has also pushed to end the exploitation of trolley collectors as part of the FBA base-skill workforce. In 2014, the FWO partnered with a major provider of trolley collection services using a Proactive Compliance Deed to raise standards across hundreds of retailer sites.<sup>70</sup> Since that time the exploitation of trolley collectors continues to receive attention.<sup>71</sup>

Specific product categories carry additional risks in the FBA sector. For example, a range of commodities sourced by Australian companies such as cocoa, coffee and palm oil are known to be associated with child labour in their supply chain. Some companies, such as Nestle, have prioritised high-risk categories, recognising that they require additional focus in responsible sourcing controls.<sup>72</sup> The seasonal nature of fruit picking seasons in Australia also contributes to high-risks of forced labour in these food supply chains.

Sector action and maturity

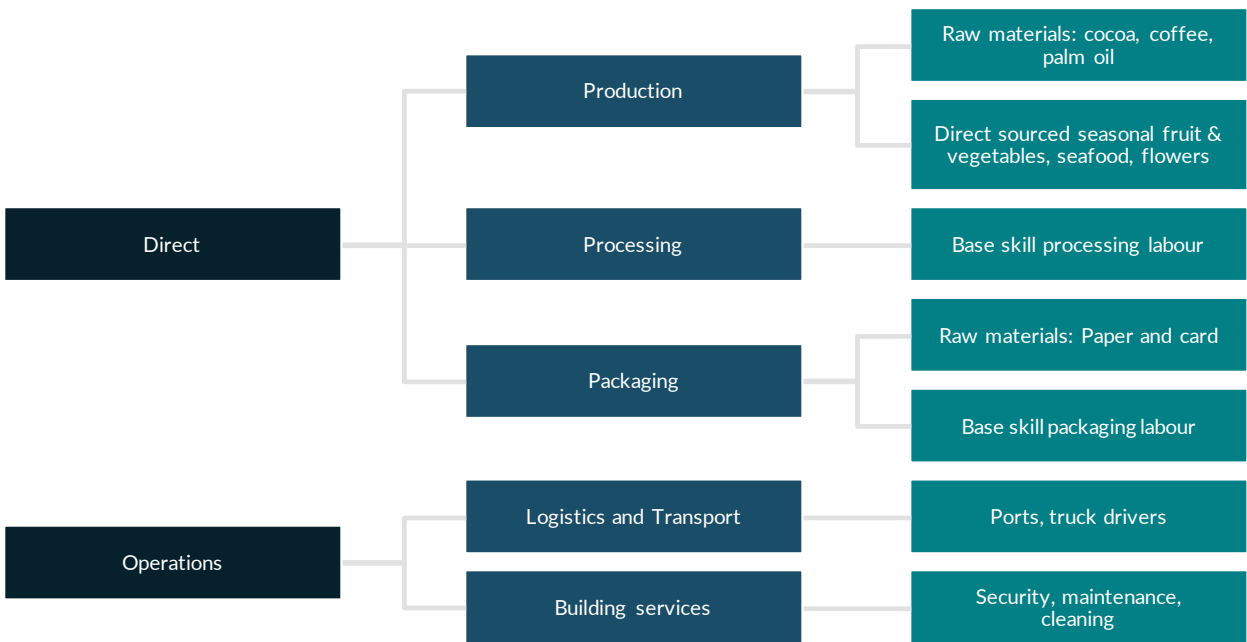
The FBA sector finds its human rights practices under both a national and global spotlight. The global Corporate Human Rights Benchmark and Know The Chain both assess food beverage and agriculture sector efforts to identify and address rights violations.<sup>73</sup> Specific categories have received increased focus. For example, the Interfaith Center on Corporate Responsibility (an investor network in the US) has engaged with companies sourcing palm oil and seafood as part of its 'No Fees' Initiative.<sup>74</sup>

In Australia, in response to the growing interest and pressure, retailers signed a pledge in 2015 to address forced labour in their supply chains. In January 2016, the Consumer Goods Forum published a resolution to develop an action plan to eradicate forced labour.<sup>75</sup> However, FBA industry bodies have also signalled resistance to legislative

responses to help combat modern slavery. For instance, the Australian Food & Grocery Council's submission to the Parliamentary Inquiry indicated a strong preference for voluntary measures over legislative requirements.<sup>76</sup>

Nevertheless, there is growing awareness across the FBA sector, and regulatory focus – particularly around the use of labour-hire companies – will require more sophisticated responses. The Australian FBA sector's ongoing strength in international trade is also dependent on further improvement: it is clear that '[p]ublic commitments to ethical practices, coupled with greater oversight and awareness will be essential for Australian agriculture's capacity to secure global markets for our products.'<sup>77</sup>

Figure 4: Typical food, beverage and agriculture procurement functions responsible for high-risk categories





Representing 16 per cent of the ASX200, the mining sector has operations which are high risk for modern slavery. Generally, the mining sector is relatively mature in addressing environmental and work health and safety risk. This legacy of engagement in ESG issues means that the sector tends to be more aware of social and human rights risk.<sup>78</sup> However, high-risk business models, operations in high-risk geographies and complex supply chains require the sector's continued focus to address modern slavery.

As with many sectors, risks hidden in the supply chain beyond first tier suppliers are particularly difficult to manage. Key stages in the mining lifecycle such as project construction, development and product procurement, as well as logistics and transportation carry high modern slavery risk.

The site construction and operation phases (which can last over 100 years) of any mining endeavour are the primary points at which labour needs are the highest, and where third-party labour arrangements and the use of migrant workers are most prevalent.<sup>79</sup> Third-party labour arrangements reduce the company's visibility over the risk of modern slavery and increases the complexity of risk management and mitigation.

Most ASX200 mining companies operate overseas, including in high-risk geographies that can be prone to violence, conflict and instability. The Australian-Africa Minerals & Energy Group reports that more than 200 ASX-listed companies are involved in over 1000 projects across 38 African countries.<sup>80</sup>

The Organisation for Economic Co-operation and Development (OECD) has recognised that '[i]n conflict-affected and high-risk areas, companies involved in mining and trade in minerals...may also be at risk of contributing to or being associated with significant adverse impacts, including serious human rights abuses and conflict.'<sup>81</sup> This elevates the need for robust human rights due diligence including a particular emphasis on modern slavery.

Transportation is a high-risk category in the mining sector and involves many logistical challenges, including the movement of heavy metals and materials from remote mines across the world. The modern slavery risks associated with global shipping and other freight services have attracted attention, with more emphasis being placed on managing risks in these contexts.<sup>82</sup> For example, in recognition of this risk, BHP highlighted seafarers' human rights in its 2017 Modern Slavery Statement, establishing a program of work to "better understand the full range of human rights and ethics risks (including the potential for forced labour or unacceptable working conditions) to which its charter vessels may be exposed."<sup>83</sup>



## Sector maturity and action

In 2018, social licence to operate was one of the key identified business risks impacting the Australian mining sector.<sup>84</sup> While individual companies, particularly those which have already reported under the UK legislation, have demonstrated leadership on modern slavery, the high risks and complex supply chains involved will demand increasing transparency.

Particularly vocal advocates, such as Andrew Forrest, have sought to be transparent in publicly discussing modern slavery in the mining sector's supply chains, but more commonly the sector reports on its processes rather than where impact or harm is discovered.<sup>85</sup>

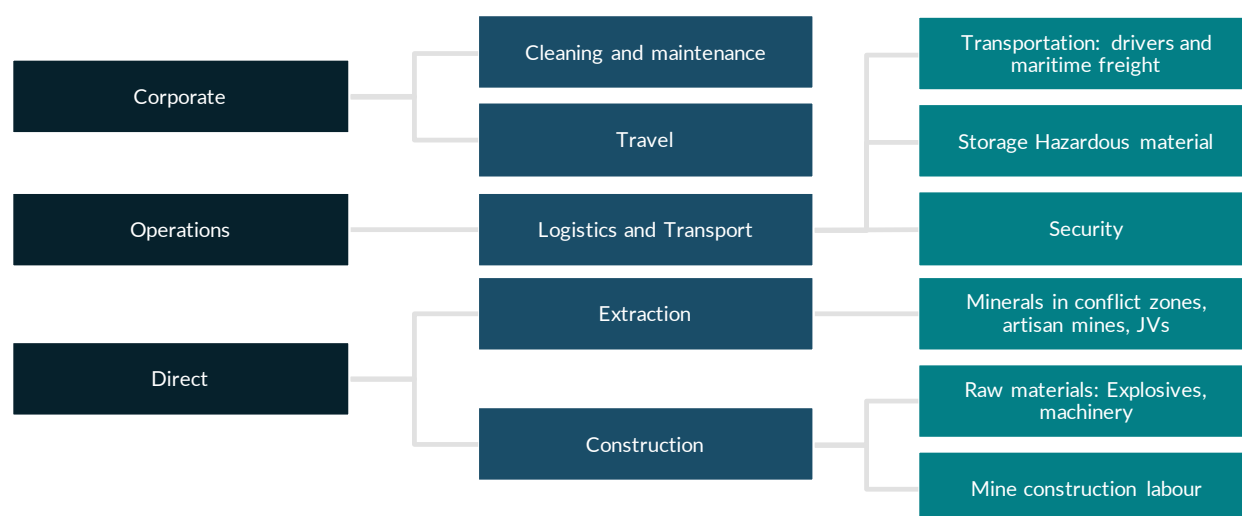
Nevertheless, the preparedness of some Australian companies in the mining sector to model transparency in human rights reporting has been recognised in certain international benchmarks – such as BHP and Rio Tinto's placement in the ranking band of the highest-performing companies in the 2017 Corporate Human Rights Benchmark.<sup>86</sup>

These efforts will need to become more widespread if modern slavery-specific league tables are to recognise Australian mining sector companies as leaders.<sup>87</sup>

“A current focus for us is looking at the supply chain. We have set minimum mandatory requirements for our suppliers of non-traded goods and services, which include some Zero Tolerance Requirements. We have implemented our Global Contracting Management System to strengthen our controls, including in relation to human rights. Integrating human rights due diligence into our supply chain requires a multi-year, cross-functional approach, designed to align, formalise and continuously review and deepen our understanding and assessment of suppliers. This includes engaging with our direct suppliers to assess and encourage continuous improvement in their own capacity to manage human rights risks (including modern slavery) in their subcontractors and broader supply chain”

Jorge Chapa,  
Head of Market Transformation,  
Green Building Council of Australia

Figure 5: Typical mining procurement functions responsible for high-risk categories





# HEALTH CARE

Representing 8.2 per cent of ASX200 companies, the health care sector faces its highest modern slavery risks in the procurement of medical goods, including electronics and surgical equipment and medical supplies. Most Australian health care companies source their workers and goods from Asia, where low-cost labour is widespread.<sup>88</sup>

Factories around Asia are also highly reliant on migrant workers from nearby developing countries, arriving either illegally or through 'guest worker' programs. Medical goods sourced in high-risk countries are a primary challenge, but the health care sector also deals with high modern slavery risks in the procurement of building services, mirrored across the other sectors reviewed in this report. Further, the broader life sciences sector faces significant human rights challenges in pharmaceuticals, medical device manufacturing, as well as bio-technology. These include workers' exposure to toxic materials, unfair wages, failure to obtain proper consent in clinical trials and forced labour in production of raw materials for medical devices.

Exploitation in the production of medical goods is well documented. Product categories, including gloves, surgical instruments, garments and electronics, carry particular risks and these are described further below.<sup>89</sup>

With an annual revenue of \$US5.2 billion, glove manufacturing mostly occurs in Malaysia, Thailand and Sri Lanka and 150 billion pairs are produced annually.<sup>90</sup> Australian health-care company facilities have reportedly violated labour rights in the procurement of gloves, including by pressuring workers with severe production targets, withdrawal of wages, recruitment fees worth the same as three months of pay, sub-standard working conditions and confiscation of identification documents.<sup>91</sup>

As in other industries, surgical instrument production involves the use of third-party labour arrangements. Health and safety standards are compromised, often to meet competitive demands for cheap products. Most handheld stainless steel surgical instruments that are used in health care facilities around the world, are made in Europe and Asia. Pakistan's labour standards are notoriously bad, and the town of Sialkot is amongst the world's highest producers of surgical instruments.<sup>92</sup> While ILO programs have endeavoured to gradually reduce the rates of child labour without undermining the economic stability of this poverty-stricken region, evidence remains that debt bondage and other health threatening labour practices continue.<sup>93</sup>

In recent years, the global commitment to improving labour conditions in garment factories has been strong. However, these initiatives have focused on well-known fashion brands and have largely ignored manufacturers that produce work wear not intended for general consumers. The health care sector relies on garments produced for both medical professionals and patients. A high risk of forced labour both in the production of raw materials such as cotton and the manufacturing of the garments has been identified.<sup>94</sup>

The sourcing of raw materials for health care electronics at the extraction stage, including tin, copper, gold, tantalum and tungsten, has been found to involve forced and child labour.<sup>95</sup> Risks are compounded in high-risk geographies. There are risks at the manufacturing stage too. A 2014 report on the manufacturing of electronics goods in Malaysia found that one third of workers sampled were in a situation of forced labour involving payments of excessive recruitment fees, deceptive contracting and confiscation of identification documents.<sup>96</sup> Reports of labour exploitation in China have highlighted the pressures faced by workers to meet unrealistic production quotas.<sup>97</sup>

Sector action and maturity

In April 2017, following significant media attention on Australian procurement of medical goods, the Australian Nursing and Midwifery Federation (ANMF) issued a report about the labour and human rights issues that exist in health care supply chains.<sup>98</sup> The ANMF identified that companies lack the transparency and risk management processes to identify human rights issues in their complex supply chains.

In recognition of the severity of the risks, there is a growing appetite to scrutinise the sector to ensure that health care services are not, antithetically, being delivered at a ‘human cost’. A 2017 human rights benchmarking report ranked three health care companies in the lowest band for their response to human rights issues. All except one of the listed health care companies scored below the Australian average and most lacked clear policy commitments.<sup>99</sup>

“ Australian health care companies that produce or procure [medical goods], as well as government, healthcare organisations and end-users, have the power and the responsibility to protect workers in medical goods supply chains.

Despite their legal and moral responsibilities, the health care sector and government in Australia are failing to address labour and human rights violations linked to the production of healthcare goods.”

Australian Nursing and Midwifery Federation  
Do No Harm? Procurement of Medical Goods by Australian Companies and Government (March 2017)

Figure 6: Typical health care procurement functions responsible for high-risk categories



# PART 3



# MODERN SLAVERY RISK MANAGEMENT

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## PRACTICAL RESPONSES TO MODERN SLAVERY RISK

Human rights reporting requirements, such as those embedded within the proposed Australian modern slavery legislation, are designed to promote continuous improvement. Companies are encouraged to demonstrate over time that they have matured their capacity to identify, manage, address and remediate modern slavery risks and impacts.

Business needs to understand its responsibility to respect human rights and the expectations embedded within international frameworks, especially the UN Guiding Principles on Business and Human Rights. Domestic legislation in Australia, whether at a federal or a state level, is strongly influenced by these international norms, along with other voluntary initiatives, guidelines and general non-financial reporting requirements which increasingly promote visibility over social impact.

For investors, the information reaching the public domain can be hard to interpret or directly apply to ESG risk frameworks. In particular, testing the veracity of non-financial data or interrogating the quality of the data that businesses choose to report is crucial to investment decisions. Investors have already shown their willingness to walk away from companies where human rights violations – including modern slavery – are present. With the introduction of modern slavery legislation, investors now have additional information to engage with companies on their efforts to understand and manage modern slavery risk.

Part three of this report offers investors, boards and executives guidance for collaborative engagement. The underlying purpose is to outline the considerations that will assist with assessing readiness to respond to modern slavery risk.

This guidance draws on professional business and human rights expertise and incorporates international standards in a clear outline of the practical responses that will be necessary under the requirements of the Australian legislation. Leading practice and business responses to analogous human rights reporting requirements in other jurisdictions are used to highlight opportunities.

We have created checklists to enable companies and stakeholders to start to understand modern slavery risks. These questions cannot, however, take the place of a comprehensive assessment of a company's risk and corresponding controls.

“ *Ignorance is no longer an excuse. The facts are sobering and real. An estimated 45.8 million people experience some form of modern slavery in the world today and more than two thirds are in the Asia Pacific region. Not only is this our regional backyard, it is also where millions of global supply chains intersect. Businesses need to be bold, authentic and transparent in our efforts.*”

Dr David Cooke,  
Managing Director, Konica Minolta, 'New Partnerships to End Human Trafficking' LinkedIn Article (5 August 2016).

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## MODERN SLAVERY REPORTING REQUIREMENTS

Transparency provisions are designed to drive continuous improvement. Concerted peer support will move everyone towards leading practice more quickly.

Should a company choose not to take genuine steps to address modern slavery it will risk unfavourable market comparison, investor scrutiny and find it increasingly difficult to maintain public trust. Annual public modern slavery statements, signed-off at a board-level, will allow stakeholders – including investors, civil society and others – to compare year-on-year progress.

Modern slavery statements will become the primary public source of information about what companies are doing, how they are doing it and the effectiveness of those measures. The only way to reduce modern slavery risk and demonstrate remediation of harm when incidents of slavery-like practices are found is to implement a practical program of action.

The *Modern Slavery Act 2018 (Cth)* was proclaimed, effective 1 January 2019. The accompanying Explanatory Memorandum to the Bill made it clear that the seven mandatory reporting criteria are strongly influenced by the corporate responsibility to respect human rights, outlined in the *UN Guiding Principles on Business and Human Rights* (and described in part one of this report).

We have divided the guidance in this section on managing modern slavery risk into four key areas encompassing the Australian government's mandatory reporting criteria:

- entities and supply chains
- modern slavery risks present in operations and supply chains
- action taken to address modern slavery risks, and
- assessing the effectiveness of action taken.

For each area, the mandatory reporting requirements are identified, followed by expectations and examples of good practice. Each section also contains a checklist to assist investors, directors, executives and other stakeholders to review current practice and consider options for engagement.

“Modern slavery thrives in the shadows of global supply chains and involves serious crimes and human rights abuses [...]. It is a significant risk for Australian businesses as it undermines their competitiveness and can have substantial legal and reputational costs for businesses that fail to protect their supply chains. By introducing a mandatory reporting requirement for big business, we will reduce modern slavery risks in our goods and services supply chain by ensuring businesses are held to account.”

Alex Hawke MP,




Government Strengthens Australia's Response to Modern Slavery (Media Release, 10 May 2018).



Figure 8: Understanding the Australian Modern Slavery Reporting Requirements

## ENTITY AND SUPPLY CHAINS

### MANDATORY CRITERIA

-  Identify the reporting entity
-  Structure, operations and supply chain, and
-  The process of consultation with entities owned and/or controlled by the reporting entity.

Describing the operation and control of the relevant business/es is essential to managing modern slavery risk. Collating and understanding the extent and reach of any company is frequently complex.

The Explanatory Memorandum to the Commonwealth legislation indicates that entities will be required to go beyond a company's operations and first tier, or direct, suppliers in accounting for their efforts to address modern slavery risk. The definitions of both operations and supply chain will be further refined in government guidance, but an expansive approach to a company's sphere of influence strongly underpins the legislature's intent. The Explanatory Memorandum also makes it clear that operations are also intended to cover investments.

Entities will need to be able to identify the reporting entities (particularly where there is a joint group statement), and clearly describe their structure and operations, including vertical and horizontal integration of constituent parts and cross-sector reach. Further, entities will need to ensure they have a thorough understanding of their supply chains to define the boundaries of their modern slavery reporting and to underpin their identification of modern slavery risk. This information will also allow relevant stakeholders to consider modern slavery statements in the appropriate context, including critically interrogating any decision to excise parts of a business from modern slavery reporting.<sup>100</sup> Corporate groups will need to carefully consider a strategic approach to consulting across their businesses, in order to transparently describe how they have gathered information presented in their statements and to provide a sufficient level of comfort that the information contained within the joint modern slavery statement is accurate.

### EXPECTATIONS AND EXAMPLES OF GOOD PRACTICE

It is likely that, over time, entities will be expected to raise the sophistication of the descriptions they provide of their structures, operations and supply chains, as well as adopt inclusive approaches to group-level reporting. Early indications are that the breadth of information that businesses will need to provide (as well as the penalties for not doing so) will increase over time. For example, financial services businesses are anticipating that trends in non-financial reporting, including ESG risk, will influence modern slavery reporting, including with respect to transparency over modern slavery risks as they relate to customers and investment decisions.

Most companies reporting in the UK publish general and de-identified information about their supply chains. This can include the number of suppliers, the countries in which they perform services or are domiciled and the product or service categories.

Leading companies have taken a more detailed approach to describing components of their supply chain to drive better collective practices and industry-wide action on supply chain transparency.

For example, in 2018 Unilever published information on its entire palm oil supply chain.<sup>101</sup> This included over 300 direct suppliers and more than 1,400 processing mills. Unilever's stated aim was to draw attention to key suppliers and the issues that many companies face when sourcing palm oil. Unilever reported that this greater visibility enables them to proactively identify, investigate and address issues, and contributes to enhanced relationships with their suppliers, NGOs, governments and other stakeholders.

The certification of palm oil companies and corporate action against suppliers with suspended certification has been an important collective initiative, and Unilever is regarded as 'leading the way' to sustainable palm oil.<sup>102</sup> However, full transparent supply chain mapping is a next level response. Unilever claims to be the first consumer goods company to take this step and hopes open supply chain mapping may be the start of an industry-wide movement towards greater transparency.<sup>103</sup>

Beyond the specific information contained in modern slavery statements, other leading companies have released information to demonstrate how their supplier geographical footprint intersects with key human rights issues. For example, Marks & Spencer Group, which ranked fourth on the Corporate Human Rights Benchmark in 2018, has developed a fully interactive map of all their suppliers against material human rights risks categorised by country.<sup>104</sup>

Assessing the supply chain for likely human rights hotspots is a preliminary step in preparing to identify the modern slavery risks present in that supply chain, and provides a foundation for reporting under the second criteria set out in the Australian legislation.



*The power of business to help combat modern slavery should never be underestimated and our legislation will provide a practical framework for transparency. It will build awareness of this issue, it will encourage the disclosure of instances of modern slavery in supply chains, and it will certainly go a long way in cleaning up the supply chains where instances of modern slavery occur."*

Julie Bishop,  
Former Foreign Minister  
(Speech delivered at Launch Walk Free  
Foundation Report on Modern Slavery, Australia  
House London, 17 April 2018)

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## CHECKLIST 1:

### Assessing modern slavery readiness: entities and supply chains

The questions to ask		Not addressed <sup>(i)</sup>	Informal practice <sup>(ii)</sup>	Formalised response <sup>(iii)</sup>
GETTING READY TO REPORT: THE TOP THREE QUESTIONS FOR THE BOARD				
1(a)	Is the company able to report at a group-level on behalf of all subsidiaries and across all geographies?			
1(b)	Does the board receive regular updates on changes to the structure, operations and supply chain of the company?			
1(c)	Has the board determined whether it will meet leading practice in its approach to publicly releasing detailed information about its operations and supply chain?			
TAKING THE CONVERSATION FURTHER				
1(d)	Is the structure of the company or group of companies clearly described?			
1(e)	Has the company described its operations, including consideration of cross-sector businesses?			
1(f)	Does the company report on the composition of its supply chain?			
1(g)	Does the company know the quantum of its suppliers?			
1(h)	Has the company mapped its suppliers by country where the service or product is procured?			
1(i)	Has the company applied any of the supply chain mapping beyond tier one suppliers?			
1(j)	Does the company have a centralised or consistently applied approach to the collection of supply chain data?			

**i. Not addressed:**

The business has not yet taken any steps to address the assessment question criteria.

**ii. Informal practice:**

The business has informal approaches which may have developed as an ad hoc response to addressing the assessment question criteria.

**iii. Formalised response:**

The business has a formalised documented policy, practice, system or control which meets the assessment question criteria.

## MODERN SLAVERY RISKS PRESENT IN OPERATIONS AND SUPPLY CHAINS

### MANDATORY CRITERIA:



Risk of modern slavery practices in the entity's operations and supply chain, and of any entities controlled or owned by the reporting entity.

Reporting on modern slavery risks will require companies to go beyond high-level mapping exercises to identify the risks particular to their business operations and supply chains.

Some likely risk hotspots for modern slavery have been identified in part two of this report. Vulnerable populations, high-risk business models, high-risk products and service categories and high-risk geographies should all be considered when assessing the presence of modern slavery in an entity's operations and supply chains.

### EXPECTATIONS AND EXAMPLES OF GOOD PRACTICE

There are two data points required to make a base-level identification of modern slavery risk:

- the country of origin of the goods or service, and
- the product category.

Inconsistent data collection or the prioritisation of other risk metrics – such as vendor spend – mean that companies are not necessarily equipped with the information they need about their operations and supply in order to report on the modern slavery risks which may be present for their business.

Leading companies are not only consistently collecting and analysing this data, they are also deeply committed to supplier engagement and capacity building. Business-to-business relationships are evolving as suppliers are increasingly asked to demonstrate their efforts to identify and reduce the risk of modern slavery in their own operations and further into the supply chain.

For Australian ASX200 companies seeking to understand the potential presence of modern slavery behaviour and practices in either their operations or supply chains, consistent data collection and collaboration with stakeholders will enable the level of nuanced risk identification which industry leaders are increasingly demonstrating.

To identify and categorise the human rights risks in its supply chains, Mars, for example, draws on the data and risk indicators produced by organisations such as Verisk Maplecroft to better understand human rights risks at the country level. Mars has used the UN Guiding Principles on Business and Human Rights to formulate an action-oriented framework tailored to its business. The CARE (Commit, Assess, Respond, Engage) framework guides Mars' human rights-related decisions across the business. This framework extends to supply chain management, with a priority focus on raw material supply chains. This has been applied to procurement categories in Mars' supply chain identified as being at high-risk of slavery-like practices, including seafood, where significant risks of forced labour have emerged.<sup>105</sup> In 2016, Mars launched an action plan for advancing human rights in its Thai seafood supply chain.<sup>106</sup> Central to the plan's implementation is the mapping of Mars' seafood supply chain in Southeast Asia, and collaboration with experts to identify any potential human rights issues. In this context, Mars is one of 12 global brands which partners with the Issara Institute (Issara) to improve conditions for workers.

Issara, based in Southeast Asia, is dedicated to the empowerment of jobseekers and workers and the strengthening of global supply chains. Using innovative technology outreach, Issara manages worker communications via a multi-lingual hotline, social media chat communications and a local language smartphone application. Issara claims to have over 60,000 workers linked in to its network and to have reached over 25,000 people through its worker voice and community empowerment initiatives.<sup>107</sup>

Another of the Issara's strategic partners, Marks & Spencer, encourages its own suppliers to be involved with the Institute and several of their first-tier suppliers are members of Issara. Grounding the identification of modern slavery risk in collaborative partnerships – with both experts and suppliers – is driving leading practice.

Marks & Spencer has published a Modern Slavery Toolkit for Suppliers and Partners which aims to support its suppliers and partners in the identification and monitoring of modern slavery risks. This is an example of a supplier engagement tool that seeks to enhance supplier capability, and at the same time encourage good practice among peers. Resources like these and Marks & Spencer's suite of other sustainability frameworks are recognised as industry leading. In 2017, Mars won the Sedex 'Best Example of Continuous Improvement' Award, which aims to encourage positive impact.

“ *Increasing legal requirements and expectations from consumers, customers, employees and stakeholders mean that responsible businesses need to place tackling modern slavery at the heart of their corporate social responsibility activities.* ”

Marks & Spencer,  
Modern Slavery Toolkit for Suppliers and  
Partners (October 2017)

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## CHECKLIST 2:

Assessing modern slavery readiness: modern slavery risks present in operations and supply chains

The questions to ask		Not addressed	Informal practice	Formalised response
GETTING READY TO REPORT: THE TOP THREE QUESTIONS FOR THE BOARD				
2(a)	Do board members understand what behaviours and practices constitute modern slavery and likely risk factors for the business and sector?			
2(b)	Has the board included modern slavery risks on its risk register?			
2(c)	Has the board established accountabilities for identification of modern slavery risk through its committees or executive reports?			
TAKING THE CONVERSATION FURTHER				
2(d)	Has the company reviewed its own operations for potential modern slavery risk?			
2(e)	Has the company engaged with suppliers on how it intends to identify modern slavery risks?			
2(f)	What systems does the company have in place to collect supplier data relating to human rights risks?			
2(g)	Does the company collect any data points from suppliers that would enable it to identify and categorise human rights risks or specific modern slavery risks?			
2(h)	Has the company mapped its source high-risk geographies in relation to labour standards?			
2(i)	Has the company mapped its procurement categories with sufficient granularity to identify modern slavery risk?			
2(j)	Has the company collaborated with experts, civil society, victim advocates or other relevant stakeholders to assist with better identification of modern slavery risks?			



## ACTIONS TAKEN TO ADDRESS MODERN SLAVERY RISKS

### MANDATORY CRITERIA:



Actions taken to assess and address modern slavery risks including due diligence and remediation processes.

The actions a company takes to address modern slavery risk should aim to meet those outlined in the UN Guiding Principles on Business and Human Rights. These include the establishment of a policy commitment, a human rights due diligence process and processes to enable remediation of adverse human rights impacts. Similarly, discussion of the Australian mandatory reporting criteria has focussed on policies, processes, due diligence and remediation, and we anticipate that companies will be expected to cover and report on these elements.

The policy commitment made by a business establishes a foundation for shared understanding of the entity's ambition and expectations. Primary policies and any cascaded policy suites are points of reference for both internal and external stakeholders. A human rights due diligence process should comprehensively identify, prevent, mitigate and account for adverse human rights impacts, including modern slavery. Legitimate remediation processes seek to deal with impacts once they have occurred, and mature systems will become increasingly important as companies find instances of harm through their due diligence.

### EXPECTATIONS AND EXAMPLES OF GOOD PRACTICE

#### Policy

Company policy commitments require a suite of cascading documents which publicly articulate the business' position with respect to modern slavery and recognise the intersection between modern slavery risks, human rights and other social impacts. Commitments must be supported by boards and executives to guide managerial action plans and strategies. Modern slavery statements should clearly explain this policy framework.

Companies with leading policies are demonstrating incorporation of specific human rights and modern slavery commitments across group-level policies. For example, relevant policies and standards in Rio Tinto's control framework,

include its global code of business conduct, a dedicated human rights policy and its employment policy. These documents all consistently state that Rio Tinto rejects any form of slavery. Its global business code of conduct explicitly applies to Rio Tinto's consultants, agents, contractors and suppliers.<sup>109</sup>

Leading practice examples examined by the Business and Human Rights Resource Centre emphasised that the introduction of the UK *Modern Slavery Act* had encouraged companies to develop or revise company policies, supplier codes of conduct and other supplier controls 'to more explicitly address modern slavery and raise awareness among a broader audience'.<sup>110</sup>

#### Due diligence

There are multiple components to an appropriate and sufficient human rights due diligence process. Following the direction in the *UN Guiding Principles on Business and Human Rights*, modern slavery due diligence should include 'assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed'.<sup>111</sup>

Practically, companies will need to review their existing management system and controls to determine:

- how well they conduct risk assessment and managing determined areas of high-risk
- the maturity of their capacity building with internal and external stakeholders including supplier engagement
- their approach to collaboration, and
- the sufficiency of monitoring and reporting.

This cannot be a single assessment – human rights risks are not static, and companies must build in monitoring and continuous review. Given that modern slavery statements will require board approval and the signature of a director, governance accountabilities must rest at the highest levels of the business.

Modern slavery risk assessment can be built into a company's broader approach to supplier risk management and could form part of other general risk

assessments the company carries out. Examples from sectors new to these approaches demonstrate how it can shift the dial for a company's focus on human rights.<sup>112</sup> For instance, health care company Novartis launched a Third-Party Risk Management program in 2016. It involved an in-depth review of the company's supplier management systems and processes and an assessment of material issues in supplier management relating to labour rights and the environment.

Novartis also developed a responsible procurement risk indicator tool which uses product category, country of origin and contract value to indicate potential risks. Novartis' Supplier Code, as well as Health, Safety and Environment guidelines are incorporated in risk assessments. If Novartis' due diligence process indicates non-compliance, the matter is escalated and a case review is conducted. In 2017, 459 suppliers were identified as posing an elevated environmental, labour or human rights risk.<sup>113</sup>

“The main challenges for companies remain the visibility they have over their supply chain and their understanding of, and quick response to, new legislation. Technology is offering up some solutions but I believe the best approach remains a holistic one that involves monitoring to stay on top of current and emerging risks, empowering business partners with training throughout the supply chain, engaging stakeholders and offering access to remedy. As well as a platform that allows companies to conduct thorough monitoring and due diligence, amfori BSCI gives amfori members access to a country due diligence tool that allows them to understand the risks of sourcing from any given country.”

Christian Ewert,  
Director General, amfori – Trade with Purpose

Human rights and modern slavery-specific data are important components of leading practice trends in risk assessment. For instance, in 2017, Verisk Maplecroft reported that “vulnerable migrant populations in the primary countries of arrival [such as Turkey are] a key contributor for increases in slavery across multiple sectors in the region, such as agriculture, construction and services.”<sup>114</sup> Australian entities with supply chains which reach into geographies with large influxes of displaced people will need to rely on sophisticated data points such as these in order to escalate the level of their risk assessments.

Leading companies are pursuing innovative solutions to managing the high-risk modern slavery issues they have identified. Technology is increasingly seen as an important part of supply chain management and its adoption for managing modern slavery risk and other human rights issues is being trialled. Supplier data platforms are a vital component of the necessary management systems and controls. These may include bespoke systems for an individual company or draw on globally-recognised platforms such as amfori or Sedex and their related assurance processes, including risk data analytics and supplier social compliance audits.

Business and human rights experts have predicted the use of increasingly sophisticated approaches to balance transparency and risk management. John Morrison, Chief Executive of the Institute for Human Rights and Business noted that “[human rights] reporting formats will inevitably have to evolve. In future, I expect to see new forms of disclosure that offer both greater transparency and timeliness. One example might be through the use of blockchain technology in the supply chain, which would allow for unalterable reporting and assurance every step of the way.”<sup>115</sup>

Blockchain pilots to monitor supply chain forced labour are underway in various sectors.<sup>116</sup> One example involves the University of Cambridge Institute for Sustainability Leadership working with a number of leading global brands to pilot the use of blockchain technology to track Malawi tea supply chains, including for labour standards. The technology allows shared access to data that is maintained by a network of computers, to swiftly trace the numerous parties involved in the production and sourcing of products. The aim is to reward up to 10,000 farmers who source their tea in fairer, more ethical ways, with financial incentives such as loans and credit lines. This project is a collaboration with financial institutions including Barclays, BNP Paribas and Standard Chartered banks.<sup>117</sup> Collaboration also needs to happen throughout stakeholder and supplier engagement to build the necessary internal and external capabilities required to identify and manage modern slavery risk. One forum for productive engagement can be a relevant multi-stakeholder initiative (MSI).

There are countless MSIs that can provide an environment for knowledge sharing and advocacy. Some are sector or product specific, while others aim to have a broader reach. While some analysis suggests that 'MSIs addressing human rights-relevant concerns remain experiments in governance',<sup>118</sup> stakeholder engagement and meaningful consultation are foundational to the *UN Guiding Principles on Business and Human Rights* recommended approach to identifying and assessing human rights risks.<sup>119</sup>

Historically, businesses demonstrating leading practice have been early adopters of voluntary initiatives, principles and commitments. Founding members often shape the conversation and their involvement can ameliorate the reputational risk of being named and shamed for refusing to participate. Transparency is increasingly encouraged: benchmarks such as the Corporate Human Rights Benchmark and the Baptist World Aid Ethical Fashion Guide rank companies in the lowest bands when they refuse to publicly release information which would allow a determination of ranking to be made.

Modern slavery due diligence processes will also require robust monitoring and reporting as crucial mechanisms for continuous improvement. These are discussed further under the final criteria on measuring the effectiveness of the actions undertaken.

## Identification and Remediation

Without an avenue through which to receive information about incidents of modern slavery, companies will not be aware of the actual harm to people or be in a position to monitor trends or systemic issues.

To be in line with international standards, companies will need to develop a comprehensive, operational level grievance mechanism. Companies moving towards leading practice are ensuring that as a base line they have processes for receiving complaints.

BHP has a 24-hour, confidential, multilingual business conduct and advisory hotline called EthicsPoint. In 2017, a new stream was introduced specifically to address modern slavery and to identify any concerns raised that may fit within the definition of modern slavery. Further, every BHP asset must have in place a local complaints and grievance mechanism for individuals and communities potentially impacted by BHP's activities. These mechanisms must be broadly communicated to stakeholders and meet a series of BHP global standards for communications, community and external engagement.<sup>120</sup>

More extensive remediation processes can be established with communities and MSIs if exploitation is identified. One example of leading practice is Nestle's work with the International Cocoa Initiative (ICI) to establish child labour monitoring and remediation systems (CLMRS).<sup>121</sup> The CLMRS is active in Cote d'Ivoire and is being rolled out in Ghana. The multi-layered monitoring and remediation of harm has seen 51 per cent of the children identified as involved in child labour removed from harm.<sup>122</sup>

In Australia, ASX200 companies will need to consider appropriate pathways for monitoring and remediation. Anti-Slavery Australia (which conducts significant work with victims of slavery-like practices) will be one important partner, and it is likely that the modest government support will need to be increased over time.<sup>123</sup>

In the UK, new mapping of support services for survivors of modern slavery indicates the high need to have collective and shared approaches to ensuring harm is remediated and appropriate support avenues readily available.<sup>124</sup>



“

*Whatever issue we're looking at, it's vital to set very clear standards and to communicate clearly about what we expect our suppliers to do. It's about having some simple tools to help engage them. That's where an initiative such as Sedex [a supplier data exchange] is so important. Sedex provides one common communication, which tells people what ethical trade is about and what suppliers have to do to comply.”*

**Louise Nicholls,**  
Corporate Head of Human Rights, Food  
Sustainability (Plan A) and Food Packaging, Marks &  
Spencer

Cited in [Ethical Corporation, Responsible Sourcing by Marks & Spencer: New Q &A](#), 4 April 2014.





## CHECKLIST 3:

Assessing modern slavery readiness: actions taken to address modern slavery risks

The questions to ask		Not addressed	Informal practice	Formalised response
<b>GETTING READY TO REPORT:</b>				
3(a)	Has the board established KPIs for managing modern slavery risk?			
3(b)	Does the company express its commitment to protect human rights, including modern slavery, through a board approved public statement of policy?			
3(c)	Has the board introduced assurance measures for reporting on modern slavery due diligence?			
<b>FURTHER ASSESSMENT</b>				
3(d)	Does the company explicitly address modern slavery across its policy suite for both internal and external stakeholders?			
3(e)	Does the company clearly articulate internal accountabilities and management responsibilities for human rights and modern slavery?			
3(f)	Does the company have a robust risk assessment process to identify high modern slavery risk across both its operations and supply chain?			
3(g)	Does the company have a system for managing suppliers found to be high risk or in breach of company modern slavery policies?			
3(h)	Does the company participate in sector-specific multi-stakeholder initiatives?			
3(i)	Does the company provide modern slavery and human rights training to relevant employees?			
3(j)	Does the company have a formal avenue through which to receive human rights related complaints from its suppliers?			
3(k)	Does the company have a consistent approach to categorising, assessing and remediating human rights complaints?			

## ASSESSING THE EFFECTIVENESS OF ACTION

### MANDATORY CRITERIA:

-  Assessing the effectiveness of actions taken, and
-  Any other information considered relevant.

The *UN Guiding Principles on Business and Human Rights* set clear expectations that companies should track the effectiveness of their responses to human rights impacts. It is anticipated that this tracking should include appropriate qualitative and quantitative indicators and draw on both internal and external feedback.<sup>125</sup>

Monitoring and reporting are crucial components of continuous improvement.


As part of the phased approach to establishing a company's modern slavery risk management, companies in the early stages of maturity may need to incorporate modern slavery risk considerations into monitoring approaches already used by the business. However, as the company's actions to manage modern slavery mature, a commensurate monitoring program will be required to transparently assess the effectiveness of those actions.

Internal reporting is necessary to identify whether human rights policies are being implemented effectively. Reporting against established process and standards allows effective tracking of improvement over time. To support mandatory external reporting through annual modern slavery statements, companies will need to ensure they have determined accountabilities and internal reporting mechanisms. This is also an opportunity to demonstrate initiative, and for those companies who wish to be known as leaders in the field to highlight and communicate the success of innovative efforts to reduce harm to people.

### EXPECTATIONS AND EXAMPLES OF GOOD PRACTICE

Requirements to report on human rights performance and, specifically, how effective companies are in identifying and managing their modern slavery risk, will become a core driver for progress. Already between years one and two of the modern slavery statements made under the UK modern slavery legislation, there is evidence that companies are producing better reports.<sup>126</sup>

Another source of mounting pressure on business is the development of international human rights and modern slavery-specific benchmarks such as the Corporate Human Rights Benchmark, Know The Chain and the Business and Human Rights Resource Centre's FTSE 100 analysis. The proliferation of benchmarking as a tool to identify and share leading and lagging practices will drive participation by those companies keen to avoid additional investor scrutiny or reputational risk. Provided benchmarks maintain trust in their methodologies, investors may choose to "use the benchmarks to inform their investment decisions, as well as their active ownership strategies, such as shareholder resolutions, and individual and collaborative engagement."<sup>127</sup> The Commonwealth government's decision to require entities to submit their annual modern slavery statements to a central register is likely to drive rapid benchmarking in Australia and quick comparisons with sector peers.

 *Over the next few years, a significant amount of work is required to further test and explore what good human rights business performance actually looks like. With this we will explore and start to solve the challenges in reporting on human rights performance. I'm sure there will be ongoing roles for qualitative narrative reporting and for quantitative data reporting but what will it look like if it is to serve investors? And is that the same as the reports that rights-holders experiencing harm expect to see?"*

Richard Boele,  
Partner KPMG Banarra, Head of KPMG's Global  
Business & Human Rights Network

Other initiatives encouraging better practice are the use of awards to publicly celebrate corporate commitment. While these are often granted to companies, individuals are also recognised for their efforts to “advocate for robust ethical sourcing and human rights recognition and practices in UK direct business operations and global supply chains.”<sup>128</sup>

Ultimately, to assess the effectiveness of their efforts to address modern slavery, companies will need to introduce regular stakeholder engagement and assurance activities to gather accurate and quality data on their own progress. The boards of several Australian companies with reporting responsibilities under the UK legislation are already seeking third party limited assurance over their modern slavery statements. While management assertions will remain important inputs, companies will need to go further to establish what is taking place at their sites of operations and into their supply chain.

Social compliance auditing, compliance orders and contractual mechanism are used by many of the leading companies discussed in this section to increase effectiveness at the potential sites of harm. However, the powerful stories of effective change – Mars’ collaboration with Project Issara, Nestle’s child labour cooperation with the International Cocoa Initiative, Unilever’s partnership with the Cambridge Institute for Sustainability Leadership – demonstrate that stakeholder engagement is a critical factor in ending systemic violations and creating lasting change in communities.

In the long term, effectiveness must also be judged by a company’s willingness to go beyond its responsibility to respect human rights, to support positive efforts which contribute to the enjoyment of human rights. Here in Australia, companies that manage their modern slavery risk as part of a broader program of respect for human rights are likely be better prepared for the increased scrutiny they are likely to experience in relation to all environmental, social and governance issues.

“ *Stockland’s commitment to respect and promote human rights underpins our business activities and stakeholder relationships and is reflected in our human rights policies. We continue to extend our understanding of respecting human rights and develop our capability to identify and manage modern slavery risk in our operations and supply chain. This is part of a broader program of work designed to respect human rights and actively support initiatives which create thriving communities.* ”

Michael Rosmarin,  
Former Chief Operating Officer, Stockland

## CHECKLIST 4:

### Assessing modern slavery readiness: the effectiveness of actions taken

The questions to ask		Not addressed	Informal practice	Formalised response
GETTING READY TO REPORT:				
4(a)	Does the board monitor and review its human rights policies and their implementation?			
4(b)	Has the company benchmarked itself against leading practice examples to determine its current maturity and future ambition?			
4(c)	Have the company's management systems and controls uncovered any instances of modern slavery and, if not, are they robust enough to do so?			
FURTHER ASSESSMENT				
4(d)	Does the company publicly disclose information to voluntary surveys and benchmarks about human rights and modern slavery compliance?			
4(e)	Does the company have KPIs in place to track its performance on modern slavery risk assessment and its compliance with relevant policies?			
4(f)	Does the company have agreed qualitative and quantitative data metrics for measuring the effectiveness of its actions on modern slavery?			
4(g)	Does the company conduct regular community engagement with its external stakeholders to gain their views on the company's human rights performance?			
4(h)	Does the company have a mechanism for formally incorporating stakeholder feedback into the improvement of modern slavery risk management?			
4(i)	Has the company considered how it might support a public positive contribution to the enjoyment of human rights and the prevention of modern slavery?			
4(j)	Does the company have specialist in-house resources or commissioned human rights and modern slavery experts to assist it to mature the effectiveness of its response over time?			





# CONCLUSION

# CONCLUSION

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Unquestionably, “the imperative to end modern slavery is very much on the political agenda.”<sup>129</sup> It is certainly not acceptable for companies to argue that known risks of modern slavery can be ignored.

As ASX200 companies prepare to report under the Australian modern slavery legislation, understanding the risks and rights associated with slavery-like practices and behaviours is essential.

Some will be tempted to view this as a legal compliance exercise. However, better, transparent modern slavery statements will enable the market to make informed choices.

ACSI will continue to engage with companies to encourage greater disclosure in respect of labour and human rights management. Other advocates and the media also have a role to play in

discussing and testing the implementation of appropriate systems and controls to identify, address, manage and remediate harm. While unscrupulous behaviour should be called out – particularly those companies which fail to adequately report or act – finding modern slavery in order that it may be eradicated is one of the underlying purposes of the transparency provisions.

In 2019, Australia’s largest companies – some for the first time – are required by law to take action on modern slavery. This will increasingly shift the corporate responsibility conversation beyond sustainability teams into board rooms and cross-functional working groups. No one entity has to go through this change alone: each sector bears risks, collaboration will drive learning, and eradicating modern slavery will become a mainstream corporate responsibility.



*Company leaders play a decisive role in setting the culture of the company regarding the eradication of slavery. Others have a role too. Advisors, lawyers and consultants working in this space can urge companies to produce statements in line with the spirit of the Act, rather than encouraging a box ticking approach. Investors, civil society and consumers should look to reward companies that are taking action and are open about the risks they face, and push laggard companies to up their game.”*

**Business and Human Rights Resource Centre,**  
First Year of FTSE 100 Reports Under the UK Modern  
Slavery Act: Towards Elimination? (December 2017)

# REFERENCES

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<sup>1</sup> Australian Council of Superannuation Investors, [Corporate Sustainability Reporting in Australia](#) (July 2017), 4.

<sup>2</sup> For example, [KPMG's 2017 International Survey of Corporate Responsibility Reporting](#) indicates that of nearly 5000 companies – including the top 100 companies by revenue in 49 countries – only 55 percent of Australia's top 100 companies acknowledged human rights in their Corporate Responsibility reports as compared to almost 9 out of 10 (89 per cent) Corporate Responsibility reporters in the top global group of organisations: KPMG, [The Road Ahead: The KPMG Survey of Corporate Responsibility Reporting](#) (2017).

<sup>3</sup> This is one of the primary reasons transparency and education is required to expose modern slavery practices. The Australian Parliamentary Inquiry called out the secret yet pervasive nature of modern slavery in the title of its final report: [Joint Standing Committee on Foreign Affairs, Defence and Trade, Parliament of Australia, Hidden in Plain Sight](#) (2017).

<sup>4</sup> Definitions of modern slavery are mainly taken from the 1956 United Nations supplementary convention, which states that 'debt bondage, serfdom, forced marriage and the delivery of a child for the exploitation of that child are all slavery-like practices and require criminalisation and abolishment': *Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery*, opened for signature 1 July 1957, 266 UNTS 3 (entered into force 7 September 1956). The International Labour Organization defines forced labour as 'all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily': International Labour Organisation, *Forced Labour Convention*, opened for signature 28 June 1930, C29 (entered into force 1 May 1932). Additionally, the *Universal Declaration of Human Rights* states that 'no one shall be held in slavery or servitude: slavery and the slave trade shall be prohibited in all their forms': *Universal Declaration of Human Rights*, GA Res 217A (III), UN GAOR, 3<sup>rd</sup> sess, 183<sup>rd</sup> plen mtg, UN Doc A/810 (10 December 1948). However, precise definitions of the behaviours and practices which constitute 'modern slavery' generate continued debate: Fiona David, 'When It Comes to Modern Slavery, do Definitions Matter?' (2015) 5 *Anti-Trafficking Review* 150.

<sup>5</sup> For example, in Australia modern slavery related crimes including slavery, servitude, forced labour, trafficking in persons, forced marriage, child trafficking, debt bondage and other slavery-like practices are outlined in Divisions 270-271 of the *Criminal Code Act (1995)* (Cth).

<sup>6</sup> International Labour Organization, [Global Estimates of Modern Slavery: Forced Labour and Forced Marriage](#) (2017) 9.

<sup>7</sup> Ibid 11.

<sup>8</sup> Walk Free Foundation, [Global Slavery Index](#) (2018).

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<sup>10</sup> Edelman, [2018 Edelman Trust Barometer: Global Report](#) (2018) 3.

<sup>11</sup> Ibid 29, 31.

<sup>12</sup> *Modern Slavery Act 2015* (UK); *California Transparency in Supply Chains Act 2010* (SB 657), *Trade Facilitation and Trade Enforcement Act 2015* (US); *Council Directive 2014/95/EU of 22 October 2014 on amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups* [2014] OJ L 330/1; *Loi 2017-399 du 27 Mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre* [Law 2017-399 of March 27, 2017 Relating to the Duty of Vigilance of the Parent Companies and the Companies Giving Orders] (France) JO, 28 March 2017, 0074; *Wet Zorgplicht Kinderarbeid* [7 February 2017 Child Labour Due Diligence Law] (Netherlands) 7 February 2017.

<sup>13</sup> United Kingdom Department of International Development, [A Call to Action to End Forced Labour, Modern Slavery and Human Trafficking](#) (20 September 2017), para 1(v).

<sup>14</sup> While international business and human rights principles are not directly contemplated, Australia has other significant legislation governing corporate responsibilities which intersect with human rights obligations, including for example, *Racial Discrimination Act 1975* (Cth), *Sex Discrimination Act 1984* (Cth), *Age Discrimination Act 2004* (Cth), *Disability Discrimination Act 1992* (Cth). There are also work, health and safety laws, and equal opportunity legislation in each state and territory. The Workplace Gender Equality Agency reporting requirements mandate corporate transparency on various gender metrics.

<sup>15</sup> <https://parlinfo.aph.gov.au/parllInfo/search/display/display.w3p;query%3DId%3A%22legislation%2Fbillhome%2Fr6148%22;rec=0>

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- <sup>18</sup> [Modern Slavery Bill 2018](#) (Cth), Schedule of the amendments made by the Senate.
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- <sup>20</sup> Responsible Investment Association Australasia, [Responsible Investment Benchmark Report 2017 Australia](#) (2017) 6.
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- <sup>25</sup> Responsible Investment Association Australasia, [From Values to Riches: Charting Consumer Attitudes and Demand for Responsible Investing in Australia](#) (2017) 3-4.
- <sup>26</sup> Australian Council of Superannuation Investors, above 21, 1. See also: Australian Council of Superannuation Investors, [Labour and Human Rights Risks in Supply-Chain Sourcing](#) (June 2013).
- <sup>27</sup> [Ethical Fashion Report 2018](#), Baptist World Aid.
- <sup>28</sup> International Labour Organisation, [ILO Global Estimates on Migrant Workers](#) (2015) 27-32..
- <sup>29</sup> Department of Foreign Affairs and Trade, [Australia and the World: Trade \(2018\)](#), Australian Government.
- <sup>30</sup> International Labour Organisation, above 28, 5-23.
- <sup>31</sup> Ben Doherty, ['Revealed: The Systemic Exploitation of Migrant Workers in Australia'](#) *The Guardian* (online), 29 October 2016.
- <sup>32</sup> See e.g., Anti-Slavery Australia, [Resources](#) (2018). There are also limited state-based remedies or support for systemic exploitation of migrant workers: Bassina Farbenblum and Laurie Berg, 'Migrant Workers' Access to Remedy for Exploitation in Australia: The Role of the National Fairwork' (2017) 23(3) *Australian Journal of Human Rights* 310.
- <sup>33</sup> For example, the NGO Anti-Slavery International argues, 'the way in which companies operate can increase the likelihood of slavery in the final product. If a brand gives its supplier a large order with a short turnaround time beyond the suppliers' capacity, this could increase the risk of slavery as the supplier may subcontract work to factories that are not regulated by the same standards as the supplier.' Anti-Slavery International, [Slavery in Supply Chains](#) (2018).
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- <sup>35</sup> Australian Broadcasting Corporation, ['Slaving away', Four Corners](#), 18 September 2017 (Caro Meldrum-Hanna).
- <sup>36</sup> Department of Economic Development, Jobs, Transport & Resources, Government of Victoria, [Victorian Inquiry into the Labour Hire Industry and Insecure Work: Final Report](#) (31 August 2016) ; Finance and Administration Committee, Government of Queensland, [Inquiry into the practices of the labour hire industry in Queensland](#) (June 2016); Economic and Finance Committee, Government of South Australia, [Inquiry into the labour hire industry](#) (18 October 2016).
- <sup>37</sup> Department of Economic Development, Jobs, Transport & Resources, above 36, 23.
- <sup>38</sup> As of April 2018, Victoria had introduced, but not yet passed, a licencing scheme to regulate labour hire: Labour Hire Licensing Bill 2017. South Australia passed the *Labour Hire Licensing Act 2017* (SA) which commenced operation on 1 March 2018.
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- <sup>41</sup> United States of America Department of State, [Trafficking in Persons Report](#) (June 2017), 135.
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- <sup>47</sup> Angus Griggs, '[Qantas Named as Forced Labour in Chinese Prisons Exposed](#)', *The Australian Financial Review* (online) 26 June 2013.
- <sup>48</sup> Qantas Group, [Modern Slavery and Human Trafficking Statement](#) (2017). In 2016 Qantas previously committed to take 'all reports of any breach of law, regulation or policy very seriously': Qantas Group, [Modern Slavery and Human Trafficking Statement](#) (2016) 1.
- <sup>49</sup> Andrew Parker, Qantas Group Executive Government, Industry and International Affairs, *Submission to the Joint Standing Committee on Foreign Affairs, Defence and Trade* (17 May 2017) 2.
- <sup>50</sup> Human Rights and Business Dilemmas Forum, [Business Integrity and Corruption](#) (2018).
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- <sup>59</sup> Walk Free Foundation, above 51, 32.
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Australian Council of Superannuation Investors  
Level 23  
150 Lonsdale Street  
Melbourne VIC 3000  
Australia

P: +61 38677 3890  
E: [info@acsi.org.au](mailto:info@acsi.org.au)  
W: [www.acsi.org.au](http://www.acsi.org.au)