



Australian Government

Review of Australia's Modern Slavery Act 2018

Issues Paper



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ACRONYMS AND ABBREVIATIONS

AAB	Australian Accounting Standards Board
AAT	Administrative Appeals Tribunal
ABF	Australian Border Force
AFP	Australian Federal Police
AGD	Attorney-General's Department
ATO	Australian Taxation Office
IDC	Interdepartmental Committee on Human Trafficking and Slavery
IDCPP	Interdepartmental Committee on Modern Slavery in Public Procurement
MSBEU	Modern Slavery Business Engagement Unit
MSEAG	Modern Slavery Expert Advisory Group
MSHTB	Modern Slavery and Human Trafficking Branch
National Action Plan	National Action Plan to Combat Modern Slavery 2020-25
NCCE	Non-corporate Commonwealth entity
The Act	<i>Modern Slavery Act 2018 (Cth)</i>
The Register	Modern Slavery Statements Register
UNGPs	United Nations Guiding Principles on Business and Human Rights

1. LEGISLATING AGAINST SLAVERY

Slavery is an abhorrent practice. Parliaments worldwide have been committed over the last two centuries to making laws to end slavery.

The glaringly inhumane practice of chattel slavery – a person being owned or sold by another – was prohibited and criminalised in all countries from the early 1800s onwards. Other forms of slavery have been prohibited in later years - such as forced labour, human trafficking, debt bondage, involuntary prostitution and forced marriage.

Legislation has effectively targeted the incidence of slavery, but it has not gone away. An estimated 40 million or more people are victims of modern slavery – including in Australia, which identified over 350 suspected victims between 2004-18.

Tackling slavery has become harder. It can be commercially rewarding, entwined with the global economy and difficult to spot. A consumer product may be more affordable in one country because of oppressive and underpaid manufacturing conditions in another country. Modern slavery may occur within a family or domestic setting when one person forces another into servitude or marriage. Or modern slavery may be a voluntary arrangement endured by a person who has no other means of support.

Slavery cannot be stopped simply by a law declaring that it is illegal. The slavery may not be occurring in the country that has enacted and will enforce the prohibition. It may be difficult to pinpoint the location or product component that is linked to a slavery practice. Distinguishing modern slavery from other forms of exploitation such as substandard working conditions and underpayment can also be a challenge.

There is international acceptance that new approaches – legal, commercial and cultural – are required to block the spread of modern slavery. Two countries, Britain and Australia, have taken the path of enacting a law, appropriately called the Modern Slavery Act. The British law commenced in 2015, the Australian law in 2019.

The Australian law places the onus on large entities – government and private – to scrutinise their own business operations to ensure that slavery is not occurring within their domestic or global operations or supply chains. An entity must report annually on the actions taken to prevent the risk of modern slavery occurring. The reports are placed on a public register. This aims to increase business awareness, transparency and support for anti-slavery measures. A public register also enables others in the community to assess how earnestly and effectively individual business entities are acting to prevent modern slavery.

2. ABOUT THIS REVIEW

The Australian *Modern Slavery Act 2018* (Cth) (the Act) requires that a review be undertaken three years after the commencement of the Act. The review is to be completed within one year and the report is to be tabled in the Parliament. (The British law underwent review in 2019 at the initiative of the UK Government.)

This review was announced on 31 March 2022 by the former Australian Minister administering the Act, the Hon Jason Wood MP, Assistant Minister for Customs, Community Safety and Multicultural Affairs. Professor John McMillan AO was engaged to lead the review, with the support of the Modern Slavery and Human Trafficking Branch (MSHTB) – then in the Australian Border Force (ABF), and now in the Attorney-General's Department (AGD) in accordance with the Administrative Arrangements Order issued 23 June 2022. Professor McMillan is an Emeritus Professor at the Australian National University, and has relevant professional experience in public law as a legal practitioner and Commonwealth and State agency head. He has held appointments as Commonwealth and NSW Ombudsman, Australian Information Commissioner and Integrity Commissioner with the Australian Commission for Law Enforcement Integrity.

Terms of Reference for the review are in Appendix A to this paper. The stated objective of the review is to consider the operation of the Act over the first three years and to look at options for improved operation and compliance.

The review will consider both the terms of the Act and its administrative implementation. Specific features of the Act that are mentioned in the Terms of Reference are the reporting entity threshold, reporting periods and deadlines, mandatory reporting criteria, enforcement mechanisms, and the option of establishing an independent Anti-Slavery Commissioner (or similar body) to oversee implementation and enforcement of the Act. These issues are considered in this paper and raised in consultation questions that are set out in full in Section 6 of this paper, 'Have Your Say'.

The review is to be conducted in an open, transparent and consultative manner. This Issues Paper initiates that process by inviting written submissions on the issues to be considered as the primary form of input. This will be supplemented by targeted consultations, in and outside government, and a survey of entities reporting under the Act. The review team will consult widely and, to the extent practicable, respond to any consultation invitation from organisations (particularly representative bodies) that have a keen practical interest in the operation of the Act.

3. THE AUSTRALIAN FRAMEWORK TO COMBAT MODERN SLAVERY RISKS

a. Development of the Modern Slavery Act

The prime impetus for the adoption of a modern slavery law in Australia was an Australian Parliamentary inquiry conducted in 2017 by the Joint Standing Committee on Foreign Affairs, Defence and Trade. The Committee report, *Hidden in Plain Sight*, examined the United Kingdom's *Modern Slavery Act 2015* and relevant findings from the Joint Standing Committee on Foreign Affairs, Defence and Trade's 2013 report, *Trading Lives: Modern Day Human Trafficking*. The *Hidden in Plain Sight* report made a unanimous recommendation endorsed by 36 members of both houses of Parliament for a modern slavery law to be adopted in Australia.

An extensive consultation process to frame an Australian law and reporting requirement was undertaken by government in 2017-18 with business and civil society. This involved 12 stakeholder roundtables in 4 capital cities attended by more than 130 people; publication of a consultation paper that attracted 99 written submissions; 50 direct meetings with stakeholders; and consultation with a further 40 stakeholders on a draft Bill. A summary of the consultation roundtables and the submissions was published.

The Australian Modern Slavery Act commenced on 1 January 2019.

b. Outline of the Modern Slavery Act

The Act requires large businesses and other entities in Australia to report annually to the Australian Government on how they are addressing modern slavery risks in their domestic and global operations and supply chains. The reports are placed on an online public register, the Modern Slavery Statements Register (the Register).

There are five key features of the Act: What is the object or purpose of the Act? What is meant by modern slavery? What entities are required to report under the Act? What has to be reported? How is the reporting requirement enforced?

Objectives of the Modern Slavery Act: The Act complements other laws and international conventions that criminalise and forbid slavery.

The Act starts from the premise that modern slavery occurs in diverse ways that can be difficult to detect and combat – 'hidden in plain sight'. It may, for example, be difficult to detect and combat modern slavery occurring in complex and extensive global business supply chains in fields such as agriculture, construction, electronics, extractives, fashion and hospitality.

The dual aim of the Act is to increase business and government awareness of these modern slavery risks, and support entities to identify, report and address the risks. Equipping and enabling large businesses to be responsible and transparent in responding to modern slavery risks is expected to have flow-on market effects, for example, in consumer support and business reputation and competition for investor

funding. Two phrases commonly used to describe the Act is that it creates a 'transparency framework' that will instigate a 'race to the top'.

The Act is designed also as a practical way of giving effect to Australia's international treaty obligations to prevent and combat human trafficking and slavery and slavery-like practices.

Modern slavery: The Act defines 'modern slavery' as conduct that is either a criminal offence under the slavery provisions of the *Criminal Code* (Divisions 270 and 271) or that falls under one of two international instruments (the Trafficking Protocol and the Worst Forms of Child Labour Convention). The Act and the international instruments apply to the following slavery practices:

- *Slavery* – asserting ownership of a person, or reducing a person to slavery, including by a debt or contract with the person
- *Slave trading* – slave trading or commerce, including financing that activity
- *Servitude* – coercing or deceiving a person to provide labour or service, or conducting a business involving the servitude of others
- *Forced labour* – coercing or deceiving a person to enter into or remain in forced labour, or conducting a business involving the forced labour of others
- *Forced marriage* – coercing, threatening or deceiving a person into marriage, or being a party to a forced marriage (other than as a victim)
- *Child marriage* – marrying a person aged under 16
- *Debt bondage* – intentionally causing a person to enter into debt bondage
- *Trafficking in persons* – using coercion, threats or deception to arrange a person's entry to or exit from Australia, either generally or for a purpose such as providing sexual services, forced labour or marriage
- *Child trafficking* – arranging for a child to enter or exit Australia for a purpose such as providing sexual services, forced labour or marriage
- *Domestic human trafficking* – using coercion, threats or deception to arrange a person's movement within Australia, either generally or for a purpose such as providing sexual services, forced labour or marriage, or arranging for a child to be moved within Australia for one of those purposes
- *Organ trafficking* – arranging for a person to enter or exit Australia, or to be moved within Australia, for the removal of an organ contrary to law
- *Harbouring a victim* – harbouring or concealing a victim of slavery in order to assist another person to avoid conviction for a slavery offence
- *Global human trafficking* – using coercion, threats, deception, abduction or payment to arrange the transportation or harbouring of a child for any purpose, or an adult for a purpose such as sexual exploitation, forced labour, slavery, servitude or organ removal
- *Serious child labour* – sale and trafficking of children, forced labour, forced military recruitment, procuring a child for prostitution, pornography or drug trafficking, and hazardous child work.

The Act applies to modern slavery conduct that occurs both in Australia and overseas. Activity occurring overseas is reportable in Australia if it may form part of an Australian business supply chain.

A unifying theme in the different forms of modern slavery is that coercion, threat or deception has been used to seriously exploit a victim or deprive them of their freedom.

Entities to which the Act applies: The following entities are required to report under the Act:

- An entity that has a consolidated annual revenue of at least AU\$100 million over its twelve month reporting period, and is either an Australian entity or a foreign entity carrying on business in Australia at any time in that reporting period. The entity may, for example, be a company, partnership, trust, individual, unincorporated association or superannuation fund
- the Australian Government, on behalf of all Commonwealth departments and statutory and executive agencies (that is, non-corporate entities)
- a Commonwealth company or corporate entity that has an annual revenue of at least AU\$100M in its financial year.

An Australian or foreign entity carrying on business in Australia that does not meet those tests may volunteer to report under the Act. It may discontinue that voluntary compliance by written notice to the Minister.

The revenue test of \$100M takes account of revenue earned in Australia or overseas, and revenue earned by a group of entities under the Australian Accounting Standards.

The reporting requirement: An annual modern slavery statement must include the following information (called the mandatory reporting criteria):

- identification of the reporting entity
- the reporting entity's structure, operations and supply chains
- modern slavery risks in the entity's operations and supply chains
- actions it has taken to assess and address those risks, including due diligence and remediation processes
- a description of how the entity assesses the effectiveness of those actions
- a description of the process of consultation with any entities the reporting entity owns or controls, and
- any other information the entity considers to be relevant.

The Act also requires entities to meet two approval requirements:

- the statement is approved by the principal governing body of the reporting entity, and
- the statement is signed by a responsible member of the reporting entity.

The Act gives entities the option of submitting a joint statement that covers one or more entities. This enables a joint statement that covers a corporate group or collection of entities (though there is no limit on the number or type of entities that can collaborate to submit a joint statement). The entities must consult with each other in preparing the joint statement, the mandatory reporting criteria must be met for each entity, and the statement must be separately approved by the governing board of each entity.

A similar modification is that a single statement may cover a parent entity and its subsidiaries. The statement must include information about consultation processes between the related entities in preparing the statement.

All statements are to be made publicly and freely available on a website hosting the Modern Slavery Statements Register. The Minister has a discretion to register a statement that does not comply with the requirements of the Act. A revised statement may be prepared and re-published, with details of the revision.

There is no single reporting date for all entities. They are required to report within six months of the end of their own financial year or accounting period in which they had an annual revenue of at least \$100M. The statements are accordingly received and published on the Register throughout the year. One effect of this dispersed reporting cycle is that many entities were not due to submit their second statement until mid-2022.

Enforcement of the reporting requirement: The Act aims for voluntary compliance by entities with their reporting obligation. The intent is that Australian businesses will realise they benefit by striving for full compliance with a law that supports them to identify modern slavery risks in their operations and global supply chains. Transparency of business reporting through the public Register will also provide a practical and reputational compliance incentive and pressure.

The Act contains a supplementary regulatory measure, empowering the Minister to request an entity to explain within 28 days why it has not complied adequately or at all with the reporting requirement, or to take specified remedial action to ensure compliance. The Minister may publish the identity of an entity that does not comply with the request.

The Act does not contain any offence or civil penalty for non-compliance with the reporting requirement. The Act further provides that any subordinate legislative rule made by the Minister under the Act may not create an offence or civil penalty, or authorise entry, search or seizure. However, the Act provides that this three-year review of the legislation is to consider the need for additional compliance measures, including civil penalties.

Commonwealth annual statement: The Australian Government is required by the Act to prepare a separate statement covering all non-corporate Commonwealth entities (NCCEs) for a reporting period. It is published on the Register by 31 December each year, but separately also as the *Commonwealth Modern Slavery Statement*. The Commonwealth Statement is formally endorsed by the Minister administering the Act.

The Commonwealth Statement reports against the same mandatory reporting criteria that apply to private entities and to Commonwealth corporate entities. The latest Commonwealth Statement lists 98 NCCEs that are covered by the Statement.

Annual report: The Act requires the Minister to table in Parliament an annual report each calendar year on the implementation of the Act, noting compliance by entities and best practice reporting. The second annual report (for the 2020 calendar year)

explained that Government action to implement the Act was channelled along four work streams:

- supporting entities to understand their compliance obligations under the Act
- awareness raising and promoting best-practice responses to modern slavery
- operating the Online Register for Modern Slavery Statements
- combating modern slavery risks in public sector procurement.

The report outlined specific actions planned for the following year within those work streams. The report also explained the emphasis that would be given to monitoring compliance trends in reporting and to encouraging best-practice reporting.

c. Supplementary guidance and support on Modern Slavery Act compliance

This section describes key resources that are available to support the implementation of the Act.

Administration of the Act: The Act is administered by the MSHTB in AGD. The Branch includes the Modern Slavery Business Engagement Unit (MSBEU), and undertakes the following tasks:

- managing the Register
- examining all statements to assess if they comply with the requirements of the Act, and writing to an entity if a statement is non-compliant (over 6,400 initial and re-submitted statements assessed)
- conversing with the business community about reporting obligations and modern slavery risks
- arranging and presenting at online and face-to-face workshops and information sessions for business and civil society (more than 165 engagements)
- managing an online helpdesk (over 2,800 business enquiries handled)
- publishing administrative guidance documents
- convening formal consultation groupings
- convening the Modern Slavery Expert Advisory Group (described below).

Administrative guidance: Detailed administrative guidance was required to explain the Act's new reporting concepts and requirements. During the first three years, twenty guidance documents and e-learning modules have been published on the modern slavery register website.

The main guide is the *Guidance for Reporting Entities*. It is a 96 page manual that explains key terms in the Act, the entities required to report under the Act, matters to be reported, joint reporting and voluntary reporting options, reporting timelines, and support resources. The manual includes case studies and practical advice on responding to modern slavery incidents.

An opening message in the manual is that 'The nature and extent of modern slavery means there is a high risk that it may be present in your entity's operations and supply chains'. The manual emphasises the need to foster consultation between business, investors, government, consumers and civil society groups.

Other topics covered in guidance material are good practice reporting, editing a published statement, signifying governing body approval, addressing COVID-19 impacts, and identifying modern slavery risks in government procurement.

d. Other Australian Government measures to combat modern slavery

The Act is one element of a broader Australian Government response to modern slavery risks. This section describes other Commonwealth activities and laws. The range of activities is more fully described in the Tenth Report of the Interdepartmental Committee on Human Trafficking and Slavery, *Trafficking in Persons: The Australian Government Response 1 July 2017 – 30 June 2020*.

National Action Plan to Combat Modern Slavery 2020-25 (National Action Plan):

The National Action Plan was developed to provide strategic direction on Australian Government work to combat modern slavery. It was adopted after widespread consultation across government, business, unions, academia and the community. The Plan was formally endorsed by six Commonwealth Ministers – reflecting the need for a whole-of-government response.

The National Action Plan commences by describing forms of modern slavery, the root causes and drivers of slavery, contemporary challenges (including COVID-19 and technology being used to recruit victims), data on slavery and slavery-like practices detected in Australia, and Australian exposure to modern slavery through global operations and supply chains.

The National Action Plan aims to prevent and combat slavery through a framework of 5 strategic priorities, 9 guiding principles, and 46 action items. The 5 strategic priorities are:

- **Prevent** modern slavery by combating the drivers of these crimes and empowering individuals and groups that are vulnerable to modern slavery
- **Disrupt, Investigate and Prosecute** modern slavery by identifying victims and survivors, implementing disruption strategies and holding perpetrators to account through effective investigations and prosecutions
- **Support and Protect** victims and survivors by providing holistic and tailored victim centred support and protection
- **Partner** across government and with international partners, civil society, business, unions and academia to ensure a coordinated response to modern slavery
- **Research** by strengthening data collection and analysis to build the evidence base that supports the government response to modern slavery.

The following themes permeate the 9 guiding principles:

- the Australian response to modern slavery should be comprehensive, coordinated and collaborative
- the response should take account of the unique needs of those who are disproportionately affected, notably women and children
- protection, support and remedies should be provided to victims

- a strong deterrence framework should be maintained through investigations and law enforcement
- Australia should strive to be an international and regional leader in deterring and combating modern slavery.

The 46 action items are delivered on a whole-of-government basis across several Australian Government agencies assigned to implement them during the life of the National Action Plan, led by AGD. Though the 46 items are individually specific, themes they project include:

- awareness raising, advocacy and promotion of domestic and international laws and principles
- education, training, guidance and support, targeted broadly across government, business and the community, regarding modern slavery risks, responses and remedies
- providing support for victims and survivors of modern slavery
- government funding of programs, both domestically and abroad
- research into modern slavery and development of a research network
- reviewing and developing Australian laws, administrative programs and intergovernmental arrangements, and ratifying international standards
- implementing the Act and conducting the three-year review of the Act
- consulting the Modern Slavery Expert Advisory Group (MSEAG) and the National Roundtable on Human Trafficking and Slavery.

Statutory offences and protections: Many Australian laws criminalise slavery and related practices and extend protection to victims. Examples include:

- *Criminal Code*: Divisions 270, 271 of the Code criminalise human trafficking, slavery and slavery-like practices, both in Australia and overseas when committed by an Australian citizen, permanent resident or corporation. The offences are adopted in the definition of ‘modern slavery’ in the Act. The maximum penalty for each offence is a prison sentence of up to 25 years for slavery and trafficking in children.
- *Crimes Act 1914*: Part 1AD of the Act and Division 279 of the Criminal Code enable protected evidence to be given by a vulnerable witness in a criminal proceeding.
- *Migration Act 1958*: The Act controls irregular migration practices that can expose vulnerable people to slavery (such as people smuggling and visa breaches). A non-Australian who is a suspected victim of slavery may have their visa status regularised under the Human Trafficking Visa Framework.
- *Fair Work Act 2009*: The Act contains protections for vulnerable workers, including migrant workers and international students who may be at greater risk of exploitation.

Those laws are supported by specialist investigation and law enforcement teams, and victim support programs. Enforcement and support activity under those laws in 2017-20 included the following:

- the Australian Federal Police (AFP) received 605 reports of suspected offences being committed, and 63 prosecutions were conducted
- the Support for Trafficked People Program administered by the Department of Social Services provided specialised support to 435 clients
- the Department of Home Affairs granted 119 specialist visas under the Human Trafficking and Visa Framework.

National plans and administrative programs: The *National Action Plan to Combat Modern Slavery 2020-25* forms part of a broader framework of national plans that aim to protect and support victims of exploitation and abuse. Other national plans are the *National Plan to Reduce Violence against Women and their Children 2010-2022*, the *National Plan to Fight Transnational Serious and Organised Crime 2018*, the *International Engagement Strategy on Human Trafficking and Modern Slavery: Delivering in Partnership*, and the *National Strategy to Prevent Child Sexual Abuse*.

Human trafficking and slavery also fall within the concerns addressed by other Australian Government programs. Examples are the Department of Social Services 'Support for Trafficked People Program' (that includes funding for civil society activity), the Australian Institute of Criminology 'Human Trafficking and Modern Slavery Research Program', and the the AFP 'Look a Little Deeper' human trafficking awareness initiative.

Formal consultation mechanisms: Formal consultation arrangements with government have been established to provide advice and support on modern slavery initiatives. They include:

- ***National Roundtable on Human Trafficking and Slavery:*** The National Roundtable was established in 2008, and presently comprises representatives from 12 Australian Government agencies, and 14 non-government representatives from civil society organisations and industry bodies. The Roundtable aims to drive law and policy reforms in Australia's response to modern slavery and human trafficking.
- ***Modern Slavery Expert Advisory Group:*** The MSEAG was established in 2020 for to provide expert advice to Government on the Act's implementation. It presently comprises 22 members drawn from business, unions, legal profession, industry peak bodies, civil society organisations, universities and research centres.
- ***Interdepartmental Committee on Human Trafficking and Slavery (IDC):*** The IDC was established in 2009 and comprises representatives of the Australian Government agencies with portfolio responsibilities in relation to human trafficking and slavery. The IDC also collates data on human trafficking and slavery trends, and periodically reports on the Australian Government's response to modern slavery – an example being the IDC's Tenth Report, *Trafficking in Persons* (noted above).

- *Interdepartmental Committee on Modern Slavery in Public Procurement (IDCPP)*: The IDCPP coordinates the work of NCCEs (such as government departments) in addressing modern slavery risks in government procurement and investment activities. This work is captured in the annual *Commonwealth Modern Slavery Statement*.
- *Intergovernmental Network on Modern Slavery in Public Procurement*: This intergovernmental grouping will coordinate the work of Commonwealth, state and territory governments to address modern slavery risks.

Less formal consultation arrangements and working groups also operate across government on particular matters. Examples include periodic consultation with sector specific groupings, such as legal practitioners, textile and construction businesses and compliance and enforcement officials.

Australian Government funding: \$7.8M was provided to non-government organisations between 2008-22 to deliver community-based initiatives on modern slavery. This has supported domestic community programs addressing forced marriage, labour exploitation, slavery-awareness in migrant and regional communities, and the development of web platforms, training toolkits and community mapping resources.

International engagement by Australia: The overarching strategic plan for Australia's international work to combat human trafficking and modern slavery is the *International Engagement Strategy on Human Trafficking and Modern Slavery: Delivering in Partnership* (released in March 2022).

The Strategy brings together international engagement work across the Australian Government and is framed around a statement of strategic priorities, guiding principles and commitments.

The Strategy notes that the focus of Australia's international effort is in the Indo-Pacific, which in 2016 was home to an estimated two-thirds of the global number of victims of human trafficking and modern slavery. Australia participates in several regional programs and forums that promote intergovernmental cooperation, information sharing, policy dialogue, capacity building and work to address the drivers of modern slavery.

The principal regional forum is the 'Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime', which Australia co-chairs with Indonesia. Membership of the Bali Process comprises 45 governments and 4 international organisations. It includes the Government and Business Forum that supports collaborative work on supply chain transparency, ethical recruitment and worker remedies.

Two other Australian initiatives in Southeast Asia are:

- the ASEAN-Australia Counter-Trafficking (ASEAN-ACT) initiative, which is a 10-year program to counter human trafficking in Southeast Asia through work with ASEAN member states to strengthen justice systems
- TRIANGLE in ASEAN, which is a 12 year program to support safe and fair work migration within ASEAN to support the rights of migrant workers.

Examples of Australia's broader participation in international forums and projects are:

- in the United Nations General Assembly Third Committee, the UN Human Rights Council, and other UN forums as a co-sponsor and supporter of resolutions, statements and initiatives relating to human trafficking and modern slavery
- in support of the United Nations *Guiding Principles on Business and Human Rights* (2011)
- as co-convenor of the Financial Sector Commission on Modern Slavery and Human Trafficking (called the Liechtenstein Initiative), that continues as the Finance Against Slavery and Trafficking (FAST) initiative to promote implementation of the Commission's 2019 Final Report, *A Blueprint for Mobilising Finance Against Slavery and Trafficking*
- as inaugural Chair (2017-2019) of Alliance 8.7, a multi-stakeholder partnership of governments, UN agencies, businesses, academics and civil society, working to achieve Goal 8.7 of the 2030 Sustainable Development Goals on the eradication of forced labour, modern slavery, human trafficking and child labour
- in developing, along with the United Kingdom, United States, New Zealand and Canada, the *Principles to Guide Government Action to Combat Human Trafficking in Global Supply Chains* (2017)
- in establishing the position of Ambassador for People Smuggling and Human Trafficking, in the Department of Foreign Affairs and Trade, to progress Australia's regional and international efforts to combat human trafficking and modern slavery.

Australian adoption of international agreements: Australia has ratified international agreements relating to human trafficking and modern slavery. Internationally, this signifies Australia's commitment to global collaboration to ensure compliance with agreed standards.

Domestically, the Australian Parliament can legislate to give effect to these agreements under the external affairs power of the Commonwealth Constitution (s 51(39)). The Act declares that its constitutional basis partly depends on the following international agreements:

International Convention to Suppress the Slave Trade and Slavery (1926)
ILO Convention (No 29) concerning Forced or Compulsory Labour (1930)
Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices similar to Slavery (1956)
International Covenant on Civil and Political Rights (1966)
Convention on the Elimination of All Forms of Discrimination Against Women (1979)

Convention on the Rights of the Child (1989), and the *Optional Protocol to the Convention – on the Sale of Children, Child Prostitution and Child Pornography* (2000)
Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime (2000)
Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (2000)
ILO Convention (No 182) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (1999).

The Australian National Action Plan lists other international agreements that are similarly treated as part of the international legal framework endorsed by Australia:

International Covenant on Economic, Social and Cultural Rights (1956)
Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (2000)
Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1984)
International Convention on the Elimination of all Forms of Racial Discrimination (1965)
ILO Convention (No 105) on Abolition of Forced Labour (1957)
Universal Declaration of Human Rights.

Parliamentary inquiries: The reports of several high-profile parliamentary inquiries have been influential in shaping Australian legislation, policy and commitments. Examples include:

- Joint Standing Committee on Foreign Affairs, Defence and Trade:
 - *Hidden in Plain Sight: An Inquiry into Establishing a Modern Slavery Act in Australia* (2017)
 - *Compassion, Not Commerce: An Inquiry into Human Organ Trafficking and Organ Transplant Tourism* (2018)
 - *Advocating for the Elimination of Child and Forced Marriage* (2021)
- Parliamentary Joint Committee on Law Enforcement:
 - *An Inquiry into Human-Trafficking, Slavery and Slavery-Like Practices* (2017)
- Senate Foreign Affairs, Defence and Trade Legislation Committee
 - *Customs Amendment (Banning Goods Produced by Uyghur Forced Labour) Bill 2020* (2021)

e. State and Territory legislation combating modern slavery

Laws that combat slavery-like practices apply in each state and territory. Examples are laws relating to sexual servitude, child abuse, deceptive recruiting, kidnapping, deprivation of liberty and labour practices.

The only State Act that is comparable to the Commonwealth Act is the NSW *Modern Slavery Act 2018* (that was enacted as a Private Member's Bill, but subsequently amended in 2021 on the Government's initiative). The NSW Act commenced operating on 1 January 2022, and is in the process of being implemented. There are similarities and differences between the NSW and Commonwealth Modern Slavery Acts.

The main similarity is that the NSW Act requires supply chain transparency of modern slavery risks by government agencies (including local councils) and State owned corporations. State owned corporations are required to report voluntarily under the Commonwealth Act. Government agencies are required to comply with directions (yet to be made) by the NSW Procurement Board under s 175 of the *Public Works and Procurement Act 1912* (NSW). The Board has published guidance ('Modern Slavery and Procurement') outlining due diligence steps that government agencies can take to assess and deal with modern slavery risks in their supply chains. A public register is to be established that will identify any government agency or State owned corporation that fails to comply with any of those requirements.

The definition of 'modern slavery' in the NSW Act is similar to and partially adopts the definition in the Commonwealth Act.

A provision in the NSW Act that was repealed in 2021 would have required any commercial organisation doing business within NSW and with an annual consolidated revenue of \$50M to prepare an annual modern slavery statement to be published on the register. A civil penalty would apply to a failure to report publicly or to knowingly include materially false information in a report. The NSW Parliament was informed (when this requirement was repealed in 2021) that discussions would occur between NSW and the Commonwealth as to the appropriate reporting threshold.

There are three notable differences in the NSW Act. First, it establishes an independent and full-time position of Anti-Slavery Commissioner (the inaugural full-time Commissioner commences in August 2022). The Commissioner has a range of functions that include advocacy, community awareness, guidance, maintaining the public register, publishing codes of practice, monitoring government agency reporting, advice to government, annual reporting and victim support (but not complaint handling).

Secondly, the NSW Act establishes a joint parliamentary committee of eight members to be called the Modern Slavery Committee. The Committee has a general inquiry and reporting role.

Thirdly, the NSW Act contains an objects clause that is broadly cast. The objects include the Commissioner's role, mandatory reporting, education and training, raising community awareness, encouraging collaborative action, detecting and exposing modern slavery, assisting victims, and penalising forced marriage and cybersex trafficking.

f. International comparisons and regulation

Other countries have enacted legislation with the policy aim of stopping modern slavery practices being part of domestic operations or overseas supply chains of

goods and services entering the country. Some laws are similar to the Act in applying a transparency framework to business operations and supply chains. Others adopt a different approach, such as imposing a mandatory due diligence planning obligation regarding any foreign purchases, or prohibiting the import of goods from declared regions.

The full range of regulatory models is beyond the scope of this three-year Act review. Some country models are noted briefly below.

Canada

The *Customs Tariff Act 1997* was amended to prohibit (from July 2020) the importation of goods produced wholly or in part by forced labour.

In mid-2022 the Canadian Parliament was considering a modern slavery law, called the *Fighting Against Forced Labour and Child Labour in Supply Chains Act* (Bill S-211). The Act would require government institutions and Canadian companies that met a revenue or employee threshold to submit an annual report (to go on a public register) setting out the measures taken to prevent and reduce the risk of forced labour or child labour being used at any step in its activities or supply chains. Failure to comply could attract a fine of up to \$CAD250,000 (approximately \$AUD280,000).

France

The Corporate Duty of Vigilance Law enacted in 2017 requires French companies with more than 5,000 employees to develop a public vigilance plan that outlines measures to identify and prevent potential and actual human rights and environmental risks in their operations and supply chains. An individual can seek judicial enforcement and a fine of a company's failure to comply.

Germany

The Supply Chain Due Diligence Act was enacted in 2021 and commences operation in 2023. It requires companies based in Germany with more than 3,000 employees (or 1,000 from 2024) to identify, assess, prevent, remedy and report on human rights and environmental risks in their own operations and supply chains. The human rights risks include forced labour and child labour. Failure to comply can attract a large civil penalty and exclusion from winning public contracts.

New Zealand

In April 2022 the New Zealand Government released a draft legislative proposal with a threefold aim – requiring all organisations to take action when aware of modern slavery or worker exploitation in their international or domestic operations or supply chains; requiring medium and large organisations to disclose the steps they are taking to prevent modern slavery of that nature; and requiring large organisations to undertake due diligence to prevent modern slavery.

Norway

The *Transparency Act* enacted in July 2022 requires companies carrying on business in Norway with 50 full-time employees to report annually on a human

rights due diligence assessment of their operations and supply chains. An individual can seek information from the company about its human rights risks and due diligence activities.

United Kingdom

The Modern Slavery Act 2015 was the first of its kind and extends broadly: it consolidates and strengthens existing slavery and human trafficking offences; authorises judicial restraining orders against alleged slavery offenders; enables confiscation of criminal assets; provides protections and support for victims; establishes an Anti-Slavery Commissioner to advocate on modern slavery conduct; and includes a supply chain reporting requirement.

The reporting requirement is a non-enforceable obligation imposed on commercial organisations with a turnover of £36M (approximately \$AUD63M) to publish an annual statement of the steps taken to ensure that slavery and human trafficking are not taking place within the organisation or its supply chains. An independent review of the UK Act in 2019 made recommendations that would strengthen and align the reporting requirement more closely to the Australian Act.

United States

Since 1930 the *Tariff Act* has authorised the US Customs and Border Patrol to make a 'Withhold Release Order' that blocks the importation or sale of foreign merchandise that is reasonably suspected of involving forced or indentured labour.

The *Uyghur Forced Labour Prevention Act* of 2021 creates a rebuttable presumption that goods made within the Xinjiang Uyghur Autonomous Region of the People's Republic of China are made with forced labour and cannot enter the US.

The *Transparency in Supply Chains Act 2010* requires businesses in California with annual gross receipts of \$US100M to publish an annual report on their efforts to eradicate human trafficking in direct supply chains.

4. MODERN SLAVERY STATEMENTS – ANALYSIS AND COMMENTARY

This section presents indicative data and analysis on two matters:

- data compiled from the Modern Slavery Statements Register on modern slavery statements submitted by entities under the Act up to 30 June 2022. The data incorporates the first two entity reporting cycles under the Act. The first full reporting cycle was from 1 April 2019 – 30 June 2021, and the second full reporting cycle was from 1 July 2021 – 30 June 2022. While the statutory period of this review is the first three years of the Act (1 January 2019 – 31 December 2021), the inclusion of additional indicative reporting data provides a more comprehensive picture of compliance with the Act.
- modelling undertaken by the Department of Home Affairs into the impact of lowering the current reporting threshold in the Act, which is set at annual consolidated revenue of at least AU\$100M.

Appendix B to this paper presents the analysis and findings from reports prepared by non-government organisations on statements published on the Register, mostly during the first reporting cycle that ended on 30 June 2021.

a. Reporting trends under the Modern Slavery Act

Two full reporting cycles have concluded, respectively on 30 June 2021 and 30 June 2022. The indicative number of statements published from reporting entities were:

- First reporting cycle: over 1,720 statements
- Second reporting cycle: over 3,420 statements.

The MSBEU examines all statements to assess if they formally comply with the requirements of the Act. There can be one of three outcomes:

- A statement is assessed as likely to be compliant with the Act and is published on the Register.
- A statement is assessed as likely to be non-compliant with the Act for not adequately addressing all of the mandatory reporting criteria in s 16(1) of the Act, but is published on the Register as authorised by the Act. The MSBEU writes to the entity drawing attention to the assessment and provides guidance for future statement preparation.
- A statement is assessed as non-compliant with the Act for not including details of principal governing body approval or the signature of a responsible member (s 16(2)). The statement is not published on the Register and is returned to the entity. The entity may re-submit a revised statement to be published on the Register.

Figure 1 provides a monthly breakdown of statements published on the Register in the first two reporting cycles.

Figure 2 shows the assessment of all statements submitted in the first two reporting cycles. Statements published on the Register were those assessed as compliant or non-compliant with the Act's mandatory reporting criteria.

Figure 3 provides a breakdown of the reason that statements published on the Register in both reporting cycles were assessed as likely to be non-compliant with the Act's mandatory reporting criteria (with the exception of the criterion for 'any other information' that the reporting entity considers relevant: the Act s 16(1)(g)).

Figure 4 provides a percentage breakdown of statements not accepted for publication on the Register for not meeting the Act's signature/and or principal governing body approval requirements.

Figure 5 provides an economic sector breakdown of the number of entities that published statements under the Act in the first and second reporting cycles (the figures for both reporting cycles are combined). When submitting a statement an entity can select the sector to which they belong. Not all entities make that selection.

Figure 6 shows the revenue base (in \$50M bands) of the entities that published statements under the Act in the first and second reporting cycles.

Figure 7 is a graph showing the monthly trend in public searches performed on the Register.

Figure 1: Number of modern slavery statements published per month in first and second reporting cycles (as at 30 June 2022)

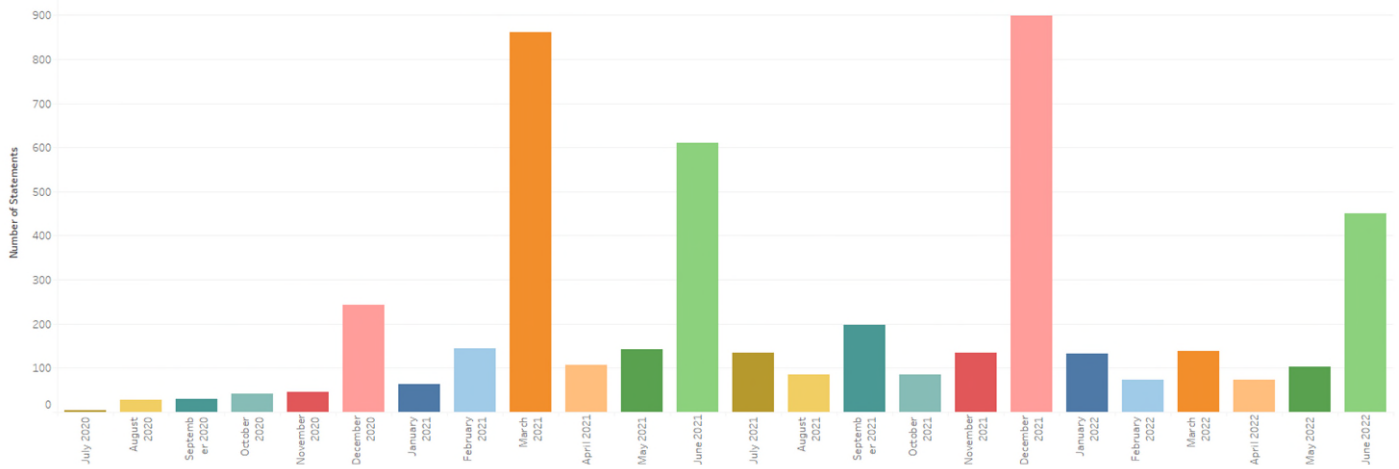


Figure 2: Compliance assessment of modern slavery statements submitted in first and second reporting cycles (as at 30 June 2022)

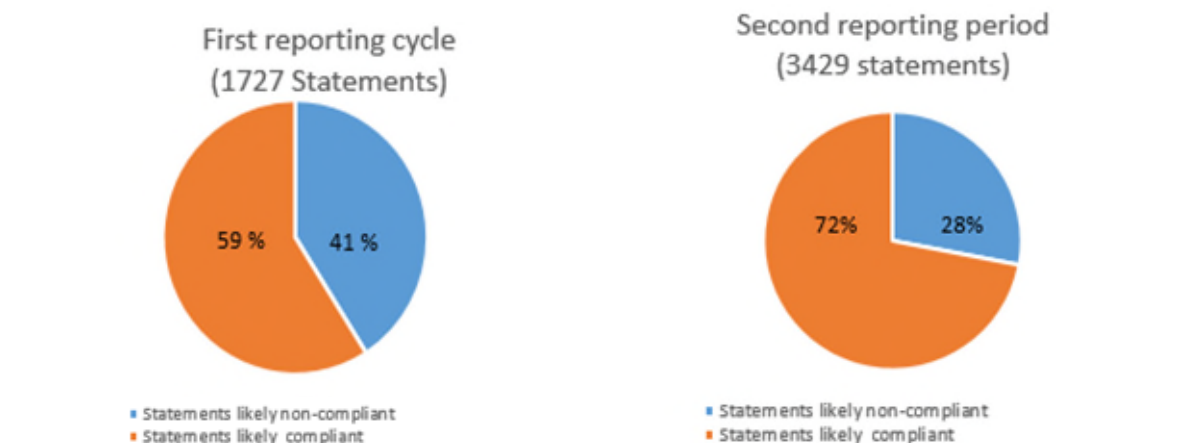


Figure 3: Reason why published statements were assessed as likely to be non-compliant with the mandatory reporting criteria in the Act (as at 30 June 2022)

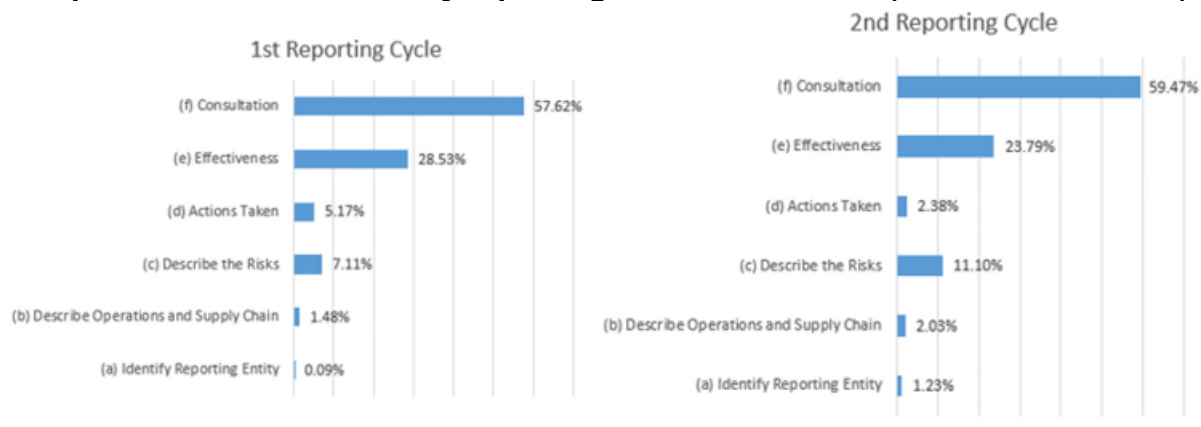


Figure 4: Percentage of statements not published due to failure to meet signature and/or principal governing body approval requirements in each reporting cycle (as at 30 June 2022)

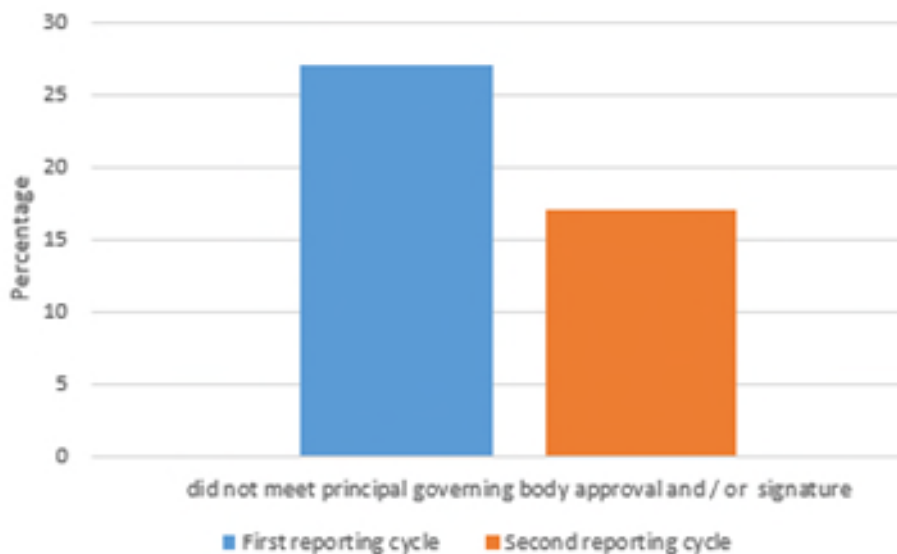


Figure 5: Number of entities by sector that reported under the Act (July 2020 – 30 June 2022)



Figure 6: Revenue base of entities publishing statements (as at 30 June 2022)

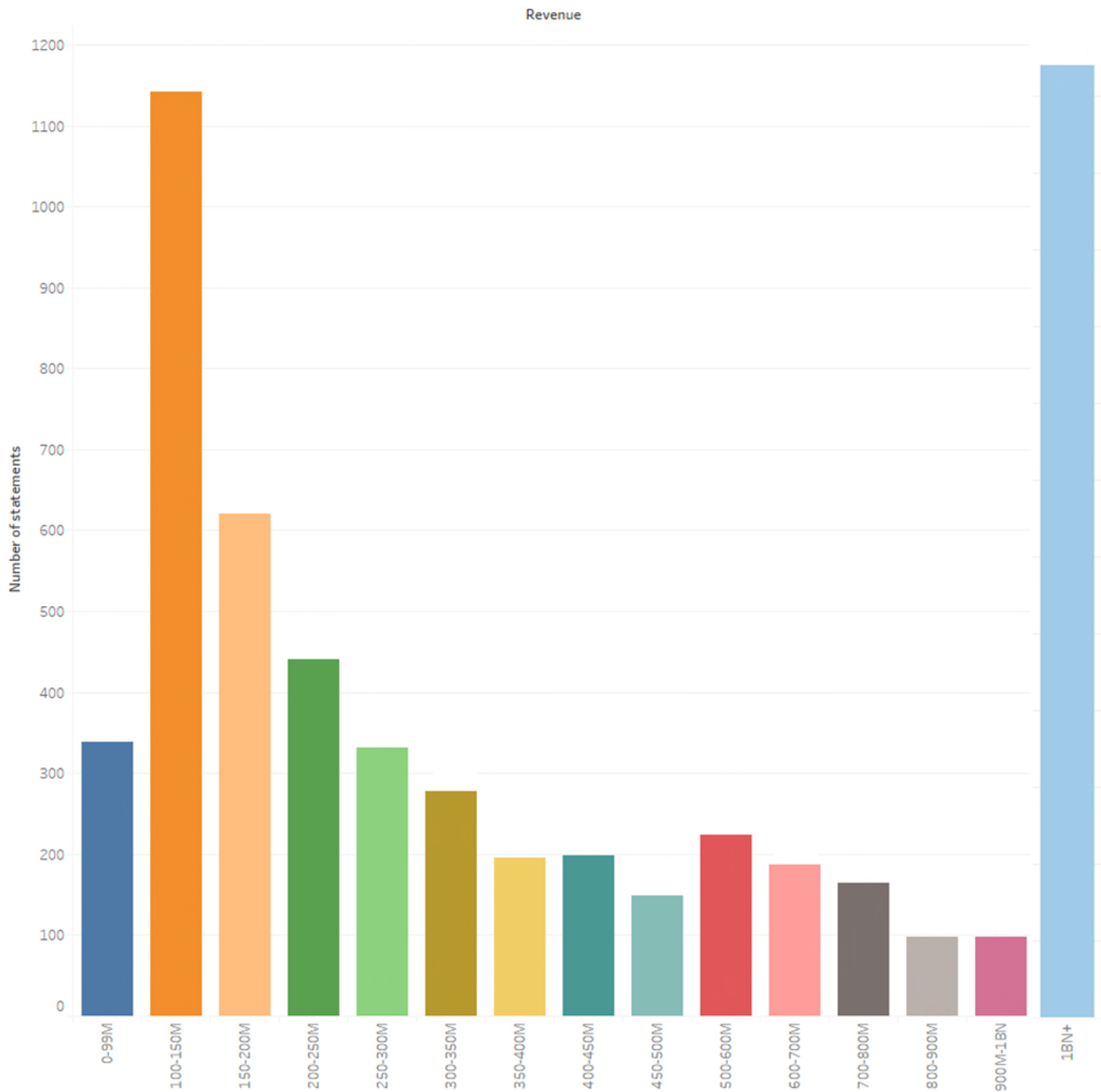
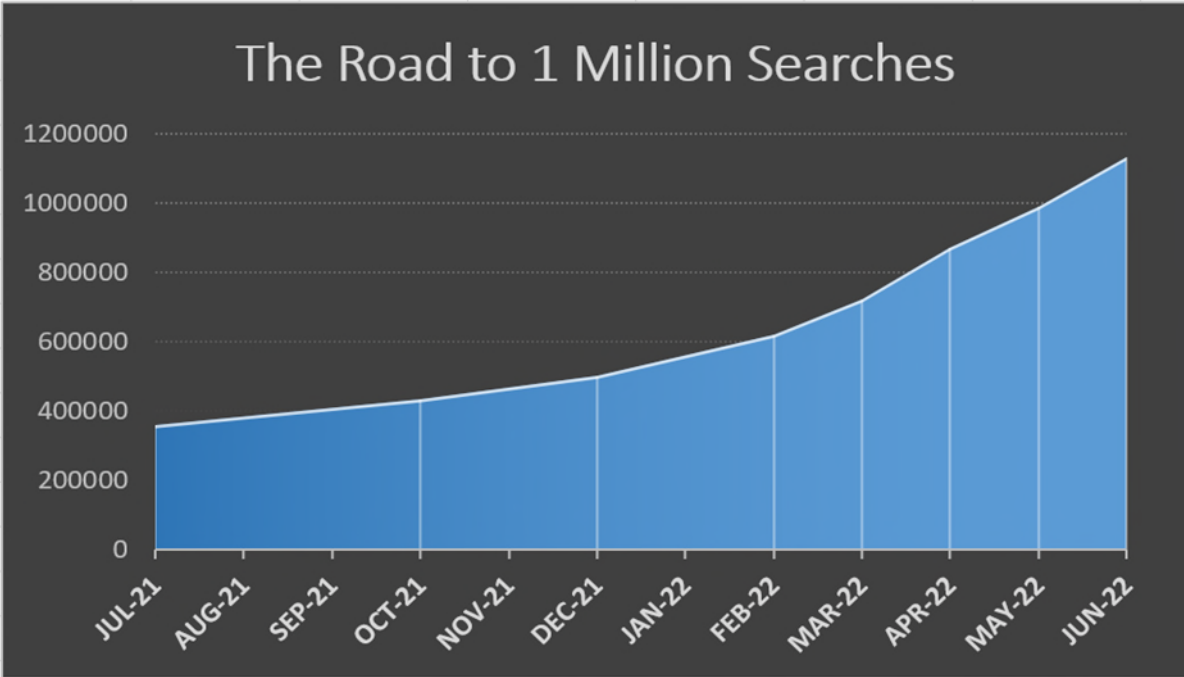


Figure 7: Searches performed on the Modern Slavery Statements Register (as at 30 June 2022)



b. Modelling on the impact of lowering the Modern Slavery Act reporting threshold

A central issue in the design of the Act was the selection of an annual business turnover of AU\$100m as the threshold for imposing an obligation on an entity to submit an annual modern slavery statement. There has been frequent discussion of whether that reporting threshold should be changed, and in particular if it should be lowered. The competing considerations in that debate are discussed later in this paper, together with several consultation questions.

To assist that process the Department of Home Affairs has undertaken preliminary modelling on the impact that changing and lowering the reporting threshold would have on the number of entities required to report and transparency in modern slavery reporting. The modelling is not presented in full in this paper, as it is preliminary only. The final report from this review may include refined modelling that takes account of any commentary on this issue received during the consultation process.

There are several dimensions to setting the Act's reporting threshold:

What methods can be used to estimate the number of entities and the spread of business activity that would be captured by altering the reporting threshold?

The Act requires entities to self-assess if they meet the reporting threshold, by reference to the Australian accounting standards.

To replicate this approach, the Departmental modelling used data from the Australian Taxation Office (ATO) on the annual turnover of Australian businesses, to estimate the number of entities that would be captured by lowering the reporting threshold. The ATO data is drawn principally from taxation returns submitted to the ATO. The ATO definition of 'business' is different to the definition in the Act of 'entity', though there is likely to be a close parallel in the number of 'businesses' and 'entities' that have an annual consolidated revenue of \$100M.

Two other primary descriptors were also used in the modelling to understand the extent to which changes in thresholds will change the number and distribution of firms for reporting purposes. These other descriptors can shed light on the type of business activity that may newly be captured if the reporting threshold is lowered.

One approach was to examine the profile of businesses under the ANZSIC code – the Australian and New Zealand Standard Industrial Classification, developed by the Australian Bureau of Statistics and Statistics New Zealand. For statistical reporting purposes, the ANZSIC Code groups business entities based on their predominant activity. There are 19 ANZSIC Code groupings. They are broadly similar to the economic sectors that are adopted for modern slavery reporting, as presented in Figure 5 above.

The other descriptor that was used in the modelling was the Forbes Global 2000 table of the largest companies internationally, based on sales, profits, assets and market value. There are 37 publicly-listed Australian firms in the table. This metric can be used to gauge the proportion of Australian business activity that is captured by the existing Act's reporting threshold.

How many entities would be covered by lowering the Act's reporting threshold?

The departmental modelling based on ATO data suggests that the additional number of Australian businesses required to report under the Act at lower threshold levels would be:

- Reporting threshold of \$90M: an additional 669 businesses
- Reporting threshold of \$70M: an additional 1,656 businesses
- Reporting threshold of \$50M: an additional 2,393 businesses.

Those figures suggest that, in rough terms, there would be a 19% increase in the number of entities required to report under the Act for each \$10M reduction in the reporting threshold.

However, those figures do not reveal whether entities that would be captured by a lower threshold are already reporting voluntarily under the Act, are currently listed in a joint modern slavery statement, or form part of the supply chain of an entity that is currently reporting under the Act.

Would lowering the reporting threshold capture different segments of Australian business?

A core aim of the Act is supply chain transparency of the risks of modern slavery. Consequently, it is relevant to ask whether lowering the reporting threshold and capturing more entities would correspondingly generate more supply chain reporting.

It is unclear whether a direct parallel of that kind can be drawn. Only after a business has reported under the Act will its supply chain profile be known. However, it is possible to estimate the scale of business activity that will be captured by different reporting thresholds.

As noted above, ATO data suggests a 19% increase in the number of entities captured in each \$10M reduction of the reporting threshold. By contrast, there is only an 8% additional business turnover captured by each \$10M reduction. The explanation lies in the proportionately higher degree of economic activity that is concentrated in larger firms in Australia.

The Forbes Global 200 table shows a similar picture. The 37 Australian firms listed in the table had combined earnings of \$611 trillion. However, close to 60% of that amount (\$366trillion) was earned by the 10 largest firms. Put another way, the global supply chain activity of Australian businesses is proportionately more likely to be concentrated in a smaller number of large firms than spread evenly across the Australian business sector.

Another perspective is to ask whether lowering the reporting threshold would capture business activity of a kind that is not being captured by higher reporting thresholds. If so, the lowered threshold may capture supply chains in segments of the economy that are not currently captured by the Act's reporting. The ANZSIC code groupings combined with ATO business data are helpful to this inquiry.

Two points stand out. One is that there is a higher number of Australian businesses in some groupings than others (the highest are professional, financial, rental/hiring and construction). The second point is that the distribution of firms across the groupings is largely consistent at turnover bands of \$50-60M, \$70-80M and >\$100M. That is, lowering the reporting threshold is unlikely to change the profile of entities across ANZSIC codes that are currently reporting under the Act. Similarly, lowering the reporting threshold may not capture supply chains of a type that are not currently captured in the Act's reporting. (Figure 5 above presents the current reporting profile under the Act.)

What is the probable cost impact of lowering the reporting threshold?

There is no reliable data on the cost borne by individual entities in preparing a modern slavery statement. As noted below, the Regulation Impact Statement in 2018 estimated that

the average cost per reporting entity would be AU\$21,950. Recent informal business estimates have been far higher.

The actual cost is likely to vary according to the size and nature of a business, and may be lower for smaller entities that have fewer or less active supply chains. It is possible, too, that reporting costs will decrease over time. An underlying issue, nonetheless, is that compliance costs have to be offset against regulatory gains.

This review is interested to receive commentary on how the costs and gains of the reporting thresholds in the Act can be estimated and compared.

5. KEY ISSUES IN THIS REVIEW OF THE MODERN SLAVERY ACT

This section highlights issues at the heart of this review regarding the terms of the Act and how effectively it is operating. The consultation questions at the end of each section aim to guide rather than constrict submissions to this review. It is nevertheless important to bear in mind that this review is concerned only with the role of the Act in combating modern slavery and not with the comparative effectiveness of other anti-slavery measures.

a. Has the Modern Slavery Act had a positive impact?

A great deal has happened under the Act since it commenced operating on 1 January 2019. Drawing from the discussion above:

- The online Modern Slavery Statements Register has been established and publishes modern slavery statements and guidance material that has been accessed in more than 1.2 million searches.
- 4,399 modern slavery statements are published on the Register, covering the activities of an estimated 6,293 entities from 42 different countries (at 30 June 2022).
- The Commonwealth has published 2 modern slavery statements, and tabled 2 annual reports on the implementation of the Act.
- The MSEAG has been established to provide expert advice on the implementation of the Act and includes 22 organisations and experts from outside government.
- There is frequent dialogue between government, the business community, civil society groups, government agencies, and universities about the Act's requirements, compliance trends and best-practice reporting. The MSHTB supports this dialogue through an online helpdesk, workshops, a national conference, project funding, international engagement, and a range of other stakeholder collaborations.
- Several meticulous research projects have been undertaken by non-government groups into the adequacy of reporting under the Act based on their own methodologies and interpretations of published modern slavery statements.
- The Act's activity has been integrated with other Commonwealth programs that aim to combat modern slavery and support those at risk, both domestically and abroad.

Doubtless, more is now known in Australia through reporting under the Act about the link between modern slavery practices and global supply chains. Similarly, more is known about steps that entities have (or have not) taken to identify and respond to these practices in their own business operations. The Act has provided a platform for increased dialogue between government, business and the community about modern slavery risks and threats.

Those developments of the first three years exemplify the transparency premise of the Act. This review will examine options for strengthening transparency through legislative or administrative changes that may lead to better reporting and a sharper understanding of the modern slavery challenge.

It is equally important to ask whether the Act, viewed overall from its early days, will have a positive impact in combatting the drivers of modern slavery – that include factors as diverse as poverty, economic shocks, gender inequality, disability, lack of access to education, exploitative business practices, and unregulated labour migration. In effect, does the

transparency model approach in the Act make a difference strategically in confronting modern slavery on a global scale and reducing its prevalence? The Act aims to have that impact in various direct and indirect ways – increasing business awareness of modern slavery risks and drivers; encouraging government and business to shoulder greater responsibility for supply chain analysis and shielding vulnerable people against threats of enslavement; supporting and equipping business to take effective action; and initiating stronger collaboration between government, business, academia and the community.

A related line of inquiry is to ask whether the transparency premise of the Act should be extended. An option for doing so (consistently with the current mandatory reporting scheme) may be to expand on the obligation that entities currently have under the Act to report on their actions to address modern slavery risks and to assess the effectiveness of those actions. For example, the Act could require an entity in its modern slavery statement to explain the process it followed in order to be reasonably satisfied that a modern slavery practice was not occurring in a specified region, industry or product, or in relation to a specified issue of pressing concern. The matter to be reported on could be specified by an Anti-Slavery Commissioner or by some other government process. (The range of issues to be considered in established a mandatory reporting procedure of this kind are noted below, in the discussion of administrative compliance.)

This links to the broader topic of placing a due diligence obligation on entities to address modern slavery risks. The Act adopts the due diligence concept by requiring an entity to describe its ‘due diligence and remediation processes’ to assess and address modern slavery risks (s 16(1)(d)).

The term ‘due diligence’ is not defined in the Act. The Explanatory Memorandum to the Bill advises that some of the mandatory reporting terms in the Act are drawn from the *United Nations Guiding Principles on Business and Human Rights* (2011) (UNGPs).

The UNGPs list 31 principles that government and business enterprises are urged to follow to ensure that business respects and protects the human rights of individuals throughout their operations. The UNGPs deal with human rights protection in the broadest sense, though modern slavery abuses are at the core of that challenge. The UNGPs adopt the concept of ‘human rights due diligence’ to frame the operational responsibilities of business. This is defined in Principle 17:

In order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, business enterprises should carry out human rights due diligence. The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed. Human rights due diligence:

- (a) Should cover adverse human rights impacts that the business enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships;*
- (b) Will vary in complexity with the size of the business enterprise, the risk of severe human rights impacts, and the nature and context of its operations;*
- (c) Should be ongoing, recognising that the human rights risks may change over time as the business enterprise’s operations and operating context evolve.*

Other UNGP principles that elaborate on that overarching principle are summarised in the Australian Government *Guidance for Reporting Entities*:

There are four key parts to due diligence:

- **Identifying and assessing** actual and potential human rights impacts (for example, screening new suppliers for modern slavery risks)
- **Integrating your findings** across your entity and taking appropriate action to address impacts (for example, introducing internal training on modern slavery and processes for incident reporting)
- **Tracking your entity's performance** to check whether impacts are being addressed (for example, doing an internal audit of your supplier screening)
- **Publicly communicating what you are doing** (for example, by publishing a Modern Slavery Statement or publicly responding to allegations against a supplier).

The *Guidance for Reporting Entities* gives additional practical guidance on how an entity can undertake those due diligence activities.

For present purposes, the question arising is whether the concept of 'due diligence' should be embedded more specifically or concretely in the Act. Or should due diligence reporting be encouraged in other ways? In effect, if there is a view that Australian businesses have not stepped up as well as they might to the modern slavery due diligence challenge, does the weakness lie in the terms of the Act, the administrative guidance to supplement the Act, business culture, or that modern slavery reporting is a significantly new procedure that is likely to improve over time? This review is interested to receive commentary on that theme.

For context, it should be noted that some options for complementing the Act are beyond the terms of reference for this review and are not examined in this paper. A prominent example is import control measures, such as presumptive import bans on goods sourced from regions or industries that are declared to carry a modern slavery risk.

Impact of the Modern Slavery Act

This review is interested to hear your views on the success or limitations of the Modern Slavery Act in the first three years:

- *Has the Modern Slavery Act had a positive impact in the first three years?*
- *Is the 'transparency framework' approach of the Modern Slavery Act an effective strategy for confronting and addressing modern slavery risks, including the drivers of modern slavery?*
- *Should the Modern Slavery Act be extended to require additional modern slavery reporting by entities on exposure to specified issues of concern? If so, what form should that reporting obligation take?*
- *Should the Modern Slavery Act spell out more explicitly the due diligence steps required of entities to identify and address modern slavery risks?*
- *Has the Modern Slavery Act been adequately supported and promoted by government, business and civil society?*

b. Are the Modern Slavery Act reporting requirements appropriate?

Several aspects of the Act's reporting requirements require separate analysis.

Reporting threshold: The mandatory reporting obligation in the Act applies to Australian and foreign entities conducting business in Australia that have an annual consolidated revenue of at least AU\$100M for the reporting period.

A much-debated issue is whether this threshold should be lowered. A figure of \$50M is commonly suggested, though intermediate suggestions are \$60M or \$75M, or even lower at \$25M.

The then Minister's Second Reading Speech for the Act explained that the \$100M threshold 'focuses on entities that have the capacity to meaningfully comply and the market influence to clean up and address their global supply chains'. The Minister foreshadowed (correctly) that the threshold would capture more than 3,000 entities in Australia.

Two principal arguments in support of the \$100M reporting threshold are:

- The work required to prepare an annual modern slavery statement can be considerable. The reporting burden can also be felt by the suppliers to a reporting entity, who may be required in practice to forward information and undertake their own due diligence assessment. A lower reporting threshold will potentially impact a high number of organisations, including many smaller ones.
- Experience confirms that reporting entities may require considerable assistance from government and independent advisers to undertake high quality reporting. The work to support and improve mandatory reporting is, it is argued, better targeted at larger entities that also have the capacity to act on their own findings in eradicating modern slavery from supply chains. Similarly, regulatory scrutiny of the adequacy of mandatory reporting may be less effective if it is spread across too many entities. A lower reporting threshold could consequently result in overall inferior compliance with and oversight of the Act's requirements, and in turn make the Register a less valuable tool for shining a light on supply chain failings.

Two principal arguments for lowering the reporting threshold are:

- The purpose of the Act's reporting requirement is to drive meaningful change in modern business practice in a global economy that both nurtures and masks modern slavery. The obligation to prepare a modern slavery statement should be extensive – and in particular should apply to entities that at present may not fully understand or acknowledge that modern slavery practices can enter their operations and supply chains.
- The Act will operate alongside a growing number of mandatory reporting laws in other countries. There should be consistent reporting thresholds and criteria, both to lessen the burden on reporting entities and to capture meaningful information about supply chain risks. The reporting threshold is generally set lower in other countries – for example, the UK threshold of £36M is roughly AU\$63M. Now is an appropriate time, it is argued, to lower an Australian reporting threshold that was set in different circumstances in 2018.

To assist this ongoing debate, the Department of Home Affairs – as noted above – has undertaken preliminary modelling on the economic impact of changing and lowering the reporting threshold. The modelling has attempted to estimate the number of entities that would be captured by a lower reporting threshold – perhaps an additional 2,400 entities if the threshold is reduced to \$50M. There may not, on the other hand, be a commensurate increase in the coverage of Australian business activity, which is concentrated in a smaller number of large businesses. The modelling also queries whether a lowered threshold would capture a style of business or supply chain activity that is not captured by the present reporting threshold. Commentary is invited on how modelling of this kind should be undertaken, the lessons that can be drawn from it, and how compliance costs and regulatory gains can be balanced.

Other elements of the reporting obligation will be noted briefly for the purposes of this consultation. Comments are invited on whether these elements are appropriate or are a source of difficulty for entities in deciding if the reporting obligation applies to them. Guidance on the meaning of these elements is given in the *Guidance for Reporting Entities*.

- An entity is required to report under the Act if it has ‘a consolidated revenue of at least \$100M for the reporting year’ (s 5(1)(a)). The term ‘consolidated revenue’ is defined in s 4 of the Act as the total revenue of the entity in the reporting period, worked out in accordance with the accounting standards made by the Australian Accounting Standards Board (AASB) under the *Corporations Act 2001* (Cth) s 334. The total revenue of an entity includes the revenue of all other entities that it ‘controls’ (a term that again relies on the definition in the AASB accounting standards). The accounting standards may not otherwise apply to an entity – for example, because it is not a body incorporated under the Corporations Act.
- The entities to which the reporting obligation applies are described in the Act as an ‘Australian entity’ that ‘carries on business in Australia’ at any time during the reporting period (s 5). The term ‘Australian entity’ is defined partly by reference to concepts in the *Income Tax Assessment Act 1936* (Cth) (such as ‘company’ and ‘trust’), and partly by the inclusion in the term of any other incorporated or unincorporated entity, such as a partnership formed in Australia. The term ‘carries on business’ is defined by reference to the meaning of that term in the Corporations Act.

Another point to note (more for completeness than as a consultation issue) is that a different criterion to annual consolidated revenue could be adopted. For example, the threshold adopted in some European laws for applying a reporting or due diligence obligation to an entity is that it employs a specified number of full-time employees, such as 1,000 or more. Adoption of an entirely new criterion such as that could, however, open a similar range of definitional problems and disrupt the continuing smooth operation of the Act.

Reporting timelines: An entity is required to submit its modern slavery statement no later than six months after the end of its ‘reporting period’ (s 13(2)(e)). The term ‘reporting period’ is defined as meaning a financial year or other annual accounting period used by the entity (s 4).

The deadlines for submitting a statement, and the dates of actual submission, can vary widely among entities. Most entities will operate under the Australian financial year, which ends on 30 June – meaning that the Act’s reporting deadline is 31 December. Some entities

adopt the financial year of the country in which they are based (for example, the financial year in the UK and Japan ends on 31 March – meaning that the Act’s reporting deadline is 30 September). An entity that adopts calendar year reporting (ending on 31 December) will have an Act reporting deadline of 30 June in the following year. All entities have flexibility as to when they submit within the six month period leading up to their reporting deadline.

The explanation for this flexibility in reporting deadlines is to minimise the regulatory impact of the Act by allowing entities to align their reporting obligation with other internal accounting and reporting processes. A practical consequence, nevertheless, is that the reporting cycle covers a period of 14 months.

It was even longer (17 months) during the first reporting cycle as the Government granted a three month extension for most reporting, in response to COVID-19 pressures on business operations. This meant, for example, that entities reporting on an Australian financial year basis had a due date for submission of 31 March 2021. The second reporting cycle for all entities ended on 30 June 2022.

Australia, consequently, is still at an early stage in being able to objectively evaluate modern slavery statement reporting. The variability has an impact both on comparative analysis of all statements, and longitudinal analysis of reporting by individual entities.

These difficulties may settle over time when multiple statements have been submitted by all entities. Commentary is nevertheless invited on the suitability of the reporting period defined in the Act.

Reporting criteria: A unique feature of the Australian Act is that it lists seven mandatory reporting criteria for modern slavery statements. This is to ensure both a high base level of reporting for all entities, and consistency and comparability in statements.

For the most part the criteria (listed above) have a self-evident purpose and meaning. Commentary is nevertheless invited on all criteria - for example, are they overall too demanding, or conversely do they not go far enough?

Five specific issues will be noted for the purposes of this consultation:

1. Should criteria that have been less well complied with be reframed?
2. Is ‘modern slavery’ appropriately defined in the Act?
3. Should the phrase ‘operations and supply chains’ be clarified?
4. Should one or other modern slavery practices be excluded from the Act’s definition?
5. Should the Act’s reporting requirement be better harmonised with reporting requirements in other jurisdictions?

1. *Reframe the reporting criteria?* Some of the reporting criteria have been less well complied with, or at least have attracted more criticism as to the adequacy of reported statements.

The Act requires that an entity’s statement ‘describe how the reporting entity assesses the effectiveness’ of the actions it has taken to assess and address the risks of modern slavery practices in its operations and supply chains (s 16(1)(e)). This must include a description of its ‘due diligence and remediation processes’ (s 16(1)(d)). Another problematic area has

been the requirement to describe the process of consultation between higher and subsidiary entities (s 16(1)(f)).

Extensive guidance has been given on the meaning of those criteria in the *Guidance for Reporting Entities*. But is that enough? Should the criteria be reframed or stated more clearly?

An issue discussed above is whether the 'due diligence' element of the reporting obligation should be spelt out. Another example is the textual ambiguity in the requirement to describe how a reporting entity assesses the effectiveness of its own actions. Is this requirement one of form (to describe the assessment method used) or one of substance (to record the entity's opinion on how effective its own actions have been)?

2. *Re-define 'modern slavery'*? The reporting criteria are tied to the definition of 'modern slavery' in the Act. In turn, the Act defines modern slavery by reference to offence provisions in the Criminal Code and descriptions of human trafficking and child labour in two international conventions.

That potentially raises difficult definitional issues for entities as to what they should be reporting. The offence provisions are necessarily cast in precise and meticulous terms that set a standard for criminal prosecution. Should more generic phrasing be used in the Act? The international conventions, by contrast, are framed more broadly, in keeping with the drafting style of international agreements. That, too, could raise a definitional quandary in the context of the Act – child labour, for example, is defined in the convention to include 'work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children'.

In practice, the approach taken in defining modern slavery for reporting purposes has been to use shorthand expressions – such as 'slavery, servitude, forced labour, deceptive recruiting for labour or services, forced marriage, debt bondage, trafficking in persons, trafficking in children, organ trafficking and harbouring a victim'. This is the approach adopted in the *Guidance for Reporting Entities*, Appendix 1, which explains that the term 'modern slavery' describes eight types of serious exploitation. These are described, together with examples.

Commentary is invited on whether the approach presently adopted in the Act of defining modern slavery is appropriate, or whether a different approach is desirable.

3. *Define 'operations and supply chains'*? The Act requires entities to report annually on the risks of modern slavery in their 'operations and supply chains' (eg, ss 3, 11, 16).

That phrase is not defined in the Act. There may be difficulty in doing so, given the great variety of business and other operations engaged in by entities to which the Act applies. Instead, the *Guidance for Reporting Entities* gives numerous examples of activities that may fall within the phrase. For example, the guide explains that a bank's operations include financial lending to clients; a manufacturing company's operations include employment of workers; and a religious entity's operations include marriage services.

On the other hand, the guide explains that an entity's operations do not include how its products or services are used by customers. Nor would the supply chains of a financial

lender include the supply chains of its loan recipients. The guide nevertheless urges entities to assess whether they may be exposed to modern slavery risks through their arrangements or practices.

Difficult questions will understandably arise as to which activities are part of the 'operations' or 'supply chains' of particular entities. For the purposes of this review, commentary is invited on whether further guidance or clarification is required as to the meaning of those terms, either generally or in reference to specific activities. Clarification could be provided either in the Act or in administrative guidelines.

4. *Exclude some 'modern slavery' practices?* It has been questioned whether all the Criminal Code categories of modern slavery are appropriate matters for modern slavery reporting.

Should forced marriage, for example, be excluded from reporting, as it is less likely to be present in business operations and supply chains? It may also be difficult (or intrusive) for a reporting entity to assess whether forced marriage is occurring among its own employees or within the business operations of its contractors or suppliers.

Commentary is invited on whether any categories of conduct that presently fall within the definition of modern slavery for the Act's reporting purposes should be excluded from the reporting requirement.

5. *Harmonise the reporting criteria?* Harmonisation of reporting requirements across different jurisdictions is highly desirable in principle, but how easy is it to achieve?

There is a close similarity between the reporting requirements in Australia and the UK, yet there are textual and substantive differences. The UK Act requires that an organisation prepare 'a statement of the steps the organisation has taken ... to ensure that slavery and human trafficking is not taking place ... in any of its supply chains, and ... in any part of its own business' (s 54(4)). The Act then lists information (optional criteria) that an organisation 'may include' in its statement.

The UK list of optional criteria is similar to the mandatory criteria in the Australian Act. But there are differences. A UK statement may include information about an organisation's policies in relation to slavery and human trafficking and the training available to staff. There is no equivalent criterion explicit in the Australian mandatory criteria. On the other hand, an Australian statement must describe the risk of modern slavery practices in any entities the reporting entity owns or controls. There is no equivalent mention of this in the UK Act.

The Australian and UK Acts both adopt the same approach of defining slavery by reference to criminal offence provisions. Understandably, those offence provisions are drafted differently in each country. In addition, the UK offence provisions are narrower in scope and do not, for example, cover forced marriage and debt bondage. Nor does the UK Act cross-reference the international convention on the worst forms of child labour.

Those comparisons highlight the practical challenges in harmonising the reporting requirements in Australia and the UK. Which reporting features are most desirable or helpful for reporting entities in addressing modern slavery risks? Is a new approach required to define modern slavery? To what modern slavery practices should the reporting requirement

apply? The challenges become larger when more countries engage in a harmonisation process.

Commentary is invited on whether inconsistencies in different country reporting requirements have hampered the operation of the Act, both for entities in preparing statements and for others (such as civil society groups) in assessing those statements. Commentary is similarly invited on steps that could be taken to ensure greater cross-jurisdictional harmony in reporting requirements.

Statement approval: The Act requires that a modern slavery statement be approved by the 'principal governing body' of the reporting entity and be signed by a 'responsible member' of that governing body (s 13(2)). A joint statement for two or more entities must be approved by the principal governing body of each entity and be signed by a responsible member of each (s 14(2)).

A variation is that a joint statement may cover an entity and its subsidiaries. If so, the statement is to be approved by the governing body of the higher entity, that is, the entity that can directly or indirectly influence or control the subsidiary entities (s 14(2)(d)).

The terms 'principal governing body' and 'responsible member' are defined in the Act (s 4). Examples are a company's board of directors, and a member of the board who is authorised to sign modern slavery statements.

The purpose of these approval requirements is to encourage senior management awareness, leadership and accountability in addressing modern slavery risks. The requirements seem relatively straightforward, but have not been free of difficulty. Non-compliance has frequently been noted and drawn to the attention of entities when statements are submitted.

This may be an issue that will settle down as entities gain more experience in preparing and submitting statements. Commentary is nevertheless invited on whether alterations should be made to these requirements or how they are implemented.

Other reporting features: Two other aspects of the reporting requirements should be noted in this consultation.

- **Joint statements:** A joint annual modern slavery statement may cover one or more entities of any type, or a higher entity and its subsidiaries.
- **Voluntary reporting:** An Australian-based entity that does not meet the \$100M reporting threshold may opt to report under the Act by giving prior written notice of its intention to do so (s 6). The entity is expected to comply with the mandatory reporting criteria and reporting timelines. There were 537 voluntary statements on the Register as at 30 June 2022.

The provisions on joint statements and voluntary reporting have not loomed large in commentary on the Act. Commentary is nevertheless invited on whether the provisions in the Act are suitably framed.

Modern Slavery Act reporting requirements

This review is interested to hear your views on the reporting requirements in the Modern Slavery Act:

- *Is AU\$100M consolidated annual revenue an appropriate threshold to determine which entities are required to submit an annual statement under the Modern Slavery Act? Does the Act impose an appropriate revenue test for ascertaining the \$100m threshold?*
- *Should the Modern Slavery Act require annual submission of a modern slavery statement? Does the Act contain appropriate rules for ascertaining the annual reporting timeline for entities?*
- *Does the Modern Slavery Act appropriately define 'modern slavery' for the purpose of the annual reporting obligation?*
- *Is further clarification required of the phrase 'operations and supply chains', either in the Modern Slavery Act or in administrative guidelines?*
- *Are the mandatory reporting criteria in the Modern Slavery Act appropriate – both substantively and in how they are framed?*
- *Should more be done to harmonise reporting requirements under the Australian Modern Slavery Act with reporting requirements in other jurisdictions, such as the United Kingdom? How should harmonisation be progressed?*
- *Does the Modern Slavery Act contain appropriate requirements for approval of a statement by the principal governing body and responsible member of an entity?*
- *Should other reporting features of the Modern Slavery Act be revised – such as the provisions relating to joint statements, or voluntary reporting?*

c. Are additional measures required to improve compliance with Modern Slavery Act reporting obligations?

This three-year review is required by the Act to consider the following two items:

- 'compliance with this Act and any rules over the [three year] period', and
- 'whether additional measures to improve compliance with this Act and any rules are necessary or desirable, such as civil penalties for failure to comply with the requirements of this Act' (s 24(1)(aa),(ab)).

The Government has foreshadowed (in a 2022 Election commitment) that it would consult with business and advocacy groups to amend the Act to introduce penalties for non-compliance. The announcement criticised current compliance approach and culture.

As noted above, the Act was framed on a principle of voluntary compliance by businesses with their reporting obligations. This was explained in the Regulatory Impact Statement for the Act as a strategy to focus compliance on ‘sharing best-practice’ rather than a ‘tick box compliance approach’. The objective was to support and equip business to understand the importance and requirements of the law. The *Guidance for Reporting Entities* comments that modern slavery reporting is expected to be a process of continuous improvement over time, from one reporting cycle to the next. It was similarly anticipated that reputational risk and investor and consumer pressure would become effective drivers for business compliance.

Two features of the Act that are designed to cultivate effective compliance are the list of mandatory reporting criteria, and the requirement that a statement be approved at a board (or equivalent) level and be signed by a responsible member of the entity.

The Act contains three supplementary regulatory measures:

- The Minister may elect not to register a modern slavery statement that is assessed as not complying with the requirements of the Act (s 19). In effect, a decision not to register a statement could expose an entity to criticism.
- The Minister may request an entity to explain within 28 days why it has not complied adequately or at all with the reporting requirement, or request an entity to take specified remedial action to ensure compliance (s 16A).
- The Minister may publish the identity of an entity that does not comply with the request. An entity may seek review in the Administrative Appeals Tribunal (AAT) of the Minister’s decision to publish information about the entity’s failure to comply with a request.

It is also open to an entity to submit a revised version of a modern slavery statement at any time (s 20).

Three questions arise about compliance and enforcement options:

- In what areas has there been inadequate compliance by entities with the Act’s reporting requirements?
- Can more be done at an administrative level to improve compliance standards?
- Should the Act be amended to include additional enforcement measures or powers, including civil penalties for non-compliance?

Non-compliance concerns: Compliance with the Act’s reporting requirements has been evaluated in two ways – within government by the MSBEU; and externally in several independent studies.

The MSBEU assessment outcomes for the first and second reporting cycles are presented above in Figures 2-4. Key points are:

- The number of statements published in each reporting cycle was 2,359 (first cycle) and 4,108 (second cycle).

- As to the statements published on the Register in the first reporting cycle: 59% were assessed as likely to be compliant and 41% assessed as likely to be non-compliant for not adequately addressing all the mandatory reporting criteria. Of the statements published on the Register in the second cycle: 72% were assessed as compliant and 28% as non-compliant.
- One compliance requirement is that a statement must include details of approval by the principal governing body of an entity, and be signed by a responsible member. This requirement was not met in 27% of statements in the first reporting cycle (632 instances), and 17% in the second cycle (679 instances). These statements were not published on the Register unless that element was corrected.
- A statement may be published on the Register even though it has not adequately addressed all six of the mandatory reporting criteria. There was a higher rate of non-compliance with two criteria, requiring that a statement describe –
 - the process of consultation between the entities covered by a joint statement (537 instances in first cycle; and 843 in second)
 - how the entity assessed the effectiveness of any actions it took to assess and address the risks of modern slavery practices in its operations and supply chains (251 instances in first cycle; and 329 in second).

Several independent studies by non-government bodies of compliance with the Act are summarised in Appendix B. These studies looked mainly at compliance in the first reporting cycle. They also had a broader frame of reference in evaluating (in their own terms) the quality of statements published on the Register.

The independent studies have generally been critical of the adequacy of compliance with the Act. They have noted a wide divergence among statements in formal compliance and the quality of reporting. A central theme in all studies is that a majority of statements gave inadequate explanation or detail on how an entity had gone about identifying and responding to modern slavery risks (particularly beyond Tier 1 suppliers). There was also a call in some studies for modern slavery statement reporting to be explicitly linked to proactive steps by an entity to combat modern slavery risks.

Another compliance perspective is to estimate the cost to individual entities of preparing and submitting a modern slavery statement. The Regulation Impact Statement for the Act estimated in 2018 that the average, annual regulatory cost would be \$21,950 per reporting entity. Recent informal estimates have put the cost much higher.

This review is interested to hear views on compliance adequacy and trends.

Improving compliance standards through administrative action: It was acknowledged from the outset that business may need guidance and support to fully understand the new reporting requirements in the Act. This was noted in the then Minister’s Second Reading Speech, the Explanatory Memorandum to the Bill and the Regulation Impact Statement.

The MSBEU was established early to lead this business support program. Activities have included publishing administrative guidance documents, managing an online helpdesk, hosting a national conference, arranging workshops and information sessions, convening

consultation groupings, and supporting the MSEAG. There is further elaboration of this support work in the two annual reports under the Act.

Two observations can be made based on the above figures:

- There is a noticeable compliance improvement across both reporting cycles, as assessed by the MSBEU – the rate of compliance rose from 59% to 72% in the second cycle.
- There is room for significant improvement. In the second cycle 679 statements did not include approval or signature information and were not initially accepted for publication; and 957 statements published on the Register were assessed as non-compliant. The most common failing was in describing the process of consultation between entities covered by a joint statement.

To this point, government administrative action to encourage compliance with the Act has endeavoured to build business goodwill and support for the Act's objectives. Could more be done at an administrative level to provide constructive guidance? And should this be augmented by government action that is more commanding or castigatory?

Several options could be considered. One may be for government to issue more specific direction on modern slavery risks that entities are expected to address in the current reporting year. The specific direction could (as noted above) relate to specified regions, industries, products or concerns. Another option may be for government to adopt a policy that an entity that has failed to meet its reporting obligations is not eligible for a government contract. Or to require through the procurement process that businesses tendering for a government contract must affirm they have met their modern slavery reporting obligations and will continue to do so as a condition of any contract.

There are subsidiary issues to be considered for each of those options. For example, specifying regions of particular concern may raise issues for Australia's bilateral relations. There may also be unintended consequences for vulnerable workers who are freshly exposed to exploitation if their employment ceases when a reporting entity terminates a supply chain contract for a specified industry or product. Another unintended consequence may be that entities attach overarching importance to reporting on specified issues at the expense of due diligence reporting in general.

This review is interested to hear views on the role that government administrative action has played in furthering compliance with the Act reporting requirements and, going forward, how that administrative support should be strengthened or targeted.

Amending the Act to include additional enforcement measures: The Act presently confers limited regulatory powers to enforce the reporting requirement. Additional suggested measures are principally of four kinds. (Commentary on other possible options is invited.)

The *first* option is akin to the procedure in the UK Modern Slavery Act, s 54(11), that confers jurisdiction on a court, in proceedings commenced by the Secretary of State, to grant an injunction requiring an entity to comply with its reporting obligations. This procedure has never been used.

A *second* option is to confer power on a nominated person (such as the Minister or an Anti-Slavery Commissioner) to publish standards or guidelines that entities are expected to observe in preparing modern slavery statements. Publication of regulatory standards is nowadays a common function in government. The following two examples are illustrative. The Information Commissioner has power under the *Privacy Act 1988* (Cth) s 26V to make written guidelines to assist private entities to develop privacy codes to be registered under the Privacy Act. The National Archives of Australia has published the Information Management Standard to assist Australian Government agencies to create and manage government information.

A *third* option is to include in the Act a procedure by which a person may complain that a statement is non-compliant, and for that complaint to be investigated by the Minister or Commissioner. The complaint outcome may be that a revised statement must be prepared.

A *fourth* option (as foreshadowed in the Government's election commitment) is to include within the Act a penalty regime for non-compliance with the reporting requirements.

There was a precedent for this approach in the NSW Modern Slavery Act before its amendment in 2021. The Act provided that a civil penalty may apply if a business that was required to prepare an annual modern slavery statement either failed to do so or knowingly included materially false information in its statement. The maximum penalty was 10,000 penalty units (then \$1.1M).

The Commonwealth Parliament Joint Standing Committee report, *Hidden in Plain Sight*, recommended that penalties and compliance measures be introduced after the first reporting cycle. The first step would be to apply a penalty to an entity that was required to submit a statement but failed to do so. The next step (following a review at the three-year mark) may be to apply penalties for a failure to meet any of the Act's reporting requirements or for not adequately addressing modern slavery risks occurring within a supply chain.

The Independent Review of the UK Act in 2019 recommended that Government bring forward proposals for the gradual introduction of sanctions for non-compliance. The sanctions would commence with a warning letter, and rise to a fine (as a percentage of turnover), a court summons or disqualification of a director.

The Commonwealth *Regulatory Powers (Standard Provisions) Act 2014* (Cth) provides a framework of standard provisions that can be adopted by other Acts. Among the standard provisions are those relating to civil penalties, infringement notices and enforceable undertakings.

As that summary indicates, there are many unanswered questions in constructing a penalty/sanctions regime. They include:

- *What conduct (or omission) would be penalised* – failure to submit a statement, failure to submit a statement by the due date, failure to satisfactorily address all mandatory reporting criteria, submission of a materially false statement, or a repeated failure to comply with the reporting requirements?

- *What kind of penalty would apply* – a monetary penalty, exclusion from government contracting, or a sanction against the responsible member who approved the statement?
- *Who would apply the penalty* – a court, tribunal, commissioner, or the Minister?
- *What procedure should be followed in applying a penalty* – a warning letter, a procedural fairness process, a prosecution, and a right of appeal to the AAT?

A helpful background for dealing with those questions is the earlier debate as to whether penalties should apply to reporting failures. In brief, the main arguments put in favour of applying penalties were:

- It is important, in a global economy, that entities take modern slavery risks in supply chains seriously. They should be held to account if they fail to do so, and in particular if an entity has not bothered to submit an annual statement. The Act should be more than an aspirational framework.
- Entities will be less committed to addressing and reporting on modern slavery risks if there is no adverse consequence for inadequate reporting. The early experience in the UK (as reported by the Anti-Slavery Commissioner) is that compliance had been ‘patchy at best’.
- Penalties will not apply in the first two Act reporting cycles. This gives entities an adequate opportunity to adjust to the new reporting requirement. Arguments against applying penalties have considerably less force after that.

By contrast, the arguments put against applying penalties were:

- Business compliance should not be driven by a fear of being penalised but by a commitment to understanding and addressing modern slavery risks. A punitive regime will encourage a compliance culture rather than a supportive and open-minded culture.
- The Act implicitly encourages a collaborative and multi-stakeholder approach through mechanisms such as joint reporting. Penalties will work against that objective.
- Penalties that apply too broadly could discourage entities from full reporting and undertaking a probing analysis of their supply chains. Full disclosure could expose an entity to criticism for not taking stronger action against its suppliers. Entities may similarly be pressured to dispense with particular suppliers rather than work with them to eradicate modern slavery practices, and pose consequential exploitation risks for vulnerable workers.

A final point to bear in mind is that there are constitutional limitations in creating a punitive framework in a Commonwealth law. The imposition of a monetary fine is classified as an exclusively judicial function that can only be exercised by a federal court under Chapter III of the Australian Constitution. Consequently, prosecution action would be required to levy a penalty for failure by an entity to comply with the Act’s reporting requirements. Other powers that are only castigatory in nature – such as publication of a list of entities that are assessed

as non-compliant, or exclusion of an entity from Commonwealth procurement activity – could be exercised at an executive level by a Minister or commissioner.

Enforcement of the Modern Slavery Act reporting obligations

This review is interested to hear your views on compliance and enforcement options for the Modern Slavery Act:

- *Has there been an adequate – or inadequate – business compliance ethic as regards the Modern Slavery Act reporting requirements?*
- *Has government administrative action been effective in fostering a positive reporting and compliance ethic during the first three years of the Act? What other administrative steps could be taken to improve compliance?*
- *Should the Modern Slavery Act contain additional enforcement measures – such as the publication of regulatory standards for modern slavery reporting?*
- *Should the Modern Slavery Act impose civil penalties or sanctions for failure to comply with the reporting requirements? If so, when should a penalty or sanction apply?*

d. Are public sector reporting requirements under the Modern Slavery Act adequate?

An innovative feature of the Act is that it applies to Australian Government entities, in two ways:

- Commonwealth corporate entities report in the same manner as private entities, that is, those above the \$100M threshold must submit an annual modern slavery statement (either individually or jointly with other entities).
- Non-corporate entities such as departments and statutory agencies are collectively covered by a consolidated annual statement, the Commonwealth Modern Slavery Statement. The Act's mandatory reporting criteria and timeframes apply to the Commonwealth statement as for other entities. The Commonwealth statement is to be published by 31 December each year.

The Regulation Impact Statement explained that the Act applies to government as 'The Australian Government recognises that it needs to show leadership in combating modern slavery and that government procurement is not immune from modern slavery risks'.

An important feature of the Commonwealth reporting requirement is that a single report is prepared for all non-corporate entities. A variation may be to require separate reporting by some agencies that undertake high-volume procurement.

Key points made in the second Commonwealth Statement for the 2020-21 financial year period were:

- The Commonwealth is one of the largest procurers of goods and services operating in the Australian market. In the 2020-21 financial year it entered into 84,054 contracts with a total value of \$69.8B (3.64% of the contracts were with overseas suppliers).

- While recognising that modern slavery practices are deeply embedded in global supply chains, the Commonwealth has focused on specific high-risk sectors through a targeted risk-based approach.
- The highest risk areas for government have been identified as investments, cleaning and security services, textiles procurement, construction, and procurement of information communication technology hardware.
- Collaboration with industry and civil society experts has been prioritised to build a deeper awareness and understanding of modern slavery risks in procurement.
- The Commonwealth has a six year program comprising four phases – Foundation, Discovery, Implementation, and Review. The first two Commonwealth Statements fall within the Foundation and Discovery phases, which involve establishing a practical basis for NCCE reporting; awareness raising and training; and commencing targeted supply chain mapping and risk assessments. Further Commonwealth Statements are expected to conclude the Discovery phase and progress to the Implementation and Review phases, which will include mitigation strategies and targeted action; and review of overall effectiveness and forward planning.
- Resources that have been developed to address slavery risks and assess the effectiveness of government action are model contract clauses, a risk screening tool, a supplier questionnaire, e-learning modules, a reporting template, a rapid response framework to address modern slavery risks in procurement during emergency situations, and a Performance Review Framework.
- Groups consulted in the development of the Commonwealth Statement were the MSEAG, the IDCPP, and cross-agency working groups focussed on textiles, construction and information communication technology hardware.

The Act's reporting requirement does not apply to state, territory and local governments (s 8). This is in line with Australian federal arrangements that generally respect the self-governing status of each jurisdiction. Examples of other national regulatory laws that do not apply to other governments are those relating to race and sex discrimination, privacy protection and consumer protection. The implied constitutional principle of intergovernmental immunity also poses a potential obstacle to a Commonwealth law regulating the management of state public services.

It is nevertheless open to state, territory and local government to report voluntarily under the Commonwealth Act. Consultation occurs between Australian governments on approaches to combating modern slavery. One jurisdiction, NSW, has enacted a Modern Slavery Act that requires public reporting by State government agencies, and voluntary reporting under the Act by State owned corporations.

Public sector reporting requirements under the Modern Slavery Act

This review is interested to hear your views on the application of the Modern Slavery Act to public sector agencies:

- *Should any alteration be made to the Modern Slavery Act as regards its application to Australian Government agencies?*
- *Does the annual Commonwealth Modern Slavery Statement set an appropriately high reporting standard in the Foundation and Discovery Phases of reporting?*
- *What action, if any, should be taken to ensure a common standard of modern slavery reporting among Commonwealth, state and territory government agencies in Australia?*

e. Does the online Modern Slavery Statements Register adequately support scheme objectives?

Another innovation of the Act was the requirement to maintain a public register to be known as the Modern Slavery Statements Register. It was described in the then Minister's Second Reading Speech as a 'world-leading initiative [to] promote transparency and ensure that the community can easily access and compare statements'.

The Act requires that all modern slavery statements submitted in compliance with the requirements of the Act be registered and published on the Register. The Minister may also publish a statement that has been submitted but does not comply with the Act's requirements. The current practice is usually to publish compliant and non-compliant statements, with the exception of statements that do not include details of principal governing body approval or the signature of a responsible member of the entity.

The Australian Modern Slavery Act is still the only Act that requires the creation of a government Register and the publication of complying statements. The UK Government established a voluntary register in March 2021, to supplement the obligation imposed on commercial organisations by the UK Modern Slavery Act to publish statements in a prominent place on their own website. The NSW Modern Slavery Act requires the Anti-Slavery Commissioner to establish an electronic register that identifies government agencies and State owned corporations that have failed to comply with their obligations to prepare modern slavery statements.

The Australian Register includes (at 30 June 2022) 4,399 statements covering an indicative 6,293 entities. The Register has a search facility with numerous search variables – the entity name, date of submission, entity revenue, country where headquartered, industry sector (21 categories), overseas reporting obligations, and mandatory or voluntary reporting status. In excess of 1.2 million Registry searches have been performed.

The success of the Register principally depends on whether it fulfils the Act's objective of establishing a transparency framework that displays business and supply chain monitoring by large entities and government. Key to the success of the Register will be that it is user-friendly for members of the public in terms of accessibility and searchability.

The Register also contains other information and resources – such as a guide to the Act, guidance material on the Act’s reporting obligation, modern slavery model contract clauses, and the annual reports to Parliament.

Modern Slavery Statements Register

This review is interested to hear your views on the operation of the online Register for Modern Slavery Statements:

- *Does the Register provide a valuable service?*
- *Could improvements be made to the Register to facilitate accessibility, searchability and transparency?*

f. The administration of the Modern Slavery Act, and the role of an Anti-Slavery Commissioner

The administration of a regulatory law will be a key determinant of how well the objectives of the law are met.

A major issue identified in the Terms of the Reference for this three-year review is ‘whether it is necessary or desirable for an independent body, such as an Anti-Slavery Commissioner, to oversee the implementation of the Act and/or the enforcement of the Act’. A recommendation to the same effect was earlier made in 2017 by the Parliamentary Joint Committee in the *Hidden in Plain Sight* report.

The UK and NSW Modern Slavery Acts both provide for appointment of an Anti-Slavery Commissioner. The broad functions of the UK Commissioner are stated in the Act to be ‘the prevention, detection, investigation and prosecution of slavery and human trafficking offences’ and ‘the identification of victims of those offences’ (s 41, UK Act). In effect, the Act envisages that the Commissioner’s primary roles are to identify and support victims of modern slavery, and to prosecute offenders.

The Act states that the Commissioner is not to exercise any function in relation to individual cases, beyond considering them in the course of research and general reporting. Nor does the Commissioner have any express role in relation to the reporting requirement in the UK Act. Another feature of the UK Act is that the Commissioner must prepare a strategic plan, to be approved by government, outlining objectives and priorities for the period to which the plan relates.

The NSW Anti-Slavery Commissioner is to be appointed for a maximum period of five years (extendable for two years). The Commissioner’s functions are cast broadly, and include promoting public awareness of modern slavery and its effects, advocating for remedial action, assisting and supporting victims, operating a hotline to assist children and other victims, encouraging reporting of suspected instances of modern slavery, and monitoring the effectiveness of laws, government policies and government supply chain reporting.

The NSW Commissioner is not to investigate or deal directly with complaints or individual cases except in discharging other functions. As in the UK, the Commissioner is to prepare a strategic plan (to cover a 1-3 year period). The NSW Act provides explicitly that the Commissioner is not subject to the control or direction of a Minister.

The Australian Government has also committed to establish an independent Anti-Slavery Commissioner. The nominated functions are to:

- coordinate work across government and with industry to eliminate modern slavery in Australia and global supply chains
- monitor the effectiveness of all federal and state institutions to tackle modern slavery
- collaborate with other agencies to increase outreach and information sharing, and
- publish an annual list of countries, regions, industries and products with a high risk of modern slavery.

The role and functions of an Anti-Slavery Commissioner are potentially far broader than the terms of reference for this review. The specific issue for this review is whether an anti-slavery commissioner should play a role in overseeing and/or enforcing the Act's reporting requirement.

The role of a Commissioner could, at its narrowest, be limited to monitoring and reporting on the operation of the Act's reporting requirement, without discharging any of the administrative, support, educative or compliance functions currently discharged by the MSBEU. On the other hand, a Commissioner's role could be far broader, encompassing those functions together with new enforcement functions. Examples given elsewhere in this paper are:

- examining, either on complaint or an own motion basis, whether individual entities have properly complied with modern slavery reporting requirements
- publishing a list of entities that are assessed as not complying with Act's reporting requirements
- playing a role in recommending the imposition of penalties on individual entities for failing to comply with Act's reporting requirements
- periodically reviewing the operation of the Act.

The Office of Anti-Slavery Commissioner could be established by the Modern Slavery Act (as in the UK and NSW), or by a separate Act. Either way, the statute would necessarily deal with matters such as the process for appointing the commissioner, the term and conditions of appointment, appointment of staff and reporting to government. Those matters are not canvassed in this issues paper. Suffice to say they are addressed in a familiar way in many existing statutes that establish independent statutory office positions.

Administration and Compliance Monitoring of the Modern Slavery Act

This review is interested to hear your views on the administration and compliance monitoring of the Modern Slavery Act:

- *What role should an Anti-Slavery Commissioner play, if any, in administering and/or enforcing the reporting requirements in the Modern Slavery Act? What functions and powers should the Commissioner have for that role?*

- *Responsibility within government for administering the Modern Slavery Act.*

g. Future review of the Modern Slavery Act

This initial three-year review is required by the Act. There was support, when the Act was being enacted, for requiring a regular review process. The explanation given was that there can be change over time in modern slavery risks and business reporting culture. A periodic review by an Anti-Slavery Commissioner was one option.

The Terms of Reference for this review accordingly require consideration of ‘whether a further review of the Act should be undertaken, and if so, when’.

Review of the Modern Slavery Act

- *Is a further statutory review (or reviews) of the Modern Slavery Act desirable? If so, when? And by whom?*
- *Should a periodic review process (other than a statutory review) be conducted of the Modern Slavery Act and its implementation? What form should that review process take?*

6. HAVE YOUR SAY

This review invites your submissions and comments in response to this Issues Paper. Consultation questions are set out below to guide feedback. It is not required that you specifically address a question, or all of the questions.

You may make a submission in two ways:

- By forwarding a written submission to the following email (preferred) or postal address:

Modern Slavery Act Review Secretariat
Attorney-General's Department
3-5 National Circuit, Barton ACT 2600
ModernSlaveryActReview@ag.gov.au

- By completing the consultation questions online at the following link:
<https://consultations.ag.gov.au/crime/modern-slavery-act-review/>

The review will also put out an additional targeted survey for reporting entities to capture data on their experience in completing and submitting modern slavery statements under the Act.

The consultation period closes at midnight (AEDT) on Tuesday 22 November 2022. Submissions cannot be accepted after that date. The online consultation link also ceases on that date.

The intention is to publish written submissions on the AGD website. Please indicate if you do not wish your submission to be published. Please refrain from including personal information about other individuals in the body of your submission.

Note that this review collects your personal information in order to contact you if the review wants to clarify matters discussed in your submission, needs to clarify the nature of your submission (eg, if it is made in a personal or representative capacity), to confirm your consent to publication of information in your submission, or to seek feedback on the consultation process.

CONSULTATION QUESTIONS

Impact of the Modern Slavery Act

1. Has the Modern Slavery Act had a positive impact in the first three years?
2. Is the 'transparency framework' approach of the Modern Slavery Act an effective strategy for confronting and addressing modern slavery threats, including the drivers for modern slavery?
3. Should the Modern Slavery Act be extended to require additional modern slavery reporting by entities on exposure to specified issues of concern? If so, what form should that reporting obligation take?
4. Should the Modern Slavery Act spell out more explicitly the due diligence steps required of entities to identify and address modern slavery risks?
5. Has the Modern Slavery Act been adequately supported and promoted by government, business and civil society?

Modern Slavery Act reporting requirements

6. Is AU\$100m consolidated annual revenue an appropriate threshold to determine which entities are required to submit an annual statement under the Modern Slavery Act? Does the Act impose an appropriate revenue test for ascertaining the \$100m threshold?
7. Should the Modern Slavery Act require annual submission of a modern slavery statement? Does the Act contain appropriate rules for ascertaining the annual reporting timeline for entities?
8. Does the Modern Slavery Act appropriately define 'modern slavery' for the purpose of the annual reporting obligation?
9. Is further clarification required of the phrase 'operations and supply chains', either in the Modern Slavery Act or in administrative guidelines?
10. Are the mandatory reporting criteria in the Modern Slavery Act appropriate – both substantively and in how they are framed?
11. Should more be done to harmonise reporting requirements under the Australian Modern Slavery Act with reporting requirements in other jurisdictions, such as the United Kingdom? How should harmonisation be progressed?
12. Does the Modern Slavery Act contain appropriate requirements for approval of a statement by the principal governing body of an entity?
13. Should other reporting features of the Modern Slavery Act be revised – such as the provisions relating to joint statements, or voluntary reporting?

Enforcement of the Modern Slavery Act reporting obligations

14. Has there been an adequate – or inadequate – business compliance ethic as regards the Modern Slavery Act reporting requirements?

15. Has government administrative action been effective in fostering a positive compliance ethic? What other administrative steps could be taken to improve compliance?
16. Should the Modern Slavery Act contain additional enforcement measures – such as the publication of regulatory standards for modern slavery reporting?
17. Should the Modern Slavery Act impose civil penalties or sanctions for failure to comply with the reporting requirements? If so, when should a penalty or sanction apply?

Public sector reporting requirements under the Modern Slavery Act

18. Should any alteration be made to the Modern Slavery Act as regards its application to Australian Government agencies?
19. Does the annual Commonwealth Modern Slavery Statement set an appropriately high reporting standard?
20. What action, if any, should be taken to ensure a common standard of modern slavery reporting among Commonwealth, state and territory government agencies in Australia?

Modern Slavery Statements Register

21. Does the Register provide a valuable service?
22. Could improvements be made to the Register to facilitate accessibility, searchability and transparency?

Administration and Compliance Monitoring of the Modern Slavery Act

23. What role should an Anti-Slavery Commissioner play in administering and enforcing the reporting requirements in the Modern Slavery Act? What functions and powers should the Commissioner have for that role?
24. Responsibility within government for administering the Modern Slavery Act?

Review of the Modern Slavery Act

25. Is a further statutory review (or reviews) of the Modern Slavery Act desirable? If so, when? And by whom?
26. Should a periodic review process (other than a statutory review) be conducted of the Modern Slavery Act and its implementation? What form should that review process take?

Other issues

27. Is there any other issue falling within the Terms of Reference for this review that you would like to raise?

APPENDIX A: TERMS OF REFERENCE

Objective

The review will consider the operation of the Commonwealth *Modern Slavery Act 2018* (the Act) over the first three years and whether any additional measures are necessary or desirable to improve compliance with the Act and the operation of the Act.

Context

Modern slavery practices are major violations of human rights and serious crimes. Modern slavery practices include trafficking in persons, slavery, and slavery-like practices including forced labour, servitude, debt bondage, deceptive recruiting, forced marriage, and the worst forms of child labour. The Commonwealth Modern Slavery Act established Australia's national Modern Slavery Reporting Requirement. The Act was established through extensive consultations with the Australian business community and civil society, including investors. The Australian Parliament passed the Act on 29 November 2018 and the reporting requirement came into effect on 1 January 2019.

The reporting requirement is focused on large businesses, the Commonwealth, and other entities that have capacity and leverage to drive change throughout their supply chains. Under the UN Guiding Principles on Business and Human Rights, entities have a responsibility to respect human rights in their operations and supply chains, including taking action to prevent, mitigate and where appropriate, remedy modern slavery in entity operations and supply chains.

Three years after the commencement of the Act, the Government is undertaking this statutory review in accordance with Section 24 of the Act.

The Modern Slavery Act is one part of Australia's broader response to modern slavery domestically and overseas. It complements Australia's existing criminal justice response to modern slavery, which includes a National Action Plan to Combat Modern Slavery, specialist police investigative teams and a dedicated victim support program.

Matters to be considered by the review

1. The review is to consider and report on:
 - a) the operation of the Act and any rules over the period of 3 years after the Act's commencement;
 - b) compliance with the Act over that period;
 - c) whether additional measures to improve compliance with the Act are necessary or desirable, such as civil penalties for failure to comply with the requirements of the Act;
 - d) whether a further review of the Act should be undertaken, and if so, when;
 - e) whether it is necessary or desirable to do anything else to improve the operation of the Act and any rules; and
 - f) whether the Act should be amended to implement review recommendations

2. The review should also have regard to:
 - a) the extent to which the mandatory reporting criteria set out in Section 16 of the Act are appropriate;
 - b) the appropriateness of the \$100 million reporting entity threshold, reporting periods and reporting deadlines; and
 - c) whether it is necessary or desirable for an independent body, such as an Anti-Slavery Commissioner, to oversee the implementation of the Act and/or the enforcement of the Act.
3. The review will look specifically at the Australian context with respect to available legal frameworks and powers. Noting this, the review will consider relevant international legislation to consider whether reporting requirements may be harmonised across jurisdictions where feasible.

Conduct of the review

The review will draw on a range of sources. The review will:

- Provide an Issues Paper for public consultation.
- Invite submissions on matters for consideration in the review.
- Meet with stakeholders on specific matters arising from the Issues Paper and submissions.
- Consider related research and reports, including, but not limited to:
 - The following Parliamentary Joint Standing Committee on Foreign Affairs, Defence and Trade (JSCFADT) reports, and the October 2020 Australian Government response to the JSCFADT reports:
 - Hidden in Plain Sight: An inquiry into establishing a Modern Slavery Act in Australia; and
 - Modern Slavery and Global Supply Chains: Interim report of the Joint Standing Committee on Foreign Affairs, Defence and Trade’s inquiry into establishing a Modern Slavery Act in Australia.

APPENDIX B: INDEPENDENT STUDIES ASSESSING MODERN SLAVERY STATEMENTS

Several studies have been published in Australia in 2021-22 presenting the findings from projects that independently assessed modern slavery statements published on the online Modern Slavery Statements Register.

The studies looked at statements that were submitted mostly during the first reporting cycle that ended on 30 June 2021. The studies explained their aim of making an early assessment of the quality of modern slavery statements and assisting entities to strengthen their reporting in future years.

The MSHTB then in ABF (now in AGD) has welcomed these projects and consulted with the researchers. However, the ABF (now AGD) has not previewed or endorsed the study findings. They are presented in this Issues Paper to assist discussion of the consultation questions in this paper. The following presentation gives only a brief snapshot of the study findings.

Australian Council of Superannuation Investors, *Moving from paper to practice: ASX200 reporting under Australia's Modern Slavery Act (July 2021)*

This study examined modern slavery statements submitted in the first reporting cycle by 151 ASX200 companies. ACSI members are asset owners and institutional investors that own on average 10% of ASX200 companies.

The study assessed statements against 41 quality indicators and 8 legal compliance indicators. While the quality of modern slavery reporting varied by sector and revenue level, the overall finding was that there was significant room for improvement in the quality of reporting by ASX200 companies. The average quality score for statements was 15.4 out of a maximum of 41 points; only 31 statements scored 20 points or more. Statements generally aimed to satisfy the Act's legal reporting requirements, but not to deepen disclosure on operational risks – a 'paper over practice' approach.

Areas of marked weakness in reporting were: identifying entities that were owned or controlled by the reporting entity; describing consultation among those entities; going beyond a basic description of modern slavery risks in operations and supply chains; failing to look beyond Tier 1 suppliers; lack of greater consultation with civil society groups and workers to inform the modern slavery risk management approach; and providing insufficient detail in statements of risk assessment, internal training, assessment of effectiveness, grievance mechanisms for vulnerable workers, response strategies and identified incidents or allegations of labour rights violations.

The report contained recommendations for improving reporting under the Act that were separately targeted for ASX200 companies, investors and government. Practical steps were suggested for using the reporting process to mitigate and remediate modern slavery practices in business operations and supply chains.

Monash University Business School, Centre for Financial Studies, *Measuring Disclosure Quality of Modern Slavery Statements (Dec 2021)*

This study assessed the quality of 239 modern slavery statements submitted in 2020 by ASX300 companies. An annual survey of statements is planned for coming years as part of a Modern Slavery Research Program.

The study scored each statement according to 31 criteria grouped in 5 categories (multiple researchers assessed each statement). The statements were then graded from A (highest) to F (lowest). Only 6 companies received an A rating, 36% received a fail grade of E or F, and the majority were rated C or D. The ASX300 companies were identified by name in the final ratings.

The companies were also grouped by sector to show which performed best (utilities, consumer staples and real estate) and which performed worst (health care). The report also explained the features of best practice reporting and low-scoring reporting: lack of detail and unclear descriptions was a common weakness. Recommendations for improving reporting under the Act were separately made for ASX300 companies, investors and regulators.

Another feature of the research method was that it was conducted in two phases – initially with ASX100 companies, and then with ASX300 companies. There was engagement with ASX100 reporting entities as part of the initial assessments.

Human Rights Law Centre, *Paper Promises? Evaluating the early impact of Australia's Modern Slavery Act (Feb 2022)*

This study examined 102 modern slavery statements in four sectors with known modern slavery risks: garments from China; rubber gloves from Malaysia; horticulture produce from Australia; and seafood from Thailand.

The analysis had a dual focus. One was to examine if statements met the Act's mandatory reporting requirements, with statements being scored against 66 indicators in a three-stage assessment process. The report found that only 23% of companies fully addressed mandatory requirements; the average reporting score was 59%.

The other study focus was whether statements mentioned known modern slavery risks in each of the four sectors. 52% failed to do so, and only 27% of companies demonstrated that they were taking effective action against modern slavery risks. Drawing from public sources, the report discusses working conditions and slavery risks in the four sectors.

The report explains that this study of modern slavery reporting in four sectors will be continued. A sharp focus will be applied to whether the Act's reporting process is linked to meaningful change on matters such as supply chain awareness and capacity building, stakeholder engagement, protection of the rights of supply chain workers, and development of accessible grievance mechanisms.

The report briefly outlines proposals for strengthening the Act to ensure that entities are required to go beyond simply reporting to taking meaningful action to investigate and address modern slavery practices.

Walk Free, *Beyond Compliance in the Garment Sector: Assessing UK and Australian Modern Slavery Act statements produced by the garment industry and its investors* (Feb 2022)

This study examined reporting under the UK and Australian Modern Slavery Acts by 50 companies in the garment sector.

The report explains that the garment sector was chosen because modern slavery is rife in global garment supply chains. The report describes the scale of the industry and the difficulties in providing transparency and enforcing workers' rights at the multiple stages of garment supply chains.

The report finds that reporting is inadequate under both the UK and Australian laws – but with some areas of better reporting under the Australian law because of the mandatory reporting criteria. A particular weakness was the failure to explain under both Acts how risk assessment tools are used for supply chain analysis.

A strong theme of the report is that reporting under the Act must go beyond mere compliance and be tailored to responding effectively to modern slavery risks. Equally, modern slavery laws should go beyond a mandatory reporting requirement and include mandatory due diligence and avenues for redress for exploited workers.

International Justice Mission, *Spot Fires in Supply Chains* (April 2022)

This study analysed 404 modern slavery statements – 332 from entities that sourced from or operated in India. The study group of 20 researchers analysed the statements against 44 criteria.

One part of the study looked broadly at modern slavery reporting, and the other part looked at reporting on modern slavery risks in India, as a high-risk region.

A key finding in the first part of the study was that more than 90% of statements identified potential modern slavery supply chain risks, but less than 30% identified risks beyond the first tier of the supply chain. Those which did were more likely to have due diligence and remediation processes in place. Two other critical findings were that less than 20% of entities had consulted a potentially affected group or stakeholder; and 40% did not have processes in place to integrate the findings from completed risk assessments.

The second part of the study found that just over half of the statements specified forced labour, child labour, human trafficking and debt bondage as the main modern slavery supply chain risks in India. The remaining statements did not specify a risk. The study concluded that company risk assessments were not gathering sufficient information or delving deeply enough into their supply chain arrangements. The textile and garment manufacturing industry was highlighted as a particular area of under-reporting.

The study recommended that entities more actively use the modern slavery reporting process to engage with stakeholders, explore ways of reducing slavery rates in high-risk regions, and implement stronger due diligence measures. The recommendations for government were to better inform entities of modern slavery risks in high-risk regions, partner with governments in those regions to improve justice system responses to modern slavery, and implement stronger controls on imports that are linked to modern slavery risks.