

Australia's Modern Slavery Act: IS IT FIT FOR PURPOSE?



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Executive summary

The purpose of the Australian *Modern Slavery Act 2018* (Cth) (**MSA**) is to combat modern slavery in the operations and supply chains of Australian business. By requiring big business and other entities to report on their efforts to address modern slavery, the MSA aims to drive change in business conduct to prevent and redress modern slavery, but is it fit for purpose?

Based on data gathered from a business survey and focus groups conducted in 2022 and 2023, this report provides new and critical data to inform policy change and business practice. It builds upon our recent in-depth research on the quality of corporate reporting under the MSA,¹ by looking beyond the annual corporate modern slavery statements to highlight the gaps that can arise between policy and practice.

Our investigation sought input from respondents on the effectiveness of the MSA, inquiring into how best to implement practices to remediate modern slavery and potential reform of the Act. It provides evidence of the types of corporate responses that are being triggered by the MSA, and the perceptions of key stakeholders about its impact. Our report reveals broad consensus that current corporate responses to the Australian MSA are largely not benefiting victim-survivors of modern slavery.

According to survey and focus group participants, in the best case, the MSA is generating widespread awareness, but in the worst case, it provides a shiny veneer for a business model that contributes to modern slavery. That is, a model that depends on opaque and complex supply chains that continue to rely on cheap labour, with many companies failing to substantively commit to remedying abuses.

KEY FINDINGS

Our business survey found:

70%



support the establishment of an Anti-Slavery Commissioner

67%



would find it easier to comply with the MSA if it were harmonised with international standards (such as the UN Guiding Principles on Business and Human Rights)

61%



would be more likely to improve modern slavery responses if required to undertake human rights due diligence

54%



would be incentivised to improve modern slavery responses if financial penalties were introduced

Two issues are critical in improving remediation: **improving supplier relationships** and **engaging with key stakeholders**.

- Higher levels of transparency between entities and suppliers resulted in more effective remediation practices.
- Failure to engage the right stakeholders presents a major barrier to remediating modern slavery.

Participants in our survey and focus group discussions highlighted two issues critical to implementing improved policy and practices to redress modern slavery: improving supplier relationships and stakeholder engagement. Underlying this, respondents reported several issues which pose barriers to achieving effective remediation including current procurement practices, low trust between suppliers and reporting entities, and a failure by businesses to adequately resource remediation practices that would compensate and empower victim-survivors of modern slavery. Yet, remediation is a key aspect of addressing modern slavery, and effective remediation processes must prioritise addressing risk to people and not simply risk to business.

The findings also provide insights into practices that may contribute to more effective remediation of modern slavery, with vital lessons for government about where to focus policy attention and useful learnings for businesses seeking to improve their approach to remedy. The survey data shows that participants who engage key stakeholders in remediation, such as trade unions, report the most effective approaches to remediation. Other key tools they report include risk management practices such as supplier training and increasing transparency from suppliers — practices which are currently under-utilised by Australian businesses.²

Data gathered for this report and our earlier research reveal a strong appetite for reform of the MSA and a need to incentivise improved practices. A majority of respondents to our survey:

- Endorse establishing an Anti-Slavery Commissioner;
- Support harmonising the MSA with international standards, such as the *UN Guiding Principles on Business and Human Rights (UNGPs)*, and emerging legislation in other countries;
- Agree that mandating human rights due diligence requirements would lead to improved responses to addressing modern slavery; and
- Support a mix of policy measures including sanctions and incentives (such as disqualification from government tenders, financial penalties and director liability) to better tackle modern slavery.

All respondents argued for reform of the MSA to drive company action that benefits victim-survivors of modern slavery instead of promoting more cosmetic compliance with the MSA.

Research methodology

This report is based on a business survey and focus groups conducted in 2022 and 2023. In this section we describe our mixed method approach, and the way that we combined the survey and focus groups to triangulate data, comparing it with data regarding the quality of reporting under the MSA as disclosed in earlier joint reports, [Paper Promises](#) and [Broken Promises](#).

This is the first mixed methods empirical study on modern slavery that engages with reporting entities. As described in this section, this publication reports on the findings of both a 2022 survey and four focus groups that provided more detailed views on the survey data. Ethics approval was obtained for the survey from the University of Western Australia,³ and for focus groups from RMIT University.⁴

Survey

The survey was deployed between July and October in 2022. The survey instrument was developed by a team of research scholars and practitioners specialising in the field of modern slavery. Key government representatives were also consulted in the design of the survey instrument. This allowed for a robust process that helped inform the questions and language used in the survey.

The survey was distributed to known reporting entities through professional networks and social media, on the Business & Human Rights Resource Centre website and global newsletter, as well as in UNSW publications. Overall, we received 128 responses and, following data cleaning (e.g., removing incomplete attempts), we had 86 participants with at least 82 complete responses for the majority of questions.⁵



Fisherman and fish caught in the morning at fishing port, Thailand Kor-Gai • Shutterstock.com

The survey specifically drilled into the topic of remediation. To determine the extent to which remediation of modern slavery was likely to be effective, we asked several questions requiring survey respondents to list and assess corporate policies and practices (**remediation practice effectiveness**). The resulting indicators used to measure remediation practice effectiveness were:

- The reported presence and form of mechanisms to ensure suppliers provide remediation to workers facing labour violations;
- The reported presence of policies to handle supplier incidents regarding labour violations;
- The degree to which survey participants believe those who face labour violations by their suppliers will be better off after the remediation process;
- The reported resources (budget line, funding, insurance) of survey participants in place to seek restitution for affected workers at their supplier locations;
- The degree to which survey participants believe staff within their organisation know what to do if incidents of modern slavery are reported;
- The degree to which survey participants believe staff within their organisation are well supported (through guidance, training, resources) to remedy situations of modern slavery; and
- The reported external stakeholders involved in the co-design of the remediation process.

‘Remediation practice effectiveness’ was analysed using a hierarchical linear regression model in the program SPSS. This form of modelling measures the impact that changes in a reported variable (like various risk management approaches or firm demographics) has on another (remediation practice effectiveness). The outcome is a percentage that expresses the degree to which changes in variables impact remediation. For example, greater supplier information sharing with companies results in a positive effect of 6.5% on remediation practice effectiveness. All percentages in this report with a decimal place are the result of this analysis, whereas those without are descriptive statistics (i.e. the direct responses of participants to survey questions).

ROLE OF SURVEY RESPONDENTS WITHIN COMPANY



While the identities of the survey participants are anonymous, respondents represented both larger and smaller-sized reporting entities, with 49% working for companies with revenue above AUD\$500m, and 51% in companies below that threshold. On an individual level, the most commonly held role of respondents is ‘sustainability’ (CSR/ESG) (27%), C-suite or higher (13%) or legal professional (11%). Approximately 63% of the survey respondents have fewer than ten years of experience in their role, and 17% have more than 21 years of experience. We would like to highlight that, regardless of the size of the organisation, each survey was completed by one respondent. Therefore, the reported results are based on the perspective of the specific respondent who completed the survey.

Focus groups

The survey data was triangulated with four qualitative in-depth focus groups held in November 2022, December 2022, and January 2023 that included 19 participants. The focus groups were used to test and further explore key elements of the survey results. We informed the focus group participants about the survey findings and asked for their opinions on remediation practices and MSA reform. Questions were open-ended and followed the flow of the conversation using a semi-structured approach. The focus groups involved professionals working within companies, expert advisors, and union and civil society representatives engaged in addressing modern slavery.

Two of the focus groups, held with industry personnel, concerned remediation. We invited individuals who we knew to be engaged in modern slavery remediation and capable of giving informed responses. Therefore, participants do not necessarily represent the views of all or most of the personnel responsible for implementing the MSA within any given company, or the views of all or most of the companies reporting under the MSA. The third focus group was held with business personnel and examined questions concerning reform of the MSA. For this group, we invited participants who are engaged with and represent industry on the issue of MSA reform. Our final focus group was held with civil society and union representatives. In this focus group we examined both remediation and reform questions. **In this report, we use synonyms for focus group participants based on their industries to ensure their anonymity.**

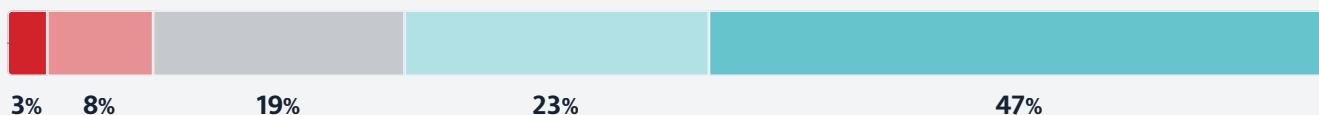


Law reform is needed to ensure the MSA is effective

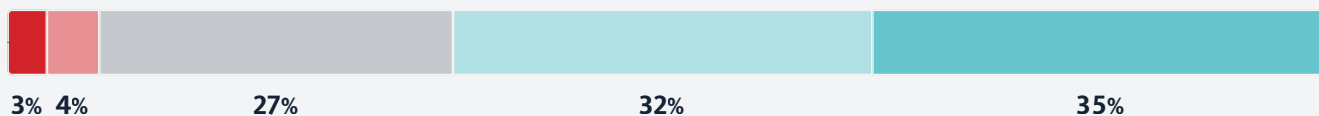
Both survey and focus group participants showed a strong appetite for reform of the MSA. The establishment of an Anti-Slavery Commissioner received the strongest support as a reform measure, followed by harmonisation with international standards (such as the UNGPs). The next highest support was for mandatory human rights due diligence, followed by support for a range of penalties.

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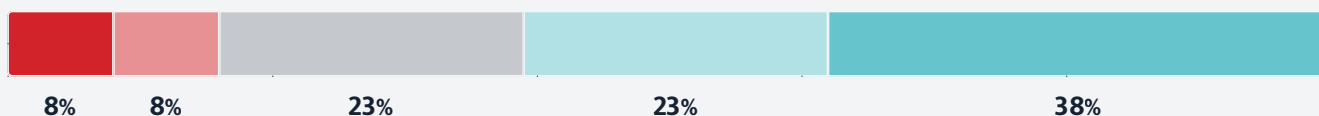
‘Australia should have a Commonwealth Anti-Slavery Commissioner to oversee the implementation and enforcement of the Modern Slavery Act’



‘It would be easier to comply with the Australian Modern Slavery Act if it were harmonised with international standards (such as the UN Guiding Principles on Business and Human Rights)’



‘My company would be more likely to improve its response to modern slavery if it were required to undertake due diligence to identify, prevent and address modern slavery in its operations and supply chains’



Establishment of Anti-Slavery Commissioner

70% of survey respondents agreed (to some degree) Australia should have a Commonwealth Anti-Slavery Commissioner. In response to open-ended questions, survey respondents explained the types of assistance they want from government. These include more work by the government to identify modern slavery, and vetting of suppliers:

“ Two things: 1. There is a significant amount of work involved to ensure compliance with the Act, undertake due diligence, and produce the modern slavery statement. It would be helpful if the government was more involved in the identification of modern slavery and had a ‘banned’ list of suppliers and countries (the US do this to some degree). 2. There is a huge amount of duplicated effort (e.g. a supplier supplies 100 customers and each of those 100 customers individually undertake a due diligence assessment which take time and money). It would be very efficient and effective if there was a published central register of suppliers that were vetted and cleared to use.”

Both survey and focus group participants called for greater government assistance. Survey respondents agreed that the government could do far more to promote compliance with the MSA. Two thirds of survey respondents believed that further guidance from the government would help their company engage more broadly with the MSA.

Among focus group respondents, there was a strong perception that the MSA places an undue burden on the lead firms, suppliers, and civil society and this burden should be shared with government. Many voiced a strong desire for more government assistance, specifically in the form of investigations and data collection. Supermarket participant, Focus Group 2 desired government to share the burden that had been placed on big business to improve working conditions in supply chains:

“ There is a role for government and even the Fair Work Ombudsman, if I’m talking locally, about what they’re doing to educate businesses and how they assess them to understand whether or not they should even be operating. More often than not, the recognition that this is the customer, the end customer’s responsibility to fix all these things, I think is that challenge.”

Many also supported the government in bringing companies together to avoid duplication of due diligence processes. Given the high number of shared suppliers in particular sectors, they expressed the view that identification of risks and vetting of suppliers could be a shared endeavour, with the help of government. As one survey respondent wrote:

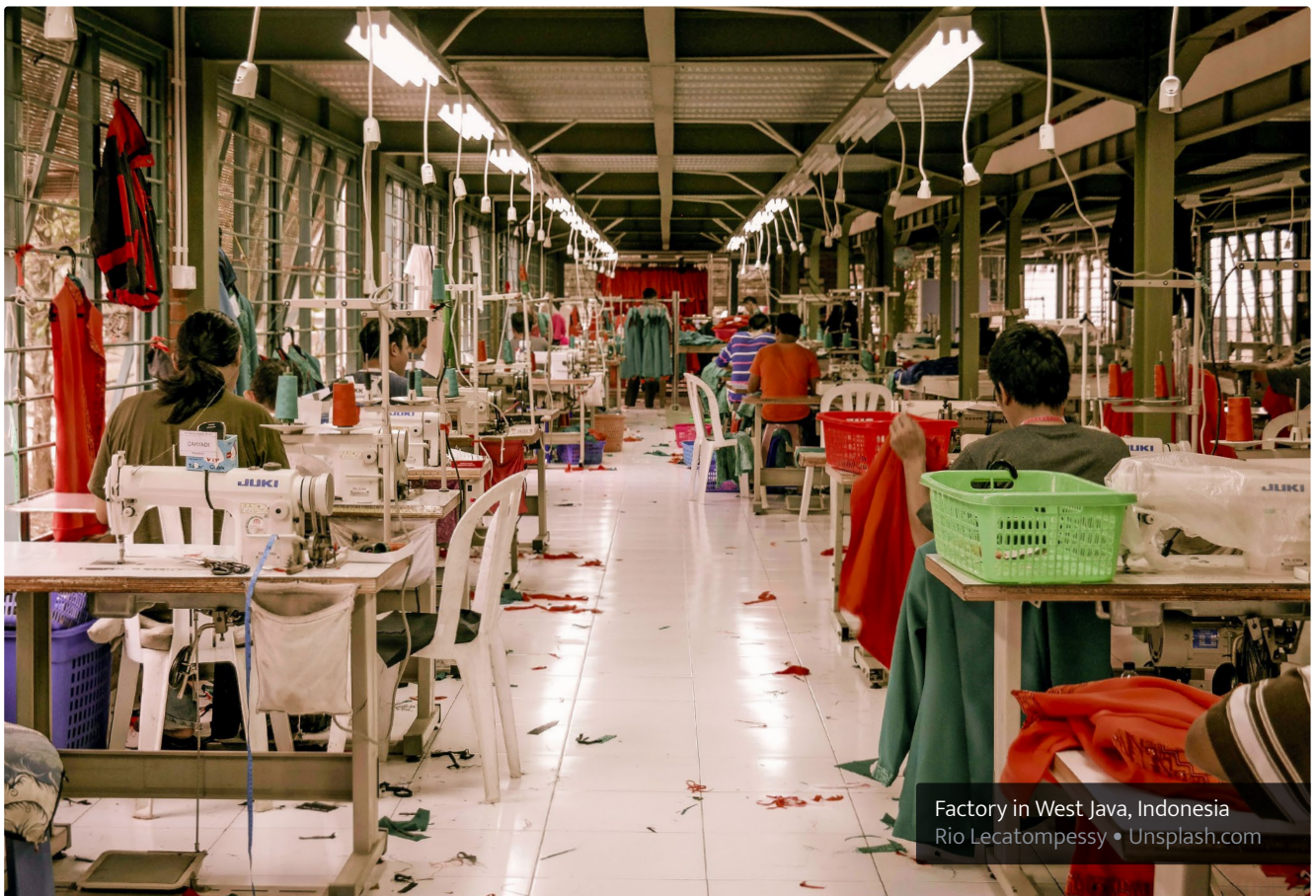
“ I also think that there should be some way of creating opportunities for collaboration to ensure businesses are not just operating in a silo and taking an individualistic approach – I think this generates a high cost of compliance for a low return on investment with respect to reduction of risk to people and thus reduction of risk to business.”

Indeed, many focus group participants believed that far more could be done to encourage collaboration and collective leverage among buyers and big business in supply chains. They saw this as a lost regulatory opportunity at present, given the emphasis on individual reporting under the MSA.

Harmonisation of the MSA with international standards

The survey results reveal strong support for harmonisation of the MSA with international standards, with 67% of respondents agreeing (to some degree) that it would be easier to comply with the MSA if it were harmonised with international standards such as the UNGPs. This would mark a significant broadening in the scope of human rights covered and the processes companies would adopt. The enactment of the MSA is only a first step towards a fuller operationalisation of the UNGPs. In particular, the UNGPs require respect and protection of all human rights, not only modern slavery. One survey respondent explained their support for harmonisation as follows:

“ We strongly advocate for the Australian Modern Slavery Act to continue to be aligned with other due diligence and reporting regulations such as the UK Modern Slavery Act and existing and upcoming dd regulations in Europe and elsewhere. Alignment is key to avoid unnecessary administrative burden on companies, and by aligning with OECD and/or UNGP, the legislation will also be aligned in terms of content and direction... It also helps us put our resources on action over reporting, relative to the issue.”



Mandating human rights due diligence

The survey findings reflect an appreciation of the benefits of mandatory human rights due diligence, with 61% of respondents agreeing that their company would be more likely to improve its response to modern slavery if they were required to undertake human rights due diligence in its operations and supply chains.

Such an approach would be consistent with the UNGPs. While the MSA only mandates reporting on *efforts*, the UNGPs enumerate three measures that a business should have in place in order to meet its responsibility to respect human rights. These are: a policy commitment to human rights; a human rights due diligence process ‘to identify, prevent, mitigate and account for’ how they manage their potential adverse human rights impacts; and remediation processes to address any such adverse human rights impacts that they cause or to which they contribute.

Focus group participants generally believed that Australia will adopt a human rights due diligence approach at some point and were supportive of that trajectory. A conservative approach was recommended by Legal participant, Focus Group 3, who said:

“ I think ultimately we’ll end up there, but I personally would like to see what the Europeans do with it and how it works practically, and I’d rather they iron out the bugs before we get into it. I think we should be committed to it in principle, but let’s have a look at what it actually means, what it costs, and whether there’s some changes we can make to make it more acceptable.”

The adoption of mandatory human rights due diligence would shift the emphasis of regulation away from reporting to implementation. Many business focus group participants took a dim view of the extent to which reporting under the MSA drives change or the type of engagement with suppliers that benefits workers. Resource participant, Focus Group 1 stressed how much she agreed with previous speakers who had expressed frustration with the emphasis of the MSA on reporting:

“ I totally agree [with the] perspective that us having to prepare a modern slavery statement is just another compliance matter. It’s just another thing that the procurement team has to find budget for; they waste money with external consultants helping them do desktop due diligence rather than actually engaging with our suppliers. So they’re missing sort of the point is there’s not much value, but there’s a hell of a lot of time and money wasted.”

Some in the focus groups advocated the adoption of reporting templates to reduce the burden of reporting. Several focus group participants thought that if smaller companies were required to report under the MSA, a short, standardised survey for all questions would be sufficient. Others thought template reporting would be preferable for all entities. One survey respondent recommended the government adopt ‘a standardised due diligence survey that all Australian companies would use’.

Improving approaches to tackling modern slavery

A majority of survey respondents agreed that a range of incentives and/or penalties would increase compliance with the MSA. There was the highest support for disqualification from government tenders, with 60% of the survey respondents agreeing that this measure would incentivise their company to improve its approach to tackling modern slavery.⁶ Additionally, most respondents agreed (to some degree) that the risk of financial penalties (54%) and imposition of directors' legal liability (55%) would have a similar incentivising effect.

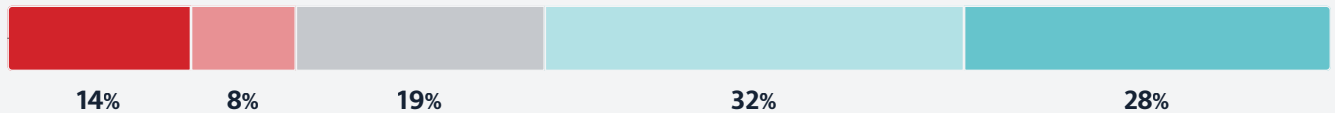
Penalties

The civil society and union focus group participants were in favour of financial penalties and directors' liability, but wanted these sanctions to be highly targeted, with safeguards against the passing on of responsibility. Civil society participant, Focus Group 4 described this as follows:

“ It depends on the circumstance. I think depending on the level of culpability, you'd want to tailor your sanctions based on that. So is it a direct personal fine as we see in the Fair Work Act where there is an ability to both fine the company and fined the directors, and there are safeguards against the company paying the fine of the individual as well?”

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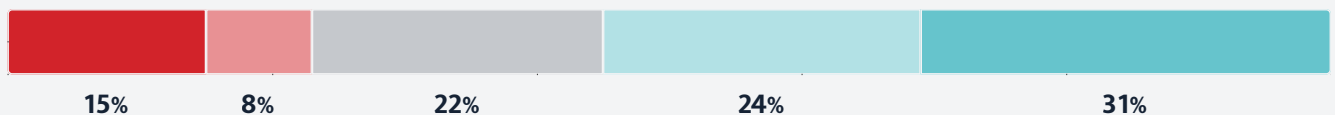
'The risk of **disqualification** from government tenders would further incentivise my company to improve its approach to tackling modern slavery'



'The risk of **financial penalties** for the company would further incentivise my company to improve its approach to tackling modern slavery'



'The risk of **directors' legal liability** would further incentivise my company to improve its approach to tackling modern slavery'



Remedying modern slavery: is the MSA driving effective policies and practices for remediation?

Remediation mechanisms and processes

What is ‘remediation’?

Remediation is a key aspect of an effective corporate response to modern slavery. Reporting on remediation is included within the mandatory criteria of the MSA and forms one of the three pillars of the UNGPs that informed the MSA’s framing.⁷ In the Commonwealth Guidance to the MSA, remediation is defined as ‘to ‘make good’ the adverse impact by restoring the victim to the situation they would be in if the adverse impact had not occurred’.⁸ How do the policies and practices deployed by the companies represented by survey and focus group participants compare with this definition?

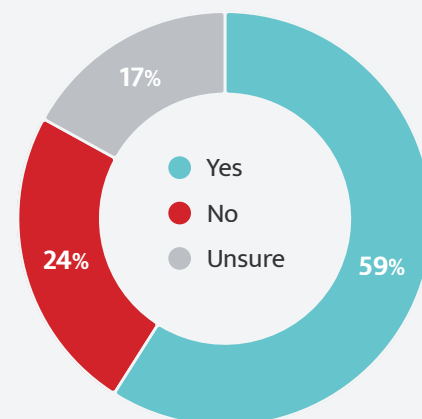
First, to provide remedy, the instances of modern slavery must be identified. However, 61% of the survey respondents stated that no specific instances of modern slavery had been identified in their company’s operations or supply chains. In our research analysing the content of MSA statements, even fewer companies reported allegations or incidents of modern slavery. Once triggered, remediation mechanisms must be effective in design, as well as being well enough resourced to enable adequate restitution of those adversely impacted. In our assessment of round one statements issued under the MSA, only 8% of those statements disclosed allegations or actual instances of modern slavery,⁹ and in round two statements, this figure had increased to 14% — far lower than the 39% of survey respondents who indicated that specific instances had been identified.¹⁰

This may reflect the fact that those who choose to participate in surveys and focus groups are likely to be highly engaged and so may represent companies that have a more developed human rights approach, resulting in higher levels of identification of modern slavery. It may also demonstrate some of the limitations of reporting, given that there are often perceived sensitivities and risks involved in making allegations or instances of modern slavery public.

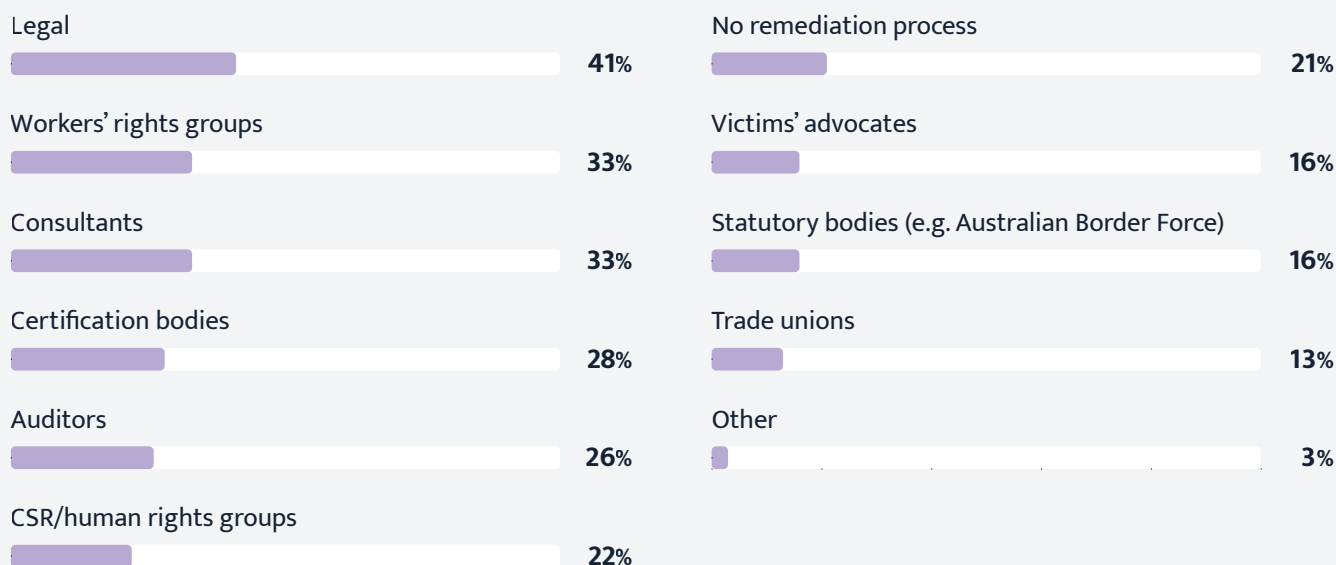
What percentage of survey respondents indicated their company has mechanisms in place for ensuring suppliers provide remediation?

When we asked survey respondents whether their company had mechanisms in place to ensure that suppliers provide remediation to workers facing labour violations, the positive response rate (59%) was notably lower than the findings in our *Broken Promises* report which showed 82% of modern slavery statements reported some form of grievance mechanism.¹¹ Those findings also indicated that there was a level of superficiality regarding the establishment of remediation mechanisms, with only 17% of reports disclosing how such mechanisms are accessible for vulnerable groups and just 4% describing how potential or actual users of the grievance mechanism have been involved in its design. Only 13% reported actions taken to address actual or potential modern slavery risks that were identified.

‘We have mechanisms in place for ensuring suppliers provide remediation to workers facing labour violations’



PERCENTAGE OF COMPANIES THAT CONSULTED RESPECTIVE STAKEHOLDER CATEGORIES



Who are companies consulting with in the design of remediation processes?

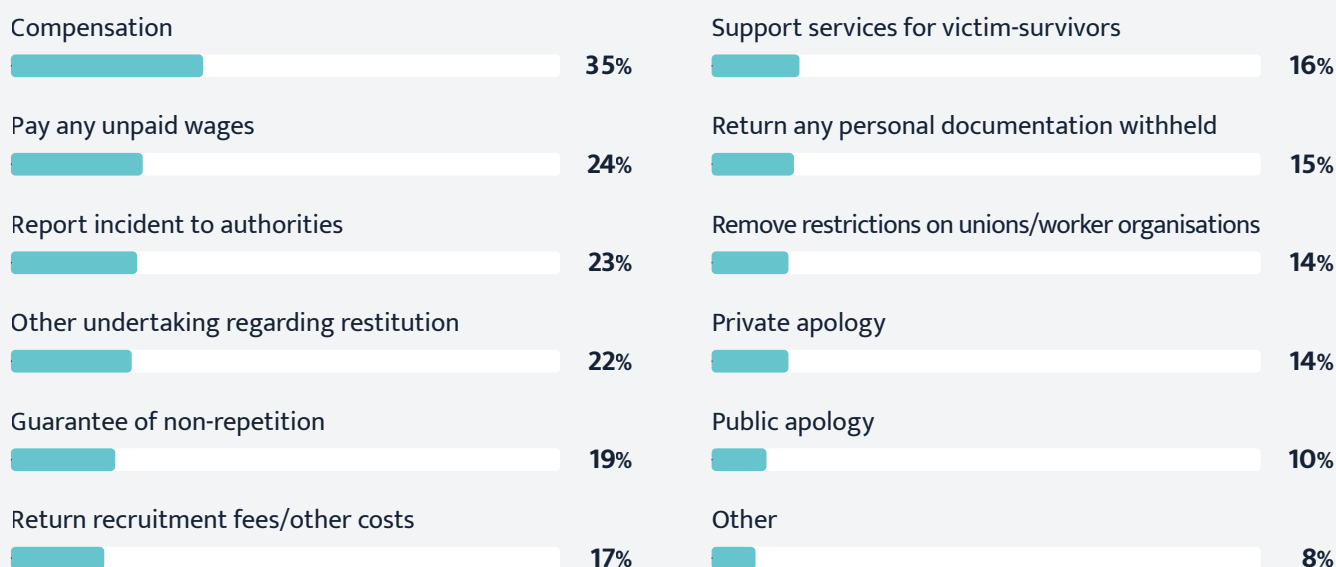
We asked survey respondents about the categories of external stakeholders with whom they engage in designing their remediation processes. The findings show that consulting and professional services groups, such as lawyers, certification bodies, and auditors, are among the groups that are engaged with most frequently. Engagement with victims' advocates and trade unions was lower. Based on their experience working on labour rights and modern slavery, civil society and union focus group participants thought these numbers (provided by survey respondents) were likely inflated. Union participant, Focus Group 4 argued that:

“...at the basic level, we need grievance mechanisms that are co-designed with trade unions with the ability for unions in the supply chain to access it and make complaints. That's just a very basic thing that we don't see existing in many situations.”

How do companies seek to mitigate risk in their supply chains?

Consistent with an approach that seeks to reduce the risk for the company rather than lower the risks for the workers, the survey respondents most frequently reported utilising 'Staff Training' (95% of companies), 'Policies' (94% of companies), and 'Contract Terms and Conditions' (92% of companies) to identify and manage the risks of modern slavery. Around half the companies whose statements we assessed in the *Broken Promises* report indicated the presence of contract terms to manage modern slavery expectations/requirements on suppliers.¹² Research conducted by the authors elsewhere shows that an overly contract-orientated approach within an organisation is associated with a lack awareness regarding the complexity of modern slavery, and one that can overlook the possibility that suppliers themselves may be involved in workforce exploitation or that workers are concealing abuses to avoid retaliation.¹³

PERCENTAGE OF COMPANIES THAT CONTEMPLATE USE OF RESPECTIVE REMEDIES IN SUPPLY CHAINS



Which remedies are most commonly offered by companies in connection with harms occurring in supply chains?

The survey respondents indicated that compensation (35%) was the most widely offered remedy, followed by payment of unpaid wages (24%) and reporting of incident to authorities (23%).

The survey responses reveal that companies may be considering a wide variety of remedies, but this was not apparent in our earlier statement analysis. For example, only 17% of the company reports analysed in *Broken Promises* committed to providing some form of remedy in the event that they caused or contributed to modern slavery, and just 7% of the statements contained an explicit commitment by the reporting entity to provide compensation.

The need for a holistic approach

Focus group participants identified compensation as an important element of remediation. However, they did not perceive remedy to be limited to compensation alone, but indicated a preference for a flexible approach that responds to the specific circumstances of the incident and the individual(s) involved. Supermarket participant, Focus Group 2, for instance, understood remediation as being a flexible ‘victim or people-centric’ process... ‘with the best interests of the person impacted in mind’. A broader commitment to ‘repair those wrongs and to address any sort of undue impacts in the sense of repatriation of funds or similar’ was identified by Garment participant, Focus Group 2.

Many focus group participants identified prevention as a vital characteristic of remediation. Two focus group participants described remediation as stopping the recurrence of incidents through systemic approaches. Business focus group participants did not identify worker empowerment as a vital aspect of prevention.

Civil society and union participants also saw accountability and criminal prosecution as an important aspect of remediation, though, again this did not arise in focus groups with business participants. One participant (International civil society participant, Focus Group 4) explained:

“ [Remediation] definitely starts with compensation... But it can extend to many different things, including things like apologies; prevention work is linked into that. And, also I think it’s quite important that there’s accountability, alongside remediation also... If their conduct is criminal and their behaviour is criminal, then they also have to be held accountable. It shouldn’t just be civil accountability... [Nodding and agreement from all other participants.]”

Remediation: barriers and opportunities to increasing effectiveness

The survey and the focus group respondents had complex and at times contradictory views on the effectiveness of their company’s remediation process. Keeping in mind that many survey respondents’ companies had never identified modern slavery in their operations or supply chains, just 56% of respondents believed their company had an effective approach to providing remedy to victim-survivors of modern slavery in their operations or with direct suppliers. Furthermore, 41% of the respondents indicated that their organisation lacked the resources to adequately provide remedy for affected workers. This suggests that, for many businesses, remedial mechanisms may be ineffective or under resourced.

Business focus group participants stressed the difficulties associated with providing adequate remediation. The barriers identified were multiple and complex. For example, they noted that suppliers often do not report incidents of modern slavery, which resonates with our survey data reported below, or that it is difficult to work with suppliers to address incidents due to limited leverage or lack of trust. They also emphasised that the most vulnerable workers, who are most at risk of modern slavery, are often distant from the company — many levels down the supply chain, working for suppliers that the company has no direct relationship with. Lack of supply chain knowledge further hampers remediation efforts with prior research indicating that only 13% of reporting entities’ modern slavery statements identified suppliers beyond Tier 1.¹⁴

Survey and focus group data reveal two issues that are particularly critical in improving remediation: improving supplier relationships and engaging with key stakeholders.

Improving supplier relationships

The data indicates that relationships between suppliers and those who buy from them are problematic when it comes to identifying and remediating modern slavery. In this section we first describe the characteristics of suppliers of the companies of our survey respondents. We then report on the data concerning barriers to, and opportunities for improving, supplier relationships.

Numbers and risk levels of suppliers

On average, survey respondents reported having around 2,000 suppliers. However, responses to this question ranged from four, to tens of thousands of suppliers. Companies with many thousands of suppliers face a significant task of communicating and gaining accurate information on labour risks. On average, 28% of suppliers were described as ‘high-risk’ for modern slavery.

Focus group participants acknowledge that they struggle with how to respond once suppliers are identified as high risk. For example, Resource participant, Focus Group 1 said:

“We have not had any complaints. We obviously identify risks, but we’re not in a position really with all that much leverage to influence our suppliers all that much to change their practices when we do identify a risk. So our response usually is just to not engage with that supplier, which doesn’t sit there well for me, because I don’t think that’s the best way of actually dealing with a potential risk.”

Firms with ‘fewer’ suppliers were more likely to indicate a greater percentage of ‘high-risk’ suppliers. While there could be many reasons for this, one may be that firms with fewer suppliers may have better visibility over their procurement practices and deeper supplier engagement and therefore may be in a better position to assess modern slavery risks of those suppliers.



Barriers to obtaining accurate information from suppliers on labour incidents

Most survey respondents generally agree that they receive information on labour conditions (61%) and adherence to labour laws from their suppliers (76%). However, when it comes to reporting allegations of labour abuses, the majority of respondents indicate that their suppliers do not provide this information directly to them, with over half of survey respondents (52%) not receiving alerts of labour incidents at suppliers. This represents a major roadblock in effective risk identification and management.

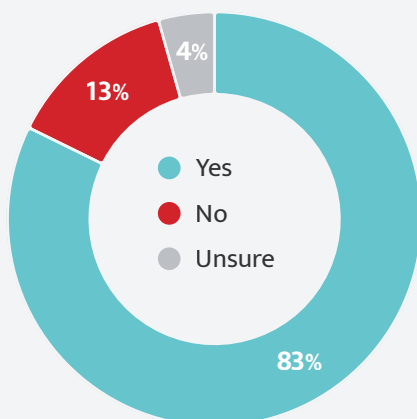
One survey respondent explained the difficulties they are experiencing in trying to extract accurate information from a supplier about child labour:

“ The vehicle manufacturer has assured us that our [goods] were not supplied by this particular factory but we don’t consider that is a good enough response and are pushing them to explain how they are going to stop it from happening again and how they can be sure it’s not happening in other parts of their supply chain. (We found out about the issue through open-source media reporting, for what it’s worth).”

Even where incidents of modern slavery are reported directly to lead companies, they may still struggle to gain sufficient cooperation from the supplier in question, or other party, to be in a position to effectively remediate the situation. One survey respondent wrote that they:

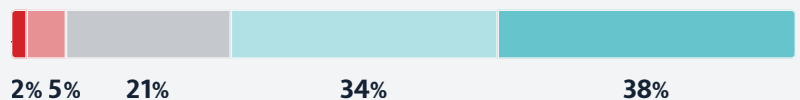
“ Sought to respond in collaboration with supplier (and failed as they were hostile). Sought to respond in collaboration with other brands (they were uninterested and did not respond). Ended by reporting the matter and exiting supplier.”

‘We have a policy/policies in place to handle supplier incidents regarding labour violations’

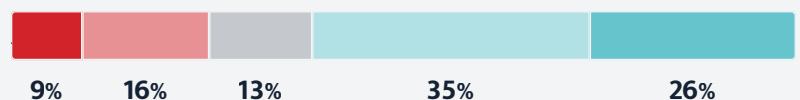


● Disagree ● Somewhat disagree
● Neither agree nor disagree ● Somewhat agree ● Agree

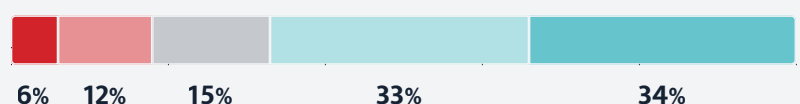
‘Our major suppliers collect labour information’



‘Our major suppliers share their labour information with us’



‘Our major suppliers provide information to us on their adherence to local labour laws’



In the focus groups, business participants complained that a significant barrier to addressing modern slavery is that the companies they work for, though large, lack sufficient leverage over suppliers. Resource participant, Focus Group 1 said, ‘We obviously identify risks, but we’re not in a position really with all that much leverage to influence our suppliers all that much to change their practices when we do identify a risk.’ Other focus group participants described strategies to maintain leverage such as Supermarket participant, Focus Group 2, who said ‘we typically find it’s best to continue trade during that time [of investigating an incident of modern slavery] if we can, because essentially if we remove that commercial leverage, then it becomes very difficult to have any impact in terms of remediation process’. A Global Footwear participant in Focus Group 1, described reducing the number of suppliers to maintain leverage:

“ [A]bout 85% of our global production is in what we call our strategic partners, and that’s about 110 factories, but they’re huge factories, of course, in size... So, our systems try to cater for the different levels of leverage and engagement.”

Focus group participants also complained of low levels of trust in the information provided to them by suppliers. There was consensus, for instance, that suppliers were unable to meet the demands of lead companies for assurances that there are no risks of modern slavery. Supermarket participant, Focus Group 2 provided an Australian specific example:

“ A lot of issues come from suppliers being spread too thin, because they’re having to comply with so many things that in reality they’re not out to do the wrong thing. They themselves are just not resourced to keep up with the businesses’ requirements. Now I’m not saying that that’s an excuse, but you overlay complex and confusing Australian legislation onto a business that doesn’t have a legal team or a ER team and expect them to go and figure it out and make sure that everything has ticked the box, at every single point that they operate.”

Mining participant, Focus Group 1 likewise acknowledged this unfair load on suppliers to comply with the MSA, looking for ways to reduce the burden:

“ What we’re trying to do is look at the resource burden we’re putting on our suppliers as well, but also coming together as an industry to say, we’re in this together, we’re committed together, so no matter whether you go left or right, one of us is going to come and partner with you to understand [the] supply chain.”

Another participant referred to this cascading of the regulatory burden to suppliers as ‘neo-colonial’.

In summary, our data regarding relations with suppliers indicates that around a third of suppliers are perceived as high risk; information is shared by suppliers about broad labour rights risks, but not specific incidents of labour rights breaches. We heard frustration from focus group participants about the information provided by suppliers, but also empathy for suppliers faced with a high burden without adequate support to respond to modern slavery risks.

Key supplier characteristics impacting remediation

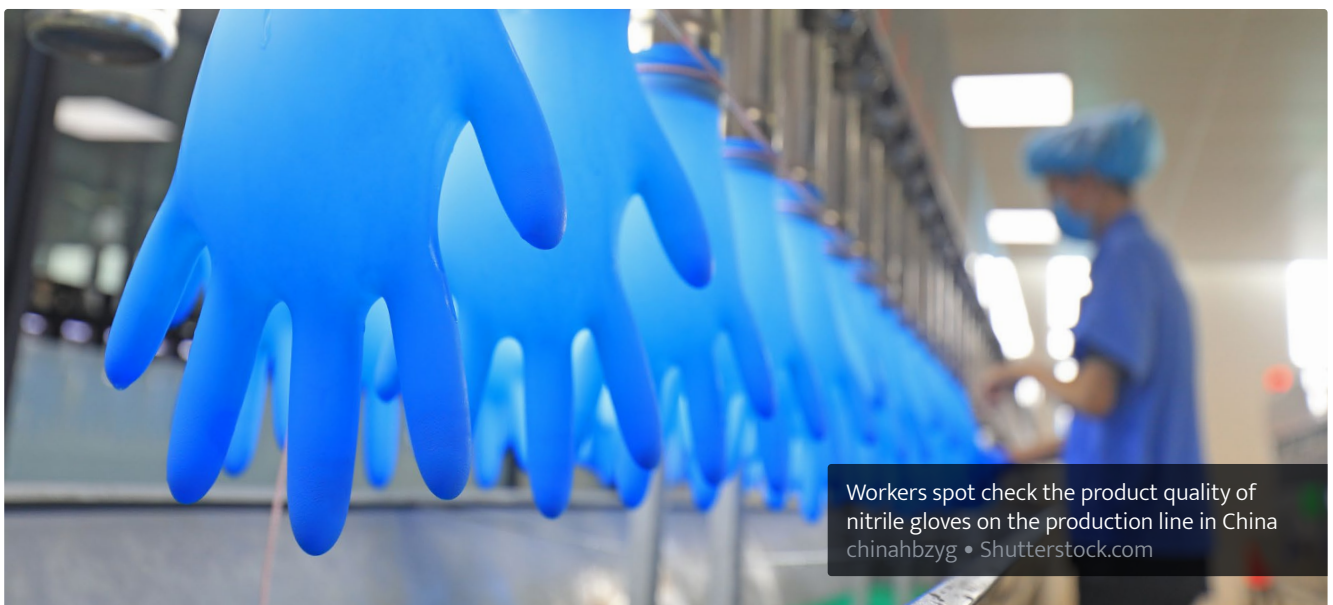
Transparency of information between suppliers and buying firms, the number of risky suppliers, and the overall number of suppliers are all factors that are perceived as significantly impacting remediation efforts.

Survey and focus group data reveals that supplier transparency leads to stronger remediation practices by companies.¹⁵ In terms of working with suppliers, higher levels of transparency between the supplier and principal firm resulted in a greater deployment of remediation practices.¹⁶ Similarly, greater supplier information sharing with companies also resulted in a positive effect on remediation practice effectiveness.¹⁷ Mining Participant, Focus Group 1, stressed the importance of building trust and screening prior to engaging a supplier:

“ [I]f you have your strong due diligence or risk profiling before that supplier comes into your business, you get your contracts aligned when that risk review is identified and then from a matrix perspective of looking at the categories and having, I can't state it enough in relation to transparency and building that transparency before anyone comes in.”

Companies that successfully identify their higher risk suppliers are better placed in terms of knowing where to focus their efforts for remediation. Survey respondents who indicated that their company had a higher percentage of risky suppliers subsequently reported more effective remediation practices, meaning that they appeared marginally more likely to respond to that risk.¹⁸ We interpret this correlation as signifying a stronger due diligence approach and commitment by the company.

The total number of suppliers at a company had a somewhat negative effect on remediation practice effectiveness,¹⁹ meaning that more suppliers resulted in less effective remedy practices. This makes sense given the resources required to deploy remedial practices amongst a larger supply base. This finding provides support to those companies who are attempting to reduce the number of suppliers and the complexity of their supply chains, and promote longer term strategic relations, to allow strong partnerships around labour conditions, as some of our focus group participants described.



Workers spot check the product quality of nitrile gloves on the production line in China
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Engaging with key stakeholders

Both the Guidance to the MSA and the UNGPs stress the importance of effective engagement by business with stakeholders who have an understanding of working conditions and drivers of exploitation on the ground. The Guidance stresses that ‘engagement with key stakeholders, such as at-risk communities or workers’ is a key part of remediation.²⁰ Failure to engage the right stakeholders presents a major barrier to either identifying incidents of modern slavery or remediating them. Indeed, failure to engage with civil society and unions is likely a key reason why the identification of incidents of modern slavery is so low in both the survey data and our assessments of modern slavery statements, pointing to a significant flaw in the practices commonly used by companies.

Respondents reporting that their companies involved key stakeholders also reported improved effectiveness of remediation practices.²¹

Workers’ rights groups represented the greatest impact, with certification bodies coming in second.²² Involving more individuals in designing the Modern Slavery Guidelines for the company also improved remediation practice effectiveness.²³ This result highlights that including stakeholders — particularly unions — at the table is a good practice for building better remediation processes.

Civil society and union focus group participants proposed that business must get better at involving different groups when consulting on labour issues. Multistakeholder certification participant, Focus Group 4, explained she advises business:

“ Consulting with that civil society body is good but that’s not the same as consulting with the union. And if you’re operating in a certain space where you’re particularly dealing with things forced labour or debt bondage or other things you need the union involved. And I think if we went out there and did more separation of the two and asked the same question, you’d see overwhelmingly that there’s zero consultation with unions or very close to zero... There are so many variations to what civil society is.”

Union participant, Focus Group 4 agreed, ‘we’re not just another stakeholder. We’re a rights holder: the representatives of the workers.’ At the same time, all the participants in Focus Group 4 acknowledged that at times there is no credible union to engage, particularly in countries where freedom of association is suppressed.

Overall, these findings provide strong evidence of the value (and complexity) of engaging stakeholders to improve remediation, suggesting not only that such practices should be adopted by business, but also that government should do more to encourage such engagement.

Other key findings on remediation

Effective practices for remediation

There is a suite of tools and range of practices to identify and address modern slavery. The regression analysis found that firms identifying more effective remediation practices reported using the following for risk management: 1) Supplier Training, 2) Trade Union Engagement, 3) ISO Standards, 4) Grievance Mechanisms, and 5) Audits.²⁴ Conversely, risk management practices found to be less impactful were 1) External Consultants, 2) Policies, 3) Internal Working Groups, and 4) Contract Terms & Conditions.²⁵

Focus group participants described the importance of using a mix of tools to identify and address modern slavery, rather than seeing one practice as a magic bullet. They also identified that such practices are not short-term projects, but take many years to yield results: Sportswear participant, Focus Group 2, for example, said:

“ You have to work very hard over a long period of time to see progressive change. And so yes just as [redacted] said the business models in that case is where cotton comes from for us is not something overnight you are going to fix and all the complexity of it you know whether it's child labor, forced labor or working conditions, income levels. I mean, these are complex things.”

This reinforces the finding that improving the relationships with suppliers and trade unions appears to be more effective in generating strong remediation practices and that reliance on contract terms and conditions is seen to be of more limited benefit.

What is the role of government?

Companies that use government resources reported improved remediation practices on average.²⁶ We take this to mean that if they read and engaged with the Guidance on the MSA and other government-provided information, they felt they did better at remediation. When asked if the requirements of the MSA were ‘clear and easy to understand’, companies who responded positively reported more effective remediation practices (over those who indicated that the MSA was not clear or easily understandable).²⁷ It is no surprise that those who understand the requirements of the MSA do better at complying with its terms. The implications for policy-makers here is that companies benefit from access to clear, easy to understand guidance and that this supports more effective remediation.

What is the utility of audits?

The survey indicated a positive correlation between the use of audits and effective remediation practices.²⁸ However, this correlation fell well behind those concerning engaging stakeholders and improving supplier transparency, and is contrary to well established research that questions the utility of audits.²⁹ Focus group participants expressed a mix of views about the utility of audits. Some business participants described identifying modern slavery through an audit process. One participant in Focus Group 1, however, went as far as to say: ‘we know auditing doesn't work. 80% of audits are fake data’.

Conclusion

It is evident that there is a gap between policy and practice in addressing modern slavery in the operations and supply chains of Australian companies. A lack of transparency in corporate supply chains inhibits both the identification and redress of modern slavery. The key to improving this, and ensuring remediation is an integral part of a holistic approach to tackling modern slavery, is to focus on improving supplier relationships and engaging with key stakeholders such as trade unions. If the problem cannot be seen, it cannot be fixed. Achieving greater visibility over labour conditions in supply chains by engaging with those at the 'coal face' is a basic but necessary first step in fighting the scourge of modern slavery.

Our findings provide important insights about practices that contribute to more effective remediation of modern slavery, with vital lessons for government about where to focus policy attention, including potential reform of the MSA. Businesses are currently under-investing in remediation processes and are largely unprepared for dealing with modern slavery incidents. Our survey and focus group respondents expressed a lack of confidence in the processes that are currently in place to remedy modern slavery. The survey data shows that engaging stakeholders (especially trade unions) in remediation is perceived as being the most effective means of improving business responses, along with risk management practices such as supplier training achieving greater transparency from suppliers. However, the survey data and our previous work assessing modern slavery statements suggests that these practices are under-utilised and under-resourced by Australian businesses.

It is widely accepted that the MSA needs reform.³⁰ There is a need to harmonise the MSA with the UNGPs and emerging due diligence laws to ensure greater global consistency. The MSA should be reformed to require companies to undertake human rights due diligence to identify and assess the salient risks in their operations and supply chains that cause modern slavery, and to take steps to mitigate and address them. It is clear that companies are feeling the burden of reporting and are well aware of the reporting and human rights due diligence requirements emerging in other countries. In addition, there is support for the establishment of an Anti-Slavery Commissioner to improve the effectiveness of the MSA and to ensure consistency in regulating corporate responses. Finally, it is clear that there is support for a suite of measures to be incorporated into the MSA to improve compliance. This may include financial penalties, director liability and/or exclusion from government tenders for non-compliant entities. Such reform would signal a strong policy commitment to addressing modern slavery.

Reporting in and of itself, even if properly enforced, is unlikely to result in the transformative changes to corporate practices needed to eliminate modern slavery. This report shows that businesses are well aware of this and recognise the limitations of the MSA which prioritises corporate disclosures over action. This report should serve as a call to action for business to move from cosmetic compliance with reporting requirements to substantive actions that focus on improved relationships with suppliers and stakeholders. For the government, these findings show a broad consensus from business and civil society respondents to reform the MSA to ensure that the Australian approach to addressing modern slavery is best practice rather than one that adopts a 'tick box' approach.

Endnotes

- 1 Freya Dinshaw et al, *Broken Promises: Two Years of Corporate Reporting under Australia's Modern Slavery Act* (Report, 16 November 2022), herein referred to as the Broken Promises report; Amy Sinclair and Freya Dinshaw, *Paper Promises: Evaluating the Early Impact of Australia's Modern Slavery Act* (Report, 6 February 2022), herein referred to as the Paper Promises report.
- 2 *Paper Promises report* (n 1); *Broken Promises report* (n 1).
- 3 Reference number: 2022/ET000375 — Improving the Regulation of Modern Slavery and Access to Remedy: Learning from Experience.
- 4 Reference number: 2022-25164 — Improving the Regulation of Modern Slavery and Access to Remedy: Learning from Experience.
- 5 The first five 'items' in the survey were 'automatically recorded' results (e.g., date, time spent, starting time, etc.) so data cleaning involved removing those who dropped out at question 6 (those who opened the survey and failed to answer any question).
- 6 The Western Australian government now includes requirements for compliance with the MSA in its tendering process. See Fiona McGaughey et al '[Public procurement for protecting human rights](#)' (2022) 47 (2) *Alternative Law Journal* 143.
- 7 Human Rights Council, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie: *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework* (UNGPs), UN Doc A/HRC/8/5 (2008).
- 8 Department of Home Affairs, *Commonwealth Modern Slavery Act 2018: Guidance for Reporting Entities* (Guidance Document, 2018) 47.
- 9 *Paper Promises report* (n 1) 66.
- 10 *Broken Promises report* (n 1) 18.
- 11 *Broken Promises report* (n 1) 16.
- 12 *Broken Promises report* (n 1) 19.
- 13 Danya Simpson et al, 'The role of psychological distance in organizational responses to modern slavery risk in supply chains' (2021) 67(8) *Journal of Operations Management* 989.
- 14 *Broken Promises report* (n 1) 18.
- 15 As mentioned in the methodology section, the following footnoted percentages with decimal places are the result of a hierarchical linear regression model in the program SPSS. The model measures the impact that changes in a reported variable (like various risk management approaches or firm demographics) has on another (remediation practice effectiveness). The outcome is a percentage that expresses the degree to which changes in variables impact remediation.
- 16 A positive impact of 7.3%.
- 17 A positive impact of 6.5%.
- 18 A positive impact of 4.2%.
- 19 A negative impact of -2.5%.
- 20 Department of Home Affairs, *Commonwealth Modern Slavery Act 2018: Guidance for Reporting Entities* (Guidance Document, 2018) 47.
- 21 Including various stakeholders had a highly impactful effect on remediation practices of 9.2%.
- 22 Involvement of each stakeholder had a positive effect on remediation practice effectiveness of 7.2% and 6.5% respectively.
- 23 Involvement of more individuals positively impacted remediation practice effectiveness by 4.4%.
- 24 The following risk management practices had a positive effect on remediation practice awareness: Supplier Training – 7.8%; Trade Union Engagement – 7.7%; ISO Standards – 6.8%; Grievance Mechanisms – 6.3%; Audits – 5.7%.
- 25 The following risk management practices had a less positive effect on remediation practice awareness: External Consultants – 3.1%; Policies – 2.2%; Internal Working Groups – 1.9%; Contract Terms & Conditions – 0.3%.
- 26 A positive impact of 6.4%.
- 27 A positive impact of 5.0%.
- 28 A positive impact of 5.7%.
- 29 Genevieve LeBaron, Jane Lister, and Peter Dauvergne, 'Governing global supply chain sustainability through the ethical audit regime' (2017) 14(6) *Globalizations* 1.
- 30 Full recommendations for reform are set out in the *Broken Promises report* (pp 10-11) and the *Paper Promises report* (pp 8-11).



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About us: This report is the third publication issued as part a multi-year collaborative research project by academics and civil society organisations aimed at improving responses to modern slavery and access to remedy for affected workers.

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Cover image: Workers preparing shrimp in a line in a seafood factory in Thailand by Ai Han • Shutterstock.com.

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