



# New law requires businesses to produce modern slavery statements

By Aaron Goonrey and Coral Yopp

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The recent passing of the Modern Slavery Bill in Federal parliament means there are new reporting requirements for Australian organisations.

Different estimates reveal that in 2016 there were between 4,300 and 15,000 modern slaves in Australia, and 40.3 million (including men, women and children) worldwide.

In 2013, the Criminal Code Act 1995(Cth) was amended to include a provision on forced labour. Since then, the report on [Human Trafficking in NSW](#) has revealed that despite there being a notable increase in reported offences of forced labour, there have been no prosecutions under these provisions.

There's a reason this fact doesn't sound new; it's not. We outlined the lack of prosecutions in our article on [modern slavery legislation in NSW](#) in July this year. In that piece we also foreshadowed the introduction of Commonwealth legislation to address the issue of modern slavery in Australia.

On 29 November 2018, the Senate passed the [Modern Slavery Bill 2018](#) (the Bill). The Bill was passed with [amendments](#) proposed by the Morrison Government to address concerns about non-compliance and enforcement. The Bill signals the Commonwealth Government's first steps to assist modern day slaves.

## What will the Bill mean for businesses?

The Bill introduces new reporting requirements with respect to the risks of modern slavery practices. Under the Bill, “reporting entities” will be required to produce a “modern slavery statement” to the Minister for Home Affairs every financial year. The Bill defines a “reporting entity” as:

1. an Australian entity (including Australian companies, trusts and partnerships), carrying on business in Australia and which has a consolidated revenue of at least \$100 million each financial year
2. the Commonwealth Government
3. a corporate Commonwealth entity, or a Commonwealth company with a consolidated revenue of at least \$100 million each financial year.

Additionally, the Bill allows entities to “volunteer” to comply with the reporting requirements by giving written notice to the Minister that a statement will be provided.

While there is not yet a proclamation date for the Bill to come into force, a reporting entity will need to report for FY19.

## What is a Modern Slavery Statement?

The Bill specifies mandatory reporting requirements for reporting entities. Every modern slavery statement is required to:

1. identify the reporting entity
2. describe the structure, operations and supply chain of the reporting entity (although the Bill does not define “supply chain”)
3. describe the risks of modern slavery practices in the operations and supply chains of the entity, and any other entities which the entity owns or controls
4. describe the actions taken by the reporting entity and any entities which the reporting entity owns or controls to assess and address identified risks, for example, through due diligence and remediation processes
5. describe the effectiveness of the actions taken by the entity to address the risks of modern slavery
6. describe the process of consultation with entities which the reporting entity owns or controls
7. provide any other information which the reporting entity considers relevant.

All modern slavery statements will be kept on a publicly available register maintained by the Minister.

## What happens if my business does not comply with the Bill?

As amended, the Bill contains measures for the Minister to take in circumstances where a reporting entity does not comply with reporting obligations. The Bill provides that if a reporting entity does not comply with reporting obligations, the Minister may request that the entity takes remedial action, such as providing a modern slavery statement. The Bill also gives the Minister power to publicly identify entities who do not comply with reporting obligations, which could cause entities serious reputational damage.

Importantly, the Bill gives the Minister discretion to not act for non-compliance within the first three years of enactment, until entities are more familiar with what is expected of them.

While there are currently no civil penalties provided for in the Bill, it has been drafted in such a way as to allow civil penalties to be introduced in the future, should it be necessary. It is expected that the use of civil penalties will be reviewed three years after enactment.

## How does the Bill compare to the NSW legislation?

Many of the reporting obligations in the Modern Slavery Act 2018(NSW) are also present in the Bill, including the requirement to report on risks of modern slavery within the reporting entity and its supply chain. However, a notable absence from the Bill is the requirement to report on training available to employees on modern slavery, which is a minimum reporting requirement under the NSW legislation.

The NSW legislation captures more entities than the Federal legislation, with a revenue threshold of \$50 million for entities required to comply with reporting obligations. Non-compliance with the NSW legislation may also come at a higher financial risk to entities, with penalties of up to 10,000 penalty units (\$1.1 million) applicable to companies for offences including failing to prepare and publish a modern slavery statement.

The NSW legislation provides that an entity does not have to comply with specific sections of the legislation if it is subject to reporting obligations under a Commonwealth law which is prescribed as a corresponding law. This provision could save entities from having to produce two separate reports. However, the Bill will have to take effect and be prescribed in regulations to the NSW legislation (which do not currently exist) before entities know whether they can be saved the effort of producing two reports.

## Continued criticism

While the amendments to the Bill quelled some concerns regarding enforcement, they stopped short of addressing other shortcomings for which the Bill has been criticised. Particularly, the amendments did not reduce the \$100 million revenue threshold for entities which are required to comply with reporting obligations (meaning fewer entities will be covered by the legislation), nor did they develop the role of an independent Commissioner, which is a feature of the Modern Slavery Act 2018(NSW).

## Key takeaway points

- The Commonwealth, Corporate Commonwealth entities and businesses falling within the definition of “Australian entities” with a consolidated revenue of over \$100 million will be required to produce an annual modern slavery statement.
- Conducting due diligence with respect to suppliers will be important for businesses now more than ever. Mandatory reporting criteria of modern slavery statements will require reporting entities to report on risks of modern slavery practices not only within the entity’s operations but also in the entity’s supply chains. This will likely be the biggest challenge, as the precise identification of supply chains can be complex.

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*Picture is of a fish market in Danang, Vietnam. Migrant labourers from Vietnam have been targeted for forced labour that has [connections](#) to Australia’s import seafood industry.*