



General

27 Key issues for modern slavery and anti-corruption

Investing in Energy Transition Projects
March 2023



Modern slavery

'Modern slavery' is a term used to describe serious exploitation. It describes situations where offenders use coercion, threats, or deception to exploit victims and undermine their freedom. Practices that constitute modern slavery can include:

- human trafficking
- slavery
- servitude
- forced labour
- debt bondage
- forced marriage
- serious and exploitative forms of child labour.

It does not include practices like substandard working conditions or underpayment of workers.

Modern slavery reporting requirements in Australia

Entities have a responsibility to respect human rights in their operations and supply chains, as outlined in the *United Nations Guiding Principles on Business and Human Rights*. This includes taking steps to assess and address modern slavery risks.

On 1 January 2019, the *Modern Slavery Act 2018* (Cth) (**Commonwealth Act**) commenced. Entities need to report under the Commonwealth Act if they are an Australian entity or carry on business in Australia and have a minimum annual consolidated revenue of AUD\$100 million. Reporting entities (which includes the Commonwealth Government) must prepare annual modern slavery statements.

In 2018, the *Modern Slavery Act 2018* (NSW) (**NSW Act**) was passed by the NSW Parliament and parts of the NSW Act commenced on 1 January 2022. On 14 October 2021, the NSW Government introduced the *Modern Slavery Amendment Bill 2021* (NSW) (**MSA Bill**) before Parliament. The MSA Bill repeals the duplicative reporting requirements from the NSW Act. This means that NSW entities with a consolidated revenue of between AUD\$50-AUD\$100 million per annum will no longer be required to prepare a modern slavery statement.

What does reporting entail?

Reporting obligations require entities to assess the risk of modern slavery in their operations and supply chains (as well as those of its owned and controlled entities) and to report on the steps it has taken to respond to the risks identified.

Unlike other jurisdictions, the reporting criteria in Australia are mandatory. Reporting entities must have a reasonable basis for any opinions expressed in their modern slavery statement, so it is important that reporting entities take the time to assess their risk. The reporting criteria are as follows:

1. the identity of the reporting entity
2. the structure, operations and supply chains of the reporting entity
3. the risks of modern slavery practices in the operations and supply chains of the reporting entity, and any entities that the reporting entity owns or controls
4. the actions taken by the reporting entity and any entity that the reporting entity owns or controls, to assess and address those risks
5. how the reporting entity assesses the effectiveness of such actions
6. the process of consultation with any entities the reporting entity owns or controls or is issuing a joint modern slavery statement with
7. any other information that the reporting entity, or the entity giving the statement, considers relevant.

Businesses must describe the risk of modern slavery and the actions taken in the reporting year (not in previous years). Joint statements are permitted for corporate groups, but all reporting entities need to be consulted to prepare the statement.

How and when do entities report?

An entity must submit its modern slavery statement within six months of the end of the financial year of that entity.

Reporting entities must provide their approved modern slavery statement to the Australian Border Force (**ABF**) for publication on an online public register.

Enforcement

Currently, the Commonwealth Act does not contain any offence or civil penalties for non-compliance. If an entity fails to submit a statement, or submits a non-compliant statement, the Minister can issue requests for explanation or remedial action and can 'name and shame' entities which do not comply with these requests.

COVID-19 and modern slavery reporting

The ABF encourages entities to consider how the impacts of COVID-19 may increase the vulnerability of workers in their global operations and supply chains to modern slavery, including in Australia. ABF has highlighted that COVID-19 could have the following impacts on businesses, thereby increasing the risk of modern slavery:¹

- factory shutdowns and order cancellations
- workforce reductions
- sudden changes to supply chain structures.

It is important to note the following circumstances that may put workers at risk of modern slavery:²

- loss of income or fear of loss of income
- low awareness of workplace rights
- requirements to work excessive overtime to cover capacity gaps
- increased demand due to supply chain shortages
- inability to safely return to home countries.

Key steps entities can take to protect and support workers in their operations and supply chains may include:³

- maintaining supplier relationships and fostering open communication with suppliers about COVID-19 risks
- collaborating with suppliers, workers, business peers, investors, civil society and peak bodies to identify best-practice approaches to protect and support vulnerable workers in global operations and supply chains
- reviewing key international resources and implementing, where applicable, guidance to support decent work in supply chains.

Reporting entities should review their supply chains and operations to comply with the reporting obligations under the Commonwealth Act and consider specific actions that can be taken to manage risks identified.

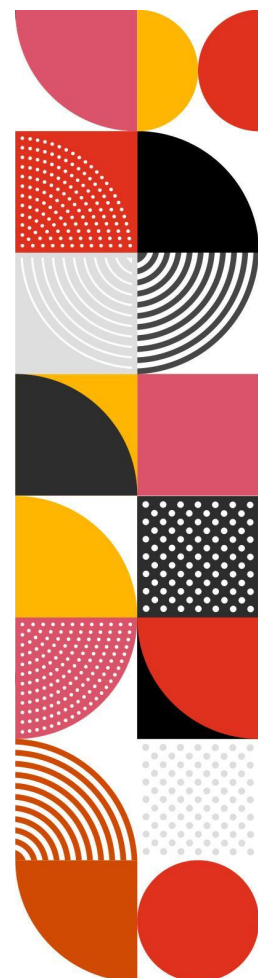
If an entity is unable to provide detailed responses to some criteria in its statement due to the impact of COVID-19 (for example, due to an inability to undertake planned modern slavery assessment activities, having limited capacity to prepare statements due to staff shortages, or having experienced significant changes to their supply chains), then the entity should clearly articulate the relevant circumstances in its modern slavery statement to demonstrate how COVID-19 has impacted its ability to assess and mitigate modern slavery risks. Entities should still address the mandatory reporting criteria and use the opportunity to commit to goals for the following reporting period. Goals demonstrate commitment if the last year has proved challenging.

Three-year review of the Commonwealth Act

Section 24 of the Commonwealth Act requires that a review occur every three years to review, amongst other things, the operation of the Commonwealth Act and compliance with it. Accordingly, on 31 March 2022, the Australian Government formally commenced a statutory review covering the first three years since commencement, which will culminate with a report to be tabled in Parliament.

As part of this review, on 22 August 2022, the Australian Government released an Issues Paper. The Government is seeking submissions and comments from interested stakeholders in response to the Issues Paper and is particularly interested in the views of reporting entities. Once consultation closes, submissions will be published on the Australian Government website.

Reporting entities should be mindful of any amendments that may be implemented into the Commonwealth Act as a result of the review. This could include matters raised in the Issues Paper, such as changes to reporting obligations or the introduction of enforcement mechanisms like civil penalties.



¹ Australian Government Department of Home Affairs, 'Modern Slavery Act: Information for reporting entities about the impacts of coronavirus', Criminal justice (web page) <<https://www.homeaffairs.gov.au/about-us/our-portfolios/criminal-justice/people-smuggling-human-trafficking/modern-slavery-act-coronavirus>>.

² Ibid.

³ Ibid.

Anti-bribery and corruption

It is important for businesses, government organisations and other entities to be mindful of the requirements for compliance with anti-bribery and corruption laws. The effects of globalisation have led to increased regulatory co-operation across international borders and it is critical for entities operating globally to understand their obligations both domestically and internationally. Australian anti-bribery and corruption laws are similar to those in the UK and the US and it is possible to be held liable in multiple jurisdictions for the same conduct.

Australian anti-bribery legislation

Australia is a party to the international OECD Anti-Bribery Convention, which guides its member states on laws dealing with transnational bribery. As a party to this Convention, Australia must regularly submit progress reports. Australia has also implemented the *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* by enacting the relevant anti-bribery and corruption provisions in the *Criminal Code Act 1995* (Cth) (**Criminal Code**).

Each Australian State and Territory has legislation in place that criminalises bribery of both public officials and private individuals. Under the Criminal Code, it is a criminal offence to bribe Commonwealth public officials.

It is an offence to bribe a foreign official under the Criminal Code. The offence consists of providing or offering to someone (directly or indirectly) a benefit that is not legitimately due to that person with the intention of influencing a foreign public official in the exercise of their duties in order to obtain or retain business or a business advantage. The Criminal Code defines 'benefit' broadly as any advantage and it is not limited to money or property. For this offence to be committed, a relevant connection with Australia must be established.

State commissions against corruption

All Australian States have established statutory bodies or commissions tasked with investigating and reporting on corruption within government. As examples, the Victorian Independent Broad-based Anti-corruption Commission and the NSW Independent Commission against Corruption have conducted various high-profile investigations into corruption allegations in recent years. The anti-corruption commissions have strong coercive powers to investigate corruption. For some commissions, hearings and reports are generally public. Investigations may also lead to referrals for criminal prosecution.

Corporate liability

Companies may be held criminally liable for corrupt actions undertaken by their employees, officers and agents. For example, under the Criminal Code, a corporation will be held criminally liable for bribery of a foreign official where:

- the conduct has been committed by an employee, officer or agent of the corporation
- that person was acting within the actual or apparent scope of their authority
- the corporation expressly, tacitly or impliedly authorised or permitted the conduct.



How to contact us



If you have any questions about this paper, please contact the editor, Damian McNair, Partner, Energy Transition.

PwC Australia has a dedicated Energy Transition business, consisting of a hub of 132 multidisciplinary and highly-skilled experts helping to facilitate Australia's successful transition to a decarbonised economy by 2050. We are helping accelerate our clients through the energy transition and their related ESG priorities as Australia moves to a net zero economy.

Damian McNair

PwC | Partner, Energy Transition
M: +61 421 899 231
E: damian.mcnaair@pwc.com
[LinkedIn](#)

Varya Davidson

PwC | Partner, Energy Transition
M: +61 478 303 103
E: varya.davidson@pwc.com
[LinkedIn](#)

Luke Westmore

PwC | Partner, Energy Transition
T: +61 402 074 040
E: luke.westmore@pwc.com
[LinkedIn](#)

Rhiannon Hough

PwC | Director, Energy Transition
M: +61 403 514 687
E: rhiannon.hough@pwc.com
[LinkedIn](#)



A community of solvers coming together in unexpected ways to solve the world's important problems

www.pwc.com.au

© 2022 PricewaterhouseCoopers Consulting (Australia) Pty Limited. All rights reserved. PwC refers to PricewaterhouseCoopers Consulting (Australia) Pty Limited, and may sometimes refer to the PwC network. Each member firm is a separate legal entity. Please see www.pwc.com/structure for further details. This content is for general information purposes only, and should not be used as a substitute for consultation with professional advisors. Liability limited by a scheme approved under Professional Standards Legislation. At PwC Australia our purpose is to build trust in society and solve important problems. We're a network of firms in 158 countries with more than 250,000 people who are committed to delivering quality in assurance, tax and advisory services. Find out more and tell us what matters to you by visiting us at www.pwc.com.au.
D0404694