

Modern Slavery Reporting: how have we fared and what's next?



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The end of the 2020 / 21 financial year marked the end of the first full cycle of reporting against the *Modern Slavery Act 2018* (Cth) (*'Modern Slavery Act'*). The *Modern Slavery Act* requires organisations registered or carrying on business in Australia and with a consolidated revenue of at least \$100 million to report annually on how they are addressing the risks of modern slavery in their supply chain and operations (referred to colloquially as *'Modern Slavery Statements'*). These reports are lodged on a publicly accessible register held and managed by Australian Border Force (the *'Register'*).

The first round of statements reflect a widely variable level of engagement with the issues. Some organisations have gone to extensive lengths to understand their supply chain and the risks that lie within it, to engage with suppliers, and to seek to mitigate, ameliorate and address any concerns. Others have barely scratched the surface. While this was to be expected, it is also expected

that reporting entities embark on a process of continuous improvement. Engagement and demonstrable progress in the second reporting period will be critical. This article outlines common first steps reflected in Modern Slavery Statements on the Register and explores considerations for strategic engagement by organisations with the issues over the next reporting period.

Common actions reflected on the Reporting Register

At the time of writing, reporting entities have lodged 2214 Modern Slavery Statements on the Register. While the reporting entities vary widely in industry, size and structure, many of the steps that reporting entities have taken to identify and address risks of modern slavery are similar. There has been a strong focus on understanding the supply chain and putting in place governance and management structures to facilitate the effective monitoring and management of modern slavery risk. The following are common inclusions in the registered Modern Slavery Statements:

Snapshot

- The end of the 2020 / 21 financial year marked the end of the first full cycle of reporting against the *Modern Slavery Act 2018* (Cth).
- The publicly accessible register shows mixed results.
- The second reporting period presents reporting entities with a number of challenges and opportunities. Genuine engagement and demonstrable progress will be critical.
- Organisations will need to explore ways to deepen assessments of modern slavery risks, while also planning appropriate ways to respond if actual instances occur.
- This article offers some practical suggestions for making the grade in the next round.

- **Supply chain mapping** has been undertaken to varying extents. Some entities have a strong understanding of their supply chains and operations, identifying spend percentages across a range of categories, locations, and material inputs. In contrast, other organisations have described their supply chains at a level that indicates both a lack of understanding and commitment. The work to undertake a thorough supply chain mapping is time consuming and often requires input from a number of parts of the business in order to obtain the level of detail necessary to meet the expectations set out in the *Commonwealth Modern Slavery Act 2018 Guidance for Reporting Entities* (*'Guidance'*). For some reporting entities, the required level of engagement across the business has clearly been difficult to harness and the description of their supply chain falls well below expectations.

• **Governance and management processes** have been an important foundational achievement commonly evident in first round Modern Slavery Statements. Given that few organisations had already identified assessed and addressed risks of modern slavery prior to the mandated reporting requirement, ensuring that policies and processes were in place was a basic but essential, step on the path to effective due diligence.

- **Risk assessment** has been highly variable. Again, some organisations have undertaken a thorough assessment, not only by the broad categories presented in the Guidance (sector and industry risks, product and services risks, geographic risks and entity risks) but by delving deeper into their supply chains. This has included sending questionnaires to higher risk suppliers and subcontractors and engaging directly with those suppliers to demonstrate a significant engagement. On the other hand, many organisations have only identified very broad industry and geographic level risks that do

not speak specifically to the products, services and suppliers that are in their supply chains.

- **Grievance and remediation** has largely relied on existing hotlines established under existing or new whistleblower policies and other complaints mechanisms. Many have failed to describe how those might be promoted with stakeholders as tools available to raise concerns in respect of modern slavery. Few organisations have effectively addressed issues of remediation, although there are some examples of exceptional innovation and commitment to the individuals most affected by modern slavery practices.
- **Training and awareness raising** with relevant staff on modern slavery risks, and in some cases with Boards and senior executives, has been a common focus and another easy win in this early phase of the modern slavery transparency. The question remains whether the right stakeholders are getting the right training to make an impact.

In summary, the statements on the Register reflect a wide spectrum of engagement on supply chain transparency and commitment to assess and address modern slavery. It is expected that reporting entities are on a journey of continuous improvement, and while it is understood and recognised that it is impossible to address all the risks in your supply chain and operations in the first year, it is also expected that engagement is meaningful, and considered. The first round of statements reveals this has not always been the case.

Even for those entities that have been engaging for some years, there are significant challenges ahead. For those who have, perhaps, scraped through in their first year, there is much work to be done. We outlined some considerations for subsequent modern slavery statements below.

Where to from here?

Most entities have made a commitment to certain tasks and activities in the year ahead, and have sought to demonstrate their engagement in a process of 'continuous improvement' as expected in the Guidance.

Some of the commitments reflect the ongoing and complex nature of tasks and some reflect a lack of progress in the first year. It may be prudent for entities to adopt a greater sense of urgency in the second reporting period. Trends towards mandatory human rights due diligence in Europe (already a reality in Germany and Norway) combined with stakeholders increasingly demanding corporate responsibility as a minimum standard, make it clear that a greater onus is being placed on companies to address a broad range of human rights breaches including modern slavery.

As you begin to think about your second Modern Slavery Statement there are a number of important matters to consider.

Getting down to business: Key practical matters to consider in the next round

(i) Supply chain mapping

In the first reporting period, many reporting entities assessed their modern slavery risks according to country or industry using broad tools such as the Global Slavery Index. This has led to vague and often imprecise conclusions on the degree of risk.

In future, reporting entities should consider their specific operations and supply chain to assess risk in greater detail. This may often be guided by results from supplier questionnaires, but should also be accompanied by further due diligence to identify suppliers' supply chains, recruitment methods and working environments. Armed with more detailed information, entities will be better equipped to prioritise and focus on areas of real risk and mitigate accordingly.

Continuing to deepen and understand your particular supply chains is critically important. In their Modern Slavery Statements many organisations noted that many of their suppliers are based in Australia. While this might provide some comfort in respect of the first tier of the supply chain, it provides no security regarding the level of modern slavery risk in the second and subsequent tiers. It is essential to develop an understanding of where Australian based suppliers are sourcing goods and services. Do they come from overseas or are they manufactured in Australia with commodities and raw materials purchased here but imported from abroad? There are many layers of complexity in every supply chain regardless of how simple they may appear at first glance.

(ii) Engaging with suppliers

Genuine transparency will require engagement with suppliers. This may involve sending self-assessment questionnaires (*'SAQ's'*) to suppliers and subcontractors, and many organisations have undertaken this in the first reporting period. Your next statement should describe what you are doing with the information you are collecting. Has it raised further concerns? Are you following up directly with the supplier to gain a greater understanding of their risks? Are you able to encourage action by the supplier to address the risks? Are you working together to bring about changes? What is the effectiveness of the surveys and of your engagement?

One difficulty faced by many organisations is getting access to the parts of the supply chain where risks are likely to be greatest. Businesses should think about how they can most effectively gather the information needed to have true oversight of their supply chains. In particular, thought should be given to contractual inclusions mandating the sharing of information, as well as the limitations of contractual mechanisms. In cases where suppliers are reluctant to hand over information, it can be difficult to get a true picture of the risk profile of the supply chain beyond the first tier.



(iii) Engaging with other stakeholders

In truth, few of us will be able to resolve modern slavery issues in our supply chain alone. This is particularly true of risks that are identified deep within our supply chain. Are you considering how you will engage with others, including multi-stakeholder groups, to address these complex risks? For example, many of the modern slavery statements identify risks of modern slavery in their cleaning contracts, and in their technology and communications equipment. It may be easy to engage with your cleaning contractor, but addressing issues of modern slavery in respect of the cobalt found in your telephone, or the lithium found in your computer battery will be infinitely more complex. It is important to consider how you will engage to address all these supplier risks.

(iv) Training

What ongoing training program is in place? Who are you training? Do you have the same or different levels of training across the organisation or is it only the procurement department? It is essential that those responsible for contracting and procuring have a clear understanding of modern slavery. But it is also important for other areas of the business to understand how slavery manifests in different environments, and how different business decisions might inadvertently foster an environment where modern slavery can flourish. It is also important for many involved in day to day operations to understand and consider the signs and red flags for modern slavery so they are enabled to raise concerns.

(v) Governance and accountability

Are your Board and senior executives engaged and committed to the level of transparency required to implement a continuously improving system of modern slavery due diligence and transparency? Have they been adequately briefed on the *Modern Slavery Act* and the requirements, and does the Board understand their disclosure obligations in respect of modern slavery? This should include the risks that arise if they are not confident that adequate representation of organisational realities are indicated in the modern slavery statement, and a clear understanding of when legal advice may be appropriate.

(vi) Grievance and remediation

How will employees, contractors, suppliers and their people know how to raise concerns regarding the risks or possibility of modern slavery in your supply chain or operations? Many entities have whistleblower policies which they are using as a means for raising modern slavery concerns. However, entities must ensure that both their workers and suppliers' workers are aware of, have access to, and feel safe using the whistleblower mechanisms. In addition, do those receiving complaints understand at what point a complaint may be reportable conduct under the whistleblowing policy? Are they trained in managing issues relating to human rights abuses and connecting victims with supports? Do you have a trigger for seeking professional or legal advice?

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(vii) Remediation

Few organisations have adequately addressed the issue of remediation in their modern slavery statements. With an abundance of activity identifying and assessing risks of modern slavery, organisations should not be surprised if they find people in their supply chain working in situations of modern slavery. In the next round of reporting, organisations should explain how they will respond in circumstances where they identify instances of modern slavery practice, and so development of a remediation plan is highly recommended. Modern slavery concerns may be raised with the organisation in a number of ways and a variety of contexts, so a remediation plan should acknowledge this and outline a range of appropriate responses. Gathering and securing information is critical, but primary consideration must be given to safeguarding impacted people. Referral to authorities may be appropriate under certain circumstances so early engagement of specialist legal and other human rights advisers, and consideration of confidentiality, legal professional privilege and information sharing protocols are important. Whether your organisation has caused, contributed to, or is linked with the instances of modern slavery will influence your response, but if you have not already started thinking about these issues, it is important to do so now.

Organisations should recognise that if modern slavery is uncovered, then a criminal offence under the *Criminal Code Act 1995* (Cth) may have been committed. The Guidance does not require businesses to renounce all connections with suppliers who have been implicated in modern slavery. However, when working with suppliers to address actual instances of modern slavery, reporting entities should take care that they do not themselves become involved in any contraventions of the law.

Conclusion

The second reporting period presents reporting entities with a number of challenges and opportunities. In the spirit of continuous improvement, explore ways to deepen assessments of modern slavery risks, while also thinking through appropriate ways to respond if actual instances occur. Build understanding across your enterprise and into deeper tiers of your supply chain and strengthen social capital through meaningful engagement in the issues. **LSJ**