

A Modern Slavery Act in Australia

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A MODERN SLAVERY ACT IN AUSTRALIA

In late June 2018 Assistant Minister for Home Affairs, Alex Hawke, introduced a Modern Slavery Bill into the House of Representatives in Australia. Modelled after the UK Modern Slavery Act, the Australian Modern Slavery Act will make steps towards combatting Modern Slavery in Australia and our surrounding region. The legislation introduced into parliament is widely expected to pass and will likely be built upon over time.

In this article the implications of the Modern Slavery Bill, the impact it will have on investment decision making, reporting requirements and stakeholder demands will be discussed. A timeline of events leading to the bills introduction will also be provided.

What is Modern Slavery?

'Modern slavery' is a contested term because it has no legal definition under International Law. Modern slavery can be broadly defined as forms of slavery, servitude, forced or compulsory labour and human trafficking.

International conventions, such as the 1956 UN Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery and the 1930 Forced Labour Convention, do however define and classify slavery-like practices. The 1956 UN Supplementary Convention includes definitions of debt bondage, serfdom, forced marriage and child labour as slavery-like practices and require criminalisation and abolishment.¹ The 1930 Forced Labour Convention defines forced labour as "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily".²

The reason for the adoption of the term "modern slavery" is unclear. It may be because it is easier for the broader public to picture and sympathise with the image of slavery, and associate that as being intolerable. Modern Slavery Acts' have been introduced in the United Kingdom, and Australia is in the final stages of introducing their own Modern Slavery Act. Further, there have been calls to support modern slavery legislation in New Zealand and Canada.

In Australia, there have been movements to include orphanage trafficking and cybersex trafficking in addition to the international definitions of slavery-like practices and forced labour in their judicial responses to modern slavery.

A Modern Slavery Act For Australia

In late June 2018, Minister Hawke introduced the Modern Slavery Bill into the House of Representatives. The Bill was for an 'Act to require some entities to report on the risks of modern slavery in their operations and supply chains and actions to address those risks, and for related purposes'.³ Other recommendations from the *Hidden in Plain Sight Report* (a comprehensive document that suggests eight key themes to be considered in order for Australia to implement regulatory and legislative change under a Modern Slavery Act discussed in greater detail below) are slated to be introduced into Parliament at a later date.

The current bill stipulates mandatory criteria for Modern Slavery Statements as summarised in Figure 1.⁴ Other mandatory criteria include having the statement approved by the principal governing body of the reporting entity.

Figure 1 Part of the Mandatory Criteria for Modern Slavery Statements

1) A Modern Slavery Statement must, in relation to each reporting entity covered by the statement:

a) identify the reporting entity; and	b) describe the structure, operations and supply chains of the reporting entity; and	c) describe 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; and	d) modern slavery statements address those risks, including due diligence and remediation processes; and	e) describe how the reporting entity assesses the effectiveness of such actions; and	f) describe the process of consultation with: (i) any entities that the reporting entity owns or controls; (ii) in the case of a reporting entity covered by a statement 9 under section 14—the entity giving the statement; and	g) include any other information that the reporting entity, or the entity giving the statement, considers relevant
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In contrast to the UK law, in Australia Commonwealth Corporations will also have to report if they reach the revenue threshold. Furthermore, the Modern Slavery Statement reporting requirements are more stringent in the proposed Commonwealth Modern Slavery Bill.

There are some key differences between the recommendations made by the Joint Standing Committee in the *Hidden in Plain Sight Report* and the Modern Slavery Bill that was introduced into Parliament in late June 2018. For example, the revenue threshold for the reporting requirement has been set at 100 million dollars, rather than the suggested 50 million in the *Hidden in Plain Sight* report. The Government estimates that this threshold will cover approximately 3,000 entities.⁵ Figure 2 outlines some key proposed features of a Commonwealth Modern Slavery Act compared to the current government’s commitments and proposed legislation, and the *Hidden in Plain Sight* recommendations.

Figure 2 - Comparison of government commitments, including the drafted Modern Slavery Bill and the Hidden in Plain Sight Recommendations

Proposed Mechanism	Government Commitment / Current Bill Legislation	Hidden in Plain Sight Recommendations
Supply Chain Reporting Requirement	\$100 million reporting threshold. No information regarding allowing or encouraging ‘opt-in’ reporting.	\$50 million reporting threshold. Allow entities below the threshold to ‘opt-in’ to the reporting requirement.
	Reporting entities to publish Modern Slavery Statements within six months from the end of their Financial Year.	Reporting entities to publish annual Modern Slavery Statement within five months from the end of the Australian Financial Year.
	Modern Slavery Statements to be approved by Principle Governing Body of the entity.	Modern Slavery Statements to be approved by the equivalent of a board and signed by the equivalent of a director.
	Mandatory criteria for modern slavery statements covering the entities own operations and supply chain, associated risks, actions taken by the company, assessment of the effectiveness of the process.	Mandatory criteria for modern slavery statements covering the entities own operations and supply chain, associated risks, actions taken by the company, assessment of the effectiveness of the process.

Proposed Mechanism	Government Commitment / Current Bill Legislation	Hidden in Plain Sight Recommendations
Supply Chain Reporting Requirement	The Australian Government to publish an annual consolidated statement covering Commonwealth procurement. Commonwealth corporations and Commonwealth companies to publish separate reports if they reach the revenue threshold.	Commonwealth public bodies over the prescribed threshold amount, including the Australian Government, required to provide a modern slavery statement.
Central Repository	Provide a free, publicly accessible central repository that ensures all Modern Slavery Statements are easily accessible. The Central Repository will be government run. The Central Repository will be administered by the Business Engagement Unit in the Department of Home Affairs.	To support a legislated and government-funded central repository of Modern Slavery Statements under the proposed Modern Slavery Act. That the Australian government support and fund an independent civil society NGO or NGOs to run and administer the central repository, as well as to undertake benchmarking and analysis of Modern Slavery Statements.
Anti-Slavery Commissioner	No commitment to an Independent-Anti Slavery Commissioner.	Establish an Independent Anti-Slavery Commissioner to lead and coordinate Australia's response to combatting Modern Slavery. The Anti-Slavery Commissioner would help to identify and support victims of modern slavery, assist to prosecute offenders, engages with the private sector to encourage supply chain transparency, improve law enforcement and criminal justice responses and promote best practice in partnership between statutory bodies, civil society, and the private sector.
Business Engagement Unit	A dedicated Business Engagement Unit within the Department of Home Affairs. The unit will provide support and assistance for reporting entities. The Unit will also promote best-practice, administer the central repository and undertake awareness-raising and training.	Not recommended/mentioned.

The Journey to Australia's Modern Slavery Act

The following section details the developments leading up to the introduction of a Modern Slavery Bill in Australia and also outlines some of the suggested mechanisms to be introduced to help combat and prevent modern slavery in Australia.

UK Modern Slavery Act 2015

The United Kingdom was the first country to legislate laws under the term 'modern slavery'. The UK Modern Slavery Act 2015 was the first domestic law of its kind in the world.⁶

The UK Modern Slavery ACT 2015 included legislation that covered:

- The creation of an Independent Anti-Slavery Commissioner
- The protection of victims
- Supply chain reporting for companies with a revenue threshold of over 36 million pounds

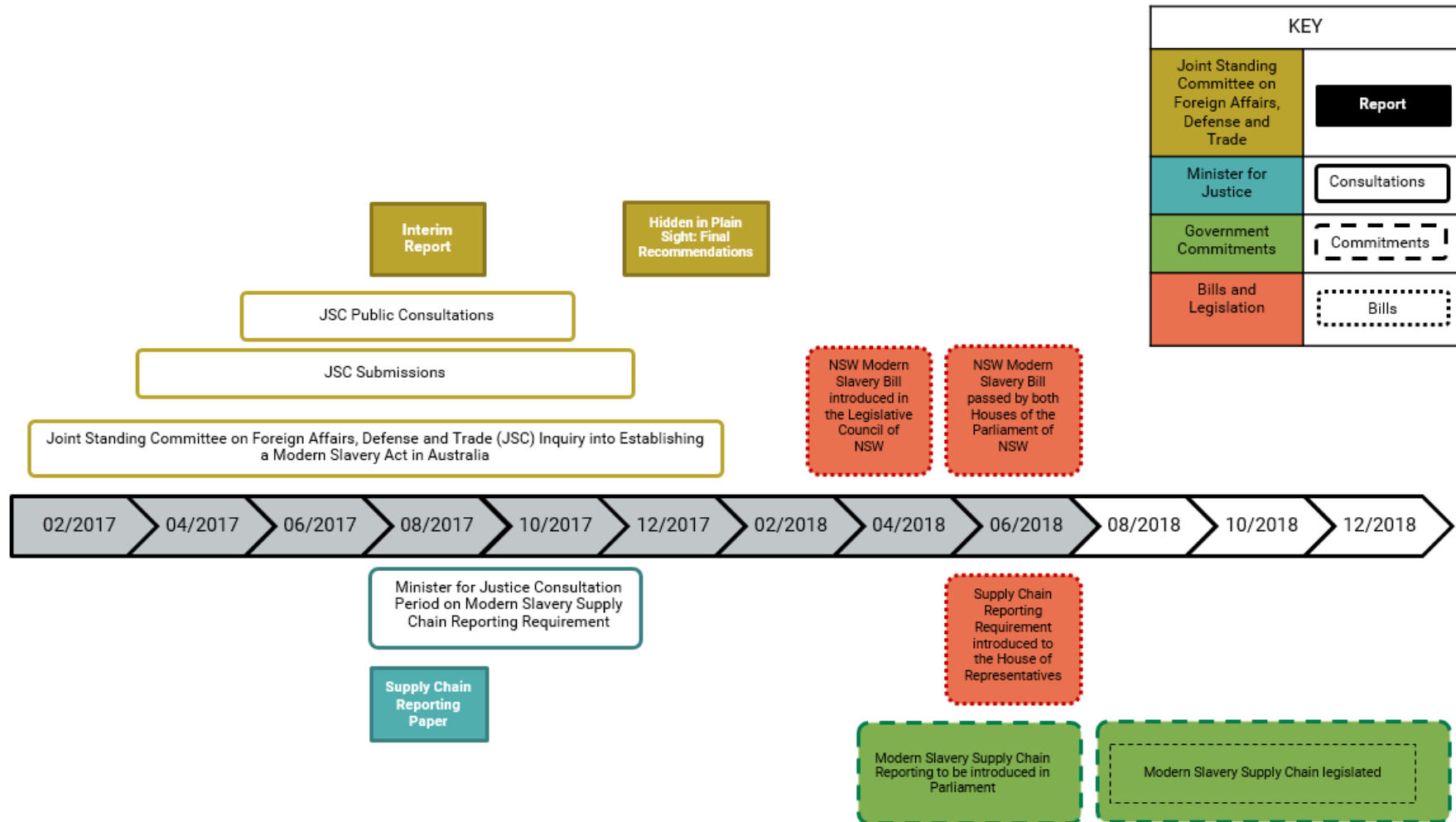
There have been both praise and criticism for the UK Modern Slavery Act. Praise stems from the fact that the Act was largely a consolidation of pre-existing criminal legislation, that it was enforceable by the courts and had a relatively low reporting threshold. One criticism of the act is that supply chains in the production of goods that are not sold and distributed in the UK are not covered.⁷ There has also been criticism that the focus of the Act was too much on law enforcement and not enough on the needs of victims.⁸

Timeline to a Modern Slavery Act in Australia

Following the enactment of the Modern Slavery Legislation in the United Kingdom, there have been movements in Australia towards establishing similar legislation. It is likely that a supply chain reporting requirement component of the modern slavery developments will be legislated before the end of 2018. The primary responsibility for the legislation relating to modern slavery now lies in the Home Affairs portfolio.

The following diagram (Figure 3) shows different steps and events (as at July 2018) that have influenced the introduction of a Modern Slavery Reporting Requirement for companies operating in Australia. Once legislated, we expect this to impact investors, companies, government bodies and other stakeholders.

Figure 3 - Timeline leading to an Australian Modern Slavery Act



Joint Standing Committee on Foreign Affairs, Defence and Trade Inquiry into Establishing a Modern Slavery Act in Australia (February - December 2018)

In February 2017, the then Attorney General of Australia Senator George Brandis asked the Joint Standing Committee on Foreign Affairs, Defence and Trade to inquire into and report on Establishing a Modern Slavery Act in Australia.⁹ The Committee examined whether Australia should adopt a Modern Slavery Act comparable to that in the UK. The Committee was also tasked with exploring the extent of modern slavery both in Australia as well as globally, investigating the prevalence of modern slavery in domestic and global supply chains and identifying best practice of companies and governments.

The Attorney General's Department hosted a series of consultations across Australia over the September-October period. These consultations, in addition to the 225 written submissions made to the Joint Standing Committee, helped shape the recommendations made by the Joint Standing Committee in their *Interim Report* published in August 2017, and final recommendations in the *Hidden in Plain Sight Report* published in December 2017. Many players in the responsible investment industry have made submissions to the inquiry, demonstrating the attention of the responsible investment industry on the modern slavery debate and the importance placed on potential legislation in Australia.¹⁰

In December 2017, responsibility for work regarding modern slavery transitioned from the Attorney-General's Department to the Department of Home Affairs.

Minister for Justice Consultation Paper on the Australian Government's proposed model for a Modern Slavery in Supply Chains Reporting Requirement (August – October 2017)

The Minister for Justice released a consultation paper on the Australian Government's proposed model for a Modern Slavery in Supply Chains Reporting Requirement. This model was put up for consultation over September-October 2017.¹¹

The paper highlights various options for the government to take in order to address modern slavery in supply chains. The Government decided on targeted regulatory action through a Modern Slavery and Supply Chains Reporting Requirement. The suggested reporting requirement that was proposed by the Minister for Justice included the following criteria:

1. The entity's structure, its operations, and its supply chains
2. The modern slavery risks present in the entity's operations and supply chains
3. The entity's policies and processes put in place to address modern slavery in its operations and supply chains and their effectiveness (such as codes of conduct, supplier contract terms, and training for staff)
4. The entity's due diligence processes relating to modern slavery in its operations and supply chains and their effectiveness.

This paper heavily influenced the Modern Slavery Bill, which was introduced to parliament on the 28th of June 2018. The Minister for Justice portfolio was subsumed into the portfolio of the Minister for Law Enforcement and Cybersecurity in the Home Affairs portfolio in December 2017.

Hidden in Plain Sight Report Recommendations (December 2017)

In December 2017, the Joint Standing Committee on Foreign Affairs, Defence and Trade published their recommendations from the Inquiry in a report titled *Hidden in Plain Sight*.¹² The *Hidden in Plain Sight Report* is a comprehensive document that suggests eight key themes to be considered in order for Australia to implement regulatory and legislative change under a Modern Slavery Act. These themes contain recommendations for legislation and systems to prevent instances of modern slavery, and to protect and find remedy for persons found under conditions of Modern Slavery. The recommendations are summarised in Figure 4.

Figure 4 Hidden In Plain Sight Recommendations

Comparison of UK Modern Slavery Act 2015 with Australia's existing legal and policy frameworks	Recommends establishing a Modern Slavery Act in Australia.
Defining and measuring Modern Slavery	Recommends a definition for Modern Slavery and measures to improve data collection and research on Modern Slavery in Australia.
Independent Anti-Slavery Commissioner	Recommends the establishment of an Australian Independent Anti-Slavery Commissioner.
Transparency in Supply Chains	Recommends mandatory supply chain reporting requirements. The main elements include a central repository for the disclosures, guidance for entities and prescribed reporting areas. The revenue threshold recommended lies at AUD 50 million and the definitions of 'entities' is broad enough to include private and listed companies, organisations and the public sector.
Support for Victims	Recommends changes to the Support for Tracking People Program and Human Trafficking Visa Framework. This includes introducing a statutory defence for victims, establishing a national compensation scheme and funding NGO working to support victims.
Criminal Justice Responses	Recommends improving coordination between training for law enforcement agencies and the criminal justice system, introducing a duty to report suspected modern slavery cases and measures to address debt bondage. Includes recommendations by the Parliamentary Joint Committee on Law Enforcement Inquiry on human trafficking, slavery and slavery-like practices (2017).

Orphanage Trafficking	Recommends funding a national awareness campaign on the risks of orphanage trafficking, changes to charity regulations and establishing a register of legitimate overseas residential institutions, with penalties applying to visiting or donating to non-registered institutions.
Migrant Workers and Backpackers	Recommends changes to Australia’s visa framework to remove conditions of vulnerability for migrant workers and backpackers. Establishing a community hotline for reporting Modern Slavery and establishing a national labour hire licencing scheme.

Government Commitments

Members of the Joint Standing Committee, in addition to representatives of business and civil society, attended a Modern Slavery event hosted at Parliament House in Canberra by the Walk Free Foundation and the Salvation Army in February 2018. At the event Assistant Minister Hawke announced that there would be legislation for the supply chain reporting component of the Act before the Parliament by the middle of the year, with a goal of enacting legislation prior to the end of the year. These commitments have led to the introduction of the Modern Slavery Bill discussed above. The opposition party, the Labor government, also announced their support for a supply chain requirement, an independent anti-slavery commissioner and penalties for non-compliance.

In the Federal Government 2018 budget it was announced 3.6 million dollars has been allocated to establish a dedicated Anti-Slavery Business Engagement Unit in the Department of Home Affairs. The Anti-Slavery Business Engagement Unit is to provide advice and support for businesses on modern slavery risks as well as manage a central repository for all Modern Slavery Statements.¹³ This proposed structure means that the central repository would not be managed by an independent party, as recommended by many civil society groups.

NSW Modern Slavery Bill

On Wednesday the 6th of June the NSW Modern Slavery Bill was passed through the NSW Legislative Assembly, after being initially introduced in the Legislative Council in March 2018.¹⁴ The introduction of the bill shows that there is interest in combatting modern slavery and support for related legislation at a state and federal level. The NSW Modern Slavery Bill had a supply chain reporting requirement, however, the NSW Bill states that the reporting provisions do not apply if another regime is in place, such as if an Australian Modern Slavery Act comes into effect. There are other provisions, such as the appointment of an Anti-slavery Commissioner.¹⁵ The Act also assists victims of modern slavery to access compensation under the *Victims Rights and Support Act 2013* (NSW).¹⁶

How Will a Modern Slavery Act Impact Investors?

The Modern Slavery Act may impact investors in the following ways:

- **Once a Supply Chain Reporting Requirement is legislated, most ASX-listed companies will be required to disclose Modern Slavery Statements.** This will mean that there will be an increase in reporting disclosures related to human rights due diligence and how companies ensure they monitor and reduce the risk of modern slavery in their own operations and their supply chain. Investors should consider whether and how they will take these disclosures into consideration when making investment decisions, and understand how reducing exposure to modern slavery through their investments is consistent with prudent ESG practice.
- **More clients and stakeholders will be asking questions relating to modern slavery.** It is important to understand the nuances of the issue and be able to communicate these to stakeholders. Furthermore, investors should monitor leaders and laggards – not just with regards to the quality of companies Modern Slavery Statements, but also with regards to their other human-rights related disclosures and exposure to controversies.
- **Some investors will be exposed to the reporting requirement.** Be prepared to understand the risk of modern slavery within both your own operations and throughout your supply chain. Assessing your risk exposure could include considering your procurement processes – which can be as local as considering who cleans your offices, to considering your investment processes – which can include how you screen for controversies relating modern slavery in your portfolios, or implement a best-in-practice human rights approach.

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