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Australia Proposes Modern Slavery Reporting Requirements for Multinationals – An Overview and Comparison to Existing Corporate Modern Slavery Disclosure Legislation

The Australian Government has released a consultation paper proposing the adoption of legislation that would require many multinationals operating in Australia to publicly report on modern slavery risk in their business and supply chains and their related compliance practices. “Modern slavery” includes human trafficking, slavery and slavery-like practices such as servitude, forced labor and debt bondage, which have been found to exist to varying degrees in many supply chains across a large number of countries. If adopted, Australia would join the United Kingdom and California in adopting similar reporting requirements. In this Alert, we discuss the proposed legislation and provide a comparison to the UK and California modern slavery reporting requirements.

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The Proliferation of Corporate Modern Slavery and Related Legislation

Over the last several years, legislation addressing corporate responsibility for modern slavery has been adopted in several jurisdictions. California was first out of the gate when it adopted the California Transparency in Supply Chains Act, requiring companies to make disclosures concerning their efforts to address modern slavery. This Act took effect in 2012. The UK Modern Slavery Act, which was based on the California Act, was adopted in 2015 and required disclosures beginning last year. The U.S. Federal Acquisition Regulation anti-human trafficking provisions, which among other things require U.S. federal contractors to put in place specified compliance procedures, also were adopted in 2015. And last year saw the repeal of the consumptive demand exception under the U.S. Tariff Act.

This year has been especially active for corporate human rights legislation. Early in the year, France adopted a corporate duty of vigilance law that requires large French companies to take steps to identify and prevent serious human rights impacts, which would include modern slavery, in their supply chains. At around the same time, the Dutch Parliament adopted child labor due diligence legislation, which is awaiting Senate approval. In addition, the Welsh Government released a Code of Practice for Ethical Employment in Supply Chains that businesses involved in Welsh public sector supply chains are expected to sign on to. Next year, many EU companies will begin making disclosures under the EU non-financial reporting directive, which for some companies are expected to include modern slavery-related disclosures.

Shifting over to Australia, corporate human rights legislation has been under discussion for some time. In 2013, a Parliamentary committee recommended that the Australian Government adopt legislation to improve supply chain transparency. In 2016, a multi-stakeholder working group convened by the Government recommended that it consider adopting a modern slavery reporting requirement. Last month, on August 16, the Commonwealth Minister for Justice announced the Australian Government’s proposal to enact an Australian Modern Slavery in Supply Chains Reporting Requirement and released a Consultation Paper outlining the proposed regulation. That Paper and the public consultation process are discussed below.

The Proposed Regulation

Definition of Modern Slavery. “Modern slavery” will encompass slavery, servitude, forced labor, debt bondage and deceptive recruiting for labor or services. The Australian Government proposes that the definition incorporate conduct that would constitute a relevant offense under existing human trafficking, slavery and slavery-like offense provisions contained in the Commonwealth Criminal Code. The definition will exclude practices such as forced marriage that are unlikely to be present in business operations and supply chains.

Subject Entities. The Australian Government proposes that the revenue threshold for the reporting requirement be set no lower than AUD100 million in total annual revenue (approximately USD80 million as of the date of this Alert). For purposes of its cost analysis, at this monetary threshold, the Government has assumed that approximately 2,000 large corporations and entities operating in Australia will be subject to the regulation. The regulation would allow for periodic adjustments. Entities below the threshold would be able to opt in to the reporting requirement.

The Australian Government has indicated that, in the public consultation process, it will collaborate with business and civil society to define the types of entities that the reporting requirement will apply to and to clarify how the proposed revenue threshold will apply. At this stage, the Australian Government proposes to define “entity” broadly to include a broad range of entity types, including bodies corporate, unincorporated associations or bodies of persons, superannuation funds and approved deposit funds. The Australian Government does not propose to limit the application of the reporting requirement to high risk sectors or importers.

Subject to consultation with the business community and civil society, the Australian Government anticipates the reporting requirement will apply to not only entities headquartered in Australia, but also to entities that have any part of their operations in Australia, in each case subject to the revenue threshold.

Covered Business Activities. Entities that are subject to the reporting requirement will be required to report on their actions to address modern slavery in both their operations and their supply chains. The Australian Government intends to provide detailed guidance concerning the definition of “operations” and “supply chains,” in collaboration with the business community and civil society. The Australian Government notes in the Consultation Paper that it proposes that the definition of “supply chains” extend beyond first tier suppliers.

Statement Content. The Australian Government proposes that subject entities be required to report on substantially the same topics as are contained in the UK Modern Slavery Act. However, under the Modern Slavery Act, reporting on the enumerated topics is optional.

Subject to feedback received through the consultation process, the Australian Government proposes that entities be required to, at a minimum, report against a consolidated set of four mandatory criteria:

- the entity’s structure, operations and supply chains;
- the modern slavery risks present in its operations and supply chains;
- the entity’s policies and process to address modern slavery in its operations and supply chains (such as codes of conduct, supplier contract terms and training for staff) and their effectiveness; and
- the entity’s due diligence processes relating to modern slavery in its operations and supply chains and their effectiveness.

The Consultation Paper indicates that entities will have the flexibility to determine what, if any, information they provide against each of the four criteria and whether to include any additional information. The Australian

Government intends to provide detailed guidance concerning the nature and extent of the information that should be included in statements.

Approval Requirements. Statements will be required to be approved at the equivalent of the board level and signed by a director.

Statement Publication. Entities will be required to publish their statements on their website. Subject to feedback obtained through the consultation process, the Australian Government also proposes to provide for a free, publicly accessible and searchable central repository.

Reporting Due Date. The Australian Government proposes that entities be required to publish modern slavery statements within five months after the end of the Australian financial year. The Consultation Paper indicates that, if necessary, the Australian Government will provide for a phased introduction of the reporting requirement to ensure the business community has sufficient preparation time.

Compliance Mechanism; Penalties. The regulation would not include punitive penalties for non-compliance. However, the Consultation Paper indicates that the Australian Government will monitor general compliance with the reporting requirement and entities that do not comply may be subject to public criticism.

The Australian Government also is considering options for oversight of the reporting requirement, including the feasibility of and requirement for independent oversight. In addition, the Australian Government is considering ways to support business groups and civil society to undertake analysis and benchmarking of modern slavery statements.

Subsequent Review of the Legislation. The Australian Government proposes to review the legislation three years after its introduction. The review will include further public consultation. The Australian Government also will establish a mechanism for the business community to provide feedback to the Government pertaining to the operation and effectiveness of the reporting requirement. Consumers and civil society also will be consulted.

A Comparison to Existing Corporate Modern Slavery Legislation

The table below provides a high-level comparison of the proposed Australian regulation, the UK Modern Slavery Act and the California Transparency in Supply Chains Act. Australian modern slavery reporting requirements are expected to be further fleshed out in draft legislation during 2018. For additional information on the UK Modern Slavery Act and the California Transparency in Supply Chains Act, see our earlier publications [here](#), [here](#), [here](#) and [here](#). Additional publications and source materials are available on our [Supply Chain Compliance & Corporate Social Responsibility website](#).

	Australia	United Kingdom	California
Subject Companies	To be defined broadly; not limited to high risk sectors or importers	Supplier of goods or services, including a trade or profession	Manufacturer or retailer
Annual Turnover Threshold	Not lower than AUD100 million, subject to periodic adjustment	£36 million	USD100 million
Jurisdictional Nexus	Entities headquartered in Australia or having any part of their operations in Australia	Doing business in the United Kingdom	California Revenue and Taxation Code
Covered Business Activities	The subject entity's operations and supply chains	Any of the subject entity's supply chains, and any part of its own business	Direct supply chain for tangible goods offered for sale
Statement Content <i>(Substantially similar across all three jurisdictions)</i>	Required topics	Suggested topics	Required topics
Publication	Website; potentially also a central repository	Website, with a prominent homepage link, or upon written request	Website, with a conspicuous and easily understood homepage link, or upon written request
Signature/Board Approval	Required	Required	None
Frequency	Annual	Annual	Not specified; on an as-needed basis
Due Date	Within five months after the end of the Australian financial year, potentially subject to a phased introduction	No mandatory due date; recommended within six months after fiscal year end	Not specified

Next Steps

The Australian Government is holding a public consultation process with the business community and civil society to refine its proposal. The Commonwealth Attorney-General's Department is leading this process. Written submissions can be made through October 20, 2017. A series of stakeholder roundtables also will be convened during the remainder of 2017.

The reporting requirement will be established through a new Act of Parliament. Taking into account feedback provided during the consultation process, the Minister for Justice proposes to seek to bring forward draft legislation in the first half of 2018. As noted earlier in this Alert, the legislation may include a phase-in period to allow businesses additional time to prepare their first annual statement.

Thoughts on the Proposed Legislation and the Continuing Evolution of Modern Slavery Compliance

There Isn't Much for Multinationals to Do Now under the Proposed Legislation, but There Are a Couple of Near-Term Action Items to Consider

At this point, it is premature for multinationals to begin preparing for compliance with Australian modern slavery legislation. Many details remain to be worked out through the ongoing public consultation and the legislative process to follow. In addition, aspects of the legislation may change from what is described in the Consultation Paper, with some NGOs and other constituencies continuing to advocate for a more expansive approach. Finally, the timing of both the adoption of legislation and the due date of the first statements remain unknown.

With that said, there are two nearer-term action items to consider. The more immediate action item is to consider whether to participate in the consultation process. As noted earlier in this Alert, submissions can be made through October 20, 2017. This is something that larger multinationals should consider, either individually or through their trade associations, given their substantial experience reporting under existing corporate modern slavery legislation.

The second action item is to determine which entities in the consolidated group may be subject to the proposed legislation, and whether those entities present modern slavery risks that may require different disclosures and/or compliance procedures than other group companies already publishing modern slavery statements.

The Proposed Australian Modern Slavery Legislation Will Accelerate the Movement Toward Combined Disclosure Statements

Many multinationals that are subject to both the UK Modern Slavery Act and the California Transparency in Supply Chains Act already have opted to prepare a single combined statement to address both requirements, since this tends to be more efficient and substantive modern slavery compliance procedures typically are the same across the consolidated group. With potentially three jurisdictions at issue, we expect most of the remaining holdouts to move over time to combined statements.

Notwithstanding the trend toward combined statements, at many multinationals, responsibility for CSR disclosures remains spread out across functions, business units and geographies. With the increase in mandatory human rights disclosures on modern slavery and other topics, and potentially more on the way in addition to Australia, this approach is becoming unwieldy and is in some instances creating risk. We are already starting to see more multinationals move global responsibility for modern slavery and other human rights-related disclosures into a single team and expect this trend to continue as well.

Keep the Big Picture in Mind – Mandatory Disclosures Are Only One Piece of Modern Slavery Compliance

As articulated in both the Consultation Paper and previously by the UK Home Office, modern slavery disclosure requirements are intended to create a “race to the top.” NGOs and other stakeholders already have published several expectations documents and assessments and rankings of California and UK modern slavery disclosures and company compliance practices, and we expect to see these continue to spring up like wildflowers after a rainstorm. In addition, companies are benchmarking their modern slavery disclosures and compliance programs against those of peers and competitors. These factors – along with greater awareness of modern slavery, more supply chain transparency and an increasing focus on ethical sourcing generally – will continue to drive enhancements to compliance programs and disclosures, well beyond what is required by California, UK or Australian legislation, for the foreseeable future.

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