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Proposed Changes to Australia's Modern Slavery Act Would Introduce New Obligations for Multinationals

On May 25, the Australian Attorney-General's Department tabled a report that reviews the first three years of practice under the Australian Commonwealth Modern Slavery Act. The Report contains 30 recommendations, consisting of both changes to the Act and administrative actions, such as amended guidance. The Recommendations generally seek to align the Act with evolving global trends in human rights due diligence, supply chain transparency and corporate accountability. In this Alert, we discuss the key recommendations made in the Report and compare them to the current Act and other existing modern slavery legislation.

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See also our earlier Alerts regarding the Act [here](#), [here](#), [here](#) and [here](#).

The Act in Its Current Form

The Australian Commonwealth Modern Slavery Act took effect on January 1, 2019. Like other disclosure-based modern slavery statutes, the goal of the Act is to reduce modern slavery in businesses and their supply chains through transparency. The Act requires Australian entities and other entities carrying on business in Australia with consolidated worldwide revenue of more than A\$100 million to annually prepare a modern slavery statement and submit it for inclusion in a central government register. The statement is required to describe, among other things, the potential risks of modern slavery in the reporting entity's operations and supply chains and the actions taken to assess and address those risks.

The Act does not require a reporting entity to engage in modern slavery due diligence. It also does not impose monetary penalties for non-compliance.

The Review Process

The Act requires that it be reviewed three years after its commencement. The purpose of the review is to consider the efficacy and operation of the Act and whether improvements may be merited.

A 12-month review began on March 31, 2022. The review included the publication of an Issues Paper in August 2022, an online questionnaire based on the Issues Paper, an online survey sent to all entities that had submitted a statement under the Act and targeted consultations and meetings with select committees and individuals.

The review received 136 written submissions, 30 responses to the online questionnaire and 496 responses to the online survey. Additionally, the review involved 38 consultation meetings attended by 285 representatives from governmental and non-governmental organizations and another 65 meetings with government officers in Australia and abroad. Participants in the consultation and submission process came from business, government, civil society, academia, unions, charitable organizations and professional associations.

The Recommendations

The Report includes 30 recommendations for the Government's consideration. Key Recommendations that would have the greatest impact on reporting entities are discussed below.

Lower Compliance Threshold

Currently, an entity is required to report only if it has at least A\$100 million in consolidated revenue for the reporting year. Recommendation 4 proposes cutting the threshold in half to A\$50 million. As a point of comparison, this lower threshold is contained in the New South Wales Modern Slavery Act. However, the reporting provisions of that Act were never implemented. The New South Wales Act is discussed in our earlier Alerts [here](#) and [here](#). At the lower reporting threshold, the Report estimates that there would be approximately 2,400 more reporting entities, almost double the number that currently report annually.

The Recommendations propose a transition period for entities that would be captured by the lower threshold. Certain proposed requirements, such as due diligence and penalties for non-compliance (each described below), would not immediately apply to these entities; they would have a two-year grace period.

To facilitate compliance by entities that would be captured by the lower threshold, Recommendation 5 also proposes that the Attorney-General's Department, in consultation with the proposed Anti-Slavery Commissioner, provide tailored guidance for small and medium-sized entities.

Expanded Mandatory Reporting Criteria

Recommendation 8 proposes that the Attorney-General's Department consider amending the mandatory reporting criteria as follows:

- Replace the current phrase “operations and *supply chains*” with “operations and *supply networks*.”

The stated rationale for this change is that “supply chain” infers a linear set of links, which is noted as being uncommon. The Report also notes that the current term used in the Act may explain why reporting beyond the tier 1 supply base has been problematic and why entities may not be reporting on their position in customer supply chains.

- Add new mandatory criteria that would require entities to report on the following:
 - Modern slavery incidents or risks that they identified during the reporting year;
 - Available grievance and complaints mechanisms;
 - Internal and external consultations undertaken during the reporting year relating to modern slavery risk management; and
 - If Recommendation 11 (discussed below) is accepted, the due diligence activities undertaken by the reporting entity.

Additionally, Recommendation 13 proposes facilitating reporting by creating an optional template for use in preparing an annual modern slavery statement.

New Mandatory Due Diligence Obligation

The Act currently requires reporting entities to describe their modern slavery due diligence, but it does not require them to undertake due diligence. Recommendation 11 proposes that the Act be amended to include an affirmative due

diligence obligation. Recommendation 11 advocates specifying the minimum due diligence requirements in the Act. These requirements are not further fleshed out in the Recommendation.

The introduction of a due diligence obligation would set the Act apart from other current disclosure-based modern slavery acts, aligning it more closely with broader-based mandatory human rights due diligence legislation, such as those which recently took effect in Germany, Norway and Switzerland (see our earlier Alerts [here](#), [here](#) and [here](#), respectively). It also would align the Act more closely with the approach outlined in a 2022 New Zealand consultation on modern slavery legislation. That consultation is discussed in our earlier Alert [here](#).

As earlier noted, the Report recommends that reporting entities under the current A\$100 million reporting threshold be given a two-year period to implement a due diligence system.

Three-Year Reporting Cycle

Currently, reporting entities are required to submit a modern slavery statement annually, within six months after their fiscal year end. Recommendation 12 proposes that entities be given the option to instead submit a full statement that addresses all of the Act's requirements every three years. In the interim two years, only updates would be required to be reported. This approach is intended to reduce the compliance burden on reporting entities, facilitate compliance reviews by the Australian Government and make developments more transparent to the general public.

More Standardized Reporting

Recommendation 15 proposes that the Act require that all statements have a standardized cover sheet. The cover sheet would be required to highlight key features of the statement, such as modern slavery incidents identified during the year and action taken by the entity on commitments or plans described in the preceding year's statement.

Penalty Provisions

As earlier noted, the Act does not currently contain any offense or civil penalty for non-compliance with its reporting requirements. The introduction of civil penalties was specifically called out as an area to be evaluated in the triennial review. Recommendation 20 proposes that the Act be amended to classify the following as offenses under the Act:

- Failing to submit a statement by the statutory deadline without a reasonable excuse;
- Submitting a statement that knowingly includes materially false information;
- Failing to comply with a request by the Minister to take specified remedial action to comply with the reporting requirements of the Act; and
- Failing to implement a due diligence system that meets the requirements set out in rules made under the Act.

Recommendation 20 does not contain specific penalty amounts. As part of the Australian Government's fiscal year 2024 budget announcement, the Attorney-General noted that the introduction of penalties for non-compliance with the Act would be part of the Government's proposed modern slavery program.

As earlier noted, the penalty regime would not apply for the first two years to entities required to report as a result of the amended reporting threshold.

Public Complaints Mechanism

Recommendation 24 proposes the establishment of a formal complaints mechanism to enable members of the public to submit complaints regarding entity reporting to the Attorney-General's Department. The Report suggests that this should be a two-stage process, requiring that complaints first be made to the reporting entity before being escalated to the Attorney-General's Department.

Anti-Slavery Commissioner

The Australian Government has committed to establishing an independent office of the Anti-Slavery Commissioner. The Report describes functions that may be conferred on this office.

Recommendation 30 proposes that the legislation establishing the office of the Anti-Slavery Commissioner expressly provide that a function of the Commissioner be to issue guidelines on special issues relating to the reporting requirements. Some of the Recommendations also provide that specified guidance be developed and/or updated in consultation with the Anti-Slavery Commissioner. Funding for an office of the Anti-Slavery Commissioner was included in the Australian Government's fiscal year 2024 budget.

High-Risk Designations

Recommendation 27 proposes that the Act be amended to allow the Minister or the Commissioner to declare a region, location, industry, product, supplier or supply chain as having a high modern slavery risk. In preparing its annual statement, a reporting entity would be required to consider whether a declared risk is present in its operations or supply chains. If so, the entity would be expected – or required, as set out in the declaration – to address that risk in its statement. The Report notes that the entity also could be required by the Act to exercise due diligence in respect of the risk.

A Comparison to the Current Act and Other Disclosure-Based Modern Slavery Regulations

A chart comparing selected provisions of the current Act with the Recommendations in the Report is available [here](#). The chart also includes a comparison to other current modern slavery disclosure legislation.

Next Steps

The Australian Government is currently reviewing the Report. It will consult with other stakeholders in formulating a response to the Recommendations. While the Government has not yet confirmed its position in relation to the Recommendations, it previously indicated support for introducing penalties for non-compliance, implementing a mandatory due diligence obligation in some form and establishing an office of the Anti-Slavery Commissioner.

To the extent that the experience of other countries is a guide, uptake on the Recommendations could be a long process. In September 2020, the UK Government published its response to a 2019 public consultation on the UK Modern Slavery Act. The public consultation followed an independent review of the UK MSA that was launched during the summer of 2018. The aim of that review was to report on the operation and effectiveness of the UK MSA and recommend potential improvements.

In the 2020 response, the UK Government indicated that it is “committing to an ambitious package of measures to strengthen and future-proof the Modern Slavery Act's transparency legislation.” Among other things, the UK Government indicated it will require specific topics to be addressed in modern slavery statements, establish a single reporting deadline for all companies and require companies to submit their statements to a new government registry.

Those and other contemplated changes to the UK MSA have not yet been implemented. The UK's process is discussed in more detail in our earlier Alert [here](#).

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