



MODERN SLAVERY ACT 2018 (Cth) FACT SHEET

What is the Modern Slavery Act?

The [Modern Slavery Act 2018](#) (Cth) passed on 29 November 2018 introduces a supply chain reporting requirement. It's an important step towards protecting the [estimated](#) 40 million men, women and children who are victims of slavery around the world, over 60% of whom are in the Asia-Pacific region.

What impact will the Act have on ending slavery?

The reporting requirement has the potential to reduce the use of forced labour to produce goods sold and used by Australian companies by encouraging targeted and risk-based procurement practices. However, while the Act implements some of the key recommendations for which IJM has advocated along with other civil society organisations, the effectiveness of the provision will depend on rigorous and sustained collaboration between business, civil society and the Government's new Anti-Slavery Business Engagement Unit.

This collaboration will be greatly assisted by the Government-run public central register of Modern Slavery Statements and by the Government's decision to amend the Act to enable the publication of a list of companies that persistently fail to comply and the review of compliance and best practice on an annual basis, consistent with IJM's [recommendations](#). Nevertheless, the lack of a civil penalty for non-compliance could make it difficult to mainstream compliance and create a cultural shift across industry.

What are the key features of the Act?

The Act is based on section 54 of the [Modern Slavery Act 2015](#) (UK) and requires businesses to produce an annual statement about the risk of modern slavery in their supply chains and the actions they are taking to address it.

Several features of the Act address some of the [weaknesses](#) of the UK model and are in accordance with the [recommendations](#) made to the Government by IJM Australia and [other](#) civil society organisations throughout the consultation process. These are detailed in the Act's [Explanatory Memorandum](#) and [Supplementary Explanatory Memorandum](#) and include:

- introduction of clear and comprehensive guidance for businesses on the completion of Modern Slavery Statements before the law comes into force;¹
- provision of a Government-run public central register of statements;²
- power to request explanation of non-compliance and publicly identify uncooperative entities;³
- extending the obligation to report to the public sector;⁴
- annual reports on compliance and including the identification of best practice reporting;⁵ and
- commitment to review the effectiveness of the legislation every three years, with required specific consideration of the need for a civil penalty for non-compliance.⁶

The Business Engagement Unit within the Department of Home Affairs will be [charged](#) with overseeing the implementation of the Act – an important and promising initiative. This Unit has a budget of \$3.6 million over four years and will coordinate with business, civil society and government agencies to: develop detailed guidance on the preparation of modern slavery statements; raise awareness of and promote best practice responses to modern slavery; administer the public register; and oversee the government's Modern Slavery Statements.⁷

How does the Commonwealth Act compare with the UK and NSW Legislation?

Darker shading indicates stronger regulatory measures likely to bring about broader compliance and cultural change in corporate procurement.

	Commonwealth (November 2018)	NSW (June 2018)	UK (2015)
Modern Slavery Statement	Yes	Yes	Yes
Revenue Threshold	\$100 million	\$50 million*	~AU\$60 million
Public Sector Reporting	Yes	1. Public sector must take 'reasonable steps' to ensure goods and services are not product of modern slavery 2. Auditor-General empowered to conduct Modern Slavery Audit to ensure due diligence in public sector	No
Enforcement Mechanism	Minister <u>may</u> request explanation of failure to comply and <u>may</u> publish entity name for persistent failure to cooperate	\$1.1 million fine	Injunction
Central Public Register	Yes	Yes	No
Publication of Statement	Not required	Statement to be published as prescribed by regulations	Organisation must 'include a link to the slavery and human trafficking statement in a prominent place on that website's homepage'
Body Overseeing Reporting	Business Engagement Unit	Independent Anti-Slavery Commissioner	Independent Anti-Slavery Commissioner
Clear Guidance in Advance	Yes	Power to create 'codes of practice'	No
Reporting Criteria Not Optional	Yes	No**	No
Monitoring and Review	1. Act (and need for civil penalty) must be reviewed after 3 years; 2. Annual reports on compliance and best practice	Commissioner has power to recommend changes to modern slavery legislation in annual reports	None

* The Act empowers Governor to set a higher threshold.

** The Act empowers Governor to specify criteria upon which entities must report.

What is IJM Australia's position on the features of the Modern Slavery Act?

The Commonwealth's proposal does in many ways provide a stronger regulatory framework than in the UK that will encourage and empower businesses to comply. This should lead to concrete steps being taken to reduce the risk of modern slavery in supply chains.

However, it is critical to note that contrary to IJM Australia's [recommendations](#) and advocacy in partnership with other civil society organisations, the federal Act does not impose a **civil penalty** for businesses that do not comply with the reporting requirement. In the UK, where there is only a weak, procedural penalty for non-compliance, many businesses have [not published](#) a Modern Slavery Statement, and of those that have, many have not provided adequate information. It is heartening to see that the need for a civil penalty will be a mandatory component of the review of the Act in three years' time.

The **revenue threshold** at which companies are required to report is also higher under the federal Act than in the UK and NSW, meaning that fewer organisations are required to comply. This may reduce the ability for the Act to cause a 'shift in broader business culture'.⁸

IJM Australia understands that the Government has chosen to relax the reporting requirement in these and other areas to reduce the regulatory burden created for businesses, and with the objective of phasing in the scheme so that targeted and individual guidance can be provided to businesses as well as extensive evaluation of the requirement. We support this strategy but hope that the **Business Engagement Unit** is sufficiently resourced to take a proactive approach in collaboration with civil society to facilitate compliance and identify and correct inadequate reporting practices. In particular, the Minister must make regular use of the power to request explanations for non-compliance where appropriate, informed by the annual reports on compliance and best practice.

It is also important to acknowledge that the legislation in UK and NSW includes broader reforms such as providing **support for victims** of modern slavery⁹ and giving an **Independent Anti-Slavery Commissioner** broad powers to coordinate the response of government and the community to modern slavery.¹⁰ However, the Government has committed to responding to the [Hidden in Plain Sight](#) report following last year's parliamentary inquiry, and we hope that the Government will commit to further reforms to implement the recommendations of that report.

What's next?

IJM Australia hopes that the improved transparency brought about by this legislation will lead to 'top down' strategies by government and business to eliminate practices that create a risk of modern slavery occurring in the supply chains of organisations operating in Australia. We hope this will result lead beyond this to investment in measures working from the '**bottom up**' with local authorities so that modern slavery is adequately investigated and prosecuted to deter primary producers from offering goods tainted by slave labour to Australian companies and their suppliers in the first place.

The Modern Slavery Act is a crucial first step by the federal Government in addressing the horrific problem of modern slavery. The reporting requirement can only ever be one component of a broader response required by business, government and civil society to bring this crime to an end.

¹ Explanatory Memorandum, Modern Slavery Bill 2018 (Cth) 32 [48], 46, 48, 53–5.

² Ibid 45, 54; *Modern Slavery Act 2018* (Cth) ss 18–19.

³ *Modern Slavery Act 2018* (Cth) s 16A.

⁴ Ibid s 15.

⁵ Ibid s 23A.

⁶ Ibid s 24.

⁷ Explanatory Memorandum, Modern Slavery Bill 2018 (Cth) 53–5.

⁸ Ibid 55.

⁹ *Modern Slavery Act 2015* (UK) c 30, pt 5; *Modern Slavery Act 2015* (NSW) sch 5 item 5.7.

¹⁰ *Modern Slavery Act 2015* (UK) c 30, pt 4; *Modern Slavery Act 2015* (NSW) pt 2.



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