

Impacts and applications of modern slavery act 2018



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I. LAW

The *Modern Slavery Act (No 153) 2018* (Cth) (' *MSA* ') requires large businesses with a consolidated revenue greater than \$100 million (either registered within or operating within Australia) and Commonwealth non-corporate entities to report annually on the risk of modern slavery in their supply chains and operations, and the actions they are employing regarding those risks. Organisations need to comply with the legislation from the first reporting period beginning on or after 1 January 2019. There is also scope for voluntary compliance.

The Constitutional basis is covered in s 7 of the *MSA* . Specifically, s 7 (2) outlines the international agreements and treaties Australia is a party to and relied on the Commonwealth's external affairs powers for jurisdiction.

The legislation changes the previous language around human trafficking and will elevate business awareness of the risks of modern slavery practices.

Modern slavery practices include trafficking in persons, slavery, slavery-like practices (including forced labour and forced marriage) and the worst forms

of child labour (including using children for prostitution or in hazardous work).[1]

The *MSA* is non-revenue raising with no penalties but establishes the Modern Slavery Business Engagement Unit housed within the Department of Home Affairs. Cost of compliance is estimated to be \$21, 950 per entity.[2]

The change of business behaviour will filter through to all sizes of enterprises, both domestically and internationally as compliant businesses investigate and engage with entire supply chains. As public awareness increases, the legislation enables “ a safe place to identify and disclose risks by establishing a level playing field for all businesses”[3]and not be disadvantaged by disclosure.[4]

In summary, the legislation “ codifies certain expectations of business as articulated by the United Nations’ Guiding Principles on Business and Human Rights”.[5]

II. CONTEXT

Slavery is considered one of the most abhorrent violations of human rights in today’s society. The “ International Labour Organisation believes there are 21 million forced labourers worldwide, with over half being in the Asia-Pacific region.”[6]

Human trafficking and slavery are embedded as criminal activities within the *Criminal Code Act 1995* (Cth)divs 270-271 . The Government passed amendment Acts to further enforce Australia’s stance on slavery

issues[7]following discussion papers issued in 2010 to address these issues.
[8]

Likewise in 2015, further amendments to Division 270 of the Criminal Code addressed the reinforcement of slavery as universal jurisdiction and a strengthening of the response to forced marriages, respectively.[9]

Social media, ethical activism and informed consumers are demanding transparent supply chains[10]Australia is a party to nine significant human trafficking and slavery international treaties.[11]Changing societal expectation contributed to the Australian Government announcing its intention to establish modern slavery legislation on 16 August 2017.[12]

Closely watching the progress and behavioural changes from the United Kingdom's experience of their *Modern Slavery Act 2015* (UK) , the Government utilised a public consultation and inquiry process. The inquiry's report, " Hidden in Plain Sight"[13]brought recommendations to the establishment of the legislation, although not adopted in entirety. The legislation focus is awareness and action involving activities of slavery rather than the prior focus on identification and support for victims.

The inquiry received 225 submissions from enterprises ranging from some of Australia's largest companies to charities supporting victims domestically and internationally.[14]98% of the submissions supported the Australian Government's direction to address modern slavery.[15]

From this position of public support, Alex Hake, Assistant Minister for Home Affairs,[16]capitalised on an advocacy event in February 2018 to announce

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the commitment to introduce a Modern Slavery Act to be enacted by the close of 2018.[17]The NSW Government also introduced a *Modern Slavery Act 2018* (NSW) which was passed on 21 June 2018.

Advocacy group, Hagar Australia and their patron Australian celebrity, Rachel Griffiths, also have utilised media to highlight the need for action. Griffiths appeared before the inquiry.[18]

Both major parties have been involved throughout the strengthening of Australia's commitment to addressing modern slavery with both parties in government on the timeline from 2010 discussions to the passing by both Houses of the Act in 2018. The "Hidden in Plain Sight" inquiry involved members of parliament and senators representing varying parties.[19]The Liberal Party were in government for royal assent on 10 December 2018. The Opposition did propose changes to "introduce financial penalties, an independent commissioner and annual ministerial statement on compliance by reporting entities".[20]

III. APPLICATION

The 2018 Annual Report of International Network of Churches ("INC") for the year ended 31 December 2017 shows a consolidated revenue of \$111 million meeting the revenue threshold for the application.

INC will need to provide a statement by 30 June 2020. Part 2 of the Act outlines the requirements of the Modern Slavery Statement to be prepared by INC as a single reporting entity and approved by the principal governing body, which is the National Executive and signed by myself as Company Secretary. In summary, the Statement will include:
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- INC’s structure, operations and supply chains;
- Identified risks of potential modern slavery in those operations and supply chains;
- Regarding those risks, what due diligence and remediation has been undertaken to assess and mitigate;
- Training given to employees (and potentially those suppliers in the supply chain) regarding modern slavery; and
- INC systems to assess the effectiveness of those strategies.[21]

The following table broadly outlines the operations and a sample of the range of products that INC will need to investigate and asses the risk and develop appropriate action for:

Business Units	Operations Subject to Assessment	Example of Services & Products Subject to Chain Assessment
Australian Churches	Recruitment practices, volunteer management, internships, staff welfare and training	Construction; Cleaning; Web, app, graphic media design services; Professional services including accounting and legal; Printing; Gifts (including awards, merchandise and clothing), Software providers, Consumables as catering, first aid supplies, café supplies Vehicles, Travel including airlines and hotel equipment.
Higher Education Provider	As above	As per “ Australian Churches” plus Books/Journals; Events.

Schools	As above	As for " Australian Churches" plus Constr Cleaning; Maintenance Services; Uniform Canteen supplies; Educational materials o online; Awards & Trophies; School Excurs Trips including overseas.
Child Cares	As above	As per " Australian Churches" plus Equipm learning materials.
Domestic Charitable Activities -low-cost food retail, disaster relief, op shops, housing assistance	As above	As per " Australian Churches" plus Donat Boxes; Costumes; Fruit & Vegetables.
International Churches Governance & Support (particularly in the South Pacific and Asia regions)	Recipient Churches practices	
International Charitable Activities - support & operations of orphanages and rescue homes, disaster relief,	Recipient agencies and charities practices	

education

According to the Global Slavery Index 2018, Australia domestically has concentrated areas of forced labour exploitation risk in the industries of:

- agriculture,
- construction,
- domestic work,
- meat processing,
- cleaning,
- hospitality and
- food services.[22]

Imported products at highest risk are:

- Laptops, computers and mobile phones
- Apparel and clothing accessories
- Fish
- Rice
- Cocoa.[23]

INC will mainly focus on these risk areas.

INC is in the preliminary stages of planning our due diligence to comply with the new legislation for the 30 June 2020 first Annual statement.

INC is a decentralised model, and regulatory compliance to *MSA* will become significant. However, within this new burden is the opportunity to become advocates for compliance and create tools and assistance over the coming years for suppliers as well as congregation members, students, parents,

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donors and charitable recipients to continually raise awareness and training that can modify consumer behaviour.

INC's theology is that all humans are created equal, and there is no place for modern slavery in our world. This theology outworks in our ministries and support of external ministries that rescue, house, care, support and retrain identified victims throughout many parts of the world. To become a role model to address slavery practices is an excellent ideal for our group. Innovation inspiration can be taken from Baptist World Aid Australia now delivering its sixth edition of the Ethical Fashion Report, grading clothing retailers on their efforts in mitigating modern slavery risks and harmful environmental practices.

As only one of 120 charities registered with the Australian Charities and Not for Profit Commission expects to be a reporting entity under the legislation, [24]it is also likely that not many reporting entities will be Pentecostal churches due to differing legal structures, which potentially gives our churches a point of difference for missional outworking and knowledge.

Compliance will be a journey for INC. Guidance will come from the United Nations Guiding Principles of Business and Human Rights, as well as engagement of professional consultants, senior management attendance at training seminars and utilisation of the Modern Slavery Business Engagement Unit. " The response to modern slavery seems to still be very much in its infancy, and as such best practise disclosure is still being developed." [25]

With limited resources, INC will also utilise the frameworks made available by Australian companies already leading the way such as Fortescue Metals Group.[26]Geraldine Johns-Putra, advises “ companies should make full use of the three years prior to the review of the Act. Overseas experience has shown that although many companies take their obligations seriously, they do use the first year report as a learning opportunity and sometimes adjust their approach in the second year.”[27]

IV. EVALUATION

Explicit support for the intent of the Act is evident through the public consultation process.[28]However, the *MSA* varies from the Inquiry’s recommendations and many of the submissions on two critical points:

- No penalties imposed; and
- No independent oversight.

Public statements have been issued by The Australian Council of Trade Unions, Law Council of Australia and Stop the Traffik calling on the appointment of an Anti-Slavery Commissioner.[29]

The power of oversight in some ways is handed to the public with the display of all Statements on a public register allowing for other suppliers and consumers to ‘ name and shame’ non-compliant enterprises.[30]The Minister for Home Affairs is also empowered to request an explanation under s 16A of the *MSA* and further apply to the Administrative Appeals Tribunal to publish details of repeat non-compliers.

The United Kingdom experience indicates that compliance will be underwhelming.[31]To mitigate this uptake, the Australian Act included a freely-accessible register of all Modern Slavery Statements from reporting entities and enterprises choosing to comply voluntarily and considered to “foster greater certainty about publication, and in turn, encourage higher reporting rates”.[32]

“ The Australian Act introduces an annual public reporting requirement which facilitates year-on-year scrutiny by external stakeholders of corporate efforts to address modern slavery. Reporting entities’ slavery statements must be approved by the board, or similar, and signed-off by a director, ensuring high-level buy-in and accountability for the content of statements.”[33]

Further improvements to the UK model are:

- reporting by non-corporate Australian Government entities;
- Six mandated reporting criteria improving quality of statements generated; and
- a comparative approach with standard criteria and public accessibility.

[34]

The Australian Government is aiming to support businesses in compliance with the legislation and have issued an initial reporting handbook, but there is a glaring omission of anything specific for nonprofits.[35]Initial estimates by INC put the amount in the vicinity of \$50, 000, which is a significant burden for a nonprofit.

A further concern for “ non-reporting” charities is if they supply to Commonwealth non-corporate entities, they will need to report on their supply chains. Those charities have to comply with what will become part of the Government’s procurement practices and tender submissions. Ruth Knight provides the example of “ rubber gloves used or supplied by health nonprofits that will need to produce a modern slavery statement may have slavery involved at some level of the supply chain. However, it will be challenging for nonprofits to establish if their products are affected by slavery.”[36]

Knight further explores the implications of donated items. Does that invoke a need to determine the slavery in that supply chain and what happens to those goods identified?[37]INC runs many op shops selling donated goods. Will volunteers need to cross-reference every label to the Ethical Fashion Report and those graded at an unacceptable level destroyed?

This Act solely requires reporting – it doesn’t require action or give direct legal liability. A company’s statement may explain away the reasons (e. g. short lead times, small volumes) that the identified risk could not be removed or remedial action taken, leading to “ cosmetic compliance”. [38]Furthermore, apart from negative publicity, non-compliance brings no financial penalty – unlike the NSW equivalent[39]– or exclusion from government tendering.

Time will need to show that “ when workers are given the right to freedom of association, a living wage, safe working conditions, and are free from slavery

and bondage, then supply chains are ultimately more resilient, generating sustainable returns".[40]

[1]Explanatory Memorandum, Modern Slavery Bill 2018 (Cth).

[2]Regulated Impact Statement, Modern Slavery Bill 2018 (Cth).

[3]Explanatory Memorandum, Modern Slavery Bill 2018 (Cth).

[4]Ibid.

[5]Amy Sinclair and Justine Nolan, ' The Australian Modern Slavery Act 2018 - Will it Live Up to Expectations?' *Business & Human Rights Resource Centre* (Blog Post, 1 December 2018) (' *The Australian Modern Slavery Act 2018 - Will it Live Up to Expectations?*').

[6]Paul Redmond, ' At Last, Australia Has a Modern Slavery Act. Here's What You'll Need to Know.' *The Conversation* (Blog Post, 3 December 2018) .

[7]Department of Home Affairs, ' Human Trafficking and Slavery Legislation' *Australian Government: Department of Home Affairs* (Web Page) .

[8]Ibid.

[9]Ibid.

[10]fuels the international momentum to address modern slavery. Dr Ruth Knight and Kaiti Peters, ' Modern Slavery' *QUT - Business School Insights* (Blog Post, 6 June 2019) (' *Modern Slavery*')

[11]Modern Slavery Act 2018 (Cth) s 7 (2).

[12]' Establishing a Modern Slavery Act in Australia' *Business & Human Rights Resource Centre* (Web Page) (' *Establishing a Modern Slavery Act*') .

[13]Joint Standing Committee on Foreign Affairs, Defence and Trade, Parliament of the Commonwealth of Australia, *Hidden in Plain Sight: An inquiry into establishing a Modern Slavery Act in Australia*, (Final Report, December 2017) (' *Hidden in Plain Sight*') .

[14]Ibid.

[15] *Establishing a Modern Slavery Act* (n 12).

[16]Gareth Hutchens and Ben Doherty, ' Modern Slavery Bill Welcomed, but No Penalties for Breaching Act' *The Guardian* (Blog Post, 28 June 2018) .

[17] *Establishing a Modern Slavery Act* (n 12).

[18]Andy Noonan, ' Rachel Griffiths Throws Support Behind Bid to End Modern Slavery', *ABC News* (Online, 2 August 2017) 3 .

[19] *Hidden in Plain Sight* (n 13).

[20] *Establishing a Modern Slavery Act* (n 12).

[21]' Modern Slavery Act 2018: New Human Rights Legislation', *Deloitte Australia* (Article, December 2018).

[22]' Country Studies: Australia' *Global Slavery Index* (Web Page) .

[23]Ibid.

[24] *Modern Slavery* (n 10)

[25]Tim Macready, Submission No 46 to Joint Standing Committee on Foreign Affairs, Defence and Trade, *Establishing a Modern Slavery Act* (28 April 2017) 3 (‘*Submission No 46*’).

[26]Tim Langmead, Submission No 58 to Joint Standing Committee on Foreign Affairs, Defence and Trade, *Establishing a Modern Slavery Act* (28 April 2017)

[27]Geraldine Johns-Putra and Kate Hilder, ‘The Federal Modern Slavery Bill Has Passed Both Houses and Will Become Law’ *Minter Ellison* (Blog Post, 3 December 2018) (‘*The Federal Modern Slavery Bill Has Passed Both Houses and Will Become Law*’)

[28] *Hidden in Plain Sight* (n 13).

[29] *The Federal Modern Slavery Bill Has Passed Both Houses and Will Become Law* (n 27).

[30]Paul Redmond, ‘Australia’s Soon-To-Take-Effect Modern Slavery Act Explained.’ *The Conversation* (Blog Post, 7 December 2018) .

[31]Ibid.

[32] *The Australian Modern Slavery Act 2018 - Will it Live Up to Expectations?* (n 5) .

[33]Ibid.

[34]Ibid.

[35] *Modern Slavery* (n 10).

[36]Ibid.

[37]Ibid.

[38] *The Australian Modern Slavery Act 2018 - Will it Live Up to Expectations?* (n 5) .

[39] *Modern Slavery Act 2018* (NSW)

[40] *Submission No 46* (n 25)