

# A Practical Action Plan for Commonwealth Modern Slavery Act Compliance

In this Practical Action Plan, our regulatory change specialists unpack the *Commonwealth Modern Slavery Act 2018* (**Modern Slavery Act**) which will require large entities in Australia to report annually on the risk of modern slavery in their organisation and supply chain and to take certain steps to assess risk. This Practical Action Plan has been developed to assist legal and business stakeholders to develop a clear roadmap for Modern Slavery Act compliance.

Issue	Answer
<p><b>Modern Slavery Act developments in a nutshell</b></p>	<p>The Modern Slavery Act was passed late last year and establishes a framework for large organisations to report on an annual basis on human rights issues which constitute 'modern slavery'.</p> <p>The term 'modern slavery' is used to describe situations where coercion, threats or deception are used to exploit victims and undermine or deprive them of their freedom. The definition of 'modern slavery' under the Modern Slavery Act includes serious exploitation such as trafficking, slavery, servitude, forced marriage, forced labour, debt bondage, the worst forms of child labour, and deceptive recruiting for labour or services.</p> <p>Extensive and very detailed draft guidance on the operation of the Modern Slavery Act has been released by the Department of Home Affairs for public consultation (<b>Draft Guidelines</b>). Submissions on the Draft Guidelines are open until <b>19 May 2019</b>.</p>
<p><b>Does the Modern Slavery Act apply to my organisation?</b></p>	<p>The Modern Slavery Act is geared towards larger organisations. It applies to:</p> <ul style="list-style-type: none"> <li>– an entity which has a consolidated revenue of at least \$100 million, and is an Australian entity at any time in the reporting period, or carries on business in Australia in that reporting period</li> <li>– the Commonwealth itself</li> <li>– an entity which has volunteered to comply with the requirements by giving written notice to the Minister.</li> </ul>
<p><b>What does the Modern Slavery Statement need to include?</b></p>	<p>The key purpose of the Modern Slavery Act is to increase transparency and accountability by establishing an annual reporting regime. The Modern Slavery Act requires that:</p> <ul style="list-style-type: none"> <li>– entities submit an annual Modern Slavery Statement in the approved form</li> <li>– the Modern Slavery Statement is signed by a responsible member of the entity (such as a board member)</li> <li>– the Modern Slavery Statement covers the following six mandatory matters                             <ul style="list-style-type: none"> <li>– identity of the reporting entity</li> <li>– structure, operations and supply chains</li> <li>– risks of modern slavery practices in supply chains of the reporting entity and any entities under the reporting entity's control</li> <li>– actions taken to assess and address the above risks (including <b>due diligence and remediation processes</b>)</li> <li>– how the reporting entity assesses the effectiveness of such actions</li> <li>– a description of the process of consultation with any entities that the reporting entity owns or controls.</li> </ul> </li> </ul>



Issue	Answer
<p><b>So what is 'due diligence' in this context?</b></p>	<p>As part of your Modern Slavery Statement, you must describe your entity's actions to address modern slavery risks, including due diligence and remediation processes.</p> <p>According to the Draft Guidelines, 'due diligence' refers to an ongoing management process to identify, prevent, mitigate and account for how an entity addresses actual and potential adverse modern slavery risks and impacts on their operations and supply chains.</p>
<p><b>Senior Management oversight required</b></p>	<p>The Modern Slavery Act requires statements to be approved by the principal governing body of the reporting entity and signed by a responsible member. In the case of a company, a director on the board will need to sign the Modern Slavery Statement before it is submitted.</p>
<p><b>When does my organisation need to submit its Modern Slavery Statement?</b></p>	<p>If captured by the Modern Slavery Act, your organisation will need to start reporting for its first financial year that commences after 1 January 2019. For example, an entity operating on an Australian financial year will need to report on the period from 1 July 2019 to 30 June 2020 (with the first report due by 31 December 2020).</p>
<p><b>Why does the Modern Slavery Act matter?</b></p>	<p>Unlike the corresponding New South Wales regime (see break-out box below) there are no financial penalties under the Modern Slavery Act, however, the reputational risk for organisations is significant.</p> <p>The Commonwealth Government consulted closely with human rights advocates and experts in shaping the Modern Slavery Act. It contains a number of significant improvements compared to other laws (such as the UK Modern Slavery Act).</p> <p>Because the Australia Modern Slavery Act requires certain mandatory matters to be covered in a Modern Slavery Statement and these will be publicly available, it will be relatively easy to compare which organisations are taking modern slavery risks seriously, with robust systems and processes, and which organisations have their work cut out for them in comparison to their peers and competitors.</p>

### NSW Modern Slavery Act

The State of New South Wales has also introduced a Modern Slavery Act that requires certain businesses to report. Regulations for the NSW regime have not been released at the time of publishing this practical guide.

Maddocks will be releasing a separate update that deals with the NSW regime once the NSW regulations have been released.

## A Practical Compliance Check List

The production of a Modern Slavery Statement is the core of the Modern Slavery Act, but in order to be in a position to prepare a Modern Slavery Statement which complies with the requirements of the Modern Slavery Act, an organisation must be taking action now.

Do	Complete
<p><b>Conduct a threshold assessment:</b> If you have not done so already, conduct a threshold assessment to confirm whether or not the Modern Slavery Act applies to your organisation. If your organisation is close to the threshold – be sure to take appropriate steps towards compliance so that you are not caught out in the future.</p>	<input type="checkbox"/>
<p><b>Promptly consider whether to make submissions on the Draft Guidelines:</b> At 73 pages, the Draft Guidelines are extremely detailed and comprehensive. Submissions on the Draft Guidelines are only open until 19 May 2019 so you will have to act promptly if you wish to make submissions.</p>	<input type="checkbox"/>
<p><b>Assemble a project team of senior stakeholders and appoint a Project Champion:</b> Apply a 'whole of business' approach and assemble a skilled project team to implement your compliance action plan. Bring together key areas of your entity to help assess and respond to modern slavery risks, including Human Resources, Finance, Procurement, Sourcing, Legal, Risk, Sustainability, Major Projects and Senior Leadership. Appointing a 'Project Champion' can be a helpful strategy to ensure your project team stays engaged and on-track with designated tasks and responsibilities under your action plan.</p>	<input type="checkbox"/>
<p><b>Educate and inform your board NOW:</b> Engage senior management, executives and board members as early as possible to ensure they understand the Modern Slavery Statement process and can sign off on Modern Slavery Statements when the time comes.</p>	<input type="checkbox"/>
<p><b>Map your supply chains:</b> Map out the broad operations and overall supply chain structure of your entity. Identify the general sectors and industries, types of products and services, countries and entities that are involved in your entity's operations. Many entities have complex operations and supply chains. The Draft Guidelines suggest that you focus on assessing general areas of your operations and supply chains where modern slavery risks are likely to be most significant. Once you have addressed your most severe risks, you should ensure you move on to address these other risks.</p>	<input type="checkbox"/>
<p><b>Identify Modern Slavery Risks:</b> Identify which sectors, types of products and services, countries and entities may involve high modern slavery risks. Again the Draft Guidelines include detailed lists, tables and resources for completing this task.</p>	<input type="checkbox"/>
<p><b>Review and update existing policies, procedures and contracts:</b> You may already have in place relevant policies and procedures, such as procurement processes for screening or engaging new suppliers. These may need to be updated to include screening for modern slavery risks. You may need to update or insert new ethical procurement clauses into contracts and agreements.</p>	<input type="checkbox"/>
<p><b>Create new procedures and documentation and make them publicly available (where appropriate):</b> You may need to set up a mechanism to allow people within your organisation to safely report modern slavery risks or you may identify the need to have a supplier code of conduct which outlines clear expectations on your suppliers.</p>	<input type="checkbox"/>
<p><b>Have in place a clear remediation plan:</b> You need to describe your remediation plan. The Draft Guidelines include a number of suggestions. Ensure you are prepared to respond if you find modern slavery occurring in your operations or supply chains, including by developing an agreed procedure for responding to modern slavery cases.</p>	<input type="checkbox"/>
<p><b>Train and educate your staff (and potentially suppliers as well):</b> Your staff and suppliers need to understand what modern slavery actually is, what circumstances may be a risk and how to report any potential issues.</p>	<input type="checkbox"/>
<p><b>Develop a 'continuous improvement' mindset and have systems and processes for tracking your progress.</b> The Draft Guidelines acknowledge that modern slavery is a complex area. The requirement to report annually under the Modern Slavery Act encourages entities to continually assess their modern slavery risks and improve their responses over time. Ensure you have systems and processes in place to track your improvement.</p>	<input type="checkbox"/>
<p><b>Allocate an appropriate budget to your compliance action plan.</b></p>	<input type="checkbox"/>

## Big mistakes not to make

'With so many things to do in order to prepare a Modern Slavery Statement, an organisation could easily make some of the mistakes below.

### Don't:

- X** **Don't leave it too late.** As you can see from our checklist, there is plenty for organisations to consider and implement. The reporting provisions expressly refer to due diligence and remediation processes, thereby creating an expectation that organisations have completed due diligence and have a remediation plan in place before submitting their Modern Slavery Statement.
- X** **Don't copy and paste your organisation's UK modern slavery statement or generic statements from other companies.** Human rights advocates fought hard to ensure that the Modern Slavery Act was a significant improvement on the UK modern slavery regime. So don't copy and paste generic or copied statements from your UK group company or from the web. These won't cut it and your board will not be happy!
- X** **Don't underestimate the power of the consumers (and investors).** Don't just 'tick the box' for the sake of compliance. The freely available Modern Slavery Statements will be closely scrutinised by human rights advocates, the media and investors. Reputational risk is significant.
- X** **Don't ignore the Draft Guidelines.** Any compliance action plan should be created with reference to the detailed Draft Guidelines. The Draft Guidelines provide clear guidance on what steps the Government expects organisations to take in order to comply with the Modern Slavery Act. Remember that your due diligence process should be appropriate to your size, sector, operational context, ownership and structure.
- X** **Don't forget about your overseas supply chains.** If you supply goods or services in Australia, the Draft Guidelines ask you to consider your overseas operations and supply chains.

## How can we help?

### Do you require help to activate your action plan?

Maddocks has provided assistance to a number of clients to help them comply with the new Modern Slavery Act. We can help you to:

1. respond to the Draft Guidelines by helping you with any submissions you may wish to make
2. map and audit your supply chain
3. conduct your due diligence
4. identify modern slavery risks within your organisation
5. review your existing policies, procedures and agreements and update them
6. document new policies, procedures and codes of conduct
7. develop tailored training and educational materials for your board, staff and suppliers and conduct training (if required)
8. draft your Modern Slavery Statement (when the time comes).

## Contact us

If you would like further information, please contact us.



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