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15 Recommendations for a meaningful Modern Slavery Statement



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153 company Modern Slavery Statements have just been publicly released on the Australian Government Registry. This is significant as these statements are governed by the most comprehensive reporting requirements that exist now in the world. The statements vary in detail and quality, but the ones which demonstrate best practice show an authentic commitment to companies strengthening their risk assessment systems and addressing potential and actual labour exploitation.

This article has been prepared by Melissa Stewart, a member of the Alphinity Sustainable Compliance Committee, and an international expert in human rights and modern slavery. Here she has summarised 15 key recommendations for a meaningful response to Modern Slavery. These recommendations are relevant for any organisation that is required to prepare a statement under the Act, but most importantly, they form a simple engagement agenda for investors when speaking with Australian companies around the issue of modern slavery.

Introduction

The second tranche of 'Modern Slavery Statements submitted under the Australian Modern Slavery Act 2018 have recently been published by the Federal Government. The online statements are organised by entity revenue, reporting period, country headquartered and by sector. These statements have been eagerly anticipated by civil society, industry peers, along with investors in Australia and around the world, as they are the most comprehensive reporting requirement on modern slavery to date globally.

Interested stakeholders have been waiting to see the level of transparency that companies would provide, along with the maturity of the responses. This will allow them to use the information to address the risk of modern slavery in their own supply chains, operations and investments.

As of today, 131 mandatory statements and 22 voluntary statements have been provided—which covers 328 of the approximately 2000+ reporting entities expected to comply under the Act in FY20. Because of anticipated COVID-19 related delays, the Government allowed for a three-month extension for the submission of Statements which means there will be a jump in the number of Statements published by the end of March 2020.

What is really required for compliance?

While compliance can be met by simply submitting a statement that's signed by the Board and covers seven mandatory criteria¹ (in no corresponding specific level of mandatory detail)—it is important to remember that the intent of the legislation was not mere compliance. The Act is designed to encourage business to truly take action to dig deep into their supply chains, operations and investments, to assess and address their risks, and help victims of modern slavery—not merely to meet a set of minimum standards.

This legislation was borne out of significant public consultation across Australia, which overwhelmingly supported the need for mandatory reporting on this pressing issue². Through this consultation, companies said there was a strong business case for ensuring all businesses above a certain size were equally investing in addressing risks in their supply chains and operations. And they wanted to be on a level playing field.

The Act was the result of widespread advocacy to try and harness the collective leverage of Australian businesses to drive real change on modern slavery both domestically and abroad. Unlike other compliance laws, this Act does not include penalties for not reporting (though this is up for review in three years). Instead, through the reporting requirements, the Government is actively encouraging companies to be as transparent as possible in assessing their risks and to fix the systemic gaps that allow these crimes and human rights abuses to occur. The Act encourages companies to work together, using their collective leverage to both influence and demonstrate impact.

Investors should think of the Act as allowing corporates the freedom to honestly assess and report about where they are on the path to addressing modern slavery risks—without fear of penalty—with the common understanding that the goal is about protecting human lives. Most importantly, company disclosure needs to be supported by active investment and engagement to support the change that will lead to positive impact.

What are we seeing in the first Statements published?

The first tranche of statements represents a range of sectors and entity sizes and therefore provides a useful initial snapshot of how Australian companies are thinking about this issue. The lack of a strict prescriptive format by the Act has meant that the published statements range in length from a few pages to over 20 pages, vary in style and format, and generally include qualitative rather than quantitative analysis, which makes direct comparison challenging.

We had expected that there would be a continuum of maturity in responses depending on whether companies have already been required to report (for instance under the UK Modern Slavery Act); were operating in high-risk industries where ESG oversight is more evolved (such as fashion, electronics manufacturing, food processing); were public-facing brands (and presumably already well versed in consumer-driven ethical sourcing demands); or were new to both the issue of modern slavery and in assessing and addressing risk. We expected that

¹ See Modern Slavery Act 2018- Guidance for Reporting Entities (Australian Government, Department of Home Affairs) <https://www.homeaffairs.gov.au/criminal-justice/files/modern-slavery-reporting-entities.pdf>

² See https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Foreign_Affairs_Defence_and_Trade/ModernSlavery/Submissions

companies would use the first year as their baseline report – and so it is from the FY21 reports that we will really start to be able to measure continued improvement and effectiveness.

What are we looking for in these statements? What do we see as good practice?

The following recommendations are good practice in developing an effective response to modern slavery.

- 1. Lead from the top.** Leadership on modern slavery, like most ESG areas, needs to come from the top. Establishing Board level committees and accountability, cross-functional modern slavery and human rights working groups, and a clear management plan that outlines responsibility, resourcing and outcomes will support effective top-down leadership. An effective modern slavery response cannot be run solely by one business unit—such as Procurement. The response needs to be integrated across the business and the ultimate accountability should rest at the top.
- 2. Use leverage to create change.** A company's core business is generally where an entity has the greatest leverage; and the greatest risk. For example, a financial services company should prioritise and manage risks across its investment portfolios, rather than focussing, initially, on its back-end procurement (such as office paper). Resources are limited so it's best to focus on areas where your company has the most influence. Larger companies should also consider how their industry leverage can support smaller players in the sector to deliver positive impacts through collaboration.
- 3. Be brave, honest and transparent.** Transparency and honest investigations into modern slavery risks will give the greatest opportunity to discover human rights abuses and resolve them; and to ultimately help victims. Every company will have incidences of modern slavery somewhere in its supply chain, investments, or operations, so identifying potential or actual cases will not demonstrate the failure of a company, but rather a system that is working effectively. Be brave and bold in order to make change internally and to model responsible corporate behaviour.
- 4. Collaborate with other businesses to enhance positive change.** Addressing modern slavery is a pre-competitive issue, and industry sectors can enhance their impact if they work together. For example, creating joint Supplier Assessment Questionnaires to alleviate reporting burdens on smaller suppliers. Companies will also benefit from active engagement in multi-stakeholder initiatives, such as in global membership-based organisations on human rights, or by signing onto sector specific joint initiatives by business on labour protections (eg The Bangladesh Accord; the Better Cotton Initiative). Companies should take a public-facing stand on embracing the UN Guiding Principles on Business and Human Rights.
- 5. Take a human-rights approach to risk management.** Responding to modern slavery requires taking a human rights-based approach to risk. This is about considering salient risks to people; not necessarily material risks to the business. For example, a prioritised risk for a company could be in its use of cleaners and security guards rather than on a more material spend (such as professional consultants).
- 6. Investigate supply chains, operations and investments.** The Act requires an entity to assess and address risk across three key areas; supply chains, operations and investments. Merely reporting on one of these areas (such as actions taken on responsible sourcing, while ignoring investments) is not enough.

- 7. Look for modern slavery issues beyond the parent company.** A complete modern slavery response also isn't limited to the actions of the parent company. Mandatory criteria under the Act goes beyond just documenting the extent of subsidiaries. This includes actively assessing and addressing risk of modern slavery across all subsidiaries and joint ventures (and their suppliers, operations, and investments), and consideration of these entities in Modern Slavery response plans.
- 8. Integrate the response across relevant business areas using KPIs and metrics.** Embed a modern slavery response within a company wide holistic ESG response. Modern slavery falls under the "S" in ESG. A company should assess and address human rights risks and undertake human rights due diligence throughout all relevant parts of the business (procurement, investments, risk, M&A, sustainability, responsible sourcing, human resources, property) in order to address modern slavery. Winning over hearts and minds of individuals is important—but effective action requires other incentives.
- 9. Cast your net wide when looking for forms of labour abuse.** While the Act defines "modern slavery" as an umbrella term for several crimes in Australia (human trafficking, slavery, servitude, forced labour, debt bondage, worst forms of child labour, forced marriage)—these are notoriously difficult to prosecute. The general public and media may define any systematic case of labour exploitation as "modern slavery" so cast your net wide when looking for forms of labour abuse. Sub-standard labour conditions and underpayment of workers may also be an indicator of other labour abuse. Victims may not even know they are victims, especially if the behaviour has been normalised (for example, unscrupulous recruitment brokers withholding fees, or demanding repayments for loans at a high interest rate).
- 10. Respond to modern slavery incidents quickly and appropriately.** The first action when an egregious incidence of modern slavery is identified should be to remove a victim/s from continued harm or neglect. An effective incident response strategy should clarify the local support networks and empower local employees to respond quickly and appropriately when an issue has been identified. When a criminal act is involved—a response plan should include alerting the responsible law enforcement authorities in country and/or the Australian Federal Police. Any learning from incidents of modern slavery should also be incorporated as feedback to update and improve systems so future risks are avoided.
- 11. Listen to the voice of vulnerable workers, survivors and NGOs.** Those who engage with vulnerable workers and survivors are best placed to advise on the design of modern slavery responses (including incident reporting, care and support, and remediation). Vulnerable workers and or survivors should be empowered to help influence change in systems.
- 12. Know your supply chain.** There is both a business case and ethical case for knowing your supply chain, especially beyond first tier. Companies are learning that rationalizing and having greater oversight over their procurement and supply chain not only encourages better ESG monitoring—but also reaps cost savings. Demonstrate thought leadership in group procurement teams such that accountable business owners across all business units seek advice and guidance on how to source and spend more responsibly.
- 13. Actively monitor your high-risk suppliers.** While Self-Assessment Questionnaires (SAQs) and supplier audits are generally a good first action to gain information about the type of risks and types of workers—a supplier who is exploiting labour is unlikely to disclose any criminal or concerning behaviour. A multi-pronged approach is therefore critical to monitor suppliers and ensure that critical incidents of modern slavery are brought to light. This could include independent third-party audits, unannounced site visits, and engaging directly with

workers and communities. Modern slavery plans should include innovative ways to monitor governance of implementation of policies (such as a Supplier Code of Conduct). Good practice does not involve immediately disengaging with a non-compliant supplier, but rather working with that supplier (if possible) to avoid labour exploitation.

14. Align company philanthropy to human rights issues. Aligning wider company philanthropic and “employee engagement program” pursuits around human rights (including modern slavery) can have a large impact on prevention of the issue and its root causes. If corporate giving is aligned to corporate purpose and focused—there can be greater impact on critical social issues, like worker vulnerability.

15. Deliver relevant and actionable training for staff. Training on modern slavery should be tailored to audience, meaningful, and measured. Having employees attend a briefing session does not mean they have the tools or skills to identify incidences of risk. Any training delivered needs to be relevant, actionable, and measured. Suppliers need to be trained on corporate expectations and consequences.

In Summary

There is no silver bullet in addressing the risk of modern slavery. Collectively governments, civil society, business and responsible investors need to work together to better understand how to identify and address modern slavery in supply chains, operations and investments in order to remove the impunity of offenders and to secure justice for victims. Every year we collectively learn more—and are better able to prevent modern slavery and to protect victims.

We will be keeping abreast of the release of new statements and will provide updates on our continued assessment around the modern slavery reporting in Australia and legislative reporting developments globally. This is a quickly evolving space, and by next year all interested stakeholders, including investors, will expect to see more detailed disclosures outlining measurable actions, increased transparency, and impact on the ground.

The statements can be found at www.modernslaveryregister.gov.au. This Government website also has a useful set of tools to assist business to develop effective Modern Slavery responses. These include, but are not limited to, advice on contractual clauses, advice on supplier questionnaires, and detailed Guidance for preparing Statements

Important information

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