

Amendments to the *Modern Slavery Act 2018 (Cth)*:

What does this mean for existing reporting entities and entities now captured as reporting entities?

Yesterday, the review paper outlining the proposed changes to the *Modern Slavery Act 2018 (Cth)* ("**Act**") was released ("**Review Paper**"). The review process of the Act was formalised on 31 March 2023 and will be tabled to parliament shortly, with a Bill proposing amendments to the Act to follow.

The recommendations outlined in the Review Paper are largely consistent with the proposed changes promised in the Albanese Government's election campaign. However, there are some additional recommendations which will affect the reporting process for existing reporting entities.

The key recommendations are as follows:

1. Changing the "reporting entity" revenue threshold:

Currently, a "reporting entity" that is required to comply with the reporting and due diligence requirements of the Act is an entity with an annual consolidated revenue of at least \$100 million. The calculation of an entity's consolidated revenue includes the revenue of entities that it is deemed to "control" (for example, entities in a corporate group).

Under the recommendations, a reporting entity will be amended to an entity with an annual consolidated revenue threshold of \$50 million. This amendment would capture an additional 2,393 businesses as reporting entities.

2. Financial penalties for non-compliance

Introduction of financial penalties for non-compliance with the Act. Non-compliance with the Act includes failing to submit a Modern Slavery Statement, submitting falsified information within the Modern Slavery Statement, or failing to have due diligence system in place as part of the entity's modern slavery compliance framework.

3. Addition of new mandatory reporting criteria:

Currently, section 16 of the Act prescribes seven (7) mandatory reporting criteria which must be included in the annual modern slavery statements.

The Review Paper proposes adding a new reporting criterion which requires reporting entities to report on:

- Modern slavery incidents or risks identified during the reporting period - this aligns with the new positive obligation to undertake due diligence on a reporting entities' operations and supply chains, which is outlined below.
- Grievance and complaint mechanisms available to staff and other stakeholders.

E.g. whistleblower policies and broader complaint mechanisms available to employees, suppliers and other key stakeholders to report instances or concerns of modern slavery.

- Internal and external consultation undertaken during the reporting year on modern slavery risk management.

E.g. obtaining external legal advice on compliance with the Act and the developing of your modern slavery compliance framework, engaging with NGO's and industry groups about the risks of modern slavery in your industry.

Additionally, there will be a broader review of the existing reporting criteria, in particular the wording of criteria 3, 4 and 5, to ensure that the reporting criteria are clearer in what they are asking from reporting entities. For example, it is proposed that criteria 5, which asks the reporting entities to consider the effectiveness of the actions taken throughout the year to address their modern slavery risks, to give greater direction on how effectiveness can be assessed (e.g., through the adoption of metrics and KPI's).

4. Positive obligation for due diligence

The new positive obligation to undertake due diligence will require entities to:

- a. Undertake due diligence on their supply chains and operations.
- b. Implement a due diligence system which incorporates a robust risk framework.
- c. Report on the actions undertaken in the Modern Slavery Statement.

For example, this will require entities to describe what measures they have implemented and undertaken as part of their due diligence framework, the modern slavery risks that it has identified and what it has done to remediate these risks.

Currently, there is a "phase in" approach proposed for this requirement for entities with a consolidated revenue threshold between \$50 million and \$100 million (i.e. entities who currently aren't mandatorily reporting under the Act).

5. Additional options for Modern Slavery Statement submissions:

The Review Paper has proposed that the Act be amended to provide reporting entities with the option of submitting full Modern Slavery Statements which are compliant with all of the mandatory criteria every three (3) years, and in the intervening two (2) years to submit a report which updates the information in the full statement. The Review Paper notes that during consultation, it was revealed that on average, the entities who consulted on the review of the Act were spending \$21,950 to prepare and submit their Modern Slavery Statements annually. Accordingly, the aim of this recommendation is two-fold:

- a. to increase compliance with the positive obligation to undertake due diligence and to ensure that meaningful compliance is being prioritised by reporting entities; and
- b. balancing this with attempts to lower the cost and burden of annual reporting compliance.

6. Listing of high-risk locations, regions, products, suppliers and supply chains:

The Review Paper proposes that the Attorney General and/or the newly implemented Anti-Slavery Commissioner who will oversee compliance with the Act will publish annual lists which note the regions, locations, industry, products, suppliers, or supply chains which carry a heightened modern slavery risk. High risk topics that are currently proposed to fall under this procedure are disposable gloves, electronic hardware, cotton products, bricks and palm oil.

This change would require the reporting entity to consider whether a "declared risk" exists in its operations and supply chains and would be required to address that risk and undertake due diligence directed at that particular risk.

This is similar to the operation of the Uyghur Forced Labour Prevention Act in the United States which imposes a presumption of modern slavery on all goods from or directly linked with the Xinjiang Uyghur Autonomous Region in China ("**Xinjiang**"), with the entity importing the goods required to disprove this presumption to allow importation into the United States. The Xinjiang region has been linked to evidence of Government forced labour camps and other modern slavery practices against Uyghur peoples and other minority groups.

7. Extension of definition of "modern slavery" to include worker exploitation

It has been proposed that worker exploitation to be included within the scope of the definition of modern slavery in the Act. The New Zealand government has issued a proposal to change their Modern Slavery Act to be titled the "Modern Slavery and Labour Exploitation Act". In the proposal, it acknowledges that the terms cover different conduct to which separate legal obligations should apply.

The Review Paper recommends that for international suppliers/operations, the legal obligations under the Act should extend to modern slavery only, but for local operations and suppliers that the legal obligations should extend to worker exploitation also.

8. Amended guidance for SME's

To account for the change in the definition of a reporting entity, the Attorney General will release tailored guidance for small and medium enterprises for complying with the Act, both on a voluntary basis (i.e., where an entity does not meet the "reporting entity" threshold but wants to issue modern slavery statements, undertake due diligence and comply with the Act) and a mandatory basis. An issue with the current guidance for reporting entities is that it takes a "one size fits all" approach. This concern would only increase with the new reporting entity definition encompassing SME's.

Alongside this, there will be a broader review of the terms "operations" and "supply chains" and how this applies to industries where it is more difficult to define their operations and supply chains (for example, the financial sector).

What do these recommendations mean?

Whilst these proposed amendments are just "recommendations", it is prudent for both current reporting entities and entities that may now be captured as "reporting entities" to be aware of the impact to their organisation if these changes are implemented to ensure that they are ready to comply.

For existing reporting entities: Existing reporting entities should:

- a. review their due diligence processes and their broader modern slavery compliance frameworks now in light of the new positive obligation to undertake due diligence through an established due diligence framework;

- b. consider the policies and procedures currently in place and whether they align with the proposed new reporting requirements; and
- c. implement an action plan for the FY24/25 reporting period that aligns with the proposed amendments to the Act.

For entities now considered reporting entities under the Act: Organisations that are likely to be captured as reporting entities under the proposed amendments to the Act should start to implement preparatory steps to develop a modern slavery compliance framework and develop an action plan for compliance with the Act.

A key takeaway from the Review Paper and the proposed amendments for both current and future reporting entities is that due to new due diligence framework requirements, technology will play a key role in compliance with the Act. This positive obligation will require both current and new reporting entities to ensure the adequacy of their due diligence frameworks.

To assist with this requirement, Cowell Clarke has a Modern Slavery Compliance Digital Solution. This solution utilises accounts payable API's, procurement workflows, ESG screening tools, and risk-based rules to automate supplier due diligence and directly tackle the incoming requirement of the Act.

We're here to help

The ESG Team at Cowell Clarke are across the proposed amendments to the Act under the Review Paper and can assist both existing reporting entities and new reporting entities in considering how these proposed amendments will affect their organisations as well as ongoing assistance with your modern slavery compliance framework.

Please don't hesitate to contact us if you would like assistance in assessing how these proposed amendments may affect you and developing your modern slavery compliance framework going forward.



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