Mandatory due diligence in modern slavery reporting: what it means for you

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Law | Purpose | Impact

Change is afoot for Australia's modern slavery reporting regime. The era of "tell us what you did" is ending. A mandatory due diligence obligation — requiring entities to implement and maintain enforceable systems, not just describe them — is now actively being considered by the Australian Government. Civil penalties for non-compliance are also on the table.

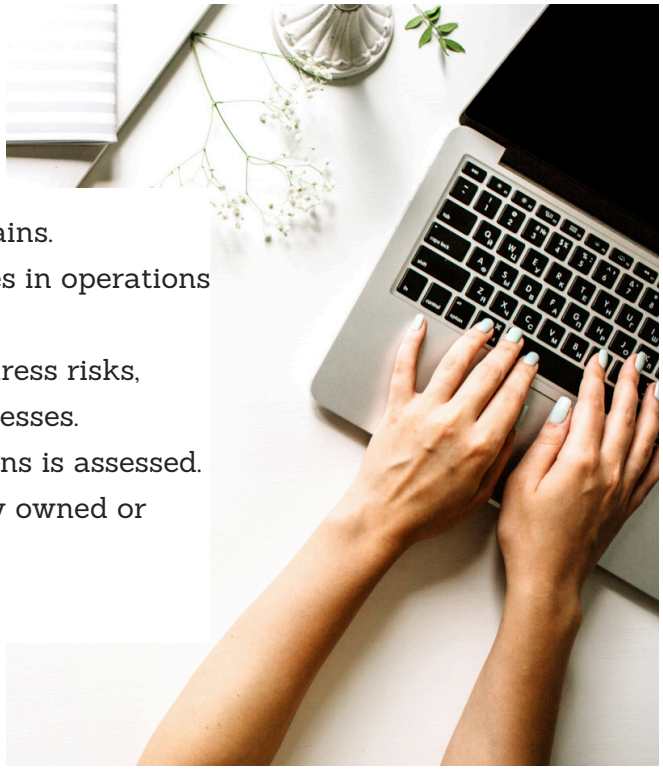
When it was introduced seven years ago, Australia's Modern Slavery Act 2018 (Cth) ('the Act') was one of the world's first modern slavery reporting regimes. Through a transparency model requiring large entities to publicly report how they identify and respond to the risks of modern slavery in their operations and supply chains, the Act brought awareness to corporate Australia of its role in perpetuating human rights abuses occurring halfway around the globe. Investigations into Uyghur forced labour in textile and solar supply chains prompted international sanctions and import bans, and media reporting by outlets such as Reuters and The New York Times highlighted the presence of forced labour risks in major global brands.

The legal framework

Under the Act, key operative provisions require large entities operating in Australia to

MODERN SLAVERY ACT: 7 MANDATORY REPORTING CRITERIA

1. Identify the reporting entity.
2. Describe structure, operations and supply chains.
3. Describe the risks of modern slavery practices in operations and supply chains.
4. Describe the actions taken to assess and address risks, including due diligence and remediation processes.
5. Describe how the effectiveness of those actions is assessed.
6. Describe the process of consultation with any owned or controlled entities.
7. Include other relevant information.



By focussing on self-assessed disclosure, the Modern Slavery Act does little to tackle root causes and is no longer fit-for-purpose.

publish an annual modern slavery statement addressing mandatory reporting criteria.

While the statute lacks clear penalties, it does contain non-penalty compliance levers. Under the Act, if the Minister is reasonably satisfied an entity has failed to comply with statement requirements, the Minister may request an explanation and/or specified remedial action; if the entity fails to comply with that request, the Minister may publish information about the failure, including the identity of the entity — in a name-and-shame style tactic.

The policy rationale behind the Act is straightforward: modern slavery, encompassing practices such as forced labour, debt bondage and trafficking, often occurs in complex international supply chains where traditional regulation is tricky to enforce. The Australian legislature, therefore, adopted a transparency model of regulation, requiring large entities to disclose how they assess and address modern slavery risks in their operations and supply chains. Put differently, the Act is drafted as "tell us what you know and what you did," not "you must implement step X."

Why change is overdue

In response to modern slavery reporting laws, companies adopted procedural controls such as supplier questionnaires, policy statements and staff training. But these controls did not always embed deeper inquiry into what was truly occurring in supply chains.

Nor did reporting entities necessarily comprehend the overall aim of the model. A 2023 statutory review of the Act, led by Professor John McMillan AO, found that stakeholders understand that risk identification and explaining effectiveness

MODERN SLAVERY ACT: WHO MUST REPORT

A reporting entity must prepare and publish a modern slavery statement each financial year, addressing the mandatory reporting criteria set out in section 16 of the Act, including risks in its operations and supply chains and the steps taken to assess and address those risks.

Reporting entities include:

1. Australian entities (companies, trusts, partnerships, or other bodies) that carry on business in Australia and have annual consolidated revenue of at least AUD $100 million.
2. Foreign entities that carry on business in Australia and also meet the AUD $100 million revenue threshold.
3. Certain Commonwealth entities and Commonwealth companies that must report separately under the Act.

are central to the regime but find them difficult to grapple with and implement.

Approximately 25% of Australian modern slavery statements have been assessed as likely non-compliant across the first four reporting cycles, and as of Reporting Cycle 5, 12% of statements were non-publishable and 17% of published statements were non-compliant.

Incomplete reporting does little to address underlying causes of modern slavery, and superficial disclosures only increase the incidence of greenwashing. A Human Rights Due Diligence (HRDD) system on the other hand introduces a coherent risk and reporting framework for companies, tying together their risk assessment, responses and duty to disclose. It promotes accountability and the likelihood of substantive action.

However, according to a 2021 study by the Netherlands International Law Review of more than 350 businesses, only 37% had introduced dedicated HRDD processes, and many of those did not apply them across their entire value chain. The World Benchmarking Alliance found of the world's 2,000 most influential companies, only around 6% have fully implemented HRDD, highlighting the persistent gap between voluntary commitments and meaningful corporate practice – an endorsement for a due diligence system to be enforceable and accompanied by penalties for non-compliance.

Only 6% of the most influential companies had fully introduced dedicated human rights due diligence across their whole value chain.

Towards mandatory due diligence in Australian law

The McMillan review of the Act recommended that an enforceable due diligence system become a legal requirement in Australia. The review report found that, while transparency-only models have promoted awareness of modern slavery risks, they

have failed to produce clear evidence of meaningful changes in business practices.

The McMillan review specifically benchmarked Australia against overseas regimes, such as the EU's Corporate Sustainability Due Diligence Directive (CSDDD) which requires large companies across all 27 member states to conduct human rights and environmental due diligence, Germany's Supply Chain Act which imposes fines up to 2% of global revenue and France's Duty of Vigilance law which incorporates civil liability for failing to adopt and implement a "vigilance" plan.

The Australian Government's formal response, released in December 2024, agreed in principle to 25 of the review's 30 recommendations. The Government noted the due diligence system recommendation for further consultation and its 2025 consultation paper explicitly discusses introducing this requirement.

Through an initial position paper published in January 2026, Australia's inaugural Anti-Slavery Commissioner (OAASC) joined calls for the Act to be amended to introduce a mandatory, risk-based due diligence obligation for all reporting entities. Going further than the consultation paper, the Commissioner outlines a detailed framework

WHAT IS HUMAN RIGHTS DUE DILIGENCE

HRDD is a risk-management process through which businesses identify, prevent, mitigate and account for adverse human rights impacts arising from their operations, subsidiaries and supply chains. It is grounded in the UN Guiding Principles on Business and Human Rights and is designed to help organisations systematically manage risks such as forced labour and other forms of modern slavery.

According to guidance from the Australian Anti-Slavery Commissioner, HRDD typically involves four core steps:

1. Identify and assess risks within operations and supply chains.
2. Integrate findings and take action to prevent or mitigate harm.
3. Track the effectiveness of those responses.
4. Communicate outcomes, including through public reporting.

for what "reasonable steps" should look like — from embedding due diligence into policies and systems, through to stakeholder engagement, grievance mechanisms and remediation of harm. Critically, the Commissioner recommends the appointment of a regulator with powers to monitor compliance, issue improvement and infringement notices, and apply to court for civil penalties or injunctions.

> *The Anti-Slavery Commissioner goes further than the Government consultation paper, outlining what reasonable due diligence would look like.*

The signals for change and alignment with international standards are strong. This is an opportunity for Australia to reclaim its leading status in this area. By focussing on self-assessed disclosure rather than substantive enforceable obligations, the Act does little to tackle root causes. Put simply, it is no longer fit-for-purpose.

Effective due diligence: the true gold standard

The organisations who lead in taking effective action against human rights abuses in their supply chains adopt HRDD frameworks.

While mandatory due diligence is not yet formally required under Australian law, the need to *report* on due diligence is already in the Act, although mentioned peripherally in the reporting criteria. Official guidance defines due diligence by reference to the United Nations Guiding Principles on Business and Human Rights (UNGPs). The UNGPs are seen as soft law, meaning they are not legally binding, but they have become a global standard for corporate responsibility since their endorsement by the UN Human Rights Council in 2011.

4 PRACTICAL STEPS TOWARDS HUMAN RIGHTS DUE DILIGENCE

1. Identify: Start with identifying the most severe risks in your operations and supply chains.
2. Integrate: Operationalise your risk controls through your frontline employees and management.
3. Monitor: Embed methods to measure and improve effectiveness and capture data consistently over time.
4. Communicate: Integrate public disclosures into due diligence - use the statement as your accountability tool.

The role of disclosure in HRDD as an antidote to greenwashing

A modern slavery statement is a public output of a well-implemented HRDD process, which is ultimately about proper risk management. Disclosures are evidence, not marketing.

Reporting entities should be aware that modern slavery statements can attract scrutiny – and penalties – under existing law: the Australian Competition and Consumer Commission (ACCC) has warned that sustainability claims can be misleading even without intent to deceive, and the Australian Securities and Investments Commission (ASIC) requires that sustainability-related claims by financial institutions be clear, accurate and supported by evidence. Under both the Australian Consumer Law (section 18) and Corporations Act (section 1041H), statements that overstate an entity's actions or misrepresent its supply chain practices risk being characterised as misleading or deceptive conduct.

Through working with cooperatives, Dutch chocolatier Tony's Chocolonely has a Child Labour Monitoring and Remediation System, identifying and tracking child labour cases.

Practical steps

The following steps illustrate how companies can operationalise the process in practice. Taken together, these steps frame HRDD as a continuous cycle of risk identification, action, monitoring, and transparency.

Start with severity-based risk identification

The starting point is to identify risks through the lens of the most severe and prevalent harms, including changes in labour model (direct hire vs labour hire), subcontracting intensity, recruitment channels, geography, and upstream materials. For example, Tony's Chocolonely explicitly identifies child labour and illegal cocoa production in Ghana and Côte d'Ivoire as the most severe human rights risks in its supply chain. The company works with cooperatives to implement a Child Labour Monitoring and Remediation System, which identifies and tracks cases of child labour within cocoa communities.

Turn risk insights into operational decisions

Conclusions from a modern slavery risk assessment, as with any other risk assessment exercise, should be integrated into a company's operations. Risk controls like supplier onboarding checks, codes of conduct, policies and procedures, contractual clauses, training, audits and whistleblowing channels need to be embedded operationally. A company's "first line of defence" – its frontline employees and business unit management who own the risks – need to be intimately familiar with the tools and policies that affect them. As the OAASC position paper observes, grievance mechanisms can be particularly effective, as they enable concerns to be surfaced from the coalface.

> Nike's Speak Up Portal allows employees and stakeholders to easily report suspicions and incidents of human rights violations.

For instance, Nike provides a Speak Up portal that employees, suppliers and other stakeholders can access online or by phone to raise questions or report potential violations of company policies. More broadly, the company embeds labour standards across its supply chain through supplier codes of conduct, worker training programmes and factory audits throughout its manufacturing network.

Monitor effectiveness of interventions

Under the Act, reporting entities must describe how they assess the effectiveness of their actions to address modern slavery risks.

In practice, this requires moving beyond policy commitments. Organisations need to identify the most meaningful metrics to measure salient risks, then implement measurement tools and capture data consistently over time through KPI dashboards, internal audit reports, corrective action monitoring and supplier improvement plans. Only with monitoring can effectiveness be sharpened.

Patagonia monitors the impact of its procurement decisions through its Responsible Purchasing Practices programme, using supplier feedback and performance data to assess whether sourcing decisions are creating labour risks such as excessive overtime or supplier pressure. Their website details how each textile or material used is sourced.

Report to enhance accountability

Companies should treat public reporting not as a compliance formality but as a means of building accountability into the due diligence process itself. Statements should be structured around the HRDD cycle from risk identification, action taken, metrics of effectiveness, through to public commitments.

> *A company's "first line of defence" at the frontline must be intimately familiar with the modern slavery tools and policies that affect them.*

This is practically illustrated by Who Gives A Crap which publishes a modern slavery statement that outlines its future commitments to strengthen supplier oversight and reinvest profits into initiatives to improve social and environmental outcomes.

Year-on-year reporting should be the norm, ensuring comparability. The disclosures should form a vehicle to transparently and measurably demonstrate change.

Patagonia monitors procurement impact through a Responsible Purchasing Practices programme, using supplier feedback and data to feed into risk assessment.

As we inevitably move towards a mandatory due diligence obligation for Australian reporting entities, organisations that treat this as just another compliance exercise will fall behind. Those that embed due diligence into business systems will be better positioned — not just for the imminent regulatory change, but for investor scrutiny, litigation risk and reputational resilience.

E: geraldine@geraldinegrace.com.au
M: +61 411 183 968
www.geraldinegrace.com.au

Geraldine Grace

Geraldine Johns-Putra is a lawyer and founder of Geraldine Grace, specialising in modern slavery, ESG compliance, governance, impact investing and mission-aligned fundraising. She has advised on modern slavery since the inception of the Australian Modern Slavery Act and built the modern slavery practice for one of Australia's largest law firms. A seasoned non-executive chair and director, she is familiar with the landscape of governance and risk that Boards traverse.