

Getting Full Value Out Of Your Modern Slavery Statement – Paul Davies



The current pandemic has had many unfortunate and troubling outcomes. Amongst them is the heightened likelihood that people already living in challenging circumstances are now more vulnerable than before to exploitation. As the global economy reels and businesses try to navigate the chaos, those in the weakest position to find or retain work are easy targets for practices that should rightly not exist in the 21st Century.

Australia is far from immune to the pernicious nature and impacts of modern slavery. In the past few years, thousands of people living in Australia have been considered to be living in conditions of modern slavery, hundreds of alleged slavery offences have been reported to Australian authorities, and the Director of Public Prosecutions has pursued numerous individuals for slavery-related offences.

Despite these efforts, the actual extent of modern slavery in Australia, and the related crime of human trafficking, remains uncertain. Disturbingly, Australia is classified as a *high destination* category for human trafficking.

Human rights in Australia are protected under our Constitution, and Australia is also party to several international conventions around preserving human rights. The Australian Human Rights Commission is our national independent statutory body tasked with investigating human rights transgressions. Human rights are also protected under various State's legislation.

Against this backdrop, the *Commonwealth Modern Slavery Act 2018* came into force on 1 January 2019 to help combat modern slavery both in Australia and offshore. Many Australian states are currently in the process of enacting their own legislation, although some states have not moved as quickly as many would like.

The federal Modern Slavery Act requires large organisations (with annual consolidated revenue of A\$100 million or greater) to submit an annual Statement, which reports on how they are assessing and addressing the risk of modern slavery within their own operations and in their supply chains.

As with many types of reporting, whether compliance-based or voluntary, the preparation and submission of these Statements provides a unique and important opportunity for businesses to significantly lift their game in relation to detecting, understanding, and responding to modern slavery in their supply chains.

Yet as with many types of reporting (particularly that which is compliance-driven) these opportunities are often lost, as the reporting process is seen more as an administrative burden than a chance to demonstrate awareness, leadership, transformation, learning and effectiveness in this area. Even voluntary reporting, such as sustainability reporting, is prone to a 'siloed' mindset that partitions the accountability process from other business functions.

Around 3,000 organisations in Australia are required to submit an annual Statement under the Modern Slavery Act. That may seem impressive, but the concern is whether most will see this as a 'tick the box' exercise rather than a chance to seriously step up and be counted.

The Act requires organisations to report on seven key matters, which on paper look fairly straight forward but in execution can (and arguably should) require an appropriate investment of time and resources across the business. The question for each organisation is how they see that investment and what value they can derive from it, in terms of benefiting the business and society.

In terms of going beyond compliance with the legislation, the most important steps under the Act are:

- identifying any modern slavery risks in their operations and supply chains
- assessing and addressing these risks, including through due diligence and remediation
- measuring the effectiveness of the responses
- engaging with other entities that the organisation owns or controls

Again, seemingly straight-forward, yet these four actions can be transformative for the organisation.

Identify and understand your modern slavery risks

No business functions in isolation. Each has its own supply chain that includes materials, products and services sourced from Australia or overseas. These supply chains can be relatively simple or incredibly complex. Simple supply chains allow for a comparatively high degree of visibility by the business, but as supply chains get longer, the resulting layers obfuscate their activities. Even accurately identifying your suppliers can be daunting once you get two or three layers down.

And it's not just supplier visibility that gets challenging, but supplier accountability as well. As the gap between your business and entities further down your supply chain grows, their actual and perceived accountability to you rapidly diminishes. Which means if you're looking to engage these entities on their MS obligations, they may not embrace this as fully as you would like (or need).

Your procurement records will help, but they are unlikely to be enough in terms of fully assessing your modern slavery risk. You will need to get more information about your suppliers, either directly through engagement or indirectly through third parties such as NGOs, supplier certifiers or the media.

In larger enterprises, such as the ones most likely to be targeted by the Act, you will certainly benefit from an informed risk assessment approach that considers certain supplier characteristics that potentiate modern slavery risks. This includes supplier reputation, geographic location, the type of product or service they supply, and your overall spend with them – which are dealt with in more detail later in this article.

By applying these filters, you can significantly narrow down the field in terms of risk and then prioritise those in your supply chain most likely to need further investigation.

Engage, educate, raise awareness and garner buy-in

Like the word “sustainability”, the phrase “modern slavery” is not immediately familiar and obvious to most people. The Modern Slavery Act notes that it covers the following activities: people trafficking, slavery, servitude, forced marriage, forced labour, debt bondage, deceptive labour recruitment and child labour.

To enable and support your risk identification process you will need to ensure that your internal and external stakeholders (incl. your board, leadership team, fellow employees, shareholders, investors, suppliers and business partners) fully grasp what modern slavery is and what you are looking to do about it. These education and awareness components go beyond agreeing what modern slavery is, but where and how to spot it. This is where the high-risk areas and the warning signs that you

identified above can be shared with your team and your suppliers? This may require more than a conversation and extend into formal training, particularly for those employees in the best positions to act as vanguards.

Based on personal experience could I urge you not to go down the supplier questionnaire route as your primary source of information on modern slavery risks, as some practitioners suggest. Rarely do questionnaires give a reliable and complete picture in terms of risk management. And *their risk is your risk* – if you think otherwise consider Nike, Apple and other well-publicised cases of iconic companies being reputationally undone through human rights blind spots.....

Finally, be absolutely clear with suppliers and business partners that you have *zero tolerance for slavery or other human rights transgressions in your supply chain or elsewhere in your business dealings*.

Analyse your risks

Your modern slavery risks encompass the potential for your business to either *create, enable or be connected to, modern slavery* through your own policies, processes or practices *and* those of your supply chain. Your potential and actual risks will likely fall under one or more of the following:

1. You *cause* modern slavery practices through your entity's operations.
2. You *contribute* to modern slavery through your operations or those of your suppliers.
3. You can be *linked* to modern slavery practices via your company's operations, products or services, or through the activities of another entity you have a business relationship with.

Having earlier mapped your supply chain and identified potential hotspots, you can now dig deeper so as to zero in on your high and medium risk suppliers. To do this, you should now apply key risk criteria, such as overall spend and contracted volume with those suppliers, *plus* the following considerations:

- *What industries are they operating in?* Certain sectors and industries present high risks of modern slavery because of the sector they work in.
- *What are they producing or delivering to you?* Some products and services have high risks of modern slavery due to how they are produced, provided or used.
- *Where are they located?* Countries characterised by weak governance, ongoing conflict, high migration and economic disadvantages often have high risks of modern slavery.
- *Who are they?* Companies that have been identified by media, NGOs or other informants as having poor governance, poor treatment of workers or human rights violations are (naturally) high risk suppliers.

Get leadership on board

Nothing else gives true momentum to changes in your business approach, or innovation in your management practices, like the backing of your executive, board or leadership team. The key touchpoints to get the attention of these individuals are what I would call the three R's - risk, reputation and return on investment. Modern slavery has material impacts on all these aspects and your goal is to make this connection clear and present. Use this language when engaging them, avoiding generalities and theory, and also add the key argument that, at the end of the day, *this is simply the right thing to do*.

Implement informed, whole of business responses

A mistake many organisations make is to assume that their procurement function has sole ownership and responsibility for detecting, assessing and responding to modern slavery risks. The

pervasive nature of these risks means that a number of key business functions will need to be involved and to support and inform your key responses.

Finance will likely have a role to play in supplier selection and relationships. Human Resources will take a key role in employee education and policy development around change behaviours, performance goals, labour practices and training.

Your Operations and Technical functions will help inform your actions around alternative products and materials to consider. Your Risk function will help to inform your MS risk assessment processes and also integrate modern slavery into the organisation's risk management system.

Your Communications, Public Affairs and Sustainability functions will guide stakeholder engagement, as well as public messaging and reporting to government, to suppliers and business partners, and to your own Board on your actions, progress and effectiveness.

Measure, review, learn and improve

Other than leadership buy-in, the other key driver of success is embedding ownership and accountability for monitoring and reporting into individual job functions and performance targets. In other words, making it clear that success in managing this risk is linked to, and recognised by management as, a key 'whole of business' deliverable.

As noted above, the distributed ownership in addressing these risks means that many roles will have relevant KPIs attached to this response, including *at leadership and board level*. The *Commonwealth Modern Slavery Act 2018 Guidance for Reporting Entities* suggests examples of useful KPIs that will help you with this, including:

- the number of modern slavery training and awareness-raising programs delivered
- the proportion or number of complaints resolved by a grievance mechanism
- the number of supplier contracts that include modern slavery clauses
- the number of actions taken to engage suppliers and improve their capacity to respond to modern slavery risks.

Without such an approach you will have little idea whether your response is being successful and how you can demonstrate and report risk reductions across the business. KPIs also send a powerful internal message that this is not window-dressing, but a serious and committed effort by the whole organisation to get on top of this risk and stamp it out within the boundaries of your sphere of influence.

Finally, ensure there is a regular, thoughtful and open dialogue in your management meetings, employee gatherings and supplier communications about your efforts and progress in managing these risks. It's not dissimilar to what you are already doing around other compliance- and values-driven performance areas such as safety and governance.

The extra effort will pay you back

Whilst the Act requires a specific Statement on modern slavery each year, that should only be part of your organisation's overall response to this insidious practice. Making that statement a driver for change in your policies and practices will pay dividends for your business in terms of its supplier relationships, its employee engagement, its management of risk, reinforcing values and building your business' reputation as a socially responsible organisation.

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