



Modern Slavery Act 2018

No. 153, 2018

An Act to require some entities to report on the risks of modern slavery in their operations and supply chains and actions to address those risks, and for related purposes

Note: An electronic version of this Act is available on the Federal Register of Legislation (<https://www.legislation.gov.au/>)

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[Assented to 10 December 2018]

The Parliament of Australia enacts:

Part 1—Preliminary

1 Short title

This Act is the *Modern Slavery Act 2018*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

| Commencement information | | |
|--|--|---------------------------------|
| Column 1 | Column 2 | Column 3 |
| Provisions | Commencement | Date/Details |
| 1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table | The day this Act receives the Royal Assent. | 10 December 2018 |
| 2. Sections 3 to 10 and Parts 2 to 4 | A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period. | 1 January 2019 (F2018N00189) |

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Simplified outline of this Act

This Act requires entities based, or operating, in Australia, which have an annual consolidated revenue of more than \$100 million, to report annually on the risks of modern slavery in their operations and supply chains, and actions to address those risks. Other entities based, or operating, in Australia may report voluntarily.

The Commonwealth is required to report on behalf of non-corporate Commonwealth entities, and the reporting requirements also apply to Commonwealth corporate entities and companies with an annual consolidated revenue of more than \$100 million.

Reports are kept by the Minister in a public repository known as the Modern Slavery Statements Register. Statements on the register may be accessed by the public, free of charge, on the internet.

4 Definitions

In this Act:

accounting standards has the same meaning as in the *Corporations Act 2001*.

Australia, when used in a geographical sense, includes the external Territories.

Australian entity means:

- (a) a company which is a resident within the meaning of subsection 6(1) of the *Income Tax Assessment Act 1936*; or
- (b) a trust, if the trust estate is a resident trust estate within the meaning of Division 6 of Part III of the *Income Tax Assessment Act 1936*; or
- (c) a corporate limited partnership which is a resident within the meaning of section 94T of the *Income Tax Assessment Act 1936*; or
- (d) any other partnership, or other entity, whether incorporated or unincorporated, if:

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- (i) the entity is formed or incorporated within Australia; or
- (ii) the central management or control of the entity is in Australia.

carries on business in Australia: see section 5 (meaning of *reporting entity*).

consolidated revenue, of an entity, means:

- (a) the total revenue of the entity, for a reporting period; or
- (b) if the entity controls another entity or entities—the total revenue of the entity and all of the controlled entities, considered as a group, for a reporting period of the controlling entity;

worked out in accordance with the accounting standards, even if those standards do not otherwise apply to such an entity (including a controlling entity) or group.

control, of an entity by another entity, means control of the entity within the meaning of the accounting standards.

entity has the same meaning as in the *Income Tax Assessment Act 1997*.

Note: See section 960-100 of that Act.

modern slavery means conduct which would constitute:

- (a) an offence under Division 270 or 271 of the *Criminal Code*;
or
- (b) an offence under either of those Divisions if the conduct took place in Australia; or
- (c) trafficking in persons, as defined in Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, done at New York on 15 November 2000 ([2005] ATS 27);
or
- (d) the worst forms of child labour, as defined in Article 3 of the ILO Convention (No. 182) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of

Child Labour, done at Geneva on 17 June 1999 ([2007] ATS 38).

Note: In 2018, the text of international agreements in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

modern slavery statement: see section 12.

principal governing body, of an entity, means:

- (a) the body, or group of members of the entity, with primary responsibility for the governance of the entity; or
- (b) if the entity is of a kind prescribed by rules made for the purposes of this paragraph—a prescribed body within the entity, or a prescribed member or members of the entity.

Example: Examples of principal governing bodies are as follows:

- (a) for a company—the company’s board of directors;
- (b) for a superannuation fund—the fund’s board of trustees.

register means the Modern Slavery Statements Register established under section 18.

reporting entity: see section 5.

reporting period, of an entity, means a financial year, or another annual accounting period applicable to the entity, which starts after the commencement of this section.

Example: For a company’s reporting period, see section 319 of the *Income Tax Assessment Act 1936*.

responsible member, of an entity, means:

- (a) an individual member of the entity’s principal governing body who is authorised to sign modern slavery statements for the purposes of this Act; or
- (b) if the entity is a trust administered by a sole trustee—that trustee; or
- (c) if the entity is a corporation sole—the individual constituting the corporation; or
- (d) if the entity is under administration within the meaning of the *Corporations Act 2001*—the administrator; or

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- (e) if the entity is of a kind prescribed by rules made for the purposes of this paragraph—a prescribed member of the entity.

rules means rules made by the Minister under section 25.

5 Meaning of *reporting entity*

- (1) Each of the following is a ***reporting entity*** in relation to a reporting period:
 - (a) an entity which has a consolidated revenue of at least \$100 million for the reporting period, if the entity:
 - (i) is an Australian entity at any time in that reporting period; or
 - (ii) carries on business in Australia at any time in that reporting period;
 - (b) the Commonwealth;
 - (c) a corporate Commonwealth entity, or a Commonwealth company, within the meaning of the *Public Governance, Performance and Accountability Act 2013*, which has a consolidated revenue of at least \$100 million for the reporting period;
 - (d) an entity which has volunteered to comply with the requirements of this Act under section 6 for that period.

Note: The Commonwealth is required to report on behalf of non-corporate Commonwealth entities within the meaning of the *Public Governance, Performance and Accountability Act 2013*: see section 15 of this Act.

- (2) An entity ***carries on business in Australia*** if the entity:
 - (a) in the case of a body corporate—carries on business in Australia, a State or a Territory within the meaning of the *Corporations Act 2001* (see section 21 of that Act); or
 - (b) in any other case—would be taken to do so within the meaning of that Act if the entity were a body corporate.

6 Voluntary modern slavery statements

How an entity may volunteer

- (1) An entity covered by subsection (2) may volunteer to comply with the requirements of this Act for a reporting period, or reporting periods, by giving written notice to the Minister accordingly before the end of the reporting period (or the earliest of the reporting periods), in a manner and form approved by the Minister.

Note: An entity can volunteer under this section in relation to a reporting period and all later reporting periods.

- (2) An entity is covered by this subsection for a reporting period if the entity, at any time in the reporting period:
- (a) is an Australian entity; or
 - (b) carries on business in Australia.

Revoking a notice

- (3) An entity may revoke a notice given under subsection (1), to the extent that it applies in relation to a reporting period or periods, by giving written notice accordingly to the Minister before the start of the reporting period, or the earliest of the reporting periods.

7 Constitutional basis

- (1) Without limitation, this Act relies on:
- (a) the Commonwealth's legislative powers under the following provisions of the Constitution:
 - (i) paragraph 51(i) (trade and commerce);
 - (ii) paragraph 51(xi) (census and statistics);
 - (iii) paragraph 51(xix) (aliens);
 - (iv) paragraph 51(xx) (corporations);
 - (v) paragraph 51(xxi) (marriage);
 - (vi) paragraph 51(xxvii) (immigration);
 - (vii) paragraph 51(xxix) (external affairs);
 - (viii) paragraph 51(xxxix) (incidental matters);
 - (ix) section 61 (the executive power); and

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- (b) any implied legislative powers of the Commonwealth.
- (2) Without limiting subparagraph (1)(a)(vii), this Act's reliance on the Commonwealth's legislative powers under paragraph 51(xxix) of the Constitution is based on purposes including giving effect to the following international agreements, as amended and in force for Australia from time to time:
- (a) the International Convention to Suppress the Slave Trade and Slavery, done at Geneva on 25 September 1926 ([1927] ATS 11);
 - (b) the ILO Convention (No. 29) concerning Forced or Compulsory Labour, done at Geneva on 28 June 1930 ([1933] ATS 21);
 - (c) the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices similar to Slavery, done at Geneva on 7 September 1956 ([1958] ATS 3);
 - (d) the International Covenant on Civil and Political Rights, done at New York on 16 December 1966 ([1980] ATS 23);
 - (e) the Convention on the Elimination of All Forms of Discrimination Against Women, done at New York on 18 December 1979 ([1983] ATS 9);
 - (f) the Convention on the Rights of the Child, done at New York on 20 November 1989 ([1991] ATS 4);
 - (g) the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, done at New York on 15 November 2000 ([2005] ATS 27);
 - (h) the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, done at New York on 25 May 2000 ([2007] ATS 6);
 - (i) the ILO Convention (No. 182) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, done at Geneva on 17 June 1999 ([2007] ATS 38).

Note: In 2018, the text of international agreements in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

8 Act binds the Crown

This Act binds the Crown in right of the Commonwealth. However, it does not bind the Crown in right of a State, the Australian Capital Territory or the Northern Territory.

9 Extension to external Territories

This Act extends to every external Territory.

10 Extra-territorial application

This Act extends to acts, omissions, matters and things outside Australia.

Part 2—Modern slavery statements

11 Simplified outline of this Part

This Part requires modern slavery statements to be given annually to the Minister, describing the risks of modern slavery in the operations and supply chains of reporting entities and entities owned or controlled by those entities.

The statements must also include information about actions taken to address those risks.

Joint modern slavery statements may be given on behalf of one or more reporting entities.

The Minister must prepare an annual modern slavery statement on behalf of all non-corporate Commonwealth entities.

The Minister may request an explanation from an entity about the entity's failure to comply with a requirement in relation to modern slavery statements, and may also request that the entity undertake remedial action in relation to that requirement. If the entity fails to comply with the request, the Minister may publish information about the failure to comply on the register or elsewhere, including the identity of the entity.

12 Meaning of *modern slavery statement*

A *modern slavery statement* is a statement prepared for the purposes of any of the following:

- (a) section 13 (modern slavery statements for single reporting entities);
- (b) section 14 (joint modern slavery statements);
- (c) section 15 (Commonwealth modern slavery statements).

13 Modern slavery statements for single reporting entities

- (1) A reporting entity must give the Minister a modern slavery statement for the entity, for a reporting period, unless a modern slavery statement has been given covering the entity for that period under section 14 (joint modern slavery statements) or 15 (Commonwealth modern slavery statements).
- (2) The reporting entity must ensure that the statement:
 - (a) complies with section 16; and
 - (b) is prepared in a form approved by the Minister; and
 - (c) is approved by the principal governing body of the entity; and
 - (d) is signed by a responsible member of the entity; and
 - (e) is given to the Minister within 6 months after the end of the reporting period for the entity, in a manner approved by the Minister.

Note: The statement may be signed electronically: see section 10 of the *Electronic Transactions Act 1999*.

14 Joint modern slavery statements

- (1) An entity, other than the Commonwealth, may give the Minister a modern slavery statement covering one or more reporting entities (which may include the entity giving the statement), for a reporting period for those reporting entities.
- (2) The entity giving the statement must ensure that it:
 - (a) complies with section 16; and
 - (b) is prepared in a form approved by the Minister; and
 - (c) is prepared in consultation with each reporting entity covered by the statement; and
 - (d) is approved by the principal governing body of:
 - (i) each reporting entity covered by the statement; or
 - (ii) an entity (the **higher entity**) which is in a position, directly or indirectly, to influence or control each reporting entity covered by the statement, whether or not the higher entity is itself covered by the statement;or

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- (iii) if it is not practicable to comply with subparagraph (i) or (ii)—at least one reporting entity covered by the statement; and
- (e) is signed by a responsible member of:
 - (i) if subparagraph (d)(i) applies—each reporting entity covered by the statement; or
 - (ii) if subparagraph (d)(ii) applies—the higher entity; or
 - (iii) if subparagraph (d)(iii) applies—each reporting entity to which the subparagraph applies; and
- (f) is given to the Minister:
 - (i) within 6 months after the end of the reporting period for the entities covered by the statement, in a manner approved by the Minister; or
 - (ii) within a period prescribed by rules made for the purposes of this subparagraph.

Note 1: The statement may be signed electronically: see section 10 of the *Electronic Transactions Act 1999*.

Note 2: If subparagraph (d)(iii) applies, the statement must include an explanation: see subsection 16(2).

15 Commonwealth modern slavery statements

- (1) The Minister must prepare a modern slavery statement for the Commonwealth, for a reporting period, covering all non-corporate Commonwealth entities within the meaning of the *Public Governance, Performance and Accountability Act 2013*.
- (2) The Minister must ensure that the statement:
 - (a) complies with section 16; and
 - (b) is prepared within 6 months after the end of the reporting period.

16 Mandatory criteria for modern slavery statements

- (1) A modern slavery statement must, in relation to each reporting entity covered by the statement:
 - (a) identify the reporting entity; and

- (b) describe the structure, operations and supply chains of the reporting entity; and
- (c) describe the risks of modern slavery practices in the operations and supply chains of the reporting entity, and any entities that the reporting entity owns or controls; and
- (d) describe the actions taken by the reporting entity and any entity that the reporting entity owns or controls, to assess and address those risks, including due diligence and remediation processes; and
- (e) describe how the reporting entity assesses the effectiveness of such actions; and
- (f) describe the process of consultation with:
 - (i) any entities that the reporting entity owns or controls; and
 - (ii) in the case of a reporting entity covered by a statement under section 14—the entity giving the statement; and
- (g) include any other information that the reporting entity, or the entity giving the statement, considers relevant.

Example: For paragraph (d), actions taken by an entity may include the development of policies and processes to address modern slavery risks, and providing training for staff about modern slavery.

- (2) A modern slavery statement, other than a statement to be given under section 15 (Commonwealth modern slavery statements), must include:
 - (a) for a statement to be given under section 13 (modern slavery statements for single reporting entities)—details of approval by the principal governing body of the reporting entity; or
 - (b) for a statement to be given under section 14 (joint modern slavery statements):
 - (i) details of approval by the relevant principal governing body or bodies; and
 - (ii) if subparagraph 14(2)(d)(iii) applies—an explanation of why it is not practicable to comply with subparagraph 14(2)(d)(i) or (ii).

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16A Explanations for failure to comply etc.

Request for explanation or remedial action

- (1) If the Minister is reasonably satisfied that an entity has failed to comply with a requirement under section 13 or 14 (which deal with requirements to give modern slavery statements), the Minister may give a written request to the entity to do either or both of the following:
- (a) provide an explanation for the failure to comply within a specified period of 28 days or longer after the request is given;
 - (b) undertake specified remedial action in relation to that requirement in accordance with the request within a specified period of 28 days or longer after the request is given.

Example: For a request relating to a failure to give a modern slavery statement to the Minister within the period required by section 13, remedial action specified under paragraph (b) of this subsection may be to give a modern slavery statement to the Minister within a further period specified in the request.

- (2) The Minister may extend, or further extend, a period specified in a request under subsection (1) by written notice given to the entity. The extension may be given before or after the end of the specified period (or that period as previously extended).
- (3) A request under subsection (1) must include a statement of the effect of subsections (2) and (4) to (6).

Publication of information about failure to comply with request

- (4) If the Minister is reasonably satisfied that an entity has failed to comply with a request under subsection (1), the Minister may publish the following information on the register, or in any other way the Minister considers appropriate:
- (a) the identity of the entity;
 - (b) if the request relates to the entity's failure to comply with subsection 14(2) (joint modern slavery statements) in relation to a modern slavery statement—the identities of the reporting entities covered by the statement;

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- (c) the date the request was given, and details of any extension given under subsection (2);
 - (d) details of the explanation or remedial action requested, and the period or periods specified in the request;
 - (e) the reasons why the Minister is satisfied that the entity has failed to comply with the request.
- (5) An entity ***fails to comply*** with a request if, and only if:
- (a) no explanation is given in response to the request within the period specified in the request under paragraph (1)(a) (as extended, if at all, under subsection (2)); or
 - (b) no remedial action is undertaken in response to the request within the period specified in the request under paragraph (1)(b) (as extended, if at all, under subsection (2)).

Review of decisions

- (6) Applications may be made to the Administrative Appeals Tribunal for review of the Minister's decision under subsection (4) to publish information about an entity's failure to comply with a request under subsection (1).

Part 3—Access to modern slavery statements

17 Simplified outline of this Part

This Part establishes the Modern Slavery Statements Register.

The register is made available to the public on the internet.

Modern slavery statements are registered by the Minister.

Revised versions of registered modern slavery statements can be registered in some circumstances.

18 Modern Slavery Statements Register

- (1) The Minister must maintain a register of modern slavery statements, to be known as the Modern Slavery Statements Register.
- (2) The register must be made available for public inspection, without charge, on the internet.

19 Registration of modern slavery statements

- (1) The Minister must register a modern slavery statement:
 - (a) given in accordance with section 13 (modern slavery statements for single reporting entities) or 14 (joint modern slavery statements); or
 - (b) prepared in accordance with section 15 (Commonwealth modern slavery statements).
- (2) The Minister may register a statement given for the purposes of compliance with section 13 or 14 (including a statement given in response to a request under section 16A) even if the entity giving the statement does not comply with the requirements of subsection 13(2) or 14(2).

Note: However, the Minister may elect not to register a modern slavery statement if the entity does not comply with those requirements.

20 Registration of revised modern slavery statements

- (1) An entity (other than the Commonwealth) may, by written notice to the Minister, accompanied by a revised version of a registered modern slavery statement given by the entity, request the Minister to register the revised version.
- (2) The revised version of the modern slavery statement must indicate the date of the revision and include a description of the changes made to the registered statement (or to the most recently registered revised version of the statement).
- (3) The Minister must register the revised version of the modern slavery statement, if the revised version complies with the requirements mentioned in the following provisions:
 - (a) if the original statement was given under section 13—paragraphs 13(2)(a) to (d);
 - (b) if the original statement was given under section 14—paragraphs 14(2)(a) to (e).
- (4) The Minister may register a revised version of a modern slavery statement even if it does not comply with the requirements mentioned in paragraph (3)(a) or (b).

Note: However, the Minister may elect not to register a revised version of a modern slavery statement which does not comply with those requirements.

- (5) For a modern slavery statement registered under section 15 (Commonwealth modern slavery statements), the Minister may register a revised version of the statement that complies with section 16 and subsection (2) of this section.

Part 4—Miscellaneous

21 Simplified outline of this Part

This Part deals with the following miscellaneous matters:

- (a) things done by an unincorporated entity;
- (b) the Minister's capacity to delegate powers and functions under this Act;
- (ba) annual reports about the implementation of this Act;
- (c) the 3-year review of this Act;
- (d) the power to make rules.

22 Unincorporated entities

- (1) This section applies if this Act requires or allows a thing to be done by an entity that is an unincorporated body.
- (2) The thing must, or may, be done by a responsible member of the entity on the entity's behalf.

23 Delegation

- (1) The Minister may, by writing, delegate all or any of the Minister's powers and functions under this Act to an SES employee, or acting SES employee, in the Department.

Note: The expressions *SES employee* and *acting SES employee* are defined in the *Acts Interpretation Act 1901*.

- (2) In exercising powers or functions under a delegation, the delegate must comply with any directions of the Minister.
- (3) Subsection (1) does not apply to a power to make, vary or revoke the rules.

23A Annual reports about implementation

- (1) The Minister must cause a report to be prepared for each calendar year (including the year in which this section commences) about the implementation of this Act during the year, including the following (without limitation):
 - (a) an overview of compliance by entities with this Act during the year;
 - (b) the identification of best practice modern slavery reporting under this Act during the year.
- (2) The report must be:
 - (a) started as soon as practicable after the end of the calendar year for which it is prepared; and
 - (b) completed before the end of the calendar year in which it is started.
- (3) The Minister must cause copies of the report to be tabled in each House of the Parliament within 15 sitting days of that House after the completion of the report.

24 Three-year review

- (1) The Minister must cause a report to be prepared reviewing:
 - (a) the operation of this Act and any rules over the period of 3 years after this section commences; and
 - (aa) compliance with this Act and any rules over that period; and
 - (ab) whether additional measures to improve compliance with this Act and any rules are necessary or desirable, such as civil penalties for failure to comply with the requirements of this Act; and
 - (ac) whether a further review of this Act and any rules should be undertaken, and if so, when; and
 - (ad) whether it is necessary or desirable to do anything else to improve the operation of this Act and any rules; and
 - (b) whether this Act or any rules should be amended to implement review recommendations.
- (2) The review must be:

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- (a) started as soon as practicable after the end of the period of 3 years after this section commences; and
 - (b) completed within 12 months after it starts.
- (3) The Minister must cause copies of the report to be tabled in each House of the Parliament within 15 sitting days of that House after the completion of the report.

25 Rules

- (1) The Minister may, by legislative instrument, make rules prescribing matters:
- (a) required or permitted by this Act to be prescribed by the rules; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) To avoid doubt, the rules may not do the following:
- (a) create an offence or civil penalty;
 - (b) provide powers of:
 - (i) arrest or detention; or
 - (ii) entry, search or seizure;
 - (c) impose a tax;
 - (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
 - (e) directly amend the text of this Act.

*[Minister's second reading speech made in—
House of Representatives on 28 June 2018
Senate on 18 September 2018]*

(134/18)
