



# Modern slavery: Time for more action

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**T**here is little evidence that Australia's *Modern Slavery Act 2018* (MSA) has helped reduce the prevalence of modern slavery.

The MSA was the first national legislation in the world to define modern slavery. *The Act defines modern slavery as eight types of serious exploitation: trafficking in persons; slavery; servitude; forced marriage; forced labour; debt bondage; deceptive recruiting for labour or services; and the worst forms of child labour. Under the worst forms of child labour, children are subjected to slavery or similar practices, or engaged in hazardous work.*

Poor labour practices may contribute to company risks, even when it may not be technically defined as modern slavery.

## The estimated prevalence of modern slavery is rising

The UN Sustainable Development Goals have mandated a target for the eradication of forced labour worldwide by 2030. But data shows the estimated incidence of modern slavery has been rising, not falling (Figure 1). The number of people living and working in modern slavery conditions increased from an estimated 40.3 million in 2016 to 49.6 million in 2021. This represents a compound annual growth of +4.2% across five years—more than four times the annual world

population growth of +1.0% per annum for the same period (World Bank, 2024).

The statistics on modern slavery are disturbing. Some 17 countries worldwide still allow state-imposed forced labour. Only 50 countries have criminalised forced marriage—a key aspect of the enslavement of women and children—with some 126 countries still to act on forced marriage.

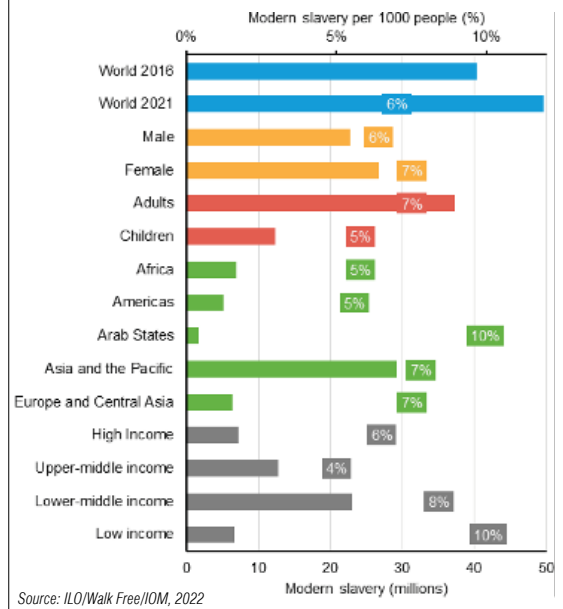
## In Australia

The Australian Government Attorney-General's Department maintains the Modern Slavery Statements Register (<https://modernslaveryregister.gov.au/>) where all modern slavery reports are registered. This includes mandatory and voluntary reports. (Ausbil Investment Management is a voluntary reporter.)

According to the Attorney-General's Department, approximately 15,000 entities are captured by the reporting requirement. Some 10,000 statements covering 60 countries have been lodged as of mid-2024. Over 600 voluntary statements have been lodged so far, indicating an encouraging commitment to operate within the spirit of the MSA.

In 2022-2023, the MSA was subject to a statutory review, undertaken by professor John McMillan AO (*The McMillan Review*), which resulted in 30 recommendations for change. Critically, McMillan concluded that there is no hard evidence that the MSA has caused any meaningful change for people living and working in modern slavery

Figure 1. Estimated increase in modern slavery



conditions. He states that, “while the quality of modern slavery statements has improved, the change is not significant enough and has been a race to the middle”.

The MSA implements a transparency/disclosure framework to address modern slavery concerns. However, transparency only reduces undesirable conduct if a reporting entity goes beyond identifying ‘risk’.

An alternative, perhaps cynical, view of the MSA regime’s first years is that it has resulted in another compliance exercise for reporting entities, and that the main beneficiaries of the MSA are not those trapped in modern slavery conditions, but those that profit from the production of modern slavery statements.

The MSA, since its introduction in 2018, has imposed mandatory reporting on companies and other organisations in relation to modern slavery risk, including risk assessment and a description of their actions. Mandatory reporting under the MSA is currently limited to organisations with \$100 million in revenue or more.

However, generating the thousands of modern slavery statements which have been uploaded to the Australian Government’s Modern Slavery Statements Register is not, and should not be, the end goal. To some extent, the simple MSA disclosure regime misses the original purpose of assisting the business community in Australia to take proactive and effective actions to address modern slavery.

The MSA has and will continue to play an important role in raising awareness of modern slavery. The Australian Government’s intention to appoint an anti-slavery commissioner will further raise awareness. But it will need adequate resourcing, proper grievance mechanisms, and a victim compensation scheme.

In light of the MSA’s limitations, The McMillan Review’s recommendations, and regulatory developments

on human rights and modern slavery elsewhere in the world, such as the European Union (EU), Ausbil believes now is the time for Australia to consider the next logical step in addressing modern slavery.

### Policy changes that can help achieve progress on modern slavery

Globally, governments have chosen various ways to tackle modern slavery. These include:

- transparency legislation, such as the MSA in Australia and the UK
- outright import bans on goods made by forced labour, as per legislation in the EU and US (a move that has also been discussed in Australia)
- human rights due diligence (HRDD), which has been introduced in France, Germany, Norway and Switzerland.

The MSA falls under the banner of a ‘general’ risk assessment. The problem is that companies are sometimes simply satisfied to point out that they ‘may’ have risk in a number of categories. It’s a low bar and simply repeats what the *Global Slavery Index* [published by international human rights group Walk Free] established many years ago.

By contrast, a ‘human rights’ risk assessment—is a structured approach to identify ‘actual’ or ‘potential’ adverse human rights impacts resulting from a company’s business activities. Under a human rights risk assessment, it is recommended a company employ a ‘risk-to-people’-based approach to identify risks in the supply chain.

If Australia, as a society, wants to be serious about tackling modern slavery, the next step should be moving beyond mere disclosure to active due diligence. The next logical step would be to consider some form of mandatory HRDD.

Mandatory HRDD would put Australia in line with the EU’s development of mandatory due diligence. With the backing of a majority of European governments, the European Parliament recently passed new legislation, the *Corporate Sustainability Due Diligence Directive* (CSD- DD), which requires supply chain audits.

HRDD is also incorporated in the framework of The United Nations *Guiding Principles on Business and Human Rights* 2011 (UNGPs), the key international reference point on business and human rights. While the UNGPs are not legally binding, they have influenced other international standards, and there have been cases where the UNGPs have been considered in national courts (McCorquodale & Nolan, 2021).

If, however, human rights due diligence is not carried out by the companies themselves, investors can find this challenging. A legal framework built on HRDD can help investors who aim to meet the expectations of the UNGPs.

HRDD can be structured in various ways, including a mandatory regime and, at least initially, it can apply to only high-risk sectors or very large companies. Our position paper does not make a case for a particular pathway, but the aim is to encourage the government to adopt the concept of HRDD first.



#### The quote

*The Modern Slavery Act falls under the banner of a ‘general’ risk assessment.*



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Måns is head of ESG at Ausbil Investment Management. He has held senior ESG positions at AMP Capital, Carnegie Investment Bank, Macquarie Bank and Accenture, and is well known for his advocacy, research and leadership on key ESG issues. His industry leadership positions include director of the Responsible Investment Association Australasia; and steering committee member of Investors Against Slavery and Trafficking—Asia Pacific. Måns holds a Bachelor of Science, Master of Finance, and an MBA.

Unlike a general ‘risk assessment’ under the likes of the MSA, an HRDD risk assessment, like CSDDD, requires businesses to identify, assess and, crucially, to address actual or potentially adverse human rights impacts resulting from a company’s business activities.

It is clear that if we simply continue with Australia’s annual reporting requirements, we will not discernibly improve the lives of people living in modern slavery conditions, and we will therefore fall short of the original intent of the MSA.

Using due diligence is not a foreign concept in combatting global issues. The finance industry, for example, has increasingly introduced know your customer (KYC) obligations to combat terrorism funding, money laundering and other crimes. A mandatory HRDD equivalent could be equally effective through a know your supplier (KYS) approach.

Mandatory HRDD can complement other efforts to address human rights abuses, such as public procurement laws and forced labour import bans.

Ultimately, the effectiveness of HRDD depends on their implementation by companies covered by the legislation.

Nevertheless, HRDD is another step up from the current MSA and a logical way to build on the work that the MSA has achieved. HRDD laws may play a role in increasing awareness of labour rights and improve corporate disclosure of human rights risks, which should enable investors to make better-informed investment decisions.

From an investor perspective, mandatory HRDD is an important consideration. Investors prefer stable and predictable earnings. They therefore dislike negative earnings surprises and unknown risks. Mandatory HRDD can help companies to proactively identify risks, thereby reducing the probability of negative earnings surprises.

## The role investors can play in combatting modern slavery

Investors play an important role in the fight against modern slavery. When they collaborate, the pooled capital power of investors can achieve bigger results than single voices and fractured approaches.

While modern slavery is morally reprehensible, it can also have financial ramifications for investors and markets. Modern slavery can significantly distort company earnings. For example, the existence of modern slavery and other human rights abuses can damage assets such as brand and goodwill, damage that can cause lost sales and be costly and time-consuming to restore.

In the current global climate, companies face an increased risk of regulatory action if they knowingly or unknowingly rely on a supply chain of underpaid workers, weak regulation or even illegal practices like slavery to generate earnings.

Human rights due diligence requirements, as opposed to simple annual reporting on risk, could lead to better earnings predictability and lower earnings risk. Companies would need to demonstrate that they are adhering to human rights across their supply chains and demonstrate the remedial actions they are taking to address such risks.

Investors are a key stakeholder group under the MSA as both users and preparers of modern slavery statements. For investors, the MSA entails reporting on the risk of modern slavery, not just in company supply chains, but also in investment portfolios.

Investors who just focus on MSA risk assessments, however, are unlikely to move the dial on reducing modern slavery. All companies have some level of modern slavery risk due to the nature of global supply chains, and supply chains to supply chains.

Constructing a modern-slavery-free investment portfolio is therefore highly challenging. Yet, investors can act as positive influencers on companies by encouraging best practices in identifying, assessing and addressing modern slavery risk. Capital carries significant power to influence change.

In the responsible investor community, investors and companies have increased their collaboration and engagement on modern slavery in recent years. That includes the Responsible Investment Association Australasia’s (RIAA) Human Rights Working Group and Investors Against Slavery and Trafficking—Asia-Pacific. Effective engagements with companies has been formalised, and global best practices identified to encourage the adoption of higher standards. The RIAA’s Human Rights Working Group, for instance, has published investor toolkits on best practice for companies to implement, which investors can use to encourage the adoption of better practices.

## The next logical step

The MSA has no doubt increased awareness of modern slavery, however, it has often been treated as another compliance exercise. It has done little to improve the actual incidence of modern slavery.

With 30 recommendations from The McMillan Review to consider, as well as regulatory developments in the EU, the next logical step for Australia should be to consider mandatory HRDD. It is through HRDD that we can truly start to improve the lives of those living under the scourge of modern slavery. **FS**

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