

RESOURCES, ENERGY AND MODERN SLAVERY

Practical responses for
managing risk to people



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The essential guide for managing modern slavery risks in the resources and energy sectors.

KPMG Australia (KPMG) has joined with the Australian Human Rights Commission to release a series of **sector-specific resources** to help companies understand and effectively identify and manage their modern slavery risks.

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ACCESSIBILITY

We are committed to making our resources accessible and widely available. As such, and to comply with the Australian Government's accessibility requirements for publishing on the internet, two versions of this Guide are available: a KPMG- and AHRC-branded PDF version and a Microsoft Word version. The branded PDF version remains the definitive version of this Guide.

“Taking a rights-based approach to addressing modern slavery will assist energy and resources companies to meet the increasing expectations of investors, governments, clients, consumers, business peers and civil society concerning business respect for human rights.”

EMERITUS PROFESSOR ROSALIND CROUCHER AM
President of the Australian Human Rights Commission

“The need to decarbonise means that the global energy mix is rapidly shifting. This shift is creating increasing crossover between the resources and energy sectors in both their operations and supply chains. It’s in this context that companies must challenge their thinking on where they’ll find risk to people. Transition is creating new and emerging human rights and social risks that we have to identify and understand.”

RICHARD BOELE
Chief Purpose Officer, Partner in Charge of KPMG Banarra Human Rights and Social Impact,
Global Leader of Business and Human Rights Network, KPMG Australia

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MODERN SLAVERY IN THE RESOURCES AND ENERGY SECTORS

Corporate human rights reporting in Australia has changed. Modern slavery legislation makes boards responsible for public statements about their entities' efforts to manage the risk of modern slavery in their operations and supply chains.

Australia's *Modern Slavery Act 2018* (Cth) requires certain organisations to report on their efforts to identify and address risks of modern slavery in their global operations and supply chains.

The Australian Government's [Guidance for Reporting Entities](#) provides general guidance to businesses, including those in the resources and energy sectors, about how to prepare for modern slavery reporting.

We understand that the sectors need practical advice on how to respond to modern slavery risks.

THIS GUIDE:

01

Highlights particular modern slavery risks prevalent in the resources and energy sectors.

02

Provides tips for the resources and energy sectors on leading practice and a rights-based approach to managing modern slavery risk.

03

Fosters transparent modern slavery reporting for the benefit of business, government and the people at risk of harm.



AN INTRODUCTION TO MODERN SLAVERY AND THE REPORTING REQUIREMENT

1.1

What is modern slavery?

Modern slavery refers to a range of serious human rights violations. The term is used to describe situations where coercion, threats or deception are used to exploit people and deprive them of their freedom. These violations are crimes in Australia.

Modern slavery includes trafficking in persons, slavery, servitude, forced marriage, forced labour, debt bondage, the worst forms of child labour, and deceptive recruiting for labour or services.¹

While the *Modern Slavery Act 2018* (Cth) requires businesses—including resources and energy companies—to look specifically at modern slavery, taking a broader approach and considering the full spectrum of human rights risks and impacts will enhance the credibility and strength of your modern slavery response and statement.

Relationships between the traditionally distinct sectors of mining, oil and gas, and power generators and retailers, are rapidly shifting with the global shift towards decarbonisation and sustainability. This has added complexity to the supply chains of companies in these sectors, creating new modern slavery risks that must be considered and addressed under the *Modern Slavery Act 2018* (Cth).

The economic and labour market shocks accompanying the COVID-19 pandemic have exacerbated the risks of modern slavery globally, especially for women, children and migrant workers.² The pandemic-induced shortfall in jobs across the world was predicted to be 75 million in 2021,³ increasing the supply of vulnerable workers.⁴ Modern slavery risks are especially heightened in locations where labour regulation and social safety nets are weak, where schooling is suspended⁵ and where the movement of already vulnerable populations, such as migrant workers, is restricted by lockdowns and border closures.⁶

1.2

What does the *Modern Slavery Act 2018* (Cth) require?

The *Modern Slavery Act 2018* (Cth) requires entities with a consolidated revenue of \$100 million or more to submit an annual modern slavery statement on what they are doing to identify and manage modern slavery risk in their operations and supply chains. The *Modern Slavery Act 2018* (Cth) applies to a wide range of entity types, including individuals, partnerships, associations, and legal entities such as companies, trusts, superannuation funds and other types of investment organisations. This includes both commercial entities and not-for-profit entities. In the resources and energy context, this includes identifying and addressing risks of modern slavery across a wide range of operating contexts and business relationships.

- Statements are published on a central, online Australian Government register.
- Modern slavery statements require approval of the Board (or equivalent)⁷ and the signature of a Director or a responsible member of the entity.
- Entities that fall outside the threshold can demonstrate good practice by reporting through a voluntary 'opt in' mechanism.

THE MANDATORY REPORTING CRITERIA

There are seven mandatory criteria that your entity must respond to under the *Modern Slavery Act 2018* (Cth) requiring descriptions of:

01

The reporting entity.

02

Your structure, operations and supply chains.

03

The risks of modern slavery practices in your operations and supply chains and any entities owned or controlled by you.

04

Actions taken to assess and address those risks, including modern slavery due diligence and remediation processes.

05

How you assess the effectiveness of the actions taken.

06

The process of consultation with entities owned and/or controlled by you.

07

Any other information that you consider relevant.

This guide focuses on the [risks](#) and [actions](#) to support your practical response to modern slavery.

2.

THE REALITY OF MODERN SLAVERY IN RESOURCES AND ENERGY

In the context of today's rapidly changing global energy mix and acceleration towards decarbonisation, the relationships between traditionally distinct sectors are rapidly shifting, resulting in considerable supply chain crossover.

These changes create new modern slavery risk 'hot spots' that business should consider and address as part of their reporting obligations under the *Modern Slavery Act 2018* (Cth).

Though the lines between the oil and gas and the power and utilities sectors are blurring – particularly with the advent of hydrogen production – for the context of this report, 'resources' refers to mining and oil and gas, while 'energy' denotes power generation, retail and transmission.

The level of risk of modern slavery in operations and supply chains depends on a range of intersecting contextual factors. Our research shows that there are four key factors which elevate the risk of modern slavery: **vulnerable populations, high-risk business models, high-risk procurement categories, and high-risk geographies**. Where multiple high-risk factors co-exist, there is a greater likelihood that actual harm is being experienced, and additional controls are required to ensure that risk does not become harm.

The following pages will help you understand how these high-risk factors affect the resources and energy sectors, and how that might shape company responses to managing modern slavery risks across operations and supply chains.

Note that although part of this section is divided into a discussion about 'Resources' and then 'Energy', supply chain crossover means that for many companies, the risk factors discussed in both these areas will be relevant.

COMMON MODERN SLAVERY PRACTICES CONNECTED TO RESOURCES AND ENERGY



Human trafficking



Worst forms of child labour



Forced or unpaid work



Bonded labour

WHY IS RESOURCES AND ENERGY HIGH-RISK?



High-risk geographies in operations and supply chains such as the presence of militias, criminal organisations and corrupt governments in countries that are conflict-affected or prone to instability



Demand for base-skill workers in construction of infrastructure; frequent outsourcing of labour to third-party contractors



Low visibility over multi-tiered supply chains



Alleged forced labour in developing countries is a supply-chain risk for several renewable energy technologies

KEY TRENDS IN THE SECTOR THAT INTERSECT WITH MODERN SLAVERY RISK



Profound shift towards decarbonisation means rapidly changing procurement strategies and increasingly complex supply chains



Increase in scrutiny and reporting requirements from markets, exchanges, lenders and investors on environmental, social and governance (ESG) issues



Increase in scrutiny and minimum supplier standards from downstream customers regarding ESG issues



Increase in scrutiny from civil society on ESG issues, including shareholder action

2.1

Resources

The resources sector is uniquely exposed to multi-faceted risks and various economic, political and cultural contexts as a result of the nature and locations of often global operations. Mining and oil and gas companies are often dealing with complex context-specific issues.

An example is the presence of militias, criminal organisations and corrupt governments in countries that are conflict-affected or prone to instability. These contextual factors, coupled with certain supply chain and operational complexities, increase modern slavery risk and require resource companies to proactively identify and manage that risk.

For example, mining company chair, Andrew Forrest, investigated his corporate supply chains and found workers who were being subjected to forced labour by way of passport confiscation. The experience led him to recognise that ‘all of us in business face the risk of modern slavery in our supply chains – I found it in my own – and it is now widely accepted that inaction, and hiding our head in the sand, are no longer options’.⁸

As a result of increased scrutiny in the occupational, health and safety space, resource companies worldwide already manage a range of human rights risks. Workplace safety is intimately connected to the right to health and the right to safe working conditions. This has led many resource companies to increasingly acknowledge and understand the importance of assessing and acting on risks of harm to people. The relative maturity of this sector in understanding their human rights obligations places resource companies in a strong position to create real change in combating modern slavery. In many cases, this will require building an

explicit consideration of modern slavery risks into existing risk management systems and processes. This includes ways to manage modern slavery risks, and instances of modern slavery when they are found.

The resources sector should be considered high-risk in terms of modern slavery for several reasons, including due to:

- demand for migrant and base-skill workers
- the short-term and temporary nature of some work, such as construction
- high-risk business models, including labour hire and sourcing
- frequently operating in high-risk geographies
- chartering and contracting sea transport, which is a known high-risk sector.

Australian resource companies face particularly high risk of exposure to modern slavery due to the complex structure of their supply chains and operations, and their global reach. The many tiers of suppliers associated with resource companies are often where modern slavery risk is hidden. Day-to-day operations frequently draw upon a variety of resources in the form of labour, transportation and procurement, where visibility over the human rights practices of sub-contractors and beyond tends to be low.

Modern slavery risks occur at many points in the resources supply chain, including downstream from a product stewardship perspective. The raw ingredients produced by resource companies are ultimately used in manufacturing processes, many of which carry high modern slavery risk.

Resource companies are also exposed to risks associated with their corporate operations. These include risks relating to building management and other functional services, such as catering and cleaning, which have elevated risks of forced labour and trafficking practices.

Modern slavery can occur at any point in the supply chain. However, there are risk hot spots where it is more likely to be present. Some of these are emerging as the result of the global trend towards decarbonisation.

Demand for certain raw ingredients used in the manufacture of renewable energy technology is rapidly increasing. This has led to changes in resource companies' long-term business strategies as they seek to meet this demand. In some cases, resource scarcity and grade decline mean that miners are increasingly operating in high-risk jurisdictions and expenditure on exploration in remote or challenging geographies has increased.

In addition, public commitments to reduce Scope 1 and 2 emissions mean resource companies are increasingly installing renewable generation at operational sites and sourcing dispatch power through power purchase agreements (PPAs). This exposes resource companies to some of the risks detailed in the following section on energy companies.

2.2

Energy

For the Australian energy sector, most modern slavery risk occurs in the direct procurement of goods used in the construction of power infrastructure.

Lower renewable energy costs and changing societal expectations have meant power generators are adjusting their energy mix and moving toward a greater proportion of renewables in their portfolio composition. Deployment of capital into renewable plant creates fundamental changes to traditional supply chains and therefore the underlying modern slavery risk.

The energy sector should be considered high-risk for modern slavery for several reasons, including:

- high demand for migrant and base-skill workers in construction of infrastructure
- supply chains that include high-risk geographies in the context of both manufacturing and resource extraction
- short-term and temporary nature of some work, such as construction
- use of labour hire and outsourcing of construction and maintenance to third-party contractors

As Case Study 1 demonstrates, renewable energy technologies have been identified recently as a significant area of modern slavery risk in energy company supply chains. This occurs both in the extractive context mentioned above but also in manufacturing.

In the past, the supply chain relationship between energy companies and resource companies could be characterised as relatively simple and stable. Resource companies provided feedstock for fossil fuel generation and, in turn, purchased power from the energy sector for their continuing operations. However, this has changed. Power generators are shifting to a greater proportion of renewables in their portfolio. This means that an increasing variety of metals and minerals produced by mining companies find their way to power generators via manufacturers of renewable technology. Generators in turn sell this power to resource companies through increasingly complex carbon-neutral offtake arrangements.

Energy retailers are also increasingly purchasing renewable energy directly from third-party generators, such as wind and solar farms, to on-sell to customers. Adoption of PPAs has increased as companies offset their carbon emissions and even look to achieve neutrality. This exposes those energy companies purchasing renewable power to modern slavery risks in the manufacturing of renewable plant sourced by generators from whom they purchase power.

Figure 1:
How decarbonisation
and the energy
transition create
emerging modern
slavery risks



DECARBONISATION AND THE ENERGY TRANSITION



CASE STUDY 1:

MODERN SLAVERY ISSUES IN RENEWABLE ENERGY TECHNOLOGIES SUPPLY CHAINS

Modern slavery risks are heightened when there is a change in procurement strategy and high volumes of manufactured goods are required at short notice. The shift to renewable energy has revealed a number of areas of emerging modern slavery supply chain risk for energy companies.

For example, labour risks have been identified in the supply chains for solar panel technology.⁹ To minimise the risks of sourcing from high-risk geographies, Australian trade unions have called for the Government to increase investment locally to manufacture solar product modules, and in turn ensure safe working conditions by reducing reliance on imported products that may be associated with forced labour.¹⁰

Similarly, the boom in wind power has created the conditions for precarious labour issues and environmental degradation in the logging of balsa wood in the Amazon.¹¹ The fact that certain minerals are fundamental to particular renewable technologies is another key component of modern slavery risk. Many of these minerals are extracted in geographies with low labour rights protections and/or a heightened risk of child labour (see Case Study 8 on page 42).

2.3

Examples of modern slavery risk: corporate, operations and procurement



Corporate

Resources and energy companies with a global footprint have major assets across geographies that require building services.

Building services carries its own significant modern slavery risks. For example, facilities management services such as cleaning and maintenance present high risk: in Australia, the poor working conditions and intersecting risks for cleaners are now well documented.¹² Similarly, hospitality and catering have higher risks of association with forced labour and trafficking practices. In these areas, base-skill labour, vulnerable populations and high-risk business models come together to elevate the overall risk of modern slavery practices being present.



Operations

As highlighted above, labour used in the exploration, construction and extraction phases of resources projects and in manufacturing in the energy sector presents a significant risk.

The temporary and seasonal nature of work, the base-skill labour and migrant worker risk and the use of third-party labour hire arrangements in the provision of that labour can all combine to further magnify the risk of modern slavery in this space. Modern slavery risk is also heightened when labour is procured via third parties, with construction and security services rated as problematic in many geographies.

Logistics and transport is also an area of high modern slavery risk. Modern slavery in this area has been known to take the form of forcing contracts by threat or duress, forcing work of unsafe numbers of hours, or non-payment for non-driving work such as loading and waiting. Pandemic-related restrictions have seen seafarers trapped at sea for up to 18 months and have shone a light on forced labour and other human rights risks in the shipping sector, a key part of resources and energy supply chains.¹³

Additionally, the production phase of extractive projects presents particular risks associated with unregulated artisanal mining, which in certain geographies operates near or overlaps with industrial mining operations. This can bring safety and labour rights risks into close contact with large-scale modern mining. Conflict zones can present significant instability in the production phase in particular, and bring associated slavery risks, in the form of forced labour and inadequate and unstable working conditions, into close proximity with industrial mining operations.

CASE STUDY 2:

MODERN SLAVERY RISKS IN SHIPPING

In the North Sea, low oil prices led to downward pressure on charter rates for supply boats, meaning that local crews were increasingly replaced by hired labour from developing countries. The risk to people was brought starkly to light in 2016, when a supply vessel that had been chartered by several oil and gas companies was revealed to have Indian seafarers on board who had not been paid for many months.¹⁴

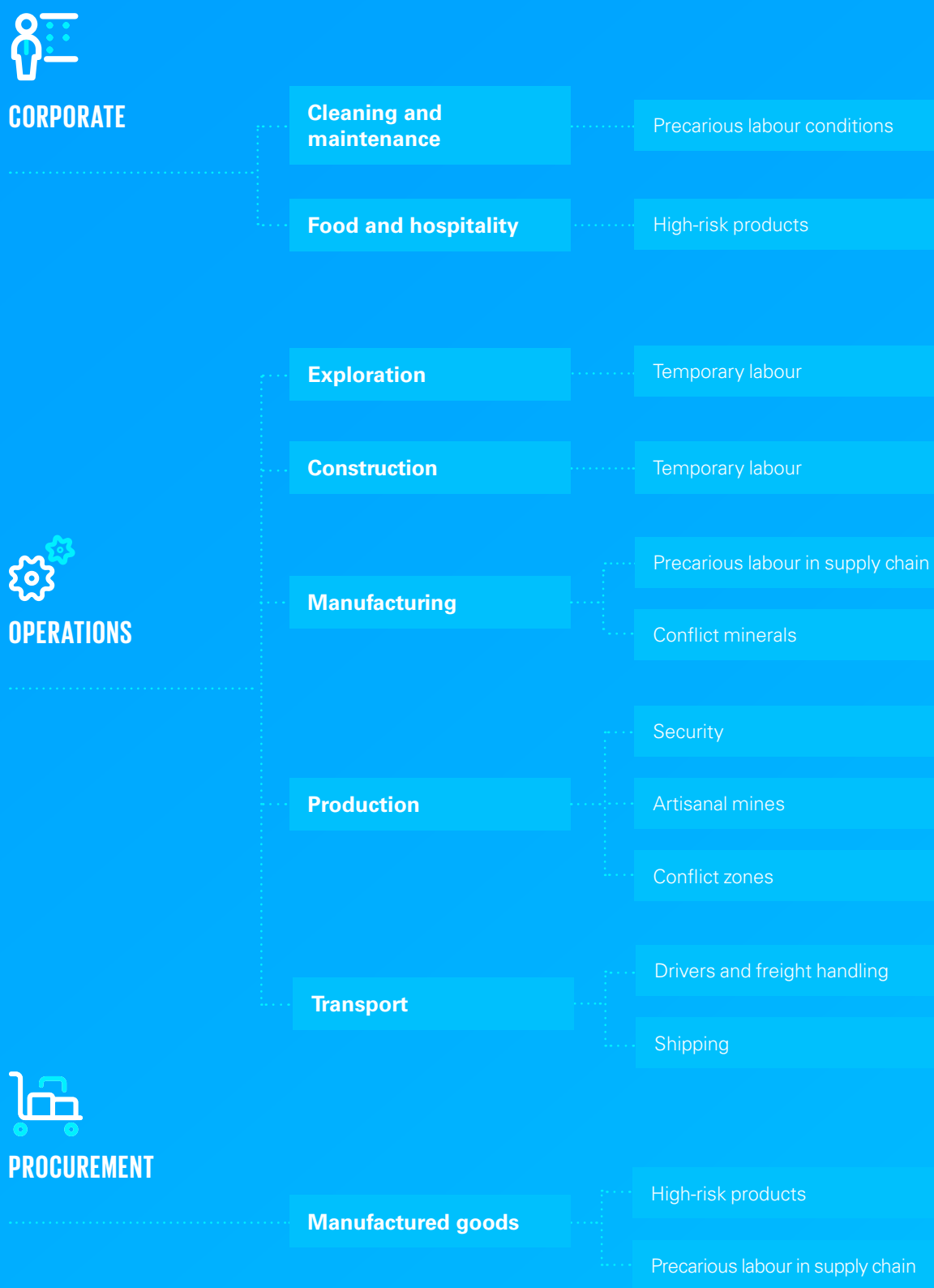


Procurement

Procurement of goods across both corporate and operations is also an area of risk. Goods purchased by resources and energy companies that are commonly considered high-risk include:

- Personal Protective Equipment (PPE) and uniforms
- Solar panels
- Explosives
- Construction materials
- Tyres and wheels
- Electrical parts and electronic equipment, including metering equipment
- Mechanical parts
- Processed metals
- Imported feedstock
- Food

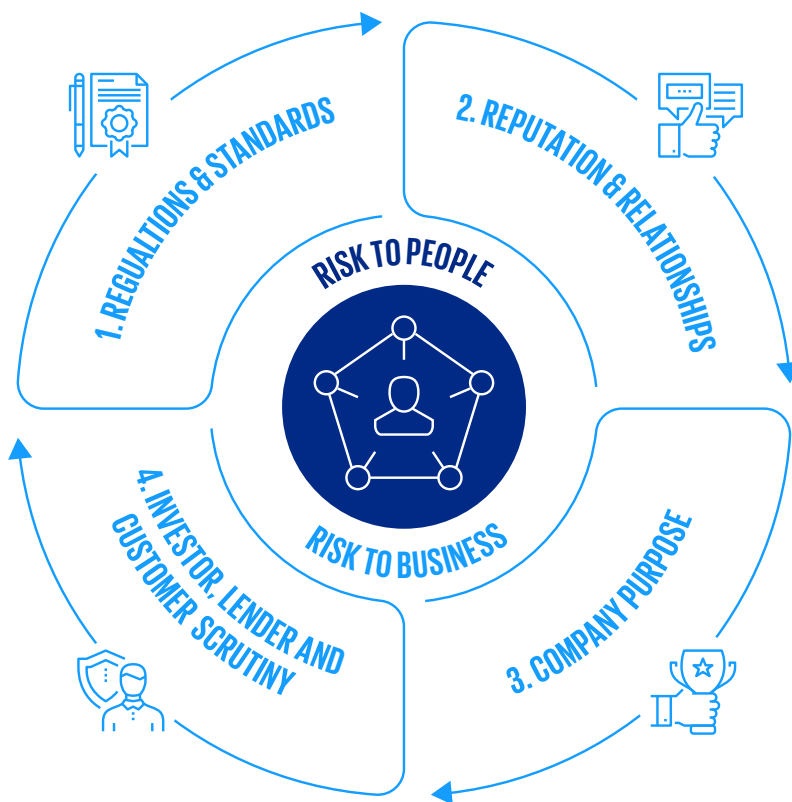
Figure 2: Areas in resources and energy where modern slavery risks are most likely to arise



3.

RISK TO PEOPLE AND RISK TO BUSINESS

When companies fail to take their human rights responsibilities seriously, they expose people to harm and themselves to business risk.



The modern slavery reporting requirement helps direct corporate responses, including the development of systems and processes that identify and address modern slavery risk, and ultimately mitigate and account for harm to people.

In this section we consider how to put risk to people first and then consider how this can help companies across the resources and energy sectors to assess the risks to their business if they fail to respond to modern slavery.

3.1

Focusing on risk to people

The Australian Government has made it clear that it expects business to identify and manage risk to people.

The Guidance for Reporting Entities explains that effective company responses to the modern slavery reporting requirement should be grounded in the human rights due diligence framework outlined in the 2011 *United Nations Guiding Principles on Business and Human Rights* (UNGPs).¹⁵

A key difference between human rights due diligence and traditional business due diligence and risk management is that human rights due diligence focuses on risks to people rather than risks to the business.

A risk-based approach, from a human rights due diligence perspective, means that businesses should prioritise addressing the most severe risks to people first. The most severe risks to people in relation to modern slavery will usually, though not always, also align with risks to your business (such as reputational or financial risks). However, taking a 'risk to people' approach, you will need to ask the question in a different way: how might people be harmed as a result of this business activity, decision, relationship or purchase?

For instance, typical metrics used to narrow vendor risk assessment may focus on highest-value suppliers, or highest spend. However, the areas of biggest risk to people may sit outside your high-value and strategic suppliers.

Considerations of the company's level of influence, alongside the severity and remediability of potential impacts, can help guide your mitigation approach and response.

As you develop a human rights risk-based response, which prioritises severe risks to people, your due diligence process should include a mechanism that will enable you to demonstrate the effectiveness of the steps you are taking over time. Ideally, human rights due diligence processes for managing modern slavery and other human rights risks will be integrated with existing risk management processes in your business.

3.2

Business exposure to risk

Business is exposed to human rights risks in four domains: regulatory reporting requirements and standards; reputational damage and eroded public trust; scrutiny of social impact credentials by investors, lenders, buyers and others; and values alignment for employees.

REGULATIONS AND STANDARDS

International frameworks and domestic legislation with cross-jurisdictional reporting requirements are all advancing. Relevant developments include:

- *Modern Slavery Act 2018* (Cth)
- *Modern Slavery Act 2018* (NSW)
- Similar legislation in other jurisdictions, including the *German Corporate Due Diligence in Supply Chains 2021*, *Norwegian Transparency Act 2021*, *French Corporate Duty of Vigilance Law 2017*, *Modern Slavery Act 2015 (UK)*, *California Transparency in Supply Chains Act 2010*, and *European Union (EU) Directive on Non-Financial Disclosures 2014*. The EU is expected to introduce an EU-wide directive on mandatory human rights and environmental due diligence laws in late 2021.

These legislative developments have been driven and informed by the UNGPs, which confirm the corporate responsibility to respect human rights and establish a framework for addressing human rights risks. This framework requires businesses to address their adverse human rights impacts by taking measures to prevent, mitigate and, where appropriate, remediate, human rights harm.

The UNGPs also expressly inform risk management expectations set out in standards relevant to the resources and energy sectors, such as the *OECD Guidelines for Multinational Enterprises (OECD Guidelines)* and the *Equator Principles, based on the International Finance Corporation Environmental and Social Performance Standards*, which apply to project finance (see Case Study 3).

Reporting on ESG issues is also increasingly being required by lenders, investors, stock markets and mineral exchanges, as well as companies downstream in the supply chains of resources and energy companies.

Alongside the emerging cohort of corporate reporting and human rights due diligence laws outlined above, other regulatory tools are also being used to tackle forced labour, including the use of customs and import controls. The United States, for example, can secure goods that have been produced by forced labour under the U.S. Tariff Act 1930. Similar laws are under consideration in Canada and Australia. The rise of anti-bribery and corruption legislative frameworks is also of particular relevance to the resources and energy sectors, given the intersectionality between these criminal practices and modern slavery.

CASE STUDY 3:

INTERNATIONAL STANDARDS AND INDUSTRY EFFORTS TO ENCOURAGE ETHICAL PRACTICE

In recognition of the high degree of risk associated with both resource company supply chains and their operations, industry bodies and global organisations have established influential standards in an effort to encourage sustainable and ethical practice in the resources and energy sectors.

For example, the International Finance Corporation (IFC) is a major provider of equity and loan financing for resources and energy companies.

The IFC's *Environmental and Social Performance Standards* (IFC Performance Standards) define the responsibilities its clients must adopt for managing their environmental and social risks.

The Equator Principles, a risk management framework adopted by 92 financial institutions covering over 70% of project finance debt in emerging markets, incorporate the UNGPs and are based on the IFC's Performance Standards.

Notably, IFC's Performance Standard 2, Labour and Working Conditions, specifically sets out to:

Avoid the use of forced labour

Protect workers, including vulnerable categories of workers such as children, migrant workers, workers engaged by third parties, and workers in the client's supply chain.

A further example is the International Council on Mining and Metals (ICMM), which was founded in 2001 to promote safe, fair and sustainable practices in the mining and metals industry. There are currently 28 member companies accounting for a large proportion of global mineral production.

Membership of ICMM requires a commitment to ten Mining Principles that set out best practice for sustainable development in the mining sector.

ICMM's Principle 3 expects that companies will implement the UNGPs¹⁶ and includes a commitment to:

'Respect the rights of workers by: not employing child or forced labour; avoiding

human trafficking; not assigning hazardous/ dangerous work to those under 18;

eliminating harassment and discrimination; respecting freedom of association and

collective bargaining and; providing a mechanism to address workers' grievances.'

The Principles also include the goal of enhancing the social and economic development of host countries and Indigenous communities by seeking opportunities to address poverty.

REPUTATION AND RELATIONSHIPS

Modern slavery reporting requirements are, at their core, transparency requirements aimed at increasing corporate responsiveness to modern slavery.

The reputational risk imposed by stakeholders – including the media, civil society and labour unions – calling out unaddressed modern slavery risk can be high. Investors place increasing emphasis on the benchmarking of corporate performance on human rights, as exemplified by the Corporate Human Rights Benchmark¹⁷ produced annually by an investor- and civil society-run organisation.

Civil society groups also play a key role in scrutinising transparency efforts on modern slavery: in some jurisdictions, reports have benchmarked published modern slavery statements and highlighted companies demonstrating leading and poor human rights practice.¹⁸ Increasing focus on the need for a ‘just transition’ – a transition to renewable energy that does not itself cause harm to people – has increased public scrutiny on companies in the resources and energy sectors, as have outcries over such incidents as Juukan Gorge in Australia¹⁹ and the tailings dam collapse at Brumadinho in Brazil.²⁰ Shareholder action has also increasingly been used to attempt to force resources and energy companies to adopt higher standards on issues with ESG implications.²¹

COMPANY PURPOSE

For many businesses, addressing modern slavery is the ‘right thing’ to do. It aligns with their purpose, culture and values. Employees are also increasingly demanding that their employer consider the human rights impacts of their activities.

Action on modern slavery should also be seen as part of a company’s commitments on ESG issues, such as contribution to the achievement of the Sustainable Development Goals (SDGs). The UN’s 17 SDGs were adopted in 2015 and have become a popular framework for companies’ sustainability efforts. The SDGs offer a shared global framework to end extreme poverty, fight inequality, foster just and inclusive societies and protect the planet. The majority of the SDGs and their 169 targets are underpinned by international human rights standards. The efforts of Australian businesses to address their modern slavery risks contribute directly to the achievement of Sustainable Development Goal 8, Target 8.7, which asks for effective measures to eradicate modern slavery by 2030.

INVESTOR, LENDER AND CUSTOMER SCRUTINY

Investors, lenders and customers are increasingly analysing the human rights performance of businesses. Businesses that cannot demonstrate that they are putting in place appropriate systems to identify and address these risks may experience loss of substantial investors or loss of trust from its stakeholders. This particularly applies in contexts where third parties raise allegations of modern slavery practices in relation to an organisation or its supply chains.

4.

MODERN SLAVERY AND HUMAN RIGHTS RISKS

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The Modern Slavery Act 2018 (Cth) requires businesses to look specifically at modern slavery.

However, modern slavery does not occur in a vacuum, and situations where modern slavery takes place are likely already to involve a range of other violations of the human rights of workers.

Resources and energy companies should therefore consider wider labour rights issues and apply a human rights risk lens to the company's activities and relationships.

Taking a human rights risk approach will enhance the credibility and strength of the modern slavery response and statement as modern slavery risk assessment will be anchored in a broader framework that takes a holistic approach to the risk of harm to people. It will also enable a whole-of-business approach to management of those risks and impacts, whereas a narrower modern slavery response can become siloed as a compliance issue, leading to ineffective responses.

The benefit of the more holistic approach, supported by the UNGPs, is that it allows for early identification and response in contexts where human rights violations may be taking place, thus decreasing the opportunities for severe human rights violations like modern slavery to occur.

While all human rights may be impacted in the course of activities and operations within the resources and energy sectors, certain fundamental human rights are particularly vulnerable to adverse impacts.

Labour rights are particularly prone to being negatively impacted, particularly in the contexts of subcontracted labour and manufacturing in procurement supply chains. The right to work is a fundamental human right that can significantly affect the enjoyment of other human rights, including the right to health, adequate food, clothing and housing, and culture.

The employment relationship can be a site of unequal power dynamics that increase the risk of human rights violations. Extreme erosion of rights may result in forced or involuntary labour, including for vulnerable populations such as children and migrant workers.

Resource companies often operate on Indigenous territory and the presence of their products in energy company supply chains, as well as the importance of Traditional Owners in the Australian context, means that **Indigenous rights** are of concern for the whole resources and energy sectors. The Indigenous rights to consultation, free, prior and informed consent and self-determination are key and act as protectors of further rights concerning Indigenous communities and their traditional territories.

The **right to a healthy environment** is now recognised by the UN and in some form by over 150 countries,²² acknowledging the fact that without protection of the environment which we inhabit, many human rights cannot be realised, the crucial rights to food and water among them. The environmental impact of resource companies and their supply chains is often significant and these companies must consider and mitigate these impacts and their associated consequences for rights.

Resources and energy companies, especially when they operate in remote regions in developing countries, can also have a significant positive impact on human rights. Though the UNGPs make clear that positive impacts cannot be used to offset negative impacts on human rights, by taking a holistic, rights-based approach, resources and energy companies can focus on preventing and mitigating negative impacts on human rights and maximising positive ones.

COMMONLY INFRINGED HUMAN RIGHTS IN THE RESOURCES AND ENERGY SECTORS



Right to freedom from slavery and slavery-like conditions



Right to freedom from discrimination



Right to free, prior and informed consent



Right to health



Right to self-determination



Right to water



Right to a healthy environment



Right to safety at work



Right to traditional culture



Freedom of assembly and association and right to strike

CASE STUDY 4:

LAND RIGHTS OF INDIGENOUS PEOPLES

As well as resource companies, renewables projects can also have potentially adverse human rights impacts on Indigenous populations.

In Latin America, foreign direct investment in solar panel projects disproportionately affects vulnerable people in Indigenous communities. While the positive impacts of renewable energy projects for the environment are clear, awareness of the adverse impact of renewable energy projects on people and communities is important. For example, the biggest solar project in Latin America placed solar panels over 600 hectares of deforested land, but Indigenous communities claim they were not adequately consulted. The project has also been associated with numerous allegations of threats and attacks against Indigenous people.²³

5.

PRACTICAL RESPONSES

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A practical response to the mandatory reporting requirements will focus on:

01

Identifying modern slavery risks.

You will need to determine some important threshold questions, such as your consolidated annual revenue, relevant reporting entities, and your approach to joint statements for corporate groups. However, the most efficient and effective responses will focus on doing the work of addressing and ending modern slavery practices.

02

Actions taken to assess and address modern slavery risks and impacts.

In this section, we help you to understand the key risk factors for identifying modern slavery risks in the resources and energy sectors. Furthermore, we provide practical guidance on actions your business can take to manage identified risks, using the rights-based approach outlined in the UNGPs.

03

Measuring the effectiveness of your response.

5.1

Identifying modern slavery risks

KEY MODERN SLAVERY RISK FACTORS

The behaviours and practices which constitute modern slavery are serious human rights violations. The level of risk of modern slavery depends on a range of intersecting contextual factors.

There are four key factors which elevate the risk of modern slavery: vulnerable populations, high-risk business models, high-risk categories, and high-risk geographies. Where multiple high-risk factors co-exist, there is a higher likelihood that actual harm is being experienced, and additional controls are required to ensure that risk does not become harm.

Figure 3: Key modern slavery risk factors

Vulnerable populations

Migrant workers

Base-skill workers

High-risk business models

Labour hire and outsourcing

Franchising

Seasonality

Aggressive pricing



High-risk categories

Services procurement

Goods not for resale

Raw materials

High-risk geographies

Conflict

Weak rule of law

Corruption

Displacement

State failure to protect human rights



THE ROLE OF MAPPING

“Operations’ is intended to cover any activity undertaken by the entity to pursue its business objectives and strategy. These activities may include research and development, construction, production, distribution, purchasing, sales, and financial lending and investments.”

Explanatory Memorandum, Modern Slavery Bill 2018 (Cth)

Mapping critical areas of modern slavery risk in the resources and energy sectors can help organisations to identify risks. The sectors include high-risk geographies and have increasingly complex supply chains which include many activities where modern slavery risks may exist.

The modern slavery legislation requires you to report on the risks of modern slavery across both your supply chains and operations. Your entity’s operations may include direct employees in the business, while supply chains may include procured services such as construction, security, transport, cleaning, furniture and building management. Mapping areas of risk in operations and supply chains is a useful way to consider your entity’s connection to and influence on risks.

Resources and energy companies should invest effort in:

- systematically mapping your entity’s risks
- prioritising your entity’s responses according to the most severe risks to people
- ascertaining the response required to avoid, mitigate or manage those risks.

Resources and energy companies – particularly the latter – are likely to find that many modern slavery risks are hidden deeper in the supply chain than Tier 1 suppliers. This emphasises the importance of detailed mapping.

In the resources and energy context, it is also particularly important to consider joint ventures. Managed/operated joint ventures are considered to be part of operations for the purposes of reporting under the

Modern Slavery Act 2018 (Cth), but so are investments in non-managed joint ventures. The Australian Government’s Guidance for Reporting Entities explains that:

‘Entities’ operations also include making financial investments in, and engagement with, non-managed/non-operated joint ventures (although the joint venture is not a managed operation, the entity’s investment in and engagement with the joint venture is a business activity). For example, an oil company’s operations include its investments in non-managed/non-operated joint ventures.’²⁴

THE IMPORTANT ROLE OF CIVIL SOCIETY AND COMMUNITIES

Even if you are confident in your modern slavery risk management systems, often the best information comes from consultation and collaboration. Civil society organisations and communities can be valuable partners to resources and energy companies in providing insights into areas of high risk of modern slavery, particularly where risks are not directly connected to an entity’s operations. For example, non-governmental or civil society research and reports can provide insights into allegations of human rights abuses that a resources or energy company might be connected to via labour outsourcing, construction contracts or transport arrangements.

Failure to consult and transparently report may also have a negative reputational impact and affect a company’s social licence to operate. Civil society has called out companies in industries where modern slavery risks are prevalent, but where the company has nonetheless failed to report the identification of modern slavery risks in their operations and supply chains.²⁵ Reporting that you have ‘no modern slavery risks’, or that you are not taking steps to manage modern slavery risks prevalent in the resources and energy sectors, may carry similar reputational risk.

Civil society groups are also proactively using existing accountability mechanisms to call out poor corporate practices. For example, the OECD Guidelines provide for a complaint mechanism, the National

Contact Point, in each signatory country. This complaint mechanism has been widely used by communities, civil society groups and unions to raise concerns about breaches of the OECD Guidelines by businesses. While the conciliation-based process undertaken by National Contact Points is often confidential, final findings may be made public, enabling public scrutiny over the alleged misconduct. From 2015 to 2019, approximately 20% of complaints globally to National Contact Points each year were about the conduct of resources and energy companies.²⁶ Adopting

effective due diligence processes will not only ensure compliance with modern slavery legislation but will also help avoid complaints being made to National Contact Points or other accountability mechanisms. It will also favourably position your business to respond to future legislative developments, such as the EU's proposed law on Mandatory Environment and Human Rights Due Diligence (see below).

CASE STUDY 5:

EU MANDATORY ENVIRONMENT AND HUMAN RIGHTS DUE DILIGENCE LAW (FORTHCOMING)²⁷

The European Parliament passed a resolution in March 2021 recommending an EU-wide directive that would require companies to:

- carry out, and have a strategy for, ongoing due diligence on potential and actual adverse impacts on human rights, the environment and good governance in their business operations and 'business relationships' throughout the company's value chain including subsidiaries suppliers
- establish legitimate, accessible and transparent grievance mechanisms²⁸
- provide remediation or cooperate with the remediation process if the business finds that it has caused or contributed to an adverse impact, and use its best efforts to cooperate in remediation where it is directly linked to an adverse impact.²⁹

The proposed law would apply to many companies operating in the EU or governed by the law of a member state.³⁰ Importantly, it would include not just the business itself, but also its value chain.³¹ **Its impact therefore would be global.**

The proposed law may also provide for sanctions and civil liability in certain circumstances.³² The proposed law defines a company's 'value chain' as all activities, operations, business relationships and investment chains of an undertaking. It includes direct and indirect business relationships, either upstream or downstream, and which either (a) supply products or services that contribute to the company's own products or services, or (b) receives products or services from the company.³³ This broad definition of 'value chain' includes a much broader range of entities than would be captured by reference to a 'supply chain'.

The potential impact of this new law is expected to be significant in relation to captured companies' own operations and their value chains. **It will require companies that have not engaged with human rights risks to do so, with likely penalties for non-compliance.**

SUMMARY: KEY RISK IDENTIFICATION STEPS

01

Map your operations and supply chain

02

Identify areas of operations and supply chain where high-risk factors are present with internal cross-function engagement

03

Test your assumptions through consultation with relevant external stakeholders

04

Continuously perform risk identification and risk assesment across the lifecycle of any business relationship

05

Enhance your risk identification methodology over time by:

- understanding both inherent and residual risk;
- building on current ESG frameworks, supplier management frameworks, customer screening systems and other third party risk research to identify human rights and modern slavery risk;
- drawing on and embedding sector-wide typologies and indicators;
- asking new questions of your existing data and the smart use of data analytics; and
- considering the evolving dynamics of human rights risk to reflect changes in the profile of modern slavery practices over time.

5.2

Taking action

According to the Australian Government's *Guidance for Reporting Entities*, effective business responses to the mandatory reporting requirement should be grounded in the human rights due diligence framework outlined in the UNGPs.

In practice, this means:

1. Having a **policy commitment** to meet the business responsibility to respect human rights.
2. Conducting a **human rights due diligence process** to identify, prevent, mitigate and account for how the business addresses its human rights risks, such as modern slavery, including:
 - **risk identification and assessment** informed by mapping your operations and supply chain and identifying and prioritising the most severe risks
 - acting on the findings of the risk identification and assessment, by implementing **risk management measures**, including training
 - **monitoring** the risk management measures taken and **reporting** on them, such as in your annual modern slavery statement.
3. **Remediating** human rights harms (such as modern slavery) that the business causes or to which it contributes. Where the business does not cause or contribute to the harm, but is directly linked to the harm (for example, through a supplier or business relationship such as minority shareholding), then the business should use its leverage and influence to mitigate the harm, prevent it from recurring, and to ensure the persons harmed are remediated. Having effective remediation processes in the modern slavery context includes:
 - responding to the identification of instances of modern slavery in a manner that does not jeopardise the safety of victims, ideally working with expert advisors, such as local NGOs
 - having a trusted, accessible and confidential grievance mechanism (and ensuring your suppliers have one), to elevate and address worker concerns, and to act as an early warning system for modern slavery risks.

5.3

Case studies of practical actions in the resources and energy sectors

Below we outline practical examples of companies operating in the resources and energy sectors undertaking risk management actions to address their modern slavery risks.

CASE STUDY 6

MODERN SLAVERY IN HIGH-RISK GEOGRAPHIES

After paying \$6 million in compensation to villagers affected by its operations, and finding evidence of forced labour on one of its gas pipelines in Myanmar, an oil major designed a Human Rights Guide which details how the Group's Code of Conduct is put into practice to manage modern slavery in its supply chain.

Its experience caused the company to reform its supply chain management system which has led to it being consistently highly rated compared to peer oil firms in the Corporate Human Rights Benchmark.¹⁴

CASE STUDY 7

DEMONSTRATING COMMITMENT TO AN ETHICAL VALUE CHAIN

Following allegations of forced labour in its supply chains, and recognising the importance of demonstrating value alignment, a mining major designed and implemented Responsible Sourcing Standards for Suppliers, which outline supplier requirements under six pillars, with prevention of modern slavery included under the pillar requiring respect for labour and human rights.

The CEO was one of eight business leaders who joined the UK Home Secretary in founding the UK Business Against Slavery Forum in 2017, an initiative to lead industry action against modern slavery in supply chains. The company has publicly committed to collaborating to end modern slavery.

5.4

Sector collaboration

Companies across the resources and energy sectors often have similarities in their supply chains and therefore share many modern slavery risks.

Collaborative initiatives can therefore be a useful way to increase efficiency in identification of modern slavery risks. Collaborations also allow resources and energy companies to combine and therefore increase their leverage over the businesses with which they are engaged. Industry platforms, collaborative sector agreements and multi-stakeholder initiatives are all examples of actions that can help increase or maximise the leverage of companies on a specific issue or context.

Some examples of collaboration in the sector on the issue of modern slavery are already apparent. As part of its framework on sustainable development, the ICMM shares case studies of member company responses to modern slavery,³⁵ while the Minerals Council of Australia has consolidated modern slavery advice for the sector³⁶ and has also published a guide specifically addressing heightened modern slavery risk in the extractive sector due to Covid-19.³⁷ Similarly, the Australasian Convenience and Petroleum Marketers Association (ACAPMA) has produced a guide for that sector,³⁸ while a group of Australian resources and energy companies have joined together to agree on a self-assessment questionnaire (SAQ) to distribute to suppliers.³⁹

However, the opportunities for further collaboration in the resources and energy sectors are striking, with the need for joint responses to issues of emerging risk. Leading businesses could collaborate on a proactive response to modern slavery risks, including where these are part of their value chain rather than direct supply chain. For example, modern slavery risk in shipping has been shown to be relatively high. Oil and gas companies often charter vessels from the same owners (see Case Study 2), identifying an opportunity for collaboration on this issue. Similarly, though mining companies commonly sell minerals as free onboard (FOB), there is an opportunity to work collaboratively with peers and with buyers who are contracting the ocean freight to require certain conditions of the vessel owners.

“Recognising the industry has shared supply chains, we designed a common self-assessment questionnaire (SAQ) to promote efficiency and reduce the reporting burden for suppliers who will likely receive requests from their customers on modern slavery. By agreeing a common SAQ, it is anticipated this will reduce any duplication of efforts, minimise the cost of compliance and provide clarity to suppliers by using consistent terminology.”

SOUTH 32⁴⁰



CASE STUDY 8

SECTOR COLLABORATION: COBALT

Cobalt, which is still a crucial component of most lithium-ion batteries, a technology crucial to the energy transition, is strongly associated with modern slavery risks. More than half the world's supply is mined in the Democratic Republic of Congo, where a significant proportion comes from artisanal mines, where miners – many of them children – work in dangerous conditions for minimal reward.⁴¹

In response, the Responsible Cobalt Initiative was developed as a collaboration between Chinese cobalt importers, the OECD and other stakeholders, to increase supply chain transparency and promote better supply chain governance.⁴² Additionally, the Responsible Minerals Initiative has developed cobalt-specific guidelines and a reporting template to assist companies in their due diligence efforts on this mineral.⁴³

CONCLUSION

The *Modern Slavery Act 2018* (Cth) presents an opportunity for the resources and energy sectors to embrace a human rights-based approach to risk identification and mitigation. Responding to and demonstrating continuous improvement against the mandatory reporting criteria is the best way to reduce the risk to your business and ultimately help stop modern slavery practices. Responding to and demonstrating continuous improvement against the mandatory reporting criteria is the best way to reduce the risk to your business and ultimately help stop modern slavery practices.

The global context of decarbonisation means that the supply chains of resources and energy companies are changing rapidly and becoming increasingly intertwined. This rapid change means that companies need to challenge their assumptions about where risks to people might exist in their operations and supply chains and focus attention on areas of emerging risk that are a product of the energy transition.

This guide has emphasised particular areas of risk for resources and energy companies and highlighted the four key risk factors for modern slavery: high-risk geographies, high-risk business models, high-risk categories and vulnerable populations. The shift in supply chains caused by the move towards decarbonisation, and the compressed timeframes often involved, mean that all four of these risk factors are very relevant to the activities of resources and energy companies. Many resources and energy companies already report under Australian and UK modern slavery legislation. In light of significant risk and complexity in the sector, it is important to build on existing initiatives and momentum in the 'human rights and social licence to operate' space, to explicitly incorporate modern slavery risk considerations, and adopt a program that facilitates continuous improvement.

Some companies will be right at the start of the journey, with significant internal buy-in required and foundational commitments to human rights still to be made. Others may have already developed quite sophisticated approaches to address human rights issues, perhaps as part of an ESG framework, community relations strategies or other approaches to social impacts. Most will have existing risk systems and controls around which you can build or retrofit human rights considerations.

A robust approach to managing modern slavery risks requires an understanding of the maturity of your existing systems and controls with an articulated pathway to enhancing them over time. Building in learning from international leading practice and fundamental human rights principles can set a foundation for reporting on effectiveness under the mandatory criteria year-on-year, providing a benchmark for your response.

The following checklist provides practical guidance for businesses starting to take action to manage their modern slavery risks.

CHECKLIST

1 Raising awareness on modern slavery in the entity

- ☐ Have you informed management and board on modern slavery and their responsibilities to address it?
- ☐ Has the business conducted a strategic conversation on its risk appetite, values and level of ambition to respect human rights and contribute to eradicate modern slavery?

2 Understanding how modern slavery risks present in operations and supply chains

- ☐ Do you understand what behaviours and practices constitute modern slavery and likely risk factors for the business and sector?
- ☐ Has the business included modern slavery risks on its risk register?
- ☐ Has the business established accountabilities for identification of modern slavery risks (i.e. allocated lead responsibility at operational and senior management levels, and equipped staff for those roles)?
- ☐ Has the business collaborated with experts, civil society, victim advocates or other relevant stakeholders to assist with better identification of modern slavery risks?

3 Assessing the existing supply chain of the business

- ☐ Is the entity able to report at a group-level on behalf of all subsidiaries and across all geographies?
- ☐ Does the board receive regular updates on changes to the structure, operations and supply chain of the entity?
- ☐ Has the business determined its approach to publicly releasing detailed information about its operations and supply chains?

4 Designing and implementing a framework to address modern slavery risks

- ☐ Has the business established senior executive KPIs for managing modern slavery risks?
- ☐ Does the business express its commitment to protect human rights, including modern slavery, through a board approved public statement of policy?
- ☐ Does the board receive periodic reports on modern slavery risks? Is the risk committee (or equivalent) undertaking the more granular work associated with addressing modern slavery risks and addressing risks identified on the risk register?

- ☐ Has the business introduced assurance measures for reporting on modern slavery due diligence?

- ☐ Has the business established an effective grievance mechanism?

- ☐ Has the business established a framework for what it does when it has found evidence that modern slavery may exist in its supply chains?

- ☐ Has appropriate staff training, and education been put in place to ensure the organisation is able to implement its modern slavery obligations effectively?

5 Monitoring and evaluating the effectiveness of the company's actions

- ☐ Does the business monitor and review its human rights policies and their implementation?
- ☐ Has the business engaged with organisations that have in place more mature practices or have implemented regulatory obligations in other jurisdictions?
- ☐ Have management systems and controls uncovered any instances of modern slavery and, if not, are they robust enough?



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