

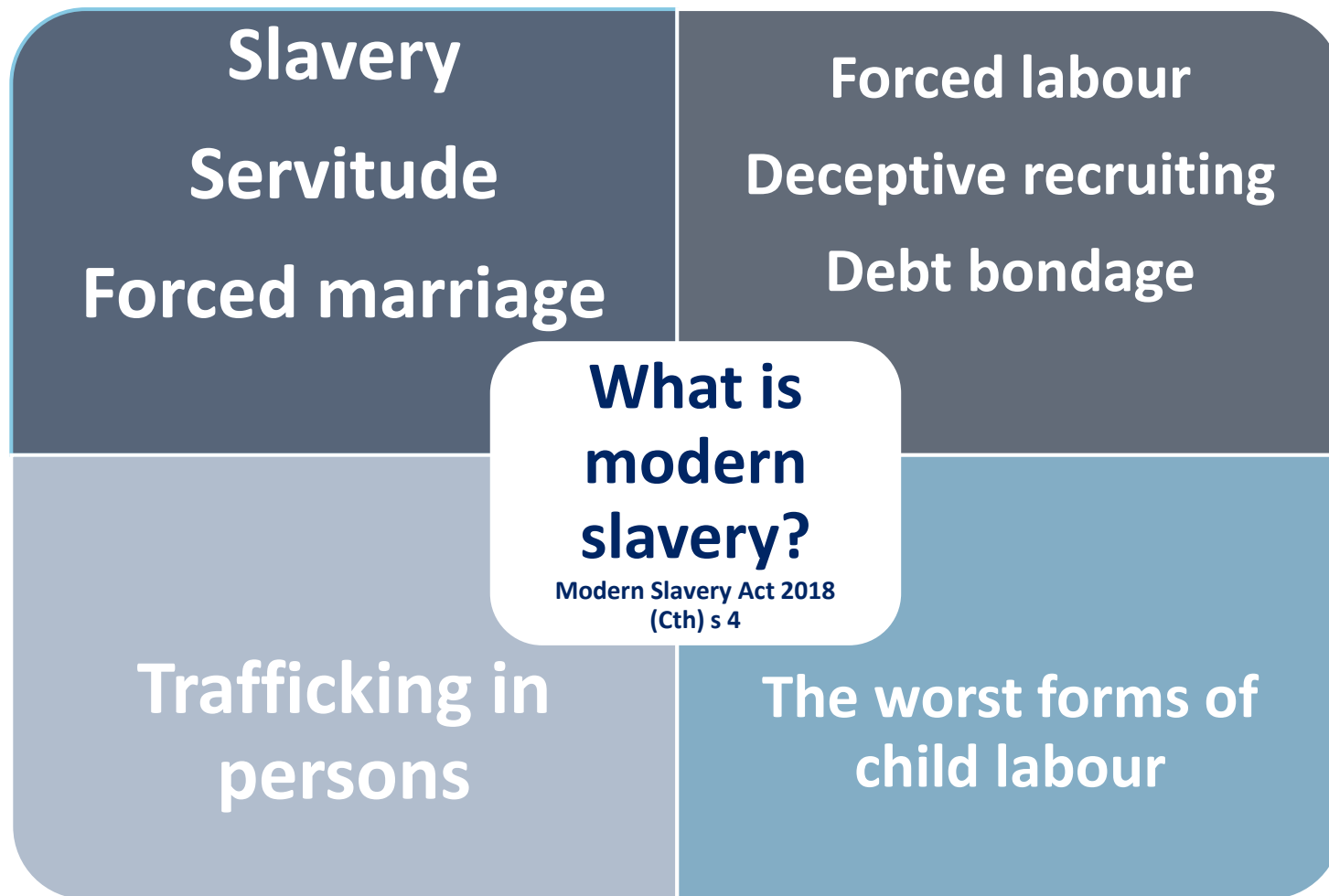


# Modern Slavery

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Presented by Scott Alden, Partner  
HWL Ebsworth







#### **MODERN SLAVERY**

- Worker cannot refuse or cease work because of coercion, threats or deception.
- Worker may also be deprived of personal freedom

#### **DANGEROUS OR SUBSTANDARD WORKING CONDITIONS**

- Worker can refuse or cease work but doing so may lead to detriment.
- Worker is not paid fairly and does not receive some or all entitlements.
- Worker may be required to work excessive hours.
  - Workplace is unsafe.

#### **DECENT WORK**

- Workers' rights respected.
- Worker free to refuse or cease work.
- Worker paid fairly (at least the minimum wage).
  - Workplace is safe.





## First World Countries – Addressing Through Legal / Economic Measures

- UK – Modern Slavery Act 2015
- Australia – Modern Slavery Act 2018
- Germany – 2023
- NZ – Current Consultation Paper
- EU – Products of Forced Labour
- US – Products of Forced Labour



# Prevalence of Modern Slavery

**49.6M**

people in modern slavery in 2021

**27.6M**

in forced labour

**22M**

in forced marriage

**10M**

increase in five years since the last  
estimate

**6.3M**

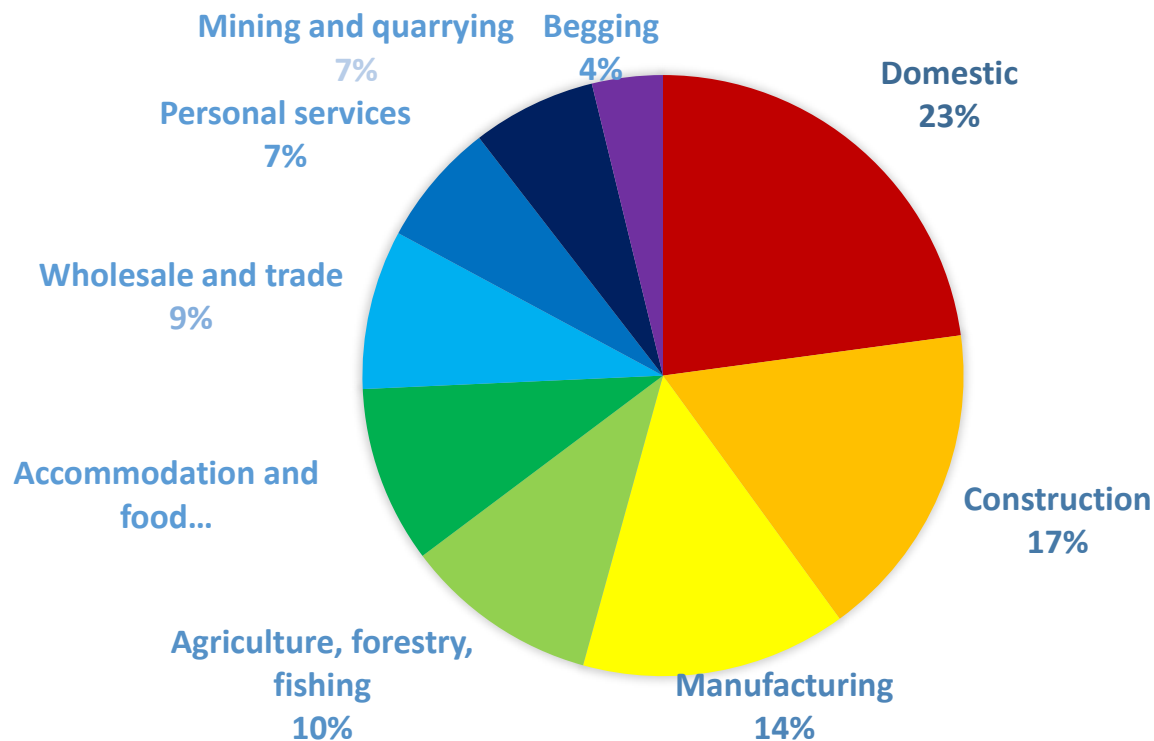
in forced commercial sexual exploitation

**3.9M**

in state-imposed forced labour

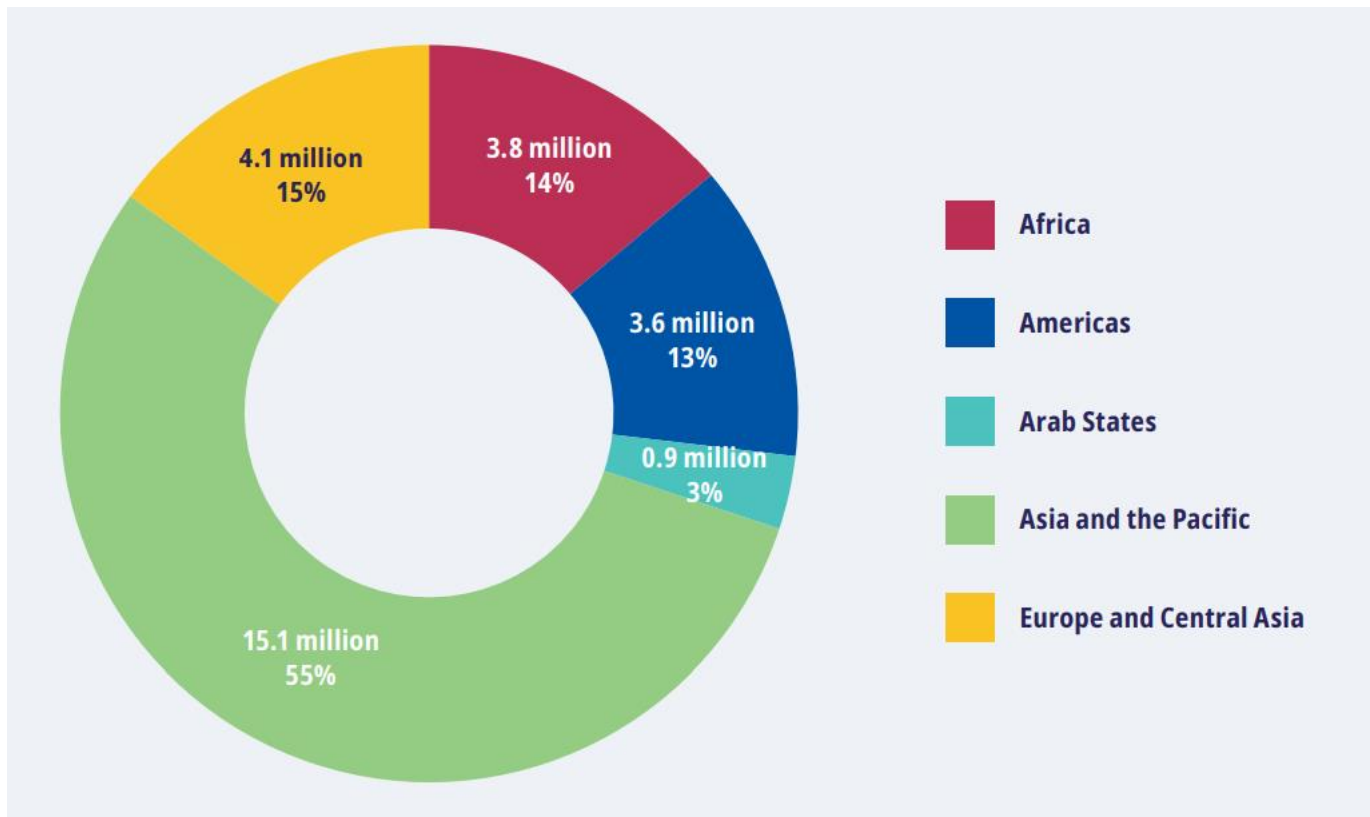


# The prevalence of modern slavery - Sector





# The prevalence of modern slavery







## TOP 10 COUNTRIES WITH THE HIGHEST RISK OF MODERN SLAVERY





## Cth Australia legislation - *Modern Slavery Act 2018*

- Assented to on 10 December 2018
- Commenced on 1 January 2019
- \$100m
- Lodgement of a Modern Slavery Statement



# What to report? Requirements of a statement

## Commonwealth Modern Slavery Act

### Seven mandatory criteria

1. Identify the reporting entity
2. Describe the reporting entity's structure, operations and supply chains
3. Describe the risks of modern slavery practices in the operations and supply chains of the reporting entity and any entities it owns or controls
4. Describe the actions taken by the reporting entity and any entities it owns or controls to assess and address these risks, including due diligence and remediation processes
5. Describe how the reporting entity assesses the effectiveness of these actions
6. Describe the process of consultation with any entities the reporting entity owns or controls (a joint statement must also describe consultation with the entity giving the statement)
7. Any other relevant information



# Modern Slavery Act – Current Review

## Terms of Reference

- The Operation of the Act since its inception
- Compliance with the Act during that period
- Whether additional measures are necessary or desirable to increase compliance – eg Civil penalties
- Whether a further review should be undertaken and, if so, when
- Necessary or desirable to do anything else to improve the operation of the Act



# Changes to supplier onboarding and changes to sourcing and contract documents

- The Engagement and Contracting Process
  - Onboarding of New Suppliers and New Supplier Checklist
  - Routine Updates of Onboarding Process with Existing Suppliers
  - Company Policies and Modern Slavery
  - Contract Clauses and Pitfalls



## Onboarding of New Suppliers

- Tenders and Schedules
  - Tender Form
    - More about the supplier – Revenue / Corporate Group
    - Add to Corporate Policies Schedule
    - Create whole new Questionnaire – Supplier Questionnaire
    - Add Modern Slavery and Supply Chain Schedule



## Policies that should address modern slavery include:

Procurement, Purchasing, Sourcing And Subcontracting Policies

Child Labour Policy

Whistle-blowing Policy

Child Protection Policy

Migrant Worker Policy

Supplier Code Of Conduct

Human Rights Policy

Employee Code Of Conduct

Gender Policy

Grievance Policy

Recruitment Policy

Human Resources Policy



## Contract Clauses and Pitfalls

- New Contract Clauses and Rights
  - ***Warranties / Representations***
    - Modern Slavery Statements
    - Compliance with Law
    - Information provided





## Contract Clauses and Pitfalls

- New Contract Clauses and Rights (cont.)
  - ***Information and Disclosure***
    - Keeping of records sufficient to enable verification of source of supply (location, vendor entity etc)
    - Obligation of continual disclosure and provision of information (due diligence)
    - Ongoing obligation to report:
      - An actual or suspected Modern Slavery Offence in its supply chain
      - Any instance of an actual or alleged Modern Slavery or Human Rights violation (eg through Whistleblowing Policy etc)
    - Specific consent allowing for disclosure / reporting of information provided (release from Privacy and Confidentiality claims)



## Contract Clauses and Pitfalls

- New Contract Clauses and Rights (cont)
  - ***Information and Disclosure (cont)***
    - Ongoing obligation to allow audits (social audits) including
      - provision of information
      - documents and details (eg employment contracts, wage slips etc)
      - access to management, employees and subcontractors for interviews etc



## Contract Clauses and Pitfalls

- New Contract Clauses and Rights (cont)
  - ***Training***
    - Supplier obligation to train personnel, contractors, consultants and others in its operation
  - ***Subcontractors***
    - Subcontractor compliance
  - ***Indemnities and Limitations***
    - Specific indemnity
    - Limitations of Liability?
    - Loss of Reputation and Consequential Loss Exclusions
    - Modern Slavery breach = specific termination right (material and essential term)



## Contentious Issues

- Application – Corporate (what size/ how measured) / Government in a Federal System
- Two Tier System – to capture more companies (eg NZ)
- Penalties for Non-Compliance
- Independent Commissioner / Government Commissioner
- Low Level Compliance
- Generalised Reporting Requirements



## Anti Modern Slavery – An Economic Argument

- Dr James Cockayne – NSW Anti Slavery Commissioner
  - Slavery Reduces Productivity
    - If you aren't free you aren't productive
    - Depressed equilibrium wage – everyone worse off
  - Slavery Breeds Poverty
    - Historic forced labour in a community - increases poverty by 13.1 percent
    - Increases gender discrimination and family violence
    - Negatively impacts health outcomes and lowers household income – these become cross-generational and may have created the Close the Gap issues faced by 'First Nations' today
  - Institutionalises Inequality
    - Slavery steals a persons agency, monetises it and turns it into wealth
    - 'Recruitment Fees' – debt bondage - \$6bn per year from migrant workers to employers
    - Massive wealth transfer and money would be better left in hands of workers and communities



## Anti Modern Slavery – An Economic Argument

- **Slavery Weakens Multipliers**
  - Slaves can't spend what they don't have / aren't paid
  - Even where paid – sometimes forced to spend in particular ways – not their own needs eg Health / Education
  - IMF research – if you end child marriage – immediate increase to GDP of 1.05%
- **Slavery Discourages Innovations**
  - Slaves are not motivated to innovate. Neither are employers.
  - Sectors that rely on forced labour grow fat and complacent and vulnerable to competition – leads them to act in an uncompetitive manner
- **Slavery Distorts Capital Markets**
  - Faulty valuation of businesses
  - In some cases has led to country wide recessions



# Anti Modern Slavery – An Economic Argument

- **Slavery Hits The Public Purse**
  - Income Tax Impacts
  - Consumption Tax Reduced
  - 2009 ILO report – underpaid wages through forced labour - \$21bn
  - Expenditure on enforcement, health and victim services – UK Home Office 3.3 to 4.3 billion pounds per year
- **Slavery Weakens Governance**
  - Forced Labour and Human Trafficking – increased social stratification and inter-group violence – and increased hostility and mistrust, transmitted down generations
- **Slavery Breeds Corruption**
  - Connections between organised crime, human trafficking and money laundering
  - This is called ‘Domain Maintenance’ – business cost that traffickers have to pay for a protected domain where they can do things that are illegal to profit.
- **Slavery Harms the Environment**
  - Slavery skews production to unsustainable labour intensive methods
  - Frequently coincides with illegal deforestation, illegal fishing and illegal land use



# Contact



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