

Editorial Introduction

The inaugural round of Australia's modern slavery reporting in December 2020 coincided with the COVID-19 global pandemic. This research focused on how companies responded during the first year of the COVID-19 pandemic, with the key aim to recommend improvement to future reporting. Using content analysis to examine the first modern slavery statements submitted under Australian legislation, the research finds more than half of the modern slavery statements did not disclose COVID-19 issues related to modern slavery risk. This research advises how companies can improve their resilience and reduce modern slavery risks related in modern slavery reporting.

About the Authors

Shakoor Ahmed, PhD, QUT Business School, QUT

Professor Larelle (Ellie) Chapple, SJD, QUT Business School, QUT

About the Collection

This paper forms part of a collection on modern slavery and exploitative work practices been prepared in collaboration with the QUT Centre for Decent Work & Social Justice, Centre for Justice, QUT

Modern Slavery Disclosure Practices: Risks Induced by COVID-19 in Business Operations and Supply Chains

Shakoor Ahmed and Ellie Chapple

Introduction

There has been much academic and professional commentary leading into and since the passage of Australia's *Modern Slavery Act 2018* (Cth), including influential research by QUT scholars (Street et al., 2022). Although there is no specific regulator appointed to monitor and enforce the regulated entities' statutory reporting obligation, disclosure was the policy choice to tackle modern slavery practices in supply chains. In lieu of direct sanctions, compliance with modern slavery reporting relies predominantly on market sanctions, as consumers, investors and the media are expected to monitor companies' self-reported efforts (Redmond, 2020). Legislation that imposes disclosure should be effective through the due diligence imposed on regulated entities, providing visibility to the problem of human rights abuses (Kamalath, 2021). For these reasons, disclosure is a second-order solution but is a recognised strategy to obtain buy-in for practices that may occur in offshore and remote locations.

It is unfortunate that Australian entities' inaugural modern slavery statements coincided with the global COVID-19 pandemic. On the one hand, we could predict that the inaugural statements could not be expected to represent best practices in due diligence and disclosure due to the pandemic disruptions. This de facto business shutdown has caused and contributed to major disruptions in global supply chains and manufacturing operations in all industries. These disruptions are primarily economic; however, the pandemic has exposed vulnerabilities in companies' operations and supply chains linked to employment conditions (Kent et al., 2021), human rights and disaster preparedness (Institute for Human Rights and Business, 2020; Voss, 2020). The disruption to livelihoods and associated socio-economic challenges due to COVID-19 exposes vulnerable groups in society and intensifies the drivers and root cause of trafficking, forced labour, slavery, servitude and sexual exploitation (Global Initiative Against Transnational Organized Crime, 2020). The International Labour Organization (ILO) estimates that 1.6 billion workers in the informal sector are significantly economically affected by COVID 19, including job losses or reduction of working hours (ILO, 2020). As an insidious example of supply chain risk, COVID-19-related school closures have served to increase the number of child labourers available for operations. The United Nations Educational, Scientific and Cultural Organization (2020) estimated that 1.04 billion students were unable to attend school when 132 countries closed their educational institutions as a preventative measure to reduce the spread of COVID-19.

On the other hand, many entities subject to regulation would already have experience in disclosure, given that the Australian legislation is loosely based on the *Modern Slavery Act 2015* (UK) (Kamalath, 2021). The Australian Act requires regulated entities to report on their assessment of the modern slavery risks in their operations and report on the steps taken to assess and address the risks and how the entity assesses the effectiveness of its actions.

We conducted this research for several reasons. First, the commencement date of the Australian Act as of 1 January 2019, with disclosures to follow in the next reporting period, coincided with the unprecedented global pandemic. Second, the 'Online Register for Modern Slavery Statements' is the first of its kind in the world where companies are required to submit their publicly available statements (McGaughey et al., 2020). Third, there is some urgency to reviewing Australian companies' experience and compliance records, as the *Modern Slavery Act 2018* (Cth) contains a three-year sunset clause for review. Given the unfortunate coincidence in timing with the modern slavery reports and the global pandemic, we are anxious to measure the extent to which this disruption may have impaired reporting entities' ability to comply in substance and in spirit with their disclosure obligations.

Our published article in the *Australian Journal of Corporate Law* on COVID-19 impacts on modern slavery statement disclosure provides topical evidence in this crucial first reporting round as to companies' compliance (Ahmed & Chapple, 2022). Two possible COVID-19-related risks to regulated entities' compliance are predicted: 1) entities may misreport their supply chain risks through distraction or de-prioritisation of routine compliance matters and 2) entities may fail to detect substantive matters of risk due to gaps in their detection systems due to COVID-19 restrictions.

Why modern slavery is a problem

Slavery remains as profitable to business as it was over the centuries. The ILO reported the profits per enslaved person could range from a few thousand dollars to a few hundred dollars in a year, and the cumulative illegal profit generated from slavery is US\$150 billion per year (ILO, 2017). The United Nations recognises modern slavery as one of today's grand challenges and is committed to freeing around 10,000 people daily from slavery conditions to attain its Sustainable Development Goals in 2030. The United Nations Sustainable Development Goal's Target 8.7 is designed to eradicate modern slavery practices worldwide by 2030. Despite these regulative initiatives, a recent report revealed that the number of victims of modern slavery has skyrocketed in the last five years, from 40.3 million in 2016 to 49.6 million in 2021 (ILO et al., 2022), whereas about 0.2% of victims are rescued annually (Mekong Club, 2021). Forced labour accounts for 27.6 million victims of modern slavery, while forced marriage for 22 million victims. ILO et al.'s (2022) report also identified that COVID-19 is one of the major contributing factors to this spike in victimisation.

COVID-19 response in modern slavery statements

Our research seeks to answer the question: to what extent do regulated entities substantively engage in supply chain integrity through the mechanism of mandated disclosure? Specifically, in the context of the inaugural statements, the Australian Border Force, which maintains the Australian Modern Slavery Statement Register, recommended that eligible entities consider modern slavery risks in light of the COVID-19 crisis (Australian Government, 2019). This research examines the merits of what companies disclose, recognising the inherent limitation that we cannot test that companies actually do what they say they do. The register of modern slavery reveals that regulated entities filed 121 modern slavery statements to cover the first reporting period, 2019–2020, including 19 voluntary statements. Most of the statements have been submitted from entities headquartered in Australia, Japan, the United States and the United Kingdom, while four are from New Zealand. The submitted statement lengths range from three pages to 22 pages. However, longer and glossier statements tend to have been submitted by large companies that find their social and environmental practices under scrutiny (McGaughey et al., 2020).

We used an inductive and iterative strategy to develop the coding scheme. The coded instruments were grouped by similarities into 30 different codes. We refined and identified the seven themes/categories into five themes/categories and 17 codes from 30 codes by discussing and re-reading the statements for COVID-19 impact on modern slavery practices, namely, COVID-19 prevention initiatives, health and safety policy, grievance-redress mechanism, COVID-19 impact on purchase orders or contracts, and amount of spending with suppliers and victims' support. Figure 1 presents these COVID-19-related specific categories and the extent of disclosure by the sample companies in their modern slavery statements.

Based on sampling and the results presented in Figure 1, more than half of the reporting entities did not disclose COVID-19 issues related to the modern slavery risk, despite government recommendations. Each column of Figure 1 shows that less than half of the entities address COVID-19-related issues. Specifically drilling into the results, in the case of COVID-19 prevention initiatives, 57% of disclosing entities did not provide any COVID-19 prevention measures in their statements, whereas 31 modern slavery statements disclose four or more items on COVID-19 prevention initiatives. Overall, it reflects the lack of awareness or initiatives the examined entities have taken.

When it comes to health and safety policies in the context of COVID-19, 31% of entities provided minimal disclosure (one disclosure item), including repatriating migrant workers to their country of origin. Due to pandemic-related travel restrictions, site visits to verify working and production conditions were not feasible; two disclosing entities mentioned virtual site inspection.

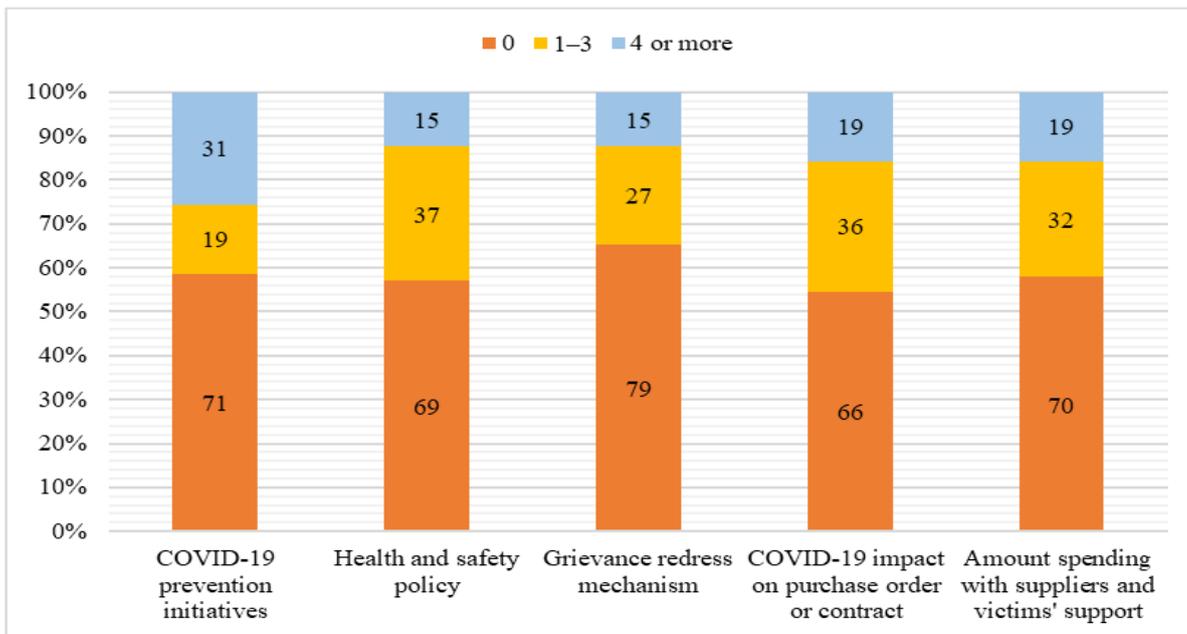


Figure 1: Frequency Distribution of COVID-19 Response by the Reporting Entities (N = 121)

Grievance redress mechanisms in the context of COVID-19 generated the least disclosure. Whereas 35% of entities have a grievance redress mechanism, only two companies mentioned grievances on COVID-19-related issues, indicating a degree of lack of confidence towards this significant policy.

Whether COVID-19 impacted purchase orders or contracts is reported in Figure 1, column 4; of the 55 reporting entities that mentioned procurement contracts and orders, only six entities expressly referred to the impact of COVID-19 on supply orders and contracts. Interestingly, no entities reported any variation or cancellation of purchase orders or contracts, but they reported the impact as extended deadlines. In contrast, some entities reported their firm commitment to procurement orders. Finally, Figure 1, row 5, reports that regarding actual expenditure on suppliers and victims' support, more than 50% of entities identified the issue of victims; however, disclosure of actual expenditure on such programs is rare. Only 8% of companies mentioned the amount spent on victim support. These findings are also supported by the recent research conducted by the Human Rights Law Centre et al. (2022) on the early impact assessment of the *Modern Slavery Act 2018* (Cth).

The widespread failure to consider COVID-19-related risks in the inaugural statements is somewhat disappointing relative to the sophistication of the regulated Australian entities. Risk management processes as part of governance, while not necessarily predicting the COVID-19 pandemic precisely, ought to predict a number of scenarios for widespread global supply chain disruption (e.g., climate disruption, geopolitical disruption and conflict). The COVID-19 experience presents as a case for a broad context for modern slavery statement reporting. Companies that responded to the risk to workers from this external condition can become important 'horizontal' exemplars.

Recommendations

In our research, we recommended that entities continue to prioritise their reporting obligations of their modern slavery preventative measures before, during and after the COVID-19 crisis. The pandemic increased economic inequality engendering a labour force more vulnerable to exploitation. To be proactive, Australian companies should seek to preserve decent work conditions in their supply chains. Existing modern slavery Acts and other human rights in business standards and guidance provide a strong foundation to build key immediate responses to the COVID-19 crisis, recognising the problematic nature of the lack of detail that has been investigated and reported in prior literature (Landau & Marshall, 2018). Entities can use their inaugural experience to implement short-, medium- and long-term policies to tackle modern slavery risks beyond the pandemic.

Our research culminates with five key recommendations:

1. Regulated entities need to adopt a proactive stance to their compliance obligations in the face of pressures from other business imperatives in the firms' operations. It is unfortunate that many first modern slavery statements may be truncated compared to expectations; however, entities need to explicitly address COVID-19 impacts in their risk analysis. Based on the inaugural modern slavery statements, entities have not substantially engaged with COVID-19 conditions impacting their risk assessment.
 2. Entities should assess workers' vulnerabilities and ensure that impacted workers, especially vulnerable groups of workers, are provided appropriate support and personal protective equipment.
 3. In the medium term, entities should conduct due diligence for effective monitoring of high-risk suppliers by requiring their suppliers to comply with a COVID-19 risk mitigation policy while following social and ethical business practices and standards. This includes monitoring high-risk regions and sectors such as medical equipment manufacturing and agriculture (particularly those with existing high rates of forced and child labour).
- Supply chain processes can be monitored using blockchain technology and remote sensing, which provides real-time information about the goods and services and ensures due diligence. It has been posited that technology has a disruptive and long-term role to play in supply chain integrity post COVID-19.
4. As part of their research and development agendas, entities need to invest in technology and upskill employees to implement distance education and training for workers, employees, staff and suppliers. Grievance mechanisms need to be accessible through remote reporting channels using different technology.
 5. Horizontal collaboration among similar industries can improve the reporting of modern slavery risks based on different acts and guidance. Collaboration with non-business actors (such as non-government organisations and international organisations) can provide additional insights and resources to overcome the uncertainty that manifests when responding to new legislation.

References

- Ahmed, S., & Chapple, L. (2022). Corporate response to modern slavery risks induced by COVID-19: Business as usual? *Australian Journal of Corporate Law*, 37(3), 203–229.
- Australian Government. (2019). *Guidance for reporting entities: Commonwealth Modern Slavery Act 2018*. Department of Home Affairs. <https://www.homeaffairs.gov.au/criminal-justice/files/modern-slavery-reporting-entities.pdf>
- Global Initiative Against Transnational Organized Crime. (2020). *Aggravating circumstances: How coronavirus impacts human trafficking*. <https://globalinitiative.net/human-trafficking-covid-impact/>
- Human Rights Law Centre, Uniting Church in Australia, UNSW Australian Human Rights Institute, The University of Melbourne, Baptist World Aid Australia, RMIT Business and Human Rights & Notre Dame University Australia. (2022). *Paper promises? Evaluating the early impact of Australia's Modern Slavery Act*. [Paper+Promises Australia+Modern+ Slavery+Act 7 FEB.pdf \(squarespace.com\)](https://www.squarespace.com/Paper+Promises+Australia+Modern+Slavery+Act+7+FEB.pdf)
- Institute for Human Rights and Business. (2020). *Respecting human rights in the time of the COVID-19 pandemic: Examining companies' responsibilities for workers and affected communities*. <https://www.ihrb.org/focus-areas/covid-19/report-respecting-human-rights-in-the-time-of-covid19>
- International Labour Organization. (2017). *40 million in modern slavery and 152 million in child labour around the world*. http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_574717/lang--en/index.htm
- International Labour Organization. (2020). *COVID-19 crisis and the informal economy: Immediate responses and policy challenges*. https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/briefingnote/wcms_743623.pdf
- International Labour Organization, Walk Free Foundation & International Organization for Migration. (2022). *Global estimates of modern slavery: Forced labour and forced marriage*. https://www.ilo.org/global/topics/forced-labour/publications/WCMS_854733/lang--en/index.htm
- Kamalnath, A. (2021). Transnational corporations and modern slavery: Nevsun and beyond. *Journal of Corporate Law Studies*, 21(2), 491–516.
- Kent, P., McCormack, R. & Zunker, T. (2021). Employee disclosures in the grocery industry before the COVID-19 pandemic. *Accounting & Finance*, 61(3), 4833–4858.
- Landau, I. & Marshall, S. (2018). Should Australia be embracing the modern slavery model of regulation? *Federal Law Review*, 46(2), 161–191.
- McGaughey, F., Cullen, H. & Faungo, R. (2020, 30 November). Australia's world-first repository of 'modern slavery statements' a step in the right direction. *The Conversation*. <https://theconversation.com/australias-world-first-repository-of-modern-slavery-statements-a-step-in-the-right-direction-151029>
- Mekong Club. (2021). *2020: Our year in review: Annual report*. https://themekongclub.org/wp-content/uploads/2021/02/TMC-Annual-Report-2020-03_Final_25Feb21.pdf
- Redmond, P. (2020). Regulating through reporting: An anticipatory assessment of the Australian Modern Slavery Acts. *Australian Journal of Human Rights*, 26(1), 5–26.
- Street, P., Bolger, S., Payne, A., Boersma, M., Coneybeer, J., Josserand, E., Kaine, S., O'Brien, E., Maguire, R. & Rissanen, T. (2022). The effects of COVID-19 on the textile and apparel value chain. *QUT Centre for Justice Briefing Paper*, (29).
- United Nations Educational, Scientific and Cultural Organization. (2020). *Education: From disruption to recovery*. <https://en.unesco.org/covid19/educationresponse>
- Voss, H. (2020). Implications of the COVID-19 pandemic for human rights and modern slavery vulnerabilities in global value chains. *Transnational Corporations*, 27(2), 113-126.