

TENDERING? BE READY TO IDENTIFY, ASSESS, AND ADDRESS YOUR MODERN SLAVERY RISKS

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Australia Corporate Alert

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The Australian Government has uploaded two new resources to its [Modern Slavery Register](#):

- A model clause for use in tenders (Model Tender Clauses); and
- An educational video on modern slavery for the cleaning industry.

MODERN SLAVERY CLAUSES IN TENDERS

The Australian Government has uploaded the [Model Tender Clauses](#) for use in tenders.

The Model Tender Clauses now set out the Government's expectations for tendering suppliers with respect to the identification and mitigation of modern slavery risks in compliance with the Modern Slavery Act 2018 (Cth) (Act).

Importantly, this latest guidance includes the recommendation that entities:

"... include the modern slavery model tender clauses in procurement processes to manage modern slavery risks and support the Government's compliance with the Act" [emphasis added].

The Model Tender Clauses include requirements for suppliers to provide details about how they will identify, assess, and address modern slavery risks in their operations and supply chains for a relevant supply.

A choice is provided between the Option A or B versions of the clause, with the compliance requirements potentially stepped-up depending on the modern slavery risk profile for a specific supply.

We expect these types of clauses will become increasingly common. Potentially, it will be quite an undertaking for a business to respond to an Option B Model Tender Clause, and particularly so if the business has not previously reported under the Act. It is also expected that some smaller and less-resourced suppliers will find these requirements particularly challenging.

The following table contrasts the higher level of obligations of the Option B clause against Option A.

Clause Option	Application Use	Tender Requirements Summary
Option A	Designed for Very Low/Low Risk	Provide details of how you (i.e., the supply Tenderer) identify, assess, and address risks of modern slavery practices in the

Clause Option	Application Use	Tender Requirements Summary
	Procurements.	operations and supply chains for the applicable supply.
Option B	Designed for Medium/high Risk Procurements.	<p>Provide details of how you (i.e., the supply Tenderer) identify, assess, and address risks of modern slavery practices in the operations and supply chains for the applicable supply.</p> <p>It <i>additionally</i> recommends you (i.e., the supply Tenderer) should provide information on the following:</p> <ul style="list-style-type: none"> ▪ Any policy/plan you have in place to identify and address modern slavery risks (including information on any system to monitor compliance); ▪ How you perform screening of suppliers to identify, assess, and address the risks of modern slavery in applicable supply chains; ▪ Any grievance mechanism available to your staff for complaints or grievances about modern slavery practices; and ▪ The personnel you have responsible for managing the operations and applicable supply chains and their modern slavery training programs.

To determine whether a procurement carries low, medium, or high modern slavery risks, the risk assessment is usually conducted based on sector and industry risks, product and services risk, geographic risks and entity risks.

The Model Tender Clauses will inevitably result in many more organisations requiring their lower tier suppliers to be prepared to respond to similar questions.

MODERN SLAVERY IN THE CLEANING INDUSTRY

Although the Government's [educational video](#) is focused on addressing modern slavery risks in the contract cleaning industry, it is a generally helpful resource that serves to highlight key modern slavery risk factors that are relevant to many other sectors.

The video highlights the following modern slavery risk factors, their indicators and suggested mitigation strategies:

Risk Factors	Risk Indicators	Mitigation Strategies
Occupational and Industry Risks	<ul style="list-style-type: none"> ▪ Low pay ▪ Underpayment 	<p>Implement procurement processes that:</p> <ul style="list-style-type: none"> ▪ Go beyond mere labour law

Risk Factors	Risk Indicators	Mitigation Strategies
	<ul style="list-style-type: none"> ▪ Dangerous work ▪ Night work ▪ Low skilled labour ▪ Low barriers to entry ▪ Low safety law compliance ▪ Use of subcontracting ▪ Low or no union representation. 	<p>compliance</p> <ul style="list-style-type: none"> ▪ Help greater supply chain visibility ▪ Target the key industry specific risks ▪ Limit subcontract supply or labour hire ▪ Encourage industry collaboration.
Vulnerable Workforce	<ul style="list-style-type: none"> ▪ Temporary migrant workers ▪ Workers with: <ul style="list-style-type: none"> ▪ English as second language ▪ No or low social networks ▪ No or low knowledge of rights. 	<p>Implement protection for vulnerable workers through:</p> <ul style="list-style-type: none"> ▪ A grievance mechanism (effective) ▪ Union engagement (effective) ▪ Job security improvement.
Procurement	<ul style="list-style-type: none"> ▪ Downward contract price pressure if that translates into modern slavery ▪ Lack of contract price transparency ▪ Lack of human rights due diligence. 	<ul style="list-style-type: none"> ▪ Require sufficient contract price transparency to verify minimum legal wages and entitlements. ▪ Mandate for labour standards compliance and modern slavery risk mitigation in contracting.
Contract Management	<ul style="list-style-type: none"> ▪ Lack of dedicated tools/resources to monitor, enforce and remediate where appropriate. 	<ul style="list-style-type: none"> ▪ Secure and apply appropriate tools/resources to monitor, enforce and remediate where appropriate.

HOW CAN WE HELP?

K&L Gates regularly advises clients in relation to their modern slavery risks and appropriate responses. If you are looking for guidance or support, our team would be happy to talk with you.

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