

# AUSTRALIAN GOVERNMENT RELEASES GUIDANCE ON MODERN SLAVERY – WELCOME CLARIFICATION FOR SOME FOREIGN ENTITIES OPERATING IN AUSTRALIA

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## Global Ethical Supply Chain Initiative

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After much anticipation the Government has released the finalised "[Commonwealth Modern Slavery Act 2018: Guidance for Reporting Entities](#)" following the issue for public comment of the first draft in May 2018 (**Guidance**).

This Guidance is designed to assist entities with reporting obligations under Australia's new *Modern Slavery Act 2018* (Cth) (**Modern Slavery Act**).

In a welcome development, the Guidance has now included some clarification for foreign entities which are carrying on their businesses in Australia *through an Australian subsidiary* as it has now been made clear that the parent foreign entities of such subsidiaries are generally expected to be *excluded* from the reporting requirements under the Modern Slavery Act. Typically, it will only be the Australian subsidiary that is potentially required to report - rather than the foreign parent of the local Australian subsidiary itself being required to report.

The new clarification is helpful in answering some concerns which had first been identified at the time the Modern Slavery Act was first introduced to parliament. Initially the [Modern Slavery Bill 2018 Explanatory Memorandum](#) had contemplated there would be a potentially much wider application of the *Modern Slavery Act* as it had appeared to be contemplated that any foreign entity would be a 'reporting entity' if it had:

- a consolidated revenue of \$100 million; and
- carried on business in Australia through an Australian subsidiary.

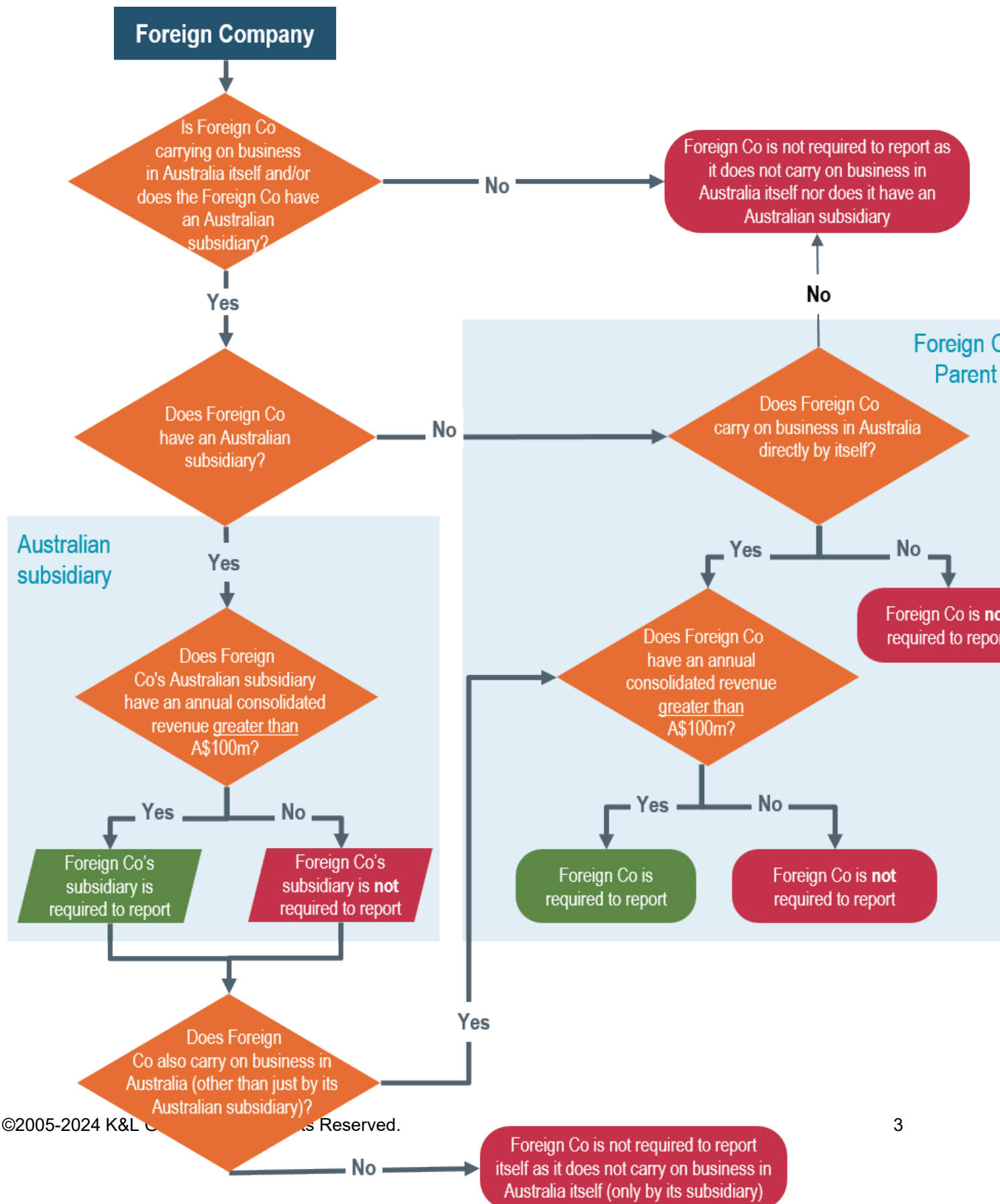
The scope of application could as a result be extraordinarily wide – potentially requiring the reporting by foreign parent corporations on all their global operations where a foreign parent corporation had a consolidated global revenue of at least \$100 million and also had any subsidiary carrying on business in Australia (regardless of the subsidiary's revenue).

The position was made somewhat clearer, though arguably still not perfectly so, at the time the Modern Slavery Act was passed as it included as potential reporting entities:

- an Australian entity incorporated in Australia; **or**
- a foreign entity that is 'carrying on a business in Australia' under s21 of the *Corporations Act 2001* (Cth).

Would a foreign parent entity still be taken to be "*carrying on a business in Australia*" because of its Australian subsidiary's operations and so liable to report on its foreign parent global operations?

Now with the benefit of the Guidance there has been a clarification of the position – the diagram below is based on the finalised Guidance to illustrate the circumstances where the Australian subsidiaries of foreign entities are being identified by Home Affairs as required to report under the *Modern Slavery Act*.



**Diagram:** when a Foreign Company and/or its Australian subsidiary are required to report.

The Guidance also contains welcome detailed information on what constitutes an entity's operations and supply chains.

Notably, it has been clarified that a reporting entity is not required to report on modern slavery risks associated with the use of its products by end customers. For example, an oil and gas company will be required to report on its upstream production and operations, however it is not required to report on the operations of the subsequent recipient buyers and consumers of production in the downstream supply chains. This means that the oil and gas company is not required to monitor or report on the modern slavery risks associated with how consumers use the oil and gas products it supplies.

The Guidance has further reinforced the Government's early message that a 'carrot' instead of a 'stick' approach is favored, at least initially.

The Guidance reinforces that for the first reporting period, the Government is aiming to work with non-compliant reporting entities to ensure they understand their reporting obligations and to support them to comply instead of resorting to publishing information about the entity and its non-compliance. The Government is expecting that as entities continue to report under the *Modern Slavery Act* that the quality of Modern Slavery Statements should improve as well as the progress in understanding and addressing modern slavery.

However, for entities which are found to have deliberately not complied or where there have been severe instances of repeat non-compliance, the Minister may choose to publicly 'name-and-shame' entities which fail to comply.

For assistance with complying with your reporting obligations under the *Modern Slavery Act* and the new Guidance, please contact our [Global Ethical Supply Chain](#) Initiative team.

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