



MINTERELLISON

# CPD Legal Studio Continuing Legal Development

## Modern Slavery

4 March 2020



# Modern Slavery Reporting:

*now is the time to act*

---

MinterEllison

# Overview

---

Timeline for compliance

Modern Slavery explained

The Cth Modern Slavery  
Act requirements

Modern Slavery  
Compliance in practice

What we can learn from  
the UK experience

Continuous improvement





# Timeline for compliance

---

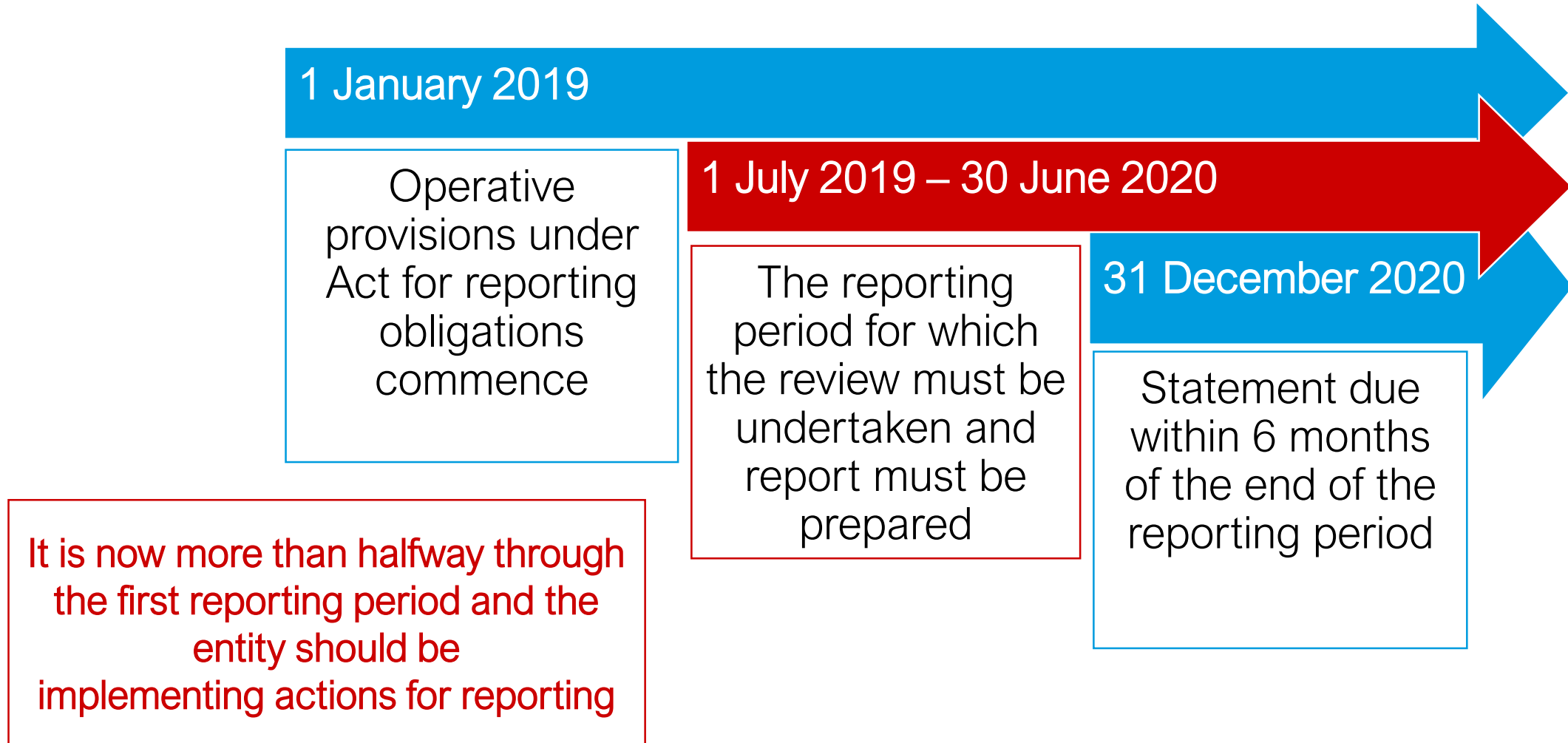
MinterEllison

Don't panic!!

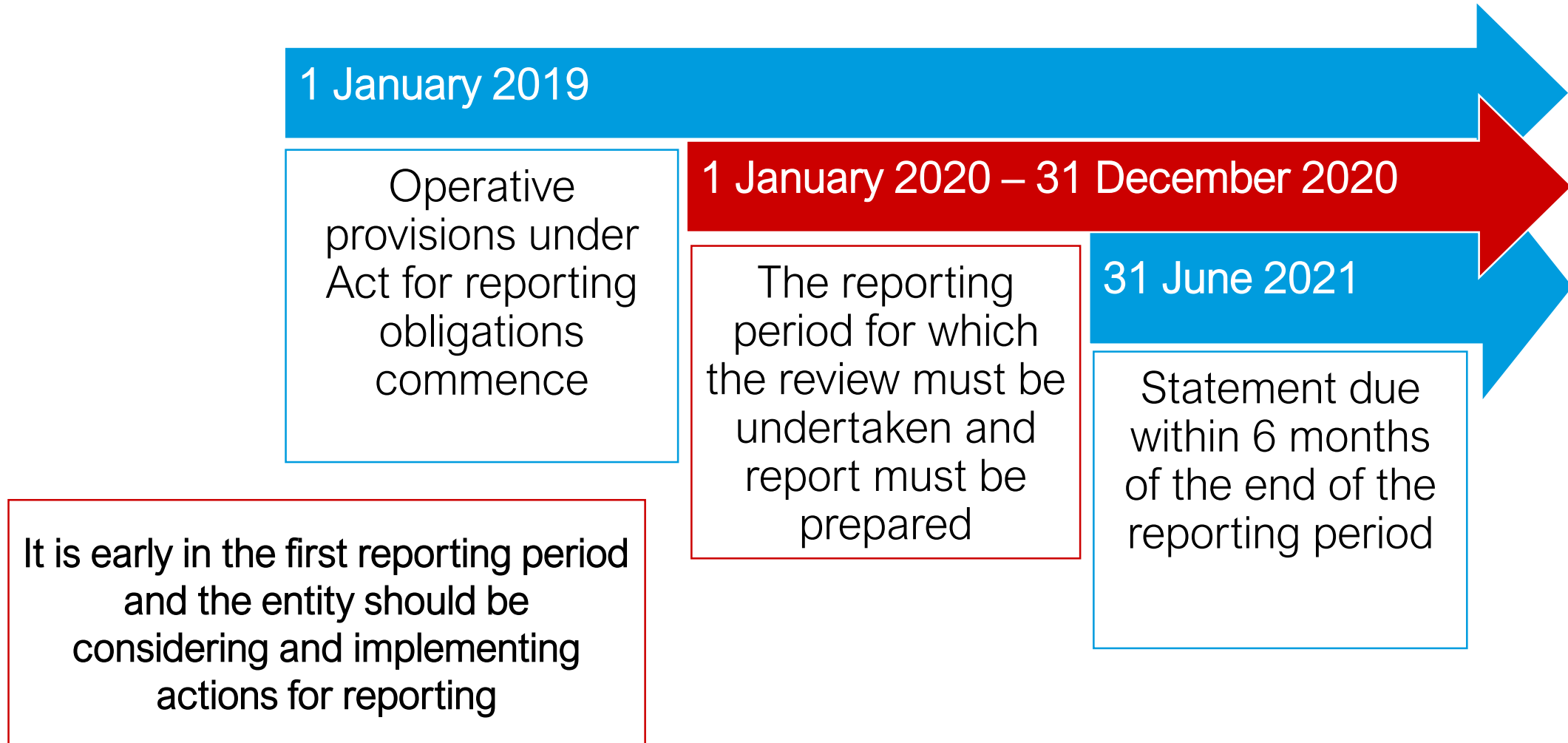




## Statement preparation and reporting timeline – financial year



## Statement preparation and reporting timeline – calendar year





# Modern Slavery explained

---

MinterEllison



---

# Modern Slavery

Over 150 years after the  
abolition of slavery and the  
trans-Atlantic slave trade...



# What is Modern Slavery?

---

An umbrella term including **exploitative practices**, including:

**Slavery**

**Child  
labour**

**Forced  
marriage**

**Debt bondage**

**Servitude**

**Forced or  
bonded labour**

**Human  
Trafficking**

**Deceptive  
recruiting**



## What is ‘bonded labour’?

---

Refers to circumstances where the victim’s services are pledged as security for a debt and the debt is manifestly excessive or the victim’s services are not applied to liquidate the debt, or the length and nature of the services are not limited and defined.

*“Vishal\* and his family were trapped in bonded labour in India after taking a loan from an agent to travel to a job in a brick factory in another part of Punjab, a state in northern India. In these situations, workers typically find it impossible to repay the initial debt because the wages are often much lower than promised and factory owners may deduct money for living expenses and the interest rates over the initial loan amount increase at the same time.”*

*\*Name has been changed. Example from  
<https://www.antislavery.org/impact/stories/vishal/>*

Source: *Commonwealth Guidance for Reporting Entities*



## What is 'forced labour'?

---

Refers to situations where the victim is either not free to stop working or not free to leave their place of work.

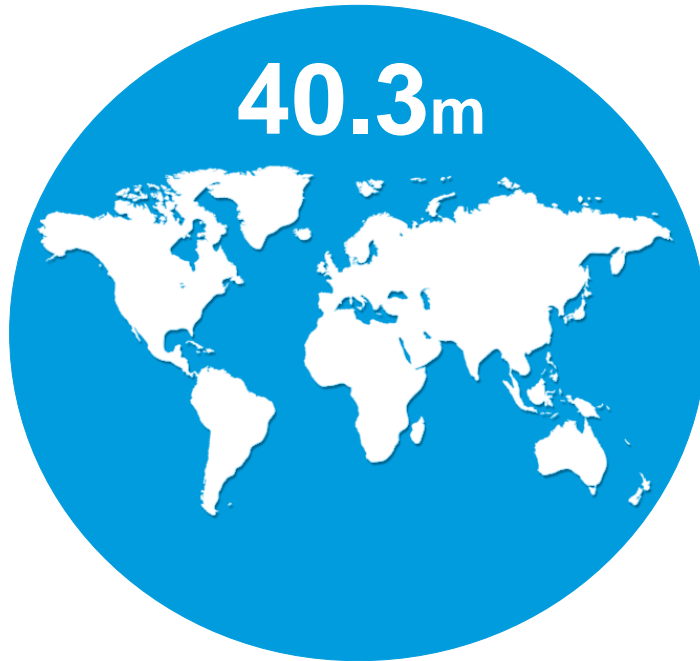
On one of the UK's largest infrastructure projects, one work gang was recently discovered to be in forced labour. However, the truth only emerged after a noticeable rise in health and safety incidents. The team had been living in cramped accommodation and forced to hot bunk. After a change in shift patterns, they were unable to find a place to sleep. Workers had begun making mistakes out of extreme fatigue.

*\*Example from Chartered Institute of Building, Construction and the Modern Slavery Act: Tackling Exploitation in the UK*

*Source: Commonwealth Guidance for Reporting Entities*



## Extent and impact of Modern Slavery



2018 Global Slavery Index <https://www.globalslaveryindex.org/>



# Modern Slavery risks – ACSI Report

---

## Modern slavery risk factors

- Vulnerable populations
- Business models structured around high-risk work practices
- High-risk product and service categories
- High-risk geographies

## High-risk sectors

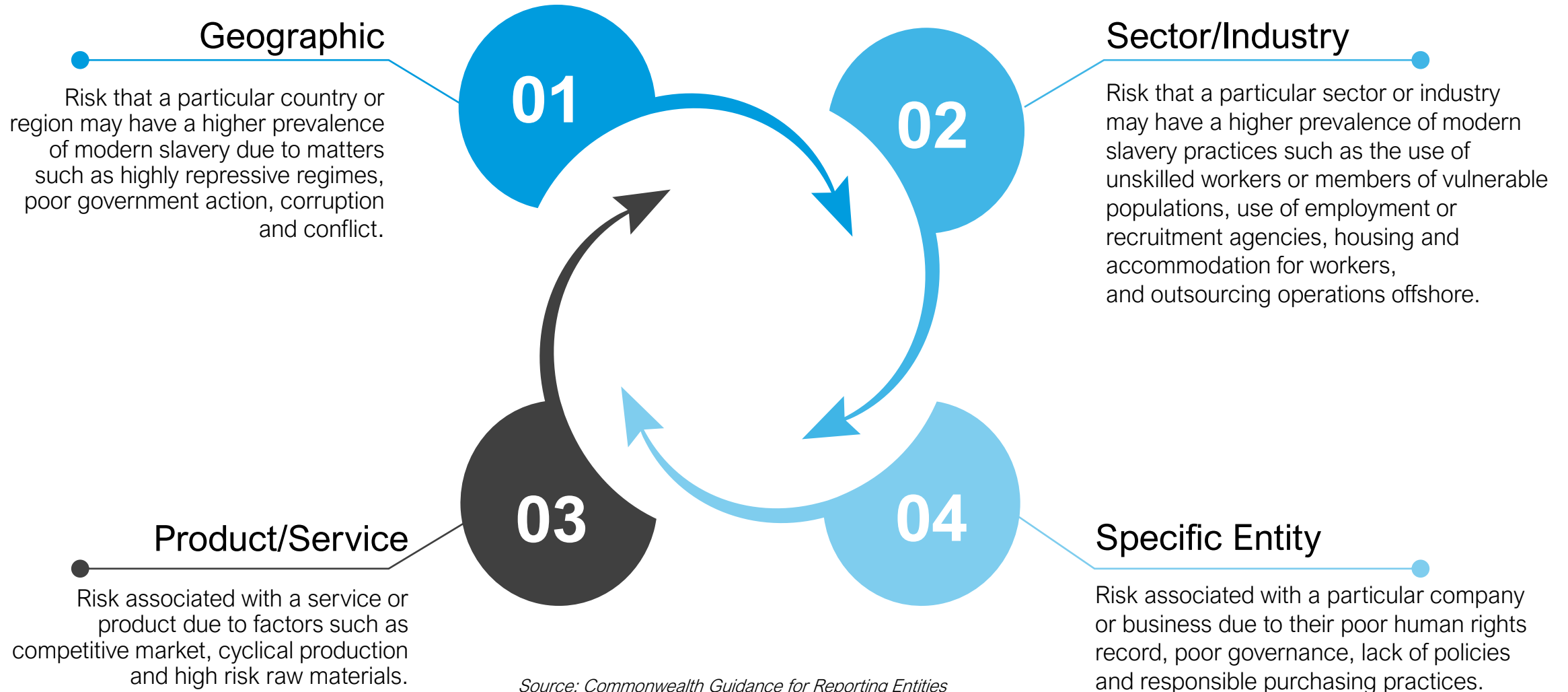
- Financial services
- Property, construction
- Food, beverages and agriculture
- Mining
- Healthcare

See '[Modern Slavery Risks, Rights & Responsibilities](#)' research report commissioned by the Australian Council of Superannuation Investors and conducted by KPMG





# Types of Modern Slavery risks – Cth Guidance



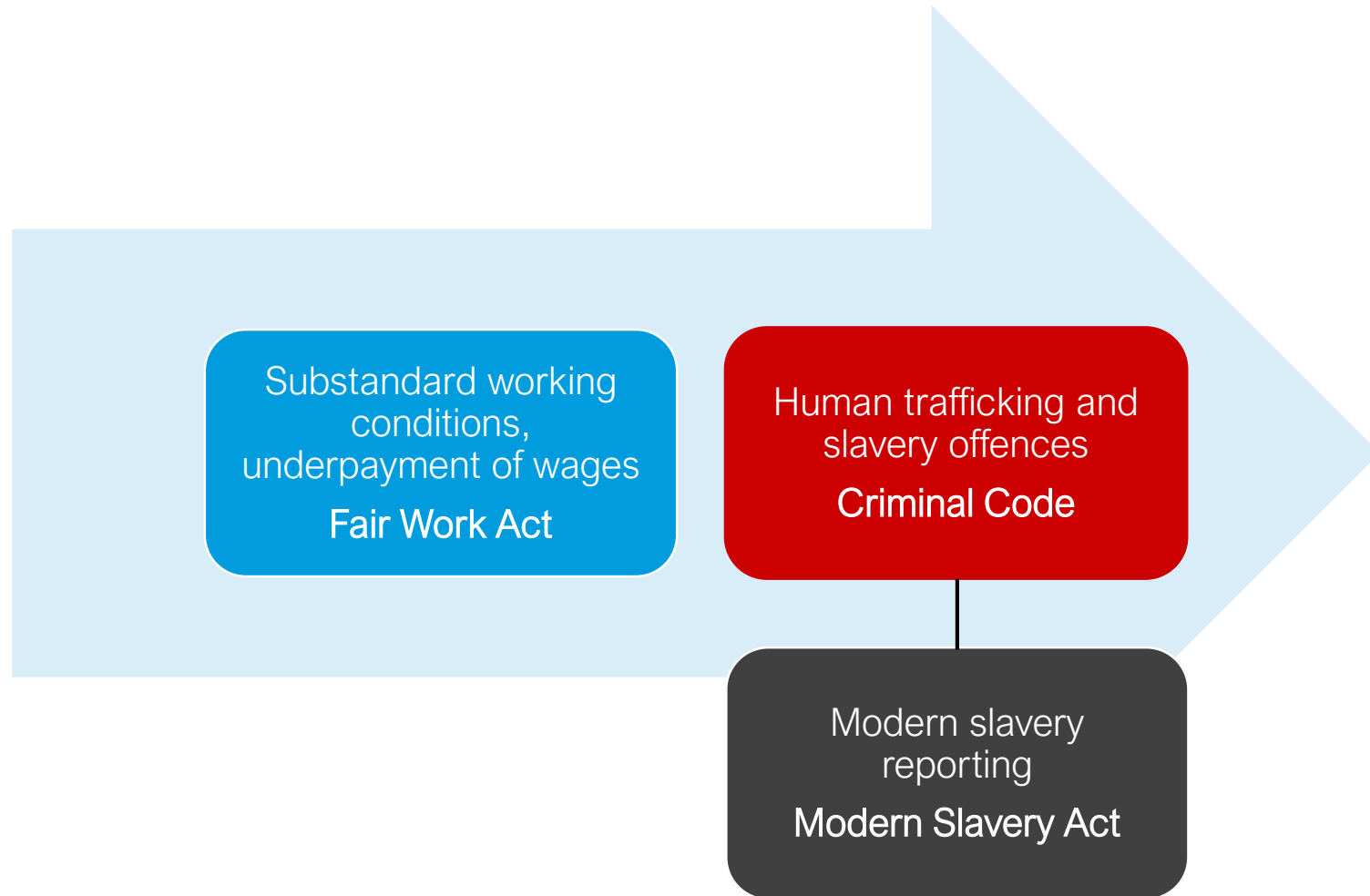
## Australia's response

---

- Human trafficking and slavery criminalised under the *Criminal Code Act 1995* (Cth) – divisions 270 and 271
- Now addressing modern slavery in supply chain practices
  - Commonwealth Parliament passed the *Modern Slavery Act 2018* (Cth)
  - NSW passed the *Modern Slavery Act 2018* (NSW)
- Legislation is aimed at encouraging the business community to take proactive and effective actions to address modern slavery
- Supporting legislation – *Fair Work Act 2009* (Cth) and *Labour Hire Licensing Act 2017* (Qld)



## Continuum of legislation



## What's happening with the NSW Modern Slavery Act?



- Amendment Bill and draft regulations referred to Standing Committee for inquiry in June 2019
- Act and Regulations under review and may not commence in current form

## What's happened in the last 12 months?

---

- 2019 – Modern Slavery Act reporting periods commenced
- 'One in 200 people is a slave' – The Guardian Feb 2019 – Globally, slavery generates \$150B (UK) in profits every year, one third of which is in developed countries
- April 2019 – Queenslanders convicted of forced labour offences under the Criminal Code
- Feb 2020 – Modern Slavery Legislation introduced in Canada
- 4 March 2020 – Nominations for Modern Slavery Expert Advisory Group due



*Source: 'One in 200 people is a slave' – The Guardian*





# The Cth Modern Slavery Act requirements

---

MinterEllison



## Who does the Cth Act apply to?

- ✓ All **entities** with annual consolidated revenue of A\$100m or more
- ✓ Includes entities based or operating in Australia
- ✓ Extends to joint reporting by groups of entities
- ✓ The Commonwealth and Corporate Commonwealth entities

*\*Taken from Guidance for Reporting Entities – pg 33 & 34*



# Modern Slavery Statement - Cth requirements

Statement content	<ol style="list-style-type: none"><li>1. identify entity</li><li>2. entity structure, operations, supply chains</li><li>3. risks of modern slavery practices</li><li>4. actions taken to address risks inc. due diligence and remediation</li><li>5. effectiveness of actions</li><li>6. consultation with other entities</li><li>7. other information</li></ol>
Reporting requirements	<ul style="list-style-type: none"><li>▪ each financial year (or other accounting period), in approved form</li><li>▪ approved by Board, signed by 'responsible member'</li><li>▪ provided within 6 months, published on Register</li></ul>
Joint Statements	<ul style="list-style-type: none"><li>▪ one reporting entity may report on behalf of related entities</li><li>▪ prepared in consultation</li><li>▪ approved and signed by each reporting entity or 'higher entity'</li></ul>
Voluntary Statements	<ul style="list-style-type: none"><li>▪ entity that does not meet \$\$ threshold may voluntarily report</li><li>▪ must give notice before end of reporting period</li><li>▪ may revoke notice before start of reporting period</li></ul>

*\*Taken from Guidance for Reporting Entities – pg 33 & 34*



## **‘Supply chains’ and ‘Operations’ explained**

---

**Supply chains means** *products and services (including labour) that contribute to an entity’s own products and services. This includes products and services sourced in Australia or overseas and extends beyond direct suppliers.*

**Operations means** *activity or business relationship undertaken by the entity to pursue its business and strategy in Australia, including direct employment of workers, processing and production, provision and delivery of products and services, construction, financial lending, financial investments, managed/operated JVs, leasing of property, products and services, research and development, charitable activities, distribution, purchasing, marketing and sales, and religious activities*

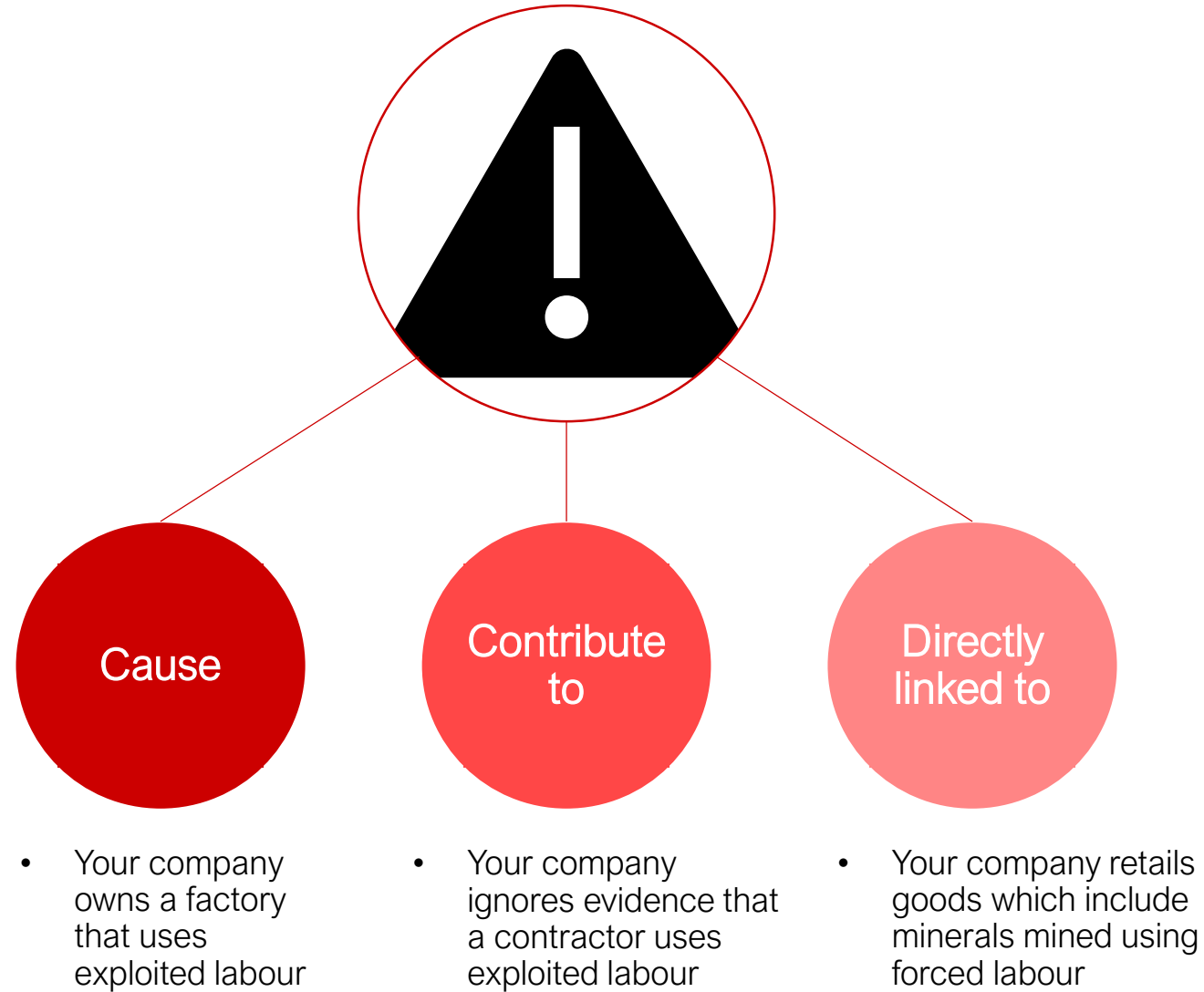
\* Taken from Guidance for Reporting Entities – pg 33 & 34



## What might this look like?



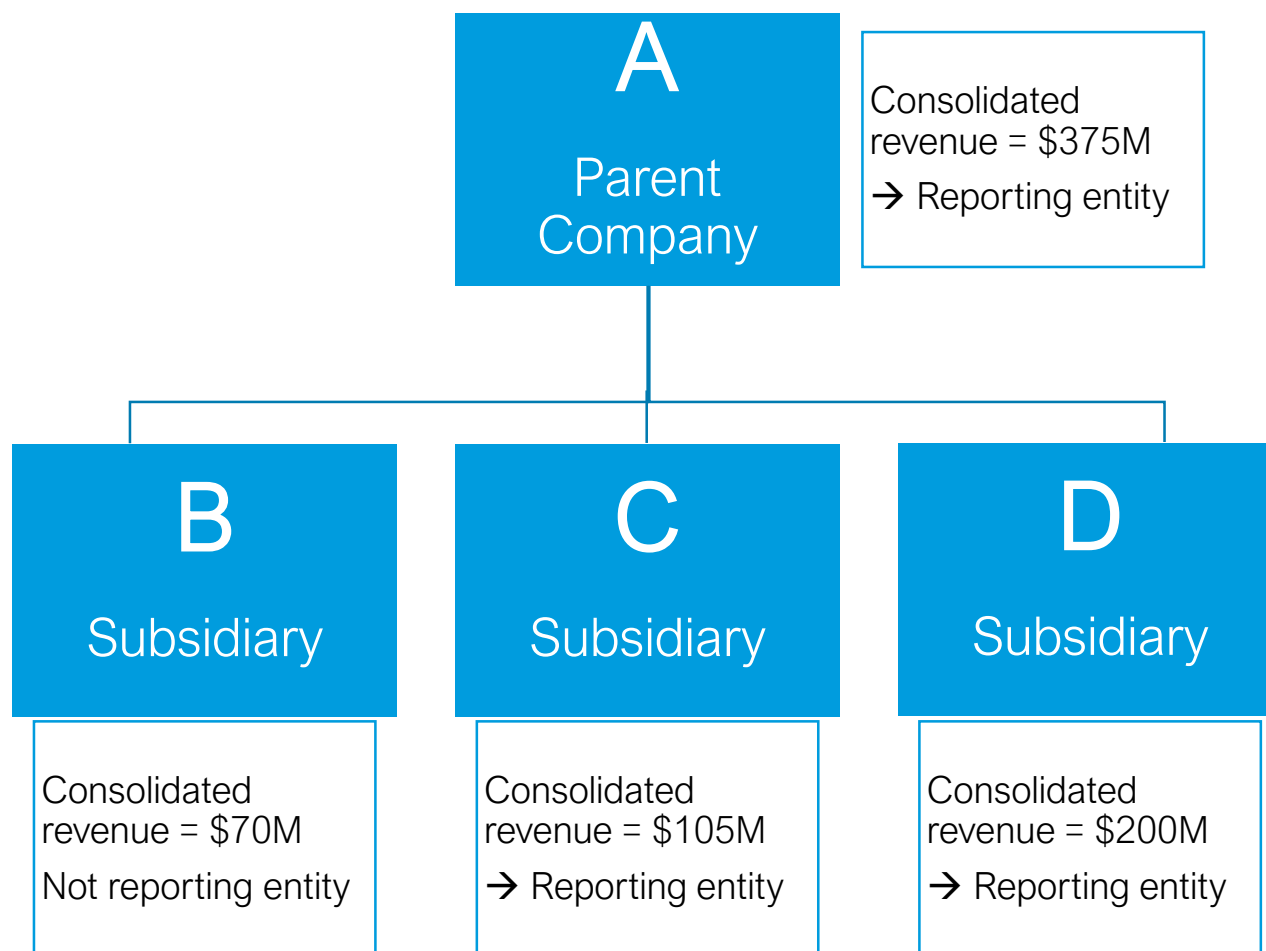
## 'Risk' explained



*\*Taken from Guidance for Reporting Entities – pg 40*



# Reporting approach and Governance Framework



- **Option 1**
  - A submits report on B, C and D
  - C submits report
  - D submits report
  - B is consulted as part of A's report (can also submit voluntary report)
- **Option 2**
  - A submits joint report for A, C and D in consultation with C and D
  - B is consulted as part of report



## Publication and Consequences

---

- No monetary penalty
- Modern Slavery Statements Register: a public register of all the modern slavery statements provided under the Act
- Minister may request an explanation or remedial action and publish information about an entity's failure to comply with a request

*\*Taken from Guidance for Reporting Entities – pg 33 & 34*





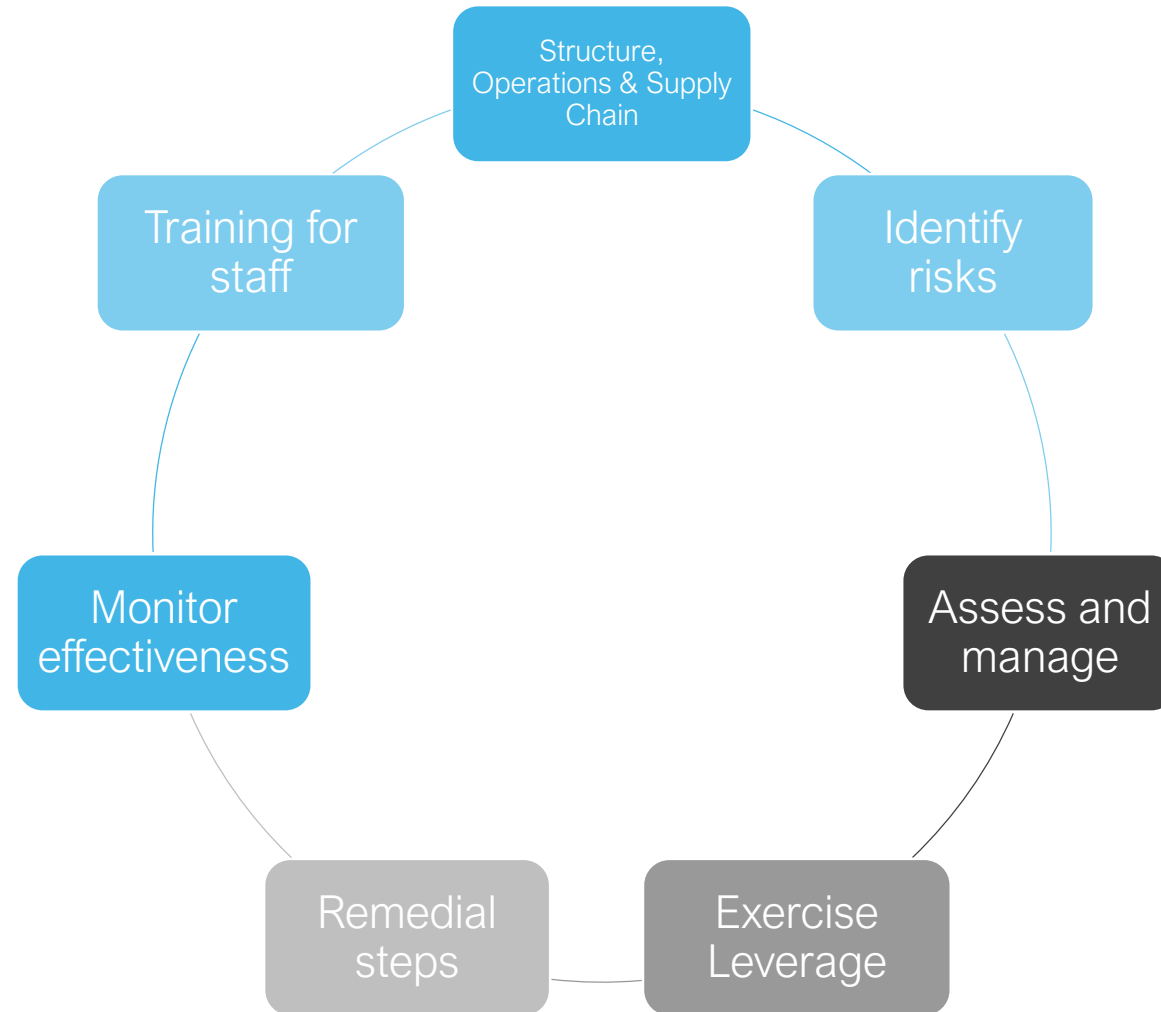
# Modern Slavery Compliance in practice

---

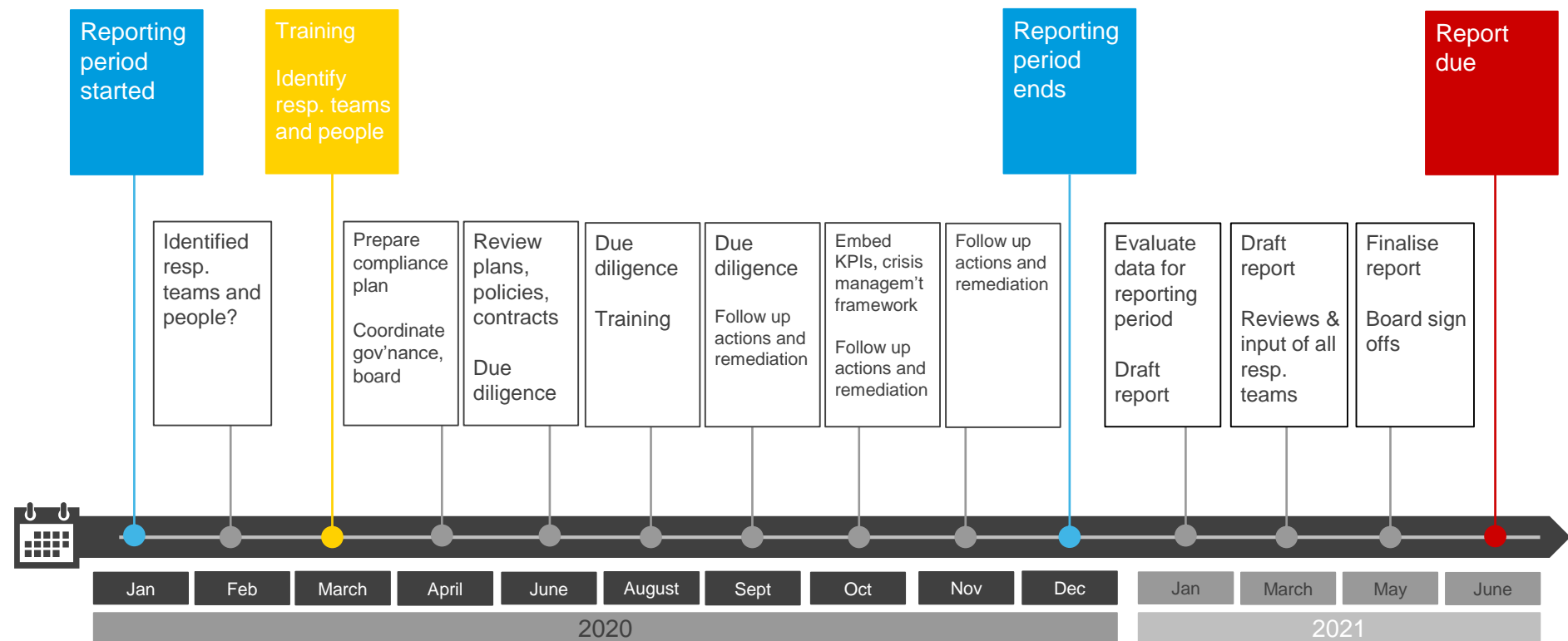
MinterEllison

# Practical responses to Modern Slavery

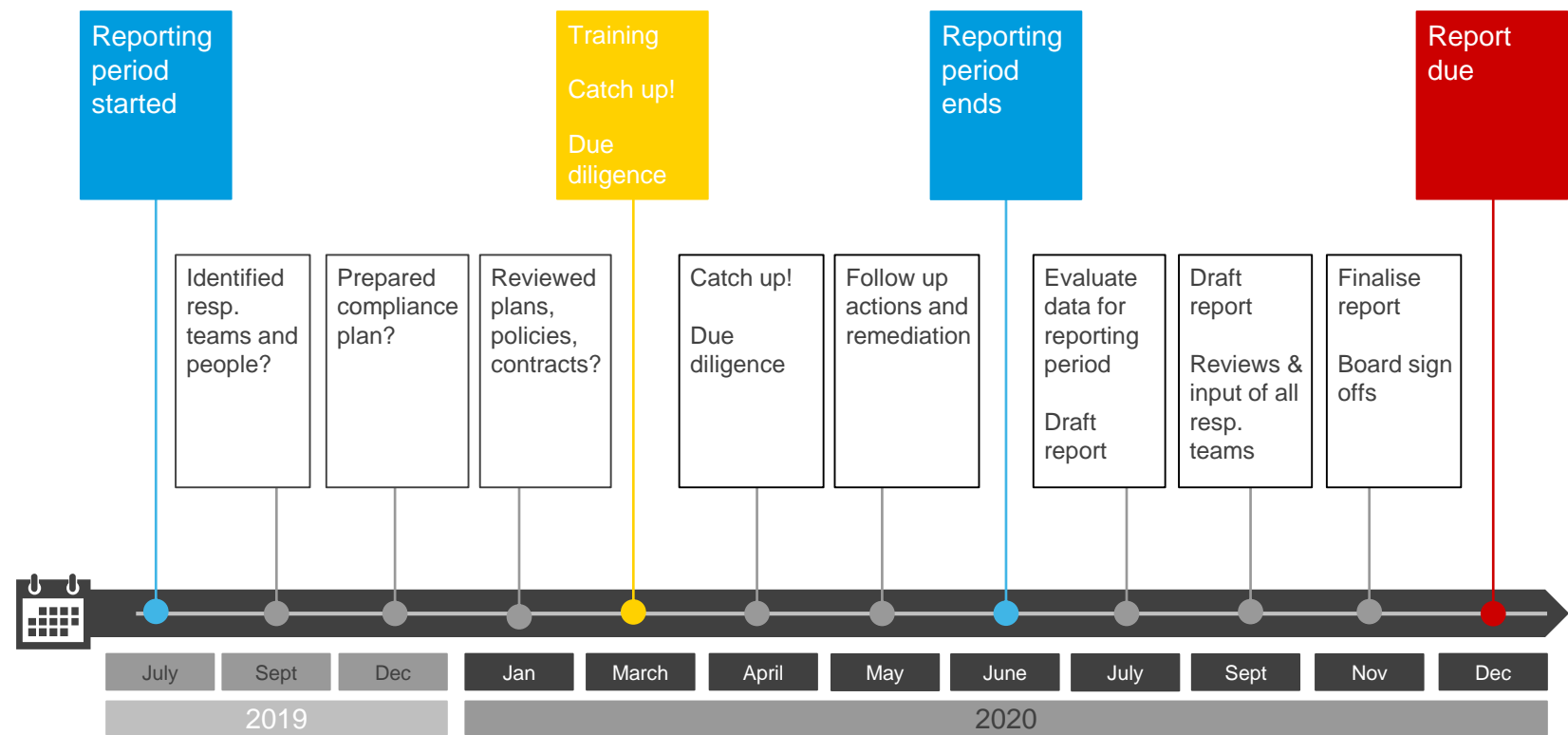
---



# Statement preparation and reporting timeline – June 2021 statements



# Statement preparation and reporting timeline – December 2020 statements



# Risks to business

- Scrutiny from
- Investors
  - Government
  - Public



- Social licence to operate
- Loss of employees



- Customer's choice
- Public procurement requirements



- Investor expectations
- Penalties
- Costs associated with non-compliance



## Potential benefits to business

---

**‘Drive a race to the top’**

**A comprehensive Modern Slavery Statement =**

- a strategic reputational asset
- used as a tool for competing for market share or investment
- more favourable lending rates and attract more cost-effective finance



## Can you exercise leverage to reduce risk?

- 3 basic principles:<sup>\*</sup>
  - Build Meaningful Partnerships
  - Ensure your engagement is risk-based
  - Recognise the leverage that you and your suppliers have to influence change
- Using a risk assessment methodology – tailor action based on the opportunity and risk factors in your supply chain
- Industry and sector level – work with competitors to identify common types of suppliers and key opportunities to influence change

*\*Commonwealth Guidance for Reporting Entities*



# Can you exercise leverage to reduce risk?



## Remediation approach

---

**“We are all going to have slavery in our supply chains no matter how good we think our corporate social responsibility is”**

**Andrew Forrest**

*Chairman of Fortescue Mining Group and the Walk Free Foundation*





What we can learn  
from the UK experience

---

MinterEllison

# Reporting experience (UK)




## SLAVERY AND HUMAN TRAFFICKING STATEMENT

2018




### POLICIES AND CONTROLS

The Social Responsibility Committee of the Board of Directors of Coca-Cola HBC is responsible for the development and supervision of procedures and systems to ensure the pursuit of the Group's social and environmental goals, which apply to all companies of the Group.



**Read our Code of Business Conduct**

At the core of our system of internal control is the Group's Code of Business Conduct. The Code communicates the Group's standards of employee conduct and clearly sets expectations that all employees are to maintain the highest standard of ethical business conduct. Our company-wide Code of Business Conduct applies to everyone working for any Group company worldwide regardless of location, role or level of seniority. We expect temporary and contract employees, consultants, agents and any other third parties who act in the name of any Group company to act in accordance with the principles of the Code. The Audit and Risk Committee of the Board of Directors of Coca-Cola HBC AG has oversight of compliance with the Code.



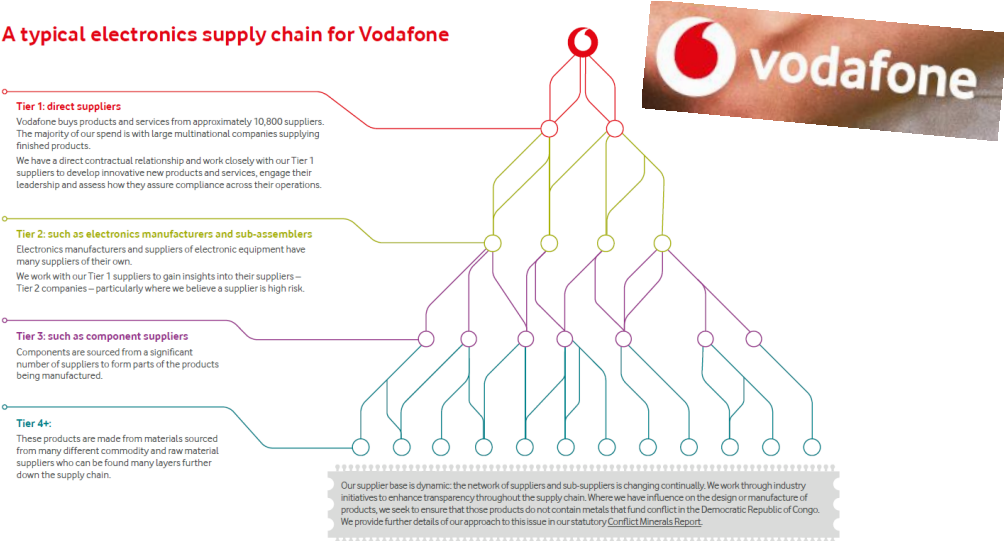
**Read our Human Rights Policy**

Our commitment to prohibiting Modern Slavery is clearly set out in our Human Rights Policy which is committed to international human rights principles enshrined in the Universal Declaration of Human Rights, the International Labour Organisation's Declaration on Fundamental Principles and Rights at Work, the United Nations Global Compact and the United Nations Guiding Principles on Business and Human Rights. It applies to Coca-Cola HBC AG, the entities it owns, the entities in which it has a majority interest, and the facilities it manages.

The policy expressly states that the Group is committed to identifying and preventing any adverse human rights impacts in relation to its business activities through human rights due diligence and preventive compliance processes. The policy prohibits forced labour, child labour and human trafficking. Regular reviews ensure that we adhere to all applicable laws and regulations, that processes are well implemented, that targets are set and reached, and that reporting is timely and accurate.



## A typical electronics supply chain for Vodafone



## Associated British Foods plc Modern Slavery and Human Trafficking Statement 2019

The steps that we take to try to eliminate modern slavery, in any of its forms, from our operations and our supply chains are set out in this document.

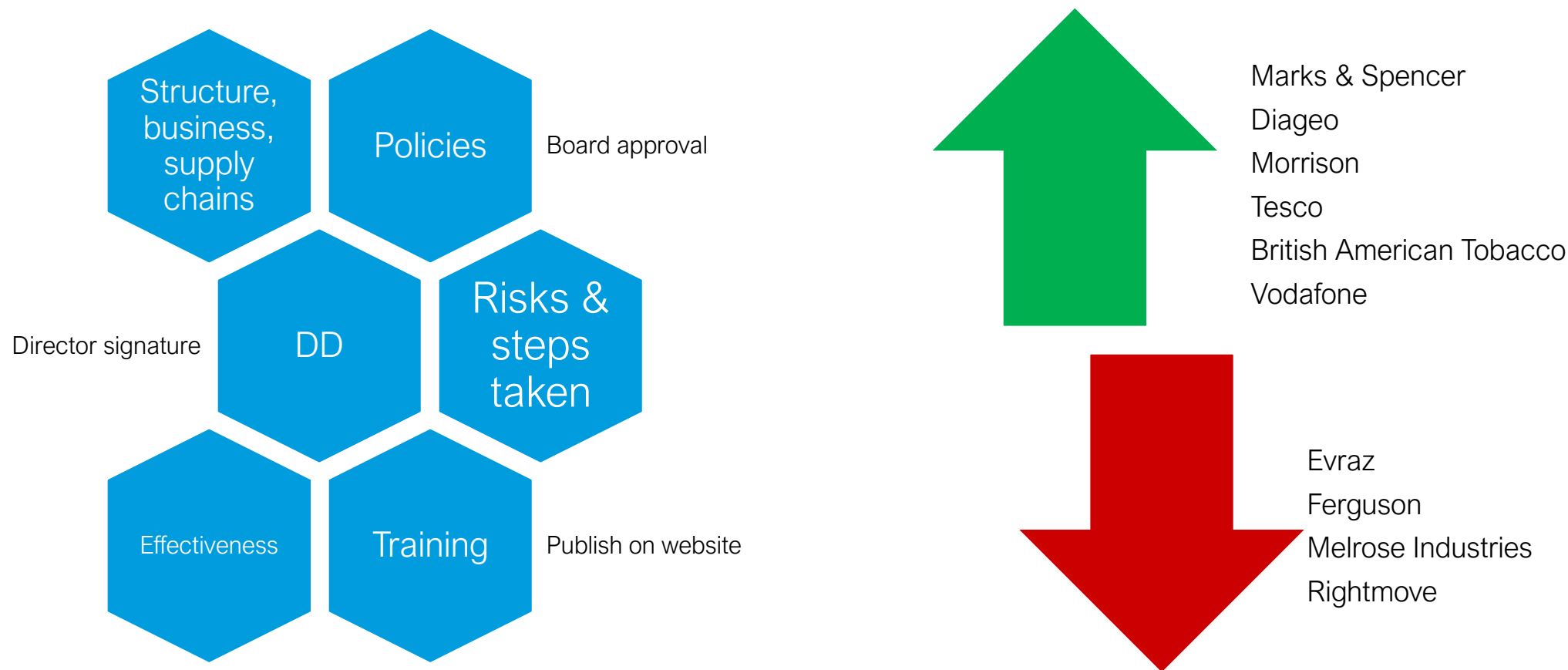


- Key developments for 2019**
- We have developed a company-wide online training module about modern slavery to help accelerate awareness-raising and give businesses the tools to train people.
  - In addition to Primark and Twinnings, **AB Sugar has produced an interactive sourcing map** that outlines where AB Sugar grows, sources and exports sugar.
  - Twinnings Oatline has published a revised **Supplier Code of Conduct**, available in 11 languages, which contains a clause obliging suppliers to cover the cost of recruitment fees and expenses. Eradicating recruitment fees is crucial for tackling modern slavery.
  - Primark is trialling a mobile phone app in China, giving more than 6,000 workers across ten supplier factories access to digital wage slips, a confidential grievance mechanism and 'micro-training' modules (see [page 6](#)).

In the last 12 months, we have built on the progress made in previous years. You can review our previous statements and the individual statements produced by some of our businesses on our [Responsibility site](#).

You can also learn more about our activities and performance in our [2019 Responsibility Report](#) and [ESG Appendix](#).

# UK Business and Human Rights Resource Centre Report – FTSE 100 companies



BHRRRC Public Register:  
<http://www.modernslaveryregistry.org/>





# Best practice examples



MODERN SLAVERY  
TOOLKIT  
FOR SUPPLIERS AND PARTNERS



**Standard Chartered** reported that potential suppliers which have submitted tenders are screened to ensure they have approaches in place to address modern slavery, which may include issuing a Modern Slavery Statement. The company has also updated its request for proposal template to include revised questions relating to modern slavery, including how suppliers' approaches are implemented within their supply chain.



**Tesco** disclosed the main origin source countries for priority products such as bananas, cane sugar, citrus, cocoa, coffee, cotton, palm oil, prawns, and tea. The company also provides a map showing the number of direct supplier sites by country, and each country is marked low, medium and high-risk for human rights abuse based on the Food Network for Ethical Trade risk rating. The company also reported that its UK labour providers work closely with the Gangmaster and Labour Abuse Authority (GLAA) to reduce the risk of trafficking and are prohibited from actively recruiting from outside of the UK without prior agreement from Tesco. It works with service providers to help ensure all temporary workers receive a reasonable number of paid hours each week and have the opportunity to transfer to permanent employment when vacancies arise.



**Vodafone** reported it assessed its own business and supply chain activities against indicators of modern slavery risk, such as: potential employment of vulnerable groups (such as low-skilled, seasonal or migrant workers); likely involvement of labour recruiters and other third-party agencies in the recruitment of workers; consideration of how many workers are involved in the business or supply chain activity; and the country-by-country risk of modern slavery (based on the Global Slavery Index).





## UK statements

---

- Most companies met the minimum requirements (compared to only half last year)
- More policies, audits, risk assessments and training reported
- Reporting on supply chain structure particularly weak
- Still lack of detail regarding actions
- Weakest reporting area was measuring effectiveness of efforts to address modern slavery



## Disclosure in UK statements

---



**Morrisons** reported it had two confirmed incidents of modern slavery related activity in its manufacturing operations in 2017. Both cases involved the exploitation of an agency worker by an external third party, encompassing offences of forced labour and human trafficking. The workers' bank accounts were controlled, they were forced to work under threat of violence and were trafficked to the UK from Eastern Europe on the false promise of well paid, regular work. Both of these incidents were reported directly to site management by the victim. One of the victims presented to the site management after reading a [Stronger Together](#) poster in Slovakian which was displayed on site. Morrisons reported it worked in close collaboration with the GLAA and police and in both cases, the victims entered the National Referral Mechanism.





# Continuous improvement

---

MinterEllison

## Continuous improvement

---

- No one has this completely 'right'
- Reporting journey is just beginning
- Don't try to do everything at once – identify biggest areas of risk and begin from there.
- Be proactive about spotting trouble and high risk spots rather than adopting a tick-the-box approach
- There will be more collective pressure and a collaborative upfront approach is recommended



## Your contacts [Sydney]

---



**Geraldine Johns-Putra**

**Partner**  
**Capital Solutions**  
**Melbourne**

**T** +61 3 8608 2310  
**M** +61 411 183 968  
**E** geraldine.johns-putra  
@minterellison.com



**Hannah McLeod**

**Senior Associate**  
**Dispute Resolution**  
**Sydney**

**T** +61 2 9921 8563  
**E** hannah.mcleod@minterellison.com

