

MODERN SLAVERY - UPDATE ON NSW REGIME

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Legal Briefings

KEY TAKEAWAYS FOR BUSINESS:

1. Implementation of the NSW regime has been deferred.
2. The NSW legislation is under review and may be repealed or amended in whole or in part. Timing of the review and any outcome is uncertain.
3. Business should continue to prepare for the Commonwealth regime.

Australia is in the process of implementing two modern slavery regimes. The Federal *Modern Slavery Act 2019* (Cth) (the **Federal Act**) became effective on 1 January 2019 (see our previous article [here](#) for more detail). There is also a New South Wales *Modern Slavery Act 2018* (NSW) (the **NSW Act**), which was due to be implemented 1 July 2019 (see our previous article [here](#) for more detail).

The NSW Government has now announced it is deferring the implementation of the NSW regime, and referring the NSW Act, amendment bill and draft regulation to the NSW Legislative Council Standing Committee on Social Issues (the **Parliamentary Committee**) for inquiry and report. In Parliament on 19 June 2019, the Special Minister of State explained he had received advice that the legislation contained “a number of defects requiring urgent attention.” The “defects” could render some provisions inoperable, and other provisions open to the risk of a constitutional challenge.

We understand that some of the “defects” relate to the overlap between the NSW Act and the Federal Act. This creates a risk of an inconsistency of laws that could result in all or part of the NSW Act being unconstitutional or unnecessary. As a result, the NSW Government has decided that the NSW Act must be amended and has asked the Parliamentary Committee to report back on proposals for addressing the issues.

The NSW Government has instructed the Parliamentary Committee to consider a number of proposals for the legislation, including whether the NSW Act should be repealed, in whole or in part. The NSW Act currently has a lower threshold for reporting in comparison to the Federal Act and contains penalties for failing to report or providing misleading statements. HSF expects the Committee to consider removing the modern slavery reporting provisions that overlap with the Federal regime, but may seek to retain NSW Anti-Slavery Commissioner (which is not a feature of the Federal regime).

The future and timeframe for the NSW Act is unclear and uncertain. The Special Minister of State stated that he would like it “dealt with as quickly as possible”, but at the same time will not “fetter the committee with a timetable as such.” The NSW Government has also foreshadowed that the review process will be “collaborative” and that there will be consultation in relation to the proposals.

The commencement date of the NSW Act is expected to be determined following the NSW Government’s consideration of the Parliamentary Committee’s recommendations. If the reporting requirement under the NSW Act is retained, it may not be possible to bring the regime into force until at least next year, in order to provide companies with adequate time to prepare and to synchronise with the reporting cycle under the Federal Act.

In terms of next steps, in the coming weeks, Professor Jennifer Burn (who is the NSW Interim Anti-Slavery Commissioner) plans to hold briefing sessions about the NSW Act, the draft amendment bill and draft regulations. HSF will attend these sessions, and will continue to monitor the review process as it progresses.

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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