

# MODERN SLAVERY UPDATE: FIRST AUSTRALIAN MODERN SLAVERY LEGISLATION PASSES IN NSW

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Legal Briefings - By **Jacqueline Wootton, Antony Crockett, Olivia Kelly and Ashleigh Barnes**

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New South Wales has become the first Australian jurisdiction to introduce specific modern slavery legislation. The NSW Modern Slavery Act (**NSW Act**) is distinct from the proposed federal Act, which is expected to be tabled for debate in the federal Parliament in the coming weeks and is also likely to pass into law with bipartisan support.

## KEY TAKEAWAYS

The NSW Act contains reporting requirements that have the potential to overlap with the proposed federal scheme. From a business perspective, it is significant for companies to understand the requirements under the NSW Act (which may apply before the federal scheme is enacted), as well as any key differences to proposed federal legislation.

The new law goes beyond the federal proposals in a number of important respects by providing penalties for non-compliance, establishing an Anti-Slavery Commissioner and controls around NSW government procurement. This is likely to lead to continuing attention on whether these aspects of the NSW Act should be incorporated at the federal level.

## OVERVIEW OF THE NSW MODERN SLAVERY ACT

On 21 June 2018, the Upper House of the NSW Parliament passed the NSW Act. The private members' bill, which was introduced to the New South Wales Parliament earlier this year, has now passed both Houses of Parliament with bipartisan support and is awaiting assent. There is no clear timetable as to when the new law will come into force.

## **ANNUAL MODERN SLAVERY STATEMENT**

Under the NSW Act, commercial organisations with at least one employee in NSW, and who have a total annual turnover of at least A\$50 million, will be required to publish an annual modern slavery statement. The threshold for reporting under the NSW Bill is considerably lower than that proposed under the federal legislation, which requires organisations with an annual turnover of A\$100 million to prepare an annual statement. The NSW Government have however indicated that small businesses with less than 20 employees will be exempt from the reporting requirement for 18 months following commencement.

The specific information which companies will be required to report on and relevant exemptions from the reporting requirement will be detailed in the Regulations, accompanying the NSW Act (the **NSW Regulations**), which are not currently drafted. The Act provides that the Regulations may require that an annual modern slavery statement should cover, at a minimum, their:

- structure, business and supply chains;
- internal policies, due diligence and remediation processes relating to modern slavery;
- key risk areas for potential modern slavery malpractice and any steps undertaken to assess and manage those risks; and
- training practices in respect of modern slavery.

These areas are broadly similar to the content proposed by the Joint Standing Committee on Foreign Affairs, Defence and Trade for the federal reporting requirement.

Consideration has been given to the way in which the NSW and federal reporting requirements will operate alongside one another. During parliamentary debate, the NSW Government expressed its desire to harmonise the state level framework for reporting with the federal framework currently being developed, in order to avoid duplicating administrative burdens on businesses. Accordingly, the Act provides that the NSW reporting requirement will not apply to commercial organisations who report under a prescribed equivalent federal or state law. It is not clear how the NSW Act will operate alongside overseas reporting requirements.

For more information on the proposed federal approach, see our earlier report [here](#).

## **PENALTIES AND MODERN SLAVERY RISK ORDERS**

The NSW Act contains a range of penalties that have not been provided for in the federal proposal. Penalties of up to 10,000 penalty units or the equivalent of A\$1.1 million will apply to companies for:

- failing to prepare a modern slavery statement;
- failing to publish that statement publicly in accordance with the Regulations; and
- knowingly providing false and misleading information in a modern slavery statement.

In addition to the penalty provisions, the NSW Act also provides power for a court to make modern slavery risk orders. Where a person has been convicted of a prescribed modern slavery offence, a court may also make orders prohibiting them from specified conduct. A breach of the order will constitute an offence, which carries a maximum penalty of 500 penalty units, imprisonment for two years, or both.

## **NSW INDEPENDENT ANTI-SLAVERY COMMISSIONER AND MODERN SLAVERY COMMITTEE**

The NSW Act provides for the appointment of a state-level independent Anti-Slavery Commissioner. The NSW Anti-Slavery Commissioner's role will be largely focused on public awareness, advocacy and advice and does not include investigative or complaint-handling powers in individual cases. The NSW Anti-Slavery Commissioner's key purpose will be to:

- advocate for, and promote action to, combat modern slavery;
- educate and inform NSW residents about the key indicators of modern slavery; and
- explain the steps to remediate or monitor risks of modern slavery in supply chains.

The NSW Anti-Slavery Commissioner will also be responsible for preparing a strategic plan to combat human trafficking and slavery-like practices in NSW, maintaining a public register identifying organisations in which goods and services are, or may be, products of supply chains where modern slavery is taking place, and establishing a hotline to provide advice to persons who may be victims of modern slavery. The Commission will also be required to publish an annual report.

Further, the NSW Act establishes a Modern Slavery Committee as a joint standing committee of the NSW Parliament, to inquire into, and report on matters relating to, modern slavery.

## **NSW GOVERNMENT PROCUREMENT**

The NSW Act provides powers for the NSW Procurement Board to direct government agencies to carry out steps that ensure that goods and services procured by, and for, government agencies are not the product of modern slavery.

This is accompanied by an audit mechanism under the Bill which provides for the Auditor-General to conduct audits to determine whether government agencies are complying with those procurement obligations.

The electronic register kept by the NSW Anti-Slavery Commissioner will also identify government agencies that are failing to comply with the directions of the Procurement Board relating to modern slavery.

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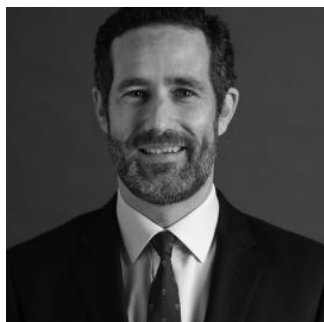
Please contact the authors or your usual Herbert Smith Freehills contacts if you have any questions or would like to discuss your organisation's compliance framework or supply chain due diligence.

## **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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