

NSW LEGISLATIVE COMMITTEE RECOMMENDS NSW MODERN SLAVERY ACT BE BROUGHT INTO FORCE IN 2021

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Legal Briefings – By **Jessica Ginberg and Nick Brewer**

After receiving over 100 submissions, the New South Wales Legislative Council’s Standing Committee on Social Issues has released its [Final Report into the Modern Slavery Act 2018 and associated matters \(Report\)](#).

The Report is the last step of the Committee’s inquiry into the operation of the *Modern Slavery Act 2018* (NSW) (**NSW Act**), passed in June 2018, and the draft NSW Modern Slavery Bill 2019 (the **Amendment Bill**). As flagged in our previous [article](#), there were open questions as to whether the legislation would be inconsistent with the *Modern Slavery Act 2018* (Cth), which was passed in December 2018.

Here, we cover the following key recommendations of the Report:

1. The Committee’s recommendation that the NSW Act be brought into force next year.
2. The potential inconsistencies between the NSW and Commonwealth legislation.
3. The inclusion of a statutory review requirement.
4. The reporting threshold of \$50 million in revenue.
5. The penalties for non-compliance with the NSW Act.
6. The way charities or not-for-profits are covered by the NSW Act.

‘GREEN LIGHT’ TO PROCEED WITH NSW ACT AND AMENDMENT BILL

First and foremost, the Committee recommended that the NSW Government proceed with the Amendment Bill taking into consideration the comments and recommendations of its Report, with the aim of the amended NSW Act commencing on or before 1 January 2021.

INCONSISTENCIES WITH COMMONWEALTH LEGISLATION

The Committee investigated whether the NSW Act was inconsistent with the Commonwealth Act and found that the Amendment Bill proposed a number of changes to address the risk of inconsistencies and overlap between the Commonwealth and NSW offence provisions.

STATUTORY REVIEW

The Commonwealth Act includes a requirement for a statutory review three years after it enters into force and the Committee considered whether the NSW Act should follow suit. The Report found that there was merit in a statutory review for the state legislation as it would provide an opportunity to evaluate the NSW Act's operation in its initial phase.

The Report recommended that the NSW Act include a statutory review to be conducted in conjunction with the Australian Government's statutory review of the Commonwealth Act. However, given the delay with the NSW Act entering into force, review at the same time as the Commonwealth Act may be too early to fully evaluate the legislation.

REPORTING THRESHOLD

The Committee also considered the appropriateness of the NSW Act's \$50 million threshold for determining which companies are required to prepare modern slavery statements.

Although the Committee received conflicting evidence as to the appropriateness of the threshold, it determined that \$50 million was reasonable and recommended that the NSW Government work with the Australian Government to seek harmonisation of this threshold as a national standard (the current threshold under the Commonwealth Act is \$100 million).

Also with a view to harmonisation with the Commonwealth Act, the Report recommended that the threshold be based on 'consolidated revenue' rather than the existing 'turnover'.

PENALTIES FOR NON-COMPLIANCE

Unlike the Commonwealth Act, the NSW Act contains penalties for failing to prepare or publish a modern slavery statement. The Committee was in favour of retaining the penalties regime, even though this creates a discrepancy between the Commonwealth and NSW legislation. The Committee suggested that as part of the Commonwealth statutory review, it would be appropriate for the Commonwealth to re-evaluate its position with respect to penalties for non-compliance.

The Committee also recommended that the NSW Government amend the NSW Act to specify a relevant authority responsible for conducting prosecutions that involve breaches of the requirement to prepare a modern slavery statement.

COVERAGE OF CHARITIES AND NFPS

The Report recommended the NSW Government reassess the exemption for charities and not-for-profit organisations from this requirement, including by:

- seeking input from the charity and not-for-profit sector; and
- considering mechanisms to support charities and not-for-profits to meet the reporting requirement going forward.

The Committee did not support a bespoke exemption for not-for-profit clubs, such as sporting and social clubs.

PATH FORWARD FOR NSW ACT

NSW Parliament will now review the Committee's findings and consider whether to legislate to implement the recommendations contained in the Report. While some recommendations are likely to be uncontroversial, such as the use of 'consolidated revenue' over 'turnover', other recommendations may be the subject of further debate, such as the appropriateness of the \$50 million threshold.

It remains to be seen whether other states will follow NSW's lead in developing state modern slavery legislation and, if so, whether NSW's approach will be implemented consistently across the country.

KEY CONTACTS

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



ANTONY CROCKETT
SENIOR
CONSULTANT, HONG
KONG
+852 21014111
Antony.Crockett@hsf.com



AMALIA STONE
SPECIAL COUNSEL,
SYDNEY
+61 2 9225 5522
Amalia.Stone@hsf.com



TIMOTHY STUTT
SENIOR ASSOCIATE,
SYDNEY
+61 2 9225 5794
Timothy.Stutt@hsf.com

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