

NSW MODERN SLAVERY LAWS TO BE HARMONISED WITH COMMONWEALTH ACT

28 September 2020 | Australia

Legal Briefings – By **Antony Crockett, Timothy Stutt and Nick Brewer**

The New South Wales (**NSW**) Government has [confirmed](#) its intention to harmonise its proposed State-based modern slavery legislation with the Commonwealth *Modern Slavery Act 2018* (Cth) (**Cth Act**).

The NSW Government's position was provided in a response letter to the [Final Report into the Modern Slavery Act 2018 and associated matters](#) (**Report**), which followed an inquiry into the path forward for the NSW Modern Slavery Act 2018 (NSW) (**NSW Act**). Whilst the NSW Act was passed by the NSW legislature, it has not yet been proclaimed to come into force given areas of overlap and inconsistency with the Cth Act.

The Report set out several key recommendations for enhancing the NSW Act, which we detailed in [this previous blog post](#). A key recommendation was that the NSW Government work with the Commonwealth Government to seek harmonisation of the consolidated revenue threshold for modern slavery reporting, ideally with \$50 million consolidated revenue as a national standard. The current threshold under the Cth Act is \$100 million in consolidated revenue, whereas the NSW Act has a threshold of \$50 million 'turnover'.

In its response letter of 24 September 2020, the NSW Government has affirmed its support for the harmonisation recommendation and signalled its intention to enter into discussions with the Commonwealth to achieve the national threshold.

The NSW Government also either accepted in-principle or noted the Report's other recommendations, including that the NSW Act:

- be brought into force to commence on or before 1 January 2021;

- include a statutory review mechanism;
- replace 'turnover' terminology with 'consolidated revenue' for consistency with the Cth Act; and
- specify a relevant authority for conducting prosecutions involving breaches of the NSW Act.

While the NSW Government's response to the Report is a positive step for companies that may otherwise be subject to inconsistent state and federal reporting thresholds, it is as yet unclear whether the Commonwealth Government will have appetite for adopting a lower threshold for reporting. Specific criticisms of adopting a lower threshold include the business 'impost' from requiring medium-sized businesses to report, as well as arguments that substantially increasing the number of reporting entities may ultimately serve to make oversight and enforcement more difficult.

Reaching national harmonisation may also prove challenging in the context of the [private member's bill](#) currently before the Tasmanian legislature proposing similar modern slavery reporting requirements with a threshold of \$30 million 'turnover'.

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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