

NSW MODERN SLAVERY - OPPORTUNITY TO PROVIDE INPUT

16 August 2019 | Australia
Legal Briefings - By **Amalia Stone**

In June 2018, the Parliament of New South Wales passed the [NSW Modern Slavery Act](#), ahead of the Commonwealth Modern Slavery Act which passed in December 2018. However, the NSW Modern Slavery Act is yet to commence and it has been [reported](#) that the NSW Special Minister of State had received advice that the legislation may be open to a constitutional challenge.

UPDATE: NSW MODERN SLAVERY ACT

As a reminder, following commencement of the legislation, 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 Committee has invited submissions in relation to the NSW Modern Slavery Act, the [Modern Slavery Amendment Bill](#) and the draft Modern Slavery Regulation.

WHAT AMENDMENTS ARE PROPOSED?

The Modern Slavery Amendment Bill seeks, amongst other things, to clarify:

- the position of the NSW Anti-Slavery Commissioner (including that other government agencies and non-government modern slavery related organisations are to co-operate with the Commissioner);
- that State owned corporations are to be treated as non-government organisations (which

carries implications in relation to reporting requirements);

- that not for profit bodies and charities may be commercial organisations for the purposes of being required to comply with the annual reporting regime if their turnover from supply of goods and services for profit clears the \$50 million threshold; and
- that information the Commissioner learns may be provided to the NSW police if relevant to a child abuse offence.

NSW STATEMENT - DETAILS ON LODGEMENT AND INTERNAL REQUIRED APPROVALS

The draft Modern Slavery Regulation provides further details about how a statement must be prepared to comply with the NSW Modern Slavery Act (once it commences). This includes that the statement must:

- be prepared and lodged within 6 months after the end of each financial year of the organisation. Lodgement is with the Commissioner in electronic form, and the register of such statements must be made publicly available free of charge on the internet;
- be in a form approved by the Commissioner;
- be approved by the principal governing body of the commercial organisation, and signed by a responsible member of the commercial organisation;
- if it covers more than one organisation (one of which is a commercial organisation that has to report), it must be prepared in consultation with each organisation that it covers, and be approved by:
 - the principal governing body of each organisation covered by the statement (and signed by a responsible member of each organisation); or
 - the principal governing body of an organisation that is in a position to control each organisation covered by the statement (and then signed by a responsible member of that higher organisation); or
 - if this is not practicable, the principal governing body of at least one commercial

organisation covered by the statement (and signed by a responsible member of each such commercial organisation).

NSW STATEMENT - DETAILS TO BE COVERED

The statement itself must set out very similar things to those required by the Commonwealth Act:

- identify the organisation and describe its structure, operations and supply chains;
- describe the risks of modern slavery practices in the operations and supply chains of the organisation and any entities it owns or controls;
- describe the actions taken by the organisation (and such entities) to assess and address those risks, including diligence and remediation processes;
- describe how the organisation assesses the effectiveness of such actions;
- describe the processes of consultation with any entities the organisation owns or controls, or if a joint statement, the consultation between those organisations; and
- details of approval by the relevant principal governing body (or bodies) or, if the statement relates to more than one organisation, and it has not been approved by the principal governing body of each organisation and only that of at least one commercial organisation, an explanation of why it has not been practicable to do so.

NSW STATEMENT - WHO IS EXEMPT

Commercial organisations that would otherwise have to report in NSW are exempt for a financial year if:

- they have volunteered to comply with (and complied with) the Commonwealth Modern Slavery Act reporting requirements for that financial year. However, the organisation must notify the Commissioner that it claims the exemption, and provide a copy of the modern slavery statement lodged under the Commonwealth regime;
- a subsidiary of a reporting entity who has reported under the Commonwealth Modern Slavery Act covering the subsidiary, who notifies the Commissioner and provides a copy of the modern slavery statement lodged under the Commonwealth regime;
- a small organisation with less than 20 employees during that financial year;

- a corporate Commonwealth entity or corporation controlled by another State or Territory (or the agency of another State or Territory); and
- an organisation that has a constitution that prohibits distribution of profits to members, does not conduct its affairs to provide pecuniary gain to members and is exempt from paying income tax – charities and other not for profit organisations.

OPPORTUNITIES TO PROVIDE COMMENTS ON THE NSW REPORTING REGIME

The NSW Standing Committee on Social Issues (**Committee**) is seeking input on the way in which NSW has legislated in relation to modern slavery risk reporting, in particular in relation to the supply chain reporting regime proposed in the draft [NSW Modern Slavery Regulation](#).

Comments can be made [here](#) before 13 September 2019 to the NSW Interim Anti-Slavery Commissioner in relation to the details of how organisations are to comply with the NSW reporting regime.

Submissions can be made to the Committee [here](#) before 4 October 2019 in relation to the NSW response to modern slavery. The NSW Interim Anti-Slavery Commissioner has flagged that comments made to her will not be provided to the Committee, such that stakeholders should both make comments to her, and submissions to the Committee, to ensure that their input is properly considered by both.

The Commissioner has also indicated that she will be hosting briefing sessions about the NSW Act, the amendment bill and draft regulation. NSW organisations who may be potentially required to report under the NSW regime, even if exempt from the Commonwealth reporting regime, should consider attending, and providing comment to the Commissioner, and submissions to the Committee, in relation to any issues of concern. In particular, the Commissioner has asked for comments in relation to a number of aspects, including on how best the Commissioner can support, communicate with and guide businesses in preparing statements, and whether the proposed joint statement regime and proposed exemptions provide enough flexibility.

KEY CONTACTS

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



**JACQUELINE
WOOTTON**
PARTNER, BRISBANE

+61 7 3258 6569 / +61 3 9288
1022
jacqueline.wootton@hsf.com



AMALIA STONE
SPECIAL COUNSEL,
SYDNEY

+61 2 9225 5522
Amalia.Stone@hsf.com



ANTONY CROCKETT
SENIOR
CONSULTANT, HONG
KONG

+852 21014111
Antony.Crockett@hsf.com



TIMOTHY STUTT
SENIOR ASSOCIATE,
SYDNEY

+61 2 9225 5794
Timothy.Stutt@hsf.com

LEGAL NOTICE

The contents of this publication are for reference purposes only and may not be current as at the date of accessing this publication. They do not constitute legal advice and should not be relied upon as such. Specific legal advice about your specific circumstances should always be sought separately before taking any action based on this publication.

© Herbert Smith Freehills 2021

**SUBSCRIBE TO STAY UP-TO-DATE WITH LATEST THINKING, BLOGS, EVENTS, AND
MORE**

Close

© HERBERT SMITH FREEHILLS LLP 2021