ETHICAL SUPPLY CHAIN AND THE MODERN SLAVERY ACT 2018 – ARE YOU READY?

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The *Modern Slavery Act 2018* (NSW Act) was passed on 21 June 2018. A week later, on 28 June, the Turnbull Government introduced the *Modern Slavery Bill 2018* (Cth) to the Federal Parliament. The contents of the Commonwealth Bill will be discussed further when parliament sits next on 13 August 2018 and the government has indicated it aims to have this passed into law later this year.

Modern slavery exists in many forms and includes forced labour, wage exploitation, involuntary servitude, debt bondage, human trafficking and child labour, both in Australia and globally. According to the International Labor Organization, human trafficking and forced labour is a US$150 billion per year industry. Labour trafficking and exploitation is prevalent in many industries including agriculture, construction, fishing, manufacturing, textiles, domestic services, mining and mineral extraction (essentially any industry that requires significant lower education manpower). From this, the United Nations estimates that up to 25 million modern slavery victims are exploited in global supply chains.

Drawing from similar legislation in the United Kingdom, these bills will require that certain Australian organisations prepare publicly available statements about modern slavery which ensures that 'their goods and services are not a product of supply chains in which modern slavery is taking place.[1]

THE NSW ACT

The NSW Act applies to businesses with employees in NSW that supply goods and services for profit or gain, and have a total turnover of AUD50 million or more. This will not be relevant for any NSW government agencies.

Under the NSW Act, each company must prepare a Modern Slavery Statement, which must be made public and complies with the Act. The statement will need to include:

- the organisation's structure, its business and its supply chains
- its due diligence processes in relation to modern slavery
- the part of its business and supply chains where there is a risk of modern slavery taking place, and the steps it has taken to assess and manage that risk, and
- the training about modern slavery available to its employees[2]

Penalties, including imprisonment and fines of up to AUD21 million, will apply for organisations that fail to prepare a statement or provide false or misleading information[3]

To oversee these changes, an independent Anti-slavery Commissioner will be appointed and will, amongst other responsibilities, keep a publically available register in electronic format of each organisation's modern slavery

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statement.[4] There will also be a Modern Slavery Committee, made up of eight members, who will report to both Houses of Parliament (NSW) on any matters relating to modern slavery.

THE COMMONWEALTH MODERN SLAVERY BILL

The proposed *Commonwealth Modern Slavery Act 2018* (MSA), which was first read in the House of Representatives on 28 June 2018, will have a wider remit applying to Australian companies or other applicable entities. The MSA will include trusts and limited corporate partnerships as well as any entity which carries on business in Australia at any time during the reporting period.[5]

A key difference between the MSA and NSW Act is that the MSA will apply to Australian entities with an annual consolidated revenue of AUD100 million or more.[6]

These entities will be required to publish an annual Modern Slavery Statement detailing their actions to address modern slavery, similar to the NSW Act.[7] In addition, each company will also need to address 'the effectiveness of those actions taken' (to address modern slavery in their operations and supply chains).[8]

However, unlike the NSW Act, the draft MSA does not contain any penalty provisions for any applicable organisations that fail to prepare a statement or provide false or misleading information.

Similar to the NSW Act, a government-run public central repository will be maintained. The Minister for Home Affairs will maintain an online public register of these statements.

Companies and other applicable entities will need to publish their Modern Slavery Statement within six months from the end of their financial year.[9]

Companies and other entities, that are not required to publish Modern Slavery Statements, may volunteer to comply with the reporting requirements in the manner and form approved by the Minister.[10]

WHAT IS MODERN SLAVERY?

Ethical sourcing and supply chain management in various industries has come under intense public scrutiny in recent years (such as the fashion industry). As brands compete to produce high volumes of affordable clothing, with clothing ranges changing every season, it can be increasingly difficult for businesses to monitor their suppliers and prevent exploitation in complex multi-national supply chains. This can also be seen as businesses look for reduce costs by offshoring, such as for operational requirements including accounting, manufacturing or call centres.

In February 2017, the Federal Government established a committee to conduct an enquiry into the establishment of a Modern Slavery Act in Australia. Many organisations and individuals made submissions to the inquiry broadly supporting the establishment of a Modern Slavery Act in Australia and provided examples of how each of their businesses worked to mitigate risks of modern slavery within their supply chains and ensure their business practices were compatible with upholding human rights.

In mid-2017, the Federal Government ran a comprehensive national consultation process to develop the reporting requirements for the proposed MSA. This included 16 consultation roundtables with over 170 participants, 99 written submissions and over 50 direct meetings with key stakeholders.

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The final report of the Foreign Affairs and Aid Sub-Committee, *Hidden in Plain Sight*, was published on 7 December 2017 and recommended the Federal Government enact a Modern Slavery Act in Australia, including a supply chain reporting regime requiring certain businesses to publish a Modern Slavery Statement annually.

Our K&L Gates Ethical Supply Chain group will keep you updated as the changes come into effect.

Further reading:

- NSW *Modern Slavery Act 2018*
- *Commonwealth Modern Slavery Act 2018*
- Parliament of Australia submissions to inquire into establishing a Modern Slavery Act in Australia

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Footnotes:

[1] Modern Slavery Act 2018 (NSW) s24(3)

[2] Modern Slavery Act 2018 (NSW) s24(5)

[3] Modern Slavery Act 2018 (NSW) s24(7)

[4] Modern Slavery Act 2018 (NSW) s26

[5] Modern Slavery Bill 2018 (Cth) s5(a)

[6] Modern Slavery Bill 2018 (Cth) s5(a)

[7] Modern Slavery Bill 2018 (Cth) s16

[8] Modern Slavery Bill 2018 (Cth) s16(1)(e)

[9] Modern Slavery Bill 2018 (Cth) s13(2)(e)

[10] Modern Slavery Bill 2018 (Cth) s6

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