# AUSTRALIA PASSES THE MODERN SLAVERY BILL 2018 – WHAT DO YOU NEED TO DO?

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**Global Ethical Supply Chains Alert**

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## THE COMMONWEALTH NOW HAS A MODERN SLAVERY ACT

The Australian Senate and House of Representatives both passed the *Modern Slavery Bill 2018* (Cth) which became law on 29 November 2018 and will be known as the *Modern Slavery Act 2018* (Cth) (Federal Act). The Federal Act takes effect on 1 January 2019 and follows the Modern Slavery Act 2018 (NSW) (NSW Act) which was enacted on 21 June 2018 and is due to take effect after the Federal Act commences.

This new modern slavery legislation will have a significant effect on the operations of businesses across many industries. Each business must be aware of their obligations, as well as the potential legal and reputational consequences of non-compliance.

## WHAT IS MODERN SLAVERY?

Modern slavery exists in Australia and globally in many forms, including forced labour, wage exploitation, involuntary servitude, debt bondage, human trafficking and child labour. 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 that utilise under-educated workforces, including agriculture, construction, fishing, manufacturing, textiles, domestic services, mining and mineral extraction. The United Nations estimates that more than 40 million modern slavery victims are exploited in global supply chains, with over half of these victims being exploited in the Asia-Pacific region, in which the supply chains of a significant number of large businesses operating in Australia are based[1].

Drawing from similar legislation in the United Kingdom, the Federal Act and NSW Act require that certain Australian entities prepare publicly available statements about modern slavery which ensure that 'their goods and services are not a product of supply chains in which modern slavery is taking place'[2].

## THE FEDERAL ACT

Under the Federal Act, entities that carry on business within Australia and have annual consolidated (including subsidiaries) revenue of at least AUD100 million or more will be required to publish a Modern Slavery Statement within six months of the end of their financial year. For financial year reporting entities, the first Modern Slavery Statement under the Federal Act must be submitted by 31 December 2020, whereas for calendar-year-reporting

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entities, the first Modern Slavery Statements must be submitted by 31 June 2020.

Organisations with annual consolidated revenue of less than AUD100 million may also be eligible to voluntarily comply with the regime. If they wish to volunteer and provide a Modern Slavery Statement, they must give written notice to the Minister before the end of the reporting period.

**What should a Modern Slavery Statement contain?**

A Modern Slavery Statement must describe or address:

- the structure, operations and supply chains of the organisation
- the risks of modern slavery practices in the operations and supply chains of the organisation
- the actions taken by the organisation to address and assess the risks of modern slavery in its operations and supply chains
- the method that the organisation uses to assess the effectiveness of its actions in addressing those risks, and
- if the organisation is reporting jointly with another organisation, or owns or controls other organisations, the process of consultation that has occurred between the organisations.

To ensure senior level engagement, the Modern Slavery Statement must be approved by the board of directors or equivalent and signed by a director.

The Commonwealth Government will establish and manage a Modern Slavery Statements Register on the internet, which will be available for free public inspection.

**Will there be penalties for non-compliance?**

The Federal Act does not contain penalties for organisations who fail to comply with their reporting requirements. However, the minister has the power to give a written request to a non-complying organisation to:

- provide an explanation for its failure to comply; and/or
- undertake specified remedial action within 28 days of the request.

If the organisation fails to comply with the written request, the Minister may publish information about the organisation on the register (or in any way the Minister considers appropriate), identifying the organisation, what it has failed to do and the reasons why the Minister believes the organisation has failed to comply. An aggrieved organisation may apply to the Administrative Appeals Tribunal for review of the Minister's decision, if required.

While there are presently no penalties for non-compliance under the Federal Act, the ability of the Minister to "name and shame" an organisation, as well as the potential negative consequences of public criticism and shareholder agitation should not be underestimated by an organisation.

The potential introduction of civil penalties for non-compliance will be revisited as part of the compulsory three-year review of the Federal Act.

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**Three-year review**

The Federal Act mandates a three-year review to consider all aspects of the Act, including a review of compliance to date, the necessity or desirability of additional measures to improve compliance (such as civil penalties for failure to comply) and whether any other amendments are required.

"The Government will amend the Modern Slavery Bill 2018 to clarify the focus of the three year review of the Modern Slavery Reporting Requirement and provide a clear pathway to introduce future penalties if compliance rates are inadequate.[3]"

The Minister will prepare a report for each calendar year about the implementation of the Federal Act. The Minister's report will include an overview of compliance during that year and the identification of best practice modern slavery reporting. The report will be tabled in each House of the Parliament within 15 days after it has been completed.

**Guidance from Government**

We anticipate that the Commonwealth Government will prepare Guiding Principles to assist organisations to prepare for the reporting requirements. In the meantime, the Explanatory Memorandum and Supplementary Explanatory Memorandum provide more details and explanations about the provisions of the Act and their intention.

## THE NSW ACT

The NSW Act is expected to commence after the Federal Act. It will apply to businesses that:

- have at least one employee in NSW;
- supply goods and services for profit or gain; and
- have a total turnover of AUD50 million or more.

Under the NSW Act, each organisation must prepare a Modern Slavery Statement similar to the Federal Act[4].

A key difference is that penalties, including imprisonment and fines of up to AUD1.1 million, will apply under the NSW Act for organisations that fail to prepare a statement or provide false or misleading information[5].

To oversee these changes, an independent Anti-slavery Commissioner will be appointed and will, amongst other responsibilities, maintain a publically available register of each organisation's Modern Slavery Statement in electronic format[6]. 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 Anti-Slavery Commissioner must consult with the NSW Procurement Board to ensure that NSW Government agencies implement due diligence procedures that aim to ensure that the procurement of goods and services by government agencies are not the product of modern slavery. Further, the Anti-Slavery Commissioner is able to identify government agencies that fail to comply with the directions of the NSW Procurement Board by listing those agencies in the modern slavery public register.

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## REPUTATIONAL RISK AND PROFILING

Whilst some businesses may fall outside the thresholds for the Federal and NSW Acts, they may want to consider conducting an audit and preparing a Modern Slavery Statement to submit to the Government. By voluntarily undertaking an audit of their operations and supply chain, this will identify whether there are any associations or links that need to be addressed.

The Government's preference is to fix any problems through remediation, rather than through punishment or penalty. Some businesses may be unaware of where their goods actually originate. The process of remediation aims to combat modern slavery by increasing wages, improving work conditions and establishing safe procedures and will ultimately result in better outcomes for affected victims than shutting down business operations, which commonly ends in affected victims becoming modern slaves in other organisations.

By implementing a robust and transparent reporting system, organisations will be able to communicate to their customers, clients and peers about their business. For some, it may be an opportunity to showcase the positive work that has been achieved in relation to their supply chains and how they have worked with, not against, companies to eradicate human trafficking, unsafe work practices, child labour and other human rights exploitations.

## WHAT DO YOU NEED TO DO NEXT?

Organisations firstly need to work out if the Federal or NSW Acts apply to them. If so, they need to begin mapping out their supply chain and those of their suppliers. This will include vendors, suppliers, employers and other people who supply goods and/or services to their business globally. Organisations will need to identify any areas where there is a high risk of forced labour and other modern slavery practices.

To assist clients in navigating complex global supply chain risks, K&L Gates has formed a *Global Ethical Supply Chain Task Force* comprised of team members in offices throughout the world, including in or near several compliance hot spots. Our task force offers a broad perspective on the ethical supply chain issues clients may face.

Our lawyers work regularly with General Counsel, Risk Managers, CEOs, CFOs, COOs, CCOs, Procurement Officers and Public Relations Managers, among others, to identify and manage risks through the implementation of certain commercially reasonable and efficient tools. These include:

- Policies and procedures
- Risk assessments
- Training
- Due diligence
- Crisis management and public relations, and
- Litigation support.

Our team can meet or speak with you to discuss your business and what short, medium and longer term steps you should take. Our support covering global ethical supply chain due diligence and compliance can be offered as stand-alone elements. These can be combined to fit different business types, industries, scales or other unique

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factors.

There may also be language considerations so being prepared is important. By having experienced counsel to help, you can help alleviate any potential issues. The Federal and NSW Acts are the beginning of the process but a well needed change.

To view the Federal Act as passed by both Houses, click here.

To contact any of our team, please contact the above people or email: AUSEthicalSupplyChain@klgates.com

**Other documents/links:**

- Parliament of Australia Modern Slavery Bill 2018 page
- Explanatory Memorandum – click here
- Supplementary Explanatory Memorandum – click here

**Footnotes:**

1 *Global estimates of modern slavery: Forced labour and forced marriage*, International Labour Office, Walk Free Foundation and International Organization for Migration, Geneva, 2017.
2 Modern Slavery Act 2018 (NSW) s24(3)
3 Australian Government response to the Senate Legal and constitutional Affairs Legislation Committee Report on the Modern Slavery Bill 2018 [October 2018]
4 Modern Slavery Act 2018 (NSW) s24(5)
5 Modern Slavery Act 2018 (NSW) s24(7)
6 Modern Slavery Act 2018 (NSW) s26

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