

NSW MODERN SLAVERY ACT – START DATE PUSHED BACK

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Global Ethical Supply Chain Initiative Alert

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The State Parliament of New South Wales, in passing the *Modern Slavery Act 2018* (NSW) (NSW Modern Slavery Act) on 21 June 2018 distinguished itself by becoming the first jurisdiction in Australia to introduce modern slavery legislation¹ and joined a small but growing global cohort of others which had passed laws of this nature.

Just a few months later, the Commonwealth Parliament also distinguished itself in joining the same cohort by passing its own modern slavery legislation, the *Modern Slavery Act 2018* (Cth) on 29 November 2018 (Commonwealth Modern Slavery Act).

Both the NSW and the Commonwealth Modern Slavery Acts did not commence operation immediately on becoming law, but both were intended to commence operations in 2019.

In the time since the initial passage of the NSW and the Commonwealth Modern Slavery Acts, there has been much commentary on the similarities between the two Acts and the potential for overlapping compliance requirements has been the subject of some debate and concern. However, it was expected that the potential for overlapping obligations would be dealt with by subsidiary legislation made under either or both Acts.

With the Commonwealth Modern Slavery Act commencing its operation on 1 January 2019, the Department of Home Affairs anticipates that there are over 3,000 entities required to comply with its requirements.

While the commencement of the NSW Modern Slavery Act was provisionally set for 1 July 2019, this date has now passed and the NSW Modern Slavery Act has not yet commenced operation.

The NSW Special Minister of State, Don Harwin, recently announced in the NSW Parliament that the NSW Modern Slavery Act, as well as an amendment bill and draft regulations, would be referred to the Parliamentary Standing Committee on Social Issues for review before it commences operation.²

NGOs and civil society organisations initially welcomed the NSW Modern Slavery Act's response to modern slavery and in particular, its provisions which go beyond those in the Commonwealth Modern Slavery Act. These include:

- a lower threshold for reporting (AUD50 million annual turnover as compared to AUD100 million of annual consolidated revenue)³
- penalties for non-compliance⁴
- assistance and support for victims,⁵ and

- the establishment of a NSW Anti-Slavery Commissioner.⁶

NSW agencies were reported to have worked closely with the Australian Government to ensure the NSW Modern Slavery Act would be 'consistent and complementary' to the Commonwealth Modern Slavery Act⁷. Despite these efforts, however, it appears that the NSW Government has formed the view that the NSW Act, in its current form:

- includes defects that could have the potential of rendering some of its provisions inoperable, and
- may be subjected to constitutional challenge on the basis of inconsistency with the Commonwealth Modern Slavery Act.⁸

The NSW Government has indicated that these issues require the NSW Modern Slavery Act to be referred to the Parliamentary Standing Committee for Social Issues for review, although details of the terms of reference of the scope of the review remain unclear. The timing of the commencement and completion of the review remain similarly unclear.

It is understood there remains cross party political support for the NSW Modern Slavery Act to commence.

Given these developments, it remains uncertain when the NSW Modern Slavery Act will come into operation, but businesses and other entities caught under the Commonwealth Modern Slavery Act need to be preparing and be readying themselves to comply with the Commonwealth Modern Slavery Act's reporting scheme and its compliance requirements.

[1] Modern Slavery Bill 2018, Parliament of New South Wales, <https://www.parliament.nsw.gov.au/bills/Pages/bill-details.aspx?pk=3488>; and see <http://www.klgates.com/australia-passes-the-modern-slavery-bill-2018--what-do-you-need-to-do-11-30-2018/>

[2] Legislative Council Hansard, Modern Slavery Legislation, Parliament of New South Wales (19 June 2019), <https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/HANSARD-1820781676-79150>

[3] Modern Slavery Act 2018 (NSW) s 24(1)(a).

[4] *ibid* s 24(2).

[5] *ibid* s 3(b).

[6] *ibid* s 6.

[7] Modern Slavery, NSW Government (28 February 2019), <https://www.nsw.gov.au/improving-nsw/projects-and-initiatives/modern-slavery/>

[8] Legislative Council Hansard, Modern Slavery Legislation, Parliament of New South Wales (19 June 2019), <https://www.parliament.nsw.gov.au/Hansard/Pages/HansardResult.aspx#/docid/HANSARD-1820781676-79150>

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