

Modern Slavery Legislation in Australia during 2018

Summary and Perspectives

2018 has been a strong legislative year for the anti-slavery cause in Australia. In June, the NSW Parliament passed a Modern Slavery Act 2018 (NSW), (the NSW Act). In November, the Australian Parliament also passed a Modern Slavery Act 2018 (the MS Act). Both these acts were modelled on the UK Modern Slavery Act 2015 (the UK Act).

In essence, the NSW Act and the MS Act provide, with notable differences, public reporting requirements in respect of business activities and supply chains of various Australian public sector agencies, corporate entities and civil society organisations.

The NSW Act is more stringent in its reporting requirements than the MS Act and provides for an Anti-slavery Commissioner with statutory independence, staff and facilities. The NSW Act also has a much lower threshold of annual turnover for entities subject to reporting requirements (\$50 million NSW Act and \$100 million MS Act).

The MS Act provisions in relation to supply chains, may be summarised as follows:

1. Commencement and coverage:

- Takes effect on 1st January 2019 and first Modern Slavery Statements are due 30th June 2020 (if the entity's annual reporting period ended on 31 December 2019). Otherwise, for entities reporting 30th June 2020 the due date for Modern Slavery Statements will be 31st December 2020.
- Entities with consolidated revenue over \$A100 million, including the Catholic Archdiocese of Sydney, must submit a statement (~ 3,000 entities including unincorporated entities– *Section 4(a) (d)*).
- Modern Slavery Statements will be required by most Catholic Dioceses in Australia and other major Catholic institutions such as Australian Catholic University, St Vincent's Health Group, aged care providers, as well as Catholic entities in superannuation, insurance and investment.
- **During the coming year, preparation of MS Act Modern Slavery Statements must be a high priority for all relevant Catholic entities.**

2. Modern Slavery Statements:

These statements must report against statutory criteria, including:

- Structure, operations and supply chains *S.16(1)(b)*.
- Risks of slavery in operations and supply chains of entity and subsidiaries *S.16(1)(c)*.
- Action to assess and address that risk, including due diligence and remediation processes *S.16(1)(d)*.
- Effectiveness of the response *S.16(1)(e)*.

A Departmental Unit will assist business with risk assessment and preparation of Modern Slavery Statements. Departmental Guidance on Modern Slavery Statements is currently being developed.

These statements must be approved by the board of directors or signed by a director.

3. The Minister and compliance under the MS Act:

- The Minister is required to table report annually in both Houses of Parliament on compliance & best practice – *S.23A*.

- The Minister can request explanations in relation to Modern Slavery Statements from entities where there has been non-compliance e.g. failure to file a Modern Slavery Statement within 6 months of the reporting period in a manner approved by the Minister – *S.16A(1)*.
- The Minister can publish information about the non-compliant entity and the reasons why the Minister is satisfied that the entity has failed to comply with the request – *S.16A(4)(e)* the so-called “name and shame” procedure enacted in preference to penalties.

4. Modern Slavery Statements Register:

- The Minister must maintain a register of modern slavery statements, to be known as the Modern Slavery Statements Register – *S.18(1)*.
- The register must be made available for public inspection, free of charge on the internet – *S.18(2)*.

5. MS Act and Commonwealth Procurement:

The MS Act includes statutory requirement for the Minister to prepare a modern slavery statement for the Commonwealth covering all non-corporate public entities which complies with the mandatory criteria – *S.15* & *S.16*. The Federal Government and Federal Agencies must prepare an annual report of their activities in relation to the mandated criteria for entities.

6. Voluntary reporting:

Smaller entities, i.e. turnover smaller than \$100 million, may make application to report voluntarily on the Modern Slavery Statements Register - *S.5.1(d)*.

7. MS Act Legislative Review:

There is a specific mandate for the Minister to authorise a review of legislation after three years and give consideration to the adoption of civil penalties for failure to comply with the requirements of the MS Act – *S.24*.

8. Significant shortcomings of the MS Act:

- No explicitly mandated human rights due diligence requirement in respect of action to be reported in a Modern Slavery Statement by entities (public or otherwise).
- There is no statutory institution of an Independent Anti-Slavery Commissioner to work with Government and entities to implement the MS Act.
- There are no financial penalties to induce entities to comply with the MS Act but the Minister, in certain circumstances, may name an entity which has not filed a compliant Modern Slavery Statement or at all.
- A failure to make a Modern Slavery Statement in accordance with the MS Act does not exclude the non-compliant entity from public tenders or entering into contracts with the Government or Public Sector.

9. Comparison of MS Act with the UK Act:

- There is no Independent Anti-Slavery Commissioner established by the MS Act.
- The annual entity turnover threshold for reporting under the MS Act (\$100 million) is almost twice the reporting threshold under the UK Act (£36 million). Proportionally, many more companies are liable to report in the UK than will be the case with the Australian legislation, regardless of industry exposure or risk of modern slavery in supply chains.
- There is no current UK Act equivalent to an annual reporting requirement for public sector entities in the MS Act. However, a major review of the UK Act is currently preceding.

10. Comparison of MS Act with the NSW Act:

- Establishment of an Independent Anti-Slavery Commissioner with significant powers is provided for in the NSW Act, including keeping the NSW Act under continuous review – *S.19(4)*.
- NSW monetary threshold reporting requirement is \$50 million not \$100 million as in the MS Act, and so, is more equivalent to the UK Act.

- There are substantial fines for non-compliance with mandatory criteria for Modern Slavery Statements or failure to report at all – S.24(6) & (7).
- The NSW Act provides that entities liable to report under comparable Australian legislation, may be exempted from reporting under the NSW Act – S.24(9).
- The NSW Act also provides that entities, below the MS Act threshold that volunteer to report under comparable Australian legislation, are exempted from reporting under the NSW Act - S.24(8).
- The NSW Act gives explicit powers to the NSW Procurement Board and the Auditor General to advise the Anti-slavery Commissioner on due diligence procedures to ensure that goods and services procured by and for Government agencies are not the product of modern slavery - S.25. There is no equivalent in the MS Act.
- It is expected that the NSW Act will be proclaimed in 2019 and reporting will commence in 2020.

The Archdiocese of Sydney participated through the Taskforce in government sponsored consultation about proposals for a modern slavery bill. The Archdiocese of Sydney also supported submissions made by the Australian Catholic Bishops Conference to Australian Parliamentary Inquiries.

Similar consultations were undertaken in NSW, where proposals were initiated in the NSW Legislative Council. Archbishop Fisher personally addressed the Legislative Council Inquiry in a notable and widely reported address in which he committed the Archdiocese of Sydney to procurement policies excluding good and services tainted with modern slavery, human trafficking and forced labour.

The enactment of modern slavery legislation in Australia has raised public awareness of the pervasiveness of modern slavery, human trafficking and forced labour. Australian ecclesial, government and business leaders must now take action to ensure that Australian supply chains are slavery-free and to fulfil Australia's commitment to rid our world of modern slavery, human trafficking and forced labour by 2030.

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