



# Modern Slavery update: Federal legislation introduced in the House of Representatives

July 2018

In the last sitting day before Winter Break, the Assistant Minister for Home Affairs, Alex Hawke, introduced the Federal Government’s eagerly awaited Modern Slavery Bill 2018 into the House of Representatives.

The *Modern Slavery Bill 2018* establishes a modern slavery reporting requirement that requires over 3,000 large companies and other entities to publish annual public statements on their actions to address modern slavery in their supply chains and operations.

Australian companies and foreign entities carrying on business in Australia with revenue over \$100 million AUD will be required to report under the new Bill.

Notably, the Australian Government will be the first in the world to subject itself to the same reporting requirements as their private-sector counterparts. Labelling the move as “leading by example”, the Australian Government, Corporate Commonwealth entities and Commonwealth companies will be required to publish an annual statement covering possible modern slavery risks.

Modern slavery reports will be kept by the Minister for Home Affairs in a public repository known as the Modern Slavery Statements Registry. In the 2018-19 Federal Budget, the Government committed 3.6 million to establish a Modern Slavery Business Engagement Unit within the Department of Home Affairs, which will provide advice and support for businesses throughout the reporting process.

The Australian Government has committed to providing formalised guidance on key terms relevant to the Bill – including “risk”, “operations”, “supply chains”, “due diligence” and “remediation processes”. The definitions are expected to align with the UN’s Guiding Principles on Business and Human Rights.

The Bill does not contain a fixed date for commencement. Instead, it will either start six months from Royal Assent or on a fixed date by Proclamation, allowing the reporting obligations to commence around the calendar year or financial year. The commencement date will become clearer as the Bill proceeds through both Houses of Parliament.

Despite the recommendations from the Joint Parliamentary Committee in late 2017, the Bill in its current form does not include penalties for non-compliance by entities that meet the reporting threshold. While the Government will be unlikely to budge on this point as the legislation makes its

way through Parliament, it has become the biggest point of contention amongst selected stakeholder groups.

## Stakeholder views on the Federal Bill

Unsurprisingly, almost all stakeholders have welcomed the Government's introduction of the Modern Slavery Bill 2018 as a positive step towards addressing modern slavery not just in Australia but abroad.

Peak industry bodies like the Law Council of Australia and the Property Council of Australia have praised the introduction of the Bill, committing to playing their part in addressing modern slavery in supply chains within their sectors.

However, the ALP and human rights groups have raised concerns about its capacity to effect cultural change in the behavior of businesses in the absence of penalties.

The Human Rights Law Centre have called for "stronger oversight and compliance measures", while Oxfam has said that the Bill "lacks the critical elements that would make sure Australian businesses could be held to account". The ACTU, the peak union for workers, has said that the Bill falls short due to its lack of enforcement measures and the voluntary nature of the reporting scheme.

From the Opposition, Shadow Minister for Justice Clare O'Neil has said that her party is pleased that the Government has introduced measures to address modern slavery, but "an optional scheme with no oversight is an enormous disappointment".

The ALP's concerns within the *Modern Slavery Bill 2018* are rooted in the fact that the current regime relies on businesses to "police themselves". According to the ALP, the legislation should contain penalties and an independent arbitrator such as an anti-slavery commissioner to assist the victims of slavery, instead of the Government's Business Engagement Unit.

The ALP's issues with the lack of accountability measures within the Bill may frustrate the Government's attempts to get the legislation through Parliament in its current form. This could see the ALP proposing amendments to the legislation in both Houses, which will slow down the passage of legislation and potentially lead to changes from its current form.

Separately, should the ALP be successful at the next Federal election in 2019, it is possible that it may seek to strengthen the legislation by the introduction of penalties, an anti-slavery commissioner or other more onerous reporting measures to give the Bill the teeth the ALP feels it is lacking.

## NSW Government developments

### Modern Slavery Reporting comes to NSW

Ahead of the Federal Bill, in late June, the NSW Parliament passed its own *Modern Slavery Bill 2018 (NSW)*, receiving Royal Assent on 27 June 2018. While similar in some ways to the proposed Federal legislation, there are a number of key differences which companies need to be aware of.

### Elements of NSW legislation

The NSW Act establishes a state position for a modern slavery commissioner to act as a public advocate and places requirements on companies to report the steps being taken to identify and mitigate the risks of modern slavery in their supply chains.

Under the NSW Bill, any business with annual revenues greater than \$50 million will need to report annually, compared with the higher limit under the Commonwealth legislation. While official guidance on reporting requirements will come later, the act calls for businesses to report on:

- The business structure and supply chain;
- due diligence procedures relating to modern slavery in the business and supply chain;
- what parts of the business and supply chain pose risks of modern slavery and the steps taken to identify and mitigate the risks; and
- the training available to staff regarding modern slavery.

The NSW Bill also goes further than the proposed federal framework by mandating penalties for non-compliance, failing to make the reports public or for making false and misleading statements. The Bill provides for penalties of up to 10,000 penalty units or the equivalent of A\$ 1.1 million.

The NSW Government has stated businesses captured by the Federal requirements will not have to make a second report, however it is possible differences might arise in the required content of the reports. For example, as currently drafted the Federal bill requires companies to publish an assessment of the effectiveness of measures being taken to combat modern slavery.

There is no clear timeline as yet for implementation of the NSW Act, but it is likely to come into effect within the next 12 months and before any Federal framework. Businesses with fewer than 20 employees are likely to be given an 18-month grace period before being required to comply, but larger ones will need to comply earlier.

## What should businesses be doing now?

Complying with the coming legislation will require preparation, especially for companies with complex global supply chains. Companies can start the process now by:

- **Assessing** – conducting a risk assessment of their operations and supply chains to identify possible high-risk areas;
- **Reviewing** – internal policies and procedures, including vendor agreements and due diligence processes;
- **Identifying** – what information the business currently holds and the gaps to be addressed in producing an effective and accurate report.

## How we can help

FTI Consulting is a global advisory firm experienced in assisting companies to identify and manage reputational and other risks in global supply chains. Our teams are staffed by experienced investigators who have an in-depth knowledge of the local communities in which they operate. Our experts can help businesses understand the reputational and practical implication of new modern slavery reporting obligations on its business operations, reputation and in its relationships with stakeholders.

The views expressed herein are those of the author(s) and not necessarily the views of FTI Consulting, Inc., its management, its subsidiaries, its affiliates, or its other professionals

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