

Tackling Modern Slavery

By Carolyn Middleton

Modern slavery is a major international problem. It is estimated globally that 40.3 million people are in slavery with two-third of slaves in the Asia-Pacific region.¹ Modern slavery comes in many forms and includes the exploitation of children or adults through forced labour or servitude. To address the violation of human rights, a growing number of developed countries have introduced laws to prevent or reduce the risk of slavery in corporate operations or supply chains. Australia is one of those countries.

The Commonwealth and the New South Wales Parliaments have both passed modern slavery legislation. How the two Acts will work together in practice is not yet entirely clear but should be better understood when the NSW Regulations come into effect on 1 July 2019. Although there are similarities between the Commonwealth and the State Acts, there are key differences between them.

The Commonwealth *Modern Slavery Act* 2018 came into effect on 1 January 2019. The Commonwealth Act applies to Commonwealth government bodies and big business² operating in Australia with an annual consolidated revenue of \$100 million or more. Each financial year, a reporting entity must lodge with the Department of Home Affairs an annual modern slavery statement.

A modern slavery statement must describe the structure, operations and supply chain of the business; identify the risks of modern slavery practices within those structures, operations or supply chain; and specify what steps have been taken to address those risks. The first reporting year will be 2019/2020 with the first modern slavery statements due on 31 December 2020. Failure to lodge an annual modern slavery statement may result in “naming and shaming” by the Federal Minister with the possibility of serious reputational damage to the business.

The *Modern Slavery Act* 2018 (NSW) came into effect on 1 January 2019. The State Act applies to commercial entities with employees in New South Wales generating \$50 million or more in annual turnover. Commercial entities do not include non-profit organisations, local councils or government agencies. The State Act is likely to affect more private businesses across the board because of the lower threshold based on turnover rather than consolidated revenue and the criteria of simply having employees in New South Wales rather than the location of operations, place of incorporation or headquarters of the business.

The State Act imposes a reporting regime on businesses but goes one step further than the Commonwealth Act by creating offences for failing to prepare or publish an annual statement or providing false and misleading information. Criminal convictions and penalties of up to \$1.1 million can be imposed. The penalty provisions do not apply to Australian businesses, subject to the Commonwealth Act.

¹ *Global Slavery Index*

² Australian companies, trusts, corporate partnerships and other partnerships

In NSW an Anti-Slavery Commissioner will oversee the implementation and effectiveness of the State Act. On 1 January 2019 Professor Jennifer Burn was appointed the interim Anti-Slavery Commissioner to implement the State Act and work with the key stakeholders on its roll out. The Commissioner's functions are several and varied. The functions include combatting modern slavery; education and raising public awareness; monitoring and reporting on the effectiveness of laws or policies to combat modern slavery. The Commissioner will establish and maintain an online public register of the annual modern slavery statements.

Local Councils and other government agencies are not required to lodge an annual modern slavery statement but are likely to be bound by a code of conduct. The Commissioner has powers to develop and make publicly available codes of practice to provide guidance in identifying modern slavery taking place within the supply chains of government and non-government agencies and to take steps to remediate or monitor identified risks.³ We expect the Commissioner will develop and publish codes of conduct for government and non-government agencies.

Affected businesses should take the opportunity to put in place the procedures to comply with the reporting regime, bearing in mind the reforms have been introduced to curb human rights abuses. Following the supply chain to its source may be a difficult exercise, particularly where a product may originate from a developing country.

On a practical level, businesses should consider action along the following lines:

- (1) developing or revising business human rights policies;
- (2) developing due diligence plans to trace and verify all links in the supply chain;
- (3) mapping suppliers;
- (4) carry out assessments of the risk of modern slavery with the operations or supply chain;
- (5) devising a protocol for how to deal with identified risks of modern slavery within the supply chain or what factors should be taken into account when devising a response;
- (6) training employees and suppliers regarding the nature, identification of features and risk of modern slavery;
- (7) implementing a complaint process to report internal abuses or abuses within operations of the supply chain;
- (8) designating responsibility to a senior employee to prepare the modern slavery statement to be submitted to the business owners or board of directors for approval and signing.

³ *Modern Slavery Act* 1918 (NSW) section 27

The modern slavery legislation is a significant reform in the area of commercial law with the aim of preventing human rights abuses in business operations or supply chain. For businesses operating just below the Commonwealth or State thresholds, we recommend those businesses take proactive internal steps to ready their business in the event reporting requirements are broadened by reducing the monetary threshold or should the annual consolidated revenue or turnover of the business subsequently exceed the current thresholds.

Businesses need to be ready to meet their reporting requirements under the Commonwealth or State Acts. The possibility of reputational damage to your business or brand caused by the naming and shaming by the Federal Minister or prosecution under the State Act should serve as both an incentive and warning to businesses to make the necessary internal changes in order to be in a position to meet its reporting requirements.

Contact us at Middleton Gardiner & Associates on telephone 02 8005 4057 or by email carolyn@middletongardiner.com if you require advice or assistance regarding your obligations under the *Modern Slavery* legislation or what it may mean for your business or organisation.

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