



## ANTI-SLAVERY LAWS AND YOUR BUSINESS

(A short outline on NSW and Commonwealth of Australia Anti-Slavery legislation)

### What and Why of Anti-slavery legislation

You may have read in the media of new Anti-slavery legislation. It can and will impact on business operations of many.

Modern antislavery legislation has its origin in human rights developments and is very much aimed at **using businesses as an enforcement mechanism** rather than relying on diminished resources of the state.

**"Slavery"** is to be understood very generally and covers things like conduct of almost any type including slavery, servitude and/or forced labour to exploit children or other persons. It includes human trafficking, psychological control and circumstances where measures are taken to prevent or deter escape, coercion and the like. It very much involves making use of the goods or services of another without proper compensation. The legislation aims to protect men, women and children and reflects a prevalence of modern slavery in areas including domestic work, construction, manufacturing, agriculture, sex trade, personal services and even begging.

Modern slavery legislation as Australians see it has its origins in UK legislation, the **Modern Slavery Act 2015 (UK)** and New South Wales and the Commonwealth of Australia have, to varying extents, worked from that example. Many jurisdictions, including the United States of America, have a range of types of antislavery legislation. Other Australian States are expected to follow the same path.

There are, unfortunately, not insignificant differences between the NSW and Commonwealth of Australia legislative developments which are outlined below. Whilst the legislation attaches only to commercial entities with largish turnovers, the legislation will also have impacts, up and down the chain of supply, especially where the supply is, in the end, to Government. Government will probably impose the obligations contractually too.

### Who does it catch?

The legislation is very much aimed at requiring commercial organisations to look at their processes and their chain of supply with a view to identifying and reporting on identified "slavery" activity upstream or downstream in the chain of supply. It will include arrangements with related companies.

### What do you have to do?

The legislation requires, in general terms, affected commercial organisations to check their own procedures and those of suppliers and persons to whom they supply to identify and be satisfied as to whether any prescribed "slavery" activity is involved. Where it is involved, there is an obligation to report it.

Next steps: –

- Determine whether the legislation is applicable to your organization
- Check current human rights/modern slavery policies of your company and its suppliers
- Get ready to be able to publish compliant modern slavery statements
- Become familiar with the Commonwealth Law (when past) and the NSW regulations when in place

## Penalties

It is interesting that the NSW and Commonwealth of Australia versions have totally different perspectives on offences. The NSW legislation involves not insignificant criminal offences and fines. The Commonwealth legislation has less in the way of offences affecting the commercial organisations.

Obviously both state and federal legislation leave in place pre-existing criminal sanctions relating to the many and varied types of activity considered to fall within "slavery", as presently understood.

## Quirks & NSW and Commonwealth Inconsistencies

The **NSW Modern Slavery Act 2018** came into force in July 2018 but presently has not had regulations made pursuant to it which will be needed in respect of significant unresolved implementation detail.

The Commonwealth **Modern Slavery Bill 2018** is presently before the Commonwealth Parliament. Whilst the Bill is understood to have general bipartisan support, the current state of the Parliament and the Government is such that it would be imprudent to estimate when it will become law (whether in its present form or with amendments) and be implemented at a Commonwealth level.

Unfortunately the NSW and Commonwealth legislative instruments proceed on slightly different philosophical tangents as to implementation and enforcement as detailed in the table below. Now is not the time to talk of whether the Commonwealth legislation will override the State legislation.

Issue	NSW	Commonwealth
Threshold	Commercial operation \$50 million and staff in NSW	\$100 million
Enforcement mechanism	Commercial organisations to prepare modern slavery statements each financial year to contain such information as may be prescribed (in the absence of regulation yet to be published the detail is not yet known). It is expected that the regulations will deal with the degree of due diligence to be required  Court can make orders  State agencies to enforce legislation in its supply chain and report.	Modern slavery statements to be provided to the Minister of Home Affairs within 6 months of the end of each financial year and the Minister will maintain a public register of statements  consultation with other entities reporting entity owns or controls
Penalties	Up to \$1.1 million	Nil (at this stage in the life of the Bill)
Action	Check and report	Check and report

If you have any queries or wish to discuss any of the above, please contact me through the website or by email [ross@eakin.com.au](mailto:ross@eakin.com.au) or call Greg Ross 61 (02) 92653070.