

Draft Modern Slavery Regulation 2019

Explanatory Paper: Supply Chain Reporting
Requirement for Business

June 2019



**Premier
& Cabinet**

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Attachment: Draft *Modern Slavery Regulation 2019*

1. Introduction

New reporting requirements under the *Modern Slavery Act 2018 (NSW)*

New South Wales is committed to taking action to combat modern slavery. On 21 June 2018 the NSW Parliament passed the *Modern Slavery Act 2018* ('the Act'); the first-of-its-kind legislation in Australia that will introduce new reporting requirements on businesses and NSW Government agencies, and new criminal penalties, to protect victims of modern slavery.

On 21 December 2018 the NSW Government appointed Professor Jennifer Burn as Interim Anti-Slavery Commissioner to lead the implementation of the Act. The Act's commencement date is to be determined.

Section 24 of the Act sets out the requirement that commercial organisations (as defined in the Act) must prepare a modern slavery statement that outlines their actions to address modern slavery in their operations and supply chains (see **Appendix 1** for the Act's requirements). A regulation is required to support the operation of Section 24 by prescribing, among other things, the mandatory minimum content of modern slavery statements, the method and timing of publication, and any exemptions from the reporting requirement.

Development of regulations pursuant to the NSW Act

The attached draft *Modern Slavery Regulation 2019* ('draft Regulation') outlines how businesses are to comply with section 24. The draft Regulation is designed to:

- be simple, clear and effective
- provide certainty for businesses on their obligations under the Act
- reflect consultation with stakeholders in the business and civil society sectors
- take into account community expectations and
- complement the reporting requirements under the Commonwealth *Modern Slavery Act 2018*, which commenced on 1 January 2019.

This explanatory paper sets out the content of the draft Regulation and a rationale for the approach taken. It also provides background about modern slavery, an overview of the Act and its key features, and the consultation undertaken so far with business and civil society stakeholders.

The paper calls for stakeholder comments on the content of the draft Regulation and on the supply chain requirements in the Act (see **4. Have your say** below on making a submission). The paper also references current work to develop practical guidance material to help businesses comply with the requirements of the Act and the regulations.

2. Context

What is modern slavery?

Although there is no single definition, the term ‘modern slavery’ commonly refers to a range of exploitative crimes including human trafficking, slavery, servitude, forced labour, debt bondage, organ trafficking, forced marriage and other slavery-like practices.

Modern slavery is a global problem, with the International Labour Organisation (ILO) estimating that there are more than 40 million people in conditions of modern slavery worldwide, about 25 million of whom are in situations of forced labour and debt bondage.

Modern slavery can happen in any country, in any industry and at any stage of the supply chain. According to the ILO, sectors that employ a high percentage of migrant workers or where operations are based in countries with weak regulatory frameworks may also be prone to modern slavery risks. Modern slavery can be present in Australian-based operations and supply chains, including through the use of casual and contract labour. According to the Australian Institute of Criminology, it is estimated there were up to 1,900 people in Australia living in conditions of modern slavery from 2015-16 to 2016-17. In Australia, victims have been identified in a range of industries, including domestic service, hospitality, construction and sex work.

The NSW Government is committed to taking action to combat all forms of modern slavery in the State. The Act defines modern slavery broadly to include different forms of exploitation such as slavery, servitude, forced labour, forced marriage, trafficking, and production of child abuse material. The Act was passed with the support of all parties.

Taking action: the *Modern Slavery Act 2018* (NSW)

The Act responds to the State Parliament’s Inquiry into Human Trafficking in NSW in 2017. The Act:

- establishes Australia’s first Anti-Slavery Commissioner to raise community awareness of modern slavery, with a clear advocacy and educative function
- provides support for victims of acts of modern slavery
- requires NSW government agencies to identify and report on risks of modern slavery in their supply chains
- requires commercial organisations with employees in NSW and with an annual turnover of \$50 million or more¹ to report on modern slavery risks in their operations and supply chains and
- introduces new offences into the *Crimes Act 1900* (NSW) to better protect victims.

¹ In practice, the NSW Act’s reporting requirements apply only to commercial organisations with employees in NSW whose annual turnover is at least \$50 million and less than \$100 million. The Commonwealth *Modern Slavery Act 2018*, on the other hand, applies to reporting entities that have a consolidated revenue of \$100 million or more.

The Act has emerged against the backdrop of increasing international attention to the issue of modern slavery. In 2011, the *UN Guiding Principles on Business and Human Rights* were the first international effort to create a best-practice standard for business and government to combat modern slavery. In 2015, the United Kingdom Parliament passed the *Modern Slavery Act* which established the office of an independent Anti-Slavery Commissioner and introduced a supply chain reporting requirement on businesses.

In 2018, the Commonwealth Government introduced its own *Modern Slavery Act* (the Commonwealth Act), creating a national reporting regime for businesses and other entities with a consolidated revenue of not less than \$100 million. The NSW Act seeks to complement the Commonwealth Act and reflect international best-practice.

Consultation with business and civil society stakeholders

The Interim Anti-Slavery Commissioner and the Department of Premier and Cabinet (DPC) have consulted with industry groups, peak bodies and civil society organisations about the Act's requirements and the development of the regulations. These consultations will continue over the coming months, in order to refine the regulations and help in the drafting of practical guidance material for businesses.

Stakeholders have provided us with valuable information and advice. The following issues have been raised:

- NSW Government needs to work closely with the Commonwealth to resolve intersecting issues and harmonise the approaches taken in the NSW and Commonwealth Acts
- Businesses need sufficient time to prepare themselves prior to having to report
- NSW Government needs to provide businesses with clear and practical guidance on the requirements in the Act and the regulations, and how businesses should respond to modern slavery risks and
- NSW Government needs to examine the regulatory impact and compliance costs of the reporting scheme on smaller businesses and charities and not-for-profits.

A key function of the Anti-Slavery Commissioner will be to assess the effectiveness of the Act and other laws relating to modern slavery. There will be an ongoing consultation process to seek the feedback of stakeholders during the Act's operation. This feedback will be critical to evaluating and improving the implementation and enforcement of the Act.

Key features and benefits of the NSW Act

Like the Commonwealth Act, the NSW Act is designed to create and expand transparency in business operations and supply chains. It requires commercial organisations falling within its scope to undertake due diligence on their modern slavery risks and to report on their findings.

Commercial organisations within scope

The NSW Act applies to commercial organisations with employees in NSW that fall within its turnover bracket. These include companies, partnerships and associations, as well as charitable and not-for-profit organisations that supply goods or services for profit or gain (e.g. in their trading arms).

Reporting requirement

The NSW Act requires commercial organisations captured to prepare an annual modern slavery statement on the steps they have taken during their financial year to ensure their operations and supply chains do not involve modern slavery. Please note however that the draft Regulation exempts charities, not-for-profits and small businesses (with less than 20 employees), that are captured by the Act, from the requirement to prepare a modern slavery statement (see 3. Draft *Modern Slavery Regulation 2019* below).

The Commonwealth Act similarly requires that reporting entities captured by its revenue threshold prepare an annual modern slavery statement.

The NSW draft Regulation and the Commonwealth Act set out the same minimum **mandatory criteria** for the content of statements. Both provide an option for the preparation of **joint statements** to cover, for instance, organisations that are part of the same corporate group (e.g. parent-subsidiary), or have some form of legal or other relationship with one another (e.g. joint ventures).

The Act's turnover bracket

The NSW Act complements the Commonwealth Act by targeting an additional group of businesses: those with employees in NSW whose annual turnover is not less than \$50 million, and up to \$100 million. The Commonwealth Act, on the other hand, covers reporting entities with an annual consolidated revenue of not less than \$100 million.

By prescribing the Commonwealth Act as a corresponding law in the NSW draft Regulation, commercial organisations regulated by the Commonwealth Act are exempt from compliance with the business reporting requirements in section 24 of the NSW Act. This will prevent duplication of reporting obligations on businesses.

Reporting period and report due date

The Act requires that modern slavery statements be prepared annually and cover the relevant financial year of the commercial organisation. Most businesses will have a financial year of 1 July–30 June, and some may have financial years that differ, such as 1 January–31 December.

The NSW draft Regulation requires that statements be prepared within six months after the end of the organisation's financial year. The due date for the first statements will be determined by the Act's commencement date. The NSW Act's commencement date is to be determined.

The reporting period and due date is consistent with that set out in the Commonwealth Act. It is designed to give businesses sufficient time to understand their obligations and report appropriately.

Publishing a statement on a public register

The NSW draft Regulation, like the Commonwealth Act, requires the publication of modern slavery statements on a public register. Having this platform will enhance transparency of business operations and supply chains in identifying and addressing modern slavery risks.

Role of the Anti-Slavery Commissioner

The Anti-Slavery Commissioner will provide guidance material to businesses, and raise awareness on identifying, managing and remediating modern slavery risks.

The Commonwealth Act establishes a Business Engagement Unit within the Department of Home Affairs to advise and assist businesses.

The Act's inclusion of criminal penalties

Unlike the Commonwealth Act, the NSW Act contains penalties for failing to prepare or publish a modern slavery statement, and for providing false or misleading information in connection with a matter under section 24. These penalties are an important part of enhancing transparency and encouraging businesses to comply with the new reporting regime. Many businesses will need time and support to fully understand and comply with the Act's requirements. The NSW Anti-Slavery Commissioner will therefore work closely with businesses and offer practical guidance and support on the type of information they will need to include in their reporting.

Appendix 2 sets out in a table an overview of the reporting requirements of the NSW and Commonwealth Acts.

3. Draft Modern Slavery Regulation 2019

Enhancing transparency of business supply chains

Modern slavery practices are deliberately hidden. Transparency is a key challenge. Businesses have a unique role in combatting modern slavery, by conducting due diligence and being vigilant in their operations and supply chains.

The Act's reporting requirement in section 24 (set out in **Appendix 1**) aims to enhance transparency in business supply chains and support the business community to better respond to modern slavery. The draft Regulation sets out what businesses will need to do to meet their reporting requirements under the Act.

Overview of the draft Regulation

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Policy approach and justification

Commencement

Clause 2: It is proposed to commence the Regulation on the Act's commencement date.

Preparing a modern slavery statement

Clauses 4: A modern slavery statement under section 24 of the Act must be prepared either in accordance with Clause 5 (statements for single commercial organisations) or Clause 6 (Joint modern slavery statements).

Clause 5: Statements for single commercial organisations must:

- address the mandatory criteria for modern slavery statements (set out in Clause 7)
- be prepared in a form, if any, approved by the Anti-Slavery Commissioner
- be approved by the principal governing body of the commercial organisation, such as a corporation's board of directors (see the definition of 'principal governing body' in Clause 3) and
- be signed by a responsible member of the commercial organisation, such as a chair of the board (see the definition of 'responsible member' in Clause 3).

Rationale

These requirements for modern slavery statements prepared by single commercial

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Policy approach and justification

organisations reflect the requirements on reporting entities under the Commonwealth Act.

Joint statements

Clause 6: There is also the option of preparing a joint modern slavery statement for two or more organisations, where at least one is a ‘commercial organisation’ under section 24 of the Act.

As well as complying with the criteria set out in Clause 5 (above), a joint statement must also:

- be prepared in consultation with each organisation covered by the statement
- be approved by the principal governing body (e.g. the board) of each organisation covered by the statement, or by the principal governing body of a higher organisation in the group (even if the higher organisation is not covered by the statement), or – where it is not practicable to comply with the above approval methods – be approved by the principal governing body of at least one commercial organisation covered by the statement and
- be signed by a responsible member of each organisation that approved the joint statement.

Rationale

The purpose of joint statements is to give businesses flexibility to report jointly where they see fit. This may cover organisations that are part of the same corporate group, such as parent companies and their subsidiaries, any subset of a corporate group, organisations in non-traditional corporate structures, or those that have some other form of legal or other relationship with one another, such as joint ventures.

Clause 6 mirrors the Commonwealth Act’s approach to joint statements. It places strict requirements for consultation between

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organisations covered by the joint statement, and robust criteria for the approval and signature of that statement. The joint statement must include all of the mandatory information set out in Clause 7 for each commercial organisation covered by the statement.

In providing a joint statement, a commercial organisation may, but is not required to, include information about organisations that are not covered by the Act (that is those that are not 'commercial organisations' under section 24). For example, a commercial organisation's international parent may elect to report on its operations and supply chains as part of the joint report. Alternatively, the commercial organisation may elect to report on only those organisations within the group that are 'commercial organisations' for the purposes of section 24 of the Act.

Timeframe for reporting

Clauses 4 and 11: Clause 4 provides that, for the purpose of section 24(3) of the Act, a modern slavery statement must be prepared within six months after the end of the financial year of the commercial organisation.

Rationale

Commercial organisations with a financial year beginning 1 July and ending 30 June will have 6 months from the end of that period to prepare their first modern slavery statements. If their financial year commences on 1 January and ends 31 December, organisations will similarly have 6 months from the end of that period to prepare their first statements. The exact dates for preparation of first statements will be determined by the Act's commencement date.

The NSW Act's reporting timeframe is consistent with the approach outlined in the Commonwealth Act and seeks to provide businesses with sufficient time to understand their obligations,

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undertake due diligence and prepare their statements. As provided in the NSW Act, it aligns with commercial organisations' financial years and existing reporting processes, such as annual reports.

Clause 11 of the draft Regulation clarifies that section 24 does not apply in relation to any financial year of an organisation that commenced before the Act's commencement date. This will be subject to review once the Act's commencement date is known, as it may be preferable for the first reporting period to be aligned with the 2019-20FY with first reports due by 30 December 2020, even if the Act commences later than 1 July 2019. This will align with the first reporting period under the Commonwealth Act.

Form of statements

Clauses 5 and 6: provide that statements for single commercial organisations or joint statements must be prepared in a form, if any, approved by the Anti-Slavery Commissioner.

Rationale

While the draft Regulation requires modern slavery statements be prepared in a form (if any) approved by the Anti-Slavery Commissioner, it is not currently proposed to provide a specific form or template for modern slavery statements. Commercial organisations will be able to prepare their statements as they see fit, so long as the content in the statements addresses the minimum mandatory criteria listed in Clause 7.

This approach is consistent with the approach currently adopted by the Commonwealth and gives businesses flexibility to prepare their statements in a manner that is appropriate to their circumstances. It will also facilitate the recognition of statements that are voluntarily lodged with the Commonwealth (see **Exemptions** below).

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Policy approach and justification

The provision provides the Anti-Slavery Commissioner with the flexibility to require, for example, the completion of a pdf form that contains a checklist for commercial organisations to confirm that in preparing their statements they have complied with their reporting requirements, including the mandatory reporting criteria, or technical format requirements for lodgement. Any such requirements or advice will be detailed in guidance material for businesses issued by the Commissioner.

Mandatory criteria for statements

Clause 7: For the purposes of section 24(4) of the Act, modern slavery statements must, in relation to each organisation covered by the statement:

- identify the organisation
- describe the organisation's structure, operations and supply chains
- describe the risks of modern slavery in the operations and supply chains of the organisation, and any entity that the organisation owns or controls
- describe the actions taken by the organisation and any entity it owns or controls to assess and address those risks, including due diligence and remediation processes
- describe how the organisation assesses the effectiveness of such actions
- describe the consultation undertaken with any entity that the organisation owns or controls and, in the case of organisations preparing a joint statement, the consultation undertaken between them and
- include any other information the organisation considers relevant.

Rationale

Section 24(5) of the Act includes examples of criteria that *may* be included in the regulations.

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Policy approach and justification

These examples were drawn from the criteria listed in the UK's *Modern Slavery Act 2015*. As the Commonwealth has since passed its *Modern Slavery Act*, the mandatory criteria in the draft Regulation instead mirror the mandatory criteria listed in the Commonwealth Act. These criteria reflect international best-practice, including the principles set out in the *UN Guiding Principles on Business and Human Rights* (2011). While the criteria are differently worded, the content covered by both is very similar.

This approach of harmonisation with the Commonwealth Act (as much as possible) reflects views put forward by stakeholders. Maximising uniformity with the Commonwealth will provide significant cost savings to commercial organisations which may fall across both reporting regimes, either within their corporate structures or from year to year as their turnover fluctuates. It will also facilitate the recognition by the NSW scheme of statements voluntarily lodged with the Commonwealth (see **Exemptions** below).

Note that the terms 'entity' and 'control' used in the mandatory criteria are defined in Clause 3 (Definitions). Guidance on the meaning of undefined terms, such as 'operations', 'supply chains', 'due diligence', 'remediation' and 'assessing the effectiveness of actions' will be provided in materials to be prepared for businesses. The guidance material will also provide examples of the type of information that could be included in a statement in order to address each of the mandatory criteria. For example, under the last criterion ('any other information the organisation considers relevant') an organisation may choose to outline any participation in anti-slavery multi-stakeholder engagement, partnerships or industry-wide initiatives. The Department of Premier and Cabinet will be aiming to ensure there is a sufficient level of understanding and comfort with the key terms used in the Act.

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Policy approach and justification

Timeframe and method for publishing

Clause 8(1)-(2): A commercial organisation is required to make its modern slavery statement public, for the purposes of section 24(6) of the Act, by lodging it with the Anti-Slavery Commissioner for publication on a statement register.

The modern slavery statement must be lodged within 6 months after the end of the organisation's financial year in a manner approved by the Commissioner.

Rationale

This timing and method of publication (on a statement register) is consistent with the approach outlined in the Commonwealth Act for the provision of statements to the Commonwealth Minister and registration of statements by the Minister on a Modern Slavery Statements Register. The NSW approach seeks to provide businesses with ample time to lodge their statement with the Anti-Slavery Commissioner for publication. Consistent with the timeframe for preparing a statement (noted under **Clause 1** above), commercial organisations with a financial year beginning 1 July and ending 30 June will have 6 months following that financial year to publish their first modern slavery statements. If their financial year commences on 1 January and ends 31 December, organisations will similarly have 6 months following that period to publish their first statements. The publication due dates will be determined by the Act's commencement date.

Note that the approved manner in which a commercial organisation lodges its statement with the Commissioner for publication is yet to be determined and will be clarified in forthcoming guidance material. It may involve mailing or emailing the statement to the Commissioner, or it may be more efficient for the commercial organisation to simply upload its statement onto the statement register. The commercial organisation may also be required to complete a

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Policy approach and justification

pdf form that contains a checklist, in order to confirm that in preparing its statement the commercial organisation has complied with its reporting requirements.

Forthcoming guidance material will also make clear that in addition to the requirement to publish a statement on a statement register, commercial organisations can choose to publish their statements in other ways, including on their website or in their annual report.

Public register

Clause 8(3)-(6): The Anti-Slavery Commissioner is required to publish all modern slavery statements on an electronic register, which will be publicly accessible free of charge on the internet.

This statement register may be combined with the register kept by the Commissioner under section 26(1)(a) of the Act. Section 26 requires the Commissioner to keep an electronic public register, available free of charge, which would identify any commercial organisation that has disclosed in its modern slavery statement the incidence or risk of modern slavery in its supply chains, and whether steps have been taken by the commercial organisation to address the concern.

Rationale

In consultations, stakeholders expressed concerns that the public register under section 26 may be used to 'name and shame' businesses that have disclosed modern slavery risks in their statements. Stakeholders also noted that for consistency with the Commonwealth Act, it would be useful for a NSW register to make all statements available.

The purpose of a combined public register is to create a platform to encourage transparency and enable business and government to work together to address modern slavery risks. The combined register will enable all statements to be

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uploaded, not just those statements which have disclosed the occurrence, or risks, of modern slavery. The NSW Government wants to encourage businesses to honestly assess the risk in their operations and supply chains, and openly and transparently share their findings. The Commissioner will support businesses that have taken positive steps to address their risks, and will positively highlight and showcase best practice in identifying, disclosing and responding to risks of modern slavery.

The Commissioner will honour the effectiveness of an organisation's due diligence if they succeed in exposing modern slavery in their operations and supply chains, and initiate work on a plan (that may need to be quite long-term) to address that problem.

The Commissioner intends to use the combined register as a central repository of all statements lodged with the Commissioner, to enable the Commissioner to assess business compliance and the quality of statements over time.

The details of how a combined register (satisfying the requirements of Clause 8 of the draft Regulation and section 26 of the Act) will operate in practice are yet to be determined. The Department of Premier and Cabinet seeks feedback and ideas from stakeholders on how a combined register may be best designed and operated to fulfil the legislative requirements, and what functions (for example, a useful search tool) it should include (see questions to stakeholders under **4. Have your say** below).

Exemption for entities regulated by Commonwealth Act

Clause 9: The Commonwealth Act is prescribed as a corresponding law for the purposes of section 24(9) of NSW's Act. This means that a business that is a reporting entity under the Commonwealth Act is exempt from the reporting requirements in section 24.

Rationale

Issue

Policy approach and justification

The effect of this clause is to limit the application of NSW's Act to commercial organisations with a total turnover in their financial year of at least \$50 million and less than \$100 million. Future guidance material will also clarify that this is the Act's turnover bracket, while the Commonwealth Act applies to reporting entities with consolidated revenue of no less than \$100 million.

Exemptions for voluntary reporters and subsidiaries of reporting entities under Commonwealth Act

Clause 10(1)-(2): Pursuant to section 24(8) of the Act, Clause 10(1) provides that the requirements in section 24(2)-(6) to prepare and publish modern slavery statements do not apply to commercial organisations that:

- **voluntarily** report under the Commonwealth Act
- comply with that Act's provisions
- give their modern slavery statement to the Commonwealth Minister
- notify the NSW Anti-Slavery Commissioner in writing of those facts and
- provide the Commissioner with a copy of the statement given to the Commonwealth Minister.

Similarly, under Clause 10(2), NSW's reporting requirements do not apply to a commercial organisation that:

- is a **subsidiary** of a parent reporting entity under the Commonwealth Act
- the parent reporting entity has given a joint statement to the Commonwealth Minister that covers the subsidiary
- notifies the Anti-Slavery Commissioner in writing of those facts and
- provides the Commissioner with a copy of the statement given to the Commonwealth Minister.

Clause 10(6) clarifies that notifications in writing and provision of a copy of the modern slavery

Issue

Policy approach and justification

statement to the Anti-Slavery Commissioner for the purposes of Clause 10(1)-(2) are to be provided to the Commissioner within 6 months after the end of the organisation's financial year, and in a manner approved by the Commissioner.

Rationale

The NSW and Commonwealth reporting regimes have a shared objective – to improve the transparency of supply chains and support businesses to take effective action to address modern slavery.

Enabling voluntary reporting to the Commonwealth supports this objective. It will also make it easier for businesses whose turnover fluctuates year to year (i.e. 'in and out of' the Commonwealth's reporting threshold) to choose one reporting regime – the Commonwealth's – and adhere to it. This certainty will minimise regulatory compliance costs.

In consultations, businesses also expressed the view that the corporate group (including parents and subsidiaries) should report only once. It would complicate matters and impose substantial regulatory impact if subsidiaries are made to also report separately under the NSW regime.

In complying with the Commonwealth Act's requirements, the commercial organisation in both Clause 10(1) and (2) will not be subject to the requirements (and associated penalties) set out in section 24(2)–(6) of the NSW Act. If the commercial organisation does not comply with the Commonwealth's requirements, it is not relieved of its NSW reporting requirements, and the associated penalties.

However, section 24(7) of the Act (which make it an offence to provide information in connection with a matter under section 24 that the person knows, or ought reasonably to know, is false or misleading) will still apply to commercial organisations that voluntarily report to the

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	<p>Commonwealth, or are subsidiaries that are covered by their parents' joint statements to the Commonwealth. The maximum penalty for failure to comply with section 24(7) is 10,000 penalty units (\$1.1 million).</p>
<p>Exemption for corporate entities of Commonwealth, other States and Territories</p>	<p>Clause 10(3): All corporate entities of the Commonwealth or other State and Territory governments that meet the \$50 million total turnover threshold and have employees in NSW will be exempted from the reporting requirement.</p>
<p>Exemptions for charities, not-for-profit organisations, and small businesses</p>	<p>Clause 10(4)-(5): Pursuant to section 24(8) of the Act, Clause 10(4)-(5) provides that the requirements in section 24(2)-(7) to prepare and publish modern slavery statements do not apply to commercial organisations that are:</p> <ul style="list-style-type: none">• constituted as charities and not-for-profit organisations, which do not distribute profits or provide pecuniary gains to members and• small businesses that employ fewer than 20 employees. <p>Rationale</p> <p>The NSW Government is committed to reducing the regulatory impact of the Act's reporting requirements on businesses and has sought to clarify and streamline the reporting process as much as possible through the draft Regulation. The Government recognises that charities, not-for-profit organisations and small businesses which are captured by the Act would face proportionality greater administrative burden and increased compliance costs in meeting their reporting requirements compared to larger commercial organisations. On that basis, the draft Regulation exempts these organisations from the requirement to prepare a modern slavery statement. The Department of Premier and Cabinet will consider these exemptions following the first reporting period and review their effectiveness and impact.</p>

4. Have your say

Consultation process and questions to guide feedback

Stakeholder consultations are essential to an effective and workable reporting regime. The draft Regulation has benefited from feedback from business and civil society stakeholders. Responses to this paper will help shape and finalise the draft Regulation. In the coming months, guidance material will be drafted to give businesses more clarity on their reporting requirements.

Feedback is sought on all aspects of the draft Regulation. The following questions are a guide for feedback; address all or some of them as appropriate to your situation.

General

1. How can the Anti-Slavery Commissioner best support businesses to comply with the reporting requirement under the Act? What guidance would businesses find helpful in preparing their statements?

Preparing modern slavery statements

2. Does the option of preparing joint statements provide businesses with enough flexibility to accommodate their different circumstances and corporate structures?
3. Should the NSW scheme enable voluntary reporting from businesses falling below the \$50 million turnover threshold and who choose to comply with its requirements?

Publishing statements on a public register

4. What are stakeholder views on the public register, and what functions could it include?
5. What would be the easiest way to lodge statements with the Commissioner? Would businesses prefer to upload statements onto the register if this function is made available?
6. How long should statements be available on the register?

Exemptions for certain businesses

7. What are stakeholders' views on the exemptions in the draft Regulation for voluntary reporters, subsidiaries of parent entities reporting under the Commonwealth Act?
8. What are stakeholder views on the exemptions in the draft Regulation for charities, not-for-profit organisations and small businesses? Are these appropriate to reduce regulatory burden and at the same time ensuring businesses take seriously their responsibility to combat modern slavery?

Consultation

9. What communication channels can the Commissioner use to raise awareness of the Act's requirements and effectively engage with businesses?

Monitoring and evaluation

10. How should the Commissioner allow for businesses and civil society to provide feedback on the effectiveness of the reporting requirement?

Other

11. What other issues does the Commissioner need to consider to implement a workable system of supply chain reporting under the Act?

Appendix 1: The Act's supply chain requirements

Section	Description
s 24(1)	<p>'Commercial organisation' means an organisation (other than a government agency of the State) having employees in the State that:</p> <ul style="list-style-type: none">(a) supplies goods and services for profit or gain, and(b) has a total turnover in a financial year of the organisation of not less than \$50 million or such other amount as may be prescribed by the regulations. <p>'Organisation' means:</p> <ul style="list-style-type: none">(a) any corporation (within the meaning of section 57A of the <i>Corporations Act 2001</i> of the Commonwealth) or incorporated partnership,(b) an association (including a partnership) other than the one referred to in paragraph (a), or other body of persons.
s 24(2)	<p>A commercial organisation must prepare a modern slavery statement complying with subsection (3) for each financial year of the organisation.</p> <p>Maximum penalty: 10,000 penalty units.</p>
s 24(3)	<p>The statement is to be prepared in accordance with the regulations within such period after the end of the financial year as is provided for by the regulations.</p>
s 24(4)	<p>The statement is to contain such information as may be required by or under the regulations for or with respect to steps taken by the commercial organisation during the financial year to ensure that its goods and services are not a product of supply chains in which modern slavery is taking place.</p>
s 24(5)	<p>Without limiting subsection (4), the regulations may require a modern slavery statement to include information about the following:</p> <ul style="list-style-type: none">(a) the organisation's structure, its business and its supply chains,(b) its due diligence processes in relation to modern slavery in its business and supply chains,(c) the parts of its business and supply chains where there is a risk of modern slavery taking place, and the steps it has taken to assess and manage that risk,(d) the training about modern slavery available to its employees.
s 24(6)	<p>The commercial organisation must make its modern slavery statement public in accordance with the regulations.</p>

Section	Description
	Maximum penalty: 10,000 penalty units.
s 24(7)	<p>A person must not provide information in connection with a matter under this section that the person knows, or ought reasonably to know, is false or misleading in a material particular.</p> <p>Maximum penalty: 10,000 penalty units.</p>
s 24(8)	<p>The regulations may exempt or provide for the exemption, unconditionally or subject to conditions, of any organisation or class of organisation from any or all of the provisions of this section or the regulations made for the purposes of this section.</p>
s 24(9)	<p>This section does not apply to a commercial organisation if the organisation is subject to obligations under a law of the Commonwealth or another State or a Territory that is prescribed as a corresponding law for the purpose of this section.</p>
s 26(1)(a)	<p>The Commissioner is to keep a register in electronic form that identifies any commercial organisation that has disclosed in a modern slavery statement under section 24 that its goods and services are, or may be, a product of supply chains in which modern slavery may be taking place and whether the commercial organisation has taken steps to address the concern.</p>
s 26(2)	<p>The Commissioner is to make the register publicly available free of charge.</p>
s 27(1)	<p>The Commissioner may develop, and make publicly available, codes of practice for the purpose of providing guidance in identifying modern slavery taking place within the supply chains of government and non-government agencies and steps that can be taken by government and non-government agencies to remediate or monitor identified risks.</p>
s 27(2)	<p>A code of practice may refer to or incorporate, with or without modification, a standard or other document prepared or published by a body specified in the code, as in force at a particular time or from time to time.</p>
s 28(1)	<p>The Commissioner may promote public awareness of and provide advice on steps that can be taken by government and non-government agencies to remediate or monitor risks of modern slavery taking place in their supply chains, including encouraging agencies to develop their capacity to avoid such risks.</p>

Section	Description
s 28(2)	Without limiting subsection (1), the Commissioner may make information available to government and non-government agencies and other persons about matters to consider in relation to employing persons to work in supply chains.

Appendix 2: Overview of NSW and Commonwealth Acts

	NSW Act	Commonwealth Act
Modern slavery statements	Yes	Yes
Option to prepare a joint statement	<p>Yes – set out in the regulations</p> <p>This may be suitable where, e.g.:</p> <ul style="list-style-type: none"> the organisations are part of the same corporate group or the organisations have a legal relationship (e.g. joint ventures) 	Yes – set out in the Act
Mandatory criteria for statements	Yes – set out in the regulations, and mirror the Commonwealth Act	Yes – set out in the Act
Who reports?	<p>Commercial organisations:</p> <ul style="list-style-type: none"> with employees in NSW that supply goods and services for profit or gain and have an annual turnover of at least \$50m and less than \$100m <p>Regulations exempt small businesses with less than 20 employees, and charities and not-for-profit organisations with commercial arms</p>	<p>Reporting entities:</p> <ul style="list-style-type: none"> that are Australian entities or foreign entities carrying on business in Australia and with an annual consolidated revenue of at least \$100m <p>Covers commercial and not-for-profit entities</p>
Reporting period	Commercial organisation’s financial year (e.g. 1 Jul – 30 Jun, or 1 Jan – 31 Dec)	Reporting entity’s financial year
Report due date	Within 6 months after the end of each financial year of the commercial organisation	Within 6 months after the end of each financial year of the reporting entity

	NSW Act	Commonwealth Act
Publication	Public register	Public register
Penalties	Criminal penalties for: <ul style="list-style-type: none"> • failure to prepare a statement • failure to publish a statement and • providing false or misleading information 	No penalties Act empowers Minister to ‘name and shame’ non-compliant entities
Support for business	Anti-Slavery Commissioner to oversee NSW response to modern slavery, including supporting business	Business Engagement Unit to advise and support business
Act’s commencement	To be determined	1 January 2019