



New South Wales

# Modern Slavery Regulation 2019

under the

Modern Slavery Act 2018

*[The following enacting formula will be included if the Regulation is made:]*

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Modern Slavery Act 2018*.

Minister administering the *Modern Slavery Act 2018*

## **Explanatory note**

The object of this Regulation is to make provision for certain matters relating to the preparation and publication of modern slavery statements by commercial organisations for the purposes of the *Modern Slavery Act 2018*.

This Regulation is made under the *Modern Slavery Act 2018*, including sections 24 and 34 (the general regulation-making power) and clause 1 of Schedule 3.

This Regulation comprises or relates to matters set out in Schedule 3 to the *Subordinate Legislation Act 1989*, namely matters of a machinery nature and matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

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## Modern Slavery Regulation 2019

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### 1 Name of Regulation

This Regulation is the *Modern Slavery Regulation 2019*.

### 2 Commencement

This Regulation commences on the day on which it is published on the NSW legislation website.

### 3 Definitions

(1) In this Regulation:

**accounting standards** has the same meaning as in the *Corporations Act 2001* of the Commonwealth.

**Commonwealth Act** means the *Modern Slavery Act 2018* of the Commonwealth.

**control**, of an entity by another entity, means control of the entity within the meaning of the accounting standards.

**entity** has the same meaning as in the *Income Tax Assessment Act 1997* of the Commonwealth.

**principal governing body**, of an organisation, means the body, or group of members of the organisation, with primary responsibility for the governance of the organisation.

**Note.** Examples of principal governing bodies are as follows:

- (a) for a corporation—the corporation’s board of directors,
- (b) for an incorporated partnership or an incorporated association—the equivalent managing body to a board of directors,
- (c) for an unincorporated association (including a partnership)—the members of the body.

**responsible member**, of an organisation, means:

- (a) an individual member of the organisation’s principal governing body who is authorised to sign modern slavery statements for the purposes of the Act, or
- (b) if the organisation is a corporation sole—the individual constituting the corporation, or
- (c) if the organisation is a corporation under administration within the meaning of the *Corporations Act 2001* of the Commonwealth—the administrator.

**the Act** means the *Modern Slavery Act 2018*.

**Note.** The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

(2) Notes included in this Regulation do not form part of this Regulation.

#### 4 Modern slavery statements: section 24 (2)–(5)

A modern slavery statement prepared by a commercial organisation for the purposes of section 24 of the Act must be prepared:

- (a) within 6 months after the end of each financial year of the organisation, and
- (b) in accordance with:
  - (i) clause 5 (Modern slavery statements for single commercial organisations), or
  - (ii) clause 6 (Joint modern slavery statements).

#### 5 Modern slavery statements for single commercial organisations

A modern slavery statement prepared by a commercial organisation for itself for the purposes of section 24 of the Act must:

- (a) comply with clause 7 (Mandatory criteria for modern slavery statements), and
- (b) be prepared in a form approved by the Commissioner (if any), and
- (c) be approved by the principal governing body of the commercial organisation, and
- (d) be signed by a responsible member of the commercial organisation.

**Note.** The statement may be signed electronically—see section 9 of the *Electronic Transactions Act 2000*.

#### 6 Joint modern slavery statements

- (1) A modern slavery statement may be prepared that covers one or more organisations for a financial year for those organisations if at least one of the organisations is a commercial organisation.

**Note.** An organisation that is not a commercial organisation may, but is not required to, prepare a joint modern slavery statement under this clause.

- (2) The statement must:

- (a) comply with clause 7 (Mandatory criteria for modern slavery statements), and
- (b) be prepared in a form approved by the Commissioner (if any), and
- (c) be prepared in consultation with each organisation covered by the statement, and
- (d) be approved by the principal governing body of:
  - (i) each organisation covered by the statement, or
  - (ii) an organisation (the **higher organisation**) that is in a position, directly or indirectly, to influence or control each organisation covered by the statement, whether or not the higher organisation is itself covered by the statement, or
  - (iii) if it is not practicable to comply with subparagraph (i) or (ii)—at least one commercial organisation covered by the statement, and
- (e) be signed by a responsible member of:
  - (i) if paragraph (d) (i) applies—each organisation covered by the statement, or
  - (ii) if paragraph (d) (ii) applies—the higher organisation, or
  - (iii) if paragraph (d) (iii) applies—each commercial organisation to which the subparagraph applies.

## 7 Mandatory criteria for modern slavery statements

- (1) A modern slavery statement must in relation to each organisation covered by the statement:
  - (a) identify the organisation, and
  - (b) describe the structure, operations and supply chains of the organisation, and
  - (c) describe the risks of modern slavery practices in the operations and supply chains of the organisation, and any entities that the organisation owns or controls, and
  - (d) describe the actions taken by the organisation and any entity that the organisation owns or controls to assess and address those risks, including due diligence and remediation processes, and
  - (e) describe how the organisation assesses the effectiveness of such actions, and
  - (f) describe the process of consultation:
    - (i) with any entities that the organisation owns or controls, and
    - (ii) in the case of organisations preparing a joint statement under clause 6—between those organisations, and
  - (g) include any other information that the organisation considers relevant.
- (2) A modern slavery statement must include:
  - (a) for a statement to be given under clause 5 (Modern slavery statements for single commercial organisations)—details of approval by the principal governing body of the commercial organisation, or
  - (b) for a statement to be given under clause 6 (Joint modern slavery statements):
    - (i) details of approval by the relevant principal governing body or bodies; and
    - (ii) if clause 6 (2) (d) (iii) applies—an explanation of why it is not practicable to comply with clause 6 (2) (d) (i) or (ii).

## 8 Publication of modern slavery statements: section 24 (6)

- (1) A commercial organisation must make its modern slavery statement public by causing it to be lodged with the Commissioner for publication on the statement register.
- (2) The modern slavery statement must be lodged:
  - (a) within 6 months after the end of the relevant financial year of the organisation, and
  - (b) in a manner approved by the Commissioner.
- (3) The Commissioner is to keep a register in electronic form of all modern slavery statements lodged with the Commissioner under this clause (the *statement register*).
- (4) The Commissioner is to publish on the statement register all modern slavery statements lodged under subclause (1).
- (5) The Commissioner is to make the statement register publicly available free of charge on the internet.
- (6) The statement register may be combined with the register kept by the Commissioner under section 26 of the Act.

## 9 Corresponding laws: section 24 (9)

For the purposes of section 24 (9) of the Act, the Commonwealth Act is prescribed as a corresponding law.

**Note.** Section 24 (9) of the Act provides that section 24 (Transparency of supply chain) does not apply to a commercial organisation if the organisation is subject to obligations under a prescribed corresponding law.

## 10 Exemptions from requirement to prepare modern slavery statements

### (1) Voluntary reporters under Commonwealth Act

A commercial organisation is exempt from the requirements of section 24 (2)–(6) of the Act in relation to a financial year of the organisation if the organisation:

- (a) has volunteered to comply with the requirements of the Commonwealth Act under section 6 under that Act for that financial year, and
- (b) has complied with provisions of that Act, and
- (c) has given a modern slavery statement to the Minister (within the meaning of the Commonwealth Act) under Part 2 of that Act, and
- (d) notifies the Commissioner of those facts,
- (e) provides the Commissioner with a copy of the modern slavery statement given to that Minister.

**Note.** Section 24 (7) of the Act makes it an offence to provide information in connection with a matter under that section that the person knows, or ought reasonably to know, is false or misleading in a material particular.

### (2) Subsidiaries of Commonwealth parent reporting entities

A commercial organisation is exempt from the requirements of section 24 (2)–(6) of the Act in relation to a financial year of the organisation if the organisation:

- (a) is a subsidiary (within the meaning of the *Corporations Act 2001* of the Commonwealth) of a reporting entity (within the meaning of the Commonwealth Act), and
- (b) that reporting entity has given a modern slavery statement to the Minister under section 14 of that Act (Joint modern slavery statements) that covers the organisation, and
- (c) notifies the Commissioner of those facts,
- (d) provides the Commissioner with a copy of the modern slavery statement given to that Minister.

**Note.** Section 24 (7) of the Act makes it an offence to provide information in connection with a matter under that section that the person knows, or ought reasonably to know, is false or misleading in a material particular.

### (3) Corporate entities of Commonwealth, other States and Territories

A commercial organisation is exempt from the requirements of section 24 (2)–(7) of the Act in relation to a financial year of the organisation if the organisation is:

- (a) a corporate Commonwealth entity or Commonwealth company within the meaning of the *Public Governance, Performance and Accountability Act 2013* of the Commonwealth, or
- (b) a corporation owned or controlled by another State or Territory or an agency of another State or Territory.

### (4) Charities and not-for-profit organisations

A commercial organisation is exempt from the requirements of section 24 (2)–(7) of the Act in relation to a financial year of the organisation if the organisation:

- (a) has an organisation constitution (however described) that prohibits the distribution of profits or property to its members, and
- (b) does not conduct its affairs (including its affairs as trustee of any trust) so as

to provide pecuniary gain for its members (within the meaning of the *Associations Incorporation Act 2009*), and

- (c) is exempt from paying income tax under the *Income Tax Assessment Act 1997* of the Commonwealth.

**(5) Small organisations**

A commercial organisation is exempt from the requirements of section 24 (2)–(7) of the Act in relation to a financial year of the organisation if the organisation during that financial year had less than 20 employees.

**(6) Giving of notification and copies of statements**

The notifications and copies of modern slavery statements referred to subclauses (1) (d) and (e) and (2) (c) and (d) are to be made to or provided to the Commissioner (as the case requires):

- (a) within 6 months after the end of the relevant financial year of the organisation,  
and
- (b) in a manner approved by the Commissioner.

**11 Transitional**

Section 24 of the Act does not apply in relation to any financial year of an organisation that commenced before the commencement of this Regulation.