

PRESENTED BY
K&L GATES

Slave, *no more*

K&L Gates' Simon Casinader and Paris Taylor consider recent developments in modern slavery law.

NEW MODERN SLAVERY legislation has been passed and this legislation will have a significant effect on the operations of businesses in the fashion industry. Organisations must be aware of their obligations, as well as the potential legal and reputational consequences of non-compliance.

The Modern Slavery Act 2018 (Cth) (Federal Act) became law on 29 November 2018 and will take effect on 1 January 2019. This follows the *Modern Slavery Act 2018* (NSW) (NSW Act) which was enacted in June 2018 and is due to take effect after the Federal Act commences.

Modern slavery refers to egregious forms of exploitation, including forced labour, wage exploitation, involuntary servitude, debt bondage, human trafficking and child labour. It is estimated that there are more than 40 million victims of modern slavery worldwide.

Ethical sourcing and supply chain management are critical issues in the fashion industry. As brands experience pressure to produce high volumes of affordable clothing using complex global supply chains, it can be difficult for businesses to monitor their suppliers and prevent exploitation.

A recent report by the Corporate Human Rights Benchmark measured the performance of 30 of the world's largest apparel companies against a variety of human rights indicators, and gave the apparel industry a disappointing average score of 26.7%. The Federal and NSW Acts provide a framework to support improvements in this area.

Federal Act

Under the Federal Act, entities that carry on business within Australia and have annual consolidated revenue of at least A\$100 million or more will be required to publish a Modern Slavery Statement within six months of the end of their financial year. Organisations with annual consolidated revenue of less than A\$100 million may also be eligible to voluntarily comply with the regime.

A Modern Slavery Statement must address:

- the structure, operations and supply chains of the organisation
- the risks of modern slavery practices in the operations and supply chains of the organisation
- the actions taken by the organisation to address and assess the risks of modern slavery in its operations and supply chains
- the method that the organisation uses to assess the effectiveness of its actions in addressing those risks, and
- if the organisation is reporting jointly with another organisation, or owns or controls other organisations, the pro-

cess of consultation that has occurred between the organisations.

Modern Slavery Statements will be stored on an online register, and available for free public inspection.

The Federal Act does not contain penalties for organisations who fail to comply with their reporting requirements. However, the Minister will have powers to request an explanation from organisations that fail to comply with their Modern Slavery Statement requirements, and request that organisations take remedial action in relation to their failure to comply. If the organisation fails to comply, they can be 'named and shamed' by the Minister. Possible civil penalties for non-compliance will be revisited in a compulsory three-year review of the Federal Act. The ALP has indicated that it will push for further amendments, including civil penalties for non-compliance, if elected into Government in 2019.

NSW Act

The NSW Act requires organisations with employees in New South Wales and having a total annual turnover of greater than A\$50 million to prepare a Modern Slavery Statement. Businesses reporting under the Federal Act will not need to do so under the NSW Act. The required Statement is likely to be similar to that required by the Federal Act.

In contrast to the Federal Act, the NSW Act includes penalties for organisations that do not prepare a Modern Slavery Statement, that fail to make their Modern Slavery Statement public, or that provide false or misleading information relating to the statement. Each offence attracts a maximum penalty of \$1.1 million.

Next steps

It is imperative that fashion businesses are aware of this rapidly changing area. Businesses should review their supply chains, and the systems, processes and resources that they have in place to identify modern slavery in their business operations. Organisations, subject to either Act, must carefully consider their obligations under the new legislation. ■

For more information about issues relating to Australia's modern slavery legislation, please contact Simon Casinader, Senior Associate at K&L Gates (email simon.casinader@klgates.com.au). This article is for informational purposes and does not contain or convey legal advice. The information herein should not be used or relied upon in regard to any particular facts or circumstances without first consulting a lawyer.

