

**INQUIRY INTO MODERN SLAVERY ACT 2018 AND
ASSOCIATED MATTERS**

Organisation: End Modern Slavery

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End Modern Slavery

ABN: 57819277945

30 September 2019

Chair, Social Committee
The Hon. Shayne Mallard, MLC

Parliament House
Macquarie Street
SYDNEY NSW 2000

Submission

Parliament of New South Wales Legislative Council

Inquiry into the Modern Slavery Act 2018 and associated matters

Dear Chair:

1. Please accept End Modern Slavery's submission for the Inquiry into the Modern Slavery Act 2018 and associated matters.
2. The submission relates to selected aspects of The Inquiry into the Modern Slavery Act 2018 and associated matters within the scope of the Terms of Reference. The Terms of Reference requested:
 1. That the Standing Committee on Social Issues inquire into and report on the Modern Slavery Act 2018 (NSW) (the NSW Act), the consultation draft of the Modern Slavery Bill 2019 (the amendment Bill), and the consultation draft of the Modern Slavery Regulation 2019 (NSW) (the Regulation), with particular reference to:
 - (a) the operability of the proposed anti-slavery scheme
 - (b) the effect of the anti-slavery scheme on business, including the supply chain reporting obligations under section 24 of the NSW Act
 - (c) the intended application of the anti-slavery scheme with respect to charities and not-for profit organisations, State Owned Corporations and local councils

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- (d) the appropriateness and enforceability of Modern Slavery Risk Orders under section 29 of the NSW Act
- (e) the unintended consequences of drafting issues with the NSW Act, including with respect to the Human Tissue Act 1983 (NSW) and the sale and supply of human tissue
- (f) the risk of a possible constitutional challenge to current provisions in the NSW Act due to inconsistencies with the Criminal Code Act 1995 (Cth)
- (g) whether the passage of the Modern Slavery Act 2018 (Cth) renders parts or all of the NSW Act unnecessary, or requiring of amendment to address inconsistencies or gaps
- (h) the preferred course of action to address the matters identified
- (i) any other related matter.

2. The Committee shall have regard to the Government submission.

3. End Modern Slavery, is a start-up and registered Australian (small) business that will provide business to business services providing specialist support to take action to combat modern slavery in business operations and supply chains, and promote compliance with Commonwealth and State Acts on Modern Slavery.

End Modern Slavery's Director, Catherine Chalk, has previously contributed to submissions on the Commonwealth Criminal Code Act 1995 in relation to human trafficking, and the 1995 Beijing Women's Conference on trafficking of women and children; conducted research commissioned by AusAID on child labour in Cambodia for Flinders University; contributed to the co-design of Cambodia's foundation legislative framework, national action plan and inter-regional research programs on trafficking and prostitution of women and children; has 20 years experience in research and design and implementation of programs that address the root causes of modern slavery, poverty and upholding human rights through legislative processes; worked with off-shore refugee communities and post-conflict communities at risk of human trafficking; and authored women, democratisation and human rights in the Cambodian garment industry.

4. Taking action to address modern slavery in business operations and supply chains is good for business. International, national and New South Wales' legislative requirements on ending modern slavery should be encouraged and are commended. The business case for businesses' acting to end modern slavery includes that it can protect against possible reputation risk and legal action which can harm business; it improves the ethics, integrity and quality of business supply chains; it increases profitability, improving investor and consumer confidence; it improves financing opportunities; and it improves relationships with suppliers, buyers, workers, local communities, and other businesses. In summary, it generates business profit with social responsibility, and business opportunities.

As part of the United Nations' Sustainable Development Goals, the international community has committed to end modern slavery by 2030 (Target 8.7).

5. The Australian Commonwealth and New South Wales Modern Slavery Acts are to be commended.

The New South Wales Modern Slavery Act was passed in 2018 and its implementation should not be delayed.

The delays in the implementation of the Act impedes an accelerated action to prevent more people being enslaved and remediate victims of modern slavery. This is neither fair nor just. It similarly endorses permitting poor safety and violence in our community if it occurs for profit. It breaches human rights. It stifles good business practice and good business governance, due to lack of education and awareness on modern slavery and its presence in supply chains.

6. The Australian Commonwealth and New South Wales Modern Slavery Acts, with minor amendments of the New South Wales 2018 Act to ensure constitutionality (in particular on issues of organ trafficking, forced marriage and internet crimes), are complementary and reporting mechanisms appear to be synced, ensuring operationality and enabling data gathering for monitoring of business activity mitigating modern slavery and facilitating a (data) environment for measuring impact in ending modern slavery in Australian business supply chains, both within Australia, and in time in progressive tiers of off-shore supply chains.

7. The amendment of Schedule 4, Section 91HAA of the New South Wales Modern Slavery Act 2018 is noted; whereby Internet Service Providers are now exempted from the reach of the offence provisions; and that Commonwealth offences will still be available for use by NSW Police in appropriate circumstances.

Monitoring, preventing and mitigating issues of modern slavery and the telecommunications industry generally, will be prudent under both Commonwealth and State Acts.

Jurisdiction issues in legislation may need to be part of this monitoring and need to be encompassed under the role of the Independent Commissioner for New South Wales.

8. It is commended that Schedule 4, Section 91HAB Encouraging use of a digital platform to deal with child abuse material continues to be part of the New South Wales Modern Slavery Act.

9. The overlap of supply chain reporting provisions of Commonwealth and State modern slavery legislation results in businesses with a turnover between AUD\$50 million and AUD\$100 million being required to report under the NSW Act; and commercial and not-for-profit entities operating in Australia with annual consolidated revenue of at least AUD\$100 million. Any Australian entity or foreign entity carrying on business in Australia can provide a voluntary statement under the Commonwealth Modern Slavery Act, 2018.

The key benefits of the NSW Modern Slavery Act vis- a vis the Commonwealth Act are that they are complementary.

10. Importantly the NSW Modern Slavery Act has additional provisions, which will likely enhance impacts on ending modern slavery, particularly in New South Wales, and it's businesses' supply lines; and arguably in-flows of trafficked persons. Embedding a culture and awareness on ending modern slavery at a local level is vital to the identification and mitigation of modern slavery, and improves outcomes for victims of modern slavery.

The Modern Slavery Acts, and in particular the New South Wales Modern Slavery Act, will be the best trigger for this process for businesses in New South Wales.

Local government entities should not be exempted from the New South Wales Modern Slavery Act, nor it's regulations.

Systemic violence, such as trafficking should be not be regulated through a voluntary regulatory framework at the level of local government. Local governments have sizable local spending power, roles in governance, influence on local culture and understanding and connections to local businesses – leadership from local councils needs to be systemized and enforced on this issue, and systems of accountability and transparency to the New South Wales people ensured.

Government at all levels, throughout it's various entities must be taking action to prevent and mitigate modern slavery within its own supply chain network of public sector suppliers. This due diligence of government to protect human rights is also detailed in the UN Guiding Principles (Principle 6).

11. The role of the Independent Commissioner is a commended inclusion in the New South Wales Modern Slavery Act. This role includes an overview of the implementation of the Act, for advocacy and victim support and regular review; and cooperation and referral with other agencies.

The New South Wales Modern Slavery Act 2018, Section 12, Commissioner's public awareness and advice functions generally, would be strengthened in operationality to include training and awareness raising activities on modern slavery for:- police and law enforcement agencies; family violence and child protection agencies; migrant support agencies; labour recruitment agencies; media; and possibly education and training institutions in New South Wales. These activities will likely be important for ensuring positive outcomes for victims of modern slavery in New South Wales, and preventing and mitigating modern slavery in New South Wales.

12. The New South Wales Modern Slavery Act Regulation does not have reference to the United Nations Guiding Principles on Business and Human Rights (UN Guiding Principles). Reference to the UN Guiding Principles would strengthen synergy with the Commonwealth Modern Slavery Act, and possibly improve operationality for businesses operating in, or planning to operate in, global contexts. It may also strengthen compliance reporting synchronization on international human rights reporting required by Australia, and including the New South Wales jurisdiction.

13. It is unclear if Division 3, (5) The Independent Commissioner is to make a special report to the Minister on any particular issue or general matter requested by the Minister, includes contributions to Australia's international human rights reporting mechanisms. Consideration and clarification on reporting and required data analysis may strengthen operationality of the New South Wales Modern Slavery Act and its synchronicity with the Commonwealth Modern Slavery Act, 2018.

14. The coordination and liaison role of the Independent Commissioner to consult regularly with the Auditor General and the NSW Procurement Board in order to monitor the effectiveness of due diligence procedures in place within government agencies to ensure that "goods and services procured by government agencies" are not the product of modern slavery will enhance operationality of the New South Wales Modern Slavery Act.

15. Section 12, Commissioner's public awareness and advice functions generally, would be strengthened in operationality to include the proposed provision to be inserted to protect information disclosure which may prejudice investigation of a crime or prejudice criminal proceedings, etc.. It is not clear, however, if this equally protects the rights of alleged perpetrators and victims.

16. Arrangements for information sharing between the Commissioner of Police and the Independent Commissioner are commended. The requirement of the Commissioner of Police to not be required to provide information to the Commissioner if he or she believes it would prejudice an investigation or proceedings, or endanger a person's life or physical safety, etc. would seem consistent practice. There is limited discussion in operationality of the New South Wales Modern Slavery Act on liaison and cooperation with Federal and other (Australian) State policing and criminal proceeding bodies. This is an area identified for future consideration in the scope of the role of the Commissioner. This will likely be an area that may need to be considered in further development of the regulations of this legislation.

17. The amendment to Schedule 4[7] Section 93AB that limits the territorial operation of the offence provision to within NSW, to avoid a conflict with the requirement in the equivalent Commonwealth offence, under which the Attorney General must consent to any prosecution in relation to matters where all of the physical elements of the offence occurred outside Australia, is commended in

so far as it ensures alignment of the offence provision with the equivalent Commonwealth offence provision, removing a potential constitutionally problematic inconsistency. The Commissioner's role of monitoring the Act, and its impact vis-à-vis the Commonwealth Act will be important on this issue. Independent reviews may improve understanding of this operational issue, including at impact level.

18. It is noted that the amendment to the NSW Modern Slavery Act amends the Crimes (Domestic and Personal Violence) Act to ensure that child victims of forced marriage can access Domestic Violence Orders or Personal Violence orders if they experience coercion or threats to enter a forced marriage. This amendment expanding the reach of those changes to include adult victims of forced marriage, is commended. This will likely improve identification and mitigation of often related trafficking issues, and is a particular positive in ensuring gender-sensitive legislation, noting that women and girl-children are a greater proportion of victims of global trafficking diasporas; and inter-linkages of trafficking, forced marriage and prostitution.

19. To enable good governance and parliamentary processes:

- Local government entities should not be exempted from the New South Wales Modern Slavery Act, nor its regulations. Local government entities should be required to have their report(s) (under the Commonwealth or New South Wales Acts), tabled in New South Wales Parliament.
- New South Wales state owned corporations should be required to have their report(s) (under the Commonwealth or New South Wales Acts), tabled in New South Wales Parliament.
- New South Wales 'government agencies' should be required to take reasonable steps to ensure that goods and services procured by and for the agency are not the product of modern slavery, and report on their actions in their Annual Reports (new section 176(1A) of the Public Works and Procurement Act 1912 (NSW) (the Public Works Act)).

This will also open opportunities for inclusion of ending modern slavery in Office of the Auditor General audits, and other independent audits, including those used by New South Wales Parliament. This improves accountability and transparency of the use tax payer funds, including on socially responsible governance attributes.

20. Walk Free Foundation's (2017) submission to the Select Committee on Human Trafficking Inquiry into Human Trafficking noted that:

Modern slavery is one of the most pressing and urgent issues of this generation. There are an estimated 45.8 million people subjected to modern slavery today (Global Slavery Index, 2016). According to GSI estimates, more than 4000 people are subject to modern slavery in Australia. Some of the countries in our region are deeply

affected, with survey results confirming for example, that more than 700,000 people are subject to modern slavery in Indonesia. Cases in the Asia Pacific region range from forced labour in agriculture, brick kilns and the garment sector, to forced begging and child soldiers in India, Afghanistan and Thailand.¹ “Modern slavery” covers a wide spectrum of crimes, but the common thread is any situation of exploitation where a person cannot refuse or leave because of threats, violence, coercion, abuse of power or deception. “Modern slavery” is used to refer to human trafficking, slavery and slavery like practices such as servitude, forced labour, deceptive recruiting and debt bondage. Modern slavery affects every country, region, business and for many large companies - their supply chains. Criminal networks exploit vulnerable scenarios and weak systems by targeting individuals who have been misplaced fleeing from conflict or are affected by globalisation, rapid technological growth, global mass migration and the gender inequality gaps that exist in many developing countries.

With New South Wales seeking to embrace the benefits and opportunities of expanding trade, particularly in the economic growth areas of Asia and China; and with increasing rates of global forced population displacement and refugee crisis in the ASEAN region, vigilance and support in ensuring our businesses and economy grows in a way that meets global business and human rights standards is timely. In today’s globalised economy the “risks that a product or service has forced labour somewhere in the supply chain is now present in almost all industries, from electronics, high-tech, automotive and steel to agriculture, coffee, seafood, mining, garment and textiles.”¹ There can be no complacency in acting to end modern day slavery.

Encouragingly, more countries and states are acting to legislate an end to modern slavery. Customers around the world, particularly younger generations, are increasingly using their purchasing power and requiring socially responsible business; and goods and services.

The ability of legislative frameworks, including through the complimentary and coordination of the Commonwealth and New South Wales Modern Slavery Acts, to assist in this process of developing socially responsible products and business governance outlooks is synergistically good for business, and future market positioning. It makes a contribution to enabling compliance with the United Nations Sustainable Development Goals; and arguably makes a contribution to an enhanced and stabilised globalised capitalist economy and positive peace².

¹ Retrieved from <https://www.sydneycatholic.org/solidarity-and-justice/anti-slavery/modern-slavery/>

² Positive Peace is defined as the attitudes, institutions, and structures that create and sustain peaceful societies. Institute for Economics & Peace. Global Peace Index 2019: Measuring Peace in a Complex World, Sydney, June 2019, p66. Available from: <http://visionofhumanity.org/reports>