

Submission  
No 25

## INQUIRY INTO MODERN SLAVERY ACT 2018 AND ASSOCIATED MATTERS

**Organisation:** Fair Supply

**Date Received:** 2 October 2019

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Proof that  
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Profitable.



Submission to the NSW Legislative Council  
Standing Committee on Social Issues:  
INQUIRY INTO THE MODERN SLAVERY  
ACT 2018 & ASSOCIATED MATTERS

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Ms Jenelle Moore  
Director Committees  
Legislative Council Standing Committee on Social Issues  
Parliament House  
Sydney NSW 2000

**By Email:** [socialissues@parliament.nsw.gov.au](mailto:socialissues@parliament.nsw.gov.au)

Dear Ms Moore

**RE: Inquiry into the *Modern Slavery Act 2018* and associated matters**

FairSupply.com.au Pty Ltd ('Fair Supply') thanks the Legislative Council Standing Committee on Social Issues for the opportunity to make a submission to its inquiry into the *Modern Slavery Act 2018* and associated matters.

Fair Supply is a boutique law firm based in Sydney with a team that possesses more than 30 years cumulative experience in the anti-slavery sector. We are Australia's first law firm exclusively dedicated to partnering with organisations to implement reporting obligations under the Modern Slavery Act 2018 (Cth) and the Modern Slavery Act 2018 (NSW). Our service offering includes using our patent pending technology tool to identify modern slavery risks in organisations' operations and supply chains (including investment and lending portfolios), undertaking due diligence to address modern slavery risk, providing business wide education on modern slavery, drafting action advisory plans to address and mitigate modern slavery risks and preparing modern slavery statements.

Reporting obligations under the Modern Slavery Act 2018 (NSW) ("the NSW Act") have been put on hold pending this inquiry and the outcome of consultations on the draft Modern Slavery Regulation 2019. Notwithstanding, reporting entities subject to the Modern Slavery Act 2018 (Cth) have already begun identifying modern slavery risks in their operations and supply chains. Fair Supply is assisting a number of those entities and hold a strong position to provide feedback on the Modern Slavery Act 2018, the proposed Modern Slavery Amendment Bill 2019 and draft Modern Slavery Regulation 2019 ("the NSW Anti-Slavery Scheme") based on our experience to date.

We hope the Committee finds our feedback helpful. We would be pleased to provide further written or verbal evidence should the Committee so request.

Yours sincerely

**Kimberley Randle**  
Executive Director and Lawyer

**Skye Kakoschke-Moore**  
Director

1 October 2019

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## **EXECUTIVE SUMMARY**

The Modern Slavery Act 2018, the draft Modern Slavery Regulation 2019 and the Modern Slavery Amendment Bill 2019 (“the NSW Anti-Slavery Scheme”) provide a strong base for New South Wales to build an internationally recognised framework for reporting entities to identify and address the risks of modern slavery in their operations and supply chains.

The NSW Anti-Slavery Scheme is complimentary to those reporting requirements under the Modern Slavery Act 2018 (Cth). The complimentary reporting framework provides reporting entities with the opportunity to report under a single framework and provides a solid foundation for reporting entities to investigate their supply chains and operations for risks of modern slavery without requiring duplication of reporting.

The preservation of the NSW Act is important to demonstrate the effectiveness of NSW’s approach to addressing modern slavery in supply chains. It is imperative that the appointment of an independent Anti-Slavery Commissioner, the lower reporting threshold and the availability of penalties remain core components of the Modern Slavery Act 2018 (NSW).

Overall, Fair Supply is supportive of the proposed amendments set out in the Modern Slavery Amendment Bill 2019. (“the Bill”). In particular, we commend the inclusion of State Owned Corporations in the definition of a ‘commercial organisation’ by Item 14 of the Bill into Section 24 of the Act. We encourage the Committee to explore further those amendments under Items 12 and 13 of the Bill proposing to exempt small business and charities and not-for-profits (even in circumstances where the revenue threshold is met) from the reporting framework. We recommend that local councils are explicitly included in the reporting framework under Section 24 of the NSW Act and not left to non-legislative approaches to tackling modern slavery risks in their supply chains.

Running in parallel to this inquiry is the NSW Government’s Have Your Say consultation on the draft Modern Slavery Regulation 2019. Fair Supply’s submission to that consultation provided on 10 September 2019 is attached to this document at Appendix 1. Our submission to that consultation sets out in detail our position regarding the importance of data collection to measure the effectiveness of reporting entities modern slavery statements. That proposed requirement will not only facilitate the identification of best-practice in modern slavery reporting, but also establish baseline data from which to judge companies’ progress in addressing modern slavery in the years ahead.

### **LIST OF RECOMMENDATIONS**

**RECOMMENDATION 1:** Section 7 of the NSW Modern Slavery Act 2018 should be amended to provide the Anti-Slavery Commissioner with full independence in the exercise of their functions in Division 2 of the Act.

**RECOMMENDATION 2:** In order to maximise the effectiveness of the NSW Anti-Slavery Scheme, the following should be preserved:

- The alignment of the mandatory reporting criteria between the NSW and Commonwealth frameworks;
- The appointment of the independent Anti-Slavery Commissioner under Division 6 of the NSW Act
- The lower reporting threshold of \$50m established by Section 24 of the Act; and
- The availability of penalties for non-compliance established by Section 24 of the Act.

**RECOMMENDATION 3:** The Anti-Slavery Commissioner should maintain an un-biased directory of organisations able to assist reporting entities with compliance with the Modern Slavery Act 2018 (NSW) and Modern Slavery Regulation 2019, including organisations who can assist with modern slavery risk mitigation and remediation.

**RECOMMENDATION 4:** Reporting entities should have the opportunity to provide draft modern slavery statements to the Anti-Slavery Commissioner for feedback prior to submitting final versions of statements.

**RECOMMENDATION 5:** The exemption for small businesses and certain charities and not-for-profits should be removed. In the event these exemptions proceed, the exempted entities should be actively encouraged to report voluntarily. The names of those organisations granted exemptions should be published on the public register.

**RECOMMENDATION 6:** State Owned Corporations should be defined as ‘commercial organisations’ rather than ‘government agencies’ under Section 24 of the NSW Act.

**RECOMMENDATION 7:** The Act and/or Regulation should be amended to specifically include local NSW government authorities such as councils within the definition of ‘commercial organisation’ under Section 24 of the NSW Act where their annual turnovers are greater than \$50m.

**RECOMMENDATION 8:** The amendment to repeal Modern Slavery Risk Orders should proceed and that victims will be afforded sufficient protections from offenders under existing schemes.

**RECOMMENDATION 9:** The amendments to clarify that activities occurring overseas in relation to the sale and supply of blood and tissue do not constitute organ trafficking should be passed.

**RECOMMENDATION 10:** The NSW Government and Anti-Slavery Commissioner should work with the Department of Home Affairs to develop an assessment matrix and score card for reporting entities under both Modern Slavery Acts, as well as any other activities they could collaborate on to strengthen the operation of both reporting frameworks.

**RECOMMENDATION 11:** The Modern Slavery Amendment Bill 2019 should be passed by the NSW Parliament as a matter of priority following the completion of this inquiry.

## ABOUT FAIR SUPPLY

Fair Supply is Australia's first law firm dedicated exclusively to partnering with organisations to implement transparency requirements under the Modern Slavery Acts. We utilise leading subject matter expertise and diverse experience in the legal, commercial and not-for-profit domains to provide organisations with a multidisciplinary approach to compliance with the NSW and Commonwealth Modern Slavery Acts. Fair Supply has partnered with organisations in the financial services, construction, transport and retail sectors to implement the Modern Slavery Act (Cth).

The Fair Supply team comprises of individuals with more than 30 years cumulative experience in the anti-slavery sector. Our legally-qualified personnel have worked at top tier commercial law firms both in Australia and internationally. Our executive experience spans strategy, HR, IT, finance, project management, business analysis and operations with multinational, publicly listed companies and international NGOs.

In all things, Fair Supply takes a human rights-based approach to identifying, assessing and mitigating modern slavery practices.

We provide our clients with the following services:

**Initial Assessment** - Fair Supply undertakes Initial Assessment (IA) on a business wide basis (nationally) to identify potential risk categories and industries in an organisation's supply chains. The IA prioritises high-risk categories and provides recommendations for a risk mitigation plan. Fair Supply has developed a unique methodology to identify supply chain risks (in both operations and supply chains) of modern slavery and is compliant with recognised international standards. The IA is an important baseline measurement tool that can be used to highlight the organisation's performance in addressing modern slavery risks.

**Risk Register** - Fair Supply's Risk Register includes an organisation-specific Risk Register. It provides a transparent tool for Executive and Management.

**Business Wide Education** - The Commonwealth Draft Guidance for Reporting Entities under the *Modern Slavery Act 2018 (Cth)* requires identified organisations to make available to employees training regarding modern slavery. Fair Supply's business wide education program is designed not only to meet compliance obligations but to provide continuing education and professional development to the organisation.

**Policy and Document Review** - Fair Supply undertakes comprehensive policy, document and contract review for clients to ensure that all internal policies address transparency obligations under the Modern Slavery Act. Fair Supply works with clients to amend or create where necessary, up-to-date internal policies relevant to legislative compliance including, but not limited to, an Ethical Procurement Policy, Whistle-blower Policy, relevant HR and Governance Policies. Fair Supply can also work with clients to create a Human Rights Statement for the business.

**Action Advisory Plan** - It is inevitable that modern slavery risks will be identified in an organisation's supply chain. Fair Supply will provide clients with the development of a prioritised action advisory plan (AAP) against risks identified. The Fair Supply AAP includes the drafting of a human rights-based remediation strategy that is consistent with the firm's commercial objectives. The AAP can also incorporate, where appropriate, the options for desk-based and in-country audits of high-risk supply chain categories and suppliers.

**Modern Slavery Statement** - The preparation of an organisation's Modern Slavery Statement is the most critical compliance obligation under the Modern Slavery Acts. Fair Supply has industry insight and experience to prepare a market leading and authentic modern slavery statement for businesses that not only meets minimum compliance standards but shows how the processes implemented in a business have significantly contributed to addressing modern slavery risks in their supply chain.

## **RESPONSES TO THE TERMS OF REFERENCE**

### **Term of Reference 1(a) - The operability of the proposed anti-slavery scheme**

1. The reporting framework proposed by the Modern Slavery Act 2018, the draft Modern Slavery Regulation 2019 and the Modern Slavery Amendment Bill 2019 provide what is arguably the most effective and comprehensive anti-slavery scheme in the world. The operability of the scheme centres around similarities with the Commonwealth's Modern Slavery Act but also to elements unique to the NSW Act.

#### **Mandatory reporting criteria**

2. The alignment of mandatory reporting criteria with the Commonwealth Act provides reporting entities with certainty around their reporting obligations. The mandatory reporting criteria could be strengthened by placing an obligation on commercial organisations to report on specifically on proscribed data sets. This would enable consistency in reporting and an ability for the regulators, reporting entities and the public to meaningfully compare modern slavery statements between entities and sectors upon publication. Fair Supply's position in relation to the collection and analysis of meaningful data sets is set out in our submission to the NSW Department of Premier and Cabinet 'Have Your Say' consultation on the draft Modern Slavery Regulation 2019 (attached to this submission at Appendix 1).

#### **Anti-Slavery Commissioner**

3. The appointment of an independent Anti-Slavery Commissioner is an important distinction between the NSW and Commonwealth Modern Slavery Acts schemes and provides for the Commonwealth Act to also in time be regulated by an Independent Commissioner.
4. The functions of the NSW Anti-Slavery Commissioner are set out in Division 2 of the NSW Act and include providing assistance to victims of modern slavery,<sup>1</sup> monitoring the effectiveness of legislation and governmental policies in combatting modern slavery<sup>2</sup> and encouraging the prevention, detection, investigation and prosecution of modern slavery.<sup>3</sup> Accordingly, the Commissioner undertakes the role of adviser to business, civil society and consumers on matters concerning the NSW Anti-Slavery Scheme. The Commissioner's functions should include the production of guidelines for commercial organisations on their reporting obligations, including for those commercial organisations operating in high-risk sectors. The Commissioner should also be responsible for regulating the collection of data in contained in modern slavery statements so that adequate analysis and benchmarking of modern slavery statements can be undertaken following publication.
5. The position of the Anti-Slavery Commissioner cannot accurately be described as truly 'independent'. Section 7 of the NSW Act provides for some independence of this position by stating that "the Commissioner is not subject to the control and direction of the Premier or any other Minister in respect of the exercise of the Commissioner's functions under section 9 (1) (a) or (c)." Section 9(1)(a) sets out the Commissioner's function "to advocate for and promote action to combat modern slavery" and section 9(1)(c) set out the

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<sup>1</sup> Section 9(1)(b) Modern Slavery Act 2018 (NSW)

<sup>2</sup> Section 9(1)(f) Modern Slavery Act 2018 (NSW)

<sup>3</sup> Section 9(2)(a) Modern Slavery Act 2018 (NSW)



Commissioner's function "to make recommendations and provide information, advice, education and training about action to prevent, detect, investigate and prosecute offences involving modern slavery".

6. The drafting of section 7 of the NSW Act has the effect of subjecting the Commissioner to the "control and direction" of the Premier and other Ministers in the exercise of their remaining functions (contained in Division 2 of the Act). Significantly, this includes "monitor(ing) reporting concerning risks of modern slavery occurring in supply chains of government agencies and commercial organisations"<sup>4</sup>, and "monitor(ing) the effectiveness of legislation and governmental policies and action in combating modern slavery".<sup>5</sup> This poses the risk that the Commissioner will be hamstrung by the attitude of the government of the day in the exercise of the majority of their functions.
7. Volume 1 of the Independent Review of the Modern Slavery Act 2015 (UK) reported on the Independent Anti-Slavery Commissioner. The report stated that "The Commissioner's independence is a key issue for the credibility and transparency of the post" and that "... independence means that the Commissioner has maximum freedom from Government influence and direction in undertaking his/her existing statutory functions. He/she must have the freedom to scrutinise and advise on the efforts of Government departments and agencies, the police, the Crown Prosecution Service and others in the areas of prevention, prosecution and protection."<sup>6</sup>
8. Fair Supply recommends section 7 of the NSW Modern Slavery Act be amended to provide the Commissioner with full independence in the exercise of their functions. This will enhance the credibility and transparency of this role and allow the Commissioner to provide full and frank advice to Government on matters concerning modern slavery in NSW.

**RECOMMENDATION 1: Section 7 of the NSW Modern Slavery Act 2018 should be amended to provide the Anti-Slavery Commissioner with full independence in the exercise of their functions in Division 2 of the Act.**

#### **Lower reporting threshold**

9. Under Section 24 of the NSW Act the reporting threshold is \$50m in annual revenue. That amount can be compared to the \$100m annual turnover threshold established by the Commonwealth Act. Entities with employees in NSW with turnovers of \$100m or more will only be required to report under the Commonwealth Act (which prevents the duplication reporting obligations), whereas NSW-based entities with annual revenues between \$50m and \$100m will be required to comply with the NSW Act.
10. The lower reporting threshold provides an opportunity to demonstrate that risks of modern slavery in supply chains are still prevalent in organisations with lower revenue than those reporting entities under the Commonwealth Act. Accordingly, the requirement of more organisations to report will logically increase the likelihood of addressing and mitigating modern slavery in supply chains i.e if more organisations are reporting because of the lower threshold, there is an increased likelihood that more modern slavery risks will be identified

<sup>4</sup> Section 9(1)(e) Modern Slavery Act 2018 (NSW)

<sup>5</sup> Section 9(1)(f) Modern Slavery Act 2018 (NSW)

<sup>6</sup> United Kingdom Home Office, *Independent Review of the Modern Slavery Act 2015: Final Report*, p 32, available at <https://www.gov.uk/government/publications/independent-review-of-the-modern-slavery-act-final-report>, accessed 24 September 2019.

and addressed. The requirement of organisations to report under the lower threshold will ensure that the proportional impact of reporting on an organisations size becomes visible.

11. It is Fair Supply's view that businesses with lower revenues operating in high risk industries should eventually be captured by the reporting framework. In order to define what industries should be classified as 'high risk', the NSW Government should have regard to research such as the Global Slavery Index published each year by the Walk Free Foundation and the International Labour Organization's Global Estimates of Modern Slavery. The 2018 Global Slavery Index reported that laptops, computers, mobile phones, garments, fish, cocoa and sugar can represented the products imported into G20 countries with the highest risk of modern slavery in their supply chains. As a result, manufacturing, agriculture and aquaculture could be defined as 'high risk' industries for the purposes of modern slavery.
12. The experience of lower revenue businesses should also be taken into account as the reporting scheme is reviewed, particularly if NSW moves towards a reporting framework more heavily focussed on risk rather than revenue.

### **Penalties**

13. Commercial organisations required to report under Act are subject to 10,000 penalty units (equivalent to \$1.1m) for each of the following offences: failure to prepare a modern slavery statement, failure to publish a modern slavery statement and providing false or misleading information in relation to a modern slavery statement.
14. In relation to penalties, heed should be taken of the experience in the UK, where the Independent Review of the Modern Slavery Act 2015 found that "a lack of enforcement and penalties, as well as confusion surrounding reporting obligations, are core reasons for poor-quality statements and the estimated lack of compliance from over a third of eligible firms".<sup>7</sup> While the UK Act allows the Secretary of State to seek an injunction against non-compliant firms, no penalties have been applied to date for non-compliance with the UK's reporting framework.<sup>8</sup>

<b>RECOMMENDATION 2: In order to maximise the effectiveness of the NSW Anti-Slavery Scheme, the following should be preserved:</b>
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- The alignment of the mandatory reporting criteria between the NSW and Commonwealth frameworks;
- The appointment of the independent Anti-Slavery Commissioner under Division 6 of the NSW Act;
- The lower reporting threshold of \$50m established by Section 24 of the NSW Act; and
- The availability of penalties for non-compliance established by Section 24 of the NSW Act.

<sup>7</sup> United Kingdom Home Office, *Independent Review of the Modern Slavery Act 2015: Final Report*, p 39, available at <https://www.gov.uk/government/publications/independent-review-of-the-modern-slavery-act-final-report>, accessed 3 September 2019.

<sup>8</sup> Ibid, p 14.

**Term of Reference 1(b) - The effect of the anti-slavery scheme on business, including the supply chain reporting obligations under section 24 of the NSW Act**

**Conducting initial assessments of operations and supply chains**

15. Section 24(5)(c) of the NSW Act provides that the regulations may require modern slavery statements prepared by a commercial organisation to contain information about “the parts of its business and supply chains where there is a risk of modern slavery taking place”.
16. In order to assist our clients with this reporting requirement, Fair Supply has conducted a number of Initial Assessments to date which provide our clients with a risk assessment report identifying and prioritising modern slavery risk and providing recommendations for analysis and due diligence within their operations and supply chains.
17. Our supply chain mapping and risk assessment methodology uses a patent pending proprietary algorithm analysis to map a company’s supply chains and operations at an industry and country level and rank suppliers based on the risk of modern slavery occurring in those supply chains and operations.
18. Economic inputs required to produce products and services sourced from Tier 1 suppliers are traced using Fair Supply’s proprietary technology to identify spend values for Tier 2 suppliers at the industry and country level. This process is repeated until Tier 10 of the company’s supply chain.
19. Fair supply utilises a proprietary algorithm to synthesise publicly available risk data against exclusively licenced global trade information. This unique, data driven capability provides clients with a unique modern slavery risk profile to the tenth tier for each supplier in their supply base.
20. Through this mapping process, risks of modern slavery and human rights abuses are identified and recorded by accompanying plots to show the supply chain and where modern slavery may be identified in each supply chain and operation analysed. This method is based on the UN Guiding Principles on Business and Human Rights due diligence frameworks, which recommends prioritising human rights remediation based on risk and leverage.

**Role of the Anti-Slavery Commissioner**

21. As companies move from risk identification to due diligence and risk mitigation (and possibly remediation) subject matter expertise may be required for commercial organisations to fulfil the reporting requirements under the Act. It is important the Anti-Slavery Commissioner is able to provide un-biased information to help reporting entities to comply with those obligations. The Commissioner should maintain a directory of organisations able to assist with reporting requirements while making it clear she/he does not endorse or guarantee the quality of those organisations. Similarly, there will likely be inquiries from business about how to conduct effective remediation should modern slavery be identified in their supply chains. The Anti-Slavery Commissioner should be able to provide advice about how to partner with specialist organisations in order to undertake risk mitigation and remediation.
22. The Anti-Slavery Commissioner should also be able to provide feedback on draft modern slavery statements prior to their final submission. This will facilitate only the highest quality modern slavery statements being uploaded to the public register by providing reporting

entities with the opportunity to gather additional information for their statements if necessary.

**RECOMMENDATION 3: The Anti-Slavery Commissioner should maintain an unbiased directory of organisations able to assist reporting entities with compliance with the Modern Slavery Act 2018 (NSW) and Modern Slavery Regulation 2019, including organisations who can assist with modern slavery risk mitigation and remediation.**

**RECOMMENDATION 4: Reporting entities should have the opportunity to provide draft modern slavery statements to the Anti-Slavery Commissioner for feedback prior to submitting final versions of statements.**

### **Term of Reference 1(c) - The intended application of the anti-slavery scheme with respect to charities and not-for profit organisations, State Owned Corporations and local councils**

#### **Charities and not-for profit organisations**

23. The exemption provided for certain charities, not-for-profit organisations and small businesses with annual revenues of more than \$50m is unnecessary. The Explanatory Paper to the draft Modern Slavery Regulation 2019 rationalises this exemption by stating “(t)he 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.”<sup>9</sup>
24. Fair Supply is concerned this exemption may create blind spots in terms of data collection, particularly when these organisations fall between the reporting cracks if they have annual revenues of more than \$50m but less than \$100m.
25. The number of employees or the fact an organisation does not distribute profits to members may not be an accurate indication of that organisation’s capacity to investigate its supply chains and prepare a modern slavery statement. Similarly, a small number of employees or the fact an organisation is structured as a charity are not signs that the risks of modern slavery in that organisation’s supply chain are lower. Indeed, organisations working in humanitarian fields should be thought leaders in this space, leading by example by proactively examining their supply chains to ensure their own operations are not contributing to modern slavery.
26. Fair Supply believes that while the exemption for small businesses, charities and not-for-profits remains in place, such organisations should be actively encouraged to report voluntarily. The names of small businesses, charities and not-for-profits granted exemptions to the reporting requirement should also be published on the public register to assist with transparency.

**RECOMMENDATION 5: The exemption for small businesses and certain charities and not-for-profits should be removed. In the event these exemptions proceed, the exempted entities should be actively encouraged to report voluntarily. The names of those organisations granted exemptions should be published on the public register.**

<sup>9</sup> Department of Premier and Cabinet, *Explanatory Paper: Supply Chain Reporting Requirements for Business*, June 2019, p. 19.

### State Owned Corporations

27. Item 14 of the Modern Slavery Amendment Bill 2019 proposes to define State Owned Corporations as ‘commercial organisations’ rather than ‘government agencies’. Which definition they fall under is relevant to the steps the State Owned Corporation must take in order to be compliant with the Act. Commercial organisations are required to report on the risks of modern slavery in their supply chains, whereas government agencies must take reasonable steps to ensure the goods and services they procure are not the product of modern slavery. Government agencies are required to report on these actions in their annual reports rather than prepare separate modern slavery statements.
28. Fair Supply supports this amendment as it will give effect to the Government’s policy to treat State Owned Corporations on a level playing field with commercial organisations and will result in greater transparency of the supply chains of these organisations.

**RECOMMENDATION 6: State Owned Corporations should be defined as ‘commercial organisations’ rather than ‘government agencies’.**

### Local Councils

29. The Department of Premier and Cabinet’s submission to this inquiry states that “(a)t this stage, no amendments to bring local councils within the scope of the NSW Act are proposed.”<sup>10</sup> Instead, non-legislative approaches are being considered with the possibility of introducing amendments to implement obligations similar to those imposed on NSW Government agencies. These could include providing statements in response to issues raised by the Anti-Slavery Commissioner or statements outlining steps the council has taken to ensure the goods and services it has procured are not products of modern slavery.<sup>11</sup>
30. There are 128 local councils and 10 country councils in the state of NSW. On 28 February 2019 the Auditor-General for NSW, Margaret Crawford, released her report on the local government sector. The report showed that in 2017-18 NSW councils collectively reported expenditure of \$11.4b across services including transport and communications, corporate services, engineering works and waste management.<sup>12</sup> Of the 138 councils, 21 had annual revenues in 2017-18 of between \$50m and \$100m, meaning these councils will be exempt from reporting under New South Wales Act unless an amendment is moved to the legislation that specifically captures local councils in the reporting requirement. There were 62 councils with annual revenues less than \$50m for the same reporting period (meaning they do not meet the reporting threshold in NSW), and 51 councils with revenues exceeding \$100m (meaning they will be required to report under the Commonwealth Act).<sup>13</sup>
31. Given the significant expenditure of local councils, Fair Supply believes an amendment to the Act should be introduced to capture local councils in NSW’s reporting framework.

<sup>10</sup> Department of Premier and Cabinet, *Submission to Legislative Council Standing Committee on Social Issues inquiry into the Modern Slavery Act 2018 and associated matters*, Submission 1, p. 7.

<sup>11</sup> Ibid.

<sup>12</sup> Audit Office of NSW, *Report on Local Government 2018*, 28 February 2019, p 7.

<sup>13</sup> Audit Office of NSW, *Report on Local Government 2018*, 28 February 2019, pp 67-70. Note revenue figures were not provided for some councils.

**RECOMMENDATION 7: The Act and/or Regulation should be amended to specifically include local NSW government authorities such as councils within the definition of ‘commercial organisation’ where their annual turnovers are greater than \$50m.**

**Term of Reference 1(d) - The appropriateness and enforceability of Modern Slavery Risk Orders under section 29 of the NSW Act**

32. The NSW Government’s submission to this inquiry characterises section 29 of the Act (relating to Modern Slavery Risk Orders) as the Act’s “most problematic provision”. The Modern Slavery Amendment Bill 2019 proposes to repeal this section of the Act, with the Government citing significant “legal, policy and practical challenges” with Modern Slavery Risk Orders as the rationale. The Government argues that use of existing schemes, such as the Crime (Serious Crime Prevention Orders) Act (NSW), the Crimes (High Risk Offenders) Act (NSW) and the Child Protection (Offenders Registration) Act (NSW) could be employed to prevent further incidents of modern slavery occurring in the future.
33. Fair Supply is generally supportive of the Government’s amendment to repeal Modern Slavery Risk Orders and encouraged that victims will be afforded sufficient protection from offenders under the existing schemes referred to.

**RECOMMENDATION 8: The amendment to repeal Modern Slavery Risk Orders should proceed and that victims will be afforded sufficient protections from offenders under existing schemes.**

**Term of Reference 1(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**

34. Fair Supply supports the amendments proposed by the Government to clarify that organ trafficking is a modern slavery offence, but that activities occurring overseas in relation to the sale and supply of blood and tissue that is not an organ are not classified as modern slavery offences. This will ensure that NSW Health can continue to rely on imports of blood-related products.

**RECOMMENDATION 9: The amendments to clarify that activities occurring overseas in relation to the sale and supply of blood and tissue do not constitute organ trafficking should be passed.**

**Term of Reference 1(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)**

35. It is important to reduce the risk of possible constitutional challenges to the NSW Act in order to ensure its operability. In Fair Supply’s view, the amendments proposed by the NSW Government should sufficiently reduce such risks by dealing with inconsistencies with the *Criminal Code Act 1995* (Cth).

**Term of Reference 1(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**

36. As the NSW reporting framework is yet to commence, there is an opportunity for the Anti-Slavery Commissioner to work with the Department of Home Affairs on developing an assessment matrix and score card for reporting entities to enable meaningful comparison between reporting entities and industries. The NSW Government should also turn its mind to any other collaborative activities that could be undertaken with the Commonwealth Government as both reporting frameworks are operationalised.

**RECOMMENDATION 10: The NSW Government and Anti-Slavery Commissioner should work with the Department of Home Affairs to develop an assessment matrix and score card for reporting entities under both Acts, as well as any other activities they could collaborate on to strengthen the operation of both reporting frameworks.**

**Term of Reference 1(h) - The preferred course of action to address the matters identified**

37. Fair Supply recommends the NSW Parliament debate and pass the Modern Slavery Amendment Bill 2019 as a priority following the completion of this inquiry. Businesses operating in New South Wales have already been subjected to extensive uncertainty around their potential reporting requirements under the NSW Act. The prompt passage of this legislation and the appointment of the Anti-Slavery Commissioner will provide the certainty and guidance required by business to begin investigating their operations and supply chains for risks of modern slavery.

**RECOMMENDATION 11: The Modern Slavery Amendment Bill 2019 should be passed by the NSW Parliament as a matter of priority following the completion of this inquiry.**

# **APPENDIX 1**

**Submission by Fair Supply to the NSW Department of Premier and Cabinet public consultation on the draft Modern Slavery Regulation 2019**



Proof that  
**Fairness** is  
Profitable.



Submission to the NSW Department  
of Premier and Cabinet on the draft  
**MODERN SLAVERY REGULATION 2019**

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**By Email:** [anti.slavery@dpc.nsw.gov.au](mailto:anti.slavery@dpc.nsw.gov.au)

Dear Modern Slavery Team

**RE: NSW Department of Premier and Cabinet, Draft Modern Slavery Regulation 2019**

FairSupply.com.au Pty Ltd ('Fair Supply') thanks the NSW Department of Premier and Cabinet for the opportunity to provide feedback on the draft Modern Slavery Regulation 2019.

Fair Supply is boutique law firm based in Sydney with a team that possesses more than 30 years cumulative experience in the anti-slavery sector. We are Australia's first law firm exclusively dedicated to partnering with organisations to implement the transparency requirements of the Modern Slavery Act 2018 (Cth) and the Modern Slavery Act 2018 (NSW). Our service offering includes conducting initial assessments of clients' operations and supply chains (including investment portfolios) using our proprietary algorithm to generate risk estimates based on the client's spend data, undertaking policy and document review, business wide education on modern slavery, action advisory plans tailored to our clients' unique modern slavery risk profiles and preparing modern slavery statements.

Reporting obligations under the Modern Slavery Act 2018 (NSW) have been put on hold pending this consultation into the draft Modern Slavery Regulations 2019 and the Legislative Council Standing Committee on Social Issues inquiry into the Modern Slavery Amendment Bill 2019. However, reporting entities subject to the Modern Slavery Act 2018 (Cth) have already begun investigating their supply chains for risks of modern slavery. Fair Supply is assisting a number of these entities and are in a strong position to provide feedback on the draft Regulations based on our experience to date.

We hope the Department of Premier and Cabinet finds our feedback helpful. We would be pleased to provide further written or verbal evidence should the Department so request.

Yours sincerely

**Kimberley Randle**  
Executive Director and Lawyer

**Skye Kakoschke-Moore**  
Director

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## **EXECUTIVE SUMMARY**

This consultation on the draft Modern Slavery Regulation 2019 is an important moment in time for New South Wales as the state moves towards implementing the reporting requirements of the Modern Slavery Act 2018.

While the draft Regulation provides some much-needed guidance in terms of reporting obligations, there are several areas that could be strengthened prior to the Regulation and the Act coming into effect.

For example, the role of the independent Anti-Slavery Commissioner could be expanded to include the ability to manage a directory of services able to assist commercial organisations with their reporting obligations. Similarly, the Commissioner should encourage reporting entities to provide consistent data sets in their modern slavery statements to enable comparisons between organisations and sectors once statements are published on the public register.

A well-functioning, easy to navigate and information-rich public register is the single-most important element of NSW's modern slavery reporting framework from a consumer awareness perspective. The Department of Premier and Cabinet should have regard to similar reporting repositories both in Australia and abroad. The Workplace Gender Equality Agency's Data Explorer, the California Transparency in Supply Chains Act 2010 use of a Risk Verification, Audit, Certification, Internal accountability and Training (VACIT) framework as a compliance matrix and the scoring methodology applied to FTSE 100 companies by the Business and Human Rights Resource Centre all provide examples of good data collection and analysis.

Organisations should have the ability to upload modern slavery statements directly to the public register or to email the statements to the Anti-Slavery Commissioner. Modern slavery statements should remain on the public register indefinitely.

The Commissioner should employ a wide variety of communication methods to promote awareness of and compliance with the Act, including all forms of media and direct communications with reporting entities and any relevant industry groups and peak bodies. This communication should include highlighting examples of best practice when it comes to investigating supply chains for risks of modern slavery and taking action to address those risks.

While the exemptions to reporting aimed at eliminating the duplication of reporting requirements are welcome, Fair Supply is concerned by the proposal to exempt small businesses and some charities and not-for-profits from the reporting framework. An organisation's number of employees or the fact that it works for a charitable purpose are not accurate indicators that the relative risk of slavery in their supply chains is lower or less deserving of investigation.

## LIST OF RECOMMENDATIONS

**RECOMMENDATION 1:** The Anti-Slavery Commissioner should produce practical guides to assist commercial organisations with their reporting obligations, including tailor made guidance for high risk sectors.

**RECOMMENDATION 2:** The Anti-Slavery Commissioner should maintain an un-biased directory of organisations able to assist reporting entities with compliance with the Modern Slavery Act 2018 and Modern Slavery Regulation 2019, including organisations who can assist with modern slavery risk mitigation and remediation.

**RECOMMENDATION 3:** Reporting entities should have the opportunity to provide draft modern slavery statements to the Anti-Slavery Commissioner for feedback prior to submitting final versions of the statements.

**RECOMMENDATION 4:** The Department of Premier and Cabinet should consider classifying commercial organisations using the ANZSIC 2006 system for the purposes of the public register.

**RECOMMENDATION 5:** The Department of Premier and Cabinet should strongly encourage commercial organisations to provide consistent data in their modern slavery statements to enable meaningful analysis and comparison. The Department should have regard to the functionality of the WGEA's Data Explorer in terms of summaries generated and comparison tools when designing the public register.

**RECOMMENDATION 6:** The Department of Premier and Cabinet should have regard to analysis of modern slavery related reports from other jurisdictions, paying particular attention to the Risk Verification, Audit, Certification, Internal accountability and Training (VACIT) framework as a compliance matrix in the California Transparency in Supply Chains Act 2010 as well as the scoring methodology applied to FTSE 100 companies by the Business and Human Rights Resource Centre.

**RECOMMENDATION 7:** Commercial organisations should have the ability to email or upload modern slavery statements directly to the public register. An electronic receipt must be provided confirming the statement has been received.

**RECOMMENDATION 8:** Modern slavery statements should remain on the public register indefinitely.

**RECOMMENDATION 9:** The exemption for small businesses and certain charities and not-for-profits should be removed. In the event these exemptions proceed, the exempted entities should be actively encouraged to report voluntarily. The names of those organisations granted exemptions should be published on the public register.

**RECOMMENDATION 10:** The Anti-Slavery Commissioner should use a wide variety of methods to engage with business, with examples of best practice in reporting regularly highlighted.

**RECOMMENDATION 11:** The Anti-Slavery Commissioner should hold consultations with business and civil society following the first round of modern slavery statements being published but before the second round of statements are required to be lodged. This will assist in identifying and remedying any gaps in reporting or data collection.

**RECOMMENDATION 12:** The Act and/or Regulation should be amended to specifically include local NSW government authorities such as councils within the definition of 'commercial organisation' where their annual turnovers are greater than \$50m.

## ABOUT FAIR SUPPLY

Fair Supply is Australia's first law firm dedicated exclusively to partnering with organisations to implement transparency requirements under the Modern Slavery Acts. We utilise leading subject matter expertise and diverse experience in the legal, commercial and not-for-profit domains to provide organisations with a multidisciplinary approach to compliance with the NSW and Commonwealth Modern Slavery Acts. Fair Supply has partnered with organisations in the financial services, construction, transport and retail sectors to implement the Modern Slavery Act (Cth).

The Fair Supply team comprises of individuals with more than 30 years cumulative experience in the anti-slavery sector. Our legally-qualified personnel have worked at top tier commercial law firms both in Australia and internationally. Our executive experience spans strategy, HR, IT, finance, project management, business analysis and operations with multinational, publicly listed companies and international NGOs.

In all things, Fair Supply takes a human rights-based approach to identifying, assessing and mitigating modern slavery practices.

We provide our clients with the following services:

**Initial Assessment** - Fair Supply undertakes Initial Assessment (IA) on a business wide basis (nationally) to identify potential risk categories and industries in an organisation's supply chains. The IA prioritises high-risk categories and provides recommendations for a risk mitigation plan. Fair Supply has developed a unique methodology to identify supply chain risks (in both operations and supply chains) of modern slavery and is compliant with recognised international standards. The IA is an important baseline measurement tool that can be used to highlight the organisation's performance in addressing modern slavery risks.

**Risk Register** - Fair Supply's Risk Register includes an organisation-specific Risk Register. It provides a transparent tool for Executive and Management.

**Business Wide Education** - The Commonwealth Draft Guidelines requires identified organisations to make available to employees training regarding modern slavery. Fair Supply's business wide education program is designed not only to meet compliance obligations but to provide continuing education and professional development to the organisation.

**Policy and Document Review** - Fair Supply undertakes comprehensive policy, document and contract review for clients to ensure that all internal policies address transparency obligations under the Modern Slavery Act. Fair Supply works with clients to amend or create where necessary, up-to-date internal policies relevant to legislative compliance including, but not limited to, an Ethical Procurement Policy, Whistle-blower Policy, relevant HR and Governance Policies. Fair Supply can also work with clients to create a Human Rights statement for the Business.

**Action Advisory Plan** - It is inevitable that modern slavery risks will be identified in an organisation's supply chain. Fair Supply will provide clients with the development of a prioritised action advisory plan (AAP) against risks identified. The Fair Supply AAP includes the drafting of a human rights-based remediation strategy that is consistent with the firm's commercial objectives. The AAP can also incorporate, where appropriate, the options for desk-based and in-country audits of high-risk supply chain categories and suppliers.

**Modern Slavery Statement** - The preparation of an organisation's Modern Slavery Statement is the most critical compliance obligation under the Modern Slavery Acts. Fair Supply has industry insight and experience to prepare a market leading and authentic modern slavery statement for businesses that not only meets minimum compliance standards but shows how the processes implemented in a business have significantly contributed to addressing modern slavery risks in their supply chain.

## RESPONSES TO QUESTIONS - GENERAL

**Question 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?**

- 1.1. The Anti-Slavery Commissioner plays the crucial role of trusted independent adviser to business on their modern slavery reporting requirements. This role is an important point of difference to the modern slavery reporting framework established by the Modern Slavery Act 2018 (Cth). The position of the Anti-Slavery Commissioner sets a precedent that could be replicated at a federal level in the future. The opportunity to learn from the successes of similar roles overseas should not be discounted.

### **Lessons from the United Kingdom**

- 1.2. For example, the website of the UK's Independent Anti-Slavery Commissioner contains a link to the Anti-Slavery Partnership Toolkit which is designed to assist businesses, first responders, victim support services and local authorities understand how they can help to disrupt modern slavery.<sup>1</sup> The Toolkit contains reports such as 'Ethical employment in supply chains', 'Guide to tackling modern slavery and human rights abuses' and 'Transparency in supply chains etc, a practical guide'. It would be helpful to Australian business for similar publications to be prepared by the NSW Anti-Slavery Commissioner and published on their website.
- 1.3. In the context of the UK's Independent Review of the Modern Slavery Act 2015 it was noted in the Expert Advisor Report for the Business Sector in the on Transparency in Supply Chains that "(t)here were also calls for Government to issue tailor made guidance for high risk sectors, such as construction, agriculture and manufacturing."<sup>2</sup> Similar guidance material should be prepared for NSW businesses by the Anti-Slavery Commissioner.

**RECOMMENDATION 1: The Anti-Slavery Commissioner should produce practical guides to assist commercial organisations with their reporting obligations, including tailor made guidance for high risk sectors.**

### **Promoting consistency in reporting**

- 1.4. The Commissioner has an important role to play in setting reporting standards that would amount to best practice. This could include encouraging reporting organisations to provide consistent data sets to enable better analysis and comparison of Modern Slavery Statements. This importance of consistency in information contained in Modern Slavery Statements is discussed in response to Question 4 below (What are stakeholder views on the public register, and what functions could it include?).

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<sup>1</sup> Independent Anti-Slavery Commissioner, Anti-Slavery Partnership Toolkit, *Guidance*, available at <https://iasctoolkit.nottingham.ac.uk/assets/guidance/>, accessed 13 August 2019.

<sup>2</sup> John Studzinski CBE & Baroness Young of Hornsey OBE, *Expert Advisor Report for the Business Sector in the on Transparency in Supply Chains*, p 7, available at <https://drive.google.com/file/d/1WCt3sRYYg5xBAAb5LpHbcaMLAnWdffKd/view>, accessed 22 August 2019.

### **Provision of unbiased information and advice to business**

- 1.5. As the Commissioner does not have the ability to conduct risk assessments or prepare Modern Slavery Statements for business, it is important the Commissioner is able to provide un-biased information on organisations that can help reporting entities with these tasks. The Commissioner should maintain a directory of organisations able to assist with reporting requirements while making it clear she/he does not endorse or guarantee the quality of those organisations. Similarly, there will likely be inquiries from business about how to conduct effective remediation should modern slavery be identified in their supply chains. The Anti-Slavery Commissioner should be able to provide advice about how to partner with organisations on the ground in order to undertake risk mitigation and remediation.
- 1.6. The Anti-Slavery Commissioner should also be able to provide feedback on draft Modern Slavery Statements prior to their final submission. This will facilitate only the highest quality Modern Slavery Statements being uploaded to the public register by providing reporting entities with the opportunity to gather additional information for their statements.

**RECOMMENDATION 2: The Anti-Slavery Commissioner should maintain an un-biased directory of organisations able to assist reporting entities with compliance with the Modern Slavery Act 2018 and Modern Slavery Regulation 2019, including organisations who can assist with modern slavery risk mitigation and remediation.**

**RECOMMENDATION 3: Reporting entities should have the opportunity to provide draft modern slavery statements to the Anti-Slavery Commissioner for feedback prior to submitting final versions of the statements.**

## **PREPARING MODERN SLAVERY STATEMENTS**

**Question 2: Does the option of preparing joint statements provide businesses with enough flexibility to accommodate their different circumstances and corporate structures?**

- 2.1. In Fair Supply's view, the option of preparing joint statements does provide businesses with the necessary flexibility to accommodate different circumstances and corporate structures.

**Question 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?**

- 3.1. The NSW scheme should enable voluntary reporting from businesses falling below the \$50 million turnover threshold. In the interests of reporting consistency, these voluntary reporters should comply with the reporting requirements of the Modern Slavery Act 2018 (Cth).



## PUBLISHING STATEMENTS ON A PUBLIC REGISTER

**Question 4: What are stakeholder views on the public register, and what functions could it include?**

### Basic information to be provided in statements

- 4.1. A well-functioning, easy to navigate and information-rich public register is the single-most important element of NSW's modern slavery reporting framework from a consumer awareness perspective.
- 4.2. The design and effectiveness of the public register will be significantly influenced by the content of the modern slavery statements provided, particularly the level of detail contained in the statements and the consistency (or lack thereof) of data sets they contain.
- 4.3. The draft Modern Slavery Regulations 2019 provide a good base for the public register by listing the mandatory reporting criteria. As noted by the Explanatory Paper, the mandatory reporting criteria proposed by the Regulations mirror those in the Commonwealth Act and "reflect international best-practice, including the principles set out in the UN Guiding Principles on Business and Human Rights (2011)."<sup>3</sup> As a result the public will be able to compare basic information about commercial organisations' structure and supply chains, including identified risks of modern slavery and actions taken by organisations to address those risks.

### Classification of industries/sectors

- 4.4. To facilitate easy comparison of modern slavery statements, the public register should include the ability to sort and search statements according to sector (eg: mining, construction, clothing, food and beverage, financial services), and provide lists of the reporting organisations by sector. The classification of sectors could be drawn from the Australian and New Zealand Standard Industrial Classification (ANZSIC) 2006, which is a standard system for classifying industries based on primary business activity. This is also the classification system used by the Workplace Gender Equality Agency in their reporting framework.

**RECOMMENDATION 4: The Department of Premier and Cabinet should consider classifying commercial organisations using the ANZSIC 2006 system for the purposes of the public register.**

### The WGEA Data Explorer

- 4.5. Fair Supply strongly recommends the Department reviews the functionality of the Workplace Gender Equality Agency website, in particular the WGEA Data Explorer. The WGEA Data Explorer enables users to search for information on industries, individual organisations and provides a comparison tool so that users can search and compare the reporting results of different industries.<sup>4</sup> For example, if a

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<sup>3</sup> Department of Premier and Cabinet, *Explanatory Paper: Supply Chain Reporting Requirement for Business*, June 2019, p. 13.

<sup>4</sup> However, currently the Data Explorer does not allow comparison of individual organisations.

user compares ‘Accommodation and Food Services’ with ‘Clothing, Footwear and Personal Accessory Retailing’, the following results are generated:<sup>5</sup>

### Accommodation and Food Services and Clothing, Footwear and Personal Accessory Retailing summary

Accommodation and Food Services has 203,434 employees within 236 organisations.

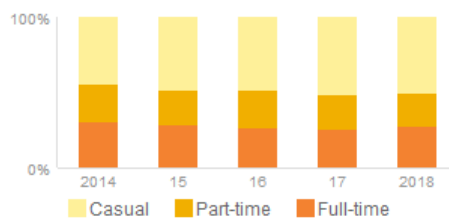
52.0% of employees are female. There is a 12.4% total remuneration gender pay gap for full-time employees.

Clothing, Footwear and Personal Accessory Retailing has 93,592 employees within 65 organisations.

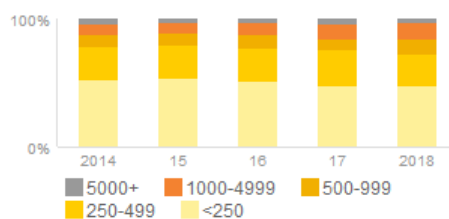
84.5% of employees are female. There is a 27.8% total remuneration gender pay gap for full-time employees.

#### Accommodation and Food Services

##### Employee type breakdown

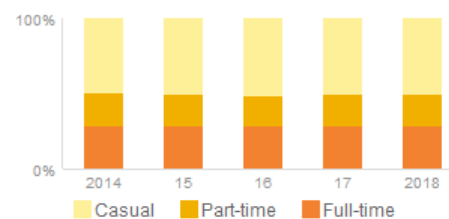


##### Organisation size breakdown

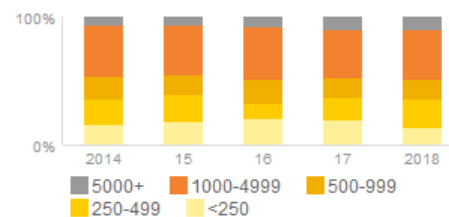


#### Clothing, Footwear and Personal Accessory Retailing

##### Employee type breakdown



##### Organisation size breakdown



- 4.6. Like the WGEA Data Explorer, the modern slavery public register should generate information that provides a ‘snapshot’ of the incidence of risks of modern slavery sector by sector, including the geographic locations where the risks of modern slavery are highest in supply chains. This information must be presented in a way that enables comparison between organisations and between industries.
- 4.7. The public register should also contain an overview of the results provided in modern slavery statements. It should show the percentage of reports provided on a sector-by-sector basis (for example, 30 percent of submitted reports were from organisations operating in the ‘building and construction’ industry, 20 percent of submitted reports were from organisations operating in the ‘financial services’ industry etc).
- 4.8. It is vital that Modern Slavery Statements contain consistent data sets so that the public can be sure they are comparing apples with apples. Each year the WGEA collects information from reporting entities on the following data sets:
  - **GEI 1** - gender composition of the workforce
  - **GEI 2** - gender composition of governing bodies of relevant employers
  - **GEI 3** - equal remuneration between women and men

<sup>5</sup> Workplace Gender Equality Agency Website, *WGEA Data Explorer*, available at <https://data.wgea.gov.au/comparison/?id1=94&id2=116>, accessed 13 August 2019.

- **GEI 4** - availability and utility of employment terms, conditions and practices relating to flexible working arrangements for employees and to working arrangements supporting employees with family or caring responsibilities
- **GEI 5** - consultation with employees on issues concerning gender equality in the workplace
- **GEI 6** - any other matters specified by the Minister: sex-based harassment and discrimination

**RECOMMENDATION 5: The Department of Premier and Cabinet should strongly encourage commercial organisation to provide consistent data in their modern slavery statements to enable meaningful analysis and comparison. The Department should have regard to the functionality of the WGEA’s Data Explorer in terms of summaries generated and comparison tools when designing the public register.**

#### **Analysis of information from overseas public registers**

##### *California*

- 4.9. Data provided by reporting entities under the California Transparency in Supply Chains Act of 2010 (‘CA-TISCA’) were recently analysed by iPoint together with Development International, which used the law’s Risk Verification, Audit, Certification, Internal accountability and Training (VACIT) framework as a compliance matrix. The iPoint/Development International study also “recorded to what extent companies reported affirmative practice on these criteria.”<sup>6</sup> The results of the analysis are contained in the Corporate Compliance with the California Transparency in Supply Chains Act: Anti-Slavery Performance in 2016 Report and associated company Scorecards.
- 4.10. The VACIT indicator and scoring system developed by iPoint could be used by the Commissioner as a starting point for recommending to businesses what issues they should address and what data they should provide in their modern slavery statements in order to encourage consistency. Snapshots of iPoint’s evaluation framework appear on the following page:

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<sup>6</sup> iPoint, *CA-TISCA Report and Scorecards, Anti-Slavery Performance*, available at <https://www.ipoint-systems.com/solutions/human-trafficking-and-modern-day-slavery-legislation/ca-tisca/>, accessed 22 August 2019.

<i>Indicator dimension</i>	<i># of indicators</i>	<i>Score categories</i>	<i># of points</i>
1. VACIT disclosure compliance (Discl.)	8	Disclosure compliance score	6 (criteria 2 and 3 have 4 half points)
2. VACIT affirmative practice (Affirm.)	7	Affirmative practice score	5 (affirmative practice indicators 2 and 3 have 4 half points)
3. Transparency (Transp.)	21 (max*)	Transparency score	21 (max*)
4. Additional (Misc.)	10	--	--

\* The transparency score denominator varies depending on which affirmative practice actions the company takes.

<i>Criteria</i>	<i>Indicator category</i>	
	<i>VACIT disclosure compliance, possible points</i>	<i>VACIT affirmative practice, possible points</i>
1. Have a conspicuous and easily understood link on the business' homepage.	1	--
2.A. Note whether the company performed verification of product supply chains to evaluate and address risks of human trafficking and slavery.	.5	.5
2.B. Note whether the company had such verification performed by 3 <sup>rd</sup> party.	.5	.5
3.A. Note whether the company conducted audits of suppliers to evaluate supplier compliance with company standards for trafficking and slavery in supply chains.	.5	.5
3.B. Note whether the company's verification involved independent and unannounced audits.	.5	.5 (independent audits only)
4. Note whether the company requires direct suppliers to certify that materials incorporated into the product comply with the laws regarding slavery and human trafficking of the country or countries in which they are doing business.	1	1
5. Note whether the company maintains internal accountability standards and procedures for employees or contractors failing to meet company standards regarding slavery and trafficking.	1	1
6. Note whether the company provides employees and management, who have direct responsibility for supply chain management, training on human trafficking and slavery, particularly with respect to mitigating risks within the supply chains of products.	1	1
<i>total possible points</i>	<b>6</b>	<b>5</b>

7

### *The United Kingdom*

4.11. Similarly, the Business and Human Rights Resource Centre has developed a scoring methodology for FTSE 100 companies that report under the UK Modern Slavery Act. Their framework provides for a maximum score of 54 points for indicators under six headings: an organisation's structure, its business and supply chains; policies relevant to slavery and human trafficking; due diligence; risk assessment;

<sup>7</sup> Chris N Bayer & Jesse H Hudson, *Corporate Compliance with the California Transparency in Supply Chains Act: Anti-Slavery Performance in 2016*, First Edition, 7 March 2017, pp 27 & 29.

effectiveness and training.<sup>8</sup>

**RECOMMENDATION 6: The Department of Premier and Cabinet should have regard to analysis of modern slavery related reports from other jurisdictions, paying particular attention to the Risk Verification, Audit, Certification, Internal accountability and Training (VACIT) framework as a compliance matrix in the California Transparency in Supply Chains Act 2010 as well as the scoring methodology applied to FTSE 100 companies by the Business and Human Rights Resource Centre.**

**Question 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?**

- 5.1. The ability to provide Modern Slavery Statements to the Commissioner electronically is essential. Whether the statements are provided via email or uploaded directly to the public register, reporting entities must receive a receipt showing the date and time the statements were received.

**RECOMMENDATION 7: Commercial organisations should have the ability to email or upload modern slavery statements directly to the public register. An electronic receipt must be provided confirming the statement has been received.**

**Question 6: How long should statements be available on the register?**

- 6.1. At this early stage of reporting, Modern Slavery Statements should remain on the public register indefinitely. This will enable and encourage historical comparison of individual reporting entities' statements, as well as trends identified when looking at the statements provided as a whole.
- 6.2. The WGEA website provides data from the first reporting period of the framework (FY2013-14) to date. This has enabled the Agency to produce reports demonstrating year-on-year differences in data.

**RECOMMENDATION 8: Modern slavery statements should remain on the public register indefinitely.**

## **EXEMPTIONS FOR CERTAIN BUSINESSES**

**Question 7: What are stakeholders' views on the exemptions in the draft Regulation for voluntary reporters, subsidiaries of parent entities reporting under the Commonwealth Act?**

- 7.1. Fair Supply believes these exemptions demonstrate a common sense approach to reporting obligations by removing any possible duplication of reporting requirements.

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<sup>8</sup> Modern Slavery Registry and Business and Human Rights Resource Centre, *FTSE 100 Scoring Methodology (Updated Summer 2018)*, available at [http://www.modernslaveryregistry.org/pages/reporting\\_guidance](http://www.modernslaveryregistry.org/pages/reporting_guidance), accessed 22 August 2019.

**Question 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?**

- 8.1. Fair Supply believes the exemption provided for charities, not-for-profit organisations and small businesses with annual revenues of more than \$50m is unnecessary. The Explanatory Paper rationalises this exemption by stating “(t)he 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.”<sup>9</sup>
- 8.2. Fair Supply is concerned this exemption may create blind spots in terms of data collection, particularly when these organisations fall between the reporting cracks if they have annual revenues of more than \$50m but less than \$100m. The number of employees or the fact an organisation does not distribute profits to members may not be an accurate indication of that organisation’s capacity to prepare a Modern Slavery Statement. Nor is a small number of employees or the fact an organisation is structured as a charity a sign that the risks of modern slavery in that organisation’s supply chain is lower. Indeed, organisations working in humanitarian fields should be thought leaders in this space, leading by example by proactively examining their supply chains to ensure their own operations are not contributing to modern slavery.
- 8.3. Fair Supply believes that while the exemption for small businesses, charities and not-for-profits remains in place, such organisations should be actively encouraged to report voluntarily. The names of small businesses, charities and not-for-profits granted exemptions to the reporting requirement should also be published on the public register to assist with transparency.

**RECOMMENDATION 9: The exemption for small businesses and certain charities and not-for-profits should be removed. In the event these exemptions proceed, the exempted entities should be actively encouraged to report voluntarily. The names of those organisations granted exemptions should be published on the public register.**

## CONSULTATION

**Question 9: What communication channels can the Commissioner use to raise awareness of the Act’s requirements and effectively engage with businesses?**

- 9.1. It is vital that the Commissioner take a pro-active approach to raising awareness of the Act’s requirements. A suite of communication tools should be employed, including but not limited to:
- electronic means, including email and social media;
  - hosting or presenting at conferences/workshops, including events not specifically about modern slavery but where reporting entities or those responsible for implementing the Act on behalf of those entities will be present;
  - communication with industry groups and peak bodies;

<sup>9</sup> Department of Premier and Cabinet, *Explanatory Paper: Supply Chain Reporting Requirements for Business*, June 2019, p. 19.

- advertising in publications widely read by the business community including newspapers, magazines and newsletters;
- TV and radio interviews.

9.2. As businesses begin to analyse their supply chains and report on their findings, examples of best practice should be highlighted by the Commissioner. This will encourage a high standard of reporting from other entities and provide an opportunity for the public to see how the Act is working and support those businesses that are taking their reporting obligations seriously.

**RECOMMENDATION 10: The Anti-Slavery Commissioner should use a wide variety of methods to engage with business, with examples of best practice in reporting regularly highlighted.**

## MONITORING AND EVALUATION

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

10.1. The effectiveness of the Act's reporting requirement will be measured in three ways. Firstly, the quality and comparability of data provided by reporting entities. Secondly, the accessibility of Modern Slavery Statements to the public and thirdly, whether the Act drives purchasing behavioural change on the part of businesses and consumers towards slavery-free products and services.

10.2. Providing feedback on the effectiveness of the reporting requirement will involve different considerations for business and civil society.

### **Feedback from business**

10.3. For business, the feedback will likely (at least initially) centre around the practicalities of the reporting requirements and any difficulties experienced by business analysing their supply chains, including obtaining transparency from suppliers and contractors or locating suitable civil society/NGOs to partner with in-country.

10.4. The Modern Slavery Regulation 2019 requires Modern Slavery Statements to be submitted in a 'form' approved by the Commissioner but does not specify what that form looks like. This may cause some confusion among reporting entities around what is and what isn't considered an acceptable form. The recent Final Report of the Independent Review of the Modern Slavery Act 2015 (UK) revealed that "there is a general agreement between businesses and civil society that a lack of enforcement and penalties, as well as confusion surrounding reporting obligations, are core reasons for poor-quality statements and the estimated lack of compliance from over a third of eligible firms."<sup>10</sup>

10.5. Ideally any concerns from NSW based businesses about what constitutes an acceptable form of statements will be communicated to and resolved by the Commissioner prior to final statements being lodged. Advice in writing from the Commissioner, including information on the Commissioner's website, should be available. This may take the form of a Frequently Asked Questions section.

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<sup>10</sup> United Kingdom Home Office, 'Independent Review of the Modern Slavery Act 2015: Final Report', p 39, available at <https://www.gov.uk/government/publications/independent-review-of-the-modern-slavery-act-final-report>, accessed 22 August 2019.

### Feedback from civil society

- 10.6. For civil society, feedback on the effectiveness of the reporting requirement will emerge in earnest following the publication of the first Modern Slavery Statements on the public register. As it is unclear how much analysis will be undertaken by the office of the Commissioner, it is likely that civil society will assume primary responsibility for dissecting the data contained within the statements.
- 10.7. The second reporting period will be a pivotal time for NSW's modern slavery reporting framework. Any gaps in reporting will have been identified and the need for consistent data will be reinforced as companies prepare to lodge their next statements. It is important that the Commissioner hold consultation sessions with business and civil society as companies prepare to enter the second year of reporting.

**RECOMMENDATION 11: The Anti-Slavery Commissioner should hold consultations with business and civil society following the first round of modern slavery statements being published but before the second round of statements are required to be lodged. This will assist in identifying and remedying any gaps in reporting or data collection.**

### OTHER

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

- 11.1. Fair Supply would like to see clarification in the Regulation or the Act around whether local government authorities with annual turnovers of \$50m or more are included in the definition of 'commercial organisation' and thus required to report under the Act. The Department of Premier and Cabinet's submission to the Legislative Council Standing Committee on Social Issue's inquiry into the Modern Slavery Bill 2018 and associated matters states that "(a)t this stage, no amendments to bring local councils within the scope of the NSW Act are proposed."<sup>11</sup> Instead, non-legislative approaches are being considered with the possibility of introducing amendments to implement obligations similar to those imposed on NSW Government agencies. These could include providing statements in response to issues raised by the Anti-Slavery Commissioner or statements outlining steps the council has taken to ensure the goods and services it has procured are not products of modern slavery.<sup>12</sup>

**RECOMMENDATION 12: The Act and/or Regulation should be amended to specifically include local NSW government authorities such as councils within the definition of 'commercial organisation' where their annual turnovers are greater than \$50m.**

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<sup>11</sup> Department of Premier and Cabinet, *Submission to Legislative Council Standing Committee on Social Issues inquiry into the Modern Slavery Act 2018 and associated matters*, Submission 1, p. 7.

<sup>12</sup> Ibid.