

Supplementary Questions: Parliamentary Inquiry into the Modern Slavery Act 2018 and Associated Matters

Question 1:

What is your response to the following comments made at the Committee's public hearing regarding s26 of the *Modern Slavery Act 2018*:

"Section 26 says if modern slavery is found to exist in a supply chain, you must report that. It will go on a register and it makes the reporting entity think the inclinations are perverse because they drive you against reporting. The solution proposed for that is that you will give the commissioner an opportunity, in proposed section 26 (1) (d), to make a statement around best practice. That does not add to the harm to reputation that is done by an organisation that has gone to the trouble of mapping and finding and addressing modern slavery in its supply chain. Modern slavery will be in many, many supply chains—that is inevitable. I think the solution proposed should be taken out. Anti-Slavery's position is that section 26 should be repealed. It does more harm than good, and considerably more harm".¹

Answer 1:

The purpose of the NSW *Modern Slavery Act* (NSW MSA) is to create an enabling environment for businesses to be transparent about the risks of modern slavery in business operations and supply chains, and the actions they are taking to address those risks. The nature and extent of modern slavery means that it is likely that most businesses will identify risks of modern slavery in their operations and supply chains. These businesses should be encouraged for seriously looking into their supply chains and being transparent about what they find.

Section 26 of the Act requires the Anti-Slavery Commissioner (the Commissioner) to keep a register of any organisation that has disclosed the incidence or risk of modern slavery in its supply chain. In submissions made to the Inquiry, stakeholders expressed concern that the public register under section 26 may be used to 'name and shame' businesses that have done their due diligence and identified risks in their supply chains.

To resolve this, and as set out in the NSW Government submission, the draft Regulation requires the publication of all modern slavery statements on a 'statements register'. The proposed amendments to section 26 will enable the Anti-Slavery Commissioner the flexibility to combine the statements register with the public register to ensure all modern slavery statements are made publicly available.

The Amendment Bill and Draft Regulation support having a register that makes all modern slavery statements publicly available because it enhances business transparency, encourages a 'race to the top' among industry peers, and aligns with the approach in the Commonwealth *Modern Slavery Act 2018*.

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Question 2:

The NSW Government's submission to the inquiry states that the Draft Modern Slavery Bill 2019 proposes to delete s 91HAA due to a conflict with the equivalent Commonwealth provision, which cannot be fixed by redrafting the provision. At the committee's public hearing, Ms Melinda Tankard Reist drew the committee's attention to similar provisions in operation in Victoria and Queensland (see quote below). Could you provide some comment on these provisions and how they differ from s 91HAA?

"If I can draw your attention to the fact that two States have enacted legislation which criminalises the administration of computer networks for the purpose of sharing child exploitation material. In Victoria the Crimes Amendment (Child Pornography and Other Matters) Act 2015 made it an offence to administer or encourage the use of a child pornography website and to provide information to a person that is likely to assist them in avoiding capture or prosecution for committing one of these offences. In Queensland the Serious and Organised Crime Legislation Amendment Act 2016 introduces similar offences to the Victorian legislation and also includes an aggravating factor of using a hidden network or an anonymising service, which further increased the sentence for these offences. So they have worked it out".²

Answer 2:

It would not be appropriate for the NSW Government to comment on the operation of, or legal risks associated with, another State's legislation. The Committee may obtain its own legal advice in relation to this matter.

The NSW Government's position with respect to section 91HAA is set out in the Government submission. The NSW MSA introduced a new offence in the NSW *Crimes Act 1900* to make it an offence to administer a digital platform to deal with child abuse material (s91HAA of the *Crimes Act 1900*). The Amendment Bill proposes to remove this offence as it conflicts with similar offences in the Commonwealth *Criminal Code*. The Commonwealth provision (s473.5 of the *Criminal Code*) specifically exempts Internet service providers and Internet content hosts from the reach of the offence provision, whereas the NSW offence specifically targets them. This inconsistency may give rise to a risk that the NSW provision (and any prosecution based on it) will be found invalid.

Question 3:

How would the supply chain reporting obligations in section 24 of the *Modern Slavery Act 2018* apply to franchises?

Answer 3:

Section 24 of the NSW *Modern Slavery Act 2018* would capture any commercial organisation with employees in NSW and an annual turnover of AU\$50 million or more. These organisations would be

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required to prepare an annual modern slavery statement outlining what they have done to assess and address the risks of modern slavery in their operations and supply chains. This may apply to a range of organisation types. The corporate structures of organisations are complex; organisations should seek legal advice about the application of section 24 to their particular circumstances.