



THE LAW SOCIETY  
OF NEW SOUTH WALES

Our ref: HRC:EEas1799056

4 December 2019

The Hon Shayne Mallard MLC  
Chair, Standing Committee on Social Issues  
Legislative Council, Parliament of NSW  
Macquarie Street  
SYDNEY NSW 2000

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

Dear Mr Mallard,

**Modern Slavery Act 2018 and associated matters – responses to questions taken on notice**

The Law Society gave evidence to the Standing Committee on Social Issues (“the Committee”) on 4 November 2019 at a public hearing for the inquiry into the *Modern Slavery Act 2018* (NSW) and associated matters (“the Inquiry”). Mr Ali Mojtahedi, Chair of the Law Society’s Human Rights Committee, represented the Law Society at the hearing.

Two of the Committee’s questions were taken on notice by the Law Society at the public hearing. The Law Society’s responses are set out below.

**1. At page [22] of the transcript of the Inquiry hearing dated 4 November 2019, Mr David Shoebridge asked:**

**“...I would be assisted by consideration about whether or not, in your view, Part 4 [of the *Modern Slavery Act 2018* (NSW)] can be maintained by amendment as opposed to simply being deleted.”**

The Law Society is of the view that s 29 of the *Modern Slavery Act 2018* (NSW) (“NSW Act”) should be deleted rather than amended.

In principle, the Law Society opposes laws which punish an individual not for what they have done, but for what they might do. Although the modern slavery risk order provisions at s 29 of the NSW Act do not amount to preventative detention, the anticipated prohibitions would likely lead to a significant curtailment of an individual’s freedom of movement and other civil liberties after the offender has served his/her sentence in respect of a sch 2 offence (including any relevant parole period). Enabling a court at any time post-sentence to make a modern slavery risk order amounts to double punishment and undermines the principle of finality in sentencing.

As stated in the Law Society’s submission to the Inquiry dated 4 October 2019, we do not support the proposal contained in the draft Modern Slavery Amendment Bill 2019 to include certain modern slavery offences in the definition of “offence of a sexual nature” in

the *Crimes (High Risk) Offenders Act 2006* (NSW). The Law Society's reasons for holding this view are set out in our earlier submission, and include the availability of existing means by which a convicted modern slavery offender can be kept under supervision, including through: parole; Apprehended Personal Violence Orders; and, where sexual offending against a child is involved, orders made under the *Child Protection (Offenders Registration) Act 2000* (NSW) and the *Child Protection (Offenders Prohibition Orders) Act 2004* (NSW).

**2. At page [25] of the transcript of the Inquiry dated 4 November 2019, Mr David Shoebridge asked:**

**“...I am wondering what your rationale is for excluding State-owned corporations from those other provisions of the Act that are much more rigorous when it comes to government agencies? One of the many is that under section 25 [of the *Modern Slavery Act 2018* (NSW)], the Commissioner has to regularly consult with the Auditor-General and procurement to monitor the effectiveness of due diligence provisions in government agencies. What is the rationale for removing that oversight from State-owned corporations?”**

The NSW Government stated in its submission to the Inquiry that there is “significant uncertainty” as to whether state-owned corporations (“SOCs”) are effectively captured by the provisions in the NSW Act governing the reporting requirements of government agencies.<sup>1</sup> The NSW Government also noted that the NSW Act, as currently drafted, does not include SOCs within the reporting requirements placed on commercial organisations.<sup>2</sup>

The amendment at [14] of the draft Modern Slavery Amendment Bill 2019 would address the uncertainty in the NSW Act by clearly including SOCs and other corporations of which a Minister is a shareholder into the definition of ‘organisation’ for the purposes of the transparency of supply chain provisions at s 24 of the NSW Act. The Law Society notes that the proposal to include state-owned corporations within the reporting regime applying to commercial organisations in the NSW Act is consistent with longstanding Government policy in relation to SOCs, which is that they should operate on a level playing field with equivalent commercial organisations, to the greatest extent possible.<sup>3</sup> The same policy position was articulated by the Government of the day when the *State Owned Corporations Act 1989* (NSW) was introduced into Parliament.<sup>4</sup>

Should you have any questions or require further information, please contact Andrew Small, Acting Principal Policy Lawyer, on \_\_\_\_\_ or email \_\_\_\_\_

Yours sincerely,

  
Elizabeth Espinosa  
**President**

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<sup>1</sup> Department of Premier and Cabinet, Submission No. 1 to Legislative Council Standing committee on Social Issues, Inquiry into the Modern Slavery Act 2018 (NSW) and associated matters, June 2019, 6.

<sup>2</sup> Ibid 7.

<sup>3</sup> Ibid 7.

<sup>4</sup> NSW, *State Owned Corporations Bill 1989*: Second Reading, Hansard, Legislative Assembly, 2 August 1989, 9141 (N Greiner).