

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

Organisation: War on Slavery
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To: The NSW Legislative Council's Standing Committee on Social Issues - Inquiry into the *Modern Slavery Act 2018* and associated matters

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'It is not every day that members of this place or the other place put forward something that will have a positive impact for literally thousands of people.....'

'There is an undeniable moral imperative to take action in relation to all forms of modern slavery.'

(NSW Premier Gladys Berejiklian in her second reading speech for the Act)

WHO WE ARE:

War on Slavery is a Sydney-based NGO, part of a global movement working to eradicate Modern Slavery. Working locally with others in the sector including Oxfam, Stop The Traffik and Anti-Slavery Australia, we also work on an international level with Kevin Hyland OBE (author and lead negotiator of SDG 8.7; former Head of London Metropolitan Police Anti-Trafficking Unit; UK and World's first Independent Anti-Slavery Commissioner), lobbying G20 governments and building awareness of Modern Slavery through public events, media, a documentary tv series and social impact campaign.

Two centuries after abolition and despite being illegal in every country around the world, Modern Slavery exists on such a scale that we believe the only way to tackle a problem of this size is to put ourselves (nations, governments, businesses, customers, law enforcers, healthcare providers, the general public) on a war-footing.

'You may choose to look the other way, but you can never say again that you did not know.'

(William Wilberforce, 1759-1833)



WAR ON SLAVERY'S Position on Potential Changes to the NSW Modern Slavery Act

'It is not every day that members of this place or the other place put forward something that will have a positive impact for literally thousands of peopleThere is an undeniable moral imperative to take action in relation to all forms of modern slavery.'

(NSW Premier Gladys Berejiklian in her second reading speech for the Act, 2018)

- We are deeply concerned that the decision by the NSW Government to refer the NSW Modern Slavery Act 2018 (NSW Act) to the Legislative Council Standing Committee on Social Issues for review rather than enacting the legislation has placed the intention, implementation and effectiveness of the Act at risk – and with it the lives of thousands if not millions of people living in modern slavery both in Australia and across the world.
- The NSW Modern Slavery Act 2018 was based on the work of the Legislative Council Select Committee on Human Trafficking in NSW, led by the Hon. Paul Green MLC. The private members bill subsequently introduced by Mr Green was supported by the NSW Government and shepherded through the Legislative Assembly with pride by the Premier herself. It passed with all-party support and was assented on 27 June 2018. That its implementation as intended was delayed until 1 July 2019 was a pity but with the passing of the Commonwealth Modern Slavery Act 2018 in November 2018, we accept that legal points of constitutionality between the two Acts required tidying up and ironing out.

We note that amendments to the bill to iron out constitutional irregularities could have passed with minimal process and emphasise our concern as to why the government could not ensure this was undertaken expediently in order for the Act to be implemented on July 1.

A government press release announced the appointment of its first Anti-Slavery Commissioner on 21 December 2018 'to implement groundbreaking new legislation that will combat modern slavery practices'. The brief to 'spend the next six months driving the implementation... of the Act before full commencement on 1 July 2019, and work closely with key stakeholders to ensure the roll out is smooth and effective.' The interim Anti-Slavery Commissioner was quoted as "excited by the opportunity to strengthen NSW's response to modern slavery". Tim Reardon, Secretary of the NSW Department of Premier and Cabinet, proudly proclaimed: "NSW was the first Australian jurisdiction to introduce this specific legislation and today's appointment underlines NSW's commitment to combat modern slavery practices."

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- In announcing its Inquiry, the Government has provided no clear timeline for when or if the Act will be implemented and appears to be retreating from the commitment with which the Bill was welcomed, passed and assented nearly 15 months ago. In recent months, the Act has been described by a government advisor to us as ‘orphan legislation’ on which we ‘should not expect to see anything happen very soon’. If this is the case and the underlying intention is to shelve the Act as intended, the situation would be deeply regrettable and arguably criminally negligent – if not under the law under any basic moral code.
- As things stand, this Inquiry is open to submissions for six weeks, ending 4 October 2109. The Committee has four months (October 2019 – February 2020) to report on its findings and recommendations. And the government a further six months to consider and respond, potentially placing an implementation date beyond 1 July 2020, two years after the Act was assented.

We urge the Committee and the government to review this timetable as a matter of urgency.

- We note that repeated and unnecessary delay to enact demonstrates a distinct lack of urgency and absence of moral imperative and moral responsibility. In this protracted process, many thousands, potentially millions, of lives stand to be damaged.

The proposed timeframe for the Inquiry constitutes a minimum 12-month delay from the planned implementation date of 1 July 2019. Over this period, estimates indicate that the number of people living in slavery around the world will have increased by around twice the population of Sydney. This flies in the face of the government’s proclaimed ‘moral imperative’ and arguably, on the government’s own terms, delay, or worse burying entirely the NSW Act as intended, would not only be a denial of our established democratic processes but criminally and morally negligent

- Having demonstrated leadership in 2018, the NSW government is now effectively playing with the lives of the world’s most poor and vulnerable. As we have seen with other legislation before the NSW Parliament, such delay is not necessary. Neither is it good enough to brush away concerns by saying ‘It’s an important issue, we need time to get it right’.
- That the Act has not been delivered as intended by the due date and a year on, an existential question is seemingly the substance of this Inquiry are cause for grave concern. There are no grounds to argue that this Inquiry should re-visit first principles.
- The Commonwealth Modern Slavery Act 2018 passed 5 months after the NSW Act and implemented on 1 January 2019 does not eclipse or replace the NSW Act. It is a supply chain transparency act only and lacks many of the provisions of the NSW Act.

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- The NSW Government's Draft Regulations produced with the interim Anti-Slavery Commissioner regularise NSW Regulations with the Commonwealth so that reporting criteria are identical, making it easy to report.
- We are happy to accept the Government's proposed amendments but do not believe that the Terms of Reference for the Inquiry should include a threshold consideration as to the value of the existence of the NSW Modern Slavery Act.
- We note our concern that this Inquiry's Terms of Reference were announced on the day the Abortion Bill was debated. Intended or not, this timing prompts concern that the government hoped to draw as little attention as possible to the delay and review of the NSW MSA.
- The Committee may be aware that questions abound as to whether the government's treatment of the Act (passed, assented and existential questions raised a year later) may be unconstitutional.
- We all know that many of the voting public have lost faith in the political system and their political representatives – none more so than our teenagers and young people who are beginning to exercise their vote and demanding greater ethical and moral responsibility from parliamentarians. People are staggered to learn that modern slavery affects some 40.3million people in the world; two-thirds of them in our region. Regardless of political affiliation, they see modern slavery as a heinous human rights issue and are disappointed to learn that the NSW government may at best be dragging its feet, at worst walking away from its commitment and the 'moral imperative' it identified and proclaimed. Such an outcome risks further reputational damage to our political system.
- NSW's position on this issue is an expression of the values which characterise our state and by extension and leadership, which characterise Australia.
- It is our job as parliamentarians and communicators to educate, to lead and to develop a national language of human rights. To do the right thing by example. To represent, demonstrate and be the kind of state, country, world we want to see. #wecandobetterthanthis.

WHY THE NSW MSA MATTERS

- The NSW Modern Slavery Act 2018 has been and is widely regarded as the most comprehensive anti-slavery legislation in the world and a model for what anti-slavery legislation should look like. The United Nations target of 2030 to end all forms of modern slavery necessitates that world governments act with the commitment demonstrated by the NSW Parliament in 2018. It is lamentable that this leadership has not been extended in 2019.



- As the largest economy in Australia and the 7th largest economy in the Southern Hemisphere, the NSW MSA was and is an opportunity to show local and international leadership on what is widely agreed to be a crime against humanity and a horrendous exploitation of the world's most vulnerable – on our own shores / at home and overseas.
- The NSW MSA should be lauded for going beyond the Commonwealth MSA in several significant ways.
- The Commonwealth MSA is a supply chain transparency act only. The NSW Act's reporting threshold of \$50m reflects the recommendations of its own NSW Committee as well as the recommendations of the Commonwealth report *Hidden in Plain Sight*. It also reflects the UK MSA threshold of GBP37m. The Commonwealth MSA \$100m threshold for companies required to report is significantly weaker - with no penalties or other provisions for non-reporting.

By any standard, a business with a AUD\$50m turnover cannot be deemed a small business, incapable of human rights compliance.

- We deem the NSW Act's penalty scheme, subjecting companies and organisations failing to report or producing false or misleading information to significant fines, a necessary provision particularly in the light of UK experience*. We argue that the requirement must be mandatory and properly policed if UN and national commitments are to be taken seriously and real change to be effected.

*In its first three years of operation, the UK MSA did not have mandatory reporting, resulting in a mere 32% of businesses complying with the requirement and 40% of the FTSE Top 100 failing to file a report. Such levels of compliance make the legal requirement meaningless.

A commitment to slavery-proofing supply chains should be seen as a necessary responsibility and cost of running a business - just as companies and organisations are required by law to provide annual accounts and tax returns, maintain public liability, pay their staff superannuation, fulfil OH&S requirements, etc etc. Such requirements are not optional and are a governance responsibility for every board.

After its first three years of operation, the UK Modern Slavery Act 2015 has been reviewed and the UK government committed to adopting some 80 recommendations to strengthen it. The UK legislation was previously compared to an iPhone 6, the Commonwealth MSA to an iPhone 8, the NSW legislation to an iPhone 10. If Australia is not careful, its legislation will lag behind from inception.

- Several other elements position the NSW MSA as a significantly more comprehensive piece of legislation in the way it is intended to combat modern slavery. Not just more comprehensive than the Commonwealth Act but world-leading.



- In addition to supply chain transparency and investigation, the NSW MSA includes:
 - i) an Anti-Slavery Commissioner as a valuable co-ordination role, raising awareness, advocating for victims, co-ordinating across government agencies and partnering with civil society to identify, protect and support victims of modern slavery.
 - ii) a publicly available electronic register identifying organisations whose goods or services are, or may be, a product of supply chains in which modern slavery may be taking place.
 - iii) public procurement provisions requiring NSW Government agencies to take reasonable steps to ensure goods and services they procure are free from slavery with the Auditor General able to conduct audits to ensure government departments comply.

With NSW the largest economy in Australia and state budgets worth some \$35billion, the inclusion and scrutiny of public procurement demonstrates the NSW government leading by example, from the front. If the NSW Act is shelved, this level of scrutiny on public procurement will not exist.

Advocacy, victim identification, support and prosecution develop a culture in which modern slavery, forced labour and human trafficking are seen and understood as crime and the people caught in it as unwitting victims. Together advocacy, identification, support and prosecution will help stop such crimes in Australia and often lead to NSW taking the lead in breaking up international webs and networks. Taken together they will also have the effect of developing media and wider public interest and engagement. UK law enforcement and media seem to report cases investigated in the UK on a weekly basis and such level of exposure and scrutiny, in addition to supply chain reporting, puts a public spotlight on a terrible abuse. Overall the impact may be to discourage similar crimes and criminals, encourage commitment to supply chain transparency and develop a human-centred understanding at a public level of a crime that otherwise may seem far away or hidden in plain sight.

Finally, from a monetary standpoint: the International Labour Organisation estimates that across the world, forced labour generates US\$150 billion of illegal profit a year, equal to a quarter of a million US dollars every minute of every day, making modern slavery the third most profitable criminal activity in the world. Second only to drugs and counterfeiting. Every cent of that \$150 billion is diverted from the pockets of responsible businesses. Criminal gangs and criminal enterprise almost inevitably evade taxes, meaning less money for the state, for public services, for schools and hospitals both in NSW and across the world. Thus modern slavery robs each and every NSW resident and taxpayer.

CONCLUSION

Whilst War on Slavery congratulates the NSW government for showing moral leadership on this issue in 2018, that leadership dims with the delay.

As a matter of urgency, and in recognition of the moral imperative, we urge that the NSW Modern Slavery Act is implemented without delay for the sake of the millions of victims around the world and for the sake of the reputational standing of the NSW Parliament.



The NSW Government should commit to implementing the Act as speedily as possible, as previously and unanimously agreed, and in the spirit of the Premier at second reading last year *'demonstrate our full commitment to taking the most effective action to combat modern slavery in New South Wales and to ensure a smooth transition to implementation of these arrangements'*.

In 2015, Australia and all 193 UN member nations signed up to eradicate modern slavery, forced labour and human trafficking by 2030, child labour by 2025. The question to ask is not whether such world-leading legislation is required but why we took 3 years to bring it in and what more we can do to encourage and support other jurisdictions to bring in similar compliance requirements.

War on Slavery believes that the Inquiry Committee and NSW government should look at no more than tidying up loose ends and ironing out any constitutional conflicts with the Commonwealth MSA, that there are no supportable grounds for a threshold question as to the need for the State Act and that it is incumbent on the NSW Government to play its part in modelling and encouraging similar legislation elsewhere.

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but you can never say again that you did not know.'***

(William Wilberforce, 1759-1833)
