

**Submission  
No 19**

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

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**Date Received:** 30 September 2019

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**Submission to the NSW Government, Legislative Council, Standing Committee on Social Issues, Inquiry into the NSW Government *Modern Slavery Act 2018* and associated matters**

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It is suggested here that duplications between the Acts need to be removed through consolidation in a single Commonwealth Act, while innovative aspects of the NSW Act need to be considered at a COAG meeting and applied at the Commonwealth level, with the NSW Act becoming redundant and the cost of regulation reduced.

Comment on agenda items (b), (g) and (h) in the [terms of reference](#) of the Inquiry

1. *Item (b) the effect of the anti-slavery scheme on business, including the supply chain reporting obligations under section 24 of the NSW Act*
  - Both the Commonwealth and NSW Modern Slavery Act 2018 require that organisations with revenues above a certain threshold prepare an annual Modern Slavery Statement (between \$50 million and up to \$100 million in NSW and \$100 million and over under the Commonwealth Act). The differing thresholds create additional complexity for business. While acknowledging the NSW Act captures a larger number of market participants as a result of the lower reporting threshold, many small and medium sized organisations will be implicated in modern slavery management regardless via contractual arrangements with entities whose revenues exceed the Commonwealth threshold requiring them to report under the Commonwealth Act. It would be more logical to wait until the Commonwealth Act is reviewed in three years' time at which point it may be appropriate to reduce the reporting threshold at the Federal level.
2. *Item (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*

Appendix 2 of the [Explanatory Paper: Supply Chain Reporting Requirement for Business Draft Modern Slavery Regulation 2019](#) published June 2019 provides a useful comparison of the Cth and NSW Modern Slavery Acts 2018.

As shown in Appendix 2 of the Explanatory Paper with the introduction of the Commonwealth Act and Regulations there is now an unnecessary burden being imposed on certain entities through this duplication of legislation.

- *Remove duplication of the Acts.* The draft Modern Slavery Regulation 2019 (NSW) suggests "This Regulation comprises or relates to matters set out in Schedule 3 to the Subordinate Legislation Act 1989, namely matters of a machinery nature and matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public." As a Commonwealth Act has been introduced since the NSW Act was passed the duplication of the Acts and Regulations would mean there is an unnecessary cost and burden of regulation being imposed on entities to which the NSW Act applies. In essence, the NSW Modern Slavery Act 2018 is largely unnecessary and, subject to the comments below, should be removed.

As shown in Appendix 2 of the Explanatory Paper the NSW Act contains additional strengths to those in the Commonwealth Act and these should be introduced with great immediacy into the Commonwealth Act.

- *Financial penalties.* The financial incentive system for compliance with mandated supply chain reporting requirements in Modern Slavery Statements should be brought in at the Commonwealth level, for reasons of equity and incentive. Following introduction of the UK Modern Slavery Act 2015 evidence indicates that there has been slow take up of the publication of Modern Slavery Statements, with no take up by many (ICAR and FLEX, 2019). Given that reputational effects have not been sufficient to gain full take up in the UK (White, 2019), financial incentives appear necessary. Avoidance of financial penalties leading to cost savings of entities addressed by the Acts in Australia would provide a stronger business case to report, and to report in more than a symbolic way. Financial penalties should be introduced into the Cth Act to encourage a faster take up of substantive modern slavery reporting than has occurred in the UK.
- *Anti-Slavery Commissioner.* A second strength of the NSW Act is the introduction of an Anti-Slavery Commissioner who can focus on implementation of the Act and independent reporting to Parliament of the actions, behaviours and outcomes of entities affected by the Act. Evidence from the UK experience is that the Anti-Slavery Commissioner is an effective person, who can develop and present results separate from the political suasion of a Minister. An Anti-Slavery Commissioner should be introduced into the Cth Act.

3. *Item (h) the preferred course of action to address the matters identified*

- In the Commonwealth Inquiry into the introduction of a Modern Slavery Act argument was presented both for and against the introduction of financial incentives to action, through penalties, and the introduction of a Modern Slavery Act. Neither was included in the Act and a three year review of issues arising, based on experience, was introduced instead. There is a critical need for a united front in Australia on addressing modern slavery in entity operations and supply chains. There is also a need to learn from the rather slow UK experience in relation to take up of Modern Slavery Statements, and by inference modern slavery management, rather than rely on what have been ineffective reputational incentives used in the UK.
- In order to reduce the regulatory impact on certain entities, it is suggested that these matters be raised with some urgency at a Council of Australian Governments (COAG) meeting with a view to consolidating these changes in a single Commonwealth Act, and removing the NSW Act.

## References

International Corporate Accountability Roundtable (ICAR) and Focus on Labour Exploitation (FLEX) (2019). Full Disclosure: Toward Better Modern Slavery Reporting. <https://static1.squarespace.com/static/583f3fca725e25fcd45aa446/t/5caf92140852294a37e36bb2/1555010068494/ICAR+Full+Disclosure+Report+Apr10-WEB.pdf>. Viewed on 28 August 2019.

White, J. (2019) [Do the right thing: corporate social responsibility can no longer be ignored](#), 31 May, Lexology.