

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

**Organisation:** Local Government Procurement

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## **Submission to the Legislative Council Standing Committee on Social Issues**

### **Inquiry into the *NSW Modern Slavery Act 2018* and associated matters**

#### **Inclusion of Local Councils under the *NSW Modern Slavery Act 2018***

It is unlikely that voluntary, non-legislative approaches will result in action by the majority of NSW councils in relation to modern slavery. Councils have many competing priorities, and in our experience, they tend to focus on those that have either legislative obligations or have been highlighted for immediate action by their community and elected members. LGP has focussed on modern slavery awareness raising through many local government events in 2019 as part of its sustainable procurement service, Sustainable Choice. This has resulted in councils wanting to know what their obligations are under legislation, and there has been very little evidence at these events and through other contact with councils that appetite for action on modern slavery outside of legislative obligations exists.

Omission of councils from a legislative tool to address modern slavery in supply chains would be to the detriment of what the *NSW Modern Slavery Act 2018* (the Act) is trying to achieve, which in summary is to combat modern slavery by identifying and managing risks within the supply chains of government and large organisations. The following data provides support for this statement:

- Collective spend by NSW councils is significant (approx. \$12 Billion annually – 2017/18). When analysing where this spend is concentrated (through councils' utilisation of LGP Contracts) a number of the highest spend categories for councils involve well-known high- risk industries, namely manufacturing, electronics, construction and clothing.
- The 2017-18 financial data presented in the 2018 NSW Auditor-general's report on local government indicates that there were 71 councils (from a total of 128 in NSW) with a total revenue above \$50M at the time of reporting. Therefore, just over 50% of NSW councils have revenues above that of the \$50M threshold stated in the Act.

As a minimum, to be consistent with obligations imposed on other high revenue generating organisations, councils who meet the reporting threshold should have obligations under the Act. However, in order to capture complete coverage of the NSW local government sector it is recommended that legislative obligations include all councils, regardless of size and revenue, as is the case with respect to NSW government agencies under the Act.

### **Amending NSW Local Government Act 1993**

In response to the following, which is included in the clarification relating to supply chain reporting obligations under the Act for local councils:

*'If non-legislative approaches prove ineffective, an amendment could be introduced at a later stage, by amending either the Local Government Act 1993 (NSW) or the NSW Act to provide obligations equivalent to those imposed on NSW Government agencies,....'*

It can be argued that modern slavery obligations already exist under the *Local Government Act 1993 (NSW)*, although not explicitly defined. Under Chapter 3, Section 8A, the guiding principles for councils state that:

*'(2) ...The following principles apply to decision-making by councils (subject to any other applicable law):*

*(a) Councils should recognise diverse local community needs and interests.*

*(b) Councils should consider social justice principles.*

*(c) Councils should .....'*

A council's procurement process that does not address modern slavery in purchasing decisions fails to meet principle 2(b).

The *NSW Local Government Act 1993* also outlines a number of integrated planning and reporting principles that apply to councils (Chapter 3, Section 8C). One of these refers to the requirement for councils to manage risks to the local community, area and council effectively and proactively. Modern slavery risks associated with council procurement, and hence the spending of public funds, should be addressed in order for this principle to be met in full.

In relation to exploring the possibility of a non-legislative approach, it is noted that Councils' reporting is guided by the *Integrated Planning and Reporting Guidelines for local government in NSW*. It is recommended that these guidelines be utilised and amended to include requirements around addressing modern slavery risks in council procurement. Furthermore, in doing so, this may address the issue of how to capture council reporting on modern slavery risks if an amendment to the *NSW Modern Slavery Act 2018* were to include obligations for councils to '...take reasonable steps to ensure that goods and services procured by and for the council are not the product of modern slavery'. In this case, it is recommended that the following constitute reasonable steps:

1. Councils undertake a risk assessment to determine modern slavery risks within supply chains
  2. Modern Slavery criteria to be included and weighted in all council RFTs
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1. Councils undertake risk assessment to determine modern slavery risks within supply chains

As a minimum, councils should undertake a risk assessment to identify modern slavery risks in their supply chains. The risk assessment could be undertaken as a collaborative activity by all councils, thereby reducing the burden on smaller and regional councils. Councils would be able to collectively identify modern slavery risks to develop a local government modern slavery risk map/tool as they all have similar purchasing needs and activities.

Government financial support to enable this undertaking would encourage participation by all NSW councils. Appointment of a facilitator to drive this process is recommended.

2. Modern Slavery criteria to be included and weighted in all council RFTs

Requiring councils to include criteria in all their RFTs that address modern slavery, and then weighting that criteria would allow for consideration of modern slavery in the procurement process. Aligning this with the results of a modern slavery risk assessment would lead to tailoring and refining of modern slavery criteria to ensure that high risk spend categories are targeted and addressed adequately.

There is also merit in collectively developing a suite of modern slavery criteria as an extension of the risk assessment activity outlined above. Provision of funding to support the facilitation and development would encourage participation by all NSW councils and reduce the burden on smaller and regional councils.

## **Sustainable Procurement**

In the broader context, councils should be encouraged to align their procurement process with best practice sustainable procurement practices described in *ISO 20400: 2017 – Sustainable Procurement Guidance*.

*ISO 20400: Sustainable procurement - Guidance* is the first international standard on sustainable procurement. It assists organisations to manage environmental, social and economic impacts throughout their extended supply chains, through the procurement function.

Transforming a council (or any organisation) towards the Business As Usual integration of modern slavery considerations involves embedding modern slavery considerations at all levels of their procurement activities: policy/strategy, organisation and process. ISO 20400

provides an internationally recognised framework on how to efficiently and effectively do this.

Additionally, by embedding sustainability throughout the procurement process other sustainability issues can also be addressed. For example, the current recycling crisis facing Australia, circular economy, local economic growth, market growth and innovation, local employment, indigenous employment and disability employment.