

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

**Organisation:** Baptist World Aid Australia

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**BAPTIST  
WORLD AID  
AUSTRALIA**  
Be love. End poverty.

**Submission to the Legislative Council Standing Committee on Social Issues  
Inquiry into the Modern Slavery Act 2018 and Associated Matters**

**Baptist World Aid Australia (A Member of Transform Aid International)**

**September 2019**

Baptist World Aid Australia is encouraged by the NSW Government's efforts to follow international best practice in addressing modern slavery, including slavery in supply chains. We welcome the opportunity to contribute to the Standing Committee on Social Issues inquiry into the NSW Modern Slavery Act 2018 (NSW Act).<sup>1</sup>

## **I. About Baptist World Aid**

Baptist World Aid Australia (a member of Transform Aid International) is a Christian development agency with a vision to end poverty. We partner with like-minded agencies overseas to empower communities to lift themselves out of poverty, challenge injustice and build resilience.

Over the last six years, Baptist World Aid Australia has been conducting world-leading research into exploitation in the supply chains of Australian fashion and electronics companies. Our Electronics Industry Trends Reports, and Australian Fashion Reports (now, Ethical Fashion Reports) examine the efforts of over 130 companies in mitigating the risks of forced labour, child labour and exploitation in their supply chains.

As such, we are particularly interested in the role that the NSW Act could play in combatting slavery in the operations of Australian companies, by requiring companies to investigate and report on the risks of slavery in their supply chains.

## **II. Preliminary Comments**

The passing of the NSW Act in June 2018 was a historical moment. The Act was the first of its kind in any Australian jurisdiction and at its passing was heralded as the strongest and most holistic piece of modern slavery legislation in the world.

The International Labour Organisation estimates that there are more than 40 million people in modern slavery around the world. The Asia-Pacific is home to approximately two thirds of all victims of modern slavery, and more than half of the world's forced labourers.<sup>2</sup> As the seventh largest economy in Asia, and home to businesses whose supply chains stretch across that region, NSW is uniquely placed to address modern slavery in all forms.

With this privileged position, comes responsibility. We urge the NSW Government to act swiftly and decisively and to take its place as a global leader in combating modern slavery.

## **III. Terms of Reference**

### **(a) The operability of the proposed anti-slavery scheme**

We believe that the proposed amendments to the NSW Act address any potential concerns with respect to the operability of the anti-slavery scheme. The proposals address any ambiguous or inconsistent drafting which potentially exists in the NSW

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<sup>1</sup> This Submission has been compiled in consultation with various stakeholders, most notably, the Be Slavery Free (formerly Stop the Traffik) network.

<sup>2</sup> International Labour Organisation and Walk Free Foundation, *Global Estimates of Modern Slavery, G(2017)*

Act, ensure the Act operates as intended, and ensure that it complements the Modern Slavery Act 2018 (Commonwealth Act).

We believe the anti-slavery scheme would be further strengthened by:

- Ensuring that the Act continues to include penalties for non-compliance (subject to our recommendation below)
- Ensuring the Act retains the threshold of \$50m.

**(b) The effect of the anti-slavery scheme on business, including the supply chain reporting obligations under section 24 of the NSW Act**

Beyond the obvious regulatory impact, we believe that the anti-slavery scheme, including the supply chain reporting obligations under s24, will ultimately benefit business.

*Regulatory impact*

The NSW Government has estimated the cost of compliance with s24 of the Act as \$21,950. This is equivalent to the estimated regulatory impact on businesses reporting under the Commonwealth Act. Because the reporting threshold for the NSW Act is lower, however, it is likely that the organisations required to report will be smaller, and have less complex supply chains, than those required to report under the Cth Act. It is therefore reasonable to assume that the average cost of compliance will be less than \$21,950.

In any case, the cost of compliance will be highest in the first year of reporting. The process of addressing modern slavery will be most onerous and resource intensive at its beginning. In subsequent years, however, once addressing the risk of modern slavery has been established as an accepted norm, it is expected that this cost will decrease.

*Level playing field*

The supply chain reporting requirements under s24 of the NSW Act will have the effect of levelling the playing field for mid-size businesses<sup>3</sup> operating in NSW that are either already reporting under other jurisdictions and/or feel that they are at a competitive disadvantage.

Investigating and responding to modern slavery risks can take up time and resources; and many businesses feel that they are at a disadvantage if their competitors are not taking the same steps. Moreover, companies that drive prices down and profits up through the use of exploited labour have a competitive edge over those who invest in strong labour rights systems. Mandatory reporting will help to ensure that mid-size businesses operating in NSW are not penalised for fulfilling their obligations under international human rights standards.

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<sup>3</sup> With a turnover of between \$50m-\$100m

## *Increased Traceability and Transparency*

Mandatory reporting could also lead to much-needed improvements in supply chain traceability and transparency.

### **Case Study: Traceability in the Australian Fashion Industry**

*Baptist World Aid's annual Ethical Fashion Report grades Australian fashion companies on the strength of their systems to mitigate the risks of forced labour, child labour, and exploitation in their supply chains.*

*Our research has found that while efforts to improve conditions for workers have accelerated since the Rana Plaza tragedy of 2013, many companies still do not have adequate knowledge of, or visibility over, their supply chains. In our 2019 Report, we found that while 69% of companies could demonstrate tracing all final stage suppliers, only 18% have traced their inputs stage and only 8% of companies have fully traced their raw materials stage of production. It is in these deeper parts of the supply chain, which sit outside the purview of companies, that forced labour, child labour and exploitation are more likely to occur and are less likely to be remediated.*

Baptist World Aid Australia, 2019 Ethical Fashion Report, < <https://baptistworldaid.org.au/resources/2019-ethical-fashion-report/>>

A company's investment in traceability and transparency are key pillars of a strong labour rights management system. If companies don't know who their suppliers are, then there is no way for them to ensure that the workers who make their products are not being exploited. Moreover, without transparency, it is near impossible for consumers, civil society and workers to hold companies accountable.

With adequate guidance, the mandatory reporting requirement could provide the necessary impetus for businesses to trace, state, monitor, and address the risks of slavery in their supply chains.

#### **(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**

The passage of the Commonwealth Act does not render the NSW Act unnecessary.

The NSW Act complements - and in many ways goes further than - the Commonwealth Act by adopting a more holistic approach to addressing modern slavery which includes but is not limited to transparency in supply chains.

Unlike the Commonwealth Act, it provides for and/or includes:

- An anti-slavery commissioner whose responsibilities include monitoring compliance, engaging in advocacy and awareness-raising, and providing assistance for victims of modern slavery
- Compensation systems for victims of modern slavery
- Government procurement covered under the Act

The NSW Act implicitly recognises that in order to end modern slavery, all sections of civil society, business, government and the community must play a role.

## *Penalties*

That said, we are concerned that the inclusion of penalties in the NSW Act, and the lack thereof in the Commonwealth Act, may create an unequal playing field for businesses in required to report under the NSW Act. These businesses may face penalties for failing to produce a modern slavery statement, while larger businesses (those required to report under the Commonwealth Act) will not.

We strongly believe that penalties are essential for a robust Modern Slavery Act, however we also believe that smaller businesses should not be disadvantaged as a result of a discrepancy in reporting regimes.

For this reason, we propose that a grace period be included in the application of penalties for three years. Thereafter, the introduction of penalties can be structured to be provisional based on a set 'trigger point' that considers if NSW businesses are failing to meet a minimum compliance threshold (for example, if less than 90% of businesses in scope comply).

Given that the Commonwealth Act has a three-year review process built into the legislation, a three-year grace period on the penalties in the NSW Act would also allow time for the Commonwealth Act to harmonise with the more robust NSW Act at the point of review. The review of the Commonwealth act could similarly make the introduction of penalties provisional on the same minimum compliance threshold for all reporting entities in scope of the Commonwealth Act. This would both address any inconsistencies with penalties between the two Acts and create a more level playing field for Australian businesses.

### **(h) The preferred course of action to address the matters identified**

Baptist World Aid Australia urges the Committee to expedite the inquiry process.

Submissions close on 4 October 2019, with the Inquiry report not expected to be released until the 14<sup>th</sup> of February 2020. Given that the Government has already stated that the proposed amendments will ensure the Act 'better aligns with the policy intent behind it' and will only enhance its clarity, constitutionality and operability, we propose that:

- The committee consider reporting earlier
- A clear timeline for the implementation be disclosed by the Government as soon as possible so that the NSW Act can commence on 1 January 2020