

Submission
No 47

INQUIRY INTO MODERN SLAVERY ACT 2018 AND ASSOCIATED MATTERS

Organisation: Oxfam Australia

Date Received: 4 October 2019



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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Oxfam Australia is an independent, not-for-profit, secular development agency whose vision is of a just world without poverty. Oxfam Australia undertakes long-term development programs, provides emergency response during disaster and conflict and undertakes research, advocacy and campaigns to advance the rights of poor and marginalised people, including women and works with them to achieve equality. For close to 30 years Oxfam has fought to protect the human rights of workers and their families.

In *Made in Poverty*, Oxfam's most recent report into poverty and the need for living wages in the global garment industry, Oxfam argues that current global trends are generating unprecedented levels of pressure on wages due to the drive for cheap and quickly produced goods. Downward pressure on workers' wages combined with increasingly complicated supply chains directly creates the conditions that allow extreme forms of worker exploitation to occur including forced labour, human trafficking and the worst forms of child labour.

The decision by the NSW Government to send the NSW Modern Slavery ACT (NSW Act) to the Legislative Council Standing Committee on Social Issues (Committee) for review rather than enacting the legislation has placed the efficacy of the Act at risk. Stepping back from enacting robust state Modern Slavery legislation unacceptably deprioritises the lives of the world's most vulnerable people.

Parliaments around the world are currently looking to strengthen their Modern Slavery legislation or going even further and introducing legislative human rights due diligence requirements. NSW, as the seventh largest economy in the Asia Pacific region, has the opportunity to play an important leadership role. If passed, the NSW Act will have a meaningful impact on the lives of some of the estimated 25 million people trapped in slavery in our region.

Oxfam Australia appreciates the range of difficulties that have been identified in the current Act by the Department of Premier and Cabinet. Whilst Oxfam Australia is ready to work with the committee to ensure that the enacted Bill is not vulnerable to operational or legal challenges there are key points in the Terms of Reference and draft legislation that are of concern.

B) Effect of the scheme on business

The TOR urges the Committee to consider the projected financial impact that reporting will have on



NSW companies within the NSW Act threshold. Without a NSW Regulatory Impact Statement (RIS) the TOR includes an estimate from the Federal (RIS) for companies reporting over the \$100m+ threshold as an equivalence for the average cost for NSW companies. It is Oxfam's view that a lower reporting threshold for the NSW Act will inevitably pull the average down from \$21,950 per reporting entity under the federal act. The companies with smaller and less complex supply chain offsetting the greater costs expected to be incurred by larger companies.

Any average cost estimate for reporting should also consider the fact that the first year of reporting has proven more onerous and resource intensive than subsequent years, once internal processes and a culture of prioritising modern slavery reporting has been established. Oxfam urges the Committee to approach the financial cost for NSW businesses as a necessary investment into meeting their international human rights obligations for the workers in their supply chains. Further, the vast majority of NSW based businesses fall well under the NSW Act threshold. It is Oxfam's position that companies with a turnover between \$50 – 100 million should be prepared to absorb the cost of taking the first concrete step towards eradicating modern slavery from their supply chains.

For example, in 2018 the clothing company APG Co, which owns established brands Sportcraft, JAG and Saba had a turnover of \$80 million, Ted's Camera House, with a large national retail network, had a turnover of \$82 million and the well-known cosmetic retailer Napoleon Perdis had a turnover of \$92million. The companies captured in the NSW threshold must be able to absorb the cost for taking responsibility for slavery in their supply chains.

As public interest in ending modern slavery continues to grow, there will be an implicit social and financial cost for companies who are seen to be recalcitrant on modern slavery. The number of companies and organisations already indicating they are interested in voluntarily reporting at a state and federal level is indicative of a shift in public sentiment and consumer expectations.

C) Clarifying supply chain reporting obligations – Local councils

The procurement footprint of NSW local councils is estimated to be significant. Oxfam would like to see more information on the scope of local council procurement as part of the Committee inquiry. Oxfam strongly recommends the implementation of a legislative approach for local councils including the Commissioner's authority to exempt certain entities from procurement and reporting requirements. The alternate voluntary, non-binding administrative process outlined in the TOR underestimates the size of Local Council procurement footprints and the advantages of having centralised reporting support.



G) Whether the passage of the Modern Slavery Act 2018 (Cth) renders parts or all of the NSW Act unnecessary

The federal legislation is not suitable as a replacement for the NSW Act, or as a measure for the relevance of particular elements of the legislation. It is our opinion that the passage of the federal law in no way changes or annuls the usefulness of the state legislation nor challenges its distinctive strengths, including: the Independent Commissioner; penalties for non-compliance; victim redress; and the lower company threshold.

The inclusion of an Independent Commissioner in the NSW Act is widely considered as a key strength of the NSW Act. Many of the findings and recommendations from the *Independent Review of the Modern Slavery Act 2015: Final Report (UK Review)* underlined the importance of the role, arguing for increased independence, resourcing and budget control.

The Inclusion of penalties in the NSW Act up to 10,000 penalty points is a critical tool for ensuring a high level of compliance. In response to low compliance levels and poor quality in reporting the UK Review recommended that the *'Government should make the necessary legislative provisions to strengthen its approach to tackling non-compliance, adopting a gradual approach: initial warnings, fines (as a percentage of turnover), court summons and directors' disqualification. Sanctions should be introduced gradually over the next few years so as to give companies time to adapt to changes in the legislative requirements.'* Removing penalties from the NSW Act will severely limit the ability of the NSW government to ensure a high quality of reporting and compliance.

The inclusion of a redress scheme in the NSW Act fills an existing support gap for some of NSW's most vulnerable people. In lieu of a federal modern slavery redress scheme, amending the Victims Rights and Support Act 2013 (NSW) will provide a critical pathway for victims of modern slavery to a range of support mechanisms including financial support and mental health care.

Lastly, the NSW Act currently requires the 1650 companies with turnover of between \$50 – 100 million to report. If the Committee concludes that the passage of the Modern Slavery Act 2018 (Cth) renders all of the NSW Act unnecessary it does so at the expense of the myriad of workers in the supply chains of these companies in NSW and around the world.

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

The delay to enacting the NSW Modern Slavery Act will have a tangible impact on people, mainly women and children, trapped in conditions of modern slavery in the supply chains of businesses operating in NSW. Oxfam Australia strongly encourages the Government to proceed with haste in enacting this legislation once the Social Issues Committee have issued their report in February 2020.

Modern Slavery has been identified across the political and social landscape as one of the pressing moral emergencies of our time. Failure to enact this legislation will be met by a coordinated civil society response, spanning church groups, unions, not-for-profits and community groups. What the Government does with this legislation will speak volumes about how it values the members of the cross bench, the NSW population and the millions of people trapped in poverty in our region.

Key Contact

Rachel Ball – Head of Advocacy and Campaigns



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