

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

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Submission to the Legislative Council Standing Committee on Social Issues

My name is Jacinta Sugiaman and I am a Commerce and Arts student at the University of Sydney. I have taken a keen interest in precarious work relationships, such as migrant or temporary workers, which I believe is a seedbed for exploitation and unlawful practices. A solution to this is necessary and urgent, particularly since it undermines both Australian and international law, as well as the fundamental values of equitable labour. Australia has historically protected the rights of workers and the vulnerable, and I praise both the NSW and federal government in their attempts to safeguard these values and to eradicate all traces of slavery from our society. While the NSW act on *Modern Slavery* (2018) has made some critical step forward, especially regarding the establishment of an anti-slavery commissioner, supply chain reporting requirements and additional criminal offence charges, this submission will argue that the bill does not address the main source of modern slavery in Australia – the horticulture industry. In the rest of this paper, I will be proposing the following amendments:

1. Amendments to reporting obligations to cover small and medium-sized businesses – ToR 1(a)
2. Introducing an independent investigative body into individual cases – ToR 1(h)
3. Enhancing the capacity of the public register by introducing a licensing or certification scheme – ToR 1(i)

Terms of Reference 1(a): The operability of the proposed anti-slavery scheme

Many perpetrators of modern slavery are able to evade the current legislation, primarily through the supply chain reporting exemptions. s24(2) states that ‘a commercial organisation must prepare a modern slavery statement... for each financial year of the organisation’. The Act further determines what constitutes a commercial organisation: a corporation or association that supplies goods or services for profitable gains and has a total turnover of \$50 million and over. The fundamental issue,

however, is that employees that tend to be most vulnerable to exploitation are within the horticulture, retail and hospitality industry.¹ These industries are predominantly made up of small and medium sized businesses that often can avoid regulatory scrutiny and who do not meet the \$50 million threshold. The agriculture, forestry and fishing industry by itself comprises more than 10 per cent of all the small businesses in Australia.² Exploitation among agricultural workers is evident with approximately 15 per cent earning \$5 or less an hour, while 31 per cent receive \$10 or less.³ These statistics highlight the importance of targeting small and medium-sized businesses particularly in the agriculture industry, which is not implementable with the current bill. While it needs to be acknowledged that many companies do not have the resources or capacity to increase their reporting obligations, it is recommended that the exemptions be lowered to only cover firms with less than 20 employees. This can increase the coverage of the bill while not imposing unnecessary regulatory burden on small or micro businesses.

Terms of Reference 1(h): The preferred course of action to address the matters identified

Another issue that the *Modern Slavery Act* (2018) does not address is the inherent vulnerability of workers in the agriculture industry. The focus of the bill has been to increase public awareness through the role of the Anti-Slavery Commissioner and supply chain reporting. However, there does not seem to be any mechanisms for dispute resolution or complaint procedure for vulnerable workers. Working conditions akin to slavery has been exacerbated by the high proportion of short-term migrant workers employed in agriculture. Due to the significant structural challenges in agriculture and the subsequent labour shortages, the Australian government has introduced temporary migrant programs such as the Seasonal Worker Program and Working Holiday Maker visa (417 visa). Academic research and government inquiries into the living conditions and wages on many of these agricultural farms reflect

¹ Clibborn, S. & C.F. Wright, 'Employer theft of temporary migrant worker's wages in Australia: Why has the state failed to act?'. *The Economic and Labour Relations Review*, vol. 29, no. 2, 2018, pp. 207-227.

² Department of Innovation Industry Science and Research, *Key Statistics – Australian Small Business*. Canberra, 2011.

³ Berg, L. & B. Farbenblum, *Wage theft in Australia: Findings of the National Temporary Migrant Work Survey*, 2017.

contraventions of employment law and the rights of individual workers.⁴ It is interesting to note that 36 per cent of employers consciously do not meet obligations under the horticulture award, especially regarding minimum wage and pay slips.⁵ Agricultural employers are often able to evade regulatory compliance due to the geographic isolation of their workplace and the overwhelming power that management have over the workers, many of whom have visa problems. These factors question the reliance that the law should place on reporting mechanisms, which tends to be one-sided and undertaken by the employers themselves. While the role of the Anti-Slavery Commissioner is to raise public awareness, the Bill explicitly states that they will not take an investigative function into individual cases. It is recommended that there be an independent body that does investigate perpetrators of slavery and whom vulnerable workers or victims can approach if they have a complaint. The UK's experience of introducing a modern slavery hotline can also be implemented, providing an efficient support mechanism for victims, while also safeguarding their privacy. It has helped to uncover thousands of victims, reflecting that modern slavery is much more prevalent than they had previously envisioned.⁶

Terms of Reference 1(i): Any other related matter

The final recommendation refers to one of the objectives of the Bill, which is to 'raise community awareness of, and provide for education and training about, modern slavery' (section 3e). While the public register facilitates transparency on which commercial organisation has or has not disclosed their supply chain reports, I believe that more can be done to engage the public. Consumers and end-users of the supply chain wield significant bargaining power over the production of goods and

⁴ MacDermott, T. & B. Opekin, 'Regulating Pacific Seasonal Labour in Australia'. *Pacific Affairs*, vol. 83, no. 2, 2010, pp. 283-305.

⁵ Underhill, E. & M. Rimmer, 'Layered vulnerability: Temporary migrants in Australian horticulture'. *Journal of Industrial Relations*, vol. 58, no. 5, pp. 508-626.

⁶ S Marsh, 'Calls to UK's modern slavery hotline double in a week', in *The Guardian*. August 2017, viewed on 4 October 2019, <https://www.theguardian.com/uk-news/2017/aug/18/calls-uk-modern-slavery-hotline-double-week-national-crime-agency>

services.⁷ Examples, such as Fair Trade and Fair Farmers (an initiative that aims to end exploitation by farmers by training programs and certification programs), show evidence that consumers are willing to make ethical choices based on production. Highlighting agricultural products that conform with supply chain reporting obligations and fair employment law can reward responsible companies and punish non-compliers. Another third party that could benefit from a licensing scheme is labour-hire agencies. These are mediating companies that aim to bring together employers seeking labour and jobseekers looking for employment. Labour-hire agencies have the knowledge of whether farmers are complying to their employment law obligations or not and therefore can have an indirect role in participating in modern slavery. Victoria and Queensland have introduced a licensing scheme for labour hire agencies to improve credibility and transparency. It is recommended that NSW should act likewise and introduce a benchmarking system that ensures certain standards are being met. Clear labelling, along with education, can provide guidelines to consumers and prospective employees. I believe that the Committee should not undervalue the importance that reputation and third parties, such as consumers and labour-hire agencies, can have in abolishing modern slavery.

From the beginning of colonisation, Australia has been a haven for aspiring and hard-working migrants, seeking a better life for themselves and their family. I thank the Committee for reviewing amendments to the *Modern Slavery Act* and for their ongoing attempts to protect vulnerable workers in NSW.

⁷ Clibborn, S. & C.F. Wright, 'Employer theft of temporary migrant workers' wages in Australia: Why has the state failed to act?'. *The Economic and Labour Relations Review*, vol. 29, no. 2, pp. 207-227.