

INQUIRY INTO MODERN SLAVERY ACT 2018 AND ASSOCIATED MATTERS

Organisation: Public Health Association of Australia (PHAA)

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Public Health Association
AUSTRALIA

Public Health Association of Australia submission on the Modern Slavery Act 2018 (NSW)

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Preamble

The Public Health Association of Australia

The Public Health Association of Australia (PHAA) is recognised as the principal non-government organisation for public health in Australia working to promote the health and well-being of all Australians. It is the pre-eminent voice for the public's health in Australia.

The PHAA works to ensure that the public's health is improved through sustained and determined efforts of the Board, the National Office, the State and Territory Branches, the Special Interest Groups and members.

The efforts of the PHAA are enhanced by our vision for a healthy Australia and by engaging with like-minded stakeholders in order to build coalitions of interest that influence public opinion, the media, political parties and governments.

Health is a human right, a vital resource for everyday life, and key factor in sustainability. Health equity and inequity do not exist in isolation from the conditions that underpin people's health. The health status of all people is impacted by the social, cultural, political, environmental and economic determinants of health. Specific focus on these determinants is necessary to reduce the unfair and unjust effects of conditions of living that cause poor health and disease. These determinants underpin the strategic direction of the Association.

All members of the Association are committed to better health outcomes based on these principles.

Vision for a healthy population

A healthy region, a healthy nation, healthy people: living in an equitable society underpinned by a well-functioning ecosystem and a healthy environment, improving and promoting health for all.

The reduction of social and health inequities should be an over-arching goal of national policy and recognised as a key measure of our progress as a society. All public health activities and related government policy should be directed towards reducing social and health inequity nationally and, where possible, internationally.

Mission for the Public Health Association of Australia

As the leading national peak body for public health representation and advocacy, to drive better health outcomes through increased knowledge, better access and equity, evidence informed policy and effective population-based practice in public health.



Introduction

PHAA welcomes the opportunity to provide input to the Inquiry into the Modern Slavery Act 2018 in NSW.

Modern slavery, which occurs on a spectrum of human exploitation, is all around us. We all use or consume products from high-risk sectors including seafood, high-tech devices and fashion. An estimated 40 million people are enslaved around the world, more than ever in human history. More than 15,000 people live in slavery in Australia at this time. Migrant women and workers on short-term visas are most at risk.¹

Modern slavery is not just a heinous violation of human rights, it is growing as a problem in the Asia-Pacific - our region – at a faster rate than in any other region of the world.

In this context, the PHAA is happy to see changes made that clarify the intent of the NSW MSA but urges the committee to ensure the parliament does not weaken the Act or roll things back, because this Act is life changing for potentially thousands of people. As Premier Gladys Berejiklian put it some months ago, *‘There is an undeniable moral imperative to take action in relation to all forms of modern slavery.’*²

This is a comprehensive Act, providing for:

- A Commissioner for advocacy and victim support and regular review of the Act
- Education and awareness raising for the community and business
- Support, compensation and protection systems for those who have experienced slavery
- Government procurement covered by the Act
- Modern Slavery risk reporting with penalties for non-compliance

Modern slavery is not just a law enforcement issue but of central public health concern. This is because it is not just devastating to the direct human health, both physical and mental, of many individuals but also raises issues about the fair treatment of vulnerable population groups. Victims of Modern Slavery are, by definition, unable to adequately protect their own interests. They require not just legal protection, through the Act, as a means to reduce the risk of exploitation but also support to respond and recover from the experience once abuse is uncovered. In addition to the fundamental human rights goal, efforts to eradicate and remediate such slavery constitute a preventive health intervention for all those affected.³

The NSW Act is a victim-centred and systems-wide modern slavery Act, whereas the Commonwealth legislation is more narrowly about supply chain transparency. There is no support for victims or penalties at the federal level. The two can co-exist to complement each other because they have similar objectives while different. For one, they capture different entities.

PHAA would like to see a speedy response to the inquiry so as not to delay the Act coming into effect any more than is necessary. At the heart of the NSW Act is human dignity. We know that health benefits flow from human dignity.

PHAA has consulted with agencies working actively in the modern slavery space, notably Be Slavery Free (formerly known as Stop the Traffic Australian Coalition) to draft this submission.

¹ [Global Slavery Index](#), 2018

² Premier Gladys Berejiklian, in her [second reading speech](#) for the Act, 6 June 2018

³ Modern slavery: a global public health concern *BMJ* 2019; 364 doi: <https://doi.org/10.1136/bmj.l838> (Published 26 February 2019)

PHAA Response to the Terms of Reference

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

It is commendable that the state government wishes to ensure the NSW Modern Slavery Act better aligns with policy intent so that it functions effectively. This is not about examining the first principles which established the Act.

We are satisfied that each of the proposed amendments in the Amendment Bill ensure the operability of the proposed anti-slavery scheme by:

- Ensuring goods and services procured by government agencies are not the product of modern slavery
- Ensuring corporations where a Minister of the state is a shareholder fall within the definition of a 'commercial organisation' and be required to produce a Modern Slavery Risk statement
- Clarifying the role of the Commissioner and allowing greater flexibility in the role and overseeing flexibility in reporting by businesses

We believe it would be further strengthened by allowing for:

- Voluntary Modern Slavery Risk statements for entities which fall outside the definitions and thresholds.

It is imperative that the MSA Amendment Bill:

- Continues to include penalties for non-compliance in reporting.
- Retains the reporting threshold of \$50 million

The language used in each of the Federal and State legislations needs to be consistent on the subject of threshold, as the current language refers to both turnover and consolidated revenue.

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

Increasingly, issues like modern slavery, once considered social and environmental, are now seen as squarely in the corporate domain, with growing expectations of ethical processes.⁴

Any modern slavery provisions requiring a mandatory assessment of risk and reporting for transparency in supply chains is good for business, and complying with it is simply the cost of doing business.

The Commonwealth has estimated the regulatory impact of producing a Modern Slavery Risk statement as \$21,950. With a lower reporting threshold for the NSW Act, the reporting organisations will be smaller. Costs are expected to come down beyond the first more intense year of reporting.

Not complying creates a reputational risk, potentially higher than any reporting costs. The Act encourages and insists on a proactive approach, necessary to avoid potential adverse media attention and reputational

⁴ "Purpose for profit: How ethical business is transforming Australian retail", Sydney Morning Herald, Sept 14, 2019.

damage that will increasingly ensue from findings of modern slavery in procurement or supply chains, as the global magnitude and severity of modern slavery becomes better understood.⁵

The NSW Act creates a level playing field so that those who are doing the right thing are not penalised by needing to compete with those who drive prices down through the use of slave labour.

(c) The intended application of the anti-slavery scheme with respect to charities and not-for-profit organisations, State Owned Corporations and local councils.

PHAA believes charities, public sector entities, State Owned Corporations and local councils, with a turnover of \$50m or more should be required to report to the overseeing body, the Independent Anti-Slavery Commissioner as an act of faith with the public.

Local Government NSW can assist local councils to produce a modern slavery risk assessment and statement so costs are shared.

Regarding charities, the public has a right to be assured that their charitable donations (typically used to establish a charity's turnover) are not being used to procure goods and services which are the product of modern slavery.

For all entities affected, the Commissioner will be instrumental in raising awareness of the Act's requirements and effectively engaging them with simple resources to make the process easier.

Terms of reference (d), (e) and (f)

PHAA has no comment to contribute on these legal and technical issues.

(g) Whether the passage of the Modern Slavery Act 2018 (Cth) renders parts of all of the NSW Act unnecessary, or requiring of amendment to address inconsistencies or gaps.

We think no amendments are needed as the two Acts are complimentary. The NSW Act affects commercial organisation with a turnover of more than \$50m required to report on actions taken to eliminate slavery from supply chains, whereas the Commonwealth legislation subjects organisations with an annual turnover of more than \$100m to report. The proposed NSW scheme threshold matches the UK threshold, which represents better practice and was recommended in the Commonwealth Inquiry Report, 'Hidden in Plain Sight'.⁶

Since the reporting criteria is similar for both, a NSW entity of \$100m or more consolidated revenue need not provide any more paperwork to comply with the Commonwealth legislation. Any additional compliance costs should be minimal.

With the assent of the NSW Act at some point, the hope is the Commonwealth is inspired to adopt penalties and have an Independent Anti-Slavery Commissioner (with capacity to recommend changes in

⁵ Conclusion in an [assessment by Clayton Utz](#), June 2019

⁶ [Hidden in Plain Sight](#), An inquiry into establishing a Modern Slavery Act in Australia. Joint Standing Committee on Foreign Affairs, Defence and Trade, December 2017 Canberra.

annual reports to improve implementation and compliance), rather than the current overseeing body at the federal level (a unit in the Department of Home Affairs).

NSW can source new and efficient technology solutions to enable it to process large numbers of reports as well as provide the kind of data that governments, business and civil society seek to better understand the realities of modern slavery in order to find lasting solutions.

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

Given the scale of modern slavery and the moral imperative to act, we urge that the legislation - which was due to come into effect in July this year - proceed without delay after being tidied up and harmonised with the Commonwealth version.

Conclusion

PHAA supports the broad directions of the amendments. What may be referred to as small defects are easy to fix.

There is no room for complacency. We are keen to ensure suggestions are absorbed so the Act can commence soon.

We are particularly keen that the following points are highlighted:

- That the Committee consider not only the impact on business, but broaden its focus to include the victims of modern slavery in supply chains, and the transforming impact that NSW business can have empowering vulnerable people.
- That reporting under the NSW MSA Act needn't be onerous, but can in fact be good for business through improved social licence.
- The Commissioner can play a key role to resource all the entities impacted by this law.
- The committee develop a clear timetable to report on this inquiry and support the earliest possible implementation of the law, with regulations developed and approved alongside the Inquiry process, so that the Act can come into effect next year (2020).

The PHAA appreciates the opportunity to make this submission. Please do not hesitate to contact me should you require additional information or have any queries in relation to this submission.

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