

**Submission
No 65**

INQUIRY INTO MODERN SLAVERY ACT 2018 AND ASSOCIATED MATTERS

Organisation: Action Sustainability Asia Pacific

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Submission to the NSW Legislative Council Standing Committee on Social Issues Inquiry into the Modern Slavery Act 2018 (NSW) and associated matters

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Thank you for the opportunity to make a submission on this important legislation, and we write to express Action Sustainability's support for the:

- Introduction and intentions of the Modern Slavery Act 2018 (NSW) ("the Act")
- Turnover bracket within the Act
- Reporting period and report due date
- Publication of statements on the public register as outlined
- Role of the NSW Anti-Slavery Commissioner
- Inclusion of criminal penalties as detailed
- Voluntary reporting of businesses falling below the \$50 million turnover threshold and who choose to comply with its requirements.

Our experience and resources

Action Sustainability is a firm of purpose-driven business advisors specialising in sustainable supply chains, built environment, finance and human rights. Action Sustainability Asia Pacific was started by a group of energetic, passionate individuals motivated by a desire to make a real difference. Operating across all industries and sectors, we share a common conviction to inspire positive and measurable societal change.

The founding directors recognised the need for a boutique, nimble, staff-owned firm in the region. This team now leads Action Sustainability Asia Pacific, building on and leveraging the success and experience of Action Sustainability Europe. Action Sustainability specialises in:

- Sustainable supply chains, procurement and ISO 24000;
- Sustainable building & infrastructure;
- Sustainable finance (lending & investing); and
- Human rights and modern slavery.

In addition, Action Sustainability is guided by the following principles:

- We only work with clients who genuinely aim to contribute positively towards a more sustainable society;
- We are committed to our purpose of inspiring sustainable business;
- We encourage our clients to think beyond the present and to see the benefit of taking a longer-term view of their role in a rapidly changing society;

- We adopt a pragmatic and realistic approach based on our experience of how businesses operate; and
- We recognise the societal benefits of sharing knowledge and will be generous in participating in ‘public interest’ and industry initiatives.

You can find out more about us at <https://www.actionsustainability.com/offices/asia-pacific/>

In addition to working with public and private sector organisations, we partner with not-for-profit organisations such as the Responsible Investment Association of Australasia, the Infrastructure Sustainability Council of Australia, and the Supply Chain Sustainability School. The School’s partners’ and members’ operations, supply chains and project supply chains across property, construction and infrastructure initiatives are often long, complex and international, and we have worked with many of them on their supply chains and procurement.

There are already hundreds of different resources on the School’s website, dozens of which are directly relevant to human rights and modern slavery and many of which Action Sustainability has contributed to, including videos, case studies, documents to download, e-learning modules, links to different tools and initiatives, definitions and guides, with more added every month. Please note in particular:

- i. The School’s Modern Slavery landing page and resources:
<http://supplychainschool.org.au/resources/modern-slavery.aspx>
- ii. The School’s ‘Where might modern slavery be hiding in your supply chains?’ short video:
<http://supplychainschool.org.au/resources/online-resources/videos/46/Where-might-Modern-Slavery-be-hiding-in-YOUR-supply-chains>
- iii. The School’s Modern Slavery e-learning module (accessible to all after free registration):
<http://supplychainschool.org.au/resources/e-learning-modules/64/An-introduction-to-Human-Rights-and-Modern-Slavery/>

Context

The need for continuous improvement

It is important to note that industry engagement around modern slavery within supply chains is not a binary issue in which organisations are either ‘ignorant of’ or ‘expert in’ the issues concerned. Instead, NSW public and private sector organisations need to commit to a process of continuous improvement around modern slavery issues over many years, with clear actions around awareness, engagement, support, transparency and, where appropriate, certification.

As some of the largest procurement organisations in Australia, the Australian Government and NSW Government have vital roles to play in addressing the potential for modern slavery across its supply chains, and Action Sustainability would encourage federal, state and territory, and local governments to take a leadership view in the context of transparency, due diligence and commitments around modern slavery, as well as around continuous improvement of their own procurement practices (see point 3 of this submission).

Increasing awareness and engagement across NSW businesses

It is important for the success of NSW businesses, particularly those reporting under the Act and supplying to organisations reporting under the Act, that sufficient time and resources be dedicated towards raising levels of awareness, engagement and support around the topic as early as possible.

Awareness can be as simple as defining the topic, explaining its relevance, outlining what should be done differently, and directing the audience towards further resources. Engagement

can include help for small, medium and large enterprises to start asking questions of their own supply chains, and to use more standardised methods of reporting objectives and outcomes.

Support can include encouragement for small, medium and large enterprises, including government agencies, to make public and transparent commitments to the examination for and elimination of modern slavery across their NSW, Australian and international supply chains.

Education of the NSW construction and infrastructure sectors

Action Sustainability would recommend that the NSW Government works closely with the Supply Chain Sustainability School of Australia, as well as with other private sector and non-governmental organisations such as ourselves, on:

- raising awareness of modern slavery issues across Australian and NSW supply chains, particularly within the property, construction and infrastructure sectors;
- improving engagement around the topic and showcasing commitments from organisations to tackle the issue within a specific timeframe;
- establishing pathways to continuous improvement on supply chain transparency; and
- increasing support for companies tackling modern slavery through their workforce, supply chains, processes, products and materials.

Education of the property, construction and infrastructure sectors about the issue of Modern Slavery is incredibly important and needs increased focus and resources. As stated earlier, further materials for NSW organisations on how to assess and address Modern Slavery in their operations and supply chains, and balance the NSW and Australian Modern Slavery Acts, should join the free resources already available.

Recommendations and suggestions

Remedy & victim support

1. Action Sustainability would recommend putting in place full and proper support for the victims of acts of modern slavery. Access to full and proper remedy for victims of Modern Slavery, in the context of NSW and Australian businesses and their operations and supply chains, needs careful consideration and more secure long-term funding. It is therefore vital to support and promote the role of the NSW Anti-Slavery Commissioner so as to raise community awareness of modern slavery, with a clear advocacy and educative function and as a 'critical friend' to encourage individuals and organisations towards better practices. Providing stable, funded and recognised services to assist victims is one of the key actions the NSW government is best placed to deliver on.
2. Action Sustainability would recommend that there is increased clarity and communications around the actions individuals and organisations should take when they suspect or find Modern Slavery in their operations or supply chains. The correct courses of action, whether gathering information, reporting the incident, obtaining legal, protection or welfare advice, escalating the report or initiating a grievance mechanism, should be made as clear as possible to those assessing and addressing modern slavery risks, as well as to the staff of all organisations raising awareness and making changes.

Government procurement

3. It should be clarified in documents, guidance and case studies that the Act requires NSW government agencies to identify and report on risks of modern slavery in their supply chains, and Action Sustainability would encourage the NSW Government to take a

leadership view in the context of transparency, due diligence and commitments around modern slavery, as well as around continuous improvement for their procurement practices. We believe that NSW government agencies can have a significant influence on the response to this issue, both by leading by example and through the leverage they have through their own procurement spend.

Anti-Slavery Commissioner

4. The Explanatory Paper sets out that “*The provision provides the Anti-Slavery Commissioner with the flexibility to require, for example, the completion of a PDF form that contains a checklist for commercial organisations to confirm that in preparing their statements they have complied with their reporting requirements, including the mandatory reporting criteria, or technical format requirements for lodgement. Any such requirements or advice will be detailed in guidance material for businesses issued by the Commissioner.*” With experience around such guidance material, Action Sustainability would be happy to recommend experts to be involved in its development.
5. Whilst the documentation states that a key function of the NSW Anti-Slavery Commissioner will be to assess the effectiveness of the Act and other laws relating to modern slavery, it will be essential to clarify the ongoing consultation process to seek the feedback of stakeholders during the Act’s operation – preferably with consultation every three years – so that feedback can be used to evaluate and improve the implementation and enforcement of the Act.

Guidance for reporting entities

6. Mandatory Criteria 5 sets out that reporting entities should “*describe how the organisation assesses the effectiveness of such actions*”. With experience gathered from conversations, events, workshops and training sessions Action Sustainability would suggest that this criterion is often misunderstood or underestimated, and so there should be increased communications around the appraisal of effectiveness. This criterion will be particularly important for NSW government in assessing the effectiveness of the Act itself, so it is paramount that reporting entities understand what is required of them.
7. In line with the excellent Australian Government ‘Guidance for Reporting Entities’ released in late September 2019, the NSW Government needs to provide businesses with clear and practical guidance on the requirements in the Act and the regulations, with practical advice on how businesses should respond to their modern slavery risks and how they can use simple and freely available resources to inform their employees, staff, networks and suppliers. In developing the guidance, it is important to stress the overall objective of the Act is to reduce modern slavery occurrences, so that the focus of reporting is not solely on business processes developed, but also includes clear outcomes.
8. Building on these objectives, the guidance developed by the NSW Government should emphasise the critical role that procurement functions will play in managing and mitigating modern slavery risks in supply chains. In order to play a mitigating role, procurement needs to be elevated to a strategic function, with sufficient resources allocated to it. Poor procurement practices have often been pointed at as increasing the risk of modern slavery by imposing unreasonable lead times and driving costs to unreasonably low thresholds. It is therefore important to highlight how procurement can help drive the correct behaviours in supply chains and support sustainability objectives. In particular, we suggest building on the already excellent procurement guidance provided by *ISO 20400 – Sustainable Procurement*, which many organisations have already adopted, to ensure modern slavery is integrated as part of a broader strategic procurement framework.

Reporting

9. As part of the move towards best practice, Action Sustainability would encourage and support voluntary reporting from businesses falling below the \$50 million turnover threshold and who choose to comply with its requirements. The option of voluntary reporting can give businesses a competitive advantage and aligns with the objective of the Act to drive 'a race to the top'.
10. More work needs to be done to clarify the connection and differences between the Australian Government Modern Slavery Act 2018, the NSW Act, and their application; as the document sets out, the NSW Government needs to work closely with the Commonwealth to resolve intersecting issues and harmonise the approaches taken in the NSW and Commonwealth Acts.

Conclusion and summary

It is important that businesses across NSW are active contributors to those green building, sustainable community, property, development and infrastructure projects that respect human rights and labour rights, and uphold environmental and governance standards in their global operations, including throughout their NSW, Australian and international supply chains.

The NSW Government should continue to work with individuals, public and private sector, and non-governmental organisations on raising awareness of modern slavery issues across Australian supply chains, improving engagement around the topic, establishing pathways to continuous improvement on supply chain transparency, and increasing support for companies tackling modern slavery through their supply chains.

Action Sustainability will continue to undertake the following activities across NSW in support of the NSW and Australian Modern Slavery Acts:

- Review and develop human rights & modern slavery strategies and policies;
- Undertake gap analyses for the public and private sector against legislation and best practice requirements;
- Implement due diligence and risk mapping across operations and supply chains;
- Develop targets, KPIs and metrics and monitoring to boost continuous improvement and assure annual commitments;
- Review grievance and complaints mechanisms to ensure compliance with best practice and appropriate victim support;
- Train, educate and build internal capacity to recognise and implement the UN Guiding Principles and NSW Modern Slavery legislation for operations and supply chains; and
- Assist organisations develop their human rights and modern slavery statements.

Please do not hesitate to contact Action Sustainability by e-mail at actionsustainability@actionnsw.com.au should you have any questions relating to this submission.