

**Submission  
No 67**

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

**Organisation:** Mills Oakley  
**Date Received:** 4 October 2019

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4 October 2019

Your ref:  
Our ref: LXGB/9175378

The Honourable Shayne Mallard MLC  
Committee Chair  
Standing Committee on Social Issues  
NSW Legislative Council

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Dear Chairman Mallard

### **Inquiry into the Modern Slavery Act 2018 and associated matters**

Thank you for the invitation to provide a submission to the Committee's present inquiry into the *Modern Slavery Act 2018* and associated matters.

A short relevant professional bio of my work in the area is contained in the annexure to this submission. In short, I have worked to support victims of modern slavery in Australia, for almost the past 15 years. Presently, I act as an advisor to some of Australia's largest organisations as they prepare for compliance with the Commonwealth *Modern Slavery Act*.

I have read and considered the ToR for this inquiry, together with the draft Government Bill and Regulation, as well as the NSW Government's submission.

I wish to comment on just two issues arising, namely:

1. The effect of the compulsion of co-operation by civil society agencies (as distinct from government agencies) contained in section 14(1); and
2. The intent and workability of the interaction between the proposed amendments to the definition of the term '*commercial organisation*' in section 24(1), when read in conjunction with the proposed exemption contained in clause 10(4) of the Regulations.

With respect to the first issue, it has been my experience in working with non-government agencies and advocacy services in this area over many years that the question of an individual victim's willingness to co-operate with any arm of government (which the Anti-Slavery Commissioner will be viewed as), is different in every case. In some cases victims are very comfortable with them and their case workers / advisors / support persons co-operating; whilst in others, this can be a very traumatic concern due to significant trust issues (actual or simply perceived). To have a blanket provision compelling non-government agencies who are supporting victims, has a very high likelihood of negatively impacting (i.e. completely undermining) the relationship between those non-government agencies / advocacy services and the very clients they exist to support. I would strongly advise the Committee to take expert guidance on this issue from clinicians with deep experience working directly with victims, so as to inform the Committee on this issue and allow the Committee to make recommendations that would suitably meet the needs of the victims to ensure they can continue to trust the non-government agencies / advocacy services who are supporting them.

Turning now to the second issue, as a specialist in charities / non-profit law, and having founded and run a charitable social enterprise on behalf of a major charity, I have some practical experience in the issues the subject of consideration in the proposed amendment to

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section 24(1) to the Act and clause 10(4) of the Regulations. On my reading of the Government's submission, it seems that the intent of the amendment to section 24(1) is to capture social enterprises whose revenue exceeds the \$50m threshold, subject to the exemption in clause 10(4) for charitable organisations.

As the Committee would be aware, the Commonwealth Act makes no distinction between profit and non-profit organisations; so long as the organisation exceeds the consolidated revenue threshold, it is required to prepare and submit a modern slavery statement under the Commonwealth Act.

The fact is that in Australia, many (most, in my respectful experience) of the more significant (by size) social enterprises, are owned and run by charitable institutions. Some of these are run simply as business units within the charitable institution with a separate business name but not as a separate legal entity; others are spun off as quarantined vehicles with a separate legal identity and are wholly owned by the charitable institution parent entity. In each instance, the social enterprise typically will have been set up to maximise the return to the charitable institution parent and as such, will likely have received appropriate tax concessions through the ACNC / ATO. Assuming my experience in this field is representative of the sector, and I believe it is, the current wording of clause 10(4) will likely defeat any such social enterprises from having to provide a modern slavery statement, notwithstanding the proposed extended definition contained within section 24(1).

In order to develop a suitable solution to this issue, I would encourage the Committee to inquire into the desired actual intention of the expanded definition contained within section 24(1). Based on the result of that inquiry, if I can be of assistance in helping inform the Committee as to a suitable solution, I would be pleased to do so.

In closing, through my work in supporting many large corporates in their preparations for compliance with the Commonwealth Act, the one theme that comes from them as they watch with interest what is happening in NSW, is their hope that the NSW Act does not create additional regulatory burden for them in a way that is at all different to the regime now in place within the Commonwealth sphere. I firmly believe that in order to obtain the greatest gains in eradicating modern slavery, the corporate community needs to feel empowered to play its part, not beaten down with unnecessarily inconsistent regulation. There is clearly a place for the NSW Act, given the main differences of a lower reporting threshold and the role of the Anti-Slavery Commissioner but wherever possible, I would encourage the Committee to do as much as it can to recommend alignments between the NSW Act with the Commonwealth Act, so as to ease any inconsistencies and thus avoid additional regulatory burden for those organisations which will be subject to both regimes.

I hope the above is of some assistance to the Committee in its work on this very important social issue.

Yours sincerely

**LUKE GEARY**  
**PARTNER**

**Enc**

## ***Annexure A – Professional Bio of Mr Luke Geary***

### **Background and experience**

Luke is a Partner in the Mills Oakley Not-For-Profit & Social Enterprise team in Brisbane and has extensive experience in the Not-For-Profit sector. Luke was a Partner at Mills Oakley in Sydney until late 2009, when he left the firm to found Salvos Legal and Salvos Legal Humanitarian. At Salvos Legal Luke headed up the Corporate & Commercial team, together with being the firm's Managing Partner. Luke returned to Mills Oakley as a Partner in November 2017.

Luke regularly acts for federal and state government agencies, ASX200 listed companies, impact financiers, non-profits and religious institutions nationally. In addition to his expertise in the Not-For-Profit sector, Luke has significant experience in building, construction and insurance law, as well as in commercial transactions and dispute resolution.

For over 10 years Luke has been recognised as one of Australia's leading lawyers representing victims of human trafficking and labour exploitation. Luke has advised in and run a variety of cases across a range of jurisdictions and novel areas of law, to help victims obtain justice through civil proceedings against their offenders. In 2015, Luke acted for the successful plaintiff in *Jane Doe v Linda Howard*, Australia's largest ever verdict in a case of human trafficking, obtaining an award of damages in excess of US\$3.5m. Luke is at the forefront of the development of the Australian Modern Slavery Act and assists many major Australian organisations in their preparations for compliance with this new and important law.

Luke was named one of Australia's Best Lawyers for Non-Profit/Charities Law in the 2019/2020 *Best Lawyers* list for the fourth consecutive year, including this year being named as Australia's Non-Profit/Charities 'Lawyer of the Year'. Additionally, Luke was recognised as one of the 10 Most Innovative Lawyers in the *Financial Times Asia-Pacific Innovative Lawyers* 2016 awards. He was included in Pro Bono Australia's 'Impact 25' most influential people in the Australian social sector in 2015. In 2013, Luke was awarded Managing Partner of the Year in the *Australian Law Awards*, he was Australia's Pro Bono Lawyer of the Year in 2012 and in 2010 he received an *Anzac of the Year* award for service to the legal profession and the community.