

**Submission
No 68**

INQUIRY INTO MODERN SLAVERY ACT 2018 AND ASSOCIATED MATTERS

Organisation: Shop, Distributive and Allied Employees' Association NSW

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Inquiry into the Modern Slavery Act 2018 and associated matters

Standing Committee on Social Issues, NSW Legislative Council

About the SDA

The Shop, Distributive and Allied Employee's Association (NSW Branch) is one the largest Trade Unions in NSW with approximately 60,000 members. The majority of these members are young people and women. International students with student visas are found within SDA membership.

Registered in 1908, the SDA has coverage of areas including retail, fast food, warehouse, drug and cosmetic manufacturing, distribution, pharmacies and modelling.

The SDA has sought in this submission to focus on the following parts of the terms of reference:

1(a) The operability of the anti-slavery scheme

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

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

1(i) any other relevant matter

The report has been prepared by Bernard Govind, Industrial Officer, who has been assisting migrant workers in the Branch including workers who were the victims of the 7-Eleven wage scandal. Some of these workers gave evidence at Senate Education and Employment References Committee that resulted in the report: "A National Disgrace: The Exploitation of Temporary Work Visa Holders"¹. Bernard is a participant in the Sydney Migrant Worker Rights Network and speaks at forums convened by Unions NSW relating to migrant workers and wage theft.

¹https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment/temporary_work_visa/Report

Introduction

Modern slavery manifests itself where an individual's freedom and capacity to make decisions is impacted in some way. The ILO Forced Labour Convention (1930) (29) states forced labour is where work or service is exacted from any person under threat of a penalty and for which the person has not offered himself or herself voluntarily.²

Recently, we have had a number of clear cases that give effect to what the ILO Forced Labour Convention defines as forced labour that of the exploitation of vulnerable migrant workers including workers on international student visas. The 7-Eleven investigation provided a number of examples of how international students were exploited into working longer hours for remuneration below the legal minimum and without complaint and under threat of deportation.³

- Sam Pendem was required to work 18 hour shifts in breach of his visa conditions and Australian labour law. He was threatened by his employer they would go to the Department of Immigration to have his visa cancelled if he complained about his pay or visa conditions.
- Pranay Alawala resigned from his job after getting a back injury at work. He later confronted his employer for unpaid wages but his employer's solicitor sent him a letter threatening to report him to the Department of Immigration for working more than 20 hours a week.

An estimated 40.3 million people are in modern slavery, including 24.9 million in forced labour and 15.4 million in forced marriage. It means there are 5.4 victims of modern slavery for every 1,000 people in the world. 1 in 4 victims of modern slavery are children.⁴ According to the global estimates for 2016, the Asia and Pacific region predominates in the numbers of victims of modern slavery. Our region, Asia/Pacific,

² https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C029

³ A Ferguson & S Danckert, "Revealed: How 7 Eleven is ripping off its workers", The Age, 29 August 2015

⁴ Global Estimates of Modern Slavery: Forced Labour and Forced Marriage, Geneva, September 2017.

accounted for almost two-thirds of all victims globally with 25 million victims of modern slavery.⁵ Consequently, the implementation of the Modern Slavery Act NSW is not merely desirable but necessary, an important step to combat and eliminate slavery in all its forms.

⁵ https://www.ilo.org/wcmsp5/groups/public/@ed_norm/@ipecc/documents/publication/wcms_597873.pdf

1 (a) The operability of the anti-slavery scheme

It is understood that there is overlap and tension between the Commonwealth and the NSW Modern Slavery Acts such as in the area of reporting obligations. Under the NSW Modern Slavery Act, the reporting obligation applies to reporting entities with not less than \$50 million in annual turnover compared to \$100 million under Commonwealth Modern Slavery Act. This can simply viewed pragmatically and complimentarily where reporting entities with between \$50 million and less than \$100 million report under the NSW legislation and \$100 million and over reports under the Commonwealth legislation but not both. With appropriate changes, including in large part the proposed amendments in the Modern Slavery Amendment Bill 2019 and supported by Modern Slavery Regulation 2019, we are of the view that this ensures the efficacy and operability of the proposed anti-slavery scheme.

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

Exemptions

The draft Modern Slavery Regulation 2019 pursuant to section 24(8) of the Modern Slavery Act, NSW, contains exemptions, inter alia, for charities, not-for-profits and small business from reporting requirements. Setting the threshold at \$50 million annual turnover suggests that reporting requirements will apply to commercial organisations that have reasonable resources and capacity at its disposal. Carving out business based on perceived special status does not sit well and sends the wrong message to business and the community as a whole that we are not taking combating and eliminating modern slavery seriously. The SDA does not support exemptions including for charities, not-for-profits and small business.

In relation to the exemption for small business specifically, the Regulation defines small business as less than 20 employees.

The Australian Tax Office defines small a business as one with an annual turnover, exclusive of GST, of less than \$2 million⁶. In 2015, at the less than \$2 million annual turnover threshold accounted for 93% of all Australian businesses by turnover.⁷ It is probable that businesses with an annual turnover of \$50 million will employ more than 20 employees so an exemption for businesses with an annual turnover of \$50 million but who employ less than 20 employees makes little sense. Any regulatory requirements and compliance costs can be ameliorated by the Anti-Slavery Commissioner developing codes of practice, resource materials, providing advice and assistance, all of which are enshrined in NSW Modern Slavery Act.

Voluntary Reporting

Permitting a voluntary reporting regime in the NSW Modern Slavery Act, as found in the Commonwealth Modern Slavery Act (Section 6) provides an entity, below the \$50 million annual turnover threshold an opportunity to voluntarily comply with the reporting requirements of the Act. This is not a feature available within the NSW Modern Slavery Act and it ought to be.

Unions are working to prevent and eliminate exploitation across the supply chain. The SDA, TWU and AWU have formed an alliance to prevent and eliminate worker exploitation across the supply chain from the farm, transport and through to retail.

Including a voluntary reporting regime would allow smaller Companies along the supply chain with turnovers below the \$50 million threshold to report on risks of modern slavery which would not only mitigate the risk at a micro level but assist commercial organisations with mandatory reporting requirements to better assess and address the risk and meet due diligence and remediation requirements.

⁶ <https://www.ato.gov.au/Business/Small-business-entity-concessions/Eligibility/>

⁷ https://www.asbfeo.gov.au/sites/default/files/Small_Business_Statistical_Report-Final.pdf

Government Procurement

The SDA supports the Modern Slavery Act NSW extending to ensure the procurement of goods and services by government agencies are not the product of modern slavery. At the time of the 7-Eleven wage scandal, the SDA called on the NSW Government to put a stop to selling Opal cards through 7-Eleven store network at a time that the Company was engaged in rampant exploitation of its workers. The NSW Government failed to act.

It is anticipated, that in the future, if an entity was shown to have engaged in such exploitative behaviour, under the Modern Slavery Act, the NSW Government would move with haste to ensure that the government goods and services would no longer be procured through such an entity.

Implementation of Act

It is important that the Act is implemented without further delay. Arguably, businesses have known about the impending legislation and reporting requirements for some time. Delays are likely to create further uncertainty for business.

Notably, the first reports under the Commonwealth Modern Slavery Act are due by December 2020. To maintain alignment and consistency with this, the first reports under the NSW Modern Slavery Act should also be due by December 2020.

Publication of Modern Slavery Statements

The SDA believes that when comes to reporting and notification, the NSW Modern Slavery Act should adopt the model found in the Workplace Gender Equality Act 2016 (Cth). In effect, this would mean that when a commercial organisation lodges its modern slavery statement with the Anti-Slavery Commissioner, it would:

- Within seven days after lodging a report, the commercial organisation must take all reasonable steps to inform each employee organisation that has

members who are employees of that employer that its report has been lodged with the Commissioner.

This would go some way to satisfy a key objective of the act, “3(f) to encourage collaborative action to combat modern slavery”.

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

The Commonwealth Modern Slavery Act and the NSW Modern Slavery Act are complimentary. That said, the NSW Act is a singularly more comprehensive piece of legislation. Its greater utility is found in a broader victim-centred approach which includes important provisions which include:

- Penalties for non-compliance of mandatory reporting of risks of modern slavery occurring within supply chains, commercial organisations and government agencies. Under the UK Modern Slavery Act, there is mandatory reporting but not penalties apply for non-compliance. Pertinently, only 22% of businesses in the UK with mandatory reporting requirements presently comply with reporting requirements⁸. The SDA supports mandatory reporting and penalties associated with failures pertaining to reporting under the NSW Modern Slavery Act
- Victim support and compensation
- Appointment of an independent Anti-Slavery Commissioner who has a broad remit, including:
 - advocate and promote action to combat modern slavery
 - prevent, detect, investigate and prosecute offences involving modern slavery

⁸ Australian Modern Slavery Conference, Sydney 26 June 2019

- co-operate with and work jointly with government and non-government agencies and bodies, which would include Unions and educational institutions, to combat modern slavery
- Provide assistance and support to victims of slavery
- Raise community awareness of modern slavery

1(i) any other relevant matter

We have seen disgraceful examples of rampant worker exploitation like the 7-Eleven wage scandal. Reporting obligations on the franchisor to describe the risks of modern slavery practices “...in the operations and supply chains of the organisations...” and more importantly the actions to assess and address those risks including due diligence and remediation process are positive steps to eliminate slavery-like practices that people like Pranay and Sam and many others spoke of.

The SDA believes that it is important that we have under the NSW Modern Slavery Act legislation with real potency that both compels one cohort (mandatory reporting) and while encouraging another (voluntary reporting) to put real focus on combating and eliminating all forms of modern slavery which manifests itself in many ways including forced and exploitative labour arrangements. This also creates a level playing field among commercial organisations who apply and act responsibly on requirements enshrined in legislation and those who would seek to do the opposite.