

**Submission
No 70**

INQUIRY INTO MODERN SLAVERY ACT 2018 AND ASSOCIATED MATTERS

Organisation: Business Council for Sustainable Development Australia (bcSD)

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Legislative Council Standing Committee on Social issues

By email: socialissues@parliament.nsw.gov.au

Dear Standing Committee on Social Issues,

Submission in response to Inquiry into Modern Slavery Act 2018 and Associated Matters

The Business Council for Sustainable Development Australia (**BCSDAustralia**) welcomes the opportunity to make this submission to the Standing Committee on Social Issues on the Inquiry into the Modern Slavery Act 2018 and Associated Matters.

We would also welcome the opportunity to speak directly on these points at the appropriate time.

Yours faithfully,

Yours faithfully,

Andrew Petersen
CEO | **Business Council for Sustainable Development Australia**
World Business Council for Sustainable Development Australian Partner
CDP Australian Partner
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SUMMARY	3
BCSD AUSTRALIA'S POSITION ON BUSINESS AND HUMAN RIGHTS	4
RESPONSES TO INSERT	5
APPENDIX 1: THE WBCSD'S ACTION ON BUSINESS & HUMAN RIGHTS	8

Summary

Modern Slavery is an umbrella term used to refer to a range of exploitative practices including slavery and slavery-like practices/conditions and human trafficking. It is estimated that up to 40 million people are victims of modern slavery in 2019.

While it is inherently difficult to obtain consistent data regarding modern slavery, it is estimated that 0.6 persons per 1,000 of Australia's population was subject to modern slavery.

The Modern Slavery Act 2018 (NSW) seeks to combat modern slavery. The Act's reporting requirement captures commercial organisations with employees in NSW and with an annual turnover between \$50 million and \$100 million.

The NSW Modern Slavery Act was referred to the Standing Committee on Social Issues on 6th August 2019 for an inquiry and report.

This submission:

- addresses the inquiry of the Legislative Council Standing Committee on Social Issues on The Modern Slavery Act, the Modern Slavery Amendment Bill and the draft Regulation.
- contains BCSD Australia's position on Business and Human Rights, followed by the members' responses to the Terms of Reference [ToR A, B, C, D, G & H].
- contains information on Business groups' action on Business & Human Rights.

BCSD Australia has been greatly assisted in the preparation of this submission by Zoic Environmental Pty Ltd (www.zoic.com.au), including engagement with BCSD Australia members on their views in the formulation of their responses

BCSD Australia's position on Business and Human Rights

Our work on Social Impact, as the Australian Network Partner of the World Business Council for Sustainable Development catalyses business action to fuel inclusive growth.

We do this by facilitating peer-to-peer exchange, inspiring, informing and advocating for business action, and representing the voice of leading business in international forums.

Projects in 2019 focus on helping companies operationalize the UN Guiding Principles (UNGPs) on Business and Human Rights.

The challenge

Companies continue to face barriers to operationalizing respect for human rights across their businesses. Some examples include fostering internal awareness and leadership within their organizations to translating commitment into policies and practice in complex and dynamic global supply chains. This is set against the backdrop of a rapidly evolving regulatory environment, coupled with enhanced expectations and scrutiny from stakeholders.

The business case

Understanding the human rights impacts on their business helps companies to better manage and mitigate reputational risks and minimize operational costs. Demonstrating corporate commitment to respecting human rights also leads to enhanced engagement with a variety of stakeholders and provides significant opportunities for companies to differentiate themselves from competitors.

The solution

Our human rights work aims at operationalizing the UNGPs and increasing the number of companies knowing and showing that they respect human rights, by:

- Inspire, inform and advocate business action
- Facilitate peer-to-peer learning to capture, highlight and disseminate solutions
- Connect companies and promote partnerships
- Represent the voice of leading business in global platforms and inter-governmental processes.

Responses

In relation to the specific questions raised by the Authority, BCSDA Australia responds as follows:

Terms of Reference	BCSDA Responses
<p>The Standing Committee on Social Issues inquire into and report on the <i>Modern Slavery Act 2018</i> (NSW) (the NSW Act or nsw MSA), the consultation draft of the <i>Modern Slavery Bill 2019</i> (the amendments Bill), and the consultation draft of the <i>Modern Slavery Regulation 2019</i> (NSW) (the Regulation), with particular reference to:</p>	
<p>a) the operability of the proposed anti-slavery scheme</p>	<p>From a practical (non-legal) perspective it would seem that the proposed amendments improve the operability of the anti-slavery scheme.</p> <p>Removing legal inconsistencies and clarifying the text, the NSW Government and the Anti-slavery team can better focus their efforts on managing modern slavery issues and provide oversight on the application of the legislation.</p>
<p>b) the effect of the anti-slavery scheme on business, including the supply chain reporting obligations under section 24 of the NSW Act</p>	<p>The Regulatory Impact Statement prepared by the Commonwealth Department of Home Affairs, estimated an annual regulatory impact on the business community of the modern slavery reporting requirement of \$21,950 per reporting entity. According to the DPC June 2019 submission (pg. 6), as the expectations of businesses reporting under the NSW Modern Slavery Act are equivalent to the reporting requirements of the Commonwealth Act, the NSW Government expects that the regulatory impact would be very similar for each reporting entity.</p> <p>While the reporting cost estimate may be understated, a recent survey undertaken by BCSDA in joint efforts with Chartered Accountants of Australia and New Zealand (CA ANZ) and Zoic Environmental, indicated that 48% of the participants considers insufficient resources have been allocated to be one of the key barriers in the preparation for the Modern Slavery Statement.</p> <p>This could also explain why 46% of the participants in the survey chose the survey answer to the question: Q: "What would be your preference for the delivery of the NSW Modern Slavery Act?" A: "the roll out of the \$100 million (Cth) threshold initially and redirect efforts to education for businesses with a \$50 - \$100 million revenue until the 3-year review of the Commonwealth legislation" - as a suitable alternative to the current approach of implementing the Act.</p> <p>On the other hand, BCSDA is of the view that the NSW MSA is visionary and that the inclusion of the Anti-Slavery Commissioner role plays a critical part in properly policing its application.</p> <p>The NSW MSA is only the second jurisdiction in the world to introduce the office of an Anti-Slavery Commissioner and the first one to legislate on mandatory contents for the modern slavery reporting regime.</p> <p>The survey completed by BCSDA, CA ANZ and Zoic Environmental, indicated that 52% of the participants considered one of the key barriers to the preparation for the modern slavery statement to be the access to accurate and relevant information to allowing a proper response to all 7 mandatory reporting criteria.</p> <p>This could also explain why 42% of the members and participants indicated to the question, Q: "What would be your preference for the delivery of the</p>

	NSW Modern Slavery Act?": that they prefer to "Maintain the \$50 -100\$ threshold indicated by the NSW MSA, and introduce an initial educative role for the anti-slavery commissioner, rather than introduce punitive sanctions <u>until</u> the 3 year review of the Commonwealth legislation."
c) the intended application of the anti-slavery scheme with respect to charities and not-for-profit organisations, State Owned Corporations and local councils	<p>the intended application of the anti-slavery scheme with respect to:</p> <p>- Charities Provided that for-profit commercial activities still fall under the provisions of the legislation, this exemption is reasonable.</p> <p>- Not-for-profit organisations Same as for charities.</p> <p>- State Owned Corporations Ensuring that State Owned Corporations are not unfairly advantaged by exemptions is a must, if they provide services in competition with commercial enterprises. Hence SOCs must fall under the provisions of the legislation.</p> <p>- Local councils While the intent to allow Local councils the means to voluntarily take steps to mitigate modern slavery; "voluntary compliance" rarely lead to real compliance. Eliminating undue financial strain on small councils, is reasonable, however, the cost of compliance for larger councils is not prohibitive, and as such they should be included for mandatory reporting, provided that the turnover threshold is reached.</p>
d) the appropriateness and enforceability of Modern Slavery Risk Orders under section 29 of the NSW Act	Repealing section 29, MSROs, appears to be a logical and reasonable step. This is provided that the risk of past offenders reoffending can be mitigated by applying alternative & existing risk management regimes.
e) the unintended consequences of drafting issues with the NSW Act, including with respect to the <i>Human Tissue Act 1983</i> (NSW) and the sale and supply of human tissue	No comments
f) the risk of a possible constitutional challenge to current provisions in the NSW Act due to inconsistencies with the <i>Criminal Code Act 1995</i> (Cth)	No comments
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	<p>While the Commonwealth Modern Slavery Act is an important step forward, the NSW Modern Slavery Act is more stringent.</p> <p>For a business, wishing to engage freely and fairly in commercial contract with potential clients, the NSW legislation offers a stronger deterrent and hence will act as a driver to help Australian businesses doing business in Australia improve and engage on a level playing field.</p> <p>Ideally, once reviewed in 3 years, the Commonwealth legislation will be amended to also impose penalties, have an anti-slavery commissioner, and</p>

	<p>generally absorb the positives from the NSW Legislation. Only then, will the NSW Modern Slavery legislation be unnecessary.</p> <p>Until such time, the NSW legislation can effect change on the Commonwealth.</p> <p>Deeming it unnecessary at this stage, will negate the above positives before they materialise.</p> <p>One gap identified is that there is no pathway to voluntary reporting for entities below the \$50million threshold. This should be addressed/amended.</p>
h) the preferred course of action to address the matters identified in the Terms of Reference	<p>Take steps to:</p> <ul style="list-style-type: none"> 1) Include Local Councils in the scope for reporting entities. <p>Develop a pathway for voluntary reporting.</p>
i) any other related matter	No

Appendix 1: The WBCSD's action on Business & Human Rights

World Business Council on Sustainable Development

The position of the World Business Council of Sustainable Development on People/Business and Human rights is innovative and forward thinking. WBCSD provides a profusion of solutions that supports global companies in guaranteeing their alignment with ethical Business & Human Rights development. The Human Rights initiative aims at operationalizing the Guiding Principles on Business and Human Rights (UNGPs) and increasing the number of companies knowing and showing that they respect human rights, by:

- Inspiring, informing and advocating business action.
- Facilitate peer-to-peer learning to capture, highlight and disseminate solutions.
- Connect companies and promote partnerships.
- Represent the voice of leading business in global platforms and inter-governmental processes.

The WBCSD Program on People focuses on providing solutions that support companies in ensuring that they remain in tune with the needs, rights, goals and aspirations of society against the backdrop of this rapidly evolving landscape.

The organisation is committed to respecting Human Rights through the enhanced engagement of stakeholders and providing opportunities and strategies for companies to distinguish themselves from competitors. The concentrated areas of WBCSD's 'People' program include **Social Impact, Sustainable Development Goals and Sustainable Lifestyles**. WBCSD have addressed these programs/goals through the recent publication; CEO Guide to Human Rights. The Guide brings to life the business drivers for action and the tangible steps CEOs can take to ensure their companies go beyond compliance and drive transformative change in people's lives.

A major focus area throughout the Program for People incorporates Social Impact, and how Social Impact catalyses business action. Social Impact supports companies in positioning social considerations at the core of their business, allowing for better management of risks, anticipation of consumer demands and strengthening supply chains. This business growth becomes attained through the peer-to-peer exchange, in conjunction with advocating for business action.

WBCSDs employment of the Sustainable Development Goals (SDGs) provides the private sector with a lens through which to translate global needs and ambitions into a business solution across the value chain. WBCSD provides a platform for its member companies to contribute to a wide variety of SDGs through its multiple work streams. The SDGs program area focuses more broadly on supporting companies as they look to integrate and communicate around the SDG agenda strategically. The program for people contributes to the SDGs throughout many facets of business:

- Assisting companies to integrate the SDGs in their business strategies;
- Promoting human rights in business operations and improving access to basic needs through inclusive business models;
- Developing strategies to address the Future of Work; and
- Exploring solutions to promote responsible behaviours and aspirations related to where we live, how we move around, and what we eat.

WBCSDs program on People/ Business and Human Rights establishes a global position on the roles of businesses and governments in helping to ensure the companies respect human rights. Business respect for human rights is one of the most significant opportunities business has to contribute to the Sustainable Development goals. The Goals will not be achieved without the foundation of robust human rights due diligence. WBCSD program on People/Business and Human Rights works to inspire and support business action in addressing human rights issues to mainstream corporate respect for human rights throughout the value chain.

One key resource is **WBCSD's Business and Human Rights Gateway: Connecting companies with the dynamic human rights landscape**. [Click here to access](#).