

**Submission
No 77**

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

Name: Mr Eric Hayward

Date Received: 4 October 2019

Submission from Eric Hayward and another

Dear NSW Standing Committee on Social Issues inquiry into and report on the Modern Slavery Act 2018 (NSW) (the NSW Act) that has been sent for review

Respectfully I wish to raise under your terms of reference the following issues:

Our submission is on (d) (g) and (h) of the Terms of Reference.

(d) the appropriateness and enforceability of Modern Slavery Risk Orders under section 29 of the NSW Act – our submission is these are appropriate due to the issues in the State itself. They also give the legislation teeth to do something where the Commonwealth MSA is weak.

(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. Our submission is one size doesn't fit all and the NSW Act is a leading light that Commonwealth MS Act would be better amending their Commonwealth work to an acceptable standard.

- Our concern is to draw attention to the NSW Standing Committee on Social Issues inquiry to Section 24 - 3-year review of the Commonwealth Modern Slavery Act permitting modern slavery to occur as there is no compliance or enforced compliance.

It is unclear why NSW wants to dilute laws that followed a parliamentary process involving the public and produced law the people wanted to now reduce it to the lowest standard possible with Section 24:

Section 24 (1) The Minister must cause a report to be prepared reviewing:

(a) the operation of this Act and any rules over the period of 3 years after this section commences; and

(aa) compliance with this Act and any rules over that period; and

(ab) whether additional measures to improve compliance with this Act and any rules are necessary or desirable, such as civil penalties for failure to comply with the requirements of this Act; and

(ac) whether a further review of this Act and any rules should be undertaken, and if so, when; and

(ad) whether it is necessary or desirable to do anything else to improve the operation of this Act and any rules; and

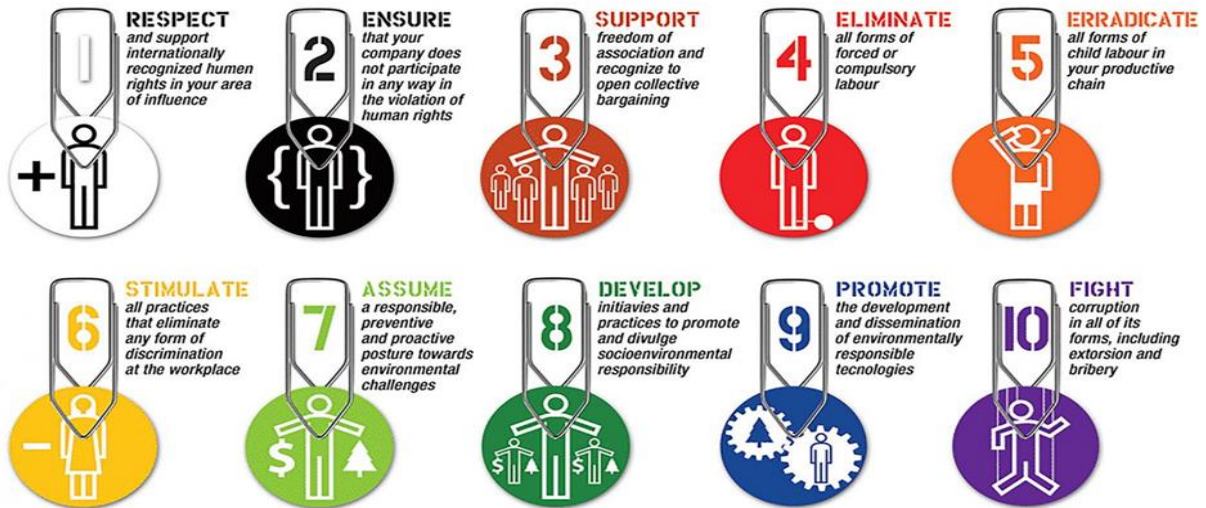
(b) whether this Act or any rules should be amended to implement review recommendations.

(h) the preferred course of action to address the matters identified – in our submission we respectfully submit the Commonwealth legislation does not fit the circumstances of incidents and concerns in NSW which is a major vector for slavery like offences compared with other States.

- The NSW legislation as drafted fits better with the 2011 UN Guiding Principles on Business and Human Rights
 1. Protect
 2. Respect
 3. Remedy

- The NSW legislation as drafted on Modern Slavery fits better with the UN Global Compact Principles:
 - Principle 3:** Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;
 - Principle 4:** the elimination of all forms of forced and compulsory labour;
 - Principle 5:** the effective abolition of child labour; and
 - Principle 6:** the elimination of discrimination in respect of employment and occupation.

GLOBAL COMPACT PRINCIPLES



- Our concern is about the lack of structure to the Commonwealth Act as summarised below in comparison to the NSW Act.

It is not clear why the NSW Standing Committee on Social Issues inquiry would want to dilute the excellent work on the NSW Act numerous people made submissions on before to get the standards for a democratic piece of law.

	NSW Modern Slavery Act	Commonwealth Modern Slavery Act
Who reports?	<ul style="list-style-type: none"> • Commercial organisations that supply goods or services for profit or gain, and have an annual turnover of \$50 million or more 	<ul style="list-style-type: none"> • Any entity – commercial organisation or charity – with an annual turnover of \$100 million or more

	<ul style="list-style-type: none"> • Based NSW • <u>Exemption:</u> Any organisation subject to equivalent legislation, as specified in the regulations 	<ul style="list-style-type: none"> • Carries out business in Australia
	NSW Modern Slavery Act	Commonwealth Modern Slavery Act
Are there penalties?	<ul style="list-style-type: none"> • <u>10,000 penalty units</u> for failure to report, providing false or misleading information, or failure to make the statement public 	<ul style="list-style-type: none"> • No penalties or enforcement mechanisms • Non-reporting entities will likely face reputational damage
Will reports be made public?	<ul style="list-style-type: none"> • Public register maintained by the Anti-Slavery Commissioner • Regulations to specify how the company should make the statement public (e.g. on their website) 	<ul style="list-style-type: none"> • Public register managed by the Minister
What about Government agencies?	<ul style="list-style-type: none"> • Comply with the directions of the procurement board on taking reasonable steps to ensure goods and services are not the product of modern slavery • Report on an annual basis about steps 	<ul style="list-style-type: none"> • Commonwealth Government agencies are subject to the same reporting criteria as non-government entities • The Minister will prepare a single statement

	taken to address modern slavery	
	NSW Modern Slavery Act	Commonwealth Modern Slavery Act
Other issues?	<ul style="list-style-type: none"> • Victims support • Anti-Slavery Commissioner • Education and advocacy • Criminal offences 	? Empty

When compared it is our view the NSW Modern Slavery Act does not need a Review.

– the Review in our view should be for the Commonwealth to strengthen its Commonwealth Modern Slavery Act to a higher standard including in relation to the missing:

- Victims support
- **Anti-Slavery Commissioner**
- Education and advocacy
- Criminal offences

Commonwealth Modern Slavery Act

- Any entity – commercial organisation or charity – with an annual turnover of \$100 million or more
- Carries out business in Australia
- Assessment of risks of modern slavery
- Due diligence processes in relation to modern slavery
- Remediation actions where slavery is identified
- An assessment of the effectiveness of these processes
- No penalties or enforcement mechanisms
- Non-reporting entities will likely face reputational damage
- Public register managed by the Minister
- Commonwealth Government agencies are subject to the same reporting criteria as non-government entities
- The Minister will prepare a single statement.

Challenges we would like to see addressed is **Procurement** at both the Commonwealth and NSW level: Increasing awareness of the new requirements even if some States need a different model from the Federal model given the Federal Model is allowing Commonwealth Funds to be used in procuring where modern slavery is permitted to be in the supply chain given it's a 3 year Review Cycle in place for compliance subject to the Minister using section 24 under the Commonwealth Modern Slavery Act.

	NSW Modern Slavery Act
Who reports?	Commercial organisations in NSW that supply goods or services for profit or gain, and have an annual turnover of \$50 million or more <ul style="list-style-type: none"> • <u>Exemption</u>: Any organisation subject to equivalent legislation, as specified in the regulations
What should the report contain?	<ul style="list-style-type: none"> • Assessment of risks of modern slavery • Due diligence processes in relation to modern slavery • Training made available to employees • Mandatory content will be specified in the regulations
Are there penalties?	<ul style="list-style-type: none"> • 10,000 penalty units for failure to report, providing false or misleading information, or failure to make the statement public
Will reports be made public?	<ul style="list-style-type: none"> • Public register maintained by the Anti-Slavery Commissioner • Regulations to specify how the company should make the statement public (e.g. on their website)
What about Govt. agencies?	<ul style="list-style-type: none"> • Comply with the directions of the procurement board on taking reasonable steps to ensure goods and services are not the product of modern slavery • Report on an annual basis about steps taken to address modern slavery
Other	<ul style="list-style-type: none"> • Victims support /Anti-Slavery Commissioner/Education/ Criminal offences

In **Business Supply Chains** establish a Gold Standard that can be applied to all businesses including but not limited to:

- Balancing the need for effectiveness with concerns of regulatory burden
- Creating a list of reporting entities
- Monitoring , compliance controls and where necessary enforcement

In New South Wales a number of Slavery type offences have occurred proving one size doesn't fit all in the Commonwealth Modern Slavery Legislation with a low standard and a 3-year trial being put in place to test it before anything is done in the compliance space.

With my law degree I find it ridiculous that law would be left so up in the air with plenty of opportunities for modern slavery to occur in supply chains as the Commonwealth Standard and only then after 3 years would offences be introduced?

The cart is not even connected to the horse with this thinking in the Commonwealth statute is my humble view and NSW got it right to have a compliance standard.

Policy wise - It appears Business interests are dictating the legal standard in the Commonwealth statute rather than the purpose of the law which is to stop modern slavery occurring including in supply chains.

- I don't understand why a Review is being held to lower the threshold of legislation that came from a democratic process involving the public in NSW.
- No one in the public asked for this legislative REVIEW to my knowledge or research