

**Submission
No 81**

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

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Submission to the Standing Committee on Social Issues and its “Inquiry into the *Modern Slavery Act 2018* and associated matters” by Amanda MacKinnell.

I write this submission as an independent citizen, not representing any organisation. My interest in this issue stems from a normal human response to situations of injustice suffered by fellow human beings. Knowing that as one individual alone I can do little to effect change I seek to support lawmaking that can provide justice and remedy to victims of human trafficking and modern slavery.

In his Second Reading Speech to the Legislative Council on 8 March 2018 regarding the Act, the Hon. Paul Green MLC spoke of his passion for ridding Australia and the world of modern slavery, and his pride in being able, as a legislator, to do something about it in the jurisdiction of New South Wales. While he is no longer in the NSW Parliament it would be a fitting testament to his work in introducing the original Bill that the amendment Bill and Regulation be passed so that this legislation can come into effect, and the good that is intended to flow from it can begin.

As the New South Wales *Modern Slavery Act 2018* (the Act) has not yet received Royal Assent nor come into effect, it is not possible to examine outcomes in relation to activities it is intended to monitor or report on. However, I wish to support the promulgation of the NSW Act, subject to improvement and clarification by the *Modern Slavery Amendment Bill 2019* and the *Modern Slavery Regulation 2019*.

My submission relates to the inquiry’s Terms of Reference (b), (c), (g) and (i) and my thoughts are elaborated below.

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

Sub-sections 2 to 6 of Section 24 of the Act prescribe the preparation of a “modern slavery statement” by entities affected by the Act, and that the reports must be made public, in accordance with regulations. The *Modern Slavery Regulation 2019*, Clauses 4 to 8, will flesh out the skeleton that is the original Bill, and provide clarity and direction to affected entities. Importantly, entities’ reports must be lodged with the Anti-Slavery Commissioner and will be published on a statement register in electronic form. This focussed manner of reporting and publication will allow for additional scrutiny of entities’ behaviour by the public who can bring pressure to bear on entities’ if they don’t pass the ‘pub test’.

1(c) the intended application of the anti-slavery scheme with respect to charities and not-for-profit organisations, State Owned Corporations and local councils

Section 24 of the Act requires that commercial and other organisations report on efforts to identify and remove modern slavery risk from their supply chains. The original wording can be interpreted to exclude charities, not-for-profit organisations and State Owned Corporations which is a significant omission of entities, especially those from whom best

practice could be expected. The Amendment Bill will widen the categories of organisations to include those mentioned above.

While there are exemptions from the requirement to prepare statements for particular types of entities, as provided for in Clause 10 of the Regulation, it is fitting that the legislation broadly includes them to begin with, especially charities and not-for-profit organisations. Given the turnover threshold that must be reached for entities to be captured by the legislation, any large charities and NFPs should be able to abide by the reporting requirements, as well as demonstrating exemplary behaviour in their supply chains.

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 Act is a vital piece of legislation that should be retained and valued for its content and intent. The Modern Slavery Act 2018 (Commonwealth) (Cth Act) was given Royal Assent in December 2018 and has a specific focus on the risk of modern slavery in the operations and supply chains in entities with annual consolidated revenue of more than \$100 million, and the reporting by those entities of their efforts to recognise and rectify the risks of modern slavery.¹ (The Cth Act is already having an impact on the supply chains of three large supermarket businesses who have issued a “please explain” to the makers of Nutella regarding the source of hazelnuts and allegations of child labour in Turkey.)² The NSW Act has a wider remit, encompassing a range of person-centred actions such as assistance and support for victims of modern slavery, and the ongoing detection, exposure and combatting of modern slavery. Like its Commonwealth counterpart, the NSW Act also provides for mandatory reporting of risks of modern slavery in entities, but goes one step further with significant financial penalties for failure to comply with the reporting requirement.

The Cth Act and the NSW Act complement one another in respect of entity reporting – the annual consolidated revenue range in the NSW Act is \$50 million to \$100 million, with the Cth Act applying at thresholds above \$100 million. The wider scope of the NSW Act covers essential areas that are not covered by the Cth Act, and it is vital that these be covered by legislation in this jurisdiction.

1(i) any other related matter

Anti-Slavery Commissioner

The creation of the position of Anti-Slavery Commissioner is to be commended. Having a dedicated commissioner releases the officeholder to concentrate their energies on the tasks

¹ Parliament of Australia, “Modern Slavery Act 2018”, No.153, <https://www.legislation.gov.au/Details/C2018A00153>

² Dominic Powell, “Nutella pressed on child labour claims”, *The Sydney Morning Herald*, 25 September 2019, P.15

at hand, and not be distracted by other obligations which may have occurred if this role has been added to an existing commissioner's duties. As it is, the responsible minister for anti-slavery is the Special Minister of State, Minister for the Public Service and Employee Relations, Aboriginal Affairs, and the Arts. Without a commissioner the Act could vanish in the midst of so many other duties and roles.

The Cth Act does not provide for an independent commissioner, with responsibility for implementation of the Act residing in the Department of Home Affairs (DoHA). DoHA is a behemoth of a government department, and the Modern Slavery Act could easily be rendered invisible within the department's multitude of responsibilities and headline-grabbing diversions regarding asylum seekers.

The NSW Anti-Slavery commissioner is a person, and a person can bring much needed humanity and a human touch to the issues the NSW Act seeks to make known and combat. Modern slavery is an affront to personhood, so the commissioner has a role to be the personal face of justice and the validation of the personhood of victims. Unlike the more narrow Commonwealth legislation, the NSW Act looks beyond supply chains to the individual persons who have been used and harmed, and the commissioner undertakes to speak and act on their behalf.

Labour Hire entities

Some of the more egregious examples of modern slavery are to be found in the rural sector of Australia, including cases of misuse of temporary migration visas for overseas workers and the subsequent exploitation of workers who do not understand their rights. In 2017 a federal government inquiry into creation of a modern slavery act heard from witnesses in Mildura about overwork, underpayment and coercive practices visited on rural workers who came to Australia from overseas under legitimate working visa schemes but were used and abused by the labour hire firms that acted as intermediaries between workers and farms.³

Following in the footsteps of Queensland and South Australia, Victoria has taken steps to counteract worker exploitation in this sphere by enacting legislation regarding the licensing of labour hire firms to take effect from 30 October 2019. It is hoped that this regulatory impact will reduce the incidence of exploitation of migrant and other workers. I suggest that such legislation could be useful in NSW, and that the Committee take an interest in the findings of reviews the legislative impact on modern slavery in Victoria.

³ Parliament of Australia, "Hidden in Plain Sight", Joint Standing Committee on Foreign Affairs, Defence and Trade, December 2017, P.272-276