

**Submission  
No 5**

## **INQUIRY INTO REVIEW OF THE MODERN SLAVERY ACT 2018**

**Organisation:** National Retail Association

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# Modern Slavery Act 2018 (NSW) Review

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NEW SOUTH WALES LEGISLATIVE COUNCIL  
MODERN SLAVERY COMMITTEE

OCTOBER 2023

## About the National Retail Association



**The National Retail Association is a not-for-profit organisation that represents the interests of retailers across Australia.**



We exist to support, inform, protect and represent the interests of retailers and quick service restaurant businesses. We understand the issues and opportunities facing retailers every day.



Our members can expect to receive the latest industry information, the fastest news updates and the best range of industry insights to help their business grow and succeed



The retail industry plays a huge role in Australia's economy, employment and greater livelihood and we are dedicated to helping unite retailers and stakeholders for the success of the industry now, and for the future.

# Response to Questions

## Question 1: Are the policy objectives of the Act still valid?

The incidence of modern slavery remains high, including in Australia, indicating the importance of maintaining a strong focus on the issue. The 2023 Walk Free Global Slavery Index estimates that 50 million people were living in modern slavery conditions in 2021, an increase of 10 million people since 2016. In the financial year 2021- 2022, Australian authorities received 294 modern slavery reports, which represents the highest number of annual reports received to date. National Retail considers the policy objectives of the Act remain valid, based on evidence of the increased risk of modern slavery exploitation due to global economic disruptions in recent years.

The NSW Modern Slavery Act 2018 (the NSW Act) is designed to combat modern slavery occurring in NSW or in the supply chains of large NSW entities, whether government or commercial. It aims to do this through mandating transparency for in-scope organisations to undertake due diligence on their modern slavery risks in business operations and supply chains and report their findings. The number of modern slavery cases that have been identified and remediated, as identified in reporting, indicates that the Act is having a positive influence on the incidence of modern slavery.

National Retail understands the complexities for industry to identify modern slavery, implement remediation strategies, ensure supply chain transparency, and respond to regulatory and self-regulatory standards in line with community and government expectations. In 2021, we established an Environmental Social Governance Committee, a non-competitive and collaborative forum across the retail industry, including representatives across FMCG, QSR, apparel, electronics, and other durable goods. We believe that these collaborative groups are important in helping to achieve pervasive and long-lasting change.

The retail industry values opportunities for business to collaborate on reporting, grievance mechanisms, audits, and remediation, to avoid working in parallel, share administrative costs and expertise, and to maximise human rights outcomes. National Retail appreciate that the NSW and Commonwealth Modern Slavery Acts set out the same mandatory criteria for the content of statements and allow for joint statements from organisations within a corporate group, or which have some form of relationship with one another.

A key question regarding the NSW Act is whether this issue is better addressed at a national level, as was advised by the 2019 NSW Legislative Council inquiry into the NSW Act, which reported that it would be preferable to have comprehensive Commonwealth modern slavery legislation that addresses modern slavery across all Australian states and territories within a single uniform framework because modern slavery operates across state and international borders.

National Retail considers this to be a topic appropriately addressed at all levels and jurisdictions of government. We note that since the establishment of the NSW and Commonwealth Modern Slavery legislation, similar requirements have been introduced in other jurisdictions such as the United Kingdom and United States, making global efforts more effective.

National Retail considers a local (NSW) response to global slavery issues to be appropriate if it aligns with Australian and international requirements and does not impose additional or duplicated reporting burdens which could create a competitive disadvantage for the NSW retail industry.

**Question 2: Do the terms of the Act remain appropriate for securing its objective?**

While everyone has a responsibility to address human rights abuses such as modern slavery, governments play a pivotal role by enacting and enforcing legislation that provides safety for their population and accountability for the perpetrators of these crimes.

Improving transparency is an effective policy response because modern slavery can only thrive in secrecy.

National Retail supports the focus of online modern slavery statements to:

- identify and promote best practice
- shape behaviour to set aims and expectations for continuous improvement,
- allow collaboration and alignment with Indigenous status (INGPs) that promote genuine engagement with suppliers to solve problems.

The NSW *Modern Slavery Act 2018* is designed to combat exploitative practices through improved transparency in business operations and supply chains, by requiring in-scope organisations to undertake due diligence on their modern slavery risks and to report their findings publicly.

The 2023 Walk Free Global Slavery Index rates Australia as having the second strongest government response to modern slavery globally, due to the criminal justice mechanisms and targeted efforts to address risks through the national action plan and reporting required under the *Modern Slavery Act(s) 2018* (Cth, NSW).

The 2023 Global Slavery Index identifies opportunities to strengthen Australia's response as:

- improving measures to identify and support survivors,
- closing legal loopholes that allow marriage under the age of 18, and
- establishing an independent anti-slavery Commissioner <sup>1</sup>.

These measures are reflected in NSW Act, which establishes:

- supply chain transparency for business and Government,
- an Anti-Slavery Commissioner,
- new modern slavery offences,
- support for victims, and
- parliamentary committee oversight.

We note the importance of balancing the transparency framework with improved public education and understanding. Media interest around identified modern slavery in the supply chain (including second, third or fourth tier suppliers) has caused confusion and generated negative reporting, which can have reputational risks, commercial impacts on brand equity, influence share prices and/or compromise commercial in confidence supplier information.

National Retail considers it important, in cases where incidences of modern slavery are identified and acted upon by businesses (in compliance with legislation), that media reporting should be balanced and reflect positively on the business for its willingness to address difficult issues openly, while not downplaying the disadvantage and distress the highlighted practice may have caused the individuals personally involved.

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<sup>1</sup> Source: Walk Free GSI Country Studies - <https://www.walkfree.org/global-slavery-index/country-studies/australia/>

## Other related matters

### Positive progress

There is a strong understanding across the retail industry of the importance of continuous improvement across all modern slavery indicators and concerted efforts towards greater supply chain transparency, and a knowledge that this is in their own long-term commercial interest.

Not only is modern slavery the antithesis of social justice and sustainable development, it is also anti-competitive behaviour and carries significant reputational risk for perpetrators and bystanders. Further, human rights are increasingly coupled to trade agreements and there is increasing pressure from Governments for business to observe Human Rights and avoid trading partners that abuse human rights.

Since the introduction of the Act, there has been enormous business investment into reviewing operations, codes of conduct and supply chain operations to uphold their obligations. Australian entities, including retailers, have introduced new accountability, auditing and remediation measures throughout their operations and supply chains to identify and mitigate the risks of modern slavery. National Retail notes that retailers, and other entities, have made a strong commitment to compliance and continuous improvement and have achieved considerable progress towards addressing modern slavery.

National Retail appreciates certainty from regulators around expectations and encourage regulators to support best practice standards by promoting the good work evident in the Australian retail industry.

### Fairness and Impact

National Retail recommend that NSW seeks to maintain reporting parity with other jurisdictions.

Imposing additional requirements on NSW commercial entities would add administrative burden and costs, potentially leading to competitive disadvantage when compared with their counterparts from other jurisdictions.

The work that is involved in complying with reporting obligations is significant, complex and can require employing additional resources or engaging external consultant support. Retailers can deal with hundreds of suppliers, with thousands of second-tier suppliers. Retailers report that the information required to establish due diligence activities and report preparation (particularly in the first year) has been extensive and costly, with entities investing between \$50,000 and \$100,000 annually.

Presently, the NSW Act captures an additional group of businesses, those with employees in NSW whose annual turnover of between \$50 million and \$100 million, whilst the Commonwealth Act includes reporting entities with an annual consolidated revenue above \$100 million. National Retail support the mechanism of a revenue test to determine participation in reporting obligations and supported lowering the Commonwealth threshold to \$50 million during the recent Act review. However, we note that this inequity currently exists. National Retail supports efforts to harmonise reporting requirements with other Australian and international jurisdictions to achieve parity for businesses operating within and across borders.

Considering that the reporting can add a significant cost burden to business, we would support the government considering offsets and incentives for the cost of engaging platforms (e.g. SEDEX, Amfori) so that they are cost neutral for reporting entities and suppliers to use.

Small businesses are not required to report under the modern slavery legislation. However, they are affected indirectly by the legislative requirements. As suppliers to larger entities, small businesses may need to provide information to help larger organisations in their supply chains to meet their reporting obligations. If unable to provide this information, it may become harder to do business with these customers.

### **Education and guidance**

The NSW Anti-Slavery Commissioner has an identified role to provide guidance material to businesses, and raise awareness on identifying, managing, and remediating modern slavery risks. The Commonwealth Act also establishes a Business Engagement Unit within the Department of Home Affairs to advise and assist businesses.

Retailers have highlighted a need for industry-specific guidance, such as overcoming difficulties to obtain supply chain information and disclosures.

National Retail encourages the continuation of the NSW Anti-Slavery Commissioner role to provide education and guidance to business, including assisting smaller businesses that are captured indirectly by the reporting scheme or are willing to engage in voluntary reporting.

## **National Retail Position**

### **Summary**

National Retail acknowledges the continued relevance of the NSW Act to identify and eradicate the exploitative practices related to modern slavery. We appreciate the problem persists because modern slavery practices are deliberately hidden, making transparency a valid method to combat these practices.

We also note that Modern Slavery occurs, and is best addressed, across state and national borders, and encourage the NSW Government to continue to align their requirements with national and international efforts for best results and to provide consistency and certainty for business.

National Retail supports a standard national approach to modern slavery; and ask that the NSW Act align, and not duplicate, Commonwealth Modern Slavery business reporting requirements.

We agree that businesses have a unique role in combatting modern slavery, by conducting due diligence and being vigilant in their operations and supply chains to drive ethical sourcing. Many are taking meaningful steps to protect themselves from association with unethical practices along their supply chains and we encourage the NSW Modern Slavery Commissioner to recognise the significant progress being made by business and to promote this for best practice benchmarking.

National Retail also recognises the ongoing challenges for retailers to attain supply chain transparency and remediate the identified risks of modern slavery. We encourage the NSW Modern Slavery Commissioners to support retailer collaboration to overcome these challenges.

Noting the challenges and impact of the reporting requirements, National Retail encourages the NSW Government to continue to provide businesses with clear and practical guidance on the requirements in the Act and the regulations, and advice on how businesses should respond to modern slavery risks, and that the NSW Government examine the regulatory impact and

compliance costs of the reporting scheme on smaller businesses and charities and not-for-profits.

National Retail supports the periodic review of the Act to weigh its outcomes against its obligations on entities and ensure it remains both reasonable and effective.