

**Submission
No 7**

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

Name: Dr Martijn Boersma

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Re: Review of the Modern Slavery Act 2018 (NSW)

Submission by Dr Martijn Boersma.

Author

Dr Martijn Boersma is an academic who researches the intersection of business and society. He is currently an Associate Professor at the University of Notre Dame Australia, where he is the Director of the Modern Slavery and Human Trafficking postgraduate programs. The Australian Research Council recently awarded him a Discovery Early Career Research Award (2024-2026) to examine the modern slavery – climate change nexus. Among other projects he has focused on multistakeholder efforts to improve working conditions in the Australian commercial real estate cleaning supply chain, and strategies to improve labor conditions within the Australian cotton value chain. From 2022 to 2023 he was involved in a cross-institutional research project funded by funded by the Commonwealth Government’s “National Action Plan to Combat Modern Slavery 2020-25 Grant Program”. The project was titled “Improving the Regulation of Modern Slavery and Access to Remedy. Learning from Experience”. Dr Boersma would happily give evidence at a hearing.

Introduction

Given the size of public spending, governments are at substantial risk of being linked to labour exploitation and human rights violations, either through direct procurement or by being linked to a network of suppliers. Fortunately, in many instances that magnitude of spending also gives governments the purchasing power necessary to improve working conditions and adherence to human rights.¹ According to the UN Guiding Principles on Business and Human Rights, it is a key responsibility of governments to uphold human rights in the procurement of goods and services.² This responsibility is echoed in the Sustainable Development Goals, which advocate for sustainable public procurement practices.³

As the strain on public budgets often intensifies, emphasis is frequently placed on cost reduction, potentially at the expense of ethical aspects of procurement.⁴ It is therefore laudable that the NSW government emphasises transparency and accountability in its public spending through the introduction of the *Modern Slavery Act 2018* (NSW) (Act). This is crucial to build public trust and to ensure that resources are utilised effectively, efficiently, and ethically. Yet, considering the dynamic nature of public spending, it is crucial for the NSW government to continue to adapt to changing circumstances, to keep on ensuring both fiscal and ethical responsibility in public procurement.

¹ Martijn Boersma, *Do No Harm? Procurement of Medical Goods by Australian Companies and Government* (Australian Nursing and Midwifery Federation & The Australia Institute, 2017)
<http://www.anmf.org.au/documents/Do_No_Harm_Report.pdf>.

² United Nations Human Rights Office of the High Commissioner, *Guiding Principles on Business and Human Rights - Implementing the United Nations "Protect, Respect and Remedy" Framework* (United Nations, 2011)
<http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf>.

³ United Nations, 'Sustainable Development Goals' (2016)
<<https://sustainabledevelopment.un.org/topics/sustainabledevelopmentgoals>>.

⁴ Boersma (n 1).

This submission contends that the policy objectives of the Act remain valid and that the terms of the Act remain appropriate for securing these objectives. The recommendations put forward concentrate on the continued implementation of the Act, and what kinds of meaningful assistance and guidance can be provided to NSW public procurers in efforts to address modern slavery risks.

1. Enhancing Transparency and Due Diligence

The quality of modern slavery reporting and proactive risk assessment has often been disappointing, failing to adequately disclose and address the systemic and pervasive issues of modern slavery within business supply chains. Efforts often lack depth, transparency, and tangible data, rendering them ineffective in providing a comprehensive account of actions taken to mitigate modern slavery risks. There is a tendency to treat compliance as a box-ticking exercise, rather than an opportunity to take meaningful action and report on a transformation of practices.⁵ Enhancing the quality of reporting and the risks assessments by NSW Government bodies, councils and state-owned corporations, would benefit from more clearly articulated requirements regarding public procurement, which would enable better comparisons between entities, and longitudinal evaluation.

Recommendation:

Publish criteria, guidelines and templates for NSW Government bodies, councils, and state-owned corporations, and create or recommend authoritative frameworks or tools that allow for the systematic measurement, assessment, and disclosure of modern slavery risks in relation to public procurement.

⁵ A Sinclair et al, *Paper Promises? Evaluating the Early Impact of Australia's Modern Slavery Act* (Human Rights Law Centre, 2022) <https://static1.squarespace.com/static/580025f66b8f5b2dabbe4291/t/6200d3d9db51c63088d0e8e1/1644221419125/Paper+Promises_Australia+Modern+_Slavery+Act_7_FEB.pdf>; Freya Dinshaw et al, *Broken Promises: Two Years of Corporate Reporting under Australia's Modern Slavery Act* (Human Rights Law Centre, UNSW Sydney, Business & Human Rights Resource Centre, RMIT, University of Western Australia, University of Notre Dame Australia, University of Melbourne, Baptist World Aid Australia, 16 November 2022) <<https://www.hrlc.org.au/reports-news-commentary/broken-promises>>.

2. Enabling Cascading Obligations

With government bodies, local councils, and state-owned corporations required to ensure that goods and services procured are not the product of modern slavery, there will be increased demands placed on businesses who supply goods and services to them. This illustrates the domino effect of accountability, where obligations do not solely sit at the apex of the supply chain, but are shared across the entire supply chain: everyone in the supply chain must ensure that their partners and suppliers are also adhering to ethical labour practices, fostering a culture of transparency and accountability.⁶ This process can be enhanced by embedding strict anti-slavery protocols at every supply chain level, so that everyone can work collectively to mitigate risks and enforce standards. In this ecosystem, the failure or success in addressing modern slavery is dependent on the cascade of obligations through the supply chain.

Recommendation:

Articulate clear and consistent tender requirements to suppliers; and develop standardised modern slavery clauses for supplier contracts. Through the establishment of a *Procurement Connected Policy*, modern slavery risk mitigation may also become a more heavily weighted criterion in awarding government contracts, while a poor track record of a supplier may preclude them from becoming or remaining a government supplier.

⁶ M Rawling et al, 'Multi-Stakeholder Frameworks for Rectification of Non-Compliance in Cleaning Supply Chains: The Case of the Cleaning Accountability Framework' (2021) 49(3) *Federal Law Review* 438.

3. Recognition of the Continuum of Exploitation

The continuum of exploitation refers to the spectrum of abusive and exploitative practices that individuals may endure, ranging from poor working conditions to the extreme of modern slavery.⁷ Workers may face unfavourable working conditions, such as low wages, long working hours, or inadequate health and safety measures. Though problematic, these situations may not constitute as modern slavery per se. As we move along the continuum, the severity of exploitation intensifies. Workers may be subjected to more dire conditions including forced labor, where individuals are made to work under the threat of punishment or violence. Crucially, the continuum of exploitation recognises that workers are not once and for all subjected to certain working conditions, but that these may deteriorate over time due to a variety of factors. It also acknowledges that the existence of several 'lesser' labour right violations can be a fertile breeding ground for more serious human rights abuses.⁸

Recommendation:

In performing due diligence, NSW government bodies, councils and state-owned corporations should be encouraged to consider the range of exploitative practices that individuals may endure, ranging from poor working conditions to forced labour. This avoids a zero-sum approach where modern slavery risks are deemed to be low to non-existent, and recognises that the presence of 'minor' labour rights issues can serve as a catalyst for more severe abuses.

⁷ Hannah Lewis et al, *Precarious Lives* (Bristol University Press, 2014).

⁸ Martijn Boersma and Justine Nolan, 'Modern Slavery and the Employment Relationship: Exploring the Continuum of Exploitation' (2022) 64(2) *Journal of Industrial Relations* 165 ('Modern Slavery and the Employment Relationship').

4. Meaningful Stakeholder Engagement

Continued involvement of key stakeholders is imperative to the effective functioning of the Act.⁹ Engagement with suppliers can contribute insights into the complexities of specific supply chains, and offer pathways to integrate measures while considering on-the-ground realities.¹⁰ The inclusion of survivors and their advocates ensures that measures are informed by lived experiences and insights. Civil society can amplify these diverse perspectives, advocating for macro-level policy changes and driving the broader agenda, looking at developments as they occur in other jurisdictions.¹¹ Meaningful stakeholder engagement adds legitimacy to efforts to implement the Act and ensures that actions are pragmatic, implementable, and adaptive to the evolving landscape.

Recommendation:

Where possible engage stakeholders in the development of criteria, guidelines, and requirements, through consultation (formal or informal - roundtable discussions, interviews, surveys, or focused group discussions, etc) training (to serve as platforms for experiential learning and sharing), or public forums (workshops, webinars, conferences, or online platforms where discussions are held openly, and contributions are sought from a broader audience).

⁹ Shelley Marshall et al, *Australia's Modern Slavery Act: Is It Fit for Purpose?* (RMIT University, University of Melbourne, Willamette University, University of Western Australia, University of Notre Dame Australia, Human Rights Law Centre, UNSW, Business & Human Rights Resource Centre, 2023) <https://media.business-humanrights.org/media/documents/Australias_Modern_Slavery_Act.pdf>.

¹⁰ J Nolan et al, *Strengthening Modern Slavery Responses: Good Practice Toolkit* (UNSW, RMIT University, University of Melbourne, University of Notre Dame Australia, Human Rights Law Centre, Baptist World Aid, University of Western Australia, Business & Human Rights Resource Centre, 2023) <https://media.business-humanrights.org/media/documents/Good_practice_toolkit_ESRXlwc.pdf> ('*Strengthening Modern Slavery Responses*').

¹¹ Martijn Boersma, 'Changing Approaches to Child Labour in Global Supply Chains: Exploring the Influence of Multi-Stakeholder Partnerships and the United Nations Guiding Principles on Business and Human Rights' (2017) 40(3) *University of New South Wales Law Journal*, The 1249 ('Changing Approaches to Child Labour in Global Supply Chains').