

Submission to the NSW Department of Premier and Cabinet

Draft Modern Slavery Regulation 2019

13 September 2019

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Anti-Slavery Australia is a specialist legal research and policy centre at the University of Technology Sydney working to end human trafficking, slavery and slavery-like practices such as forced labour and forced marriage in Australia. Anti-Slavery Australia provides legal advice and representation to men, women and children who have experienced human trafficking, slavery and slavery-like conditions in Australia.

Acknowledgments

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Executive Summary

Anti-Slavery Australia welcomes the opportunity by the NSW Department of Premier and Cabinet (Department) to provide comments on the draft Modern Slavery Regulation 2019 (draft Regulation) to the *Modern Slavery Act 2018* (NSW) (Act).

This submission draws upon Anti-Slavery Australia's research and advocacy as well as our extensive experience in working with and providing legal advice and assistance to survivors of modern slavery in Australia since 2003.

1. Preparing modern slavery statements

Anti-Slavery Australia suggests that the Anti-Slavery Commissioner support organisations to comply with their reporting requirements by developing guidance consistent with the UN Guiding Principles on Business and Human Rights. This would also be consistent with the Australian Government's Draft Guidance for Reporting Entities.

Anti-Slavery Australia recommends that any guidance to organisations contain international and domestic examples of modern slavery as well as information on how organisations should respond to a case of modern slavery, particularly in Australia. Anti-Slavery Australia submits that guidance on responding to a case of modern slavery in Australia include not only law enforcement and government agencies but also non-government organisations such as Anti-Slavery Australia. People suspected of being in modern slavery should have the opportunity to seek independent and confidential legal and/or migration assistance.

Anti-Slavery Australia supports the ability of the NSW scheme to permit voluntary reporting from organisations that choose to comply with the reporting requirements. Organisations who want to demonstrate leadership and voluntarily report on their actions in assessing and addressing their modern slavery risks should not be prevented from doing so.

2. Publishing statements on a public register

Anti-Slavery Australia welcomes and supports the establishment of a public register of modern slavery statements.

Anti-Slavery Australia recommends that all modern slavery statements submitted by organisations should be made available on the public register (not just the statements of organisations that have identified modern slavery).

There should not be a time limit on how long modern slavery statements are kept on the register. Having modern slavery statements from multiple years provides the public and investors with the opportunity to see what and how organisations are doing and for the ability to see change and improvements over time.

3. Exemptions for certain businesses

Anti-Slavery Australia does not support the exemption in the draft Regulation for charities, not-for-profits and small organisations (that otherwise meet the financial threshold of \$50 million).

Exemption for charities and not-for-profits

Anti-Slavery Australia does not support the exemption for charities and not-for-profit organisations, proposed by the draft Regulation.¹ Anti-Slavery Australia submits that if a charity or not-for-profit organisation otherwise meets the definition of ‘commercial organisation’ under the Act (i.e. they supply goods and services for profit or gain, and have a total turnover of \$50 million or more)² they have the capacity and resources to prepare a modern slavery statement.

Exemption for small organisations

The draft Regulation defines ‘small organisations’ as those with ‘less than 20 employees’ during the financial year of the organisation and exempts these organisations from preparing a modern slavery statement, even if the organisation has a total turnover of \$50 million.³ Anti-Slavery Australia does not support this exemption in the draft Regulation for ‘small organisations’.

The exemption is impractical – how and at what point in time during the organisation’s financial year does the organisation assess how many employees it has and how can this be monitored or verified by the Anti-Slavery Commissioner.

Anti-Slavery Australia submits that organisations that have turnover of \$50 million or more, despite the number of employees, are not small organisations. The *Corporations Act 2001* (Cth) defines a ‘large proprietary company’ as one with consolidated revenue of \$25 million or more.⁴ In *Hidden in Plain Sight: An inquiry into establishing a Modern Slavery Act in Australia*, the Joint Standing Committee on Foreign Affairs, Defence and Trade recommended that supply chain reporting be mandated for organisations with a revenue threshold of \$50 million or more as this would ‘capture most large entities operating in Australia’.⁵ Anti-Slavery Australia also notes that the *Modern Slavery Act 2015* (UK) requires organisations with a total turnover of £36 million or more (approximately AU \$64.7 million) to prepare a modern slavery statement; with no exemption based on the number of employees.⁶

¹ Draft Modern Slavery Regulation 2019 r 10(4).

² *Modern Slavery Act NSW* (2018) s 24(1).

³ Draft Modern Slavery Regulation 2019 r 10(5).

⁴ *Corporations Act 2001* (Cth) s 45A(3).

⁵ Joint Standing Committee on Foreign Affairs, Defence and Trade, Parliament of Australia, *Hidden in Plain Sight: An inquiry into establishing a Modern Slavery Act in Australia (Hidden in Plain Sight)* (2017), 103.

⁶ *Modern Slavery Act 2015* (UK) c 30, s 54(2); *Modern Slavery Act 2015 (Transparency in Supply Chains) Regulations 2015* (UK) SI 2015/1833 reg 2.

4. Other

Anti-Slavery Australia suggests that the Department and Anti-Slavery Commissioner give consideration to the recommendations by the Legislative Council Select Committee on Human Trafficking in New South Wales (Select Committee) in *Human trafficking in New South Wales*.⁷ Many of the recommendations by the Select Committee could assist in implementing a workable system of supply chain reporting under the Act, particularly in regards to identifying and responding to modern slavery in New South Wales. Anti-Slavery Australia particularly notes the following recommendations:

- Recommendation 4: the NSW Government develop and implement a state strategy to address human trafficking in accordance with the National Action Plan to Combat Human Trafficking 2015-19
- Recommendation 7: the NSW Government allocate greater resources to the NSW Police Force to address human trafficking
- Recommendation 9: the NSW Government introduce guidelines and conduct awareness programs to assist small and medium-sized enterprises to identify modern slavery within their supply chain and to assist them in remediating and monitoring identified risks
- Recommendation 14: the NSW Government commit to providing mandatory training on human trafficking, slavery and forced marriage to all front-line government employees in NSW.⁸

⁷ Legislative Council Select Committee on Human Trafficking in New South Wales, Parliament of New South Wales, *Human Trafficking in New South Wales* (October 2017).

⁸ Ibid 26, 31.