

4 October 2019

Legislative Council Standing Committee on Social Issues
Parliament House, Macquarie Street
Sydney NSW 2000

Via email: socialissues@parliament.nsw.gov.au

Dear Legislative Council Standing Committee on Social Issues

Inquiry into the Modern Slavery Act 2018 and Associated Matters

Thank you for the opportunity to provide feedback on the inquiry into the New South Wales (NSW) Modern Slavery Act 2018 (the **NSW Modern Slavery Act**) and associated matters.

The Australian Institute of Company Directors (**AICD**) has a membership of more than 44,000 including directors and senior leaders from business, government and the not-for-profit sectors. The mission of the AICD is to be the independent and trusted voice of governance, building the capability of a community of leaders for the benefit of society.

The AICD supports transparency in business operations and supply chains and calls on organisations to undertake due diligence on their modern slavery risks and address any issues identified.

While the AICD supports the introduction of legislation as a means of combatting modern slavery in Australia or by Australian businesses, we do not support duplicative requirements at the State and Commonwealth levels. The national level is the appropriate jurisdiction in which to undertake action against modern slavery, through the recently introduced Commonwealth *Modern Slavery Act 2018 (Cth)* (**Commonwealth Modern Slavery Act**) and for this reason the AICD is of view that the NSW Modern Slavery Act is unnecessary.

In this submission, the AICD has limited its comments to addressing the following questions in the terms of reference:

- the operability of the proposed anti-slavery scheme (1a of the terms of reference);
- the effect of the anti-slavery scheme on business, including the supply chain reporting obligations under section 24 of the NSW Act (1(b) of the terms of reference);
- the intended application of the anti-slavery scheme with respect to charities and not-for-profit organisations (1(c) of the terms of reference);
- whether the passage of the Commonwealth Modern Slavery Act renders parts or all of the NSW Modern Slavery Act unnecessary, or requiring of amendment to address inconsistencies or gaps (1(g) of the terms of reference).

In parallel with this inquiry, the NSW Government has consulted on the draft Modern Slavery Regulation 2019 (the **NSW Regulation**). The AICD has separately commented on the NSW Regulation and our submission can be found [here](#).

1. Nationally consistent framework preferred (1a, 1b and 1g)

The draft NSW Modern Slavery Bill (the **Amendment Bill**) and the NSW Regulation go a long way to complementing the reporting requirements under the Commonwealth Modern Slavery Act and establishing mutual recognition between the New South Wales and Commonwealth regimes. The AICD acknowledges that these amendments have improved the operability of the NSW scheme. However, there remain inconsistencies between the two regimes and the AICD remains of the view that a nationally consistent framework is preferable to differentiated Commonwealth and State legislation.

Our key concerns relate to the penalties proposed under the NSW Modern Slavery Act and the lower monetary threshold that will, in the AICD's view, impact the operability of the scheme and have a negative impact on organisations.

Punitive approach inappropriate

The AICD does not support penalties (including financial penalties of up to \$1.1million) for non-compliance introduced under the NSW Modern Slavery Act. The AICD supports the position under the Commonwealth regime, which relies on public breach reporting and associated reputational damage, as the primary deterrent to non-compliance.

The focus, as set out in the objects of the NSW Modern Slavery Act, should be on helping organisations identify risk areas within their supply chains and educating them on how to mitigate the risks and handle any incidences which arise. Punitive measures could discourage organisations from bringing relevant issues and risks identified in supply chains to light, which would have the effect of deterring the primary objective of the legislation.

The introduction of penalties would also be out of step with international practice, which has focused on encouraging companies to turn their minds to modern slavery issues and develop organisational and reporting expertise. We consider that a regime with a focus on transparency (like the Commonwealth regime) is the most effective way to encourage companies to collectively improve performance and share lessons with other organisations and regulators.

Notably, this will be the first time many organisations have grappled with complex modern slavery issues, and it is inappropriate to introduce penalties at the outset. International experience indicates that it takes time to develop an understanding of modern slavery risks in a supply chain, assess and investigate risks, and train staff effectively to undertake this work. At this point, the legislation should focus on establishing the reporting regime and then work with businesses to improve their practices and performance.

Monetary threshold

The lower turnover threshold of \$50 million in turnover (as opposed to \$100 million revenue under the Commonwealth Modern Slavery Act) will capture organisations not caught by the Commonwealth provisions and place an increased compliance burden on those organisations. The AICD is of the view that one nationally consistent framework with one financial threshold is to be preferred. The AICD is also concerned that the messaging and education to businesses and consumers will be confusing and could undermine the efficacy of the Commonwealth regime.

We also suggest that a higher threshold (that only captures larger organisations with more resources and capacity to comply effectively with the requirements) may ultimately result in stronger compliance and improved practices throughout the economy. Market practice is more likely to be thorough and consistent than if a broad range of entities are caught (thereby setting a stronger benchmark), and despite the limited application, there should be a 'trickle-down' effect through the supply chain that will impact suppliers' behaviour.

2. Exemption for not-for-profits and charities (1c)

The AICD notes that as a general rule, NFPs and charities see 'modern slavery' as fundamentally at odds with their ethos and values and many are already taking steps to identify and eliminate modern slavery in their supply chains. For this reason, members in the NFP and charities sector supported the introduction of legislation as a means of combatting modern slavery in Australia and did not seek an exemption from the Commonwealth Modern Slavery Act.

However, as outlined above, the AICD has concerns with the lower monetary threshold and penalties under the NSW Modern Slavery Act. Charities, NFP organisations and small businesses would face proportionality greater administrative burden and increased compliance costs in meeting their reporting requirements compared to larger commercial organisations. Accordingly, they are at greater risk of facing penalties for non-compliance with reporting requirements. NFPs and charities have limited resources and whilst they should be encouraged to focus on their supply chain and investigate issues, they should not be subject to penalties. For this reason, the AICD supports an exemption being included in the Regulation.

The consultation paper on the Regulation notes that the intention of the exemption is to exempt *all* NFPs and charities from reporting obligations. However, the AICD is concerned that certain charities and NFPs may not be captured by the proposed wording of the exemption. Please refer to the AICD's submission (found [here](#)) on the NSW Regulation for suggested amendments to the exemption to ensure *all* NFPs are captured.

3. Next steps

If you would like to discuss any aspect of this submission further, please contact Christian Gergis, Head of Policy at cgergis@aicd.com.au or Christie McGrath, Senior Policy Adviser at cmcgrath@aicd.com.au.

Yours sincerely



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