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Submission on the draft Modern Slavery Regulation 2019 (NSW) and Section 24 of the Modern Slavery Act 2018 (NSW)

Australian Lawyers for Human Rights (**ALHR**) is grateful for the opportunity to make this submission on the draft Modern Slavery Regulation 2019 (NSW) (**Draft Regulation**) and the supply chain reporting requirements in the *Modern Slavery Act 2018 (NSW) (Act)*.

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1. Recommendations

- 1.1 ALHR makes the following recommendations:
 - 1.1.1 **ALHR recommends that the Draft Regulation contains a clause which provides for a public repository which includes a public list of entities required to report under the Act combined with the statement register, to strengthen the supply chain reporting requirements under the Act.**
 - 1.1.2 **ALHR recommends that the public register pursuant to s 26(1) of the Act is not made public during the first three years. This may avoid possible negative consequences associated with any ‘naming and shaming’ of businesses that disclose risks of modern slavery in their supply chains. Further, it may avoid the subsequent effect of discouraging businesses from being transparent in identifying modern slavery risks in their statements.**
 - 1.1.3 **ALHR recommends that clause 8(6) of the Draft Regulation be amended to provide that the statement register is kept separately to the public register. ALHR supports clause 8(5) that the statement register is made publicly with no cost.**
 - 1.1.4 **Should the combined public register be implemented as proposed in the Draft Regulation, ALHR recommends that practical guidance materials are provided to businesses on how the public register will positively highlight and showcase best practice in identifying, disclosing and responding to risks of modern slavery in supply chain.**

2. Submissions

- 2.1 Clause 8(3) of the Draft Regulation provides for the NSW Anti-Slavery Commissioner (**Commissioner**) to keep and publish in electronic format all modern slavery statements lodged with the Commissioner under this clause (**the statement register**).
- 2.2 Clause 8(6) provides that the statement register may be combined with the public register pursuant to s 26 of the Act. The public register is to identify entities that disclose modern slavery in their statement and what steps the entity has taken to address the concern.
- 2.3 ALHR notes that the proposed combined public register does not provide for a public list of entities required to report under the Act.
- 2.4 ALHR reiterates its previous submissions on the importance of a public list of entities to enable NSW Government agencies, civil society, and other relevant stakeholders to effectively monitor whether reporting entities are complying with the Act.¹ A public list of reporting entities will remove any ambiguity in identifying whether a reporting entity is required to report. Such a list will also enable civil society and relevant stakeholders to

¹ Australian Lawyers for Human Rights, Feedback Letter to the Attorney General for New South Wales, Modern Slavery Bill 2018, 20 June 2018, p8 at [38]; Australian Lawyers for Human Rights, Submission to the Department of Home Affairs on the Modern Slavery Act 2018 Draft Guidance for Reporting Entities, p6 at [2.15] and [2.16]; Australian Lawyers for Human Rights, Submission to the Senate Legal and Constitutional Affairs Committee on the Commonwealth, Modern Slavery Bill 2018, 20 July 2018, p5 at [18], <https://alhr.org.au/alhr-submission-modern-slavery-bill-2018/>.

focus on their role of monitoring statements, and educating and assisting businesses to improve their supply chains.²

- 2.5 As previously submitted, ALHR is of the view that that a public repository which includes a public list of entities that are required to report combined with the statement register would give greater effect to the supply chain reporting requirement.³
- 2.6 In ALHR's view, there may be scope for the proposed combined public register to be introduced in the future when Australian supply chain reporting has developed and businesses are complying with their reporting requirements.
- 2.7 However, ALHR recommends that the proposed combined public register, as provided for in clause 8(6) of the Draft Regulation and s 26 of the Act, should not be pursued at this stage. Instead, ALHR recommends a public repository to ensure compliance with, and effective monitoring of, the supply chain reporting requirements under the Act.
- 2.8 ALHR supports the creation of the proposed combined public register in due course, however this is subject to the provision of sufficient government resources to monitor whether businesses have taken steps to address modern slavery concerns, and to ensure businesses are provided with the required level of support, education, training and awareness raising. This is necessary to avoid creating perverse incentives for entities to avert publicly reporting risks or incidences of modern slavery in their supply chains.⁴
- 2.9 ALHR submits that the public repository as recommended by ALHR could include voluntary best practice disclosure provided by the reporting entity highlighting the steps the entity has taken to address modern slavery since the lodgement and publication of the statement. This may have the effect of fostering a human rights culture in businesses. Ideally, the entity would have the opportunity to periodically amend this best practice disclosure.
- 2.10 Should the combined public register be implemented as proposed by the Draft Regulation, one of its key functions should be to emphasise best practice in supply chain reporting, and this should be highlighted in any practical guidance materials.
- 2.11 ALHR is of the view that the proposed combined public register, or a public repository as recommended by ALHR, should be easily accessible and searchable, adopting the use of filters which may include, but not limited to, type of industry, turnover, year of statement, geographical location, and business name.
- 2.12 The proposed combined public register should remain as a free public record indefinitely, with the previous statements being searchable by year.
- 2.13 The process of lodging statements to the proposed combined public register should be made simple and easy to increase the level of compliance by businesses.
- 2.14 ALHR submits that the Draft Regulation is consistent, as appropriate, with the reporting requirements provided for in the *Modern Slavery Act 2018* (Cth) to ensure that

² Australian Lawyers for Human Rights, Feedback Letter to the Attorney General for New South Wales, Modern Slavery Bill 2018, 20 June 2018, p7 at [31].

³ Ibid, p8 at [39].

⁴ Ibid, p7 at [35].

businesses are clear about what is required in terms of reporting, and to prevent any unnecessary complexity which may stem from having different State and Federal reporting requirements.

If you would like to discuss any aspect of this submission, please email me at:

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Yours faithfully



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ALHR

ALHR was established in 1993 and is a national association of Australian solicitors, barristers, academics, judicial officers and law students who practise and promote international human rights law in Australia. ALHR has active and engaged National, State and Territory committees and specialist thematic committees. Through advocacy, media engagement, education, networking, research and training, ALHR promotes, practices and protects universally accepted standards of human rights throughout Australia and overseas.

Contributors

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