

## **EPISODE 5: Dr. Tina Davis Interviews Heather Moore**

**TINA:**

My name is Dr. Tina Davis and today I'll be speaking with Heather Moore from Australia. Heather is the Managing Director at Monash University's Trafficking and Slavery Research Group, and today we will discuss modern slavery legislations. Heather will tell us about the new Modern Slavery Act in Australia, and we will discuss to what extent these types of legislations have been successful and what focus is needed in the future in order to see more impact and effect. Welcome, Heather.



**HEATHER:**

Hi, thank you for having me.

**TINA:**

As you're based in Australia, you have been going through a whole shifting landscape of legislation. And I also know that you've been particularly involved in this process. Could you start by explaining what is transparency in supply chain legislation for the ones who aren't specifically familiar with that?

**HEATHER:**

Sure. Well, the purpose of transparency legislation targets large organizations, mainly large companies with the intent of encouraging them to take action and to disclose that action specific to what they're doing to assess and address risks of a range of forms of modern slavery in their global supply chains.

**TINA:**

How is it the international development been with these type of transparency in supply chain legislations, in the area of modern slavery, how's the development been over the last ten years.

**HEATHER:**

So we have about four laws to date starting with the California Transparency and Supply Chains Act, which was passed in 2010 and went active in 2012. For the Californian act, it's specific to retailers and manufacturers doing business in California with an annual gross turnover of 100 million US dollars. That law requires them to disclose on their websites, what they're doing, if anything, to address modern slavery. Then in 2015, the UK passed their Modern Slavery Act, it is not too dissimilar from the Californian act. Its threshold focuses at 36 million pounds per annum and again defines the reporting entity as large companies doing business. I think the law uses the term with a footprint, an operating footprint in the UK. So this requires some Nexus to that jurisdiction in order to apply. And then in Australia, we had actually two acts pass almost while they were both happening at the same time when the state of New South Wales passed its Modern Slavery Act in June last year, that act was supposed to go live July 1 this year, but it has actually been referred back to committee for what the government is calling operational defects and some constitutionality issues there. And then the Australian federal acts and the federal Modern Slavery Act was passed at the very end of November 2018 and became active on January 1 that builds on the UK's act. Our process in Australia looked very much to the UK's experience to inform - In fact, our inquiry was called an inquiry into establishing a Modern Slavery Act, the unwritten text was looking at the Modern Slavery Act, which is the first law to be titled that in the world. And so, Australia's act, considered some of the aspects of the UK's model looking at some of the commonalities across the different pieces of legislation. Our Act applies to Australian companies or companies doing business in Australia at or above 100 million Australian dollars turnover each year. That Act requires annual reporting on efforts to assess and address risks of modern slavery and supply chains.

**TINA:**

Was there a campaign for an Australian Modern Slavery Act or has the act actually come about?

**HEATHER:**

Really an interesting question because a lot of people attribute the Act to the advocacy of Andrew Forrest, mining magnet, and he certainly deserves a lot of credit for getting this up off the ground. However, there was actually a lot of work that had been happening for a number of years behind the scenes. And so what people may not realize is that actually a working group had been convened across a range of sectors from civil society to business and government looking at supply chains and intervention around corporate supply chains. And that group was convened under the auspices of the National Roundtable on Trafficking and Slavery. And that group had produced a report that had been delivered to the Minister at the time, Michael Keenan, with with the express recommendation of establishing this very kind of act. And then there are a number of other groups that have been advocating quietly agitating behind the scenes for similar action. So the business and human rights community had been advocating for quite some time for national action plan on business and human rights. And whilst that was put aside, unfortunately for a Modern Slavery Act, I think that community deserves some credit as well, because they certainly rallied behind this through their broad support behind the process.

**TINA:**

Where does the Australian Act stand out, as opposed to other transparency in supply chain acts or reporting acts, reporting legislation as they are so called.

**HEATHER:**

Another aspect of the Australian Act I think that will improve on its predecessors is what you might call its implementability. None of these laws have any kind of compliance mechanism - there's no penalties for not reporting. While we definitely need companies and entities to report, recalling our earlier conversation about the intention of disclosure legislation. It's not just about getting companies to report but it's about getting companies to report information that is useful. And in order to do that, you need engagement. And so I think whilst some have criticized the Australian Act for setting threshold too high and that estimate estimates put that number of entities captured by the Australian Act at about 3000. One major point of difference in Australia is that our government has committed resources, has actually already committed a significant amount of resources to raising awareness amongst business and in other reporting entities, about the law about what the expectations are under the law. They just convened a two day conference, to walk

people through the expectations under the Act and really prepare people for reporting. And I think that kind of engagement is likely to have a much more positive impact on both quality and quantity of reporting where you have in in California and the UK, almost no government resourcing to supporting and raising awareness amongst business about their obligations under the Act. And then moving forward. We also have calibrated our Act that 3000 entities in proportion to the government's resourcing under the business engagement unit, you're going to have about 500 statements per staff member. And so again, over the next three years, we're actually having we have a fairly manageable act in terms of really closely monitoring, reporting, and reaching out to people who aren't reporting, and and just having a much thorough process for engagement to maximize potential under our Act.

**TINA:**

What would you think that will do for best practice?

**HEATHER:**

Well, I think we're already seeing some signs of really good practices coming about, for example, seeing industries coming together to find solutions, share information. We've seen a couple of industries developing supplier engagement platforms to minimize the burden that's going to be undoubtedly placed on vendors within the supply chain and I think that will enhance engagement with suppliers. I think that the true test of best practice will be in that criteria around effectiveness. Because we don't we don't know what best practices yet. I think we've got some ideas. We've got some very strong ideas of what we think will work. But quite frankly, looking at current disclosure legislation, and even looking at broader corporate human rights reporting, most reporting still focuses on process. And until we start holding ourselves accountable to reporting on the impact of the actions that we're taking, we can't say for sure what what best practice is in terms of making a meaningful reduction on slavery and the conditions that give rise to slavery in supply chains.

**TINA:**

So if I'm in a company as a company, how could I best implement processes and systems to get to that point that you're describing now, so that it doesn't just become a process or a tick-off exercise, how would you see that pan out for a company?

**HEATHER:**

I think the first step is to be clear about what it is you want to achieve. Whilst I I fully appreciate the advice that's being given out about taking a risk-based approach, I'm not arguing that that's a sensible way to manage and prioritize action. I also think we need to take a step back and actually consider what do we want to achieve and in which, what what timeframe. The process that we recommend at Monash and I know other groups like Shift Project are exploring very similar work is getting companies to apply a theory of change model to their actions. So rather than starting off the block with risk, start with outcomes first, and then consider what indicators you'd need to identify, to confirm. whether or not you've achieved that result, you can use the risk based approach for prioritizing action. But I think you first need to start with what is it we actually want to achieve. And that kind of contextualizing action within that kind of framework. It helps on a range of issues. It helps companies test the assumptions that they're making about what change will actually occur as a result of, you know, if I do this, then, you know, I expect this other change to occur in the conversations that I've been having with numerous businesses. But surprisingly, a lot of companies are not necessarily thinking of it in those terms. They're thinking mainly from a risk and compliance perspective where they're wanting to make sure that they're fulfilling their legal obligations. And if we start with that approach, rather than is it actually going to take to actually know that we've we've reduced the risk, for sure, then I think we won't be realizing the spirit of legislation.

**TINA:**

What would you say is the spirit of the legislation? I know that you were very involved in the process leading up to the legislation being passed. And, you know, there's a set of guidance or guidelines from the government, what would you say is the spirit of the Australian legislation?

**HEATHER:**

I think most people recognize this is the first step on what will be a very long journey. That the spirit of legislation is corporate disclosure is disclosure on is to shed light, you know, as many people use this metaphor, shedding light into areas that have been very dark and very, very hidden for many, many years if not many decades. And so I think to harness the goodwill that many people have contributed

to this process and articulate some specific outcomes that we expect, what are we going to do with the information? How do we want to use this over time?

**TINA:**

I think that was very interesting, because it leads me into the next question, which is, what kind of infrastructure is needed to make a law like Australian Modern Slavery Act effective. So legislation in and of itself won't necessarily change things, you know, you need a certain infrastructure with this particular legislation, what would you say is needed so that it can become effective?

**HEATHER:**

Well, I think the Australian Government's already committed some infrastructure that hasn't been put in place in California and the UK. So we've got a business engagement unit is staffed with, I believe, five or six full time staff members. And we also have the commitment by the government to establish an online public free repository for all company statements to be listed. So that'll make things much easier for consumers. And that that's certainly another answer to your question about the spirit of the legislations is to empower consumers to know more to have more easily accessible information about the companies producing the goods and services that they are purchasing. But beyond that, I think we will need more infrastructure in terms of supporting the government's part in this. So this act imposes responsibilities specifically onto companies and organizations to address the issue in their supply chains. But one of the things that we found missing in the the modern slavery act inquiry was due consideration for what the government needs to do to uphold it's side because business certainly can't do everything. And so particularly in terms of immigration policy, and in enforcement of labor labor laws in Australia, and certainly Australia is not alone. This is this is a problem as well, in many other countries as well, including the US and the UK, is a disproportionate response between violations of the immigration laws which often occur under duress and manipulation by by traffickers, slavers or just unethical employers. And anti trafficking priorities. We've got a problem in Australia where businesses underpay and exploit workers. And some of those cases where the government has been successful in bringing cases against those employers and and successfully receiving orders or judgments for repayment of stolen wages. In many, many cases, those employers and in fact, frankly, the majority, I would argue, declare bankruptcy or they Phoenix to avoid these payments. And as long as governments fail to uphold labor standards, efforts of business to address the problem will be limited is not directly undermined.

**TINA:**

How will this law address exploitation happening on the ground in Australia because usually that's done by either unethical companies or even traffickers maybe, but they're not going to be your \$100 million companies that necessarily directly do this. How can the law affect the exploitation that you were mentioning happening in Australia with migrant workers?

**HEATHER:**

Three things come to mind. First is a clarification of responsibility, where, I guess historically, companies might claim that they don't have responsibility for what's going on further in the supply chain because of ignorance. I think this legislation seeks to make it very clear that they do have some responsibility. I think secondly, we are starting to see some change in decision making about what will be tolerated further down the supply chain. We'll have to wait and see the extent to which this occurs. The intention of the legislation is for corporations to either work with the suppliers or the sub-suppliers through the commercial relationship to address that misconduct, or at the end of the day, remove them from the supply chain. And then I think the third potential benefit that could come out of this in terms of reducing exploitation, but again, time will tell is a re-conceptualization of the role of the worker in the supply chain. I think we've got a really long road to go. But this is certainly an area that I'm planning on working on, I'm planning on focusing on is expanding the notion of worker voice to go beyond just a grievance mechanism. What I mean by that, I guess, is encouraging companies to reconsider the role of employees and in terms of helping identify problems that are going on in the workplace and within the supply chain, but even in certain circumstances, helping to shape and inform a company's response. So we often try to solve this problem in these silos talking to each other, when in fact, a lot of good could come from speaking directly to workers to inform our response. Would this work? If we created an integrity hotline? would you use it? If not, why not? So that the response is built on an evidence base rather than just based on false assumptions about what workers will and won't do when they're held in exploited conditions.

**TINA:**

So your research group at Monash University is newly established, correct me if I'm wrong when I say that it may also be an effect of the fact that this legislation is

now coming about in Australia. But what exactly will your group be working on that is related to the Australian legislation?

**HEATHER:**

The research group itself is new we were established earlier this year. However, the members of the group have been working on slavery and trafficking and on supply chains for number of years. With the passage of the Modern Slavery Act, we saw an opportunity to bring these different sets of expertise from across the university together. So we are a collaboration between arts, Faculty of Arts and our business school. Put simply, our purpose is to support building the the evidence base for corporate responses to modern slavery. It's still pretty early days, particularly in terms of disclosure legislation. And we want to support all organizations reporting under this kind of legislation to know what impact they've been making. So in terms of the Australian act, we've discussed the requirement for companies to describe the actions that they're taking to assess and address modern slavery in their supply chains but also to describe how they will measure the effectiveness of those actions. So what our group is trying to do is build the tool and the resources to support companies to meet that requirement under the law to describe how they know what they're doing is effective. And then to partner with the groups who are interested in going beyond compliance, and actually report what did we achieve from that process? What did we learn? Where do we come up short? And how can we do better, more and more countries are passing similar legislation. Now's the time to be refocusing away from process and more on outcomes so that we can maximize and draw together a globally consistent idea of what defines success. How do we know that these activities are actually achieving the ultimate aim of reducing slavery, trafficking, forced labor in global supply chains.

**TINA:**

So the Modern Slavery Act here in the UK and in California, are reporting requirements and of course, a lot of the discussion around the successes of, say the UK Modern Slavery Act or its lack of success, or criticism has been around the reporting, the quality of reporting, the failure to report and so forth. How do we know today whether any of these laws have been effective on grassroots?

**HEATHER:**

I think a lot of people would say that they haven't been effective at the grassroots level yet. I haven't done a careful analysis of the count of reports under the

Californian law that but I think we've seen a lot of companies report on what they're doing. So they've done trainings, they've incorporated clauses into their contracts, they've established or updated their policy on human rights and or slavery. They have engaged suppliers and through self assessment questionnaires, third party auditing and whatnot, but we still don't know with the exception of a few case studies, to what extent any of this is actually making a meaningful dent on the problem. The potential coming out of this kind of legislation is the extent to which companies start to look at how their own business practices are contributing to the problem, as opposed to looking at slavery, trafficking and other human rights abuses as something that occurs outside looking at these as aberrant within the supply chain. And I think that's really where things will start to become quite real. And I think that's what that's what we need. What we need to get to is a shift in the way business is conducting itself and the reliance on low and underpaid or unpaid work, which of course brings us to the roles of consumers and our own demand, the pressures that we're pushing from the consumer base.

**TINA:**

So you mentioned that, you know, there's a development in laws, more countries are introducing laws and At the moment, I think Canada is in the process of looking at a possible introduction of a modern slavery law. Norway has said they will do an inquiry into a modern slavery law. But there's also countries who are looking at another model of law, which is a broader human rights due diligence law, such as the one that is the future vigilance law that they have in France, SA2017, and more countries are looking towards that, such as Finland, Switzerland, and some other countries. And there's also been a big debate as to which of these laws will anyway be the the most effective or the best model for changing business practices when it comes to breaching human rights, your thoughts around that discussion?

**HEATHER:**

I think it's great that we are seeing varying approaches to the problem. And I think the French law is one to watch very closely because as I was saying earlier around implementation, the French law only captures about 200 to 300 companies. And again, I think there were there was much criticism of that fact. But it also covers a much broader range of issues. It's not just focused on slavery. So if you go on to broaden the net, to look at more issues, then I think it's wise at this early stage to make other adjustments to ensure that we are able to implement legislation the way we can know whether it's being effective. I think it's a positive thing that different

countries are trying different things. I think it's probably still too early to I think what we're it's clear what's not working, particularly under the Californian and UK Acts, and the review of the UK Act because of the poor compliance and the poor reporting for quality reporting under that act. The reviewers are now recommending a staged introduction of a civil penalty regime, but they're also hinting at building in some references to due diligence through board member accountability. So coming back to the Australian context, people should consider themselves put on notice - if companies don't rise to the challenge in both quality and quantity of reporting that will only build the case for stronger references to due diligence over time. And ultimately, I think that's probably where we need to be. I wouldn't say that modern slavery disclosure legislation is a lost cause that the things that I see companies doing now would be necessary. In a way this is laying a foundation for strong references to due diligence over time. So I think that will be very interesting to see over the first two reporting cycles in Australia, whether or not people rise to the challenge that's been set this Race to the Top that's been called because if they don't I think the signs from other jurisdictions are pretty clear that that will be the next step.

**TINA:**

Okay. Thank you so much, Heather, more for sharing about the experience of what's happening in Australia at the moment with the Australian modern slavery legislation. I appreciate you taking your time and this has been very informative. I'm sure that the listeners will agree to that. Thank you so much.

**HEATHER:**

Thank you. My pleasure.