



LEGISLATIVE COUNCIL

STANDING COMMITTEE ON SOCIAL ISSUES

*Modern Slavery Act 2018 and
associated matters*



Report 56

March 2020

www.parliament.nsw.gov.au

Standing Committee on Social Issues

Modern Slavery Act 2018 and associated matters

Ordered to be printed 25 March 2020 according to Standing
Order 231

New South Wales Parliamentary Library cataloguing-in-publication data:

New South Wales. Parliament. Legislative Council. Standing Committee on Social Issues

Modern Slavery Act 2018 and associated matters / Standing Committee on Social Issues. [Sydney, N.S.W.] : the Committee, 2020. – [139] pages ; 30 cm. (Report ; no. 56)

“March 2020”.

ISBN: 9781920788513

Chair: Hon. Shayne Mallard MLC.

1. Slavery—Law and legislation—New South Wales.
2. Human trafficking—Law and legislation—New South Wales.
3. Social responsibility of business—New South Wales.
- I. Title.
- II. Mallard, Shayne.
- III. Series: New South Wales. Parliament. Legislative Council. Standing Committee on Social Issues. Report ; no. 56.

306.362 (DDC22)

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Terms of reference

1. That the Standing Committee on Social Issues inquire into and report on the *Modern Slavery Act 2018* (NSW) (the NSW Act), the consultation draft of the *Modern Slavery Bill 2019* (the amendment Bill), and the consultation draft of the *Modern Slavery Regulation 2019* (NSW) (the Regulation), with particular reference to:
 - (a) the operability of the proposed anti-slavery scheme
 - (b) the effect of the anti-slavery scheme on business, including the supply chain reporting obligations under section 24 of the NSW Act
 - (c) the intended application of the anti-slavery scheme with respect to charities and not-for-profit organisations, State Owned Corporations and local councils
 - (d) the appropriateness and enforceability of Modern Slavery Risk Orders under section 29 of the NSW Act
 - (e) the unintended consequences of drafting issues with the NSW Act, including with respect to the *Human Tissue Act 1983* (NSW) and the sale and supply of human tissue
 - (f) the risk of a possible constitutional challenge to current provisions in the NSW Act due to inconsistencies with the *Criminal Code Act 1995* (Cth)
 - (g) whether the passage of the Modern Slavery Act 2018 (Cth) renders parts or all of the NSW Act unnecessary, or requiring of amendment to address inconsistencies or gaps
 - (h) the preferred course of action to address the matters identified
 - (i) any other related matter.
2. The Committee shall have regard to the Government submission enclosed with the terms of reference.

The terms of reference were referred to the committee by the Hon Don Harwin MLC, Special Minister of State, Minister for the Public Service and Employee Relations, Aboriginal Affairs, and the Arts and reported in the Legislative Council on 7 August 2019.¹

¹ *Minutes*, NSW Legislative Council, 7 August 2019, p 316.

Committee details

Committee members

The Hon Shayne Mallard MLC	Liberal Party	<i>Chair</i>
The Hon Daniel Mookhey MLC	Australian Labor Party	<i>Deputy Chair</i>
The Hon Greg Donnelly MLC*	Australian Labor Party	
The Hon Ben Franklin MLC	The Nationals	
The Hon Taylor Martin MLC	Liberal Party	
Reverend the Hon Fred Nile MLC	Christian Democratic Party	
Mr David Shoebridge MLC**	The Greens	
The Hon Natalie Ward MLC	Liberal Party	

* The Hon Greg Donnelly MLC substituted for the Hon Rose Jackson MLC for the duration of the inquiry.

** Mr David Shoebridge MLC substituted for Ms Abigail Boyd MLC for the duration of the inquiry.

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Chair's foreword

The task of this inquiry was to examine the New South Wales *Modern Slavery Act 2018*, which was passed by the NSW Parliament on 21 June 2018 and has yet to be proclaimed. The committee was also tasked with examining consultation drafts prepared by the NSW Government of the Modern Slavery Amendment Bill 2019 and Modern Slavery Regulation 2019.

The committee expresses its support for the NSW Act, based on the evidence in this inquiry as to its many world-leading features. These include a robust supply chain transparency scheme for both business and government, an Anti-Slavery Commissioner, the creation of new modern slavery offences, support for victims and the establishment of a parliamentary committee to provide oversight of this important policy area. However, at the outset the committee also notes that it would be preferable to have comprehensive modern slavery legislation enacted by the Commonwealth that addresses modern slavery across all Australian states and territories within a single uniform framework. This is particularly because modern slavery operates across state and international borders.

Nevertheless, the aim now should be to commence the NSW Act on or before 1 January 2021, allowing for necessary amendments to be made as proposed by the NSW Government and taking into account this committee's comments and recommendations. We also believe a statutory review should be incorporated into the Act, to be conducted in conjunction with the Australian Government's statutory review of the Commonwealth's supply chain transparency legislation, the *Modern Slavery Act 2018* (Cth). This would provide an opportunity to evaluate the NSW Act's operation in its initial phase, including as to how the two schemes are operating in tandem and to consider further improvements.

In terms of the effect of the anti-slavery scheme on business, the committee is supportive of the supply chain reporting obligations placed on businesses with a turnover of \$50 million to \$100 million under s 24 of the NSW Act. We particularly acknowledge the work done to develop reporting requirements that are aligned with the Commonwealth's, which apply to businesses over the \$100 million threshold. We have, however, recommended that the NSW Government work with the Australian Government to seek harmonisation of the reporting threshold, ideally at \$50 million consolidated revenue, as a key reform for a standard national approach to modern slavery. We have also made recommendations around the position of the charities and not-for-profits sector, and local councils.

Turning to modern slavery risk orders as currently provided for in s 29 of the NSW Act, we agree that these are the most problematic part of the legislation. Both the NSW Government and legal stakeholders expressed very serious legal, policy and practical concerns about these orders. The committee therefore supports the proposal in the Draft Amendment Bill to repeal s 29, especially in light of the availability of existing well-established risk-based offender management schemes to manage modern slavery offenders. The committee has also made a number of other recommendations concerning the offence provisions in the NSW Act, as well as around victims rights and support.

I commend this report to the House and express my thanks to committee members for their contributions, to inquiry participants for their engagement and advocacy, and to the committee secretariat for their professional support.



Hon Shayne Mallard MLC
Committee Chair

Recommendations

- Recommendation 1** **8**
That the NSW Government proceed to introduce amendments to the *Modern Slavery Act 2018* taking into consideration the comments and recommendations of this report, with the aim of the Act commencing on or before 1 January 2021.
- Recommendation 2** **8**
That the NSW Government seek to amend the *Modern Slavery Act 2018* to include a statutory review of the Act, to be conducted in conjunction with the Australian Government's statutory review of the *Modern Slavery Act 2018* (Cth).
- Recommendation 3** **32**
That the NSW Government seek to amend the reporting threshold terminology in section 24 of *Modern Slavery Act 2018* to replace the term 'turnover' with 'consolidated revenue'.
- Recommendation 4** **33**
That the NSW Government and the Interim Anti-Slavery Commissioner continue to work with businesses which meet the reporting threshold under section 24 of the *Modern Slavery Act 2018* to ensure that reporting requirements are as simple as possible and clearly explained in the guidance material.
- Recommendation 5** **33**
That the NSW Government work with the Australian Government to seek harmonisation of the reporting threshold, ideally at \$50 million consolidated revenue, as a key reform for a standard national approach to modern slavery.
- Recommendation 6** **33**
That the NSW Government seek to amend the *Modern Slavery Act 2018* to specify a relevant authority responsible for conducting prosecutions that involve breaches of section 24.
- Recommendation 7** **34**
That, as part of the statutory review recommended in Recommendation 2, the NSW Government reassess the exemption for charities and not-for-profit organisations from section 24 of the *Modern Slavery Act 2018*, including by:
- seeking input from the charity and not-for-profit sector
 - considering mechanisms to support charities and not-for-profits to meet the reporting requirement in section 24 going forward.
- Recommendation 8** **34**
That the NSW Government not amend the Draft Modern Slavery Regulation 2019 to include an exemption from section 24 of the *Modern Slavery Act 2018* for not-for-profit registered clubs.
- Recommendation 9** **35**
That the Anti-Slavery Commissioner on an ongoing basis examine and report on matters regarding the appropriateness of bringing franchisors, on behalf of franchisees not otherwise captured by the *Modern Slavery Act 2018*, under the state legislation.

- Recommendation 10** **35**
 That the NSW Government finalise the development of a voluntary reporting mechanism for businesses falling under the \$50 million reporting threshold in section 24 of the *Modern Slavery Act 2018*, to be rolled out following the statutory review recommended in Recommendation 2.
- Recommendation 11** **37**
 That the NSW Government develop legislative amendments to be introduced following the statutory review recommended in Recommendation 2 to provide for:
- modern slavery procurement and reporting obligations for local councils equivalent to those imposed on NSW Government agencies
 - a regulation-making power to exempt any council or class of councils from such obligations.
- Recommendation 12** **54**
 That the NSW Government amend Item [32] in the Draft Modern Slavery Amendment Bill 2019 to bring section 93AC of the *Crimes Act 1900* into line with the current definition of forced marriage in the *Criminal Code Act 1995* (Cth).
- Recommendation 13** **54**
 That the NSW Government consider and work to resolve the issues raised by Legal Aid NSW in relation to section 91G of the *Crimes Act 1900* prior to the introduction of the Modern Slavery Amendment Bill 2019 into the New South Wales Parliament.
- Recommendation 14** **55**
 That the NSW Government:
- omit Items [22] and [23] of the Draft Modern Slavery Amendment Bill 2019 so as to retain the reference to section 32 of the *Human Tissue Act 1983* as a modern slavery offence
 - create an exemption in the *Human Tissue Act 1983*, via an additional amendment in the Draft Modern Slavery Amendment Bill 2019, to ensure that NSW Health and other relevant organisations can continue to source blood and other blood products from comparable overseas countries.
- Recommendation 15** **64**
 That the NSW Government seek to amend Schedule 5.7 of the *Modern Slavery Act 2018* to give victims of acts of modern slavery access to recognition payments under the *Victims Rights and Support Act 2013*.
- Recommendation 16** **65**
 That the NSW Government:
- review the provisions of Schedule 5.7 of the *Modern Slavery Act 2018* to ensure that the amendments made to the *Victims Rights and Support Act 2013* are based on the current version of that Act
 - make any consequential amendments in the Draft Modern Slavery Amendment Bill 2019.

Recommendation 17**65**

That the NSW Government establish a working group which includes the Anti-Slavery Commissioner, NSW Police, the Department of Justice and Communities and other relevant stakeholders to develop further amendments to the *Crimes (Domestic and Personal Violence) Act 2007* to protect potential victims of forced marriage, to be introduced following the statutory review recommended in Recommendation 2.

Conduct of inquiry

The terms of reference for the inquiry were referred to the committee by the Special Minister of State, Minister for the Public Service and Employee Relations, Aboriginal Affairs, and the Arts on 10 July 2019. The terms of reference were adopted by the committee on 6 August 2019, and reported to the Legislative Council on 7 August 2019.

The committee received 102 submissions.

The committee held a public hearing on Monday 4 November 2019 at Parliament House in Sydney.

Inquiry related documents are available on the committee's website, including submissions, hearing transcripts, tabled documents and answers to questions on notice.

Chapter 1 Overview

This chapter commences by providing an overview of the legislative framework governing modern slavery in New South Wales. The chapter then considers the threshold question of whether the passage of the *Modern Slavery Act 2018* (Cth) renders parts or all of the New South Wales *Modern Slavery Act 2018* unnecessary, and the need for a statutory review.

The legislative framework governing modern slavery

1.1 This section provides a brief overview of the New South Wales *Modern Slavery Act 2018*, the *Modern Slavery Act 2018* (Cth), as well as drafts prepared by the NSW Department of Premier and Cabinet of the Modern Slavery Amendment Bill 2019 and Modern Slavery Regulation 2019.

The Modern Slavery Act 2018

1.2 The New South Wales *Modern Slavery Act 2018* (hereafter, the NSW Act) was introduced into the Legislative Council as a private member's bill by former member the Hon Paul Green MLC on 8 March 2018. Following amendments in both Houses, the NSW Act was passed on 21 June 2018.

1.3 In summary, the NSW Act:

- establishes an Anti-Slavery Commissioner for New South Wales (hereafter, the Commissioner)
- introduces requirements for commercial organisations with an annual turnover between \$50 million and \$100 million to lodge annual modern slavery statements about the steps they have taken to eliminate modern slavery from their supply chains with the Commissioner
- requires modern slavery statements to describe action the organisation has undertaken to assess and address modern slavery risks in their operations and supply chains, both in Australia and overseas, if applicable
- requires modern slavery statements to be made available on an online public register
- imposes criminal penalties on commercial organisations which fail to meet their reporting requirements or which provide false or misleading information in their modern slavery statements
- enables the NSW Procurement Board to issue directions about modern slavery, and requires annual reporting by government agencies about action taken to ensure that goods and services procured are not the product of modern slavery
- introduces a 'modern slavery risk order' which would prohibit a person convicted of certain modern slavery offences from engaging in conduct where the person poses a risk of engaging in further conduct constituting modern slavery
- introduces new New South Wales offences of slavery, servitude and child forced labour, and child forced marriage

- introduces a new aggravated offence in relation to using a child to produce child abuse material, and a new offence of providing information to assist a person to avoid detection for a child abuse material offence
- amends the apprehended domestic violence order framework to ensure these orders are available in cases of forced marriage
- amends the *Criminal Assets Recovery Act 1990* to permit the recovery of assets gained through the commission of offences of slavery, servitude and child forced labour
- extends support available under the *Victims Rights and Support Act 2013* to victims of modern slavery
- requires the establishment of a modern slavery hotline to provide advice and support to victims of modern slavery
- establishes a joint parliamentary committee on modern slavery
- provides the Auditor-General with authority to conduct risk based modern slavery audits.²

1.4 The NSW Act has yet to be proclaimed.

The Commonwealth *Modern Slavery Act 2018*

1.5 Following the passage of the NSW Act, the Commonwealth Parliament passed its own *Modern Slavery Act 2018* (Cth) (hereafter, the Commonwealth Act), which commenced on 1 January 2019.

1.6 The Commonwealth Act deals only with supply chain reporting and provides that:

- entities based or operating in Australia, which have an annual consolidated revenue of more than \$100 million, are required to report annually on the risks of modern slavery in their operations and supply chains and actions taken to address those risks
- other entities based or operating in Australia may report voluntarily
- the Australian Government has the power to publicly 'name and shame' entities which fail to comply with the reporting requirements, rather than imposing penalties
- the Australian Government is required to report on behalf of non-corporate Commonwealth entities, and the reporting requirements also apply to Commonwealth corporate entities and companies with an annual consolidated revenue of \$100 million
- all reports are published online on a modern slavery statements register.³

The Draft Modern Slavery Amendment Bill 2019

1.7 The committee was informed that in working to implement and commence the NSW Act since its assent, the NSW Department of Premier and Cabinet consulted extensively with NSW Government agencies on its effect and its implementation within the justice system. As a result

² Submission 1, NSW Government, pp 4-5.

³ Submission 1, NSW Government, p 5.

of this work, the Draft Modern Slavery Amendment Bill 2019 (hereafter, the Amendment Bill) was developed, aimed at ensuring that the NSW Act 'better aligns with the policy intent behind it' and enhancing 'the legal clarity, constitutionality and operation of the NSW Act'.⁴

1.8 Key amendments proposed in the Amendment Bill include:

- making State owned corporations subject to the supply chain reporting scheme applicable to commercial organisations, rather than that applicable to government agencies
- clarifying that charities and not-for-profit organisations that supply goods or services for profit are subject to the reporting regime applicable to commercial organisations
- giving the Commissioner greater flexibility and control over what is published on the register
- repealing the modern slavery risk order provision, and bringing certain modern slavery offences within the high risk offenders orders scheme
- replacing a reference to the trafficking of human tissue as a modern slavery offence with a reference to organ trafficking
- deleting the new criminal offence of administering a digital platform used to deal with child abuse material, due to potential constitutional issues, and amending two other criminal offences to align them with the equivalent Commonwealth provisions
- clarifying the extraterritorial scope of 'modern slavery offence'
- clarifying and standardising the information sharing and community provisions.⁵

1.9 These amendments are discussed in detail in subsequent chapters.

The Draft Modern Slavery Regulation 2019

1.10 The Draft Modern Slavery Regulation 2019 (hereafter, the Draft Regulation) was developed to clarify how commercial organisations subject to the supply chain reporting requirements in the NSW Act are to meet their obligations to prepare and publish modern slavery statements.

1.11 In particular, the Draft Regulation:

- sets out the mandatory minimum content of statements, and the timing and method of publication, aligned with the supply chain provisions in the *Modern Slavery Act 2018* (Cth)
- enables the preparing of joint statements by groups of organisations
- provides certain exemptions from reporting, including for charities and not-for-profit organisations.⁶

⁴ Submission 1, NSW Government, p 3.

⁵ Submission 1, NSW Government, pp 6-11.

⁶ Submission 1, NSW Government, p 12.

- 1.12 The NSW Department of Premier and Cabinet prepared an explanatory paper setting out the policy position and rationale for each of the proposed reporting requirements in the Draft Regulation and has sought feedback from stakeholders on the Draft Regulation.⁷

Is the NSW Act still necessary?

- 1.13 The introduction of the Commonwealth Act and its supply chain reporting scheme raises the question of whether the NSW Act remains necessary, in whole or in part.

- 1.14 In the course of this inquiry, a significant majority of stakeholders expressed the strong view that the NSW Act should be retained, pointing to the following features over and above the supply chain reporting provisions in the Commonwealth Act:

- the establishment of the Anti-Slavery Commissioner, with functions including:
 - advocating for and promoting action to combat modern slavery
 - identifying and providing assistance and support for victims of modern slavery
 - working jointly with government and non-government agencies to combat modern slavery
 - monitoring reporting concerning risks of modern slavery occurring in supply chains of government agencies and commercial organisations
 - monitoring the effectiveness of legislation and government policies and action in combating modern slavery
 - raising community awareness of modern slavery
- the supply chain reporting threshold of \$50 million to \$100 million, which will encompass an estimated 1,650 businesses in addition to those captured by the Commonwealth Act
- the inclusion of penalties for commercial organisations which fail to meet their reporting requirements or which provide false or misleading information in their modern slavery statements
- the imposition of procurement and supply chain reporting obligations on NSW Government agencies
- the creation of new modern slavery offences
- the extension of the victims support and apprehended violence order schemes to victims of modern slavery
- the establishment of a Modern Slavery Committee within the NSW Parliament, tasked with inquiring into and reporting on matters relating to modern slavery.⁸

⁷ Submission 1, NSW Government, p 12.

⁸ See, for example, Submission 6, Enfield Parish Against Trafficking of Human, pp 5-6; Submission 7, Josephite Counter-Trafficking Project, pp 6-7; Submission 8, War on Slavery, pp 5-6; Submission 9, Business & Human Rights Resource Centre, p 1; Submission 10, International Justice Mission, pp 5-6; Submission 15, Australian Centre for Christianity and Culture, p 2; Submission 20, End Modern Slavery, p 4; Submission 22, Australian Catholic Religious Against Trafficking in Humans and Catholic Religious Australia, p 4; Submission 25, Fair Supply, pp 6-8; Submission 33, Baptist World Aid Australia, p 4; Submission 35, Australian Lawyers for Human Rights, pp 7-8; Submission 42, The Freedom Hub Ltd, pp 5-6; Submission 43, Be Slavery Free, p 8; Submission 47, Oxfam Australia, pp 2-3; Submission 51, Corrs Chambers Westgarth, pp 1-2; Submission 53, Associate Professor Justine

- 1.15** Commenting on these features in evidence to the committee, Mr Paul Green, former member of the NSW Legislative Council, highlighted the trailblazing nature of the NSW Act in terms of modern slavery legislation globally:

'If the purpose of this Committee is truly social justice, then the recommendations from this committee will only strengthen the current legislation, not abolish it. New South Wales is a leading state in Australia and has led the way on the global social justice issues such as modern-day slavery. ... The former United Kingdom Anti-Slavery Commissioner Kevin Hyland called the New South Wales Modern Slavery Act more than likely the strongest Act in the world. I take that as a great compliment for our state.'⁹

- 1.16** Similarly, Professor Paul Redmond, Member, Management Committee, Anti-Slavery Australia and Sir Gerard Brennan Professor, Faculty of Law, University of Technology Sydney stated that the NSW Act 'should be a source of great pride to this State' and that the notion of abolishing it was 'an affront'.¹⁰

- 1.17** Echoing these sentiments, the Sydney Archdiocesan Anti-Slavery Taskforce characterised the NSW Act as 'the strongest and most comprehensive Anti-Slavery Act in the world',¹¹ while the Australian Red Cross pointed out that New South Wales was the first jurisdiction in Australia to legislate against modern slavery and only the second jurisdiction in the world to provide for an Anti-Slavery Commissioner.¹² The Australian Red Cross also expressed the view that the NSW Act would not only play a significant role in addressing modern slavery in this state, but also 'make an important contribution to addressing modern slavery in Australia and internationally'.¹³

- 1.18** Along similar lines, Hagar Australia, an international organisation working to prevent and respond to trafficking and slavery at both the individual and systemic level, emphasised the importance of retaining the NSW Act despite the passage of, and the need to harmonise with, the Commonwealth Act:

It is true that the passage of the Commonwealth Modern Slavery Act precipitates a need to ensure reporting processes are consistent and complementary, but it is certainly not

Nolan and Dr Martin Boersma, pp 3-4; Submission 57, Public Health Association of Australia, pp 6-7; Submission 58, NSW Bar Association, pp 6-7; Submission 61, The Salvation Army Australia, p 6; Submission 64, Zoic Environmental Pty Ltd, pp 3-4; Submission 68, Shop, Distributive and Allied Employees' Association NSW, pp 7-8; Submission 70, Business Council for Sustainable Development Australia, pp 6-7; Submission 71, Hagar Australia, pp 5-8; Submission 72, Professor Paul Redmond, pp 1-6; Submission 76, The A21 Campaign Ltd, p 3; Submission 78, Mercy Foundation, p 4; Submission 80, Anti-Slavery Australia, pp 5-6; Submission 87, Mr Kevin Hyland OBE, p 8; Submission 94, Sydney Archdiocesan Anti-Slavery Taskforce, p 2; Submission 97, Unions NSW, pp 4-5; Submission 99, Australian Red Cross, pp 4-5; Submission 102, Konica Minolta Business Solutions Australia, p 6.

⁹ Evidence, Mr Paul Green, former member, NSW Legislative Council, 4 November 2019, p 79.

¹⁰ Evidence, Professor Paul Redmond, Member, Management Committee, Anti-Slavery Australia and Sir Gerard Brennan Professor, Faculty of Law, University of Technology Sydney, 4 November 2019, p 43.

¹¹ Submission 94, Sydney Archdiocesan Anti-Slavery Taskforce, p 2.

¹² Submission 99, Australian Red Cross, p 2.

¹³ Submission 99, Australian Red Cross, p 2.

a reason to dilute the vision, ambition and global leadership embodied by the NSW Act'.¹⁴

1.19 On the other hand, some representatives of the business community expressed the view that the existence of the Commonwealth Act at a minimum removes the need for a separate supply chain reporting requirement for commercial organisations in the NSW Act, arguing:

- 'We maintain the existence of the Commonwealth Modern Slavery Act 2018 negates the need for NSW-specific legislation to the extent that they overlap in subject matter and believe the balance of the NSW-specific scheme is unnecessarily onerous and unworkable'.¹⁵
- '[G]iven the existence now of the *Modern Slavery Act 2018* (Cth) ... we do not consider separate reporting scheme to be necessary. Having two separate reporting schemes in Australia will create unnecessary complexity and confusion'.¹⁶
- 'HIA's principal position is that the NSW Act in its entirety is unnecessary and should be repealed. If this does not occur the provisions relating to Modern Slavery Statements in Part 3 of the NSW Act should be repealed. While HIA supports appropriate actions being taken by the business community to address the risks of modern slavery in their supply chain, HIA fails to see the merit in having a scheme in NSW operating alongside the Commonwealth scheme which passed its own Modern Slavery Act 2018'.¹⁷
- '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'.¹⁸

Need for a statutory review

1.20 The Commonwealth Act provides for a statutory review to be conducted three years after the Act's commencement, focusing on:

- the operation of, and compliance with, the Act
- whether additional measures to improve compliance with the Act are necessary or desirable, such as civil penalties for failure to comply with the requirements of the Act
- whether it is necessary or desirable to do anything else to improve the operation of the Act.¹⁹

1.21 Some inquiry participants called for the NSW Act to be amended to include a similar statutory review provision, to allow an opportunity to evaluate the Act's operation and make any

¹⁴ Submission 71, Hagar Australia, p 2.

¹⁵ Submission 92, NSW Business Chamber and Australian Business Industrial, p 6.

¹⁶ Submission 45, Chartered Accountants Australia & New Zealand, p 1.

¹⁷ Submission 62, Housing Industry Association, p 5.

¹⁸ Submission 63, Australian Institute of Company Directors, p 2.

¹⁹ *Modern Slavery Act 2018* (Cth), s 24.

necessary amendments.²⁰ International Justice Mission called for this review to be conducted by the Anti-Slavery Commissioner and for it to occur in conjunction with the statutory review of the Commonwealth Act:

We recommend that the Commissioner also be mandated to conduct a review into the legislation, including the Act and the Regulations, every three years, ideally in conjunction with the review of the Modern Slavery Act 2018 (Commonwealth). In this way, both the New South Wales and Federal Governments will be able to track the significant impact that the legislation can have on modern slavery, whilst also highlighting any areas requiring further attention.²¹

Committee comment

- 1.22** Given that modern slavery operates across state and international borders, the committee accepts that, in principle, it is preferable to have national legislation enacted that addresses modern slavery across all Australian states and territories in a uniform approach. However, this is subject to the legislative regime being sufficiently robust and likely to be effective.
- 1.23** The committee wishes to express its support for the NSW Act, based on the overwhelming evidence in this inquiry as to its many world-leading features. These include a robust supply chain transparency scheme for both business and government, an Anti-Slavery Commissioner, the creation of new modern slavery offences, support for victims and the establishment of a parliamentary committee to provide oversight of this important policy area.
- 1.24** Having considered closely the submissions received it is clear that the NSW Act has essential work to do in addressing modern slavery. For this reason we are of the view that it should commence as soon as reasonably practicable. For this reason we strongly recommend a target commencement date of on or before 1 January 2021.
- 1.25** While the committee acknowledges concerns from some representatives of the business community that having separate supply chain reporting schemes operating at the Commonwealth and state level is unnecessary and will lead to confusion, we believe that the appropriate harmonisation of reporting requirements and processes will allay many of these concerns. This is discussed in detail in Chapter 2.
- 1.26** The priority now should be to commence the NSW Act, allowing for necessary amendments to be made as proposed by the NSW Government and taking into account this committee's comments and recommendations, with the aim of the Act commencing on or before 1 January 2021.
- 1.27** The committee also believes that there would be real value in a statutory review, to take place in conjunction with the statutory review of the Commonwealth Act. This would provide an opportunity to evaluate the NSW Act's operation in its initial phase, including as to how the two schemes are operating in tandem and to consider further improvements, including on issues considered later in this report. We therefore recommend that the NSW Government seek to

²⁰ Submission 53, Associate Professor Justine Nolan and Dr Martin Boersma, p 4; Submission 48, Good Shepherd Australia New Zealand and Monash University, p 15; Submission 10, International Justice Mission, p 6.

²¹ Submission 10, International Justice Mission, p 6.

amend the NSW Act to include a statutory review provision, to be conducted in conjunction with the Australian Government's statutory review of the Commonwealth Act.

Recommendation 1

That the NSW Government proceed to introduce amendments to the *Modern Slavery Act 2018* taking into consideration the comments and recommendations of this report, with the aim of the Act commencing on or before 1 January 2021.

Recommendation 2

That the NSW Government seek to amend the *Modern Slavery Act 2018* to include a statutory review of the Act, to be conducted in conjunction with the Australian Government's statutory review of the *Modern Slavery Act 2018* (Cth).

Chapter 2 Supply chain reporting

This chapter addresses supply chain reporting obligations, starting with commercial organisations. A number of issues are discussed in this regard, namely harmonisation between the Commonwealth and New South Wales reporting schemes, including around reporting threshold terminology, the appropriateness of the reporting threshold, the position of charities, not-for-profit organisations and small businesses, and a mechanism for voluntary reporting for organisations that do not fall within the reporting threshold. The chapter then moves to supply chain reporting obligations for government agencies, looking particularly at whether State Owned Corporations and local councils should be subject to these obligations. The chapter concludes with a discussion of the public register in s 26 of the *Modern Slavery Act 2018* and the creation of a public register for all modern slavery statements.

Supply chain reporting obligations for commercial organisations

2.1 Section 24 of the *Modern Slavery Act 2018* (hereafter, the NSW Act) introduces requirements for large organisations to publish annual modern slavery statements about the steps they have taken to eliminate modern slavery from their supply chain. Section 24 provides:

24 Transparency of supply chain

(1) In this Act:

commercial organisation means an organisation (other than a government agency of the State) having employees in the State that:

- (a) supplies goods and services for profit or gain, and
- (b) has a total turnover in a financial year of the organisation of not less than \$50 million or such other amount as may be prescribed by the regulations.

organisation means the following:

- (a) any corporation (within the meaning of section 57A of the *Corporations Act 2001* of the Commonwealth) or incorporated partnership,
- (b) an association (including a partnership) other than one referred to in paragraph (a), or other body of persons.

(2) A commercial organisation must prepare a modern slavery statement complying with subsection (3) for each financial year of the organisation.

Maximum penalty: 10,000 penalty units.

- (3) The statement is to be prepared in accordance with the regulations within such period after the end of the financial year as is provided for by the regulations.
- (4) The statement is to contain such information as may be required by or under the regulations for or with respect to steps taken by the commercial organisation during the financial year to ensure that its goods and services are not a product of supply chains in which modern slavery is taking place.

- (5) Without limiting subsection (4), the regulations may require a modern slavery statement to include information about the following:
- (a) the organisation's structure, its business and its supply chains,
 - (b) its due diligence processes in relation to modern slavery in its business and supply chains,
 - (c) the parts of its business and supply chains where there is a risk of modern slavery taking place, and the steps it has taken to assess and manage that risk,
 - (d) the training about modern slavery available to its employees.

- (6) The commercial organisation must make its modern slavery statement public in accordance with the regulations.

Maximum penalty: 10,000 penalty units.

- (7) A person must not provide information in connection with a matter under this section that the person knows, or ought reasonably to know, is false or misleading in a material particular.

Maximum penalty: 10,000 penalty units.

Note. The *Crimes Act 1900* contains other offences relating to false and misleading information: sections 307B and 307C (False or misleading information/documents—maximum penalty imprisonment for 2 years or \$22,000, or both).

- (8) The regulations may exempt or provide for the exemption, unconditionally or subject to conditions, of any organisation or class of organisation from any or all of the provisions of this section or the regulations made for the purposes of this section.

Note. Section 175 of the *Public Works and Procurement Act 1912* provides for transparency in the supply chains of government agencies of the State.

- (9) This section does not apply to a commercial organisation if the organisation is subject to obligations under a law of the Commonwealth or another State or a Territory that is prescribed as a corresponding law for the purposes of this section.

2.2 As noted in Chapter 1, because the supply chain reporting scheme under the *Modern Slavery Act 2018* (Cth) (hereafter, the Commonwealth Act) applies to entities with an annual consolidated revenue of more than \$100 million, s 24 of the NSW Act only applies to businesses with an annual turnover between \$50 million and \$100 million.²²

2.3 The Draft Modern Slavery Regulation 2019 (hereafter, the Draft Regulation), prepared for public consultation, sets out how commercial organisations are to meet the requirements in s 24 for preparing and publishing their modern slavery statements, including:

²² Draft Modern Slavery Regulation 2019, cl 9.

- the mandatory minimum content of statements
- the timing and method of publication of statements
- the preparation of joint statements by groups of organisations
- exemptions from reporting for:
 - entities reporting voluntarily under the Commonwealth Act, while retaining penalty provisions in the NSW Act for provision of false or misleading information
 - subsidiaries of entities reporting under the Commonwealth Act, while retaining penalty provisions in the NSW Act for provision of false or misleading information
 - small businesses with fewer than 20 employees
 - charities and not-for-profit organisations.²³

2.4 The following table compares reporting requirements under the NSW and Commonwealth Acts.

Table 1 Comparison of NSW and Commonwealth reporting requirements

	NSW Act	Commonwealth Act
Mandatory reporting criteria	Seven mandatory criteria	The same seven mandatory criteria
Who reports?	Commercial organisations including companies, partnerships and associations: <ul style="list-style-type: none"> • with employees in NSW • that supply goods or services for profit or gain and • have an annual <i>individual</i> turnover of between AU\$50m and AU\$100m. 	Reporting entities (commercial and not-for-profit): <ul style="list-style-type: none"> • that are Australian entities or • foreign entities carrying on business in Australia, and • have an annual <i>consolidated</i> revenue of at least AU\$100m.
Report due date	The organisation's financial year or another annual accounting period applicable to that organisation.	The organisation's financial year or another annual accounting period applicable to that organisation.
Publication	Within 6 months after the end of each financial year of the organisation.	Within 6 months after the end of each financial year of the organisation.
Option to prepare a joint statement	Yes	Yes
Penalties	Criminal penalties of up to \$1.1 million for: <ul style="list-style-type: none"> • failure to prepare a statement • failure to publish a statement 	No financial penalties. The Act empowers the Minister to 'name and shame' noncompliant entities.

²³ Submission 1, NSW Government, p 12.

	NSW Act	Commonwealth Act
	<ul style="list-style-type: none"> providing false or misleading information. 	
Support for business	Anti-Slavery Commissioner to oversee the NSW response to modern slavery, including supporting business.	Business Engagement Unit to advise and support business.
Act's commencement	TBC	1 January 2019

Source: Tendered document, Professor Jennifer Burn, Interim Anti-Slavery Commissioner, NSW Department of Premier and Cabinet, Draft NSW Modern Slavery Reporting Requirement Guidance Material, July 2019, p 10.

- 2.5** The committee was advised that the Commonwealth had estimated an annual regulatory impact of its modern slavery reporting requirements on the business community of \$21,950 per entity, and that the NSW Government expects that the regulatory impact for each individual entity reporting under the NSW Act would be very similar.²⁴ The NSW Government also advised that an estimated 1,650 businesses with a turnover of \$50 million to \$100 million would be required to report under the NSW Act and that this figure is likely to be smaller if the proposed exemptions for charities, not-for-profit organisations and small businesses are implemented.²⁵
- 2.6** The following sections address issues raised by inquiry participants in relation to the NSW Act's supply chain reporting scheme for commercial organisations, as well as amendments proposed in the Draft Modern Slavery Amendment Bill 2019 (hereafter, the Amendment Bill) and the Draft Regulation regarding the position of charities and non-for-profit organisations.

Harmonisation between Commonwealth and New South Wales schemes

- 2.7** Stakeholders identified three key issues concerning the operation and harmonisation of the parallel supply chain reporting schemes at the Commonwealth and New South Wales levels, namely reporting requirements, reporting threshold terminology and the need for guidance material. These are discussed in turn below.

Reporting requirements

- 2.8** The NSW Government's submission to the inquiry emphasised that its aim in preparing the Draft Modern Slavery Regulation 2019 was to align the scheme with the Commonwealth's supply chain reporting requirements:

In preparing the Regulation, DPC has sought to clarify the reporting process and minimise regulatory burdens on affected organisations by aligning reporting requirements under the Act with the Commonwealth Act's supply chain provisions. The mandatory minimum content of statements, as well as timing and method of publication, reflect the Commonwealth Act's requirements.²⁶

²⁴ Submission 1, NSW Government, p 6.

²⁵ Submission 1, NSW Government, p 6.

²⁶ Submission 1, NSW Government, p 12.

2.9 This was echoed in the evidence given at the hearing by Professor Jennifer Burn, Interim Anti-Slavery Commissioner, NSW Department of Premier and Cabinet, with Professor Burn highlighting the harmonisation of reporting criteria and the ability for companies to report voluntarily to the Commonwealth:

Our approach was to make sure that the scheme was streamlined and complementary to the Commonwealth. ... What we have done is incorporate the Commonwealth reporting criteria within the New South Wales draft regulations to ensure there is consistency across jurisdictions. We also recognise that sometimes organisations may have a fluctuating income and may apparently move between jurisdictions but by providing the ability for organisations to voluntarily report to the Commonwealth, we have addressed that issue.²⁷

2.10 Australian Industry Group, a peak association representing the interests of more than 60,000 businesses, highlighted the importance of adopting a reporting framework in the NSW Act that is 'consistent and harmonised with the Commonwealth legislation',²⁸ noting:

- '[d]ifferent reporting frameworks ultimately undermine and confuse efforts of business to systematically identify and manage modern slavery risks in their operations and supply chains'
- the need to 'minimise duplicate reporting on business and the associated cost and regulatory burden'.²⁹

2.11 Australian Industry Group expressed support for the provisions in the NSW Act, the Amendment Bill and the Draft Regulation which seek to harmonise the reporting requirements of both schemes, in particular:

- the Draft Regulation adopting mandatory criteria against which modern slavery statements must report, identical to that contained in the Commonwealth Act
- the Draft Regulation enabling the provision by commercial organisations of joint statements to satisfy the NSW Act reporting requirement.³⁰

2.12 In contrast, the NSW Business Chamber and Australian Business Industrial expressed the view that the NSW Act creates 'an additional and unnecessary regulatory burden and is expected to create confusion in the business community, especially those businesses at the cusp of the \$100 million mark'.³¹

Reporting threshold terminology

2.13 A specific inconsistency between the NSW and Commonwealth Acts identified in the course of the inquiry was around reporting threshold terminology, with the NSW Act using 'turnover' whereas the Commonwealth Act uses 'consolidated revenue'.

²⁷ Evidence, Professor Jennifer Burn, Interim Anti-Slavery Commissioner, NSW Department of Premier and Cabinet, 4 November 2019, p 13.

²⁸ Evidence, Ms Nicola Street, National Manager – Workplace Relations Policy, Australian Industry Group, 4 November 2019, p 28.

²⁹ Submission 55, Australian Industry Group, p 3.

³⁰ Submission 55, Australian Industry Group, p 3.

³¹ Submission 92, NSW Business Chamber and Australian Business Industrial, p 4.

- 2.14** Professor Paul Redmond, an expert in corporate and securities law, drew attention to a number of difficulties with use of the term 'turnover' in the NSW Act:

The Commonwealth Act uses the term 'consolidated revenue', a central and well-elaborated concept under Australian corporate law and accounting standards, to define the reporting threshold. In contrast, the NSW Act uses the term 'turnover' in s 24(1) to define the reporting threshold; the term 'turnover' is not defined in the Act. The term is taken from the UK Act; in that country, the term appears to have a more settled legal and business usage. Greater clarity is needed with respect to the meaning of this key concept in this statutory context. How, and by what agency, is compliance with the threshold requirement and the lodgement obligation under s 24(2) to be monitored and enforced? Does 'turnover' of a commercial organisation include that of entities that it controls and, if so, under what standards of control? What relation, if any, is the concept of 'turnover' in s 24(1) intended or interpreted to bear to 'aggregated turnover' in s 328.115 of the *Income Tax Assessment Act 1997* (Cth) (and on what basis)? There is a cloud of uncertainty hanging over this central concept and its application that the otherwise helpful Government documents do not address.³²

- 2.15** Numerous inquiry participants called for consistency across the two Acts in terms of reporting threshold terminology,³³ with several suggesting that the term 'consolidated revenue' be adopted in the NSW Act.³⁴ For her part, Professor Burn acknowledged that there would be merit in using the same terminology.³⁵

Guidance material

- 2.16** Finally, the Housing Industry Association emphasised the need for detailed and industry-specific guidance material around the reporting requirements in the NSW Act, particularly given the complexity of the supply chain in the residential building industry:

HIA calls for the development of industry specific guidance material. HIA is particularly concerned that guidance material specific to the residential building industry is prepared. It is critical that reporting entities understand the extent of their supply chains as envisaged by the NSW Act, including that other businesses, particularly small businesses, will be involved in supporting a reporting entity comply with their reporting requirements.³⁶

- 2.17** In response to this, Professor Burn noted that following consultation with peak industry bodies, businesses and members of the community, draft guidance material for businesses on how to

³² Submission 72, Professor Paul Redmond, p 6.

³³ Submission 43, Be Slavery Free, p 4; Submission 52, Holding Redlich, p 2; Submission 53, Associate Professor Justine Nolan and Dr Martin Boersma, p 3; Submission 62, Housing Industry Association, p 8; Submission 85, Law Society of New South Wales, p 4; Submission 102, Konica Minolta Business Solutions Australia, p 7.

³⁴ Submission 52, Holding Redlich, p 2; Submission 53, Associate Professor Justine Nolan and Dr Martin Boersma, p 3; Submission 102, Konica Minolta Business Solutions Australia, p 7.

³⁵ Evidence, Professor Burn, 4 November 2019, p 13.

³⁶ Submission 62, Housing Industry Association, p 11.

comply with the NSW Act had been prepared, with further consultation on the draft document to take place.³⁷ A copy of the draft guidance material is available on the committee's website.³⁸

Appropriateness of the reporting threshold

2.18 The committee received conflicting evidence concerning the appropriateness of the NSW Act's reporting threshold of \$50 million to \$100 million, in comparison to the Commonwealth reporting threshold of \$100 million and over.

2.19 Mr Christian Gergis, Head of Policy, Australian Institute of Company Directors, argued that the NSW Act's \$50 million to \$100 million threshold is too low, in that it will 'capture organisations without the capacity, resources and experience to deal with the compliance and reporting regime'.³⁹ The Australian Institute of Company Directors also argued that the higher threshold of \$100 million and over would be more effective in terms of compliance and improving market practice:

We ... 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.⁴⁰

2.20 In addition, as discussed in Chapter 1, key representatives of the business community also expressed the view that it is unnecessary to have two schemes running simultaneously and that the Commonwealth's reporting scheme is preferable.

2.21 In contrast, numerous stakeholders expressed support for the NSW Act threshold, including on the basis that:

- this was the threshold recommended by the Commonwealth Parliament's Joint Standing Committee on Foreign Affairs, Defence and Trade in their report, *Hidden in Plain Sight: An inquiry into establishing a Modern Slavery Act in Australia*⁴¹
- it is similar to the £36 million (approximately AU\$66 million) threshold contained in the *Modern Slavery Act 2015* (UK)⁴²

³⁷ Evidence, Professor Burn, 4 November 2019, p 12.

³⁸ Tabled document, Professor Jennifer Burn, Interim Anti-Slavery Commissioner, NSW Department of Premier and Cabinet, *Draft NSW Modern Slavery Reporting Requirement Guidance Material*, July 2019, <https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=2546#tab-otherdocuments>.

³⁹ Evidence, Mr Christian Gergis, Head of Policy, Australian Institute of Company Directors, 4 November 2019, p 29.

⁴⁰ Submission 63, Australian Institute of Company Directors, p 3.

⁴¹ Submission 80, Anti-Slavery Australia, p 6.

⁴² Submission 80, Anti-Slavery Australia, p 6; Submission 52, Holding Redlich, p 2; Submission 71, Hagar Australia, p 7.

- organisations with an annual turnover of over \$50 million or more have the capacity and resources to prepare a modern slavery statement⁴³
- many submissions made in the consultation process for the Commonwealth Act argued for a lower figure such as that adopted in the NSW Act⁴⁴
- the lower reporting threshold extends the scope of legislative modern slavery reporting to cover approximately 1,400 additional reporting entities⁴⁵
- the lower threshold provides an opportunity to demonstrate that risks of modern slavery in supply chains are still prevalent in organisations with lower revenue than those entities reporting under the Commonwealth Act⁴⁶
- the lower threshold increases the likelihood that more modern slavery risks will be identified and addressed⁴⁷
- the suppliers of many Commonwealth reporting entities fall below the threshold of the Commonwealth Act but will be required to report under the NSW Act, which will assist the larger entities with their reporting capabilities when smaller suppliers are also specifically required by law to report⁴⁸
- it is well-established under instruments such as the United Nations Guiding Principles on Business and Human Rights that all companies, regardless of their size, sector, location, ownership and structure, have an obligation to protect and respect human rights and to provide a remedy where those rights have been violated⁴⁹
- the threshold of \$50 million is consistent with the definition of a large proprietary company used by the Australian Securities and Investments Commission for the purposes of lodging annual audited financial reports and directors' reports.⁵⁰

Penalties for non-compliance

2.22 There was significant debate during the course of the inquiry, both in written submissions and at the hearing, about the criminal penalties imposed in the NSW Act of up to \$1.1 million for failure to prepare a modern slavery statement (s 24(2)), failure to publish a statement (s 24(6)) and providing false or misleading information (s 24(7)). As noted above, the Commonwealth Act does not contain penalties, but rather empowers the Minister to 'name and shame' companies who do not comply with their reporting obligations. Entities who elect to report voluntarily under the Commonwealth Act are still subject to the penalty in s 24(7) of the NSW Act.

⁴³ Submission 80, Anti-Slavery Australia, p 6; Submission 47, Oxfam Australia, p 2.

⁴⁴ Submission 72, Professor Paul Redmond, pp 4-5.

⁴⁵ Submission 9, Business & Human Rights Resource Centre, p 1.

⁴⁶ Submission 25, Fair Supply, p 7.

⁴⁷ Submission 25, Fair Supply, pp 7-8.

⁴⁸ Submission 51, Corrs Chambers Westgarth, p 2.

⁴⁹ Submission 71, Hagar Australia, p 7.

⁵⁰ Submission 71, Hagar Australia, p 7.

2.23 Representatives of the business community strongly opposed the imposition of penalties, arguing:

- '[I]t is inappropriate for penalties to apply in a scheme that has a lower reporting threshold when penalties are absent in the higher threshold scheme'.⁵¹
- 'This results in a two-tier reporting system for New South Wales businesses with different consequences based on business size. We see this as an inequitable and inconsistent enforcement approach and it sends an inappropriate message to the community at large that combating modern slavery is more pressing for smaller businesses with fewer resources and weaker commercial leveraged than for larger organisations'.⁵²
- 'The inconsistency between the NSW Act and the Cth Act in respect of the enforcement approach, disadvantages smaller businesses and provides for an inequitable reporting scheme for NSW businesses more broadly'.⁵³
- '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'.⁵⁴
- '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'.⁵⁵
- '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'.⁵⁶

2.24 Both the Australian Industry Group and the Australian Institute of Company Directors advocated for the replacement of the penalty provisions with a three-year statutory review, as provided for in the Commonwealth Act,⁵⁷ to 'enable the NSW Government to evaluate the effectiveness of the New South Wales Act and consider whether additional measures are

⁵¹ Evidence, Mr Guy Noble, Manager Workplace Services (NSW), Housing Industry Association, 4 November 2019, p 30; see also Evidence, Mr Gergis, 4 November 2019, p 30.

⁵² Evidence, Ms Street, 4 November 2019, p 28.

⁵³ Submission 55, Australian Industry Group, p 6.

⁵⁴ Submission 63, Australian Institute of Company Directors, p 2.

⁵⁵ Submission 63, Australian Institute of Company Directors, p 2.

⁵⁶ Submission 63, Australian Institute of Company Directors, p 2.

⁵⁷ Submission 55, Australian Industry Group, p 6; Evidence, Mr Gergis, 4 November 2019, p 30.

required to improve compliance with modern slavery reporting'.⁵⁸ In addition, the NSW Business Chamber and Australian Business Industrial put forward the view that businesses voluntarily reporting under the Commonwealth Act should not be subject to any of the penalties applicable under the NSW Act.⁵⁹

2.25 Along similar lines, Baptist World Aid Australia proposed that to address the discrepancy in enforcement approach with the Commonwealth Act:

- the NSW Act be amended to make the penalties in s 24 subject to a three-year grace period
- after the three-year grace period, structure the penalties as being provisional based on a set 'trigger point' that considers if New South Wales businesses are failing to meet a minimum compliance threshold, for example, if less than 90 per cent of businesses comply
- use the three-year grace period to allow time for the Commonwealth Act to harmonise with the more robust NSW Act.⁶⁰

2.26 On the other hand, the committee also received evidence strongly in support of the NSW Act's penalty regime. In this regard, Mr Paul Green, former member of the NSW Legislative Council, who introduced the Modern Slavery Bill 2018 into Parliament as a private members bill, commented that '[p]enalties are only there because the global experience is that compliance is very sluggish'.⁶¹

2.27 In insisting on the need for the NSW Act to retain its penalty provisions, submission authors particularly highlighted the United Kingdom experience, drawing a link between the lack of penalties for non-compliance in its legislation and low compliance with reporting requirements. Submission authors noted that:

- the United Kingdom Home Office reported in 2018 that 40 per cent of the 17,000 entities required to do so had failed to publish a statement⁶²
- a survey of statements published by FTSE 100 leading companies found that '[t]hree years on, most companies still publish generic statements committing to fight modern slavery, without explaining how [and] only a handful of leading companies have demonstrated a genuine effort in their reporting to identify and mitigate risks'⁶³
- four years since the legislation's enactment, only 23 per cent of the statements submitted comply with all the minimum statutory requirements, that is, published on the organisation's website, signed by a director and approved by the board⁶⁴
- an independent review of the UK Act:

⁵⁸ Submission 55, Australian Industry Group, p 6.

⁵⁹ Submission 92, NSW Business Chamber and Australian Business Industrial, p 5.

⁶⁰ Submission 33, Baptist World Aid Australia, p 5.

⁶¹ Evidence, Mr Paul Green, former member, NSW Legislative Council, 4 November 2019, p 80.

⁶² Submission 72, Professor Paul Redmond, p 5.

⁶³ Submission 72, Professor Paul Redmond, p 5.

⁶⁴ Submission 80, Anti-Slavery Australia, p 7.

- concluded that ‘lack of enforcement and penalties, as well as confusion surrounding reporting obligations, are core reasons for poor-quality statements’⁶⁵
- recommended that the UK Government ‘make the necessary legislative provisions to strengthen its approach to tackling non-compliance’ by introducing sanctions including ‘warnings, fines (as a percentage of turnover), court summons and directors’ disqualification’.⁶⁶

2.28 At the hearing, Ms Amy Sinclair, Regional Representative for Australia, New Zealand and Pacific, Business and Human Rights Resource Centre, observed that the inclusion of penalties in the NSW Act represents global best practice for modern slavery legislation:

The penalty regime in the New South Wales Act has been applauded globally as representing best practice. ... The inclusion of penalties in the New South Wales Act is a key legislative improvement. It really is leading the way in terms of modern slavery reporting legislation.⁶⁷

2.29 Finally, in a separate but related point on the issue of penalties, the NSW Bar Association raised the fact that the NSW Act fails to identify who is responsible for prosecuting the offences in s 24, leaving a gap in the enforcement regime.⁶⁸ The NSW Bar Association recommended consideration be given to making specific provision in the Amendment Bill for a relevant authority to conduct prosecutions involving breaches of the NSW Act.⁶⁹

Charities and not-for-profit organisations

2.30 The committee was advised that, in the NSW Government's view, charities and not-for-profit organisations that supply goods or services for profit currently fall within the scope of the supply chain reporting requirements in s 24 of the NSW Act. However, the NSW Government also acknowledged that this interpretation had been contested by some stakeholders and that the issue was in need of clarification.⁷⁰

2.31 Accordingly, in the Amendment Bill:

- Item [12] clarifies that s 24 applies to charities and not-for-profit organisations, if they supply goods or services for profit, have employees in New South Wales and meet the turnover threshold
- Item [13] clarifies that the relevant turnover is only that derived from the supply of goods and services for profit or gain, and not, for example, income derived from charitable donations.⁷¹

⁶⁵ Submission 72, Professor Paul Redmond, p 5.

⁶⁶ Submission 80, Anti-Slavery Australia, p 7.

⁶⁷ Evidence, Ms Amy Sinclair, Regional Representative for Australia, New Zealand and Pacific, Business and Human Rights Resource Centre, 4 November 2019, pp 54-55.

⁶⁸ Submission 58, NSW Bar Association, p 7.

⁶⁹ Submission 58, NSW Bar Association, p 7.

⁷⁰ Submission 1, NSW Government, p 8.

⁷¹ Submission 1, NSW Government, p 8.

- 2.32** The NSW Government's submission notes that this outcome is consistent with the position of charities and not-for-profit organisations under the Commonwealth Act.⁷²
- 2.33** However, at the hearing Professor Burn indicated that she had since received advice from stakeholders regarding the burden that this would impose on charities and not-for-profits, and explained that the Draft Regulation therefore proposes to exclude charities and not-for-profits from s 24 for the time being:
- Since then we have received further advice and consultation that this would impose a significant burden on some charities and not-for-profit groups. The proposal is set out in the draft regulation that charities be excluded at this stage but the provision in the regulation does extend to a flexible framework that would allow this to be revisited at some other later stage.⁷³
- 2.34** The NSW Government further noted that if the exemption set out in cl 10(4) of the Draft Regulation is supported by stakeholders during the consultation process, an exemption can be provided in the final Regulation.⁷⁴
- 2.35** In terms of stakeholder views about whether s 24 should apply to charities and not-for-profit organisations, the Australian Institute of Company Directors expressed support for the proposal to exempt these groups due to:
- their proportionally greater administrative burden and increased compliance costs in meeting the reporting requirements compared to larger commercial organisations
 - the fact that charities and not-for-profits have limited resources and should therefore not be subject to penalties for non-compliance.⁷⁵
- 2.36** In evidence to the committee, Mr Gergis noted that while there was no opposition at the Commonwealth level to having modern slavery regulation capture charities and not-for-profit organisations, this was because of the higher monetary threshold of \$100 million and the fact that there are no penalties attached.⁷⁶
- 2.37** On the other hand, a substantial number of inquiry participants expressed the view that charities and not-for-profits should not be exempt from the supply chain reporting requirements in s 24. For example, the Australian Red Cross, which is subject to the reporting scheme under the Commonwealth Act, expressed the view that charities and not-for profits should be covered by supply chain reporting requirements, but argued that consideration should be given to a system of financial support to assist such organisations with limited financial capacity to meet these requirements.⁷⁷
- 2.38** Comments from other stakeholders who opposed an exemption for charities and not-for-profits included:

⁷² Submission 1, NSW Government, p 8.

⁷³ Evidence, Professor Burn, 4 November 2019, p 7.

⁷⁴ Submission 1, NSW Government, p 8.

⁷⁵ Submission 63, Australian Institute of Company Directors, p 3.

⁷⁶ Evidence, Mr Gergis, 4 November 2019, p 39.

⁷⁷ Submission 99, Australian Red Cross, p 3.

- '[T]he fact an organisation does not distribute profits to members may not be an accurate indication of that organisation's capacity to investigate its supply chains and prepare a modern slavery statement. Indeed, organisations working in humanitarian fields should be thought leaders in this space, leading by example by proactively examining their supply chains to ensure their own operations are not contributing to modern slavery'.⁷⁸
- 'Beyond the requirements of our regulatory and peak bodies, charities are constantly attuned to the need to show due diligence to a philanthropic public that demands transparency and impact for its every dollar. Complying with the NSW Modern Slavery Act is just one additional regulatory requirement that will help give supporters confidence that Australian charities that meet the threshold are not unwittingly contributing to slavery in the pursuit of their respective missions'.⁷⁹
- 'The ACNC Annual Report 2017-18 indicated that charities report more than \$142 billion in revenue and employ up to 10% of Australia's workforce. While much of this revenue is concentrated in a relatively small number of organisations, what these figures attest to is that the charitable sector has a significant contribution to make to collaboratively addressing the risks of modern slavery'.⁸⁰
- 'Charities and not-for-profit organisations exist for public benefit. Like any other business, there is a risk that a charity or not-for-profit organisation may be causing, contributing to or directly linked to modern slavery in their supply chains. Organisations that exist for public benefit should be expected to lead the way in ensuring their supply chains are slavery free'.⁸¹
- '[I]f 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) they have the capacity and resources to prepare a modern slavery statement'.⁸²

2.39 Going a step further, some stakeholder argued that charities and not-for-profit organisations should not only be subject to the supply chain reporting requirements in the NSW Act, but that their charitable donations should be included in calculating turnover for the purposes of reporting threshold.⁸³ For example, Ethical Merch Co told the committee:

We disagree with the exclusion of charity donations from the turnover calculation in particular and would like to specifically comment on this matter. We believe the public has a right to be assured that their charitable donations are not being used to procure goods and services which are the product of Modern Slavery. Hence, we believe that donations should be included in calculation for establishing a charity's turnover or consolidated revenue.⁸⁴

⁷⁸ Submission 25, Fair Supply, p 10.

⁷⁹ Submission 71, Hagar Australia, pp 9-10.

⁸⁰ Submission 71, Hagar Australia, p 10.

⁸¹ Submission 78, Mercy Foundation, p 3.

⁸² Submission 80, Anti-Slavery Australia, p 7.

⁸³ Submission 42, The Freedom Hub Ltd, p 5; Submission 43, Be Slavery Free p 8; Submission 36, Ethical Merch Co, p 3.

⁸⁴ Submission 36, Ethical Merch Co, p 3.

2.40 Finally, on the issue of registered clubs, ClubsNSW expressed concern that the exemption for charities and not-for-profit organisations in cl 10(4) as currently drafted would not apply to these organisations. For example, sub-clause (a) of the exemption requires the not-for-profit organisation to have a constitution that prohibits the distribution of profits or property to its members, whereas registered clubs are governed by statute.

2.41 ClubsNSW stated that given charities and not-for-profit organisations are exempt, there is 'no logical basis as to why not-for-profit clubs should not also be exempted', particularly given their structure, operations and supply chains:

Clubs are structured so their operating and financial activities are transparent and subject to scrutiny by their members and governing bodies, and clubs commonly source suppliers and staff from their local communities. These features strongly mitigate the risk that a club's structure, operations or supply chains will be connected to modern slavery and ClubsNSW is unaware of any evidence to suggest it is an issue in the industry.⁸⁵

Small businesses and franchises

2.42 Under the cl 10(5) of the Draft Regulation, small businesses that employ fewer than 20 employees are exempt from s 24, notwithstanding that they meet the reporting threshold of \$50 million. As with charities and not-for-profit organisations, this exemption recognises the proportionally greater administrative burden and increased compliance costs small businesses would face in meeting their reporting requirements compared to large commercial organisations.⁸⁶

2.43 In its submission, the Housing Industry Association expressed its support for this exemption, while questioning how the figure of 20 employees was arrived at and noting that the figure 'does not differentiate between part-time and full-time employees, casuals and labour hire'.⁸⁷

2.44 However, several stakeholders voiced their opposition to the exemption for small businesses on the basis that:

- the idea that a business with a turnover between \$50 million and \$100 million with 20 employees is 'small' is inconsistent with:
 - the Australian Taxation Office definition of a small business as one that has an aggregated annual turnover (excluding GST) of less than \$2 million
 - the Fair Work Australia definition of a small business as one that has fewer than 15 employees
 - the *Corporations Act 2001* (Cth) definition of a large business as one with a consolidated revenue in excess of \$50 million with 100 or more employees⁸⁸

⁸⁵ Submission 49, ClubsNSW, p 1.

⁸⁶ NSW Department of Premier and Cabinet, *Draft Modern Slavery Regulation 2019 Explanatory Paper: Supply Chain Reporting Requirement for Business*, June 2019, p 19.

⁸⁷ Submission 62, Housing Industry Association, pp 11-12.

⁸⁸ Submission 43, Be Slavery Free, p 8; Submission 68, Shop, Distributive and Allied Employees' Association NSW, p 5.

- the exemption serves no purpose, given that most businesses with a turnover in excess of \$50 million will also have 20 or more employees and that there is no obvious rationale for an exemption in the case of a high-turnover business with a small number of staff⁸⁹
- the exemption is impractical and poses difficult questions around the process for determining whether it applies, for example 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 Commissioner⁹⁰
- the exemption fails to capture layers of subcontracting within an organisation's operations and supply chains, which is an area where increased transparency would further the aims of the legislation⁹¹
- companies would be able to avoid the reporting requirements by having their workforce work as independent contractors rather than employees⁹²
- compliance costs for these businesses can be ameliorated by the Anti-Slavery Commissioner developing codes of practice, resource materials and providing advice and assistance, as provided for under the NSW Act.⁹³

2.45 When asked how the figure of fewer than 20 employees was arrived at, the NSW Government advised:

There are many different definitions of a 'small business.' The draft Regulation adopts the Australian Bureau of Statistics definition of a small business, not the definition of small business adopted by the ATO, Fair Work Australia or the Corporations Act 2001 (Cth). Further, the NSW Government's Small and Medium Enterprise and Regional Procurement Policy reflects the ABS definition of a small business.⁹⁴

2.46 The Shop, Distributive and Allied Employees' Association also highlighted the need to ensure that franchises are caught by the reporting requirements in s 24, in light of the 7-Eleven wage exploitation scandal:

... [W]e do stress the need to be clear that supply chain reporting should capture head franchisors all the way down through franchisee chains, however they are described. Head franchisors should have to treat franchisees as part of their supply chains. The 7-Eleven issue was emblematic of the issues we see in the franchising system, but not isolated to just 7-Eleven. It is a serious issue across a number of franchise systems that we believe should be addressed.⁹⁵

⁸⁹ Submission 43, Be Slavery Free, p 8; Submission 68, Shop, Distributive and Allied Employees' Association NSW, p 5.

⁹⁰ Submission 80, Anti-Slavery Australia, p 8.

⁹¹ Submission 102, Konica Minolta Business Solutions Australia, p 7.

⁹² Evidence, Mr Mark Morey, Secretary, Unions NSW, 4 November 2019, pp 74-75.

⁹³ Submission 68, Shop, Distributive and Allied Employees' Association NSW, p 5; Submission 102, Konica Minolta Business Solutions Australia, p 7.

⁹⁴ Answers to supplementary questions, Professor Jennifer Burn, Interim Anti-Slavery Commissioner, NSW Department of Premier and Cabinet, 10 January 2020, p 1.

⁹⁵ Evidence, Mr Bernie Smith, Secretary/Treasurer, Shop, Distributive and Allied Employees' Association NSW Branch, 4 November 2019, p 69.

- 2.47** In answers to questions on notice, Mr Bernie Smith, Secretary/Treasurer, Shop, Distributive and Allied Employees' Association NSW Branch, argued that franchisors should be required to report on the steps taken to ensure the franchise as a whole is free from slavery, and suggested that franchisees be required to provide relevant information to franchisors in order to facilitate this:

Franchising is a mode of business where there is a clear interdependence between the franchisor and the franchisee. The Union believes that the nature of the relationship means that it is in the shared interest of both the franchisor and the franchisee to consider the impact on their brand of their activities and so report on the steps taken to ensure the franchise as a whole is free from slavery. We believe the franchisor, rather than individual franchisees, is better placed to produce the modern slavery statement required by the Act. However, where a franchisee's turnover is \$50 million or more, they would be required to report directly.

To ensure transparency of the supply chain, in so far as it relates to franchising, the Act should require a franchisee to provide to the franchisor all relevant information needed to prepare a modern slavery statement.⁹⁶

Voluntary reporting for entities below the reporting threshold

- 2.48** Numerous inquiry participants put forward the view that the NSW Act should make provision for entities falling below the \$50 million threshold to voluntarily provide modern slavery statements to the Anti-Slavery Commissioner.⁹⁷
- 2.49** For example, Ethical Partners Funds Management observed that voluntary reporting would allow companies to show leadership in terms of corporate social responsibility:

We believe that the operability of the proposed anti-slavery scheme could be strengthened by allowing for voluntary modern slavery risk statements. We believe that corporates and entities that wish to establish themselves as leaders in the social responsibility space may wish to submit voluntary statements and we believe this leadership should be applauded and facilitated.⁹⁸

- 2.50** The Shop, Distributive and Allied Employees' Association NSW was also supportive of voluntary reporting, highlighting the benefits for both voluntary and mandatory reporters:

Including a voluntary reporting regime would allow smaller Companies along the supply chain with turnovers below the \$50 million threshold to report on risks of modern slavery which would not only mitigate the risk at a micro level but assist commercial organisations with mandatory reporting requirements to better assess and address the risk and meet due diligence and remediation requirements.⁹⁹

⁹⁶ Answers to questions on notice, Mr Bernie Smith, Secretary/Treasurer, Shop, Distributive and Allied Employees' Association NSW Branch, 25 November 2019, p 2.

⁹⁷ Submission 37, Ethical Partners Funds Management, p 3; Submission 68, Shop, Distributive and Allied Employees' Association NSW, p 5; Submission 43, Be Slavery Free, p 4; Submission 52, Holding Redlich, p 5; Submission 53, Associate Professor Justine Nolan and Dr Martin Boersma, p 1; Submission 71, Hagar Australia p 14.

⁹⁸ Submission 37, Ethical Partners Funds Management, p 3.

⁹⁹ Submission 68, Shop, Distributive and Allied Employees' Association NSW, p 5.

- 2.51** In relation to voluntary reporting, the *Draft NSW Modern Slavery Reporting Requirement Guidance Material* tendered by Professor Burn at the hearing states that the NSW Government is developing a system to enable businesses to voluntarily report to the NSW Anti-Slavery Commissioner and that, in the meantime, businesses can voluntarily submit a report to the Commonwealth Government.¹⁰⁰
- 2.52** As noted at paragraph 2.9, entities reporting voluntarily under the Commonwealth Act, including those that fall within the NSW Act threshold, are exempt from reporting under the NSW Act.

Supply chain reporting obligations for government agencies

- 2.53** The *Modern Slavery Act 2018* contains the following provisions regarding supply chain transparency obligations for government agencies:
- a government agency must take reasonable steps to ensure that goods and services procured by and for the agency are not the product of modern slavery (new s 176(1A), *Public Works and Procurement Act 1912*)¹⁰¹
 - the NSW Procurement Board may issue directions to government agencies regarding reasonable steps that are to be taken to ensure that goods and services procured by and for government agencies are not the product of modern slavery (new s 175(3)(a1), *Public Works and Procurement Act 1912*)¹⁰²
 - the NSW Procurement Board must regularly consult with the Anti-Slavery Commissioner about the form and content of such directions and take into account any recommendations of the Commissioner (new s 175(4), *Public Works and Procurement Act 1912*)¹⁰³
 - government agencies must include in their annual reports a statement of the actions taken in relation to any significant issues raised by the Anti-Slavery Commissioner, and of steps taken to ensure that goods and services procured by the agency were not the product of modern slavery (new cl 6(b1) and 6(b2), Annual Reports (Departments) Regulation 2015 and new cl 8(b1) and 8(b2), Annual Reports (Statutory Bodies) Regulation 2015)¹⁰⁴
 - the Auditor-General may conduct risk-based audits of government agencies to determine whether they are ensuring that the goods and services they procure are not the product of modern slavery, and may advise the Anti-Slavery Commissioner of the results of such audits (new ss 38G and 38H, *Public Finance and Audit Act 1983*)¹⁰⁵
 - the Anti-Slavery Commissioner must regularly consult with the Auditor-General and the NSW Procurement Board to monitor the effectiveness of due diligence procedures in

¹⁰⁰ Tabled document, Professor Jennifer Burn, Interim Anti-Slavery Commissioner, NSW Department of Premier and Cabinet, *Draft NSW Modern Slavery Reporting Requirement Guidance Material*, July 2019, p 16.

¹⁰¹ *Modern Slavery Act 2018*, Sch 5, Pt 5.6, Item [5].

¹⁰² *Modern Slavery Act 2018*, Sch 5, Pt 5.6, Item [3].

¹⁰³ *Modern Slavery Act 2018*, Sch 5, Pt 5.6, Item [4].

¹⁰⁴ *Modern Slavery Act 2018*, Sch 5, Pts 5.1 and 5.2.

¹⁰⁵ *Modern Slavery Act 2018*, Sch 5, Pt 5.5.

place to ensure that the procurement of goods and services by government agencies are not the product of modern slavery (s 25, *Modern Slavery Act 2018*).

2.54 The following sections discuss the position of State owned corporations and local councils in relation to this regime.

State owned corporations

2.55 There are currently seven State owned corporations established as separate legal entities under the *State-Owned Corporations Act 1989*, with the intention to operate commercially and with a governing board. The NSW Government informed the committee that State owned corporations:

- are distinguishable from government agencies in that they do not receive a budget appropriation and have their roles and responsibilities defined by the *State-Owned Corporations Act 1989* and each individual enabling statute
- are treated by the NSW Government as commercial organisations, enabling them to maintain a high level of independence and operate on a level playing field with other New South Wales businesses.¹⁰⁶

2.56 As currently drafted, the seven State owned corporations, as well as companies incorporated under the *Corporations Act 2001* (Cth) which have a Minister as a shareholder, are defined as a 'government agency' in the NSW Act.¹⁰⁷ The NSW Government said this means that the supply chain reporting requirement placed on commercial organisations under s 24 does not apply to these entities.¹⁰⁸

2.57 However, the NSW Government identified that there is 'significant uncertainty' about the extent to which the provisions governing the reporting requirements of government agencies, as set out above, have effectively captured State owned corporations. This is because, notwithstanding their inclusion in the definition of 'government agency' in the NSW Act, State owned corporations are not covered by the *Public Works and Procurement Act 1912* and would therefore not be subject to the requirement that a government agency must take reasonable steps to ensure that goods and services procured by and for the agency are not the product of modern slavery (new s 176(1A)), or be bound by a direction from the Procurement Board (new s 175(3)(a1)).¹⁰⁹

2.58 Given the government's policy that State owned corporations should operate on a level playing field with equivalent commercial organisations, to the greatest extent possible,¹¹⁰ it is proposed by the NSW Government that s 24 of the NSW Act be amended to include State owned

¹⁰⁶ Answers to questions on notice, Professor Jennifer Burn, Interim Anti-Slavery Commissioner, NSW Department of Premier and Cabinet, 10 December 2019, p 1.

¹⁰⁷ *Modern Slavery Act 2018*, s 5.

¹⁰⁸ Submission 1, NSW Government, p 6.

¹⁰⁹ Submission 1, NSW Government, p 7; *Public Works and Procurement Act 1912*, s 162. The *Public Works and Procurement Act 1912* provides the ability for a State owned corporation to fall under the definition of 'government agency' where it is prescribed under the regulations, however there are currently no State owned corporations prescribed under regulation and therefore none that are subject to the directions of the NSW Procurement Board.

¹¹⁰ Submission 1, NSW Government, p 7.

corporations in the modern slavery reporting requirements applicable to commercial organisations. The Amendment Bill therefore contains the following provision:

- Item [1] removes State owned corporations and other corporations of which a Minister is a shareholder from the definition of 'government agency' in s 5
- Item [14] inserts State owned corporations and other corporations of which a Minister is a shareholder into the definition of 'organisation' for the purposes of s 24 of the Act.

2.59 As a practical matter, it was also noted that because all of the current State owned corporations have turnovers above \$100 million, they are most likely covered by the Commonwealth Act.¹¹¹

2.60 From a stakeholder perspective, the Law Society of New South Wales expressed support for the proposal in the Amendment Bill to treat State owned corporations as commercial organisations rather than government agencies for the purposes of the NSW Act. However, the Law Society also suggested that consideration be given to 'whether a state-owned corporation should be treated as a government agency where a Minister is directly responsible or accountable to Parliament for the acts or omissions of that state-owned corporation'.¹¹²

Local councils

2.61 As with State owned corporations, 'councils, county councils and joint organisations' are currently included in the definition of 'government agency' in the NSW Act. However, the NSW Government again informed the committee that there is doubt about whether these entities are effectively captured,¹¹³ given that they are not covered by the *Public Works and Procurement Act 1912* or bound by Procurement Board directions.¹¹⁴

2.62 The committee was advised that 'NSW Government policy generally is to treat local councils as distinct from NSW Government agencies' and that the Amendment Bill therefore does not propose any amendments to bring local councils within the scope of the NSW Act.¹¹⁵ Instead, the NSW Government informed the committee that:

- non-legislative approaches for local councils are currently being explored, given 'concerns that smaller and regional councils will not have the resources to meet an additional burden to report on how their procurement activities are being managed to ensure that the goods and services they procure are not the product of modern slavery'
- the Office of Local Government is proposing an administrative process, working with the local government sector and the Anti-Slavery Commissioner, which will involve:
 - assessing the degree to which councils would be willing to provide information to the Commissioner on a voluntary basis
 - designing an appropriate regulatory instrument, for example a code of practice
- if non-legislative approaches for local councils prove ineffective:

¹¹¹ Submission 1, NSW Government, p 7.

¹¹² Submission 85, Law Society of New South Wales, p 5.

¹¹³ Submission 1, NSW Government, p 7.

¹¹⁴ *Public Works and Procurement Act 1912*, s 163(2)(a).

¹¹⁵ Submission 1, NSW Government, p 7.

- amendments could be introduced at a later stage, either to the NSW Act or the *Local Government Act 1993*, to provide procurement and reporting obligations equivalent to those imposed on NSW Government agencies
- to address concerns about the burden on smaller and regional councils, any amendments could include a regulation-making power to exempt any council or class of councils, from the modern slavery procurement and reporting requirements.¹¹⁶

2.63 In evidence at the hearing, Professor Burn assured the committee that the intent of the NSW Government in exploring an administrative framework was to bring councils 'to the table'¹¹⁷ in terms of responding to modern slavery, and emphasised the importance of ensuring that such a framework is 'targeted and framed to identify the risk of modern slavery and is appropriate for implementation for organisations regardless of their size'.¹¹⁸

2.64 However, Local Government Procurement, which as a business arm of Local Government NSW represents the local government sector, as well as Anti-Slavery Australia and Holding Redlich, recommended that the NSW Act be amended to require councils to address and report on modern slavery risks in their procurement, given that:

- councils had a collective expenditure of \$11.4 billion in 2017-18
- some of this spending occurs in sectors that are considered high risk industries for modern slavery, such as manufacturing, electronics, construction and clothing.¹¹⁹

2.65 Local Government Procurement also expressed reservations about the effectiveness of a non-legislative approach for local councils, telling the committee:

It is unlikely that voluntary, non-legislative approaches will result in action by the majority of NSW councils in relation to modern slavery. Councils have many competing priorities, and in our experience, they tend to focus on those that have either legislative obligations or have been highlighted for immediate action by their community and elected members.¹²⁰

2.66 Local Government Procurement urged that if a non-legislative approach is pursued, the Office of Local Government's *Integrated Planning and Reporting Guidelines for local government in NSW* should be 'utilised and amended to include requirements around addressing modern slavery risks in council procurement'.¹²¹

¹¹⁶ Submission 1, NSW Government, p 7.

¹¹⁷ Evidence, Professor Burn, 4 November 2019, p 17.

¹¹⁸ Evidence, Professor Burn, 4 November 2019, p 16.

¹¹⁹ Submission 26, Local Government Procurement, p 1; Submission 80, Anti-Slavery Australia, p 9; Submission 52, Holding Redlich, p 4.

¹²⁰ Submission 26, Local Government Procurement, p 1.

¹²¹ Submission 26, Local Government Procurement, p 2.

Public register

2.67 Section 26 of the NSW Act currently provides for the Anti-Slavery Commissioner to maintain a publicly available electronic register which identifies:

- any commercial organisation that has disclosed in a modern slavery statement that its goods and services are, or may be, a product of supply chains in which modern slavery may be taking place, and whether the commercial organisation has taken steps to address the concern
- any other organisation or body that has voluntarily disclosed to the Commissioner that its goods and services are, or may be, a product of supply chains in which modern slavery is taking place, and whether the organisation or body has taken steps to address the concern
- any government agency failing to comply with directions of the NSW Procurement Board under s 175 of the *Public Works and Procurement Act 1912* concerning procurement of goods and services that are the product of modern slavery, and whether the government agency has taken steps to ensure compliance in the future.

2.68 In its submission, the NSW Government noted that many stakeholders had expressed concern in the course of its consultations that the current focus of s 26 is on 'naming and shaming' companies that discover modern slavery in their supply chains, which would act as a disincentive to effective due diligence. The government also noted that there is currently no guidance in the NSW Act or Draft Regulation as to how to make a voluntary disclosure under s 26.¹²²

2.69 Accordingly, in the Amendment Bill:

- Item [16] inserts a new subsection into s 26 to allow the Commissioner to publish on the register any other information he or she thinks is appropriate. According to the NSW Government, this would give the Commissioner 'greater flexibility to use to the register to publish all Modern Slavery Risk Statements (to improve transparency and facilitate comparisons, in line with the proposed Commonwealth register) and to highlight certain matters as the Commissioner sees fit, for example to reward best practice'.
- Item [17] inserts a new regulation-making power into s 26, to allow the regulations to address the manner and form in which voluntary disclosures can best be made to the Commissioner, 'without limiting the current flexibility to volunteer any information to the Commissioner that a person or organisation sees fit to provide'.¹²³

2.70 In addition, the Draft Regulation provides that the Commissioner must keep and publish online an electronic register for *all* modern slavery statements and that this 'statement register' may be combined with the register kept by the Commissioner under s 26.

2.71 In answers to supplementary questions, Professor Burn explained what these amendments are trying to achieve:

The Amendment Bill and Draft Regulation support having a register that makes all modern slavery statements publicly available because it enhances business transparency,

¹²² Submission 1, NSW Government, p 11.

¹²³ Submission 1, NSW Government, p 11.

encourages a ‘race to the top’ among industry peers, and aligns with the approach in the Commonwealth *Modern Slavery Act 2018*.¹²⁴

2.72 However, the committee heard from advocacy groups, legal stakeholders and commercial organisations who expressed serious concern about the potential for s 26 to disincentivise commercial organisations from identifying modern slavery in their supply chains, and the importance of encouraging businesses to take effective action to combat modern slavery.

2.73 Comments from submission authors included:

- 'In our view, the dirty list approach of the s 26 register may be counterproductive because it would likely disincentivise business from acting responsibly and taking steps to identify slavery risks. Further, it acts in opposition to the rationale behind a reporting requirement such as that established by s 24. Reporting entities may be discouraged from being open and transparent about their actual, or potential, modern slavery risks, and how they are addressing them, for fear of being publicly named and shamed on the s 26 register'.¹²⁵
- '[T]he Commission is concerned that [the s 26 register] is likely to discourage companies from taking proactive steps to identify their modern slavery risks or from revealing their modern slavery risks in their modern slavery statement, for fear of being ‘named and shamed’ ... This potential consequence ... is out of step with the purpose of modern slavery reporting legislation, including in similar legislation in other jurisdictions, which is to encourage greater transparency, support business to take effective action and drive a ‘race to the top’ amongst businesses in their responses to modern slavery'.¹²⁶
- 'Ai Group considers that commercial organisations that disclose risks of modern slavery are demonstrating that they have implemented due diligence systems effective in uncovering such risks. The sharing of this information should be encouraged rather than businesses being ‘named and shamed’ on a particular list'.¹²⁷
- 'It is likely in our view that a register which is designed to only publish instances of findings of modern slavery by reporting entities may be a disincentive for businesses to really look for and find these issues within their supply chains'.¹²⁸

2.74 Further, Professor Redmond not only highlighted the importance of incentivising compliance, but questioned the effectiveness of the proposal to allow the Commissioner to publish other information on the register:

The discovery of modern slavery and appropriate action to address it should be the occasion of celebration and reward, not of opprobrium. It is important to get incentives right and discourage easy resort to naming and shaming without substance; concern should be with the quality of compliance. The proposed solution of permitting the Commissioner to publish other information, such as that promoting or rewarding best practice, does not address the substance of this concern. Commending a commercial organisation whose name sits on the register of those who have found modern slavery

¹²⁴ Answers to supplementary questions, Professor Burn, 10 December 2019, p 1.

¹²⁵ Submission 9, Business & Human Rights Resource Centre, pp 5-6.

¹²⁶ Submission 46, Australian Human Rights Commission, pp 4-5.

¹²⁷ Submission 55, Australian Industry Group, p 7.

¹²⁸ Submission 102, Konica Minolta Business Solutions Australia, p 6.

in their supply chain is unlikely to repair the damage sustained to reputation and to incentives for reporting organisations to search.¹²⁹

- 2.75** A number of stakeholders expressed support for the maintenance of a single public register of all modern slavery statements,¹³⁰ with some arguing that obviates the need for a register which identifies organisations who have identified modern slavery in their supply chains.¹³¹ For example, the Housing Industry Association told the committee:

If all statements are going to be published as required by clause 8, there is no need for a separate register under s 26. If a member of the public wants to discover whether a particular organisation has identified that it has a risk or actually identifies that its goods and services are, or may be, the product of supply chains in which modern slavery is occurring the member of the public need only read the Modern Slavery Statement from that organisation. There is no need for separate register; section 26 should be deleted.¹³²

Committee comment

- 2.76** The committee strongly supports the mandatory supply chain reporting regime provided for in s 24 of the NSW Act. We believe that the requirement for large commercial organisations to report publicly on the steps they have taken to eliminate modern slavery from their supply chain is a central pillar in combatting modern slavery in New South Wales.
- 2.77** The committee is similarly supportive of the procurement rules applicable to government agencies, particularly the requirement that a government agency must take reasonable steps to ensure that goods and services procured by and for the agency are not the product of modern slavery. This sends the message that government has an equally important role to play – together with business, civil society and consumers – in leading by example with a view to ending modern slavery.
- 2.78** The committee's comments in relation to the specific issues raised by stakeholders are set out below.

Harmonisation between Commonwealth and New South Wales schemes

- 2.79** The committee acknowledges the work done by the Interim Anti-Slavery Commissioner and the NSW Department of Premier and Cabinet in developing reporting requirements in the Draft Regulation that are aligned with the provisions in the Commonwealth Act, particularly around the mandatory minimum content of statements and the timing and method of publication. The business community is understandably concerned to ensure that the reporting process is as simple as possible and that duplication between the Commonwealth and New South Wales schemes is minimised. We are of the view that the reporting requirements contained in the Draft Regulation, subject to the amendments proposed by the Recommendations in this report, and

¹²⁹ Submission 72, Professor Paul Redmond, p 7.

¹³⁰ Submission 55, Australian Industry Group, p 6; Submission 102, Konica Minolta Business Solutions Australia, p 6.

¹³¹ Submission 62, Housing Industry Association, p 10; Submission 85, Law Society of New South Wales, p 4.

¹³² Submission 62, Housing Industry Association, p 10.

the ability for organisations to voluntarily report to the Commonwealth and thereby meet their obligations under the NSW Act, will go a long way to addressing these concerns.

- 2.80** The committee is also supportive of the work already underway in preparing detailed guidance material for business and encourages the Interim Anti-Slavery Commissioner and the NSW Department of Premier and Cabinet to continue engaging with key stakeholders so that this material, once finalised, is as practical and useful as possible for wide spectrum of businesses.
- 2.81** On the issue of reporting threshold terminology, we are persuaded that the term 'consolidated revenue' is preferable to 'turnover' given that 'consolidated revenue' is the more well-understood concept under Australian corporate law and accounting standards, and that use of this term in the NSW Act would result in greater consistency with the Commonwealth Act. We therefore recommend that the NSW Government seek to amend the reporting threshold terminology in s 24 of *Modern Slavery Act 2018* to replace the term 'turnover' with 'consolidated revenue'.
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Recommendation 3

That the NSW Government seek to amend the reporting threshold terminology in section 24 of *Modern Slavery Act 2018* to replace the term 'turnover' with 'consolidated revenue'.

Appropriateness of the reporting threshold

- 2.82** The committee notes conflicting evidence received about the appropriateness of the reporting threshold in the NSW Act of \$50 million to \$100 million, and acknowledges concerns by some members of the business community about the capacity of organisations with such a turnover to comply with the reporting requirements.
- 2.83** The committee also acknowledges the potential for confusion in the presentation of state and Commonwealth legislation with different reporting thresholds and is of the view that future harmonisation of the reporting threshold would be a desirable reform.
- 2.84** However, notwithstanding these concerns, we have come to the view that the current reporting threshold strikes a reasonable balance and is appropriate in the circumstances, particularly in light of the comparable threshold operating in the United Kingdom and the existing obligations on such businesses, as large proprietary companies, to lodge annual audited financial reports and directors' reports with ASIC. Placing reporting obligations on between 1,400 and 1,650 additional reporting entities in New South Wales is also more consistent with the NSW Government's commitment to tackling modern slavery.
- 2.85** That being said, we again emphasise the importance of the NSW Government and the Interim Anti-Slavery Commissioner continuing to work with business to ensure reporting requirements are as simple as possible and clearly explained in the guidance material, and recommend accordingly. We also recommend that the NSW Government work with the Australian Government to seek harmonisation of the reporting threshold, ideally at \$50 million consolidated revenue, as a key reform for a standard national approach to modern slavery.
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Recommendation 4

That the NSW Government and the Interim Anti-Slavery Commissioner continue to work with businesses which meet the reporting threshold under section 24 of the *Modern Slavery Act 2018* to ensure that reporting requirements are as simple as possible and clearly explained in the guidance material.

Recommendation 5

That the NSW Government work with the Australian Government to seek harmonisation of the reporting threshold, ideally at \$50 million consolidated revenue, as a key reform for a standard national approach to modern slavery.

Penalties for non-compliance

- 2.86** Penalties were another issue on which stakeholders provided diverging evidence to the committee. On the one hand, it is undeniable that the inclusion of penalties in the NSW Act creates an unfair discrepancy between the businesses captured by that Act, and the larger businesses captured by the Commonwealth Act which are not subject to penalties. On the other hand, the experience in the United Kingdom clearly demonstrates the danger in relying on a reporting regime that does not include penalties for non-compliance. The fact that an independent review of the United Kingdom modern slavery legislation, four years after its commencement, recommended the introduction of penalties to remedy poor compliance is evidence of this concern.
- 2.87** On balance, the committee is persuaded by the arguments in favour of penalties as a necessary tool for compliance. The discrepancy this creates between businesses reporting under the NSW Act and the Commonwealth Act should, we believe, be a key consideration in the Commonwealth statutory review.
- 2.88** Retaining the penalties in the NSW Act on its commencement, rather than removing them or introducing a penalty grace period, places New South Wales in a strong position to lead the way and advocate for the inclusion of penalties in the Commonwealth Act. This would create a level playing field for all businesses required to report under the two regimes.
- 2.89** In light of the submission from the NSW Bar Association regarding a gap in the enforcement regime in s 24, we recommend that the *Modern Slavery Act 2018* be amended to specify a relevant authority responsible for conducting prosecutions that involve breaches of s 24. This could be either the Anti-Slavery Commissioner or the Director of Public Prosecutions in respect of criminal matters.
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Recommendation 6

That the NSW Government seek to amend the *Modern Slavery Act 2018* to specify a relevant authority responsible for conducting prosecutions that involve breaches of section 24.

Charities and not-for-profit organisations

- 2.90** The committee acknowledges the clarifications in the Amendment Bill concerning the application of s 24 to charities and not-for-profit organisations, particularly around the relevant turnover being only that derived from the supply of goods and services for profit or gain (Items [12] and [13]). There are plainly good arguments, put forward by stakeholders in this inquiry, in favour of these organisations being caught by the reporting requirements. The fact that this is also the position at the Commonwealth level reinforces this position.
- 2.91** This being said, we also recognise the proportionally higher compliance burden that charities and not-for-profits will face in meeting the reporting requirements. While such organisations may derive funds from the supply of goods and services for profit, these funds are needed to deliver services and cover administration costs, invariably within a tight budget even for very large charities.
- 2.92** Accordingly, the committee supports the s 24 exemption contained in the Draft Regulation for charities and not-for-profits, at least for the initial period following the commencement of the NSW Act. The statutory review we recommended in Chapter 1 would provide an appropriate opportunity to reassess this issue, seeking input from the sector and considering mechanisms might be put in place to support charities and not-for-profits to meet their reporting obligations.
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Recommendation 7

That, as part of the statutory review recommended in Recommendation 2, the NSW Government reassess the exemption for charities and not-for-profit organisations from section 24 of the *Modern Slavery Act 2018*, including by:

- seeking input from the charity and not-for-profit sector
 - considering mechanisms to support charities and not-for-profits to meet the reporting requirement in section 24 going forward.
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- 2.93** We do not support a bespoke exemption for not-for-profit registered clubs. While we acknowledge that registered clubs do provide important social functions in certain communities, they are also often very significant business ventures with large supply chain footprints. If they are exempted from reporting requirements under the NSW Act then this would create a large and unintended gap in the Act's coverage which is not desirable given the aim of the Act is to prevent the dreadful crime of modern slavery.
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Recommendation 8

That the NSW Government not amend the Draft Modern Slavery Regulation 2019 to include an exemption from section 24 of the *Modern Slavery Act 2018* for not-for-profit registered clubs.

Small businesses and franchises

- 2.94** The committee accepts the rationale for the proposed reporting exemption for small businesses that employ fewer than 20 employees, namely the proportionally greater regulatory burden these businesses would face in meeting the reporting requirements: they simply have fewer human and other resources available than larger companies, notwithstanding turnover. The committee also notes that the figure of fewer than 20 employees is based on the Australian Bureau of Statistics definition of a small business, which is also reflected in the NSW Government's Small and Medium Enterprise and Regional Procurement Policy.
- 2.95** Accordingly, the committee supports the small business exemption as currently drafted in the Draft Regulation. As for franchises, the committee notes the concerns raised by the Shop, Distributive and Allied Employees' Association NSW Branch around the need to ensure that franchises are effectively captured by the reporting requirements. We encourage the Anti-Slavery Commissioner to, on an ongoing basis, examine and report on matters regarding the appropriateness of bringing franchisors, on behalf of franchisees not otherwise captured by the NSW Act, under the state legislation.

Recommendation 9

That the Anti-Slavery Commissioner on an ongoing basis examine and report on matters regarding the appropriateness of bringing franchisors, on behalf of franchisees not otherwise captured by the *Modern Slavery Act 2018*, under the state legislation.

Voluntary reporting for entities which fall below the reporting threshold

- 2.96** The committee considers that the supply chain reporting scheme set up under the NSW Act would be improved by allowing businesses which fall below the \$50 million threshold to be able to voluntarily provide modern slavery statements. We note that the NSW Government is developing a system to enable this, with businesses already able to voluntarily report at the Commonwealth level. We believe this is an acceptable interim solution. We therefore recommend that the NSW Government finalise the development of a voluntary reporting mechanism with a view to rolling it out following the statutory review.

Recommendation 10

That the NSW Government finalise the development of a voluntary reporting mechanism for businesses falling under the \$50 million reporting threshold in section 24 of the *Modern Slavery Act 2018*, to be rolled out following the statutory review recommended in Recommendation 2.

State owned corporations

- 2.97** The committee notes that, as currently drafted, the position of State owned corporations under the NSW Act is unclear. While they are defined as a 'government agency' and are therefore excluded from the reporting requirements of commercial organisations, they are not covered by the *Public Works and Procurement Act 1912* and so will also not be subject to the obligations of other government agencies under the NSW Act. The NSW Government says that State owned corporations are currently not caught by the NSW Act at all.
- 2.98** The Amendment Bill aims to redress this situation by treating State owned corporations as commercial organisations for the purposes of the NSW Act. This will subject these corporations to the requirements in s 24 and is consistent with the NSW Government's policy of allowing State owned corporations to maintain a high level of independence and operate on a level playing field with other New South Wales businesses. We agree that this approach is appropriate and therefore support the relevant provisions in the Amendment Bill (Items [1] and [14]).

Local councils

- 2.99** Local councils are another group whose position is less than clear under the NSW Act as it stands. Again, although they are defined as a 'government agency', local councils are not subject to the *Public Works and Procurement Act 1912* and are therefore not caught by the procurement and reporting requirements of other government agencies under the NSW Act.
- 2.100** In this instance, the policy response by the NSW Government is to explore non-legislative mechanisms, such as a voluntary code of practice, in order to bring local councils to the table. However, we received evidence from a key representative of the local government sector expressing significant doubt about the effectiveness of such a mechanism and calling instead for the NSW Act to be amended to require councils to address and report on modern slavery risks in their procurement.
- 2.101** We appreciate the challenge involved in devising a solution that takes into account the diversity of local councils in terms of size, expenditure and indeed procurement activities. On the other hand, the *collective* expenditure of local councils in this state in the order of \$11.5 billion compels the conclusion that this sector must be part of the solution in combating modern slavery.
- 2.102** To this end, we do not believe that the NSW Government would be well served developing an approach that the sector itself has already said is unlikely to be effective. Rather, we recommend that the NSW Government work to develop legislative amendments to be introduced following the statutory review to provide procurement and reporting obligations for local councils equivalent to those imposed on NSW Government agencies. These amendments should include a regulation-making power to exempt any council or class of councils from these obligations.

Recommendation 11

That the NSW Government develop legislative amendments to be introduced following the statutory review recommended in Recommendation 2 to provide for:

- modern slavery procurement and reporting obligations for local councils equivalent to those imposed on NSW Government agencies
 - a regulation-making power to exempt any council or class of councils from such obligations.
-

Public register

- 2.103** The committee acknowledges significant stakeholder concern regarding the s 26 public register, particularly the potential that the risk of being 'named and shamed' on the register will disincentivise companies from taking genuine steps to identify modern slavery risks in their supply chains. The diligent and thorough identification of such risks by businesses subject to the reporting requirement is absolutely fundamental to the success of the NSW Act in combating modern slavery. Incentivising compliance is the key here.
- 2.104** The NSW Government proposes to address this concern by requiring the publication of all modern slavery statements on a 'statements register', along with an amendment to s 26 to enable the Anti-Slavery Commissioner to combine the statements register with the public register to ensure all modern slavery statements are made publicly available in one location (Amendment Bill Items [16] and [17]). This would align with the approach taken at the Commonwealth level.
- 2.105** After careful consideration, the committee has come to the view that this proposal strikes an appropriate balance, ensuring transparency and hopefully incentivising best practice among reporting entities. Having said this, the committee also acknowledges that many businesses that fall within the threshold may hold concerns about the potential for reputational damage if the risk of modern slavery in their supply chains is identified, likely for the first time during the initial reporting period, and where insufficient time may have elapsed for a mitigation strategy to be put in place.
- 2.106** Accordingly, while the publication of all modern slavery statements is the right step, we urge the Anti-Slavery Commissioner to ensure that appropriate information and context is provided on the online statements register, and that good practice is highlighted.

Chapter 3 Offence provisions

This chapter deals with Modern Slavery Risk Orders as provided for in s 29 of the *Modern Slavery Act 2018*, which is proposed to be repealed in the Draft Modern Slavery Amendment Bill 2019. The chapter also outlines proposed amendments to some of the new *Crimes Act 1900* offences created by the *Modern Slavery Act 2018*, a proposed amendment to replace a reference to the *Human Tissue Act 1983* with a reference to organ trafficking, and clarification of the definition of 'modern slavery offence'.

Modern slavery risk orders

3.1 Part 4, s 29 of the *Modern Slavery Act 2018* (hereafter, the NSW Act) provides for the making of modern slavery risk orders. These orders constrain the liberties of a person convicted of a modern slavery offence, on top of any sentence served, in order to reduce or manage the risk of that person committing a further modern slavery offence.¹³³

3.2 Section 29 provides:

29 Modern slavery risk order

- (1) A court that convicts a person of an offence listed in Schedule 2 may (on the conviction or at any time afterwards) make an order prohibiting the person from engaging in conduct described in the order (a modern slavery risk order) if the court is satisfied:
 - (a) that, on the balance of probabilities, there is reasonable cause to believe, having regard to the nature and pattern of conduct of the person, that the person poses a risk of engaging in conduct constituting modern slavery, and
 - (b) the making of the order will reduce the risk, and
 - (c) the order is necessary for the purpose of protecting persons generally, or a particular person, from the physical or psychological harm that is likely to be caused if the convicted person engages in the conduct.
- (2) Without limiting the orders that may be made under subsection (1), the court may prohibit the convicted person from contacting any victim of the modern slavery offence for which the person was convicted or a relative of the victim.
- (3) In determining whether or not to make a modern slavery risk order against a person, the court is to consider the following:
 - (a) the seriousness of the offence for which the person was convicted,
 - (b) the seriousness of the person's total criminal record,
 - (c) the effect of the order on the person in comparison with the level of the risk that a further modern slavery offence may be committed by the person,

¹³³ Submission 1, NSW Government, p 8.

- (d) any other matters it thinks relevant.
- (4) A modern slavery risk order may be made by the court on its own initiative or on application by the Attorney General or the Director of Public Prosecutions.
- (5) A modern slavery risk order has effect for such period after it is made (of at least 2 years) as is specified by the court.
- (6) An application may be made to the Supreme Court by a person who is subject to a modern slavery risk order to vary or revoke the order.
- (7) The Supreme Court may dispose of the application:
- (a) by varying or revoking the order, or
- (b) by dismissing the application.
- (8) A person who is subject to a modern slavery risk order must not, without reasonable excuse, contravene the order.
- Maximum penalty: 500 penalty units or imprisonment for 2 years, or both.
- (9) The onus of proof of reasonable excuse in proceedings under subsection (8) lies on the person charged with the offence.

3.3 The offences listed in Schedule 2, conviction for which may provide the basis for the making of a modern slavery risk order, are as follows:

Table 2 Schedule 2 Offences

Section	Description of offence
An offence against the following sections of the <i>Crimes Act 1900</i> :	
80D	Causing sexual servitude
80E	Conduct of business involving sexual servitude
91G (1) and (2)	Children not to be used for production of child abuse material
91G (3)	Aggravated offence of using children for production of child abuse material
91H	Production, dissemination or possession of child abuse material
91HAA	Administering a digital platform used to deal with child abuse material
93AA–93AC	Slavery and slavery-like offences
An offence against the following section of the <i>Human Tissue Act 1983</i> :	
32	Trading in tissue prohibited
An offence against any of the following sections of the Commonwealth Criminal Code:	
270.3	Slavery offences
270.5	Servitude offences

270.6A	Forced labour offences
270.7	Deceptive recruiting for labour or services
270.7B	Forced marriage offences
270.7C	Offence of debt bondage
270.8	Slavery-like offences—aggravated offences
271.2	Offence of trafficking in persons
271.3	Trafficking in persons—aggravated offence
271.4	Offence of trafficking in children
271.5	Offence of domestic trafficking in persons
271.6	Domestic trafficking in persons—aggravated offence
271.7	Offence of domestic trafficking in children

3.4 The NSW Government's submission characterises s 29 as 'the most problematic provision'¹³⁴ of the NSW Act, commenting that:

The section presents significant legal, policy and practical challenges. Risk-based and prevention-oriented orders are complex and challenge fundamental principles of justice, including the presumption of innocence. They should not be introduced lightly. Broadening the use of such orders has the potential to cast doubt on the efficacy of the deterrent and rehabilitation functions of the current prison/parole/supervision regime.¹³⁵

3.5 The NSW Government also expressed concern that modern slavery risk orders fit poorly into the current criminal justice and criminal courts frameworks in light of the following issues:

- potential risk of constitutional challenge in relation to the provision for the courts to make Risk Orders on their own motion, and the absence of an unfettered right of appeal
- ambiguity as to whether the proceedings are civil or criminal in nature
- the difficulty of accommodating the proceedings within existing court rules, processes and technology
- failure to identify how risk assessments of modern slavery offenders will be conducted and by whom, who will make the applications to the court, how the court will make its decision and who will monitor and enforce compliance with the orders.¹³⁶

3.6 Accordingly, Item [18] in the Draft Modern Slavery Amendment Bill 2019 (hereafter, the Amendment Bill) proposes to repeal s 29, while Item [3] makes a consequential amendment to the definitions provision.

¹³⁴ Submission 1, NSW Government, p 8.

¹³⁵ Submission 1, NSW Government, p 8.

¹³⁶ Submission 1, NSW Government, p 8.

- 3.7** The NSW Government outlined that its proposal to repeal s 29 was also informed by the availability of several of the state's existing risk-based offender management schemes to manage the behaviour of modern slavery offenders, and to protect victims of modern slavery offences.¹³⁷ The government explained that these schemes could be utilised to address the potential risk posed by modern slavery offenders in a more developed and effective way, while avoiding the legal, funding and implementation challenges posed by s 29.¹³⁸
- 3.8** The risk-based offender management schemes already operating in New South Wales which would be available for the management of modern slavery offenders include the following:
- The Serious Crime Prevention Orders scheme provides for orders to be made for the purpose of protecting the public by preventing, restricting or disrupting involvement by persons in serious crime related activities.¹³⁹ This scheme applies to persons convicted of a serious criminal offence, and persons involved in 'serious crime related activity' for which the person has not been convicted of a serious criminal offence (including by reason of being acquitted of, or not being charged with, such an offence).¹⁴⁰
 - The High Risk Offender Orders scheme provides for orders to be made for the extended supervision in the community or the continuing detention in custody of high risk sex and violent offenders if they pose an unacceptable risk to the community at the end of their sentences.¹⁴¹
 - The Child Protection Register requires offenders convicted of various child related sexual offences to report personal information and information about their whereabouts to the Commissioner of Police.¹⁴²
 - The Child Protection Prohibition Orders scheme provides for orders to be made prohibiting certain offenders who pose a risk to the lives or sexual safety of children from engaging in specified conduct.¹⁴³
 - The Apprehended Violence Orders scheme provides for orders to be made to protect victims of domestic or personal violence when they are fearful of future violence or threats to their safety.¹⁴⁴
 - The Restricted Premises Framework provides a scheme to prevent unlawful and undesirable activities from taking place on premises.¹⁴⁵
 - The Summary Offences Framework provides a scheme to deal with more minor offences.¹⁴⁶

¹³⁷ Answers to questions on notice, Professor Jennifer Burn, Interim Anti-Slavery Commissioner, NSW Department of Premier and Cabinet, 10 December 2019, p 6.

¹³⁸ Submission 1, NSW Government, p 8.

¹³⁹ *Crimes (Serious Crime Prevention Orders) Act 2016*.

¹⁴⁰ Submission 58, NSW Bar Association, p 4.

¹⁴¹ *Crimes (High Risk Offenders) Act 2006*.

¹⁴² *Child Protection (Offenders Registration) Act 2000*.

¹⁴³ *Child Protection (Offenders Prohibition Orders) Act 2006*.

¹⁴⁴ *Crimes (Domestic and Personal Violence) Act 2007*.

¹⁴⁵ *Restricted Premises Act 1943*.

¹⁴⁶ *Summary Offence Act 1988*.

- 3.9** In terms of the applicability of these schemes to the modern slavery offences listed in Schedule 2, the committee was informed that, in order to complement existing provisions in the *Crimes (Serious Crime Prevention Orders) Act 2016*, *Crimes (High Risk Offenders) Act 2006* and the *Child Protection (Offenders Registration) Act 2000*, the Amendment Bill contains an amendment at Schedule 2.1 to include ss 80D and 80E within the definition of 'offence of a sexual nature' in the *Crimes (High Risk Offenders) Act 2006*.¹⁴⁷
- 3.10** Appendix 1 outlines the applicability of these schemes to the New South Wales and Commonwealth modern slavery offences listed in Schedule 2.

Stakeholder views

- 3.11** Legal stakeholders to the inquiry expressed significant concerns about the modern slavery risk orders scheme, with several arguing for the repeal of s 29 of the NSW Act.
- 3.12** For example, the Law Society of New South Wales stated that it supported the repeal of s 29 on the basis that it 'is broadly drafted and is unnecessary in light of existing broad powers to make Apprehended Personal Violence Orders ("APVOs") under the *Crimes (Domestic and Personal Violence) Act 2007* (NSW)'.¹⁴⁸ Similarly, in its submission to the inquiry Legal Aid NSW highlighted a lack of evidence to justify the scheme and safeguards to protect fundamental rights and freedoms:

Legal Aid NSW supports the repeal of s 29. There is insufficient rationale and evidence to support the introduction of the new risk order regime. Further, its provisions do not adequately safeguard minimum criminal justice guarantees, namely the presumption of innocence, to protect against the arbitrary deprivation of personal liberty and other fundamental rights.¹⁴⁹

- 3.13** Concerns were also expressed around the practical operation of the scheme, with the Office of the Director of Public Prosecutions identifying five key issues in need of clarification:
- 'It is not clear if a MSRO is a civil order or a criminal sanction. Characterisation of an order as either civil or criminal is fundamental in terms of interpreting and applying the provision, it is also essential from a procedural perspective. Consequential issues would also arise in relation to the technology used by the courts to process and enforce the orders'.
 - 'The avenues for appeal against the imposition of an MSRO would require consideration and legislative clarification'.
 - 'Applications may be made by the court on its own volition, the Attorney General or the Director of Public Prosecutions. As the Police conduct prosecutions of offences in the Local Court that may qualify for a MSRO, it is not obvious who would apply for the order in those cases on behalf of the Police'.

¹⁴⁷ Submission 1, NSW Government, p 20.

¹⁴⁸ Submission 85, Law Society of New South Wales, p 6.

¹⁴⁹ Submission 100, Legal Aid NSW, p 4.

- 'In terms of bringing an application, it is not clear to me how the ODPP would obtain additional evidence as to the risk factors, nor how a MSRO is intended to sit with the other sentencing options and post sentencing orders available to the court'.
- '[I]t is not clear who is responsible for the monitoring and enforcement of MSROs'.¹⁵⁰

3.14 The Office of the Director of Public Prosecutions also expressed support for the alternative approach proposed by the NSW Government, namely the use of existing risk-based schemes in operation in New South Wales, stating:

In short, there is more than adequate scope in the established post-conviction monitoring schemes, such as the High Risk Offenders scheme, Serious Crime Prevention Orders and the Child Protection Register to impose orders prohibiting the types of conduct envisaged by s.29. Aligning modern slavery offences to these schemes appears to me to be the most practical and efficient way to achieve the desired result.¹⁵¹

3.15 Along similar lines, the NSW Bar Association expressed the view that the object of s 29, namely preventing repeated instances of the commission or risk of commission of modern slavery offences, could be met by utilising the *Crimes (Serious Crime Prevention Orders) Act 2016*:

The Bar Association considers the object of Part 4 of the NSW Act could be met by having the modern slavery offences listed in Schedule 2 of the NSW Act being included in the definition of “serious criminal offence” for the purpose of the Crime Prevention Orders Act. This amendment would also supplement the consequential amendment proposed at Schedule 2.1 of the Amendment Bill to include certain modern slavery offences within the definition of “offence of a sexual nature” in the *Crimes (High Risk) Offenders Act 2006* (NSW).

There is also a strong case for the modern slavery offences listed in Schedule 2 of the NSW Act being subject to the operation of the *Criminal Assets Recovery Act 1990* (NSW).

Amendments in such terms would operate to ensure the furtherance of the NSW Act’s objectives; particularly, “to combat modern slavery”.¹⁵²

3.16 In this context, Mr Trent Glover, Member, Human Rights Committee, NSW Bar Association, emphasised the importance of ensuring 'that the Act has as certain an operation as possible so that there is certainty for the stakeholders involved'.¹⁵³

3.17 However, both the Law Society of New South Wales and Legal Aid NSW expressed concerns around the use of the High Risk Offenders Orders scheme for modern slavery offenders, in particular the proposal in the Amendment Bill to include the sexual servitude offences in ss 80D and 80E of the *Crimes Act 1900* within that scheme. The concerns expressed included:

¹⁵⁰ Submission 84, Office of the Director of Public Prosecutions, p 1.

¹⁵¹ Submission 84, Office of the Director of Public Prosecutions, p 2.

¹⁵² Submission 58, NSW Bar Association, p 4.

¹⁵³ Evidence, Mr Trent Glover, Member, Human Rights Committee, NSW Bar Association, 4 November 2019, p 22.

- that it is not clear what rehabilitative programmes and supports will be available specifically for modern slavery offenders, given that one of the principle objects of the high-risk offender regime is the rehabilitation of offenders in custody¹⁵⁴
- the lack of evidence of the particular risk and/or levels of recidivism posed by convicted modern slavery offenders¹⁵⁵
- the fact that there are other means by which a convicted modern slavery offender may be kept under supervision, including through parole, apprehended personal violence orders and sex offender registration where sexual offending against a child is involved¹⁵⁶
- that the scheme provides for extraordinary measures designed to protect the community from reoffending by a very small group of serious sex offenders and violent offenders who present with the most serious risk to the community, whereas no evidence has been presented to support the extension of the scheme to this further and different cohort of offenders.¹⁵⁷

New offences created by the NSW Act

3.18 Schedule 4 of the NSW Act amends the *Crimes Act 1900* by creating the following new modern slavery offences:

- s 91G – New aggravated offence – Children not to be used for production of child abuse material
- s 91HAA – Administering a digital platform used to deal with child abuse material
- s 91HAB – Encouraging use of a digital platform to deal with child abuse material
- s 91HAC – Providing information about avoiding detection
- s 93AB – Slavery, servitude and child forced labour
- s 93AC – Child forced marriage.

3.19 The Amendment Bill amends some of these new offences in light of constitutional concerns, with the NSW Government explaining:

Where Commonwealth and NSW offence provisions overlap, certain types of inconsistency can give rise to a risk that the NSW provision (and any prosecution based on it) will be found invalid.

Amendments are proposed in the Bill to remove the risks arising from these sorts of inconsistencies with equivalent Commonwealth offences. Those equivalent Commonwealth offences remain available to NSW law enforcement agencies to use in relation to offences they may be investigating or prosecuting.¹⁵⁸

¹⁵⁴ Submission 85, Law Society of New South Wales, p 6.

¹⁵⁵ Submission 85, Law Society of New South Wales, p 6.

¹⁵⁶ Submission 85, Law Society of New South Wales, p 6; Submission 100, Legal Aid NSW, p 5.

¹⁵⁷ Submission 85, Law Society of New South Wales, p 6; Submission 100, Legal Aid NSW, p 5.

¹⁵⁸ Submission 1, NSW Government, p 9.

3.20 In response to these constitutional concerns, the Amendment Bill includes the following amendments:

- Item [26] of the Bill deletes s 91HAA due to a conflict with the equivalent Commonwealth provision, which cannot be remedied by redrafting the provision. The Commonwealth provision, s 473.5 of the Criminal Code, specifically exempts internet service providers and internet content hosts from the reach of their offence provisions, whereas the new offence in the NSW Act specifically targets them in s 91HAA(3)(b). Items [21] and [27]-[30] of the Amendment Bill make consequential drafting amendments to remove s 91HAA from Schedule 2 of the NSW Act, re-number other provisions, and delete cross-references to s 91HAA.¹⁵⁹
- Item [31] of the Amendment Bill amends s 93AB to limit the territorial operation of the offence provision to within New South Wales in order to avoid a conflict with the requirement in the equivalent Commonwealth offence, under which the Attorney General must consent to any prosecution in relation to matters where all of the physical elements of the offence occurred outside Australia.¹⁶⁰
- Item [32] of the Amendment Bill amends s 93AC to ensure that where both partners to a forced marriage are victims, for example both are children who have been coerced into the marriage, neither is guilty of the offence of procuring a forced marriage, in line with the equivalent Commonwealth provision.¹⁶¹

3.21 One further amendment in the Amendment Bill, Item [25] would amend the new offence in s 91G(3A) of the *Crimes Act 1900* by inserting the words 'by means of an offensive weapon or instrument' at the end of the offence. The purpose of this amendment is to bring the wording into line with existing similar offences in the *Crimes Act 1900* for consistency.¹⁶²

Stakeholder views

3.22 Inquiry participants expressed a range of views in relation to the provisions contained in the Amendment Bill regarding the offences in Schedule 4 of the NSW Act.

3.23 Both the NSW Bar Association and the Law Society of New South Wales expressed broad support for the deletion of s 91HAA and amendments to ss 93AB and 93AC on the basis that these:

- clarify the operation of the provisions while ensuring that the objects of the *Modern Slavery Act 2019* are achieved¹⁶³
- ensure alignment between the offence provisions in the *Modern Slavery Act 2019* and the equivalent Commonwealth provisions.¹⁶⁴

¹⁵⁹ Submission 1, NSW Government, p 10.

¹⁶⁰ Submission 1, NSW Government, p 10.

¹⁶¹ Submission 1, NSW Government, p 10.

¹⁶² Submission 1, NSW Government, p 18.

¹⁶³ Submission 58, NSW Bar Association, p 5.

¹⁶⁴ Submission 85, Law Society of New South Wales, p 7.

3.24 Views about specific aspects of the provisions are set out below.

Section 91HAA

3.25 As well as expressing support for the amendments proposed in the Amendment Bill, Legal Aid NSW noted a further concern regarding s 91HAA, the offence of administering a digital platform used to deal with child abuse material, in addition to the constitutional concerns:

In addition to concerns about inconsistency, the new offence as drafted appears to criminalise the actions of a person who does anything to maintain or facilitate use of the platform and who is aware it is being used to deal with child abuse material, even where the person does not have the capacity to prevent that use of the platform.¹⁶⁵

3.26 In contrast, both International Justice Mission Australia and Collective Shout strongly opposed the deletion of s 91HAA, citing the following considerations:

- it is not clear which part of the existing Commonwealth legislation adequately enables prosecution of people administering websites or networks that share child abuse material¹⁶⁶
- the fact that two other states, namely Victoria and Queensland, have enacted legislation which criminalises the administration of computer networks for the purpose of sharing child exploitation material¹⁶⁷
- strong legislation, such as s 91HAA which targets the production and potential distribution of child abuse material, can deter demand for such material¹⁶⁸
- creators and users of child abuse material are notoriously adept at adopting new technologies to facilitate their practices and avoid the attention of law enforcement, and s 91HAA would give law enforcement officers an additional tool in seeking to bring these criminals to justice and further protect children from abuse¹⁶⁹
- the offence of administering a digital platform or assisting in the administration of a digital platform would not necessarily be caught by the offence being retained, in s 91HAB, of encouraging another person to use a digital platform.¹⁷⁰

3.27 Overall, Collective Shout emphasised the importance of retaining the offence contained in s 91HAA at a state level:

New South Wales law must ensure that any person who is facilitating such horrific acts as the abuse on demand of babies and other young children, wherever the abuse might be occurring, through a digital platform operating in or accessed from New South Wales, is subject to an offence, whether the person administering or assisting to administer the digital platform does so intending it be used for that purpose or after

¹⁶⁵ Submission 100, Legal Aid NSW, p 7.

¹⁶⁶ Submission 10, International Justice Mission Australia, p 7.

¹⁶⁷ Submission 10, International Justice Mission Australia, pp 8-9.

¹⁶⁸ Submission 10, International Justice Mission Australia, p 9.

¹⁶⁹ Submission 39, Collective Shout, p 2; Evidence, Ms Melinda Tankard Reist, Movement Director, Collective Shout, 4 November 2019, p 63.

¹⁷⁰ Submission 39, Collective Shout, p 2.

becoming aware that it is being used for that purpose fails to take all reasonable steps to prevent that use.¹⁷¹

3.28 Collective Shout also expressed support for International Justice Mission Australia's recommendation that the NSW Government provide guidance as to how Commonwealth legislation provides adequate provisions for the prosecution of a person sharing child abuse material via a digital platform or network.¹⁷²

3.29 When asked to comment on the Victorian and Queensland provisions which are similar to s 91HAA, the NSW Government stated:

It would not be appropriate for the NSW Government to comment on the operation of, or legal risks associated with, another State's legislation. The Committee may obtain its own legal advice in relation to this matter.

The NSW Government's position with respect to section 91HAA is set out in the Government submission. The NSW MSA introduced a new offence in the NSW Crimes Act 1900 to make it an offence to administer a digital platform to deal with child abuse material (s 91HAA of the Crimes Act 1900). The Amendment Bill proposes to remove this offence as it conflicts with similar offences in the Commonwealth Criminal Code. The Commonwealth provision (s 473.5 of the Criminal Code) specifically exempts Internet service providers and Internet content hosts from the reach of the offence provision, whereas the NSW offence specifically targets them. This inconsistency may give rise to a risk that the NSW provision (and any prosecution based on it) will be found invalid.¹⁷³

Sections 93AB, 93AC, 91HAB and 91HAC

3.30 In relation to ss 93AB and 93AC, which respectively relate to slavery, servitude and child forced labour and child forced marriage, the committee heard from Legal Aid NSW that these offences should be deleted from the NSW Act entirely as they duplicate existing Commonwealth offences in the Commonwealth Criminal Code.¹⁷⁴ Legal Aid NSW commented that if the offences are to be retained, it supported the amendments proposed in the Amendment Bill, in order to align the offences with their Commonwealth equivalents.¹⁷⁵

¹⁷¹ Submission 39, Collective Shout, p 4.

¹⁷² Evidence, Ms Tankard Reist, 4 November 2019, p 61; Submission 10, International Justice Mission Australia, p 7.

¹⁷³ Answers to supplementary questions, Professor Jennifer Burn, Interim Anti-Slavery Commissioner, NSW Department of Premier and Cabinet, 10 December 2019, p 2.

¹⁷⁴ Submission 100, Legal Aid NSW, p 7. Section 93AB(1)(a) duplicates Criminal Code s 270.3 (which also carries a penalty of 25 years). Section 93AB(1)(b) duplicates Criminal Code s 270.6A, causing a person to enter into or remain in forced labour. The offence is aggravated if the victim is under 18, with a maximum penalty of 12 years. Section 93AC(3) duplicates Criminal Code s 270.7B(1), causing a person to enter into a forced marriage. The offence is aggravated if the victim is under 18, with a maximum penalty of 9 years. Section 93AC(4) duplicates Criminal Code s 270.7B(2), being a party to a forced marriage (but not being the victim). The offence is aggravated if the victim is under 18, with a maximum penalty of 9 years. The Commonwealth offence extends to adult victims of forced marriage, whereas the NSW offence is limited to child victims.

¹⁷⁵ Submission 100, Legal Aid NSW, pp 7-8.

3.31 Along similar lines, the Office of the Director of Public Prosecutions argued that, for consistency and clarity, and given the proposed deletion of s 91HAA on constitutional grounds, consideration should also be given to deleting ss 93AB, 91HAB and 91HAC:

Given that the Commonwealth has general responsibility for telecommunication offences and has legislated extensively in this area, I am of the view that consideration should be given to deleting the two other NSW telecommunication offences:

- s. 91HAB Encouraging use of a digital platform to deal with child abuse material and
- s. 91HAC Providing information about avoiding detection

These activities are already covered by the existing Commonwealth offences and the law of incitement, aiding and abetting and accessorial liability.

Similarly, the new offence under s. 93AB Slavery, servitude and child forced labour covers the same field as Commonwealth slavery and servitude offences located in Division 270 of the Criminal Code 1995 (Cth).

It is preferable that there be one consistent set of laws applicable to this type of offending throughout Australia and consideration should be given to whether the NSW offences are still required given the national laws now in place.¹⁷⁶

3.32 The Office of the Director of Public Prosecutions also noted that the Commonwealth offences are still available to NSW Police, and that it has an agreement with the Commonwealth Director of Public Prosecutions which allows each Office to prosecute both New South Wales and Commonwealth offences, where appropriate.¹⁷⁷

3.33 For its part, Anti-Slavery Australia drew attention to an issue with the proposed amendment to s 93AC, contained in Item [32] in the Amendment Bill, to bring the offence into line with the equivalent Commonwealth provision. In particular, Anti-Slavery Australia noted that the definition of forced marriage in the *Criminal Code Act 1995* (Cth) has recently changed:

On 21 September 2019, the definition of forced marriage in the Criminal Code was amended to ensure that marriages involving children under the age of 16 years automatically fall within the definition of a forced marriage. This means that a marriage involving one or more children will be considered a forced marriage, without the need to prove that a child did not understand the nature and effect of a ceremony or for there to be the presence of coercion, threat or deception leading a child to enter the marriage.¹⁷⁸

3.34 Anti-Slavery Australia explained that the previous Commonwealth definition only *presumed* that a child under the age of 16 years is incapable of understanding the nature or effect of a marriage ceremony, creating difficulty for prosecutors in cases where children who had been married insisted that they had consented to the marriage and were capable of understanding what was happening at the time a marriage ceremony was performed.¹⁷⁹

¹⁷⁶ Submission 84, Office of the Director of Public Prosecutions, p 2.

¹⁷⁷ Submission 84, Office of the Director of Public Prosecutions, p 2.

¹⁷⁸ Submission 80, Anti-Slavery Australia, p 11.

¹⁷⁹ Submission 80, Anti-Slavery Australia, p 11.

3.35 Given the recent amendment to the Criminal Code, and in the interests of consistency, Anti-Slavery Australia called for an equivalent amendment to s 93AC.¹⁸⁰

3.36 In addition, addressing the argument that it is unnecessary for the *Crimes Act 1900* to duplicate the Commonwealth offence relating to child forced marriage, Anti-Slavery Australia pointed out that the New South Wales victims support and apprehended violence order schemes refer only to *Crimes Act 1900* offences as grounds for obtaining orders or receiving support:

While it is arguable that it is unnecessary to have laws at both a state and Federal level criminalising forced marriages involving children, the NSW criminal provisions will give the NSW Police and the Department of Communities and Justice (DOCJ) part of the responsibility and ambit for dealing with a complex crime. It also paves the way for people affected by forced marriage the opportunity to be recognised in related legislation, such as the Crimes (Domestic and Personal Violence) Act 2007 (NSW) and Victims Rights and Support Act 2013 (NSW), which are based around a NSW criminal framework and refer exclusively to offences under the Crimes Act 1900 to define grounds for obtaining orders or receiving support.¹⁸¹

3.37 Another inquiry participant, Slavery Links Australia, expressed concern about a specific aspect of s 93AB, namely the 'knowledge' aspect: a person is guilty of an offence if the person holds another person in slavery or servitude, and the circumstances are such that the person *knows or ought to know* that the person is held in slavery or servitude. There is equivalent drafting in relation to child forced labour. Slavery Links Australia commented that this is formulation of 'knows or ought to know' is inconsistent with existing Australian jurisprudence on slavery.¹⁸²

Section 91G

3.38 Finally, Legal Aid NSW's submission raised a number of issues in relation to the new offence in s 91G of using a child for the production of child abuse material in circumstances of aggravation, with a maximum penalty of 20 years imprisonment:

- relevant factors proposed as circumstances of aggravation are already considered in sentencing for existing offences
- the criminality involved in the aggravated forms of the offences are already appropriately encompassed by the current maximum penalty of 14 years imprisonment
- the order of the list of aggravated factors in the new s 91G(3A) differs from the order of the list in the existing offence relating to aggravated sexual act for a child between 10 and 16
- s 91G(3B), which provides that it is not necessary to prove that the accused knew the age of the child concerned, is inconsistent with the approach taken in other child sexual assault offences
- s 91G(3C), which provides that if on the trial of an offence under s 91G(3), the trier of fact is not satisfied that the offence is proven but is satisfied that the person has committed an offence under ss 91G(1) or 91G(2), it may find a person guilty of those

¹⁸⁰ Submission 80, Anti-Slavery Australia, pp 11-12.

¹⁸¹ Submission 80, Anti-Slavery Australia, p 12.

¹⁸² Submission 28, Slavery Links Australia Inc, p 4.

offences, creates a statutory alternative verdict, which introduces unnecessary complexity and has the potential to complicate trial processes.¹⁸³

Sale and supply of human tissue

3.39 One of the modern slavery offences listed in Schedule 2 of the NSW Act is s 32 of the *Human Tissue Act 1983*, which makes it an offence for a person to enter into a contract or arrangement, for valuable consideration, relating to the sale or supply of human tissue. Any activity that occurs in another country that would be a breach of s 32, had the activity occurred in New South Wales, even if the activity is legal in the other country, is considered modern slavery under the NSW Act.

3.40 The NSW Government advised that this may inadvertently impair the ability of NSW Health to source blood and other blood products from comparable overseas countries for New South Wales:

Capturing any activity within the meaning of modern slavery that occurs in another country that would be a breach of section 32 of the Human Tissue Act had the activity occurred in NSW has the potential to reduce the supply of blood and other products into NSW. NSW Health can and does rely on imports of blood-related products, particularly plasma derived products, from parts of America, or other countries, that allow a donor to be paid for their donation in a manner that may breach section 32 had the activity occurred in NSW. Continuing to rely on such imports has the potential to put NSW Health at risk of breaching the obligation created by the NSW Act that it take reasonable steps to ensure it does not have modern slavery in its supply chain (new section 176(1A) of the Public Works Act).¹⁸⁴

3.41 Accordingly, Items [22] and [23] of the Amendment Bill replace the reference to s 32 of the *Human Tissue Act 1983* in Schedule 2 of the NSW Act with references to the relevant Commonwealth organ trafficking offences. According to the NSW Government, this amendment:

- makes clear that organ trafficking is a modern slavery offence, but that overseas activity in relation to the sale and supply of blood and non-organ tissue is not
- ensures the continuing supply of blood and blood products from comparable overseas countries.¹⁸⁵

Stakeholder views

3.42 The committee heard strong opposition to the proposal to replace the reference to s 32 of the *Human Tissue Act 1983* with a reference to Commonwealth organ trafficking offences, from the NSW Bar Association, Australian Lawyers for Human Rights, and the Australian Advocacy and Initiatives Committee.

¹⁸³ Submission 100, Legal Aid NSW, pp 5-6.

¹⁸⁴ Submission 1, NSW Government, p 9.

¹⁸⁵ Submission 1, NSW Government, p 9.

3.43 Reasons given by these stakeholders for retaining the reference to s 32 of the *Human Tissue Act 1983* in the NSW Act include:

- it is important that entities, including government entities, in New South Wales take steps to prevent trafficking in human organs¹⁸⁶
- since New South Wales has specific legislation dealing with trafficking in human tissue it is appropriate that the state's modern slavery legislation should reference that legislation¹⁸⁷
- while current Commonwealth organ trafficking offences deal with trafficking in *persons* for the purposes of removing organs, the offences do not capture conduct of trafficking in human *organs*, in particular the illicit removal of organs from living or deceased persons and the solicitation of commercial organ transplants¹⁸⁸
- current Commonwealth organ trafficking offences also have only partial extraterritorial application¹⁸⁹
- as well as providing additional protection against the increased trafficking of human organs, retaining the reference to s 32 may also have the effect of raising awareness of this form of modern slavery, which remains hidden and a taboo in society.¹⁹⁰

3.44 These stakeholders also agreed that a preferable solution to that proposed in Items [22] and [23] of the Amendment Bill would be to create an exemption in s 32 of the *Human Tissue Act 1983* to allow NSW Health to import blood and blood products from overseas.¹⁹¹ In this regard, it was noted that the *Human Tissue Act 1983* already contains two other exemptions.¹⁹²

Extraterritorial scope of 'modern slavery offence'

3.45 Section 5 of the NSW Act defines 'modern slavery offence', relevantly, as 'an offence committed elsewhere than in New South Wales that, if committed in New South Wales, would be a modern slavery offence'. Item [2] of the Amendment Bill amends this definition to make clear that 'modern slavery offence' includes conduct occurring outside of New South Wales and Australia which, if it occurred in New South Wales, would be an offence, even though it might not be an offence in the place in which it occurred.¹⁹³ The NSW Government stated that this amendment is consistent with the effect of the current provision, but clarifies slightly ambiguous drafting.¹⁹⁴

¹⁸⁶ Submission 58, NSW Bar Association, p 5.

¹⁸⁷ Evidence, Mr Glover, 4 November 2019, p 25.

¹⁸⁸ Submission 35, Australian Lawyers for Human Rights, p 5.

¹⁸⁹ Submission 59, Australian Advocacy and Initiatives Committee, p 7; Evidence, Ms Madeline Bridgett, Co-Chair, National Business and Human Rights Subcommittee, Australian Lawyers for Human Rights, 4 November 2019, p 58.

¹⁹⁰ Submission 59, Australian Advocacy and Initiatives Committee, p 8.

¹⁹¹ Submission 58, NSW Bar Association, p 5; Submission 59, Australian Advocacy and Initiatives Committee, p 7; Evidence, Ms Bridgett, 4 November 2019, p 58.

¹⁹² Submission 58, NSW Bar Association, p 5; Submission 59, Australian Advocacy and Initiatives Committee, p 6.

¹⁹³ Submission 1, NSW Government, p 10.

¹⁹⁴ Submission 1, NSW Government, p 10.

- 3.46** The government's submission also highlighted that the effect of this provision is not to criminalise extraterritorial conduct as such, but to impose reporting obligations in relation to it:

A common misunderstanding about the extraterritorial provisions in the Act, and this definition of 'modern slavery offence', is that the NSW Act attempts to criminalise conduct occurring outside of NSW and Australia under NSW law that may not be an offence in the place in which it occurs. This is not the case. The NSW Act does not impose any prohibition or penalty in relation to that offshore conduct, but does impose reporting requirements in relation to it.

The way in which the term 'modern slavery offence' is used in the NSW Act ensures that this broader concept of 'modern slavery' expands the general operation of the NSW Act – including by defining the scope of the Anti-Slavery Commissioner's functions, the functions of the Modern Slavery Committee, and the scope of supply chain reporting obligations for commercial organisations and government agencies. The extraterritorial reach of relevant NSW criminal offences (being those listed in Schedule 2 to the Act) is governed by Part 1A of the Crimes Act.¹⁹⁵

- 3.47** This amendment was supported by the NSW Bar Association.¹⁹⁶

Committee comment

Modern slavery risk orders

- 3.48** The committee notes the very significant concerns expressed by the NSW Government and by key representatives of the legal community about the modern slavery risk orders scheme provided for in Part 4, s 29 of the NSW Act. These encompass legal concerns – that the scheme raises potential constitutional issues and fails to adequately safeguard minimum criminal justice guarantees; policy concerns – that the scheme is ambiguous or silent in a number of fundamental respects; and practical concerns – that the scheme fits poorly within existing court rules, processes and technology.
- 3.49** Importantly, legal stakeholders all supported the NSW Government's proposal to repeal s 29, particularly in light of the availability of existing well-established risk-based offender management schemes which would achieve comparable outcomes both in managing modern slavery offenders and in protecting their victims. We acknowledge the work that has been done, reflected in Appendix 1, to assure the committee of the applicability of the various existing schemes to the modern slavery offences in Schedule 2 of the NSW Act.
- 3.50** We are also acutely cognisant of the need to ensure that the NSW Act is clear and certain in its operation, right from the very start – for stakeholders, for the community and for victims of modern slavery. For these reasons, the committee has concluded that the case has been made for the repeal of s 29 in its entirety and its replacement with the extended operation of the risk-based offender management scheme to deal with slavery offences as proposed by the NSW Government's amendments. We therefore support the provisions in the Amendment Bill which give effect to this, and make consequential and related amendments (Items [3], [18] and Schedule 2.1).

¹⁹⁵ Submission 1, NSW Government, p 10.

¹⁹⁶ Submission 58, NSW Bar Association, p 5.

New offences created by the NSW Act

- 3.51** In relation to proposed new s 91HAA of the *Crimes Act 1900*, which would currently be inserted by Schedule 4 of the NSW Act, the committee supports the proposed repeal of this provision due to an irremediable inconsistency with the equivalent Commonwealth offence (Amendment Bill Items [21] and [26]-[30]), in line with the views of the legal community. Of course, we also understand why some stakeholders, despite these constitutional concerns, have urged to the committee to recommend the retention of the offence. However, we have ultimately come to the view that victims of these abhorrent crimes would not be well served by the creation of a constitutionally questionable new criminal offence targeted at internet service providers. The heinous nature of sexual crimes being perpetrated against children and in some cases even babies, enabled by the internet, demands that every effort must be made at all levels of government to do whatever is possible to prevent such activities and bring convicted perpetrators to justice.
- 3.52** In relation to ss 93AB and 93AC, the committee is similarly supportive of the provisions in the Amendment Bill to align these criminal offences with their Commonwealth equivalents (Items [31] and [32]). In this context, we note the arguments put forward by Legal Aid NSW and the Office of the Director of Public Prosecutions that ss 93AB and 93AC, as well as 91HAB and 91HAC, should be deleted entirely on the basis that these offences unnecessarily duplicate existing Commonwealth laws. However, the committee is not persuaded that this would be preferable, given that the state's victims support and apprehended violence order schemes refer exclusively to offences under the *Crimes Act 1900* to define grounds for obtaining orders or receiving support.
- 3.53** The committee is further persuaded that Item [32] in the Amendment Bill, which amends s 93AC relating to child forced marriage, should be amended to bring the provision into line with the current definition of forced marriage in the *Criminal Code Act 1995* (Cth).
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Recommendation 12

That the NSW Government amend Item [32] in the Draft Modern Slavery Amendment Bill 2019 to bring section 93AC of the *Crimes Act 1900* into line with the current definition of forced marriage in the *Criminal Code Act 1995* (Cth).

- 3.54** Finally, the committee notes the very specific issues raised by Legal Aid NSW in relation to the new aggravated child abuse offence in s 91G, particularly around how the provision fits within existing provisions in the *Crimes Act 1900*. The committee recommends that the NSW Government consider these issues and work to resolve them as a matter of urgency prior to the introduction of the Amendment Bill into the New South Wales Parliament.
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Recommendation 13

That the NSW Government consider and work to resolve the issues raised by Legal Aid NSW in relation to section 91G of the *Crimes Act 1900* prior to the introduction of the Modern Slavery Amendment Bill 2019 into the New South Wales Parliament.

Sale and supply of human tissue

- 3.55** The committee notes the stakeholder strong opposition to the proposal in the Amendment Bill to replace the reference to s 32 of the *Human Tissue Act 1983* as a 'modern slavery offence' with a reference to organ trafficking in the Commonwealth Criminal Code (Items [22] and [23]). Most critically, stakeholders noted that the Commonwealth offence does not go as far as s 32, covering only trafficking in *persons* for the purposes of removing organs as opposed to trafficking in human *organs*, and having only partial extraterritorial application.
- 3.56** On the other hand, it is obviously also critical that NSW Health retains the ability to source blood and other blood products from comparable overseas countries for New South Wales. It is also possible that other organisations responsible for blood products such as the National Blood Authority and the Australian Red Cross would also be impacted by the current provision, although witnesses were unable to clarify whether this would be the case.
- 3.57** In any event, so that the sourcing of blood is not inadvertently compromised and given the consensus among stakeholders, the committee has concluded that this can best be achieved by creating an exception to the *Human Tissue Act 1983* for blood products, rather than referencing the Commonwealth organ trafficking offence.
- 3.58** We therefore recommend that the NSW Government omit Items [22] and [23] of the Draft Modern Slavery Amendment Bill 2019 so as to retain the reference to s 32 of the *Human Tissue Act 1983* as a modern slavery offence. We also recommend that the government create an exemption in the *Human Tissue Act 1983* to ensure that NSW Health and other relevant organisations can continue to source blood and other blood products from comparable overseas countries via an additional amendment in the Amendment Bill.

Recommendation 14

That the NSW Government:

- omit Items [22] and [23] of the Draft Modern Slavery Amendment Bill 2019 so as to retain the reference to section 32 of the *Human Tissue Act 1983* as a modern slavery offence
- create an exemption in the *Human Tissue Act 1983*, via an additional amendment in the Draft Modern Slavery Amendment Bill 2019, to ensure that NSW Health and other relevant organisations can continue to source blood and other blood products from comparable overseas countries.

Extraterritorial scope of 'modern slavery offence'

- 3.59** The committee supports the proposed amendment to definition of 'modern slavery offence' to make clear that this includes conduct occurring outside of New South Wales and Australia which, if it occurred in New South Wales, would be an offence, even though it might not be an offence in the place in which it occurred (Amendment Bill Item [2]). This is a straightforward and sensible clarification which ensures that extraterritorial conduct attracts reporting obligations under the NSW Act.

Chapter 4 Victims support and other issues

This chapter focuses on the provisions of the *Modern Slavery Act 2018* which deal with support for victims of modern slavery, including amendments to the *Victims Rights and Support Act 2013* and the apprehended violence order scheme. The chapter then briefly discusses provisions in the Draft Modern Slavery Amendment Bill 2019 concerning information sharing and immunity, and other miscellaneous drafting amendments.

Support for victims of modern slavery

- 4.1 The *Modern Slavery Act 2018* (hereafter, the NSW Act) contains a number of provisions aimed at supporting victims of modern slavery, including giving the Anti-Slavery Commissioner the function of providing assistance and support for victims of modern slavery (s 9(1)(b)) and requiring the Commissioner to establish and maintain a hotline, or utilise an existing hotline, for provision of advice and assistance to children and other persons who are, or may be, victims of modern slavery (s 12(d)).
- 4.2 The NSW Act also contains amendments to the victims support and apprehended violence order legislation, to give victims of modern slavery access to these schemes. These provisions are discussed below.

Amendments to the *Victims Rights and Support Act 2013*

- 4.3 Schedule 5.7 of the NSW Act amends the *Victims Rights and Support Act 2013* to extend the operation of the victims support scheme to victims of 'acts of modern slavery', as defined, ensuring access to some forms of financial support and counselling for these victims. Specifically, the new provisions extend the eligibility for support provisions for a primary victim of an act of modern slavery under s 23(1) so that a primary victim can access specified support under s 26 of the *Victims Rights and Support Act 2013*, including:
- approved counselling services with respect to that act of modern slavery
 - financial assistance for immediate needs to cover expenses for treatment or other measures that need to be taken urgently, as a direct result of that act of modern slavery, to secure the victim's safety, health or well being
 - financial assistance for the economic loss suffered by the primary victim as a direct result of that act of modern slavery.¹⁹⁷
- 4.4 In addition, the Draft Modern Slavery Amendment Bill 2019 (hereafter, the Amendment Bill) contains consequential amendments to the *Victims Rights and Support Act 2013* to give effect to the changes that will expand the operation of that legislation to 'acts of modern slavery' (Items [40]-[42]).¹⁹⁸

¹⁹⁷ *Modern Slavery Act 2018*, Sch 5.7, Items [5]-[8].

¹⁹⁸ Submission 1, NSW Government, p 20.

Stakeholder views

4.5 Numerous inquiry participants commended the extension of the victims support scheme to victims of acts of modern slavery under the NSW Act, including Anti-Slavery Australia, Legal Aid NSW, Women's Legal Service NSW, Domestic Violence NSW, The Salvation Army Australia, International Justice Mission and Oxfam Australia.¹⁹⁹ Anti-Slavery Australia remarked that these provisions demonstrate 'the NSW Government's commitment to recognising the tremendous harm and trauma done to victims of modern slavery and the need to enhance their access to support and recognition'.²⁰⁰

4.6 However, a number of these stakeholders argued that in addition to accessing financial support and counselling, victims of modern slavery should also have access to recognition payments under the *Victims Rights and Support Act 2013*.²⁰¹ For example, Anti-Slavery Australia highlighted some of the challenges facing victims of modern slavery and the importance of recognition payments in assisting them to rebuild their lives:

In Anti-Slavery Australia's experience of working directly with victims, people who have experienced modern slavery are, as a result of the harm done against them, isolated from family and support networks, financially disseminated (for example, from unpaid wages), disconnected from schooling and/or career opportunities. They can require much support in re-entering schooling or employment, stabilising their accommodation, accessing legal or migration assistance and recovering from trauma. The recognition payments we help our clients access are an essential component to helping them gain recognition for the harm that was done against them and helps them rebuild their lives in practical ways.²⁰²

4.7 In particular, Anti-Slavery Australia and Domestic Violence NSW called for 'act of modern slavery' to be included in category B of the categories of recognition payments. Under s 35 of the *Victims Rights and Support Act 2013*, category B recognition payments of \$10,000 are given in respect of an act of violence of the following kinds:

- a sexual assault resulting in serious bodily injury or which involved an offensive weapon or was carried out by 2 or more persons
- a sexual assault, sexual touching or sexual act or attempted sexual assault involving violence that is one of a series of related acts.²⁰³

4.8 In this regard, both Anti-Slavery Australia and Domestic Violence NSW emphasised the combination of physical and psychological violence involved in modern slavery, telling the committee:

¹⁹⁹ Submission 80, Anti-Slavery Australia, p 15; Submission 100, Legal Aid NSW, p 3; Submission 88, Women's Legal Service NSW, p 2; Submission 96, Domestic Violence NSW, p 5; Submission 61, The Salvation Army Australia, p 9; Submission 10, International Justice Mission Australia, p 13; Submission 47, Oxfam Australia, p 3.

²⁰⁰ Submission 80, Anti-Slavery Australia, p 15.

²⁰¹ Submission 80, Anti-Slavery Australia, p 16; Submission 88, Women's Legal Service NSW, pp 2-3; Submission 61, The Salvation Army Australia, p 9; Submission 96, Domestic Violence NSW, p 5.

²⁰² Submission 80, Anti-Slavery Australia, p 16.

²⁰³ *Victims Rights and Support Act 2013*, s 35(2).

- 'Often the coercion, threats or deception used to keep people in modern slavery will be subtle and involve a combination of both physical and psychological violence, including threats to harm the victim, other family members or threats to deport them or report them to authorities. These complex forms of violence and harm should not have to be separated out via the current categories of acts of violence, and should be recognised as a separate act, or series of related acts of violence which gives rise to a recognition payment under Category B. Since the NSW Act purports to group the acts of violence leading to and experienced by victims of modern slavery into one definition "an act of modern slavery", we submit that Category B is an appropriate category to reflect the level of violence and harm done during these acts'.²⁰⁴
- 'DVNSW recommends that modern slavery be recognised as a Category B offence for the purpose of the recognition payment, as it often consists of a series of related acts. The compounded physical, psychological, emotional violence, and the coercive and clandestine nature of the abuse, as well as the extreme power dynamics of modern slavery would support modern slavery being categorised as such'.²⁰⁵

4.9 In a detailed submission, Women's Legal Service NSW similarly expressed support for making recognition payments available to victims of modern slavery.²⁰⁶ On a separate note, the Service also raised the fact that the NSW Act makes amendments to a historical version of the *Victims Rights and Support Act 2013*, and that this appears not to have been rectified in the Amendment Bill. Women's Legal Service NSW gave the following example of this:

For example, schedule 5.7 [17]-[18] of the MSA [Modern Slavery Act] attempts to include an offence of act of modern slavery as a "relevant offence" for the purpose of recovering victims support from offenders, under sections 58(a) and 58(c) of the VRSA [Victims Rights and Support Act]. However, section 58 has been amended since the MSA was passed, and the proposed amendment to section 58 of the VRSA by the MSA no longer makes sense.²⁰⁷

4.10 Women's Legal Service NSW recommended that the proposed amendments to the *Victims Rights and Support Act 2013* be reviewed to ensure that they are consistent with the current version of that Act.²⁰⁸ The Service also suggested a number of other amendments to the *Victims Rights and Support Act 2013*, such as:

- including all forms of modern slavery in the definitions of 'victim of crime' and 'act of modern slavery'
- removing the requirement to prove injury in cases of an act of modern slavery
- removing conditions attached to victims support that require victims to assist in the investigation of the 'act of modern slavery' or 'act of violence'

²⁰⁴ Submission 80, Anti-Slavery Australia, p 17.

²⁰⁵ Submission 96, Domestic Violence NSW, p 8.

²⁰⁶ Submission 88, Women's Legal Service NSW, p 13.

²⁰⁷ Submission 88, Women's Legal Service NSW, p 8.

²⁰⁸ Submission 88, Women's Legal Service NSW, p 8.

- providing victims of an act of modern slavery with access to funded legal assistance for their victims support claims.²⁰⁹

Amendments to the *Crimes (Domestic and Personal Violence) Act 2007*

- 4.11** Schedule 5.3 of the NSW Act amends the *Crimes (Domestic and Personal Violence) Act 2007* to ensure that apprehended violence orders are available in cases of child forced marriage. In particular, the new provisions:
- give potential child victims of forced marriage access to apprehended violence orders if they experience coercion or threats to enter a forced marriage
 - extend the meaning of 'intimidation' under the *Crimes (Domestic and Personal Violence) Act 2007* to include conduct amounting to coercion, deception or threat to a child to enter into a forced marriage
 - ensure there is a mandatory application for an interim apprehended violence order to protect a victim when a person is charged with child forced marriage.²¹⁰
- 4.12** Importantly, Items [33]-[37] of the Amendment Bill extend these provisions to include *adult* victims of forced marriage. The expansion is achieved by incorporating references to the Commonwealth offence of forced marriage in appropriate places, given that the Commonwealth offence extends to adult victims of forced marriage, whereas the New South Wales offence, new s 93AC, is limited to child victims.²¹¹

Stakeholder views

- 4.13** Stakeholders including Legal Aid NSW, Anti-Slavery Australia, Collective Shout and Good Shepherd Australia New Zealand and Monash University, expressed broad support for the provisions making apprehended violence orders available to both potential child and adult victims of forced marriage.²¹² However, these stakeholders also suggested two further measures be considered to strengthen the protective mechanisms available under the *Crimes (Domestic and Personal Violence) Act 2007*.
- 4.14** Legal Aid NSW and Anti-Slavery Australia both called for the expansion of the parties able to apply for an apprehended violence order. Legal Aid NSW suggested that the Australian Federal Police be able to apply for such orders, given that the agency is often involved in situations of forced marriage and 'giving them the ability to apply for these new AVOs would remove pressure from young people to apply for orders against their parents, in circumstances where the NSW Police have not applied for an AVO'.²¹³ Similarly, Anti-Slavery Australia suggested that protective family members or parties who have an interest in the safety, welfare or well-

²⁰⁹ Submission 88, Women's Legal Service NSW, pp 2-3; see also Answers to question on notice, The Salvation Army Australia, 4 December 2019, pp 3-6.

²¹⁰ *Modern Slavery Act 2018*, Sch 5.3, Items [1]-[7].

²¹¹ Submission 1, NSW Government, p 19.

²¹² Submission 100, Legal Aid NSW, p 8; Submission 80, Anti-Slavery Australia, p 12; Submission 39, Collective Shout, p 5; Submission 48, Good Shepherd Australia New Zealand and Monash University, p 19.

²¹³ Submission 100, Legal Aid NSW, p 8.

being of the child or young person should be allowed to apply for an order on their behalf, arguing:

In cases of forced marriage involving children or young people, the perpetrators are often parents or guardians who have parental responsibility for the child or young person. Children or young people are often reluctant to seek help because they fear confronting their parents and the involvement of DOCJ in such cases can vary, especially for young people aged 16-17 years. Allowing other suitable parties, such as carers or other protective family members, organisations or friends, to apply on behalf of a person in need of protection with leave of the court, may increase access to apprehended violence orders (AVOs).²¹⁴

4.15 Another suggestion made by Anti-Slavery Australia, as well as Good Shepherd Australia New Zealand and Monash University was to expand the kinds of prohibitions or restrictions able to be imposed by apprehended violence orders, particularly:

- to prevent defendants from facilitating the travel of the victim within or outside of Australia
- to prevent defendants from applying, or using third parties, to help them apply for another passport or travel document for the victim, without their consent.²¹⁵

4.16 Anti-Slavery Australia explained why such a provision is necessary to assist victims of forced marriage:

Together, the NSW Act and the Bill allow the making of an order by the Court to prohibit behaviour from the defendant that might coerce, deceive or threaten the protected person into a child forced marriage or forced marriage. While this may address the preliminary acts that lead to forced marriages, courts should be given the power to prevent more serious conduct which leads to forced marriages such as the taking of a victim's passport and the facilitation of their travel overseas.

Courts should also be explicitly given the power to prohibit behaviour by the defendant to use other family members to take actions which the defendant themselves is prohibited from doing. Forced marriages often involve several perpetrators within the family who reinforce the coercion, threat or deception from one or more primary members of the family.²¹⁶

Information sharing and immunity provisions

4.17 The NSW Act contains various provisions relating to co-operation, information sharing and protections from liability.²¹⁷ The committee heard that these provisions currently contain various inconsistencies and ambiguities,²¹⁸ and that the Amendment Bill therefore contains the following amendments aimed at clarifying and standardising them:

²¹⁴ Submission 80, Anti-Slavery Australia, p 13.

²¹⁵ Submission 80, Anti-Slavery Australia, p 14; Submission 48, Good Shepherd Australia New Zealand and Monash University, p 19.

²¹⁶ Submission 80, Anti-Slavery Australia, p 14.

²¹⁷ *Modern Slavery Act 2018*, ss 14-16.

²¹⁸ Submission 1, NSW Government, p 10.

- Item [7] ensures that the Anti-Slavery Commissioner and government and non-government agencies will co-operate and exchange information to the extent necessary to assist the Commissioner in the exercise of his or her functions under the NSW Act, but not to impose obligations of an uncertain extent that might operate more broadly than that
- Item [8] resolves an inconsistency between ss 14(2) and 16 by deleting the words 'subject to any duty of confidentiality imposed by law' from s 14(2)
- Item [10]:
 - introduces clearer and more standardised protections from liability for people required or authorised to provide information to the Commissioner under the NSW Act in a new section 16
 - provides standard personal immunities for the Commissioner and Commission staff when they are acting in good faith for the purpose of exercising a function under the NSW Act or any other law, but does not exempt the State from any liability, in new s 16A
- Schedule 2.2 mirrors the provisions of s 16A in the proposed standard amendment to the *Defamation Act 2005* for oversight bodies
- Item [20] ensures that confidential police information is protected in a new section 35.²¹⁹

Miscellaneous drafting amendments

4.18 Appendix A to the submission from the NSW Government summarises the amendments to the NSW Act proposed in the Amendment Bill. The following table reproduces this summary with respect to miscellaneous amendments, primarily of a consequential or drafting nature, not dealt with elsewhere in this report.

Table 3 Summary of proposed amendments to the Modern Slavery Act 2018

Item No in Sch to Bill	Current NSW Act section	Reason for amendment	Effect of amendment
[4]	Section 5 Definitions New subclause (3)	Consequential/drafting amendment	This is a drafting device to simplify the drafting of amendments proposed to clarify when a reference to government agencies in the NSW Act only applies to government agencies of NSW (the rest of the time 'government agencies' also includes 'public and local authorities constituted by an Act of another jurisdiction'). The definition of government agencies in the NSW Act is wider than (and displaces) its usual

²¹⁹ Submission 1, NSW Government, pp 10-11.

Item No in Sch to Bill	Current NSW Act section	Reason for amendment	Effect of amendment
			meaning in s 13A of the <i>Interpretation Act 1987</i> .
[5]	Sections 13(2) and 19(3)(c)	Consequential / drafting amendment	This amendment updates references to the Department of Family and Community Services following the post-election machinery of government changes.
[6], [9]	Sections 13(4) and 14(5)	These amendments correct a drafting error. The relevant functions of the Commissioner are conferred under section 9 of the Act, not under “this” section (section 14).	This amendment will ensure that the reference to the functions of the Commissioner is a reference to all of the functions of the Commissioner in relation to which referrals to police and other agencies and co-operation will be necessary and appropriate.
[11]	Section 20	This section needs to be updated to reflect the recent insertion of new section 316A of the Crimes Act.	The amendment ensures that the Commissioner’s powers to use information under the NSW Act align with the Commissioner’s obligations to provide information under the new Crimes Act provision.
[15]	Section 25	Correction of a drafting error. The current draft refers to “procurement” being the product of modern slavery, whereas it is the goods and services procured that may be the product of modern slavery.	The amended clause will require the Commissioner to consult regularly with the Auditor General and the NSW Procurement Board in order to monitor the effectiveness of due diligence procedures in place within government agencies to ensure that “goods and services procured by government agencies” are not the product of modern slavery.
[19]	Section 33	Amends the jurisdictions that can deal with offences summarily by deleting the District Court (which has a strictly limited summary jurisdiction) and including the Supreme Court in its summary jurisdiction, in line with current practice.	This machinery provision allows offences under the NSW Act to be dealt with summarily.
[24]	Schedule 3 Savings and Transitional regulations	This amendment inserts new standard drafting relating to savings and transitional regulations.	

Item No in Sch to Bill	Current NSW Act section	Reason for amendment	Effect of amendment
[38], [39]	Schedule 5.5 Sections 38F and 38G, <i>Public Finance and Audit Act 1983</i>	Consequential / drafting amendments	These amendment are designed to clarify that the Auditor General's new powers to audit agencies in relation to procurement and modern slavery apply to those agencies that are otherwise subject to an obligation, however imposed, to take reasonable steps to ensure that the goods and services procured by and for the agency are not the product of modern slavery.

Source: *Submission 1, NSW Government, pp 14-20.*

Committee comment

Amendments to the Victims Rights and Support Act 2013

- 4.19** The committee strongly supports the provisions in Schedule 5.7 of the NSW Act extending the operation of the victims support scheme to victims of acts of modern slavery, ensuring they can access financial support and counselling. We also, of course, support the relevant consequential amendments in the Amendment Bill (Items [40]-[42]). Providing victims of modern slavery with a form of redress for the harm they have suffered is an absolutely essential aspect of this legislation.
- 4.20** To this end, in addition to accessing financial support and counselling, the committee believes that victims of acts of modern slavery should also be able to access recognition payments under the *Victims Rights and Support Act 2013*. The extreme power dynamic at play in modern slavery, the vulnerability of the victims, the complex physical and psychological harm caused often over an extended period of time and the immense challenge for victims to rebuild their lives, we believe justify the availability of recognition payments, in recognition of the trauma suffered.
- 4.21** Accordingly, the committee recommends that Schedule 5.7 be amended to give victims of acts of modern slavery access to recognition payments under the *Victims Rights and Support Act 2013*.

Recommendation 15

That the NSW Government seek to amend Schedule 5.7 of the *Modern Slavery Act 2018* to give victims of acts of modern slavery access to recognition payments under the *Victims Rights and Support Act 2013*.

- 4.22** The provisions of Schedule 5.7 of the NSW Act should also be reviewed to ensure that the amendments made to the *Victims Rights and Support Act 2013* are based on the current version of that Act, and any necessary amendments made.

Recommendation 16

That the NSW Government:

- review the provisions of Schedule 5.7 of the *Modern Slavery Act 2018* to ensure that the amendments made to the *Victims Rights and Support Act 2013* are based on the current version of that Act
 - make any consequential amendments in the Draft Modern Slavery Amendment Bill 2019.
-

Amendments to the Crimes (Domestic and Personal Violence) Act 2007

- 4.23** The provisions in Schedule 5.3 of the NSW Act making apprehended violence orders available to potential child victims of forced marriage, and the provisions in the Amendment Bill extending this form of protection to adult victims of forced marriage (Items [33]-[37]), are another important piece of the puzzle in supporting and protecting modern slavery victims. The committee fully supports these provisions.
- 4.24** The committee is also supportive, in principle, of the proposals from Legal Aid NSW, Anti-Slavery Australia and Good Shepherd Australia New Zealand and Monash University to expand the parties able to apply for such orders and to expand the kinds of restrictions able to be imposed by such orders. These are valuable suggestions from highly credible stakeholders in this space.
- 4.25** At this stage, we believe more work should be done to develop these proposals to ensure that any further amendments to the *Crimes (Domestic and Personal Violence) Act 2007*, over and above those already contained in Schedule 5.3, are robust, avoid any unintended consequences, and are able to be implemented with the support of relevant government, law enforcement and non-government bodies. This work can be done once the legislation has commenced, with a view to any further amendments to the apprehended violence order scheme being introduced following the statutory review of the NSW Act.
- 4.26** The committee therefore recommends that the NSW Government establish a working group which includes the Anti-Slavery Commissioner, NSW Police, the Department of Justice and Communities and other relevant stakeholders to develop further amendments to the *Crimes (Domestic and Personal Violence) Act 2007* to protect potential victims of forced marriage, to be introduced following the statutory review recommended in Recommendation 2.
-

Recommendation 17

That the NSW Government establish a working group which includes the Anti-Slavery Commissioner, NSW Police, the Department of Justice and Communities and other relevant stakeholders to develop further amendments to the *Crimes (Domestic and Personal Violence) Act 2007* to protect potential victims of forced marriage, to be introduced following the statutory review recommended in Recommendation 2.

Information sharing and immunity provisions

- 4.27 The committee supports the amendments in the Amendment Bill aimed at clarifying and standardising the provisions in the NSW Act concerning co-operation, information sharing and protections from liability (Items [7], [8], [10], [20] and Schedule 2.2). These amendments are straightforward and uncontroversial.

Miscellaneous drafting amendments

- 4.28 The committee also supports the miscellaneous amendments, primarily of a consequential or drafting nature, contained in the Amendment Bill.

Appendix 1 Availability of existing New South Wales risk-based offender management schemes for modern slavery offences

Modern slavery offence	Availability of risk-based offender management scheme(s)
New South Wales offences	
s 80D, <i>Crimes Act 1900</i> , Causing sexual servitude	Serious Crime Prevention Order <hr/> <i>[Pending]</i> High Risk Offender Order <i>[on commencement of the Modern Slavery Amendment Bill 2019]</i> <hr/> Child Protection Register <hr/> Child Protection Prohibition Order <hr/> Apprehended Violence Order <hr/> Disorderly House (restricted premises) declaration <hr/> Intervention under <i>Summary Offences Act 1988</i>
s 80E, <i>Crimes Act 1900</i> , Conducting business involving sexual servitude	Serious Crime Prevention Order <hr/> <i>[Pending]</i> High Risk Offender Order <i>[on commencement of the Modern Slavery Amendment Bill 2019]</i> <hr/> Child Protection Register <hr/> Child Protection Prohibition Order <hr/> <i>[Potential]</i> Apprehended Violence Order <i>[depending on whether the protected person has grounds to fear, and does in fact fear, the MS offender committing a domestic or personal violence offence]</i> <hr/> Disorderly House (restricted premises) declaration <hr/> Intervention under <i>Summary Offences Act 1988</i>
s 91G(1)-(3), <i>Crimes Act 1900</i> , Use of child under 14 for production of child abuse material	Serious Crime Prevention Order <hr/> High Risk Offender Order <hr/> Child Protection Register <hr/> Child Protection Prohibition Order <hr/> <i>[Potential]</i> Apprehended Violence Order <i>[depending on whether the protected person has grounds to fear, and does in fact fear, the MS offender committing a domestic or personal violence offence]</i> <hr/> Disorderly House (restricted premises) declaration <hr/> Intervention under <i>Summary Offences Act 1988</i>

Modern slavery offence	Availability of risk-based offender management scheme(s)
s 91H, <i>Crimes Act 1900</i> , Production, dissemination or possession of child abuse material	Serious Crime Prevention Order
	High Risk Offender Order
	Child Protection Register
	Child Protection Prohibition Order
	<i>[Potential]</i> Apprehended Violence Order <i>[depending on whether the protected person has grounds to fear, and does in fact fear, the MS offender committing a domestic or personal violence offence]</i>
	Disorderly House (restricted premises) declaration
	Intervention under <i>Summary Offences Act 1988</i>
s 91HAA <i>[NB: due to an existing s 91HAA, this section will require re-numbering on commencement]</i> , <i>Crimes Act 1900</i> , Administering a digital platform to deal with child abuse material	Serious Crime Prevention Order
	High Risk Offender Order
	<i>[Potential]</i> Child Protection Register <i>[noting that a s 91HAA offence may be an offence that involves sexual touching or a sexual act against a child]</i>
	<i>[Potential]</i> Child Protection Prohibition Order <i>[noting that a s 91HAA offence may be an offence that involves sexual touching or a sexual act against a child]</i>
	<i>[Potential]</i> Apprehended Violence Order <i>[depending on whether the protected person has grounds to fear, and does in fact fear, the MS offender committing a domestic or personal violence offence]</i>
	Disorderly House (restricted premises) declaration
	Intervention under <i>Summary Offences Act 1988</i>
s 91HAB, <i>Crimes Act 1900</i> (NSW), Encouraging use of a digital platform to deal with child abuse material	Serious Crime Prevention Order
	High Risk Offender Order
	<i>[Potential]</i> Child Protection Register <i>[noting that a s 91HAA offence may be an offence that involves sexual touching or a sexual act against a child]</i>
	<i>[Potential]</i> Child Protection Prohibition Order <i>[noting that a s 91HAA offence may be an offence that involves sexual touching or a sexual act against a child]</i>
	<i>[Potential]</i> Apprehended Violence Order <i>[depending on whether the protected person has grounds to fear, and does in fact fear, the MS offender committing a domestic or personal violence offence]</i>
	Disorderly House (restricted premises) declaration
	Intervention under <i>Summary Offences Act 1988</i>
s 91HAC, <i>Crimes Act 1900</i> (NSW), Providing information about avoiding detection	Serious Crime Prevention Order
	High Risk Offender Order
	<i>[Potential]</i> Child Protection Register <i>[noting that a s 91HAA offence may be an offence that involves sexual touching or a sexual act against a child]</i>
	<i>[Potential]</i> Child Protection Prohibition Order <i>[noting that a s 91HAA offence may be an offence that involves sexual touching or a sexual act against a child]</i>
	<i>[Potential]</i> Apprehended Violence Order <i>[depending on whether the protected person has grounds to fear, and does in fact fear, the MS offender committing a domestic or personal violence offence]</i>
	Disorderly House (restricted premises) declaration
	Intervention under <i>Summary Offences Act 1988</i>

Modern slavery offence	Availability of risk-based offender management scheme(s)
	<p data-bbox="544 360 1430 465"><i>[Potential]</i> Apprehended Violence Order <i>[depending on whether the protected person has grounds to fear, and does in fact fear, the MS offender committing a domestic or personal violence offence]</i></p> <hr/> <p data-bbox="544 483 1123 517">Disorderly House (restricted premises) declaration</p> <hr/> <p data-bbox="544 535 1062 568">Intervention under <i>Summary Offences Act 1988</i></p>
<p data-bbox="164 589 485 685">s 93AB, <i>Crimes Act 1900</i> (NSW), Slavery, servitude and child forced labour</p>	<p data-bbox="544 589 919 622">Serious Crime Prevention Order</p> <hr/> <p data-bbox="544 640 890 674">Apprehended Violence Order</p> <hr/> <p data-bbox="544 692 1123 725">Disorderly House (restricted premises) declaration</p> <hr/> <p data-bbox="544 743 1062 777">Intervention under <i>Summary Offences Act 1988</i></p>
<p data-bbox="164 801 472 898">s 93AC, <i>Crimes Act 1900</i> (NSW), Child forced marriage</p>	<p data-bbox="544 801 1430 936"><i>[Potential]</i> Serious Crime Prevention Order <i>[noting that the s 93AC offence is an offence carrying a maximum penalty of at least 5 years imprisonment and may involve theft, extortion, obtaining financial benefit from the crime of another, money laundering and/or violence]</i></p> <hr/> <p data-bbox="544 954 1430 1059"><i>[Potential]</i> Apprehended Violence Order <i>[depending on whether the protected person has grounds to fear, and does in fact fear, the MS offender committing a domestic or personal violence offence]</i></p> <hr/> <p data-bbox="544 1077 1123 1111">Disorderly House (restricted premises) declaration</p> <hr/> <p data-bbox="544 1128 1062 1162">Intervention under <i>Summary Offences Act 1988</i></p>
<p data-bbox="164 1182 475 1216">Commonwealth offences</p>	
<p data-bbox="164 1238 512 1305">s 270.3, <i>Criminal Code 1995</i> (Cth), Slavery offences</p>	<p data-bbox="544 1238 1430 1406"><i>[Potential]</i> Serious Crime Prevention Order <i>[noting that the s 270.3 offence is an offence carrying a maximum penalty of at least 5 years imprisonment and may involve theft, extortion, obtaining financial benefit from the crime of another, money laundering and/or violence; and is an offence, which, if committed in NSW, may be a serious criminal offence under the CAR Act]</i></p> <hr/> <p data-bbox="544 1424 1430 1529"><i>[Potential]</i> Apprehended Violence Order <i>[depending on whether the protected person has grounds to fear, and does in fact fear, the MS offender committing a domestic or personal violence offence]</i></p> <hr/> <p data-bbox="544 1547 1123 1581">Disorderly House (restricted premises) declaration</p> <hr/> <p data-bbox="544 1599 1062 1632">Intervention under <i>Summary Offences Act 1988</i></p>
<p data-bbox="164 1653 512 1720">s 270.5, <i>Criminal Code 1995</i> (Cth), Servitude offences</p>	<p data-bbox="544 1653 1430 1821"><i>[Potential]</i> Serious Crime Prevention Order <i>[noting that the s 270.5 offence is an offence carrying a maximum penalty of at least 5 years imprisonment and may involve theft, extortion, obtaining financial benefit from the crime of another, money laundering and/or violence; and is an offence, which, if committed in NSW, may be a serious criminal offence under the CAR Act]</i></p> <hr/> <p data-bbox="544 1839 1430 1944"><i>[Potential]</i> Apprehended Violence Order <i>[depending on whether the protected person has grounds to fear, and does in fact fear, the MS offender committing a domestic or personal violence offence]</i></p> <hr/> <p data-bbox="544 1962 1123 1995">Disorderly House (restricted premises) declaration</p> <hr/> <p data-bbox="544 2013 1062 2047">Intervention under <i>Summary Offences Act 1988</i></p>

Modern slavery offence	Availability of risk-based offender management scheme(s)
<p>s 270.6A, <i>Criminal Code 1995</i> (Cth), Forced labour offences</p>	<p>[Potential] Serious Crime Prevention Order <i>[noting that the s 270.6A offence is an offence carrying a maximum penalty of at least 5 years imprisonment and may involve theft, extortion, obtaining financial benefit from the crime of another, money laundering and/ or violence; and is an offence, which, if committed in NSW, may be a serious criminal offence under the CAR Act]</i></p> <hr/> <p>Child Protection Register</p> <hr/> <p>Child Protection Prohibition Order</p> <hr/> <p>[Potential] Apprehended Violence Order <i>[depending on whether the protected person has grounds to fear, and does in fact fear, the MS offender committing a domestic or personal violence offence]</i></p> <hr/> <p>Disorderly House (restricted premises) declaration</p> <hr/> <p>Intervention under <i>Summary Offences Act 1988</i></p>
<p>s 270.7, <i>Criminal Code 1995</i> (Cth), Deceptive recruitment for labour or services</p>	<p>[Potential] Serious Crime Prevention Order <i>[noting that the s 270.7 offence is an offence carrying a maximum penalty of at least 5 years imprisonment and may involve theft, extortion, obtaining financial benefit from the crime of another, money laundering and/ or violence; and is an offence, which, if committed in NSW, may be a serious criminal offence under the CAR Act]</i></p> <hr/> <p>Child Protection Register</p> <hr/> <p>Child Protection Prohibition Order</p> <hr/> <p>[Potential] Apprehended Violence Order <i>[depending on whether the protected person has grounds to fear, and does in fact fear, the MS offender committing a domestic or personal violence offence]</i></p> <hr/> <p>Disorderly House (restricted premises) declaration</p> <hr/> <p>Intervention under <i>Summary Offences Act 1988</i></p>
<p>s 270.7B, <i>Criminal Code 1995</i> (Cth), Forced marriage offences</p>	<p>[Potential] Serious Crime Prevention Order <i>[noting that the s 270.7B offence is an offence carrying a maximum penalty of at least 5 years imprisonment and may involve theft, extortion, obtaining financial benefit from the crime of another, money laundering and/ or violence; and is an offence, which, if committed in NSW, may be a serious criminal offence under the CAR Act]</i></p> <hr/> <p>[Potential] Apprehended Violence Order <i>[depending on whether the protected person has grounds to fear, and does in fact fear, the MS offender committing a domestic or personal violence offence]</i></p> <hr/> <p>Disorderly House (restricted premises) declaration</p> <hr/> <p>Intervention under <i>Summary Offences Act 1988</i></p>
<p>s 270.7C, <i>Criminal Code 1995</i> (Cth), Offence of debt bondage</p>	<p>[Potential] Serious Crime Prevention Order <i>[noting that the s 270.7C offence is an offence carrying a maximum penalty of at least 5 years imprisonment and may involve theft, extortion, obtaining financial benefit from the crime of another, money laundering and/ or violence; and is an offence, which, if committed in NSW, may be a serious criminal offence under the CAR Act]</i></p>

Modern slavery offence	Availability of risk-based offender management scheme(s)
	<p data-bbox="542 358 1428 459">[Potential] Apprehended Violence Order <i>[depending on whether the protected person has grounds to fear, and does in fact fear, the MS offender committing a domestic or personal violence offence]</i></p> <hr/> <p data-bbox="542 481 1117 515">Disorderly House (restricted premises) declaration</p> <hr/> <p data-bbox="542 537 1061 571">Intervention under <i>Summary Offences Act 1988</i></p>
<p data-bbox="151 582 526 683">s 271.2, <i>Criminal Code 1995</i> (Cth), Offence of trafficking in persons</p>	<p data-bbox="542 582 1428 761">[Potential] Serious Crime Prevention Order <i>[noting that the s 271.2 offence is an offence carrying a maximum penalty of at least 5 years imprisonment and may involve theft, extortion, obtaining financial benefit from the crime of another, money laundering and/or violence; and is an offence, which, if committed in NSW, may be a serious criminal offence under the CAR Act]</i></p> <hr/> <p data-bbox="542 772 1428 884">[Potential] Apprehended Violence Order <i>[depending on whether the protected person has grounds to fear, and does in fact fear, the MS offender committing a domestic or personal violence offence]</i></p> <hr/> <p data-bbox="542 896 1117 929">Disorderly House (restricted premises) declaration</p> <hr/> <p data-bbox="542 952 1061 985">Intervention under <i>Summary Offences Act 1988</i></p>
<p data-bbox="151 1008 526 1131">s 271.3, <i>Criminal Code 1995</i> (Cth), Trafficking in persons – aggravated offence</p>	<p data-bbox="542 1008 1428 1187">[Potential] Serious Crime Prevention Order <i>[noting that the s 271.3 offence is an offence carrying a maximum penalty of at least 5 years imprisonment and may involve theft, extortion, obtaining financial benefit from the crime of another, money laundering and/or violence; and is an offence, which, if committed in NSW, may be a serious criminal offence under the CAR Act]</i></p> <hr/> <p data-bbox="542 1198 1428 1310">[Potential] Apprehended Violence Order <i>[depending on whether the protected person has grounds to fear, and does in fact fear, the MS offender committing a domestic or personal violence offence]</i></p> <hr/> <p data-bbox="542 1321 1117 1355">Disorderly House (restricted premises) declaration</p> <hr/> <p data-bbox="542 1377 1061 1411">Intervention under <i>Summary Offences Act 1988</i></p>
<p data-bbox="151 1433 526 1534">s 271.4, <i>Criminal Code 1995</i> (Cth), Offence of trafficking in children</p>	<p data-bbox="542 1433 1428 1612">[Potential] Serious Crime Prevention Order <i>[noting that the s 271.4 offence is an offence carrying a maximum penalty of at least 5 years imprisonment and may involve theft, extortion, obtaining financial benefit from the crime of another, money laundering and/or violence; and is an offence, which, if committed in NSW, may be a serious criminal offence under the CAR Act]</i></p> <hr/> <p data-bbox="542 1624 853 1657">High Risk Offender Order</p> <hr/> <p data-bbox="542 1668 837 1702">Child Protection Register</p> <hr/> <p data-bbox="542 1713 949 1747">Child Protection Prohibition Order</p> <hr/> <p data-bbox="542 1769 1428 1881">[Potential] Apprehended Violence Order <i>[depending on whether the protected person has grounds to fear, and does in fact fear, the MS offender committing a domestic or personal violence offence]</i></p> <hr/> <p data-bbox="542 1892 1117 1926">Disorderly House (restricted premises) declaration</p> <hr/> <p data-bbox="542 1937 1061 1971">Intervention under <i>Summary Offences Act 1988</i></p>

Modern slavery offence	Availability of risk-based offender management scheme(s)
<p>s 271.5, <i>Criminal Code 1995</i> (Cth), Offence of domestic trafficking in persons</p>	<p>[Potential] Serious Crime Prevention Order <i>[noting that the s 271.5 offence is an offence carrying a maximum penalty of at least 5 years imprisonment and may involve theft, extortion, obtaining financial benefit from the crime of another, money laundering and/or violence; and is an offence, which, if committed in NSW, may be a serious criminal offence under the CAR Act]</i></p> <hr/> <p>[Potential] Apprehended Violence Order</p> <hr/> <p>Disorderly House (restricted premises) declaration</p> <hr/> <p>Intervention under <i>Summary Offences Act 1988</i></p>
<p>s 271.6, <i>Criminal Code 1995</i> (Cth), Domestic trafficking in persons – aggravated offence</p>	<p>[Potential] Serious Crime Prevention Order <i>[noting that the s 271.6 offence is an offence carrying a maximum penalty of at least 5 years imprisonment and may involve theft, extortion, obtaining financial benefit from the crime of another, money laundering and/or violence; and is an offence, which, if committed in NSW, may be a serious criminal offence under the CAR Act]</i></p> <hr/> <p>[Potential] Apprehended Violence Order <i>[depending on whether the protected person has grounds to fear, and does in fact fear, the MS offender committing a domestic or personal violence offence]</i></p> <hr/> <p>Disorderly House (restricted premises) declaration</p> <hr/> <p>Intervention under <i>Summary Offences Act 1988</i></p>
<p>s 271.7, <i>Criminal Code 1995</i> (Cth), Offence of domestic trafficking in children</p>	<p>[Potential] Serious Crime Prevention Order <i>[noting that the s 271.7 offence is an offence carrying a maximum penalty of at least 5 years imprisonment and may involve theft, extortion, obtaining financial benefit from the crime of another, money laundering and/or violence; and is an offence, which, if committed in NSW, may be a serious criminal offence under the CAR Act]</i></p> <hr/> <p>High Risk Offender Order</p> <hr/> <p>Child Protection Register</p> <hr/> <p>Child Protection Prohibition Order</p> <hr/> <p>[Potential] Apprehended Violence Order <i>[depending on whether the protected person has grounds to fear, and does in fact fear, the MS offender committing a domestic or personal violence offence]</i></p> <hr/> <p>Disorderly House (restricted premises) declaration</p> <hr/> <p>Intervention under <i>Summary Offences Act 1988</i></p>

Source: Answers to questions on notice, Professor Jennifer Burn, Interim Anti-Slavery Commissioner, NSW Department of Premier and Cabinet, 10 December 2019, pp 8-12.

Appendix 2 Summary of comments and recommendations

Provision	Theme of provision	Committee position	Reference and other comments
<i>Modern Slavery Act 2018</i>			
Act as a whole		Supported	Support retention of NSW Act with the aim of the Act commencing on or before 1 January 2021, notwithstanding Commonwealth regime Chapter 1
Part 2	Anti-Slavery Commissioner	Supported	Rec 9: Anti-Slavery Commissioner to examine and report on matters regarding the appropriateness of bringing franchisors, on behalf of franchisees not otherwise captured by the NSW Act, under the state legislation Chapter 2
Penalties (throughout)		Supported	Chapter 2
Section 24	Transparency of supply chain	Amend	Rec 3: Amend to omit reference to 'turnover' and insert instead 'consolidated revenue' Chapter 2
		Amend	Rec 6: Amend to specify relevant authority responsible for conducting prosecutions that involve breaches Chapter 2
		Recommended	Rec 4: NSW Government and Commissioner continue to support businesses to comply with requirements of s 24 Chapter 2
		Recommended	Rec 5: NSW Government to work with Australian Government to harmonise the reporting threshold, ideally at \$50 million consolidated revenue, within a standard national approach

Provision	Theme of provision	Committee position	Reference and other comments
			Chapter 2
		Amend (post-statutory review)	Rec 10: Finalise development of a voluntary reporting mechanism (already underway) for businesses falling under the \$50 million threshold in s 24 following the statutory review Chapter 2
Schedule 4	Amendments to the <i>Crimes Act</i>	Amend	Rec 13: NSW Government work to resolve issues raised by Legal Aid NSW re reference to s 91G of <i>Crimes Act</i> prior to Bill being introduced into parliament Chapter 3
Schedule 5.7	Amendments to the <i>Victims Rights and Support Act</i>	Amend and review	Rec 15: Amend to give victims of modern slavery access to recognition payments Rec 16: Review to ensure amendments in Bill are based on current version of Victims Rights and Support Act Chapter 4
New provision		Recommended	Rec 2: Insert requirement for a statutory review of the Act be conducted in conjunction with review of Commonwealth Act Chapter 1
New provision		Recommended	Rec 11: Introduce new provisions relating to local councils following the statutory review Chapter 2

Draft Modern Slavery Amendment Bill 2019

Bill as a whole	Supported, subject to comments and recommendations in report
Clause 1, Name of Act	No comment
Clause 2, Commencement	No comment

Provision	Theme of provision	Committee position	Reference and other comments
Schedule 1	Items [1], [4], [14]	State owned corporations / 'government agency'	Supported Chapter 2
	Item [2]	Extraterritorial scope of 'modern slavery offence'	Supported Chapter 3
	Items [3], [18]	Repeal of s 29 of Act / Modern slavery risk orders	Supported Chapter 3
	Item [5]	Change to name of department	No comment
	Item [6]	Referral of matters to police	No comment
	Items [7], [8], [10], [20]	Information sharing and immunity	Supported Chapter 4
	Item [9]	Change to terminology	No comment
	Item [11]	Reports under CYP (C&P) Act and Crimes Act	No comment
	Item [12], [13]	Definition of commercial organisation	Supported Note recommendation to change 'turnover' to 'consolidated revenue' – in Item [13] and throughout the original Act (Rec 3) Chapter 2
	Item [15]	Government agency procurement	No comment
	Items [16], [17]	Public register	Supported Supported, but there is a role for the Commissioner in ensuring context provided good practice highlighted Chapter 2
	Item [19]	Nature of proceedings for offences	No comment
	Items [21], [26], [27], [28], [29], [30]	Repeal of reference to s 91HAA of <i>Crimes Act</i>	Supported Chapter 3
Items [22], [23]	References to Human Tissue Act	Not supported Rec 14: Omit items [22] and [23] to retain references to Human Tissue Act; and create	

Provision	Theme of provision	Committee position	Reference and other comments
			new exemption in Human Tissue Act via an additional amendment in the bill to ensure that NSW Health and others can continue to source blood/blood products from overseas Chapter 3
Item [24]	Savings, transitional, other provisions	No comment	
Item [25]	Amendment to Crimes Act – offensive weapon	No comment	
Items [31] and [32]	Alignment of NSW and Commonwealth offences – ss 93AB and 93AC	Supported with amendment	Supported, but Rec 12: Amend Item [32] to bring s 93AC into line with the current definition of forced marriage in the Commonwealth Criminal Code Chapter 3
Items [33], [34], [35], [36], [37]		Supported	Supported, but Rec 17: Working group should be established to develop further amendments to Crimes (Domestic and Personal Violence) Act to protect victims of forced marriage – introduce changes following statutory review Chapter 4
Item [38]	Definition of government agency	No comment	
Item [39]	Auditor-General functions	No comment	
Items [40], [41], [42]	Victims Rights and Support	Supported, with amendment	Rec 15: Amend Schedule 5.7 of Act to give victims of modern slavery access to recognition payments Rec 16: Review Bill to ensure amendments to Schedule 5.7 of Act are based on current version of Victims Rights and Support Act Chapter 4

Provision	Theme of provision	Committee position	Reference and other comments
Schedule 2 2.1	Repeal of s 29 of Act/ modern slavery risk orders	Supported	Chapter 3
2.2	Information sharing and immunity	Supported	Chapter 4
Draft Modern Slavery Regulation 2019			
Clause 7	Reporting requirements	Supported	Chapter 2
Clause 10(4)	Exemption for charities	Supported, with proviso	Rec 7: Reassess exemption during the statutory review Chapter 2
		Supported	Rec 8: Do not exempt not-for-profit registered clubs Chapter 2
Clause 10(5)	Exemption for small business	Supported	Commissioner to keep a watching brief to determine whether franchises are effectively captured by reporting requirements Chapter 2

Appendix 3 Draft Modern Slavery Amendment Bill 2019

public consultation draft

NEW SOUTH WALES DRAFT GOVERNMENT BILL

Modern Slavery Amendment Bill 2019

Explanatory note

Overview of Bill

The object of this Bill is to make miscellaneous amendments to the *Modern Slavery Act 2018* (the *Principal Act*) to combat modern slavery and provide assistance and support for victims of modern slavery. In particular, the Bill makes further provision to deal with the following:

- (a) the functions of the Anti-slavery Commissioner,
- (b) co-operation between the Anti-slavery Commissioner and other agencies (including the Commissioner of Police),
- (c) reports by the Anti-slavery Commissioner,
- (d) reports to the Anti-slavery Commissioner on the transparency of supply chains by commercial organisations,
- (e) the repeal of provisions enabling courts to make certain post-conviction orders relating to modern slavery offences,
- (f) the repeal of an uncommenced offence in the *Crimes Act 1900* dealing with the administration of a digital platform used to deal with child abuse material,
- (g) the clarification of an uncommenced offence in the *Crimes Act 1900* dealing with child forced marriage,
- (h) other matters of a law revision, machinery or savings and transitional nature.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

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Explanatory note

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Modern Slavery Act 2018 No 30

Schedule 1 [1] and [14] clarify that State owned corporations, and other corporations of which one or more Ministers are a shareholder, are for the purposes of the Principal Act to be treated as non-government organisations and not government agencies.

Schedule 1 [2] amends the definition of *modern slavery offence* in section 5 of the Principal Act to clarify that conduct engaged in elsewhere than in New South Wales is a modern slavery offence, if, had it occurred in New South Wales, it would constitute a modern slavery offence.

Schedule 1 [4] clarifies the meaning of the term government agency of the State for the purposes of the Principal Act.

Schedule 1 [5], [6], [9] and [15] make law revision amendments.

Schedule 1 [7] clarifies that government agencies of the State and non-government agencies that provide services to, or advocate for, victims of modern slavery in the State must work in co-operation with the Anti-slavery Commissioner (the *Commissioner*) in the exercise of the Commissioner's functions.

Schedule 1 [8] and [10] make amendments to clarify the law relating to the sharing of information with the Commissioner. Schedule 1 [10] substitutes a provision of the Principal Act to provide that no criminal or civil liability (apart from under the Principal Act) attaches to a person for compliance, or purported compliance in good faith, with any requirement made under the Principal Act or providing any information to the Commissioner. In particular, if a person provides any information, document or other thing to the Commissioner, no civil liability attaches to the person for doing so, whether that liability would arise under a contract or otherwise. If any information, document or other thing is provided to the Commissioner, no liability for defamation or other civil liability is incurred because of the provision of that information, document or thing. Schedule 1 [8] makes a consequential amendment.

Schedule 1 [10] also inserts proposed section 16A into the Principal Act to provide that a matter or thing done or omitted to be done by the Commissioner or a person acting under the direction of the Commissioner does not, if the matter or thing was done or omitted to be done in good faith for the purpose of exercising a function under the Principal Act or under any other law, subject the Commissioner or person personally to any action, liability, claim or demand. That liability attaches instead to the Crown.

Schedule 1 [11] provides that information obtained by the Commissioner in the course of exercising the Commissioner's functions may be brought to the attention of a member of the NSW Police Force if it might be of material assistance in securing the apprehension of an offender, or the prosecution or conviction of an offender, for a child abuse offence (within the meaning of section 316A of the *Crimes Act 1900*).

Schedule 1 [12] and [13] clarify that a *commercial organisation* (being a body that must prepare an annual modern slavery statement):

- (a) may include charities and not-for-profit bodies, and
- (b) must have total turnover derived from the supply of goods and services for profit or gain of not less than \$50 million or such other amount as may be prescribed by the regulations under the Principal Act.

Schedule 1 [16] provides that the public register kept by the Commissioner may include additional information that the Commissioner thinks appropriate.

Schedule 1 [17] provides that the regulations may make provision for or with respect to the manner and form of a voluntary disclosure to the Commissioner by an organisation or body about

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Modern Slavery Amendment Bill 2019 [NSW]
Explanatory note

whether its goods and services are, or may be, a product of supply chains in which modern slavery is taking place and whether the organisation or body has taken steps to address the concern.

Schedule 1 [18] repeals Part 4 (Court orders) of the Principal Act which enabled the making of modern slavery risk orders. **Schedule 1 [3]** make a consequential amendment.

Schedule 1 [19] provides that proceedings for an offence under the Principal Act or its regulations may be dealt with summarily before the Supreme Court in its summary jurisdiction (instead of the District Court).

Schedule 1 [20] inserts proposed section 35 into the Principal Act to deal with the provision of information to the Commissioner, on request or in accordance with arrangements, by the Commissioner of Police.

Schedule 1 [21] and [22] omit the offence contained in section 32 (Trading in tissue prohibited) of the *Human Tissue Act 1983* from the list of modern slavery offences in Schedule 2 to the Principal Act and insert instead references to offences in the Commonwealth Criminal Code relating to organ trafficking.

Schedule 1 [24] amends the savings and transitional schedule to the Principal Act to include an updated version of the standard savings and transitional regulation-making provision.

Schedule 1 [25] makes an amendment to one of the circumstances of aggravation for the purposes of the offence in section 91G (Children not to be used for production of child abuse material) of the *Crimes Act 1900* (which is to be inserted into that Act by Schedule 4 [2] to the Principal Act). The amended circumstance of aggravation is that, at the time of, or immediately before or after, the commission of the relevant offence, the alleged offender threatens to inflict actual bodily harm on the alleged victim or any other person who is present or nearby by means of an offensive weapon or instrument.

Schedule 1 [26] repeals the uncommenced section 91HAA (Administering a digital platform used to deal with child abuse material) of the *Crimes Act 1900* (which was to be inserted into that Act by Schedule 4 [3] to the Principal Act). **Schedule 1 [27]** renumbers other uncommenced sections in Schedule 4 [3]. **Schedule 1 [21], [28], [29] and [30]** make consequential amendments.

Schedule 1 [31] amends section 93AB (1) (Slavery, servitude and child forced labour) of the *Crimes Act 1900* (which is to be inserted into that Act by Schedule 4 [7] to the Principal Act) to clarify that the prohibited actions must occur in New South Wales.

Schedule 1 [32] substitutes section 93AC (4) (Child forced marriage) of the *Crimes Act 1900* (which is to be inserted into that Act by Schedule 4 [7] to the Principal Act) to clarify that a person does not commit the child forced marriage offence if the person is a victim of the forced marriage.

Schedule 1 [33]–[37] make amendments to Schedule 5.3 to the Principal Act (which amends the *Crimes (Domestic and Personal Violence) Act 2007*) for the following purposes:

- (a) to include a reference to the offences of forced marriage under the Commonwealth Criminal Code in the definitions of *personal violence offence* in that Act and *serious offence* in section 40 of that Act,
- (b) to include in the definition of *intimidation* in that Act a reference to any conduct amounting to the coercion or deception of, or a threat to, a child to enter into a forced marriage within the meaning of section 93AC of the *Crimes Act 1900* or any person to enter into a forced marriage within the meaning of section 270.7A of the Commonwealth Criminal Code,
- (c) to make it clear that an apprehended violence order under that Act may prohibit any behaviour of the defendant that might coerce, deceive or threaten the protected person to enter into a forced marriage within the meaning of the relevant provisions of the *Crimes Act 1900* or the Commonwealth Criminal Code,
- (d) to make consequential amendments.

Schedule 1 [38] and [39] amend Schedule 5.5 to the Principal Act (which amends the *Public Finance and Audit Act 1983*) to clarify which government agencies are to be the subject

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of modern slavery audits by the Auditor-General and what the Auditor-General is to consider in conducting those audits.

Schedule 1 [40]–[42] make law revision and consequential amendments to Schedule 5.7 to the Principal Act (which amends the *Victims Rights and Support Act 2013*).

Schedule 2 Amendment of other Acts

Schedule 2.1 amends the *Crimes (High Risk Offenders) Act 2006* to provide that offences under Division 10A (Sexual servitude) of Part 3 (Offences against the person) of the *Crimes Act 1900* are *offences of a sexual nature* for the purposes of that Act.

Schedule 2.2 amends the *Defamation Act 2005* to provide that the defence of absolute privilege applies to the publication of certain specified matters arising under the Principal Act.

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NEW SOUTH WALES
DRAFT GOVERNMENT BILL

Modern Slavery Amendment Bill 2019

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NEW SOUTH WALES
DRAFT GOVERNMENT BILL

Modern Slavery Amendment Bill 2019

No. , 2019

A Bill for

An Act to amend the *Modern Slavery Act 2018* to make further provision with respect to slavery, slavery-like practices and human trafficking; and for other purposes.

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Modern Slavery Amendment Bill 2019 [NSW]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Modern Slavery Amendment Act 2019*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

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Modern Slavery Amendment Bill 2019 [NSW]
 Schedule 1 Amendment of Modern Slavery Act 2018 No 30

Schedule 1 Amendment of Modern Slavery Act 2018 No 30

- [1] **Section 5 Definitions**
 Omit paragraphs (c) and (d) of the definition of *government agency* in section 5 (1).
- [2] **Section 5 (1), definition of “modern slavery offence”**
 Omit paragraph (c). Insert instead:
 (c) conduct engaged in elsewhere than in New South Wales that, if it occurred in New South Wales, would constitute a modern slavery offence under paragraph (a) or (b).
- [3] **Section 5 (1), definition of “modern slavery risk order”**
 Omit the definition.
- [4] **Section 5 (3)**
 Insert after section 5 (2):
 (3) A reference in this Act to a government agency of the State is a reference to a government agency other than a public or local authority constituted by an Act of another jurisdiction.
- [5] **Sections 13 (2) and 19 (3) (c) and Schedule 5**
 Omit “Department of Family and Community Services” wherever occurring.
 Insert instead “Department of Communities and Justice”.
- [6] **Section 13 Referral of matters to police and other agencies in the State and elsewhere**
 Omit “under this section” from section 13 (4). Insert instead “under this Act”.
- [7] **Section 14 Co-operation between the Commissioner and New South Wales agencies**
 Omit section 14 (1). Insert instead:
 (1) Government agencies of the State and non-government agencies that provide services to, or advocate for, victims of modern slavery in the State must work in co-operation with the Commissioner in the exercise of the Commissioner’s functions.
- [8] **Section 14 (2)**
 Omit “, subject to any duty of confidentiality imposed by law,”.
- [9] **Section 14 (5)**
 Omit “under this section”. Insert instead “under this Act”.
- [10] **Sections 16 and 16A**
 Omit section 16. Insert instead:
 16 Personal liability—co-operation with Commissioner
 (1) No criminal or civil liability (apart from under this Act) attaches to a person for the following:
 (a) compliance, or purported compliance in good faith, with a requirement made under this Act,

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Modern Slavery Amendment Bill 2019 [NSW]
 Schedule 1 Amendment of Modern Slavery Act 2018 No 30

- (b) providing information to the Commissioner.
- (2) Without limiting subsection (1), if a person provides any information, document or other thing to the Commissioner, no civil liability attaches to the person for doing so, whether that liability would arise under a contract or otherwise.
- (3) If any information, document or other thing is provided to the Commissioner, no liability for defamation or other civil liability is incurred because of the provision of that information, document or thing.
- 16A Personal liability—Commissioner and officers of Commission**
- (1) A matter or thing done or omitted to be done by the Commissioner or a person acting under the direction of the Commissioner does not, if the matter or thing was done or omitted to be done in good faith for the purpose of exercising a function under this Act or under any other law, subject the Commissioner or person so acting personally to any action, liability, claim or demand.
- (2) However, any such liability attaches instead to the Crown.
- [11] Section 20**
 Omit the section. Insert instead:
- 20 Reports under Children and Young Persons (Care and Protection) Act 1998 and Crimes Act 1900**
- (1) Any information obtained by the Commissioner in the course of exercising the Commissioner's functions may be used for the following purposes:
- (a) making a report to the Secretary of the Department of Communities and Justice under section 24 (Report concerning child or young person at risk of significant harm) of the *Children and Young Persons (Care and Protection) Act 1998*,
- (b) bringing information to the attention of a member of the NSW Police Force that might be of material assistance in securing the apprehension of an offender, or the prosecution or conviction of an offender, for a child abuse offence (within the meaning of section 316A of the *Crimes Act 1900*).
- (2) The Commissioner must use the information for those purposes if the Commissioner has reasonable grounds to suspect that a child or young person, or a class of children or young persons, is at risk of significant harm.
- [12] Section 24 Transparency of supply chain**
 Insert "(whether or not the organisation is a charity or not-for-profit body)" after "gain" in paragraph (a) of the definition of *commercial organisation* in section 24 (1).
- [13] Section 24 (1), definition of "commercial organisation"**
 Insert "derived from the supply of goods and services for profit or gain" after "turnover" in paragraph (b).
- [14] Section 24 (1), definition of "organisation"**
 Insert ", State owned corporation" before "or incorporated partnership" in paragraph (a).
- [15] Section 25 Government agency procurement**
 Omit "the procurement of goods and services by government agencies".

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Modern Slavery Amendment Bill 2019 [NSW]
 Schedule 1 Amendment of Modern Slavery Act 2018 No 30

Insert instead “goods and services procured by government agencies”.

[16] Section 26 Public register

Insert at the end of section 26 (1) (c):

- , and
- (d) includes any other information that the Commissioner thinks appropriate.

[17] Section 26 (3)

Insert after section 26 (2):

- (3) The regulations may make provision for or with respect to the manner and form of the voluntary disclosures referred to in subsection (1) (b).

[18] Part 4 Court orders

Omit the Part.

[19] Section 33 Nature of proceedings for offences

Omit section 33 (1) (b). Insert instead:

- (b) summarily before the Supreme Court in its summary jurisdiction.

[20] Section 35

Insert after section 34:

35 Commissioner of Police to provide certain information

- (1) The Commissioner of Police is, on request or in accordance with arrangements with the Commissioner, to provide the Commissioner with information regarding modern slavery and victims of modern slavery.
- (2) The Commissioner is not to disclose any information provided under this section except with the written consent of the Commissioner of Police.
- (3) The Commissioner of Police is not required to provide any information under this section if he or she reasonably believes that to do so would:
 - (a) prejudice the investigation of a contravention (or possible contravention) of a law in a particular case, or
 - (b) prejudice a coronial inquest or inquiry, or
 - (c) prejudice any care proceedings, or
 - (d) contravene any legal professional or client legal privilege, or
 - (e) enable the existence or identity of a confidential source of information in relation to the enforcement or administration of a law to be ascertained, or
 - (f) endanger a person’s life or physical safety, or
 - (g) prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention (or possible contravention) of a law, or
 - (h) not be in the public interest.
- (4) If the Commissioner of Police refuses to provide information in accordance with a request or arrangements under this section, he or she must, at the time he or she notifies the Commissioner of the refusal, provide the Commissioner with reasons in writing for the refusal.

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Modern Slavery Amendment Bill 2019 [NSW]
 Schedule 1 Amendment of Modern Slavery Act 2018 No 30

- [21] **Schedule 2 Offences**
 Omit the matter relating to section 91HAA of the *Crimes Act 1900*.
- [22] **Schedule 2**
 Omit the matter relating to the *Human Tissue Act 1983*.
- [23] **Schedule 2**
 Insert in appropriate order in the matter relating to the Commonwealth Criminal Code:
- | | |
|--------|---|
| 271.7B | Offence of organ trafficking—entry into and exit from Australia |
| 271.7C | Organ trafficking—aggravated offence |
| 271.7D | Offence of domestic organ trafficking |
| 271.7E | Domestic organ trafficking—aggravated offence |
- [24] **Schedule 3 Savings, transitional and other provisions**
 Omit clause 1 (2) and (3). Insert instead:
- (2) Any such provision:
 - (a) may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date, and
 - (b) has effect despite anything to the contrary in this Schedule.
 - (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.
 - (4) Without limiting subclauses (1) and (2), regulations made for the purposes of this clause may amend this Schedule to provide for additional or different savings and transitional provisions instead of including the provisions in the regulations.
- [25] **Schedule 4 Amendment of Crimes Act 1900 No 40**
 Insert “by means of an offensive weapon or instrument” after “nearby” in section 91G (3A) (h) in Schedule 4 [2].
- [26] **Schedule 4 [3]**
 Omit section 91HAA.
- [27] **Schedule 4 [3]**
 Renumber sections 91HAB and 91HAC as 91HAA and 91HAB, respectively.
- [28] **Schedule 4 [3], section 91HAB (1) (as renumbered by item [27])**
 Omit “or 91HAB”.

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Modern Slavery Amendment Bill 2019 [NSW]
 Schedule 1 Amendment of Modern Slavery Act 2018 No 30

- [29] **Schedule 4 [4]**
 Omit the item.
- [30] **Schedule 4 [5] and [6]**
 Omit “, 91HAB or 91HAC” wherever occurring. Insert instead “or 91HAB”.
- [31] **Schedule 4 [7], section 93AB (1)**
 Insert “, in New South Wales” after “if”.
- [32] **Schedule 4 [7], section 93AC (4)**
 Omit the subsection. Insert instead:
- (4) A person is guilty of an offence if the person:
- (a) enters into a marriage with a child, and
- (b) knows that it is a forced marriage, and
- (c) is not a victim of the forced marriage.
- Maximum penalty: imprisonment for 9 years.
- [33] **Schedule 5 Amendment of other Acts and regulations**
 Insert before Schedule 5.3 [1]:
- [1A] **Section 3 Definitions**
 Insert in alphabetical order in section 3 (1):
- Commonwealth Criminal Code* means the *Criminal Code* set out in the Schedule to the *Criminal Code Act 1995* of the Commonwealth.
- [34] **Schedule 5.3 [1] and [5]**
 Insert “or section 270.7B (Forced marriage offences) of the Commonwealth Criminal Code” after “of the *Crimes Act 1900*” wherever occurring.
- [35] **Schedule 5.3 [3], section 7 (1) (d) and (e)**
 Omit section 7 (1) (d). Insert instead:
- (d) any conduct amounting to the coercion or deception of, or a threat to, a child to enter into a forced marriage within the meaning of section 93AC of the *Crimes Act 1900*, or
- (e) any conduct amounting to the coercion or deception of, or a threat to, a person to enter into a forced marriage within the meaning of section 270.7A (Definition of forced marriage) of the Commonwealth Criminal Code.
- [36] **Schedule 5.3 [4], section 35 (2A)**
 Omit section 35 (2A). Insert instead:
- (2A) Without limiting the generality of subsection (2) (f), an order may prohibit any behaviour of the defendant that might coerce, deceive or threaten the protected person to enter into a forced marriage within the meaning of section 93AC of the *Crimes Act 1900* or section 270.7A (Definition of forced marriage) of the Commonwealth Criminal Code.

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Modern Slavery Amendment Bill 2019 [NSW]
Schedule 1 Amendment of Modern Slavery Act 2018 No 30

[37] Schedule 5.3 [8]

Insert “or section 270.7A (Definition of forced marriage) of the Commonwealth Criminal Code” after “the *Crimes Act 1900*”.

[38] Schedule 5.5, section 38F

Omit the definition of *government agency*. Insert instead:

government agency has the same meaning it has in the *Modern Slavery Act 2018*, but does not include the following:

- (a) a council, county council or joint organisation within the meaning of the *Local Government Act 1993*,
- (b) any public or local authority that is constituted by an Act of another jurisdiction that exercises public functions.

[39] Schedule 5.5, section 38G (2)

Omit the subsection. Insert instead:

- (2) In exercising functions under this section, the Auditor-General is to consider whether the government agency:

- (a) has exercised due diligence in relation to procurement of goods and services, and
- (b) if Part 11 of the *Public Works and Procurement Act 1912* applies to the procurement of goods and services by or for the government agency, has complied with any directions of the NSW Procurement Board under section 175 (3) (a1) of that Act.

Note. Part 11 of the *Public Works and Procurement Act 1912* does not apply to the procurement of goods and services by or for:

- (a) a local council or other local authority, or
- (b) the Parliament of New South Wales.

See section 163 (2) of that Act.

[40] Schedule 5.7 [2A]

Insert after Schedule 5.7 [2]:

[2A] Section 18 Definitions

Insert in alphabetical order:

act of modern slavery—see section 19A.

[41] Schedule 5.7 [3], section 19A (6)

Omit “act of violence”. Insert instead “act of modern slavery”.

[42] Schedule 5.7 [5A] and [5B]

Insert after Schedule 5.7 [5]:

[5A] Section 25 Persons not eligible for support

Insert “or act of modern slavery” after “violence” in section 25 (1), (4), (6) and (7).

[5B] Sections 26 and 27

Insert “or act of modern slavery” after “violence” wherever occurring.

public consultation draft

Modern Slavery Amendment Bill 2019 [NSW]
Schedule 2 Amendment of other Acts

Schedule 2 Amendment of other Acts

2.1 Crimes (High Risk Offenders) Act 2006 No 7

Section 5 Definitions of “serious sex offence” and “offence of a sexual nature”

Insert after section 5 (2) (a):

- (a1) an offence under Division 10A of Part 3 of the *Crimes Act 1900*,

2.2 Defamation Act 2005 No 77

Schedule 1 Additional publications to which absolute privilege applies

Insert after clause 33:

34 Matters arising under Modern Slavery Act 2018

Without limiting section 27 (2) (a)–(c), matter that is published:

- (a) to or by the Anti-slavery Commissioner or an acting Anti-slavery Commissioner in his or her capacity as the Anti-slavery Commissioner or an acting Anti-slavery Commissioner, or
- (b) to any member of staff of the Anti-slavery Commissioner in his or her capacity as such a member, or
- (c) in a strategic plan under section 11 of the *Modern Slavery Act 2018*, or
- (d) in a report under section 13, 19 or 20 of the *Modern Slavery Act 2018*, or
- (e) in a register under the *Modern Slavery Act 2018*, or
- (f) in annual reporting information under section 31 of the *Modern Slavery Act 2018*.

Appendix 4 Draft Modern Slavery Regulation 2019

public consultation draft



Modern Slavery Regulation 2019

under the

Modern Slavery Act 2018

[The following enacting formula will be included if the Regulation is made:]

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Modern Slavery Act 2018*.

Minister administering the *Modern Slavery Act 2018*

Explanatory note

The object of this Regulation is to make provision for certain matters relating to the preparation and publication of modern slavery statements by commercial organisations for the purposes of the *Modern Slavery Act 2018*.

This Regulation is made under the *Modern Slavery Act 2018*, including sections 24 and 34 (the general regulation-making power) and clause 1 of Schedule 3.

This Regulation comprises or relates to matters set out in Schedule 3 to the *Subordinate Legislation Act 1989*, namely matters of a machinery nature and matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

public consultation draft

Modern Slavery Regulation 2019 [NSW]
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public consultation draft

Modern Slavery Regulation 2019 [NSW]

Modern Slavery Regulation 2019

under the

Modern Slavery Act 2018

1 Name of Regulation

This Regulation is the *Modern Slavery Regulation 2019*.

2 Commencement

This Regulation commences on the day on which it is published on the NSW legislation website.

3 Definitions

(1) In this Regulation:

accounting standards has the same meaning as in the *Corporations Act 2001* of the Commonwealth.

Commonwealth Act means the *Modern Slavery Act 2018* of the Commonwealth.

control, of an entity by another entity, means control of the entity within the meaning of the accounting standards.

entity has the same meaning as in the *Income Tax Assessment Act 1997* of the Commonwealth.

principal governing body, of an organisation, means the body, or group of members of the organisation, with primary responsibility for the governance of the organisation.

Note. Examples of principal governing bodies are as follows:

- (a) for a corporation—the corporation's board of directors,
- (b) for an incorporated partnership or an incorporated association—the equivalent managing body to a board of directors,
- (c) for an unincorporated association (including a partnership)—the members of the body.

responsible member, of an organisation, means:

- (a) an individual member of the organisation's principal governing body who is authorised to sign modern slavery statements for the purposes of the Act, or
- (b) if the organisation is a corporation sole—the individual constituting the corporation, or
- (c) if the organisation is a corporation under administration within the meaning of the *Corporations Act 2001* of the Commonwealth—the administrator.

the Act means the *Modern Slavery Act 2018*.

Note. The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

(2) Notes included in this Regulation do not form part of this Regulation.

public consultation draft

Modern Slavery Regulation 2019 [NSW]

4 Modern slavery statements: section 24 (2)–(5)

A modern slavery statement prepared by a commercial organisation for the purposes of section 24 of the Act must be prepared:

- (a) within 6 months after the end of each financial year of the organisation, and
- (b) in accordance with:
 - (i) clause 5 (Modern slavery statements for single commercial organisations), or
 - (ii) clause 6 (Joint modern slavery statements).

5 Modern slavery statements for single commercial organisations

A modern slavery statement prepared by a commercial organisation for itself for the purposes of section 24 of the Act must:

- (a) comply with clause 7 (Mandatory criteria for modern slavery statements), and
- (b) be prepared in a form approved by the Commissioner (if any), and
- (c) be approved by the principal governing body of the commercial organisation, and
- (d) be signed by a responsible member of the commercial organisation.

Note. The statement may be signed electronically—see section 9 of the *Electronic Transactions Act 2000*.

6 Joint modern slavery statements

- (1) A modern slavery statement may be prepared that covers one or more organisations for a financial year for those organisations if at least one of the organisations is a commercial organisation.

Note. An organisation that is not a commercial organisation may, but is not required to, prepare a joint modern slavery statement under this clause.

- (2) The statement must:
 - (a) comply with clause 7 (Mandatory criteria for modern slavery statements), and
 - (b) be prepared in a form approved by the Commissioner (if any), and
 - (c) be prepared in consultation with each organisation covered by the statement, and
 - (d) be approved by the principal governing body of:
 - (i) each organisation covered by the statement, or
 - (ii) an organisation (the *higher organisation*) that is in a position, directly or indirectly, to influence or control each organisation covered by the statement, whether or not the higher organisation is itself covered by the statement, or
 - (iii) if it is not practicable to comply with subparagraph (i) or (ii)—at least one commercial organisation covered by the statement, and
 - (e) be signed by a responsible member of:
 - (i) if paragraph (d) (i) applies—each organisation covered by the statement, or
 - (ii) if paragraph (d) (ii) applies—the higher organisation, or
 - (iii) if paragraph (d) (iii) applies—each commercial organisation to which the subparagraph applies.

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Modern Slavery Regulation 2019 [NSW]

7 Mandatory criteria for modern slavery statements

- (1) A modern slavery statement must in relation to each organisation covered by the statement:
 - (a) identify the organisation, and
 - (b) describe the structure, operations and supply chains of the organisation, and
 - (c) describe the risks of modern slavery practices in the operations and supply chains of the organisation, and any entities that the organisation owns or controls, and
 - (d) describe the actions taken by the organisation and any entity that the organisation owns or controls to assess and address those risks, including due diligence and remediation processes, and
 - (e) describe how the organisation assesses the effectiveness of such actions, and
 - (f) describe the process of consultation:
 - (i) with any entities that the organisation owns or controls, and
 - (ii) in the case of organisations preparing a joint statement under clause 6—between those organisations, and
 - (g) include any other information that the organisation considers relevant.
- (2) A modern slavery statement must include:
 - (a) for a statement to be given under clause 5 (Modern slavery statements for single commercial organisations)—details of approval by the principal governing body of the commercial organisation, or
 - (b) for a statement to be given under clause 6 (Joint modern slavery statements):
 - (i) details of approval by the relevant principal governing body or bodies; and
 - (ii) if clause 6 (2) (d) (iii) applies—an explanation of why it is not practicable to comply with clause 6 (2) (d) (i) or (ii).

8 Publication of modern slavery statements: section 24 (6)

- (1) A commercial organisation must make its modern slavery statement public by causing it to be lodged with the Commissioner for publication on the statement register.
- (2) The modern slavery statement must be lodged:
 - (a) within 6 months after the end of the relevant financial year of the organisation, and
 - (b) in a manner approved by the Commissioner.
- (3) The Commissioner is to keep a register in electronic form of all modern slavery statements lodged with the Commissioner under this clause (the *statement register*).
- (4) The Commissioner is to publish on the statement register all modern slavery statements lodged under subclause (1).
- (5) The Commissioner is to make the statement register publicly available free of charge on the internet.
- (6) The statement register may be combined with the register kept by the Commissioner under section 26 of the Act.

9 Corresponding laws: section 24 (9)

For the purposes of section 24 (9) of the Act, the Commonwealth Act is prescribed as a corresponding law.

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Modern Slavery Regulation 2019 [NSW]

Note. Section 24 (9) of the Act provides that section 24 (Transparency of supply chain) does not apply to a commercial organisation if the organisation is subject to obligations under a prescribed corresponding law.

10 Exemptions from requirement to prepare modern slavery statements

(1) Voluntary reporters under Commonwealth Act

A commercial organisation is exempt from the requirements of section 24 (2)–(6) of the Act in relation to a financial year of the organisation if the organisation:

- (a) has volunteered to comply with the requirements of the Commonwealth Act under section 6 under that Act for that financial year, and
- (b) has complied with provisions of that Act, and
- (c) has given a modern slavery statement to the Minister (within the meaning of the Commonwealth Act) under Part 2 of that Act, and
- (d) notifies the Commissioner of those facts,
- (e) provides the Commissioner with a copy of the modern slavery statement given to that Minister.

Note. Section 24 (7) of the Act makes it an offence to provide information in connection with a matter under that section that the person knows, or ought reasonably to know, is false or misleading in a material particular.

(2) Subsidiaries of Commonwealth parent reporting entities

A commercial organisation is exempt from the requirements of section 24 (2)–(6) of the Act in relation to a financial year of the organisation if the organisation:

- (a) is a subsidiary (within the meaning of the *Corporations Act 2001* of the Commonwealth) of a reporting entity (within the meaning of the Commonwealth Act), and
- (b) that reporting entity has given a modern slavery statement to the Minister under section 14 of that Act (*Joint modern slavery statements*) that covers the organisation, and
- (c) notifies the Commissioner of those facts,
- (d) provides the Commissioner with a copy of the modern slavery statement given to that Minister.

Note. Section 24 (7) of the Act makes it an offence to provide information in connection with a matter under that section that the person knows, or ought reasonably to know, is false or misleading in a material particular.

(3) Corporate entities of Commonwealth, other States and Territories

A commercial organisation is exempt from the requirements of section 24 (2)–(7) of the Act in relation to a financial year of the organisation if the organisation is:

- (a) a corporate Commonwealth entity or Commonwealth company within the meaning of the *Public Governance, Performance and Accountability Act 2013* of the Commonwealth, or
- (b) a corporation owned or controlled by another State or Territory or an agency of another State or Territory.

(4) Charities and not-for-profit organisations

A commercial organisation is exempt from the requirements of section 24 (2)–(7) of the Act in relation to a financial year of the organisation if the organisation:

- (a) has an organisation constitution (however described) that prohibits the distribution of profits or property to its members, and
- (b) does not conduct its affairs (including its affairs as trustee of any trust) so as

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Modern Slavery Regulation 2019 [NSW]

to provide pecuniary gain for its members (within the meaning of the *Associations Incorporation Act 2009*), and

- (c) is exempt from paying income tax under the *Income Tax Assessment Act 1997* of the Commonwealth.

(5) **Small organisations**

A commercial organisation is exempt from the requirements of section 24 (2)–(7) of the Act in relation to a financial year of the organisation if the organisation during that financial year had less than 20 employees.

(6) **Giving of notification and copies of statements**

The notifications and copies of modern slavery statements referred to subclauses (1) (d) and (e) and (2) (c) and (d) are to be made to or provided to the Commissioner (as the case requires):

- (a) within 6 months after the end of the relevant financial year of the organisation, and
(b) in a manner approved by the Commissioner.

11 Transitional

Section 24 of the Act does not apply in relation to any financial year of an organisation that commenced before the commencement of this Regulation.

Appendix 5 Submissions

No	Author
1	NSW Government
2	Mr Mick George
3	Mr Simon Mallender
4	Name suppressed
5	Mr Syamantak Saha
6	Enfield Parish Against Trafficking of Humans
7	Josephite Counter-Trafficking Project
8	War on Slavery
9	Business & Human Rights Resource Centre
10	International Justice Mission Australia
11	Mr Gregory Ross
12	Audit Office of New South Wales
13	Name suppressed
14	Name suppressed
15	Australian Centre for Christianity and Culture
16	Confidential
17	Infrastructure Sustainability Council of Australia
18	Confidential
19	Professor Roger Burritt and Dr Katherine Christ
20	End Modern Slavery
21	Confidential
22	Australian Catholic Religious Against Trafficking in Humans and Catholic Religious Australia
23	Ms Larissa Kaput
24	Mr Robin Mellon
25	Fair Supply
26	Local Government Procurement
27	Australian Food and Grocery Industry
28	Slavery Links Australia Inc
29	Cleaning Accountability Framework
30	Supply Chain Sustainability School
31	The Freedom Fund

No	Author
32	Informed365
33	Baptist World Aid Australia
34	Mr John Terry
35	Australian Lawyers for Human Rights
36	Ethical Merch Co
37	Ethical Partners Funds Management
38	Mr Paul Green
39	Collective Shout
40	Professor Louise Chappell
41	Mr Wiatt Hinton
42	The Freedom Hub Ltd
43	Be Slavery Free
44	Ms Abbey Cummins
45	Chartered Accountants Australia & New Zealand
46	Australian Human Rights Commission
47	Oxfam Australia
48	Good Shepherd Australia New Zealand and Monash University
49	ClubsNSW
50	Australian Association of Social Work NSW Branch
51	Corrs Chambers Westgarth
52	Holding Redlich
53	Associate Professor Justine Nolan and Dr Martijn Boersma
54	Miss Jacinta Sugiaman
55	Australian Industry Group
56	Confidential
57	Public Health Association of Australia
58	New South Wales Bar Association
59	Australian Advocacy and Initiatives Committee
60	Coalition Against Trafficking in Women Australia
61	The Salvation Army Australia
62	Housing Industry Association
63	Australian Institute of Company Directors
64	Zoic Environmental Pty Ltd
65	Action Sustainability Asia Pacific

No	Author
66	Mr John Secker
67	Mills Oakley
68	Shop, Distributive and Allied Employees' Association NSW
69	Ms Andrea Tokaji
70	Business Council for Sustainable Development Australia
71	Hagar Australia
72	Professor Paul Redmond
73	Paint4Freedom Limited
74	Hazen Agency Pty Ltd
75	King & Wood Mallesons
76	The A21 Campaign Ltd
77	Mr Eric Hayward
78	Mercy Foundation
79	Calmar Corps
80	Anti-Slavery Australia
81	Ms Amanda MacKinnell
82	Mr Mishal Khan
83	Sydney Fish Market
84	Office of the Director of Public Prosecutions NSW
85	The Law Society of New South Wales
86	Deloitte Risk Advisory
87	Mr Kevin Hyland OBE
88	Women's Legal Service NSW
89	Mr Gerald O'Collins
90	Department of Classics and Ancient History, University of Sydney
91	Mr Mark Wallis
92	NSW Business Chamber and Australian Business Industrial
93	Muslim Women Association
94	Sydney Archdiocesan Anti-Slavery Taskforce
95	Unchained Business Services
96	Domestic Violence NSW
97	Unions NSW
98	Ms Olivia Jackson
99	Australian Red Cross

No	Author
100	Legal Aid NSW
101	Taldumande Youth Services
102	Konica Minolta Business Solutions Australia

Appendix 6 Witnesses at hearings

Date	Name	Position and Organisation
Monday 4 November 2019 Macquarie Room, Parliament House, Sydney	Professor Jennifer Burn	Interim Anti-Slavery Commissioner, NSW Department of Premier and Cabinet
	Mr Trent Glover	Member, Human Rights Committee, NSW Bar Association
	Mr Ali Mojtahedi	Chair, Human Rights Committee, Law Society of New South Wales
	Ms Nicola Street	National Manager – Workplace Relations Policy, Australian Industry Group
	Mr Christian Gergis	Head of Policy, Australian Institute of Company Directors
	Ms Elizabeth Greenwood	Policy Manager, Workers Compensation, WHS and Regulation, NSW Business Chamber
	Ms Melissa Adler	Executive Director, Industrial Relations and Legal Services, Housing Industry Association
	Mr Guy Noble	Manager Workplace Services (NSW), Housing Industry Association
	Ms Carolyn Liaw	Researcher, Anti-Slavery Australia
	Professor Paul Redmond	Faculty of Law, University of Technology Sydney
	Ms Carolyn Kitto	Co-Director, Be Slavery Free
	Ms Poppy Brown	Director, New South Wales & Australian Capital Territory, Australian Red Cross
	Ms Madeleine Bridgett	
	Dr Natalia Szablewska	Co-Chairs, National Business and Human Rights Subcommittee,
Ms Jessica Hatherall	Australian Lawyers for Human Rights	
Ms Liz Snell	Law Reform and Policy Coordinator, Women's Legal Service NSW	
Ms Kellie McDonald	Senior Solicitor, Women's Legal Service NSW	

Date	Name	Position and Organisation
	Ms Amy Sinclair	Regional Representative for Australia, New Zealand & Pacific, Business & Human Rights Resource Centre
	Ms Melinda Tankard Reist	Movement Director, Collective Shout
	Ms Heather Moore	Policy and Advocacy Adviser, The Salvation Army Australia
	Ms Casey Machado O'Brien	Policy and Social Justice Adviser, The Salvation Army Australia
	Mr Mark Morey	Secretary, Unions NSW
	Ms Kate Minter	Executive Officer, Unions NSW
	Mr Bernie Smith	Branch Secretary/Treasurer, Shop, Distributive and Allied Employees' Association NSW
	Mr Paul Green	Former member, NSW Legislative Council
	Ms Marie Mirza	Former Secretary/Research Assistant to Mr Paul Green
	Ms Kimberley Randle	Executive Director and Lawyer, Fair Supply

Appendix 7 Minutes

Minutes No. 4

Tuesday 6 August 2019

Standing Committee on Social Issues

Room 1043, Parliament House, Sydney, 1.36 pm.

1. Members present

Mr Mallard, *Chair*

Mr Mookhey, *Deputy Chair*

Mr Shoebridge (substituting for Ms Boyd for the duration of the inquiry into the Modern Slavery Act 2018 and associated matters)

Mr Franklin

Ms Jackson

Mr Martin

Mrs Ward

2. Apologies

Revd Mr Nile

3. Draft minutes

Resolved, on the motion of Ms Jackson: That draft minutes no. 3 be confirmed.

4. Correspondence

The committee noted the following items of correspondence:

Received:

- 18 June 2019 – Email from Ms Alicia Rodriguez, Systemic Advocate & Policy Officer/NDIS Appeals & Reviews Advocate, Multicultural Disability Advocacy Association, to the committee attaching a further submission to the inquiry into the Ageing and Disability Commissioner Bill 2019.
- 28 June 2019 – Letter from the Hon John Ajaka MLC, President of the Legislative Council and Chair of the Procedure Committee, to the Chair advising that the Procedure Committee has resolved to conduct an inquiry into the broadcast of proceedings resolution of continuing effect.
- 26 July 2019 – Email from Ms Abigail Boyd MLC advising that Mr David Shoebridge MLC will be substituting for her for the duration of the committee's inquiry into the Modern Slavery Act 2018 and associated matters, if adopted.

5. Consideration of ministerial terms of reference

The Chair tabled the following terms of reference received from the Honourable Don Harwin MLC, Special Minister of State, Minister for the Public Service and Employee Relations, Aboriginal Affairs, and the Arts and Vice President of the Executive Council on 10 July 2019:

1. That the Standing Committee on Social Issues inquire into and report on the *Modern Slavery Act 2018* (NSW) (the NSW Act), the consultation draft of the *Modern Slavery Bill 2019* (the amendment Bill), and the consultation draft of the *Modern Slavery Regulation 2019* (NSW) (the Regulation), with particular reference to:
 - (a) the operability of the proposed anti-slavery scheme,
 - (b) the effect of the anti-slavery scheme on business, including the supply chain reporting obligations under section 24 of the NSW Act,

- (c) the intended application of the anti-slavery scheme with respect to charities and not-for-profit organisations, State Owned Corporations and local councils,
 - (d) the appropriateness and enforceability of Modern Slavery Risk Orders under section 29 of the NSW Act,
 - (e) the unintended consequences of drafting issues with the NSW Act, including with respect to the *Human Tissue Act 1983* (NSW) and the sale and supply of human tissue,
 - (f) the risk of a possible constitutional challenge to current provisions in the NSW Act due to inconsistencies with the *Criminal Code Act 1995* (Cth),
 - (g) whether the passage of the *Modern Slavery Act 2018* (Cth) renders parts or all of the NSW Act unnecessary,
 - (h) the preferred course of action to address the matters identified, and
 - (i) any other related matter.
2. The committee shall have regard to the Government submission enclosed with the terms of reference.

The Chair further tabled the following documents:

- Letter from the Honourable Don Harwin MLC, Special Minister of State, Minister for the Public Service and Employee Relations, Aboriginal Affairs, and the Arts and Vice President of the Executive Council, dated 10 July 2019
- Government submission to the committee relating to the inquiry, attaching:
 - Modern Slavery Amendment Bill 2019 – Public Consultation Draft
 - Modern Slavery Regulation 2019 – Public Consultation Draft
 - Document entitled 'Draft *Modern Slavery Regulation 2019* – Explanatory Paper: Supply Chain Reporting Requirement for Business', dated June 2019, prepared by the Department of Premier and Cabinet.

Resolved, on the motion of Mr Shoebridge: That paragraph 1 (g) of the proposed terms of reference be amended by inserting at the end: ', or requiring of amendment to address inconsistencies or gaps,'.

Mr Mookhey and Ms Jackson noted their objection to the terms of paragraph 1 (g).

Resolved, on the motion of Mr Franklin: That the committee adopt the proposed terms of reference, as amended.

Resolved, on the motion of Mrs Ward: That the committee publish the following documents tabled by the Chair:

- Letter from the Honourable Don Harwin MLC, Special Minister of State, Minister for the Public Service and Employee Relations, Aboriginal Affairs, and the Arts and Vice President of the Executive Council, dated 10 July 2019
- Government submission to the committee relating to the inquiry, attaching the Modern Slavery Amendment Bill 2019 – Public Consultation Draft; Modern Slavery Regulation 2019 – Public Consultation Draft; and a document entitled 'Draft Modern Slavery Regulation 2019 – Explanatory Paper: Supply Chain Reporting Requirement for Business', dated June 2019, prepared by the Department of Premier and Cabinet.

6. Conduct of the inquiry into the Modern Slavery Act 2018 and associated matters

6.1 Proposed timeline, stakeholder list and other matters

Resolved, on the motion of Mr Shoebridge: That:

- (a) the committee adopt the following timeline for the administration of the inquiry:

- Submissions close: Friday 4 October 2019
 - Hearings: October/November 2019
 - Report tabled: 14 February 2020
- (b) the secretariat circulate to members the Chairs' proposed list of stakeholders to provide them with the opportunity to amend the list or nominate additional stakeholders, and that the committee agree to the stakeholder list by email, unless a meeting of the committee is required to resolve any disagreement, and
- (c) the Chair write to the Special Minister of State, Minister for the Public Service and Employee Relations, Aboriginal Affairs, and the Arts and Vice President of the Executive Council to request that the Minister provide additional background information, including legal advice received by the Minister or the Department of Premier and Cabinet, relating to the inquiry.

Mr Mookhey and Ms Jackson noted their concerns relating to the timeframe adopted for the inquiry.

6.2 Advertising

The committee noted that all inquiries are advertised via Twitter, Facebook, stakeholder letters and a media release distributed to all media outlets in New South Wales.

7. Other business

8. Adjournment

The committee adjourned at 2.03 pm, *sine dine*.

Jenelle Moore
Committee Clerk

Minutes no. 10

Tuesday 17 September 2019
Standing Committee on Social Issues
Members' Lounge, Parliament House, Sydney at 6.34 pm

1. Members present

Mr Mallard, *Chair*
Mr Franklin
Mr Donnelly (substituting for Ms Jackson for the duration of the Modern Slavery inquiry)
Mr Martin
Revd Mr Nile
Mr Shoebridge (substituting for Ms Boyd for the duration of the Modern Slavery inquiry)
Mrs Ward

2. Previous minutes

Resolved, on the motion of Revd Nile: That draft minutes no. 9 be confirmed.

3. Correspondence

The committee noted the following items of correspondence:

Received:

- 6 August 2019 – Letter from Revd the Hon Fred Nile MLC to the Chair, passing on a recommendation from former member of the Legislative Council Mr Paul Green regarding the terms of reference for the inquiry into the *Modern Slavery Act 2018* and associated matters
- 2 September 2019 – Letter from Mr Nicolas Parkhill, Chief Executive Officer, ACON and Mr Nicholas Stewart, Acting Managing Partner, Dowson Turco Lawyers to the Chair, requesting information as to whether the inquiry into Gay and Transgender hate crimes between 1970 and 2010 will be re-established

- 9 September 2019 – Letter from Mr Tim Riordan, Secretary, Department of Premier and Cabinet to the Chair, attaching legal advices relating to the issues to the subject of the inquiry into the *Modern Slavery Act 2018* and associated matters, in response the committee's request
- 16 September 2019 – Email from Ms Fiona Cameron, Principal Council Officer, Department of Premier and Cabinet to secretariat, providing clarification of the department's request to keep the provided legal advices confidential
- 17 September 2019 – Email from the Hon Mark Buttigieg MLC, Opposition Whip to secretariat, advising that Mr Donnelly will be substituting for Ms Jackson for the duration of the inquiry into the *Modern Slavery Act 2018* and associated matters.

Sent:

- 7 August 2019 – Letter from the Chair to Mr Tim Reardon, Secretary, Department of Premier and Cabinet, requesting additional information, including any relevant legal advice, in regard to the inquiry into the *Modern Slavery Act 2018* and associated matters.

Resolved, on the motion of Mr Shoebridge: That the committee keep the following correspondence confidential, as per the request of the author:

- Letter from Mr Tim Riordan, Secretary, Department of Premier and Cabinet to the Chair dated 9 September 2019, including attached legal advices
- Email from Ms Fiona Cameron, Principal Council Officer, Department of Premier and Cabinet to the secretariat dated 16 September 2019.

4. Inquiry into the *Modern Slavery Act 2018* and associated matters**4.1 Private committee briefing**

Resolved, on the motion of Revd Nile: That the Chair write to the Secretary of the Department of Premier and Cabinet to request that DPC Legal Branch give the committee a two-hour private briefing concerning the confidential legal advices provided, on a date to be determined by the Chair after consultation with members regarding their availability.

4.2 Public submissions

Resolved, on the motion of Mr Shoebridge: That the committee authorise the publication of submission nos. 3 and 5-7.

4.3 Partially confidential submissions

Resolved, on the motion of Mr Shoebridge: That the committee authorise the publication of submission no. 4, with the exception of the author's name which is to remain confidential, as per the request of the author.

4.4 Hearings

Resolved, on the motion of Mr Donnelly: That the committee set aside one hearing date and one reserve hearing date in late October/November 2019, the dates of which are to be determined by the Chair after consultation with members regarding their availability.

5. Adjournment

The committee adjourned at 6.44 pm, *sine die*.

Sharon Ohnesorge
Clerk to the Committee

Minutes no. 11

Wednesday 23 October 2019

Standing Committee on Social Issues

Members' Lounge, Parliament House, Sydney at 1.30 pm

1. Members present

Mr Mallard, *Chair*

Mr Donnelly (via teleconference)

Mr Franklin

Mr Martin

Revd Mr Nile

Mr Shoebridge (from 1.39 pm)

Mrs Ward

2. Apologies**3. Previous minutes**

Resolved, on the motion of Mrs Ward: That draft minutes no. 10 be confirmed.

4. Correspondence

The committee noted the following items of correspondence:

Received:

- 20 August 2019 – Email from Ms Claire Rogers, Chief Executive Officer, World Vision Australia to Chair, advising that World Vision Australia will not be making a submission to the inquiry into the Modern Slavery Act 2018 and associated matters
- 25 September 2019 – Email from Ms Fiona Cameron, Principal Legal Officer, Department of Premier and Cabinet, to secretariat, proposing that the Crown Solicitors Office prepare an summary of the legal advices provided
- 8 October 2019 – Email from Ms Montana Motuzas, Legislation Officer, Australian Federal Police, to the committee, advising that on this occasion they will not be making a submission
- 16 October 2019 – Letter from Ms Kate Boyd, General Counsel, Department of Premier and Cabinet to Chair, providing a summary of legal advices previously provided
- 23 October 2019 – Email from Ms Amy Sinclair, Regional Representative for Australia, New Zealand & Pacific, Business & Human Rights Resource Centre, requesting to appear as a witness as the public hearing.

Sent:

- 18 September 2019 – Letter from the Chair to Mr Tim Reardon, Secretary, Department of Premier and Cabinet, requesting a private committee briefing from the Department of Premier and Cabinet Legal Branch on the legal advices provided regarding the inquiry into the *Modern Slavery Act 2018* and associated matters
- 30 September 2019 – Email from the secretariat to Ms Fiona Cameron, Principal Legal Officer, Department of Premier and Cabinet, regarding the Crown Solicitors Office preparing a summary of legal advices

Resolved, on the motion of Revd Nile: That the following items of correspondence be kept confidential:

- Letter from the Chair to Mr Reardon dated 18 September 2019
- Email from Ms Cameron to secretariat dated 25 September 2019
- Email from the secretariat to Ms Cameron dated 30 September 2019
- Letter from Ms Boyd to the Chair dated 16 October 2019 including attached summary of legal advices.

5. Inquiry into the *Modern Slavery Act 2018* and associated matters

5.1 Additional witness for public hearing on 4 November 2019

Resolved, on the motion of Mr Franklin: That the reserve hearing date of 15 November 2019 be vacated, and that the committee invite the following additional witnesses to the public hearing on 4 November 2019, prior to the final session allocated to Mr Paul Green:

- Panel 1 – Focus on child abuse offence issues and assisting victims – 45 minutes
 - International Justice Mission
 - Collective Shout
 - Salvation Army
- Panel 2 – Unions – 45 minutes
 - Unions NSW
 - Shop, Distributive and Allied Employees' Association NSW

Resolved, on the motion of Mr Shoebridge: That the committee invite the following additional witnesses as part of existing panels at the public hearing on 4 November 2019:

- Legal Aid NSW to appear as part of the legal panel with the NSW Bar Association and the Law Society of New South Wales
- Business and Human Rights Resource Centre to appear as part of the panel with Australian Lawyers for Human Rights and Women's Legal Service NSW.

6. Adjournment

The committee adjourned at 1.43 pm, until Thursday 24 October 2019, 6.30 pm, Members' Lounge, Parliament House (deliberative meeting).

Sharon Ohnesorge
Committee Clerk

Minutes no. 13

Monday 4 November 2019

Standing Committee on Social Issues

Macquarie Room, Parliament House, Sydney at 9.04 am

1. Members present

Mr Mallard, *Chair*

Mr Mookhey, *Deputy Chair*

Mr Donnelly

Mr Fang (substituting for Mr Franklin)

Mr Martin (via teleconference until 9.07 am, and from 5.40 pm to 5.49 pm)

Revd Mr Nile

Mr Shoebridge

Mrs Ward

2. Previous minutes

Resolved, on the motion of Mr Shoebridge: That draft minutes no. 11 be confirmed.

3. Correspondence

The committee noted the following items of correspondence:

Received:

- 22 October 2019 – Email from Ms Fiona Cameron, Principal Council Officer, Department of Premier and Cabinet to secretariat, indicating that the department does not have anything to add to the Interim Anti-Slavery Commissioner's contribution at the hearing
- 28 October 2019 – Email from Ms Gudrun Dewey, Senior Law Reform Officer, Legal Aid NSW, advising that Legal Aid NSW is not able to appear at the hearing
- 28 October 2019 – Email from Ms Caroly Houmes, Chief Executive, International Justice Mission Australia, advising that International Justice Mission Australia is not able to appear at the hearing
- 30 October 2019 – Email from Ms Fiona Cameron, Principal Council Officer, Department of Premier and Cabinet to secretariat, requesting an advisor's table be made available during the evidence given by the Interim Anti-Slavery Commissioner.

4. Inquiry into the *Modern Slavery Act 2018* and associated matters**4.1 Public submissions**

The committee noted that the following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos. 8-12, 15, 17, 19-20, 22-55, 57-101.

4.2 Partially confidential submissions

The committee noted that the following submissions were partially published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos. 13-14.

Resolved, on the motion of Mr Shoebridge: That the committee keep the following information confidential, as per the request of the author: names in submissions nos. 13-14.

Resolved, on the motion of Mr Shoebridge: That the committee authorise the publication of submission no. 2, with the exception of sensitive material which is to remain confidential, as per the recommendation of the secretariat.

4.3 Confidential submissions

Resolved, on the motion of Mr Shoebridge: That the committee keep submission nos 16, 18, 21 and 56 confidential, as per the request of the author.

4.4 Public hearing

Witnesses, the public and the media were admitted.

The Chair made an opening statement regarding the broadcasting of proceedings, adverse mention and other matters.

The following witness was sworn and examined:

- Professor Jennifer Burn, Interim Anti-Slavery Commissioner, NSW Department of Premier and Cabinet

Professor Burn tendered the following document:

- Draft NSW Modern Slavery Report Requirement Guidance Material, July 2019

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Mr Trent Glover, Member, Human Rights Committee, NSW Bar Association
- Mr Ali Mojtahedi, Chair, Human Rights Committee, Law Society of New South Wales

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Nicola Street, National Manager – Workplace Relations Policy, Australian Industry Group
- Mr Christian Gergis, Head of Policy, Australian Institute of Company Directors

- Ms Elizabeth Greenwood, Policy Manager, Workers Compensation, WHS and Regulation, NSW Business Chamber
- Ms Melissa Adler, Executive Director, Industrial Relations and Legal Services, Housing Industry Association
- Mr Guy Noble, Manager Workplace Services (NSW), Housing Industry Association

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Carolyn Liaw, Researcher, Anti-Slavery Australia
- Professor Paul Redmond, Faculty of Law, University of Technology Sydney
- Ms Carolyn Kitto, Co-Director, Be Slavery Free
- Ms Poppy Brown, Director, New South Wales & Australian Capital Territory, Australian Red

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Madeleine Bridgett, Co-Chair, National Business and Human Rights Subcommittee, Australian Lawyers for Human Rights
- Dr Natalia Szablewska, Co-Chair, National Business and Human Rights Subcommittee, Australian Lawyers for Human Rights
- Ms Jessica Hatherall, Co-Chair, National Business and Human Rights Subcommittee, Australian Lawyers for Human Rights
- Ms Liz Snell, Law Reform and Policy Coordinator, Women's Legal Service NSW
- Ms Kellie McDonald, Senior Solicitor, Women's Legal Service NSW
- Ms Amy Sinclair, Regional Representative for Australia, New Zealand & Pacific, Business & Human Rights Resource Centre

Ms Bridgett tendered the following document:

- Independent Tribunal Into Forced Organ Harvesting from Prisoners of Conscience in China, Final Judgment & Summary Report - 2019

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Melinda Tankard Reist, Movement Director, Collective Shout
- Ms Heather Moore, Policy and Advocacy Adviser, The Salvation Army Australia
- Ms Casey O'Brien Machado, Policy and Social Justice Adviser, The Salvation Army

Ms Moore tendered the following document:

- Building Local Responses to Trafficking and Slavery, The Salvation Army, August 2018

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Mark Morey, Secretary, Unions NSW
- Ms Kate Minter, Executive Officer, Unions NSW
- Mr Bernie Smith, Branch Secretary/Treasurer, Shop, Distributive and Allied Employees' Association NSW

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Paul Green, Former member, NSW Legislative Council
- Ms Marie Mirza, Former Secretary/Research Assistant to Mr Paul Green

- Ms Kimberley Randle, Executive Director and Lawyer, Fair Supply

Mr Green tendered the following document:

- Document entitled 'Modern Slavery Risk Orders'

The evidence concluded and the witnesses withdrew.

The media and the public withdrew.

The public hearing concluded at 5.39 pm.

4.5 Tendered documents

Resolved, on the motion of Mr Shoebridge: That the committee accept and publish the following documents tendered during the public hearing:

- Draft NSW Modern Slavery Report Requirement Guidance Material, July 2019, tendered by Professor Burn
- Independent Tribunal Into Forced Organ Harvesting from Prisoners of Conscience in China, Final Judgment & Summary Report – 2019, tendered by Ms Bridgett
- Building Local Responses to Trafficking and Slavery, The Salvation Army, August 2018, tendered by Ms Heather Moore
- Document entitled 'Modern Slavery Risk Orders', tendered by Mr Green.

5. Other business

The committee discussed the timeframe for distribution of the Chair's draft report.

6. Adjournment

The committee adjourned at 5.49 pm, until Wednesday 5 February 2020, 10.00 am, McKell Room, Parliament House (report deliberative meeting).

Sharon Ohnesorge
Committee Clerk

Minutes no. 14

Wednesday 26 February 2010

Standing Committee on Social Issues

Members' Lounge, Parliament House, Sydney at 1.34 pm

1. Members present

Mr Mallard, *Chair*

Mr Mookhey, *Deputy Chair*

Mr Donnelly

Mr Franklin

Mr Martin

Mrs Ward

2. Apologies

Revd Mr Nile

Mr Shoebridge

3. Previous minutes

Resolved, on the motion of Mr Mookhey: That draft minutes no. 13 be confirmed.

4. Correspondence

The committee noted the following items of correspondence:

Received:

- 5 November 2019 – Email from Ms Nicole D'Souza, Ethical Sourcing Manager, Konica Minolta Business Solutions Australia to secretariat, requesting to be able to provide a late submission
- 11 December 2019 – Email from Madeleine Bridgett, Natalia Szablewska and Jessica Hatherall, Co-Chairs, Australian Lawyers for Human Rights, to the secretariat, attaching a Joint Position Statement on behalf of Australian Lawyers for Human Rights and the International Coalition to End Transplant Abuse in China entitled 'Section 32 Trading in Tissue in the Modern Slavery Act 2018 (NSW)'.

5. Inquiry into the *Modern Slavery Act 2018* and associated matters**5.1 Public submissions**

The committee noted that the following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submission no. 102.

5.2 Answers to questions on notice and supplementary questions

The committee noted that the following answers to questions on notice and supplementary questions were published by the committee clerk under the authorisation of the resolution appointing the committee:

- answers to questions on notice from Ms Nicola Street, National Manager – Workplace Relations Policy, Australian Industry Group, received 19 November 2019
- answers to questions on notice from Mr Bernie Smith, Branch Secretary-Treasurer, Shop, Distributive and Allied Employees' Association, received 25 November 2019
- answers to questions on notice from Ms Elizabeth Greenwood, Policy Manager, Workers Compensation, WHS and Regulation, NSW Business Chamber, received 2 December 2019
- answers to questions on notice from Mr Christian Gergis, Head of Policy, Australian Institute of Company Directors, received 3 December 2019
- answers to questions on notice from Ms Carolyn Liaw, Researcher, Anti-Slavery Australia, received 4 December 2019
- answers to questions on notice from Major Brad Halse, Head of Government Relations, The Salvation Army Australia, received 4 December 2019
- answers to questions on notice from Ms Elizabeth Espinosa, President, Law Society of New South Wales, received 4 December 2019
- answers to questions on notice from Ms Melinda Tankard Reist, Movement Director, Collective Shout, received 4 December 2019
- answers to questions on notice and supplementary questions from Professor Jennifer Burn, Interim Anti-Slavery Commissioner, NSW Department of Premier and Cabinet, received 10 December 2019
- answers to questions on notice from Madeleine Bridgett, Natalia Szablewska and Jessica Hatherall, Co-Chairs, Australian Lawyers for Human Rights, received 11 December 2019
- answer to supplementary question from Professor Jennifer Burn, Interim Anti-Slavery Commissioner, NSW Department of Premier and Cabinet, received 10 January 2020.

5.3 Clarifications to evidence

The committee noted the following items of correspondence requesting the clarification of evidence provided by witnesses:

- Letter from Ms Carolyn Liaw, Researcher, Anti-Slavery Australia to the secretariat, clarifying the number of convictions for modern slavery offences in Australia, dated 4 December 2019
- Letter from Professor Jennifer Burn, Interim Anti-Slavery Commissioner, NSW Department of Premier and Cabinet, to the Chair, clarifying two pieces of evidence on pages 8 and 16 of the transcript, dated 10 December 2019.

Resolved, on the motion of Mr Donnelly: That the committee authorise the publication of the following correspondence:

- Letter from Ms Carolyn Liaw, Researcher, Anti-Slavery Australia to the secretariat, clarifying the number of convictions for modern slavery offences in Australia, dated 4 December 2019

- Letter from Professor Jennifer Burn, Interim Anti-Slavery Commissioner, NSW Department of Premier and Cabinet, to the Chair, clarifying two pieces of evidence on pages 8 and 16 of the transcript, dated 10 December 2019

Resolved, on the motion of Mr Donnelly: That the committee authorise:

- the addition of a footnote on page 45 of the transcript of the hearing on 4 November 2019 clarifying the number of convictions for modern slavery offences in Australia
- the addition of footnotes on pages 8 and 16 of the transcript of the hearing on 4 November 2019, reflecting Professor Burn's clarifications of evidence.

5.4 Extension of reporting date

The committee noted that the previous reporting date of 14 February 2020 had been extended to 28 February 2020, as agreed over email.

Resolved, on the motion of Mr Donnelly: That:

- the report deliberative be held on Wednesday 18 March 2020 at 10.00 am
- the report be tabled by Friday 27 March 2020
- the new reporting date be published on the inquiry webpage.

6. Consideration of ministerial terms of reference

The Chair tabled the following terms of reference received from the Hon Don Harwin MLC, Special Minister of State, Minister for the Public Service and Employee Relations, Aboriginal Affairs, and the Arts and Vice President of the Executive Council on 10 January 2020:

3. That the Standing Committee on Social Issues inquire into and report on the *State Records Act 1998* (NSW) (the Act) and the Policy Paper on its review, with particular reference to:
 - (j) the role and purposes of the State Records Authority of NSW and Sydney Living Museums
 - (k) the adequacy of the Act in meeting citizens' needs
 - (l) factors constraining public access to and use of the documentary and material heritage of NSW
 - (m) the operation and effect of the proposed reforms in the attached Policy Paper, in particular:
 - (i) the effect of the proposed reforms on NSW public offices, including NSW Government agencies, local councils, public health organisations and State-owned corporations
 - (ii) whether the proposed reforms support digital government
 - (iii) whether the proposed reforms will increase public knowledge and enjoyment of the stories that shape our social, historical and cultural identity, enhancing social outcomes for the people of NSW
 - (iv) whether the proposed reforms will enhance the protection of the key cultural assets of NSW
 - (n) any other related matter.

The Chair declared a non-pecuniary conflict of interest arising from his role as a board member of the State Archives and Records Authority of NSW, and tabled a letter from Mr David Blunt, Clerk of the Parliaments to the Chair dated 31 January 2020.

Resolved, on the motion of Mr Franklin: That the committee defer consideration of the terms of reference until the next meeting.

7. Adjournment

The committee adjourned at 1.54 pm, until Wednesday 18 March 2020, 10.00 am, McKell Room, Parliament House (report deliberative meeting).

Sharon Ohnesorge
Committee Clerk

Draft minutes no. 16

Wednesday 18 March 2020

Standing Committee on Social Issues

McKell Room, Parliament House, Sydney at 10.13 am

1. Members present

Mr Mallard, *Chair*

Mr Mookhey, *Deputy Chair*

Mr Donnelly

Mr Farlow (substituting for Mr Franklin) (until 11.44 am)

Mr Martin

Mr Roberts (substituting for Revd Nile)

Mr Shoebridge (until 11.44 am)

Mrs Ward

2. Apologies

Revd Mr Nile

3. Previous minutes

Resolved, on the motion of Mr Mookhey: That draft minutes no. 15 be confirmed.

4. Inquiry into the *Modern Slavery Act 2018* and associated matters

4.1 Consideration of Chair's draft report

The Chair submitted his draft report entitled '*Modern Slavery Act 2018* and associated matters' which, having been previously circulated, was taken as being read.

Chapter 1

Resolved, on the motion of Mr Shoebridge: That paragraph 1.8 be amended by inserting 'proposed' after 'Key amendments'.

Resolved, on the motion of Mr Donnelly: That paragraph 1.14 be amended by omitting 'the majority of stakeholders' and inserting instead 'a significant majority of stakeholders'.

Resolved, on the motion of Mr Donnelly: That paragraph 1.19 be amended by omitting 'a number of representatives' and inserting instead 'some representatives'.

Resolved, on the motion of Mr Donnelly: That paragraph 1.21 be amended by omitting 'Several inquiry participants' and inserting instead 'Some inquiry participants'.

Resolved, on the motion of Mr Donnelly: That paragraph 1.22 be omitted: 'At the outset the committee notes that it is preferable to have modern slavery legislation enacted by the Commonwealth that addresses modern slavery across all Australian states and territories in a uniform approach. This is more sensible given that modern slavery operates across state and international borders. All states and territories should have a uniform approach.', and the following paragraph be inserted instead:

'Given that modern slavery operates across state and international borders, the committee accepts that, in principle, it is preferable to have national legislation enacted that addresses modern slavery across all

Australian states and territories in a uniform approach. However, this is subject to the legislative regime being sufficiently robust and likely to be effective.'

Resolved, on the motion of Mr Donnelly: That paragraph 1.23 be amended by omitting 'However, the committee wishes' and inserting instead 'The committee wishes'.

Mr Shoebridge moved: That the following new paragraph be inserted after paragraph 1.23:

'Having considered closely the submissions received it is clear that the NSW Act has essential work to do in addressing modern slavery. For this reason we are of the view that it should commence as soon as reasonably practicable. For this reason we strongly recommend a target commencement date of on or before 1 January 2021.'

Mr Mookhey moved: That the motion of Mr Shoebridge be amended by omitting 'on or before 1 January 2021' and inserting instead '1 July 2020'.

Amendment of Mr Mookhey put.

The committee divided.

Ayes: Mr Donnelly, Mr Mookhey

Noes: Mr Farlow, Mr Mallard, Mr Martin, Mr Roberts, Mr Shoebridge, Mrs Ward.

Amendment of Mr Mookhey resolved in the negative.

Original question of Mr Shoebridge put.

The committee divided.

Ayes: Mr Farlow, Mr Mallard, Mr Martin, Mr Roberts, Mr Shoebridge, Mrs Ward.

Noes: Mr Donnelly, Mr Mookhey.

Question resolved in the affirmative.

Resolved, on the motion of Mr Donnelly: That paragraph 1.24 be amended by omitting 'intended harmonisation' and inserting instead 'appropriate harmonisation'.

Resolved, on the motion of Mr Shoebridge: That Recommendation 1 be amended by inserting ', with the aim of the Act commencing on or before 1 January 2021' after 'recommendations of this report'.

Chapters 2 and 3

Resolved, on the motion of Mr Donnelly: That paragraph 2.5 be amended by omitting 'taking into account the proposed exemptions for charities, not-for-profit organisations and small businesses' and inserting instead 'if the proposed exemptions for charities, not-for-profit organisations and small businesses are implemented'.

Resolved, on the motion of Mr Donnelly: That paragraph 2.47 be amended by omitting 'Branch Secretary/Treasurer, Shop, Distributive and Allied Employees' Association NSW' and inserting instead 'Secretary/Treasurer, Shop, Distributive and Allied Employees' Association NSW Branch'.

Resolved, on the motion of Mr Mookhey: That paragraph 2.56 be amended by omitting 'This means that' and inserting instead 'The NSW Government said this means that'.

Resolved, on the motion of Mr Donnelly: That paragraph 2.58 be amended inserting 'by the NSW Government' after 'it is proposed'.

Resolved, on the motion of Mr Donnelly: That paragraph 2.76 be amended by omitting 'Overall, this committee' and inserting instead 'The committee'.

Resolved, on the motion of Mr Donnelly: That paragraph 2.79 be amended by inserting ', subject to the amendments proposed by the Recommendations in this report, ' after 'contained in the Draft Regulation'.

Resolved, on the motion of Mr Donnelly: That paragraph 2.82 be amended by concert by omitting 'members of the business community' and inserting instead 'some members of the business community'.

Resolved, on the motion of Mr Donnelly: That paragraph 2.83 be amended by omitting 'the real potential for confusion' and inserting instead 'the potential for confusion'.

Mr Donnelly moved: That paragraph 2.83 be amended by inserting 'as long as it is the lower NSW threshold which applies. Given the evil to which the NSW Act is directed, in the committee's view it should have the widest possible application' after 'a desirable reform'.

Question put.

The committee divided:

Ayes: Mr Donnelly, Mr Mookhey, Mr Roberts, Mr Shoebridge.

Noes: Mr Farlow, Mr Mallard, Mr Martin, Mrs Ward.

There being an equality of votes, question resolved in the negative on the casting vote of the Chair.

Mr Donnelly moved: That paragraph 2.85 be amended by inserting ', provided that the reporting threshold sought is that of the NSW *Modern Slavery Act 2018*.' after 'national approach to modern slavery'.

Question put.

The committee divided:

Ayes: Mr Donnelly, Mr Mookhey, Mr Roberts, Mr Shoebridge.

Noes: Mr Farlow, Mr Mallard, Mr Martin, Mrs Ward.

There being an equality of votes, question resolved in the negative on the casting vote of the Chair.

Mr Shoebridge moved: That Recommendation 5 be amended by inserting ', ideally at \$50 million consolidated revenue,' after 'the reporting threshold'.

Question put.

The committee divided.

Ayes: Mr Farlow, Mr Mallard, Mr Martin, Mr Shoebridge, Mrs Ward.

Noes: Mr Donnelly, Mr Mookhey, Mr Roberts.

Question resolved in the affirmative.

Resolved, on the motion of Mr Shoebridge: That paragraph 2.87 be amended by omitting 'as a last tool for compliance' and inserting instead 'as a necessary tool for compliance'.

Resolved, on the motion of Mr Shoebridge: That paragraph 2.89 be amended by inserting 'This could be either the Anti-Slavery Commissioner or the Director of Public Prosecutions in respect of criminal matters.' after 'involve breaches of s 24'.

Resolved, on the motion of Mr Donnelly: That paragraph 2.90 be amended by omitting 'The committee welcomes' and inserting instead 'The committee acknowledges'.

Mr Donnelly moved: That paragraph 2.91 be omitted: 'This being said, we also recognise the proportionally higher compliance burden that charities and not-for-profits will face in meeting the reporting requirements. While such organisations may derive funds from the supply of goods and services for profit, these funds are needed to deliver services and cover administration costs, invariably within a tight budget even for very large charities.'

Question put.

The committee divided.

Ayes: Mr Donnelly, Mr Mookhey, Mr Roberts.

Noes: Mr Farlow, Mr Mallard, Mr Martin, Mr Shoebridge, Mrs Ward.

Question resolved in the negative.

Mr Donnelly moved: That paragraph 2.92 be amended by omitting 'the committee supports' and inserting instead 'the committee does not support'.

Question put.

The committee divided.

Ayes: Mr Donnelly, Mr Mookhey, Mr Roberts.

Noes: Mr Farlow, Mr Mallard, Mr Martin, Mr Shoebridge, Mrs Ward.

Question resolved in the negative.

Mr Donnelly moved: That paragraph 2.92 be amended by omitting ', at least for the initial period following the commencement of the NSW Act. The statutory review we recommended in Chapter 1 would provide an appropriate opportunity to reassess this issue, seeking input from the sector and considering mechanisms might be put in place to support charities and not-for-profits to meet their reporting obligations.' after 'charities and not-for-profits'.

Question put.

The committee divided.

Ayes: Mr Donnelly, Mr Mookhey, Mr Roberts.

Noes: Mr Farlow, Mr Mallard, Mr Martin, Mr Shoebridge, Mrs Ward.

Question resolved in the negative.

Mr Shoebridge moved: That paragraph 2.92 and Recommendation 7 be omitted, and that the following new committee comment and recommendation be inserted instead:

'Committee comment

The Committee notes that submissions from the charitable sector do not support the total exemption of the sector from reporting requirements under the Act. We are of the view that the right balance is struck by using only that proportion of a charity or not-for-profit's consolidated revenue that comes from profit activities to determine if the reporting threshold is met. How this is calculated in practice will need to be the subject of further consultation with the sector, but a workable definition is clearly achievable. If this consultation is protracted it should not be used as a reason to delay implementation of the Act by 1 July 2020. In the event it cannot be resolved in time then a short deferral of no more than 12 months may be appropriate to ensure the arrangements are appropriate.

Recommendation X

That the Act be amended so that only that proportion of a charity or not-for-profit's consolidated revenue that comes from profit activities to determine if the reporting threshold is met.'

Question put.

The committee divided.

Ayes: Mr Shoebridge.

Noes: Mr Donnelly, Mr Farlow, Mr Mallard, Mr Martin, Mr Mookhey, Mr Roberts, Mrs Ward.

Question resolved in the negative.

Mr Donnelly moved: That Recommendation 7 be omitted: 'That, as part of the statutory review recommended in Recommendation 2, the NSW Government reassess the exemption for charities and not-for-profit organisations from section 24 of the Modern Slavery Act 2018, including by:

- (a) seeking input from the charity and not-for-profit sector

(b) considering mechanisms to support charities and not-for-profits to meet the reporting requirement in section 24 going forward.'

Question put.

The committee divided.

Ayes: Mr Donnelly, Mr Mookhey, Mr Roberts.

Noes: Mr Farlow, Mr Mallard, Mr Martin, Mr Shoebridge, Mrs Ward.

Question resolved in the negative.

Mr Shoebridge moved: That paragraph 2.93 be omitted: 'The committee is also of the view that it is only fair that not-for-profit registered clubs be exempted from s 24 for the initial period of the NSW Act's operation. Given these organisations are not caught by the exemption for charities and not-for-profits as currently drafted, we recommend that an exemption for not-for-profit registered clubs be included in the Draft Regulation.', and the following new paragraph be inserted instead:

'The committee is of the view that the Act should be as comprehensive as is reasonably possible with as few technical exemptions as are consistent with fairness. The essential starting point for the operation of the Act should be on an entity's consolidated for-profit revenue, not other distinct features of a business enterprise whether employee numbers or organisational structure.'

Question put.

The committee divided.

Ayes: Mr Donnelly, Mr Mookhey, Mr Shoebridge.

Noes: Mr Farlow, Mr Mallard, Mr Martin, Mr Roberts, Mrs Ward.

Question resolved in the negative.

Resolved, on the motion of Mr Shoebridge: That paragraph 2.93 be omitted, and the following new paragraph be inserted instead:

'We do not support a bespoke exemption for not-for-profit registered clubs. While we acknowledge that registered clubs do provide important social functions in certain communities, they are also often very significant business ventures with large supply chain footprints. If they are exempted from reporting requirements under the Act then this would create a large and unintended gap in the Act's coverage which is not desirable given the aim of the Act is to prevent the dreadful crime of modern slavery.'

Mr Shoebridge moved: That the following new paragraph be inserted after the newly inserted paragraph 2.93:

'Equally the case has not been made out for a bespoke exemption for small businesses that employ fewer than 20 employees. While we acknowledge that almost by definition such businesses will have fewer employees who can be tasked with addressing reporting requirements, the best measure of an entity's capacity to comply is their consolidated revenue not their current staff numbers. This also supports consistency in the application of the Act and will occur in circumstances where the Anti-Slavery Commissioner will be willing and able to provide assistance to such businesses to comply with their obligations under the Act.'

Question put.

The committee divided.

Ayes: Mr Donnelly, Mr Mookhey, Mr Shoebridge.

Noes: Mr Farlow, Mr Mallard, Mr Martin, Mr Roberts, Mrs Ward.

Question resolved in the negative.

Resolved, on the motion of Mr Shoebridge: That Recommendation 8 be amended by omitting 'That the NSW Government amend' and inserting instead 'That the NSW Government not amend'.

Mr Donnelly moved: That:

- (a) paragraph 2.94 be amended by omitting 'The committee accepts' and inserting instead 'The committee does not accept'
- (b) paragraph 2.94 be amended by omitting ': they simply have fewer human and other resources available than larger companies, notwithstanding turnover. The committee also notes that the figure of fewer than 20 employees is based on the Australian Bureau of Statistics definition of a small business, which is also reflected in the NSW Government's Small and Medium Enterprise and Regional Procurement Policy.' after 'businesses would face in meeting the reporting requirements'.
- (c) paragraph 2.95 be amended by omitting 'Accordingly, the committee supports' and inserting instead 'Accordingly, the committee does not support'.

Question put.

The committee divided.

Ayes: Mr Donnelly, Mr Mookhey, Mr Shoebridge.

Noes: Mr Mallard, Mr Martin, Mr Roberts, Mrs Ward.

Question resolved in the negative.

Resolved, on the motion of Mr Donnelly: That paragraph 2.95 be amended by omitting 'Shop, Distribute and Allied Employees' Association' and inserting instead 'Shop, Distribute and Allied Employees' Association NSW Branch'.

Resolved, on the motion of Mr Donnelly: That:

- (a) paragraph 2.95 be amended by omitting 'We encourage the Anti-Slavery Commissioner to keep a watching brief on this issue, particularly during the NSW Act's initial implementation phase.' after 'captured by the reporting requirements.', and inserting instead 'We encourage the Anti-Slavery Commissioner to, on an ongoing basis examine and report on matters regarding the appropriateness of bringing franchisors, on behalf of franchisees not otherwise captured by the NSW Act, under the state legislation.'
- (b) the following new recommendation be inserted after paragraph 2.95:

'Recommendation X

That the Anti-Slavery Commissioner on an ongoing basis examine and report on matters regarding the appropriateness of bringing franchisors, on behalf of franchisees not otherwise captured by the *Modern Slavery Act 2018*, under the state legislation.'

Resolved, on the motion if Mr Mookhey: That paragraph 2.97 be amended by omitting 'In other words, it would appear that State owned corporations' and inserting instead 'The NSW Government says that State owned corporations'.

Mr Shoebridge moved: That paragraph 2.98 be amended by omitting 'We agree that this approach is appropriate and therefore support the relevant provisions in the Amendment Bill (Items [1] and [14]).' after 'New South Wales businesses' and inserting instead 'We do not, on balance, oppose this position, especially given the fact that each State owned corporation currently has consolidated revenue that exceeds \$100 million and will be covered by the Commonwealth measures, even accepting they are less comprehensive than the NSW Act.'

Question put.

The committee divided.

Ayes: Mr Shoebridge.

Noes: Mr Donnelly, Mr Farlow, Mr Mallard, Mr Martin, Mr Mookhey, Mr Roberts, Mrs Ward.

Question resolved in the negative.

Mr Donnelly moved: That paragraph 3.50 be omitted: 'We are also acutely cognisant of the need to ensure that the NSW Act is clear and certain in its operation, right from the very start – for stakeholders, for the community and for victims of modern slavery. For these reasons, the committee has concluded that the case has been made for the repeal of s 29 in its entirety. We therefore support the provisions in the Amendment Bill which give effect to this, and make consequential and related amendments (Items [3], [18] and Schedule 2.1).' and the following new paragraph be inserted instead:

'Although the committee has concluded that the case has not been made for the repeal of s 29 in its entirety, if the NSW Government does not accept this then as an alternative we recommend that it adopt the position put forward by the NSW Bar Association outlined at paragraph 3.15.'

Question put.

The committee divided.

Ayes: Mr Donnelly, Mr Mookhey, Mr Roberts.

Noes: Mr Farlow, Mr Mallard, Mr Martin, Mr Shoebridge, Mrs Ward.

Question resolved in the negative.

Mr Shoebridge moved: That paragraph 3.50 be amended by inserting 'and its replacement with the extended operation of the risk-based offender management scheme to deal with slavery offences as proposed by the NSW Government's amendments' after 'in its entirety.'

Mr Mookhey moved: That the amendment of Mr Shoebridge be amended by inserting 'in the *Crimes (High Risk Offenders) Act 2006*' after 'risk-based offender management scheme'.

Question put and negatived.

Original question of Mr Shoebridge put and passed.

Mr Farlow and Mr Shoebridge left the meeting at 11.44 am.

Mr Donnelly moved: That paragraph 2.102 be amended by omitting 'we recommend that the NSW Government work to develop' and inserting instead 'we recommend that the NSW Government develops immediately'.

Question put.

The committee divided.

Ayes: Mr Donnelly, Mr Mookhey, Mr Roberts.

Noes: Mr Mallard, Mr Martin, Mrs Ward.

There being an equality of votes, question resolved in the negative on the casting vote of the Chair.

Mr Donnelly moved: That paragraph 2.102 be amended by omitting 'to be introduced following the statutory review' after 'legislative amendments'.

Question put.

The committee divided.

Ayes: Mr Donnelly, Mr Mookhey, Mr Roberts.

Noes: Mr Mallard, Mr Martin, Mrs Ward.

There being an equality of votes, question resolved in the negative on the casting vote of the Chair.

Mr Donnelly moved: That Recommendation 10 be amended by omitting 'to be introduced following the statutory review recommended in Recommendation 2' and inserting instead 'to be introduced immediately'.

Question put.

The committee divided.

Ayes: Mr Donnelly, Mr Mookhey, Mr Roberts.

Noes: Mr Mallard, Mr Martin, Mrs Ward.

There being an equality of votes, question resolved in the negative on the casting vote of the Chair.

Resolved, on the motion of Mr Donnelly: That paragraph 3.19 be amended by omitting 'The Amendment Bill amends several' and inserting instead 'The Amendment Bill amends some'.

Mr Donnelly moved: That paragraph 3.48 be amended by omitting 'These encompass legal concerns – that the scheme raises potential constitutional issues and fails to adequately safeguard minimum criminal justice guarantees; policy concerns – that the scheme is ambiguous or silent in a number of fundamental respects; and practical concerns – that the scheme fits poorly within existing court rules, processes and technology.' after 'Part 4, s 29 of the NSW Act.'

Question put.

The committee divided.

Ayes: Mr Donnelly, Mr Mookhey, Mr Roberts.

Noes: Mr Mallard, Mr Martin, Mrs Ward.

There being an equality of votes, question resolved in the negative on the casting vote of the Chair.

Mr Donnelly moved: That paragraph 3.49 be amended by omitting 'Importantly, legal stakeholders all supported the NSW Government's proposal to repeal s 29, particularly in light of the availability of existing well-established risk-based offender management schemes which would achieve comparable outcomes both in managing modern slavery offenders and in protecting their victims.' before 'We acknowledge the work that has been done'.

Question put.

The committee divided.

Ayes: Mr Donnelly, Mr Mookhey, Mr Roberts.

Noes: Mr Mallard, Mr Martin, Mrs Ward.

There being an equality of votes, question resolved in the negative on the casting vote of the Chair.

Mr Donnelly moved: That paragraph 3.49 be amended by omitting 'We acknowledge the work' and inserting instead 'However, we acknowledge the work'.

Question put.

The committee divided.

Ayes: Mr Donnelly, Mr Mookhey, Mr Roberts.

Noes: Mr Mallard, Mr Martin, Mrs Ward.

There being an equality of votes, question resolved in the negative on the casting vote of the Chair.

The committee noted that the secretariat would amend the first sentence of paragraph 3.51 to clarify the effect of the amending legislation.

Mr Donnelly moved: That paragraph 3.51 be amended by omitting 'the committee supports' and inserting instead 'the committee does not support'.

Question put.

The committee divided.

Ayes: Mr Donnelly, Mr Mookhey, Mr Roberts.

Noes: Mr Mallard, Mr Martin, Mrs Ward.

There being an equality of votes, question resolved in the negative on the casting vote of the Chair.

Mr Donnelly moved: 'That paragraph 3.51 be amended by omitting 'due to an irremediable inconsistency' after 'proposed repeal of this provision'.

Question put.

The committee divided.

Ayes: Mr Donnelly, Mr Mookhey, Mr Roberts.

Noes: Mr Mallard, Mr Martin, Mrs Ward.

There being an equality of votes, question resolved in the negative on the casting vote of the Chair.

Mr Donnelly moved: 'That paragraph 3.51 be amended by omitting 'Of course, we also understand why some stakeholders, despite these constitutional concerns, have urged to the committee to recommend the retention of the offence. However, we have ultimately come to the view that victims of these abhorrent crimes would not be well served by the creation of a constitutionally questionable new criminal offence targeted at internet service providers.' and inserting instead: 'The heinous nature of sexual crimes being perpetrated against children and in some cases even babies, enabled by the internet, demands that every effort must be made at all levels of government to do whatever is possible to prevent such activities and bring convicted perpetrators to justice.'

Resolved, on the motion of Mrs Ward: 'That the amendment of Mr Donnelly be amended by omitting all words after 'That' and inserting instead 'the following sentence be inserted at the end of paragraph 3.51: 'The heinous nature of sexual crimes being perpetrated against children and in some cases even babies, enabled by the internet, demands that every effort must be made at all levels of government to do whatever is possible to prevent such activities and bring convicted perpetrators to justice!'

Original question of Mr Donnelly, as amended by Mrs Ward, put and passed.

Resolved, on the motion of Mr Donnelly: That:

- the committee secretariat be authorised to make any consequential amendments to Appendix 2 to reflect amendments agreed to in earlier chapters of the report
- the amended Appendix 2 be circulated to members for review and any additional amendments or objections be lodged with the secretariat by 9.00 am, Friday 20 March 2020.

Ms Ward moved: That:

- the draft report as amended be the report of the committee and that the committee present the report to the House;
- the transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, and correspondence relating to the inquiry be tabled in the House with the report;
- upon tabling, all unpublished attachments to submissions be kept confidential by the committee;
- upon tabling, all unpublished transcripts of evidence, submissions, tabled documents, answers to questions on notice and supplementary questions, and correspondence relating to the inquiry, be published by the committee, except for those documents kept confidential by resolution of the committee;
- the committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;
- the committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee;
- dissenting statements be provided to the secretariat within 24 hours after receipt of the draft minutes of the meeting;

- the report be tabled by Friday 27 March 2020.

Question put.

The committee divided.

Ayes: Mr Mallard, Mr Martin, Ms Ward

Noes: Mr Donnelly, Mr Mookhey, Mr Roberts.

There being an equality of votes, question resolved in the affirmative on the casting vote of the Chair.

Resolved, on the motion of Ms Ward: That the secretariat be congratulated for their work in preparing the Chair's draft report.

5. Adjournment

The committee adjourned at 12.16 pm, *sine die*.

Jenelle Moore
Committee Clerk

Appendix 8 Dissenting statement

THE HON. GREG DONNELLY MLC AND THE HON. DANIEL MOOKHEY MLC DISSENTING STATEMENT

In the debate on the *Modern Slavery Bill 2018* in the Legislative Assembly on 6th June 2018 the Premier of NSW, the Hon. Gladys Berejiklian MP said:

“It is not every day that members of this place or the other put forward something that will have a positive impact for literally thousands of people”

Further in her contribution she said:

“There is an undeniable moral imperative to take action in relation to all forms of modern slavery.”

With such strong unequivocal words of support and commitment given by the Premier on behalf of the NSW Government, what then followed left ourselves and many of our parliamentary colleagues who had worked so hard and cooperatively to secure its passage feeling both bitter and betrayed. Why? Because in May last year it was discovered that the NSW Government, without telling anybody had, notwithstanding overseeing the legislation receiving Royal Assent on 27th June 2018, prevented it from passing onto the statute books (most likely on a date in July 2018) by deliberately holding it back from being proclaimed.

Having taken what was the extraordinary action to stop the new law commencing as was expected in July 2018, its commencement became further delayed with the NSW Government insisting in May last year that it wanted an inquiry into the *Modern Slavery Act 2018* and associated matters undertaken by the Legislative Council’s Standing Committee on Social Issues. The explanation given was that in the interim period the Commonwealth Parliament had passed its own *Modern Slavery Act 2018* and that legislation had commenced on 1st January 2019. In summary, the NSW Government argued that now there was Commonwealth legislation in place dealing with the matter of modern slavery it was appropriate to review the yet to be proclaimed NSW legislation in light of this development. A Terms of Reference to this effect was referred to the committee and reported in the Legislative Council on 7th August 2019.

The position of the Opposition with respect to this inquiry and what will follow it has been and will continue to be consistent with the following. This Parliament, with the support of the Premier passed through both of its Houses the *Modern Slavery Act 2018*. It is a matter of record that a number of amendments to the original bill were made in the Legislative Assembly. Those amendments were negotiated and settled in direct negotiations between the sponsor of the bill the Hon. Paul Green MLC and the Premier. Indeed the Premier refers to those negotiations specifically in her second reading speech. Having settled on a comprehensive set of agreed amendments, they were made in the Legislative Assembly and the bill was returned to the Legislative Council. This House, having considered the amendments passed the bill. Royal Assent was given to it just six days later on 27th June 2018.

The Opposition has said consistently that it is prepared to countenance minor or technical amendments to the *Modern Slavery Act 2018*. It wants the NSW Act to work concurrently with the Commonwealth legislation without ambiguities or conflict. However, it does not and will not support proposed amendments that in effect seek to rebase it with the Commonwealth legislation or remove or diminish key provisions that make it the cutting edge piece of anti-slavery and anti-human trafficking legislation that it is. It is this clear position that the Opposition members of the

committee have strongly argued for over the course of the inquiry and in particular at the deliberative meeting held on 18th March 2020 that finalised this report. The minutes to that meeting which form part of this report detail specifically where a number of attempts were made to amend it in such a way to, in our view, negate or mitigate proposed NSW Government amendments to the *Modern Slavery Act 2018* and consequential Regulations that would abolish or diminish hard fought for and hard won provisions contained in the piece of legislation that was passed by the Parliament. Far fewer of these attempts were successful than we had wished for.

Mr Kevin Hyland OBE is indisputably if not the, certainly one of the most expert individuals in the world when it comes to matters relating to modern slavery and human trafficking. In his submission to this inquiry he stated:

“I have put forward a six-point strategy which I believe is necessary to end modern slavery. The points in briefest terms include:

- Government and supply chain transparency and accountability (as suggested in the NSW Act).
- Introduction of the notion of ‘tainted money’ to remove the potential to profit from modern slavery and human trafficking.
- By legislation, all nations requiring the internet to be free of child exploitation and facilitation of human trafficking.
- Extending the use of the international agencies who have a role to play.
- A review, and where necessary amendment, of international instruments to make them fit for the hi-tech fast-moving world.
- Leadership where setting the moral compass is integrated into decision-making so ethical business free of modern slavery becomes the norm.”

He goes on to say:

“The New South Wales Government, as leading one of the largest economies in the Pacific Region, has an opportunity to demonstrate global leadership in the fight against modern slavery by introduction of one of the most comprehensive legislations in the world. It will bring improved victim identification and care, introduce an antislavery commissioner, provide continual monitoring, raise awareness and lead businesses into generating ethical profits free from exploitation and modern slavery.”

We strongly endorse both the words and sentiment of Mr Hyland. The *Modern Slavery Act 2018* was when it passed the Parliament fit for its intended purpose. That clearly remains the case today. Minor or technical amendments to enable it to operate effectively in conjunction with Commonwealth legislation should be done so it can be brought into operation in NSW. There are no other changes to it that are warranted or justified. The NSW Government is legally and morally obliged to do this right now. They also owe it to former MLC, Mr Paul Green.

The Hon. Greg Donnelly MLC

19th March 2020

The Hon. Daniel Mookhey MLC

19th March 2020

