



PARLIAMENT OF NEW SOUTH WALES

MODERN SLAVERY COMMITTEE

Review of the  
*Modern Slavery Act 2018*



Report 1

December 2023

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Modern Slavery Committee

# **Review of the** *Modern Slavery Act 2018*

Ordered to be printed 19 December 2023 according to  
Schedule 1, clause 5 of the *Modern Slavery Act 2018*

**New South Wales. Parliament. Joint. Modern Slavery Committee. Report no. 1.**

Review of the *Modern Slavery Act 2018*

"December 2023"

Chair: Dr Joe McGirr MP



A catalogue record for this book is available from the National Library of Australia

ISBN: 978-1-922960-35-1

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## Terms of reference

1. That, in accordance with section 36 of the *Modern Slavery Act 2018* (the Act), the Modern Slavery Committee:
  - (a) is to review and determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing the objectives, and
  - (b) while undertaking the review, investigate any other related matter the Committee considers appropriate
  - (c) must report to both Houses of Parliament on the outcome of the review and any related investigations within 24 months of the commencement of the Act. 2.
2. In accordance with section 22(2) of the Act, the committee does not have the authority to investigate a matter relating to particular conduct.<sup>1</sup>

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<sup>1</sup> *Minutes*, NSW Legislative Council, 12 September 2023, p 443.

## Committee details

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### Committee members

<b>Dr Joe McGirr MP</b>	Independent	<i>Chair</i>
<b>Ms Jenny Leong MP</b>	The Greens	<i>Deputy Chair</i>
<b>Mrs Tina Ayyad MP</b>	Liberal Party	
<b>Hon Robert Borsak MLC</b>	Shooters, Fishers and Farmers Party	
<b>Hon Greg Donnelly MLC</b>	Australian Labor Party	
<b>Hon Dr Sarah Kaine MLC</b>	Australian Labor Party	
<b>Hon Aileen MacDonald MLC</b>	Liberal Party	
<b>Ms Kylie Wilkinson MP</b>	Australian Labor Party	

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### Secretariat

David Rodwell, Principal Council Officer

Faith Aghahowa, Administration Officer

Shaza Barbar, Director



## Chair's foreword

Modern slavery is an ongoing issue in New South Wales and Australia, the extent of which is significant. The committee was particularly concerned to learn that an estimated 80 to 98 per cent of victim-survivors remain unidentified out of a possible 16,400 cases each year in New South Wales.

The *Modern Slavery Act 2018* is therefore an important piece of legislation enacted to address the issue of modern slavery by requiring NSW Government agencies, local councils and state-owned corporations to report on how they are addressing modern slavery risks in their supply chains, and providing for the establishment of the NSW Anti-slavery Commissioner, the first such position in any Australian jurisdiction. The Act also creates modern slavery offences.

This review examined whether the Act is adequately addressing modern slavery risks and whether the Commissioner is effectively equipped to do so. While the committee strongly supports the Act and its objectives, it is clear from the evidence we received that there are areas where the Act can be strengthened, particularly in relation to the detection and exposure of modern slavery, compliance and enforcement, support for victim-survivors and the role of the Commissioner.

However, a central theme which emerged in this review was the importance of centring the expertise of people with lived experience in the response to modern slavery. Accordingly, the committee considers it vital to receive input from people with lived experience expertise before making further recommendations about how to improve the Act.

The committee had limited time available to conduct this consultation before finalising this report by the end of 2023, as required by the Act. We will therefore continue to review the Act in 2024 specifically seeking evidence from people with lived experience expertise of modern slavery. We will also consider the evidence already received in this review.

There are many stakeholders across the government and non-government sector, including the Anti-slavery Commissioner, who are committed to addressing and preventing modern slavery. The committee acknowledges the work of these stakeholders and appreciates the time they have taken to inform us of their work and how the Act can be improved. I sincerely thank these inquiry participants, whose evidence will be valuable during the committee's continued review of the Act in 2024.

I also thank for the committee for their contributions throughout the review and commitment to addressing modern slavery in New South Wales. Finally, I thank the secretariat and Hansard for their professional support.



Dr Joe McGirr MP  
**Committee Chair**

## Findings

### **Finding 1**

**42**

That the committee needs to involve people with lived experience expertise in its review of the Act before making further recommendations, noting that this has not been possible given the requirement to complete the report within 24 months of the commencement of the Act.

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## Recommendations

### Recommendation 1

42

That the Modern Slavery Committee continue to review the *Modern Slavery Act 2018* in the next six months specifically seeking evidence from people with lived experience expertise and considering the evidence already received.

### Recommendation 2

43

That the NSW Government seek to amend the *Modern Slavery Act 2018* to explicitly provide for the Anti-slavery Commissioner's annual and other reports to be tabled out of session or made publicly available immediately after being furnished to the Presiding Officers, as provided for in the original Modern Slavery Bill 2018.

## Conduct of inquiry

The Modern Slavery Committee is a joint committee established by the *Modern Slavery Act 2018*. The review was conducted in accordance with section 36 of the Act.

The committee received 17 submissions and held two public hearings 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 Background

This chapter starts by setting out the legislative framework for modern slavery under state and Commonwealth legislation, and how they compare to each other. The chapter then details the key developments leading to the *Modern Slavery Act 2018* as it stands today.

## The legislative framework

- 1.1** The response to modern slavery in New South Wales is administered by the *Modern Slavery Act 2018* (NSW) and the *Modern Slavery Act 2018* (Cth). This section considers both sets of legislation and details the interaction between state and Commonwealth legislation.
- 1.2** The NSW Parliament passed the *Modern Slavery Act* on 21 June 2018, making New South Wales the first state to establish such legislation.<sup>2</sup> Section 5 of the Act defines modern slavery as:
- (a) any conduct constituting a modern slavery offence,
  - (b) any conduct involving the use of any form of slavery, servitude or forced labour to exploit children or other persons taking place in the supply chains of organisations.<sup>3</sup>
- 1.3** The objects of the Act are set out in section 3 as follows:
- (a) to combat modern slavery,
  - (b) to provide assistance and support for victims of modern slavery,
  - (c) to provide for an Anti-slavery Commissioner,
  - (d) to provide for detection and exposure of modern slavery that may have occurred or be occurring or that is likely to occur,
  - (e) to raise community awareness of, and provide for education and training about, modern slavery,
  - (f) to encourage collaborative action to combat modern slavery,
  - (g) to provide for the assessment of the effectiveness and appropriateness of laws prohibiting modern slavery and to improve the implementation and enforcement of such laws,
  - (h) to provide for mandatory reporting of risks of modern slavery occurring in the supply chains of government agencies,
  - (i) to make forced marriage of a child and certain slavery and slavery-like conduct offences in New South Wales,

<sup>2</sup> NSW Anti-slavery Commissioner, *Foundations for Growth – NSW Anti-slavery Commissioner's Annual Report – Financial Year 2022-2023* (Annual Report, 2022-23), p 13.

<sup>3</sup> *Modern Slavery Act 2018*, s 5.

(j) to further penalise involvement in cybersex trafficking by making it an offence to administer a digital platform for the purpose of child abuse material or encourage another person to use a digital platform to deal with child abuse material,

(k) to provide for education, training and guidance about identifying and addressing modern slavery taking place within supply chains of organisations.<sup>4</sup>

**1.4** Part 2 of the Act establishes the role of the NSW Anti-slavery Commissioner (the Commissioner) and their functions.<sup>5</sup> Dr James Cockayne was appointed the first ongoing Commissioner and commenced in the role on 1 August 2022.<sup>6</sup>

**1.5** The effectiveness of the current legislation in meeting the objects of the Act, including the role of the Commissioner are discussed in further detail in Chapter 2.

**1.6** Soon after the NSW legislation was established, the Commonwealth Act passed both Houses of the Australian Parliament on 29 November 2018, and came into effect on 1 January 2019. The Commonwealth Act defines modern slavery as:

conduct which would constitute:

a) an offence under Division 270 or 271 of the *Criminal Code*; or

(b) an offence under either of those Divisions if the conduct took place in Australia; or

(c) trafficking in persons, as defined in Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, done at New York on 15 November 2000 ([2005] ATS 27); or

(d) the worst forms of child labour, as defined in Article 3 of the ILO Convention (No. 182) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, done at Geneva on 17 June 1999 ([2007] ATS 38).<sup>7</sup>

### **Statutory review of the Commonwealth Act**

**1.7** In May 2023, the Australian Government tabled the report of the statutory review of the Commonwealth Act.<sup>8</sup> The report found that while businesses were generally taking the Act and reporting requirements seriously, there was no significant evidence the Act had caused meaningful change for victim-survivors of modern slavery.<sup>9</sup> Further, the report noted there was a competing view that reporting was not being taken seriously enough.<sup>10</sup>

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<sup>4</sup> *Modern Slavery Act 2018*, s 3.

<sup>5</sup> *Modern Slavery Act 2018*, pt 2.

<sup>6</sup> Submission 8, NSW Anti-slavery Commissioner, p 11.

<sup>7</sup> *Modern Slavery Act 2018 (Cth)*, s 4.

<sup>8</sup> Australian Government, *Report of the statutory review of the Modern Slavery Act 2018 (Cth)*, May 2023.

<sup>9</sup> Australian Government, *Report of the statutory review of the Modern Slavery Act 2018 (Cth)*, May 2023, p 8.

<sup>10</sup> Australian Government, *Report of the statutory review of the Modern Slavery Act 2018 (Cth)*, May 2023, p 8.

1.8 The report made 30 recommendations, some of which included that the:

- Australian Government and/or Anti-slavery Commissioner initiate discussion with other jurisdictions in Australia and internationally on options for defining ‘modern slavery’ for the purpose of mandatory reporting laws such as the Commonwealth Act, with a report on those discussions to be provided to any later review of the Act
- Commonwealth Act be amended to provide that a 'reporting entity' is an entity that has a consolidated revenue of at least \$50 million for the reporting period
- Commonwealth Act be amended to provide that an entity has the option of submitting every three years a modern slavery statement that addresses all requirements of the Act, and in the intervening two years to submit a report that updates the information in the full statement
- Attorney-General’s Department establish a formal arrangement for annual review of the Commonwealth Modern Slavery Statement, and to consider the role of the Anti-slavery Commissioner in that review
- Commonwealth Act be amended to provide that:
  - the Minister or the Anti-slavery Commissioner may make a written declaration of a region, location, industry, product, supplier or supply chain that is regarded as carrying a high modern slavery risk, and
  - the declaration may prescribe the extent to which reporting entities must have regard to that declaration in preparing a modern slavery statement under the Act
- the legislation establishing the office of Anti-slavery Commissioner provide expressly that a function of the Commissioner is to issue guidelines on special issues relating to the reporting requirements in the Commonwealth Act.<sup>11</sup>

1.9 Chapter 9 of the report detailed public sector reporting requirements, raising two primary issues:

- the adequacy of the Commonwealth Modern Slavery Statement, leading to the recommendation referred to above that the Attorney-General's Department conduct an annual review of the adequacy of the statement
- the need to ensure alignment between Commonwealth, state and territory programs, reporting obligations, requirements and standards.<sup>12</sup>

1.10 The report stated that alignment between jurisdictions was being pursued through the Intergovernmental Network on Modern Slavery in Public Procurement and that the new Commonwealth Anti-slavery Commissioner would consult with state and territory colleagues on achieving alignment.<sup>13</sup>

<sup>11</sup> Australian Government, *Report of the statutory review of the Modern Slavery Act 2018 (Cth)*, May 2023, pp 11-14.

<sup>12</sup> Australian Government, *Report of the statutory review of the Modern Slavery Act 2018 (Cth)*, May 2023, p 83.

<sup>13</sup> Australian Government, *Report of the statutory review of the Modern Slavery Act 2018 (Cth)*, May 2023, p 83.

- 1.11 Although the Australian Government has committed to establishing a Commonwealth Anti-slavery Commissioner,<sup>14</sup> it has not yet responded in detail to the report and recommendations.

### Interaction between New South Wales and Commonwealth legislation

- 1.12 There are two key areas in which the Commonwealth and New South Wales legislation interact: reporting obligations, and penalties and compliance. Turning first to reporting obligations, the New South Wales and Commonwealth Acts both similarly impose supply chain reporting obligations in various entities regarding their modern slavery risks. However, the entities covered by the Acts are different as set out in the table below.

**Table 1 Entities covered by NSW and Commonwealth Acts**

NSW Act	Commonwealth Act
NSW government agencies	Commonwealth government agencies (non-corporate entities)
NSW state-owned corporations	Commonwealth government corporate entities with annual revenue of more than \$100 million
NSW councils	Australian businesses and entities with annual revenue of more than \$100 million

- 1.13 The Australian Government is required by the Act to prepare a statement reporting on modern slavery risks in non-corporate government entities, known as the Commonwealth Modern Slavery Statement.<sup>15</sup>
- 1.14 In contrast, the New South Wales Act requires government agencies and councils to include in their annual reports a statement about steps they are taking to ensure goods and services procured by their agency during the relevant financial year were not the product of modern slavery.<sup>16</sup> Where relevant, a statement must also be included addressing any significant issues raised by the Commissioner.<sup>17</sup>
- 1.15 The New South Wales Act also requires State-owned corporations that are not already captured under the Commonwealth Act to make voluntary modern slavery statements under that Act.<sup>18</sup>

<sup>14</sup> Media release, Senator the Hon Penny Wong, Leader of the Government in the Senate, Minister for Foreign Affairs and Senator the Hon Katy Gallagher, Minister for Finance, Minister for Women, Minister for the Public Service Acting Attorney-General, 'Modern Slavery Act Review', 25 May 2023.

<sup>15</sup> *Modern Slavery Act 2018 (Cth)*, s 15.

<sup>16</sup> *Modern Slavery Act 2018*, s 3.

<sup>17</sup> *Modern Slavery Act 2018*, s 31 and *Local Government Act 1993*, s 428.

<sup>18</sup> *Modern Slavery Act 2018* ss 25A-25B.



- 1.16** With regard to penalties and compliance, the New South Wales and Commonwealth Acts do not create civil or criminal penalties for non-compliance with reporting obligations. However, the Commonwealth Act allows the responsible Minister to request that an entity that has failed to comply with its reporting obligations explain its failure, or undertake specific remedial action.<sup>19</sup> If the entity fails to comply with such a request, the Minister may publish information about the entity's failure to do so.<sup>20</sup>
- 1.17** The New South Wales legislation amended other Acts to impose duties on government agencies and councils to 'take reasonable steps' to ensure that goods and services they procure are not the product of modern slavery.<sup>21</sup> The NSW Procurement Board also has the power to issue directions about reasonable steps to be taken in procurement.<sup>22</sup> The Commonwealth Act did not create similar duties.
- 1.18** In addition, under the New South Wales Act, the Commissioner is required to maintain a public register identifying:
- government agencies which fail to comply with the Procurement Board's directions
  - state-owned corporations which do not submit a modern slavery statement under the Commonwealth Act
  - any other information the Commissioner thinks appropriate.<sup>23</sup>

### **Previous parliamentary inquiries and legislative history leading to the *Modern Slavery Act 2018* (NSW)**

- 1.19** The Act in its current form has developed following a number of parliamentary enquiries and legislative amendments. This section provides a timeline of key developments, including the inquiry by the Select Committee on Human Trafficking in New South Wales, which was followed by the introduction of the Modern Slavery Bill 2018, an inquiry into the *Modern Slavery Act 2018* by the Standing Committee on Social Issues, and finally the passing of the Modern Slavery Amendment Bill 2021.

#### **Select Committee on Human Trafficking in New South Wales**

- 1.20** On 9 November 2016, the Legislative Council resolved to establish the Select Committee on Human Trafficking in New South Wales (the Select Committee) chaired by the Hon Paul Green MLC, former Member of the Legislative Council.<sup>24</sup>

<sup>19</sup> *Modern Slavery Act 2018 (Cth)*, s 16A.

<sup>20</sup> *Modern Slavery Act 2018 (Cth)*, s 16A.

<sup>21</sup> *Public Works and Procurement Act 1912* s 176(1A) and *Local Government Act 1993* s 438Z.

<sup>22</sup> *Public Works and Procurement Act 1912* s 175.

<sup>23</sup> *Modern Slavery Act 2018*, s 26.

<sup>24</sup> Minutes, NSW Legislative Council, 9 November 2016, p 1240.

- 1.21** The committee tabled its report in 2017 recommending that the NSW Government:
- urge the Australian Government to establish a Modern Slavery Act for Australia
  - appoint an independent Anti-slavery Commissioner
  - urge the Australian Government to appoint a federal independent Anti-slavery Commissioner
  - allocate greater resources to the NSW Police Force to enhance interagency cooperation and covert operations to address human trafficking
  - advocate for the Australian Government to establish:
    - legislation that requires large companies based in Australia to publicly report annually on steps taken to ensure there is no modern slavery within the organisation and supply chain
    - a publicly available, independently managed register to measure the success of companies and the effectiveness of this legislation
  - update the NSW Code of Practice for Procurement to include a commitment that government departments, agencies, state-owned corporations and other government related entities will not procure goods and services that are the product of human trafficking, slavery or slave-like practices
  - require all its departments, agencies, state-owned corporations and other government related entities to include a section in their annual reports that specifies the steps taken to ensure they are not procuring goods and services that are the product of human trafficking, slavery or slave-like practices
  - conduct an annual evaluation of the progress made by its departments, agencies, state-owned corporations and other government related entities in preventing human trafficking and slavery in the supply chains of goods and services procured
  - commit to providing mandatory training on human trafficking, slavery and forced marriage to all front-line government employees in New South Wales
  - criminalise underage forced marriage
  - encourage the Australian Government to establish a national compensation scheme for victims of human trafficking; and if this is not successful, advocate for the harmonisation of schemes across all states and territories in Australia.<sup>25</sup>

### **Modern Slavery Bill 2018**

- 1.22** Some of the Select Committee's recommendations were realised with the introduction of the Modern Slavery Bill 2018. Key elements of the legislation included the:
- establishment of a NSW Anti-slavery Commissioner (the Commissioner)
  - requirement that commercial organisations with more than \$50 million annual turnover prepare an annual modern slavery statement

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<sup>25</sup> Select Committee on human trafficking in New South Wales, NSW Legislative Council, *Human trafficking in New South Wales* (2017) pp ix-xii.

- establishment of modern slavery offences
- establishment of modern slavery risk orders, which could be made by courts prohibiting a person from engaging in certain conduct if they have been convicted of a modern slavery offence and there is risk that the person will engage in modern slavery conduct.
- establishment of a public register to be kept by the Commissioner identifying commercial organisations and bodies that have disclosed that its goods and services are or may be the product of modern slavery, and identifying government agencies not complying with directions of the NSW Procurement Board under section 175 of the *Public Works and Procurement Act 1912*.<sup>26</sup>

**1.23** The legislation was introduced in the Legislative Council by the Hon Paul Green MLC.<sup>27</sup> The legislation passed the Parliament on 21 June 2018.<sup>28</sup> However, while the Modern Slavery Bill 2018 received royal assent, it was not proclaimed. Accordingly, the legislation did not commence operation.

**1.24** The *Modern Slavery Act 2018* (NSW) did not come into force until 1 January 2022 following amendments made in 2021.

#### **Standing Committee on Social Issues inquiry into the *Modern Slavery Act 2018***

**1.25** On 10 July 2019, the Hon Don Harwin MLC, then-Special Minister of State, Minister for the Public Service and Employee Relations, Aboriginal Affairs and the Arts referred an inquiry to the Standing Committee on Social Issues (Standing Committee) to on the *Modern Slavery Act 2018* and associated matters.<sup>29</sup>

**1.26** The terms of reference, as adopted by the committee on 6 August 2019 included that the Standing Committee would consider consultation drafts of the proposed Modern Slavery Bill 2019 and Modern Slavery Regulation 2019 and make particular reference to:

- the operability of the proposed anti-slavery scheme
- the effectiveness of the anti-slavery scheme on business, including the supply chain reporting obligations under section 24 of the NSW Act
- the intended application of the anti-slavery scheme with respect to charities and not-for-profit organisations, state-owned corporations and local councils
- the appropriateness and enforceability of Modern Slavery Risk Orders under section 29 of the NSW Act
- 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

<sup>26</sup> Modern Slavery Bill 2018.

<sup>27</sup> *Hansard*, NSW Legislative Council, 8 March 2018, p 8 (Paul Green).

<sup>28</sup> *Hansard*, NSW Legislative Council, 21 June 2018, p 37.

<sup>29</sup> Standing Committee on Social Issues, NSW Legislative Council, *Modern Slavery Act 2018 and associated matters* (2020) p xi.

- the risk of a possible constitutional challenge to current provisions in the NSW Act due to inconsistencies with the *Criminal Code Act 1995* (Cth)
- whether the passage of Commonwealth Act renders parts or all of the NSW Act unnecessary, or requiring of amendment to address inconsistencies or gaps
- the preferred course of action to address the matters identified.<sup>30</sup>

**1.27** On 25 March 2020, the Standing Committee finalised its report, making numerous recommendations, including that the NSW Government:

- amend the Act to include a statutory review, to be conducted in conjunction with the Australian Government's statutory review of the Commonwealth Act
- amend the reporting threshold terminology in section 24 of the Act, replacing the term 'turnover' with 'consolidated revenue'
- work with businesses within the reporting threshold to ensure that reporting requirements are as simple as possible and clearly explained in the guidance material
- work with the Australian Government to seek harmonisation of the reporting threshold as a key form for a standard national approach to modern slavery
- amend the Act to specify a relevant authority responsible for conducting prosecutions for breaches of section 24 of the Act
- reassess the exemption for charities and not-for-profit organisations from section 24 of the Act as part of a statutory review
- not include an exemption from section 24 of the Act for non-for-profit registered clubs
- finalise development of a voluntary reporting mechanism for business falling under the \$50 million reporting threshold in the Act
- develop legislative amendments to be introduced, providing for reporting obligations for local councils and regulation-making power to exempt council of classes of councils from those obligations
- retaining a reference to section 32 of the *Human Tissue Act 1983* as a modern slavery offence
- amend the Act to give victims of acts of modern slavery access to recognition payments under the *Victims Rights and Support Act 2013*
- establish a working group including the Commissioner, NSW Police, Department of Communities and Justice and other stakeholders to develop further amendments to the *Crimes (Domestic and Personal Violence) Act 2007* to protect victims of forced marriage.<sup>31</sup>

**1.28** The Standing Committee also recommended that the Commissioner examine and report on an ongoing basis the appropriateness of bringing franchisors, on behalf of franchisees not otherwise captured by the Act, under the state legislation.<sup>32</sup>

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<sup>30</sup> Standing Committee on Social Issues, *Modern Slavery Act 2018 and associated matters*, p v.

<sup>31</sup> Standing Committee on Social Issues, *Modern Slavery Act 2018 and associated matters*, pp viii-x.

<sup>32</sup> Standing Committee on Social Issues, *Modern Slavery Act 2018 and associated matters*, p viii.

1.29 In the former NSW Government's response to the Standing Committee's report, it either supported in-principle or noted each recommendation.<sup>33</sup> However, the key element of the Government's response was its statement of support for harmonising the Act with the Commonwealth Act.<sup>34</sup> The former Government said it would commence discussions with the Australian Government to 'achieve greater harmonisation', and that it then intended to 'commence components of the NSW Act that complement the Commonwealth Act and which are not inconsistent with it.'<sup>35</sup>

### Modern Slavery Amendment Bill 2021

1.30 On 14 October 2021, the Hon Don Harwin MLC introduced into the Legislative Council the Modern Slavery Amendment Bill 2021. The Bill proposed significant changes to the Act, including:

- removing supply chain reporting obligations to commercial organisations in New South Wales with an annual turnover of \$50 million or more
- consequentially, removing the requirement for non-complying organisations to be listed by the Commissioner on a public register
- removing modern slavery risk orders.<sup>36</sup>

1.31 Mr Harwin said the removal of reporting obligations for commercial organisations would 'remove the regulatory burden' of businesses complying with two schemes, as the Commonwealth Act required businesses with a consolidated revenue of \$100 million or more to produce an annual modern slavery statement.<sup>37</sup>

1.32 Other amendments proposed by non-government members were also made to the Bill, such as extending supply chain reporting obligations to state-owned corporations and local councils. The Bill passed both Houses of Parliament on 19 November 2021,<sup>38</sup> with the Act commencing on 1 January 2022.<sup>39</sup>

<sup>33</sup> Correspondence from The Hon Don Harwin MLC, Special Minister of State, Minister for the Public Service and Employee Relations, Aboriginal Affairs and the Arts, providing government response to the inquiry into the Modern Slavery Act 2018 and associated matters, 24 September 2020.

<sup>34</sup> Government response to the inquiry into the *Modern Slavery Act 2018* and associated matters, 24 September 2020.

<sup>35</sup> Government response to the inquiry into the *Modern Slavery Act 2018* and associated matters, 24 September 2020.

<sup>36</sup> Modern Slavery Amendment Bill 2021.

<sup>37</sup> *Hansard*, NSW Legislative Council, 14 October 2021, p 6092 (Don Harwin).

<sup>38</sup> *Hansard*, NSW Legislative Assembly, 17 November 2021, pp 6746-6756, 6765-6782.

<sup>39</sup> Modern Slavery Amendment Bill 2021, sch 1.



## Chapter 2 Key issues

This chapter canvasses the key issues raised by stakeholders about the provisions of the Act. It begins by discussing various issues relating to the office of the Commissioner. The chapter then discusses other issues raised, including compliance and enforcement mechanisms, the importance of centring people with lived experience expertise of modern slavery, opportunities for harmonisation between jurisdictions, victims' rights and support and the need for further statutory reviews of the Act in future.

### The Office of the Anti-slavery Commissioner

- 2.1** In the Anti-slavery Commissioner's evidence, he stated that modern slavery remains dangerously undetected and unexposed in New South Wales, with only around 120 to 230 cases out of a possible 16,400 cases being reported each year, and there is reason to believe that 80 to 98 per cent of victim-survivors in NSW may remain unidentified, unassisted and unsupported.<sup>40</sup>
- 2.2** Much of the evidence received by the committee focused on the role of the Anti-slavery Commissioner and whether the Commissioner's current functions, powers and resourcing enable him to sufficiently deliver on the objectives of the Act. As noted in Chapter 1, the Act establishes the office of the Commissioner and Division 2 sets out the functions of Commissioner, as follows:
- (a) to advocate for and promote action to combat modern slavery,
  - (b) to identify and provide assistance and support for victims of modern slavery,
  - (c) to make recommendations and provide information, advice, education and training about action to prevent, detect, investigate and prosecute offences involving modern slavery,
  - (d) to co-operate with or work jointly with persons and organisations to combat modern slavery and provide assistance and support to victims of modern slavery,
  - (e) to monitor reporting concerning risks of modern slavery occurring in supply chains of government agencies,
  - (f) to monitor the effectiveness of legislation and governmental policies and action in combating modern slavery,
  - (g) to raise community awareness of modern slavery,
  - (h) to exercise such other functions as are conferred or imposed on the Commissioner by or under this or any other Act.<sup>41</sup>

<sup>40</sup> Submission 8, NSW Anti-slavery Commissioner, p 14.

<sup>41</sup> *Modern Slavery Act 2018* div 2.

- 2.3** The Commissioner told the committee that his role is still being 'brought to life', since he commenced on 1 August 2022. However, he referred to his first annual report, tabled in Parliament on 21 November 2023 outlining the activities undertaken to date establishing his office and carrying out his functions.<sup>42</sup> These included awareness-raising activities, providing support to government agencies in fulfilling their modern slavery obligations, policy engagement and developing support and assistance to be provided to victim-survivors of modern slavery.<sup>43</sup> In addition, the Commissioner launched his *Strategic Plan 2023-2026* in accordance with section 11 of the Act.<sup>44</sup> The Department of Communities and Justice (DCJ) echoed the Commissioner's evidence that the role is in its early stages, still evolving and not yet fully realised.<sup>45</sup>
- 2.4** Nonetheless, stakeholders provided evidence on the objects and other provisions of the Act relating to the office of the Anti-slavery Commissioner, including:
- detecting and exposing modern slavery, including through the forthcoming hotline to be run by the Commissioner's office
  - cooperation and interaction with other government and non-government organisations
  - education and training to government and non-government sectors
  - funding and independence of the Commissioner's office
  - publication of the Commissioner's annual report.

### **Detecting and exposing modern slavery**

- 2.5** An object of the Act is 'to provide for the detection and exposure of modern slavery that may have occurred or be occurring or that is likely to occur.'<sup>46</sup> However, only a small number of modern slavery victim-survivors are detected by law enforcement, with the Commissioner estimating that between 80 and 98 per cent of victims in New South Wales remain unidentified.<sup>47</sup> The Commissioner told the committee that the Act currently relies on two channels for detection and exposure of modern slavery, both of which face challenges:
- Victims coming forward: victims often do not come forward for several reasons, including 'intimidation and fear or retaliation against themselves or their families' or 're-traumatisation'
  - Existing law enforcement and other frontline workers developing capabilities to identify victims: while there are efforts underway to increase these capabilities in the NSW Police Force and in the healthcare sector, the Commissioner noted it will take 'considerable time to achieve its effect'.<sup>48</sup>

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<sup>42</sup> Submission 8, NSW Anti-slavery Commissioner, p 13.

<sup>43</sup> Submission 8, NSW Anti-slavery Commissioner, p 14.

<sup>44</sup> *Modern Slavery Act 2018* s 11; Submission 8, NSW Anti-slavery Commissioner, p 13.

<sup>45</sup> Evidence, Mr Paul McKnight, Deputy Secretary, Department of Communities and Justice, 30 October 2023, p 12

<sup>46</sup> *Modern Slavery Act 2018* s 3.

<sup>47</sup> Submission 8, NSW Anti-slavery Commissioner, p 14.

<sup>48</sup> Evidence, Dr James Cockayne, NSW Anti-slavery Commissioner, 30 October 2023, p 5.



- 2.6** It should be noted that the Law Society of NSW expressed concern in their submission that 'victim survivors are still being directed into the criminal justice system as an initial response' and that 'on the NSW Anti-slavery Commissioner's website, the links to help and support are to the email of the Office of the NSW Anti-slavery Commissioner and the Australian Federal Police only'.<sup>49</sup>
- 2.7** The Commissioner noted in his submission steps being taken by agencies such as NSW Police Force and NSW Health to train their staff on modern slavery, and also referred to a new initiative he recently announced, *It's Healthy to Fight Slavery*, which aims to encourage good practice by frontline healthcare workers in detecting modern slavery.<sup>50</sup>
- 2.8** The Commissioner stated that while the Act's object of detecting and exposing modern slavery remains valid, he has 'little practical ability' in part due to the role's lack of investigative powers, to directly take action that addresses the gap in reporting of modern slavery cases.<sup>51</sup> Section 10(1) of the Act states that the Commissioner does not 'generally' have investigatory functions in relation to individual cases, but 'may take them into account and draw conclusions solely for the purpose of, or in the context of, considering a general issue'.<sup>52</sup>
- 2.9** He added that where he has concerns about specific issues his recourse is limited to:
- making referrals to investigative agencies, such as the NSW Police Force
  - advocacy and public awareness raising
  - reporting issues to Parliament
  - raising concerns with government agencies
  - if relevant, placing government agencies on a public register if they fail to respond to significant issues in their annual reporting.<sup>53</sup>
- 2.10** As an example, the Commissioner told the committee he had recently made a public statement inviting people with information about the treatment of workers by a company, Linx Employment TAS Pty Ltd to contact his office.<sup>54</sup> However, the Commissioner emphasised he had no power under the Act to proactively investigate the company, describing his position as a 'passive situation, waiting for people with information to come forward and share that information with me'.<sup>55</sup>

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<sup>49</sup> Submission 3, Law Society of NSW, p 2.

<sup>50</sup> Submission 8, NSW Anti-slavery Commissioner, p 15.

<sup>51</sup> Submission 8, NSW Anti-slavery Commissioner, p 15.

<sup>52</sup> *Modern Slavery Act 2018* s 10(1); Evidence, Dr Cockayne, 30 October 2023, p 9.

<sup>53</sup> Submission 8, NSW Anti-slavery Commissioner, p 15.

<sup>54</sup> Evidence, Dr Cockayne, 30 October 2023, p 9.

<sup>55</sup> Evidence, Dr Cockayne, 30 October 2023, p 9.

**2.11** Accordingly, the Commissioner asked the committee to consider how the Act could be amended to 'better equip' the Commissioner to detect and expose modern slavery.<sup>56</sup> In doing so, the Commissioner pointed to examples of other statutory officers, such as the NSW Building Commissioner, Children's Guardian, Small Business Commissioner and Ombudsman who have some detection and exposure powers as potential models for the committee to consider:

- the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020*, which gives the Building Commissioner the ability to inspect premises and gather information relating to building defects
- the *Children's Guardian Act 2019* gives the Children's Guardian powers to review an organisation's records and require the head of an organisation to answer questions and/or provide information as part of an investigation into a child safe organisation
- the *Small Business Commissioner Act 2013* gives the Small Business Commissioner some power to require information and records, require attendance and investigate, review, monitor and conciliate complaints
- the *Community Services (Complaints, Reviews and Monitoring) Act 1993* and *Ombudsman Act 1974* give the Ombudsman powers to require information and records, record evidence, enter a premises with a warrant, search and inspect premises, among other powers.<sup>57</sup>

**2.12** The Commissioner provided several examples of where additional powers may have assisted him, including:

- one instance where the Commissioner was not able to enter premises and speak with possible victim-survivors of modern slavery, which prevented him 'from potentially identifying and providing support for' those possible victims, after the Commissioner had 'received specific information suggesting possible indicators of forced labour'
- the Commissioner cannot require production of documents, which he says has limited his ability to 'monitor the effectiveness of governmental actions'.<sup>58</sup>

**2.13** The Commissioner therefore suggested the following possible amendments to 'strengthen the ability of the Commissioner to secure the objects of the Act' in relation to detection and exposure:

(1) where the Commissioner has reasonable grounds to believe that a modern slavery offence has occurred or may be occurring, to:

- (a) investigate that information with a view to detection and exposure, provision of assistance and support, or referral for criminal investigation of a modern slavery offence,
- (b) direct a person or organisation to provide specified reasonable assistance and cooperation,
- (c) require a person to provide information, records or copies,

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<sup>56</sup> Submission 8, NSW Anti-slavery Commissioner, p 29.

<sup>57</sup> Submission 8, NSW Anti-slavery Commissioner, p 26; Answers to questions on notice, Dr James Cockayne, NSW Anti-slavery Commissioner, 27 November 2023, pp 5-6.

<sup>58</sup> Answers to questions on notice, Dr Cockayne, p 6.

- (d) record evidence,
- (e) enter premises for the purpose of detecting and exposing a modern slavery offence,
- (f) search and inspect premises, and speak with any person on that premises,
- (g) speak with any person, and direct any person to answer questions,
- (h) seize things connected to a modern slavery offence.

(2) where an organisation refuses to cooperate with or provide specified reasonable assistance to the Anti-slavery Commissioner, as required under sub-section (1) or under section 14 of the Act, to:

- (a) invite the person to provide a written explanation of the basis for their non-cooperation within a reasonable time,
- (b) upon receipt of a written explanation under sub-section 2(a), consider that explanation and vary the Commissioner's request or direction for assistance, or repeat the request for cooperation or assistance without variation, and
- (c) in the event of continued non-cooperation or continued refusal of assistance, direct a person to comply with the request of the Commissioner.

(3) where the Commissioner has identified significant issues in a Government Sector Finance agency's operations, and the agency has failed to take reasonable steps to address those issues, to:

- (a) direct the agency to take specific steps to remediate those significant issues; and
- (b) in the event that the agency does not take those steps within a reasonable time, to refer the matter to the NSW Auditor-General.<sup>59</sup>

- 2.14** In addition to strengthening his powers, the Commissioner also suggested introducing a penalty for persons or organisations that do not comply with a direction of the Commissioner.<sup>60</sup>
- 2.15** In answers to questions on notice, the NSW Bar Association advised that it 'would have concerns if any additional inspection or information-gathering powers granted to the Anti-slavery Commissioner did not address' concerns around confidentiality and privacy rights.<sup>61</sup>
- 2.16** The Association elaborated that if the Commissioner were to be given investigatory or 'detection powers', then 'consideration needs to be given to how the Commissioner and his office would maintain the trust and relation with the victim-survivor'.<sup>62</sup> The Association's concerns about privacy and confidentiality are also discussed at 2.34-2.35.

<sup>59</sup> Answers to questions on notice, Dr Cockayne, pp 7-8.

<sup>60</sup> Answers to questions on notice, Dr Cockayne, p 8.

<sup>61</sup> Answers to questions on notice, NSW Bar Association, 29 November 2023, p 5.

<sup>62</sup> Answers to questions on notice, NSW Bar Association, pp 5-6.

***Establishment of a hotline***

- 2.17** Section 12(d) of the Act requires the Commissioner to establish and maintain a hotline (or utilise a hotline maintained by another person or body) for provision of advice and assistance to children and other persons who are, or may be, victims of modern slavery.<sup>63</sup> To-date, this hotline has not been established.<sup>64</sup>
- 2.18** The committee heard that the establishment of a hotline could be one mechanism to assist in the detection and exposure of modern slavery.
- 2.19** The Commissioner argued that the hotline will play a 'critical role in securing the objects of the Act,' and 'may also go some way to helping fill the detection and exposure gap, because it will make reporting easier'.<sup>65</sup>
- 2.20** Mr Ali Mojtahedi, representing the NSW Law Society told the committee the hotline would be a 'crucial tool in supporting victims, identifying modern slavery and encouraging collaborative action'.<sup>66</sup>
- 2.21** The Commissioner advised that his office is currently undertaking work to inform development of the hotline, such as establishing how it will be used by the public. The Commissioner said these considerations include the languages callers will speak, the age of callers and the types of modern slavery callers will have suffered, to inform the referral pathways that will be provided.<sup>67</sup>
- 2.22** However, the Commissioner also noted that no funding has been allocated to this project (discussed further at paragraphs 2.60-2.68).<sup>68</sup> The Commissioner stated that he is currently conducting 'scoping research' to inform the development of a business case and 'New Project Proposal' for the hotline, for consideration by the Government.<sup>69</sup>
- 2.23** Anti-Slavery Australia stated in their answers to supplementary questions that they also run a hotline where they receive referrals from other third parties, however that there is a 'distinction between an information and referral service such as that offered by LawAccess NSW and legal advice hotlines such as the type maintained by Anti-Slavery Australia'.<sup>70</sup>

**Cooperation and interaction with government and non-government stakeholders**

- 2.24** The committee heard evidence about the Commissioner's interaction with stakeholders from government and non-government agencies, in particular about the duty of those entities to cooperate with the Commissioner in relation to modern slavery issues.

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<sup>63</sup> *Modern Slavery Act 2018* s 12.

<sup>64</sup> Submission 8, NSW Anti-slavery Commissioner, p 24.

<sup>65</sup> Submission 8, NSW Anti-slavery Commissioner, pp 16, 24.

<sup>66</sup> Evidence, Mr Ali Mojtahedi, NSW Law Society, 30 October 2023, p 46.

<sup>67</sup> Evidence, Dr Cockayne, 30 October 2023, p 7.

<sup>68</sup> Submission 8, NSW Anti-slavery Commissioner, p 27.

<sup>69</sup> Submission 8, NSW Anti-slavery Commissioner, p 27.

<sup>70</sup> Answers to supplementary questions, Anti-Slavery Australia, 30 November 2023, p 3.

- 2.25** Turning first to the duty to cooperate, section 14 of the Act requires government agencies and 'persons and bodies that provide services to, or advocate for victims of modern slavery' to work in co-operation with the Commissioner in the exercise of their functions. The duty to co-operate includes:
- (a) the duty to disclose information that is likely to be of assistance to the Commissioner or an agency in the exercise of functions imposed on the Commissioner or agency with respect to modern slavery and victims of modern slavery,
  - (b) the duty to provide reasonable assistance and support to the Commissioner or an agency in connection with the exercise by the Commissioner or an agency of functions with respect to modern slavery and victims of modern slavery.<sup>71</sup>
- 2.26** The Commissioner stated that he sees an opportunity to 'mobilise government and non-government sector agencies' to better address modern slavery risks in their services through exercising his power under section 14.<sup>72</sup>
- 2.27** In his evidence, the Commissioner elaborated that section 14 plays a 'central role' in his functions and has been a significant source of collaboration with various government agencies, the Commissioner of Victims Rights, the Women's Safety Commissioner and the Ageing and Disability Commissioner, and non-government service providers including the Salvation Army, Australian Red Cross, and some universities.<sup>73</sup>
- 2.28** The Commissioner advised the committee that section 14 is used when a potential victim-survivor of modern slavery presents to his office, to 'open a conversation' with other actors to 'provide a fact base for effective cooperation' and 'gather information' to inform conversations with government and non-government agencies.<sup>74</sup>
- 2.29** Several stakeholders in the legal field reflected on the Commissioner's evidence about section 14. For example, Anti-Slavery Australia, an organisation which provides pro bono legal advice to victim-survivors of modern slavery, raised concerns with section 14.<sup>75</sup> Anti-Slavery Australia stated that privacy and confidentiality is an important part of its work, suggesting that the disclosure of information had the potential to risk confidentiality and the trust of its clients.<sup>76</sup> The organisation argued that section 14 does not give the Commissioner power to 'require the production of confidential information relevant to solicitor-client matters, nor information subject to legal professional privilege', and recommended that the section be repealed.<sup>77</sup>
- 2.30** In evidence, Professor Jennifer Burn, Director of Anti-Slavery Australia said that her organisation had received a letter from the Commissioner requesting confidential client information, on the basis of section 14.<sup>78</sup> Professor Burn expressed the view that there is uncertainty about the scope of section 14, but noted the Commissioner had clarified in his

<sup>71</sup> *Modern Slavery Act 2018* s 14.

<sup>72</sup> Submission 8, NSW Anti-slavery Commissioner, p 23.

<sup>73</sup> Evidence, Dr Cockayne, 30 October 2023, p 2.

<sup>74</sup> Evidence, Dr Cockayne, 30 October 2023, p 4.

<sup>75</sup> Submission 13, Anti-Slavery Australia, p 8.

<sup>76</sup> Submission 13, Anti-Slavery Australia, p 7.

<sup>77</sup> Submission 13, Anti-Slavery Australia, p 8.

<sup>78</sup> Evidence, Professor Jennifer Burn, Anti-Slavery Australia, 20 November 2023, p 2.

evidence to the committee that he does not believe the section gives the Commissioner power to request information subject to legal professional privilege.<sup>79</sup>

**2.31** The Commissioner responded to Anti-Slavery Australia's concerns in his evidence to the committee. He disagreed with their position, highlighting that section 14 only required 'reasonable' disclosure of information.<sup>80</sup> The Commissioner also stated that the section does not entitle the Commissioner 'to expect cooperation that is inconsistent with rights and privileges such as legal professional privilege', suggesting that the section should not be repealed.<sup>81</sup>

**2.32** In further correspondence to the committee, the Commissioner maintained that he does not believe amendments are required to section 14, but added that if the committee considered it necessary to clarify the scope of the provision, it could add a new section 14(6) to read as follows:

Nothing in this provision precludes existing rights and privileges, including legal professional privilege and public interest immunity.<sup>82</sup>

**2.33** The NSW Law Society, represented by Mr Ali Mojtahedi argued that the Commissioner's view that legal professional privilege applied to section 14 was likely to be correct, but the section still required clarity.<sup>83</sup> Mr Mojtahedi highlighted inconsistencies in the drafting of section 14 compared to section 35, which requires the Commissioner of Police to provide information to the Anti-slavery Commissioner.<sup>84</sup> Section 35(3)(d) provides an exception when information would 'contravene legal professional or client legal privilege'.<sup>85</sup> Mr Mojtahedi stated given the inconsistencies between sections 14 and 35, it would assist organisations for there to be clarity about what obligations section 14 creates and when those obligations do and do not apply.<sup>86</sup>

**2.34** Similarly, Mr Simeon Beckett, representing the NSW Bar Association, expressed the view that legal professional privilege applied to section 14 as it is a common law privilege 'which is not abrogated' by the section.<sup>87</sup> However, Mr Beckett believed section 14 could be clarified in light of the inconsistency with section 35.<sup>88</sup> Mr Beckett suggested that without clarifying its scope, the section may be seen to apply to information about counselling services to victim-survivors of modern slavery.<sup>89</sup>

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<sup>79</sup> Evidence, Professor Jennifer Burn, Anti-Slavery Australia, 20 November 2023, p 2. See also, Evidence, Dr Cockayne, 30 October 2023, pp 2-3.

<sup>80</sup> Evidence, Dr Cockayne, 30 October 2023, p 2.

<sup>81</sup> Evidence, Dr Cockayne, 30 October 2023, pp 2-3.

<sup>82</sup> Correspondence from Dr James Cockayne, NSW Anti-slavery Commissioner, to Chair providing additional information, 27 November 2023, p 2.

<sup>83</sup> Evidence, Mr Mojtahedi, 30 October 2023, p 49.

<sup>84</sup> Evidence, Mr Mojtahedi, 30 October 2023, p 49.

<sup>85</sup> *Modern Slavery Act 2018* s 35(3)(d).

<sup>86</sup> Evidence, Mr Mojtahedi, 30 October 2023, p 49.

<sup>87</sup> Evidence, Mr Simeon Beckett, NSW Bar Association, 30 October 2023, p 49.

<sup>88</sup> Evidence, Mr Beckett, p 49.

<sup>89</sup> Evidence, Mr Beckett, p 49.

- 2.35** The NSW Bar Association expanded on Mr Beckett's evidence, expressing concern that 'duty to cooperate provisions in the Act lack important privacy protections.'<sup>90</sup> The Association emphasised the importance that the duty to cooperate provisions 'do not become another factor that may dissuade or deter victim-survivors from seeking assistance'.<sup>91</sup>
- 2.36** In addition to the duty to cooperate, the Commissioner interacts with other government agencies. For example, he is required to 'regularly consult' with the NSW Auditor-General and NSW Procurement Board to monitor the effectiveness of due diligence procedures in place to ensure that goods and services procured by government agencies are not the product of modern slavery'.<sup>92</sup>
- 2.37** The Commissioner informed the committee about his interactions with Australian Government bodies such as the Fair Work Ombudsman with whom he has held formal meetings with since his appointment.<sup>93</sup> The Commissioner said his office is seeking to put in place information sharing arrangements with the Fair Work Ombudsman and the Australian Federal Police, but these have not progressed to date.<sup>94</sup>
- 2.38** The Commissioner also advised he has 'directed two matters' to the Fair Work Ombudsman, but to date, has not had any matters referred to him or information shared by Fair Work Australia.<sup>95</sup>

### **Education, training and raising community awareness**

- 2.39** A key part of the Commissioner's role is to 'provide advice, education and training on ways to prevent modern slavery taking place and to assist the victims of modern slavery'.<sup>96</sup>
- 2.40** In his submission, the Commissioner stated there is a 'continuing need for awareness-raising, education and training on modern slavery across New South Wales'.<sup>97</sup> The Commissioner quoted research his office commissioned, which found that:
- 72 per cent of surveyed people in NSW and Australia recognise that modern slavery exists
  - 65 per cent of people recognise that some business in Australia engage in modern slavery
  - three quarters of surveyed people believed human trafficking was the most reported modern slavery offence, when forced marriage is the most reported modern slavery offence.<sup>98</sup>

<sup>90</sup> Answers to questions on notice, NSW Bar Association, p 4.

<sup>91</sup> Answers to questions on notice, NSW Bar Association, p 5.

<sup>92</sup> *Modern Slavery Act 2018* s 25.

<sup>93</sup> Answers to questions on notice, Dr Cockayne, p 10.

<sup>94</sup> Answers to questions on notice, Dr Cockayne, p 11.

<sup>95</sup> Answers to questions on notice, Dr Cockayne, p 11.

<sup>96</sup> *Modern Slavery Act 2018* s 3.

<sup>97</sup> Submission 8, NSW Anti-slavery Commissioner, p vi.

<sup>98</sup> Submission 8, NSW Anti-slavery Commissioner, p 17.

- 2.41** The Commissioner referred the committee to his Annual Report 2022-23, which outlines various engagement activities he has undertaken including delivering keynote speeches, hosting roundtables, attending public meetings and online forums, conducting media interviews, and establishing social media channels and other publications.<sup>99</sup>
- 2.42** This section outlines the extent of training, guidance and education currently provided to government and non-government organisations, including frontline workers, the adequacy of those activities in combatting modern slavery and whether any additional activities should be conducted in future. This section also discusses evidence received regarding engagement with culturally and linguistically diverse communities.

***Training and guidance to government agencies, business and frontline organisations***

- 2.43** In his submission, the Commissioner stated that government agencies and other reporting entities had sought his advice on their reporting obligations and other statutory due diligence obligations.<sup>100</sup> The Commissioner told the committee that he plans to soon publish the *NSW Anti-slavery Commissioner's Guidance on Reasonable Steps to Manage Modern Slavery Risks in Operations and Supply-Chains* (Guidance) for public entities in New South Wales to ensure goods and services they procure are not the product of modern slavery.<sup>101</sup>
- 2.44** The Commissioner further advised he is working with Procurement NSW to introduce online training materials to support this Guidance.<sup>102</sup> In addition, the Commissioner advised that in 2024, he will publish 'a series of simple, short-form education and training resources' to support entities implementing the Guidance.<sup>103</sup>
- 2.45** The Bar Association noted development of the Guidance, and the development of a 'Shared Implementation Framework' by the Commissioner to support entities subject to new reporting obligations, as well as other tools, materials and infrastructure to support implementation of the Act.<sup>104</sup> The Association welcomed development of these resources, highlighting that they would assist with the Act's objectives.<sup>105</sup>

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<sup>99</sup> Evidence, Dr Cockayne, 30 October 2023, p 2; NSW Anti-Slavery Commissioner, *Foundations for Growth – NSW Anti-slavery Commissioner's Annual Report – Financial Year 2022-2023* (Annual Report, 2022-23), p 33.

<sup>100</sup> Submission 8, NSW Anti-slavery Commissioner, p 19.

<sup>101</sup> Evidence, Dr Cockayne, 30 October 2023, p 3.

<sup>102</sup> Correspondence from Dr Cockayne to Chair, 27 November 2023, p 2.

<sup>103</sup> Correspondence from Dr Cockayne to Chair, 27 November 2023, p 3.

<sup>104</sup> Submission 11, NSW Bar Association, p 4.

<sup>105</sup> Submission 11, NSW Bar Association, p 4.



- 2.46** The Commissioner also stated that there is a 'large appetite' for training on managing modern slavery risks in both the public and private sector, and that he has received various requests to provide such training from a 'growing ecosystem of service-providers, from large professional firms to small consultancies'.<sup>106</sup> The National Retail Association echoed the desire for education and guidance, encouraging the provision of education and guidance to business by the Commissioner.<sup>107</sup>
- 2.47** In particular, The Commissioner said that there was particular demand for training on modern slavery risks in 'renewable energy value-chains'.<sup>108</sup> He stated that he is currently developing a Code of Practice under section 27 of the Act to address modern slavery risks in this industry, given 'growing evidence of forced labour' in production of materials used in most solar panels and lithium-ion batteries.<sup>109</sup>
- 2.48** The NSW Bar Association welcomed the development of a Code of Practice for renewable energy value chains, noting the increased market for renewable energy as part of efforts to address climate change.<sup>110</sup> The Association also stated that codes of practice should be developed for other industries, including 'agriculture, manufacturing, hospitality, healthcare, mining and construction' in order to more fully meet the objectives of the Act.<sup>111</sup> NSW Treasury also supported the need for guidance on 'industry-specific risks'.<sup>112</sup>
- 2.49** NSW Treasury noted the Commissioner's scope to provide training but stated that the 'Commissioner's responsibilities do not specifically refer to education, training and guidance for identifying and addressing modern slavery risks in supply chains,' particularly for government agencies.<sup>113</sup> NSW Treasury stated it prefers the Commissioner be responsible for implementing 'mandatory training centrally, to ensure consistency across the government sector,' noting it had received feedback from agencies that training is required.<sup>114</sup>
- 2.50** In addition to training and guidance for government agencies and business, the committee heard that developing the capabilities of frontline workers to identify victim-survivors of modern slavery may assist in the detection and exposure of modern slavery cases.
- 2.51** The Commissioner referred to international research which showed that up to 87 per cent of sex trafficking victim-survivors present to a healthcare worker during their period of exploitation, but are 'rarely identified as experiencing modern slavery'.<sup>115</sup>

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<sup>106</sup> Evidence, Dr Cockayne, 30 October 2023, p vi.

<sup>107</sup> Submission 5, National Retail Association, p 9.

<sup>108</sup> Submission 8, NSW Anti-slavery Commissioner, p 19.

<sup>109</sup> Submission 8, NSW Anti-slavery Commissioner, p 19.

<sup>110</sup> Submission 11, NSW Bar Association, p 5.

<sup>111</sup> Submission 11, NSW Bar Association, p 5.

<sup>112</sup> Submission 16, Procurement NSW, p 2.

<sup>113</sup> Submission 16, Procurement NSW, p 2.

<sup>114</sup> Submission 16, Procurement NSW, p 2.

<sup>115</sup> Submission 8, NSW Anti-slavery Commissioner, pp 15-16.

- 2.52** According to the Commissioner's Annual Report 2022-23, frontline workers in criminal justice, healthcare, homelessness, disability, women's safety, family violence, child protection and other sectors have met with the Commissioner and advised him that they want additional 'resources and training to improve their ability to recognise and assess vulnerability to modern slavery and prevent victimisation'.<sup>116</sup>
- 2.53** Mr Paul McKnight, Deputy Secretary, Law Reform and Legal Services highlighted that there is capacity to build on the training offered to agencies on modern slavery risks across government.<sup>117</sup> The Commissioner included in his Annual Report a summary of existing modern slavery training provided by agencies.<sup>118</sup>
- 2.54** This followed an informal workshop that Commissioner led in December 2022 with health sector clinicians, researchers and advocates to discuss possible education and training that could be provided in addition to screening, referrals and public health responses to modern slavery, in addition to modern slavery risks in the health sector supply chains.<sup>119</sup>

***Awareness raising in culturally and linguistically diverse communities***

- 2.55** Finally, awareness raising in culturally and linguistically diverse communities emerged as a significant theme in education and training on modern slavery. The NSW Council for Civil Liberties stated that the objectives of the Commissioner's Strategic Plan to build prevention capacity, enable remedy, foster responsible business practices, change the narrative and develop a sense of community of purpose could be strengthened by ensuring information is provided to culturally and linguistically diverse communities in their languages.<sup>120</sup>
- 2.56** At the hearing, Ms Lydia Shelly, President of the NSW Council for Civil Liberties told the committee there 'should be greater engagement with respect to the communities that are most at risk'.<sup>121</sup> In addition, Past President Mr Stephen Blanks noted that engagement with communities should be done in a 'very sensitive way to ensure that it engages 'with all interests in the community' given that there may be cases where 'enslavers are within the communities of the enslaved'.<sup>122</sup>

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<sup>116</sup> NSW Anti-slavery Commissioner, *Foundations for Growth – NSW Anti-slavery Commissioner's Annual Report – Financial Year 2022-2023* (Annual Report, 2022-23), p 21.

<sup>117</sup> Evidence, Mr McKnight, 30 October 2023, p 12.

<sup>118</sup> NSW Anti-slavery Commissioner, *Foundations for Growth – NSW Anti-slavery Commissioner's Annual Report – Financial Year 2022-2023* (Annual Report, 2022-23), pp 40-41.

<sup>119</sup> NSW Anti-slavery Commissioner, *Foundations for Growth – NSW Anti-slavery Commissioner's Annual Report – Financial Year 2022-2023* (Annual Report, 2022-23), p 21.

<sup>120</sup> Submission 4, NSW Council for Civil Liberties, p 5.

<sup>121</sup> Evidence, Ms Lydia Shelly, NSW Council for Civil Liberties, 30 October 2023, p 32.

<sup>122</sup> Evidence, Mr Stephen Blanks, NSW Council for Civil Liberties, 30 October 2023, p 32.

- 2.57** The Commissioner advised that ensuring communications from his office are in multiple languages is 'critically important' and that some of the initial communications from his office included a public fact sheet had been made available in 19 languages.<sup>123</sup> The Commissioner also told the committee that the CEO of Multicultural NSW had joined his Advisory Panel to help draw on a 'rich array of cultural perspectives'.<sup>124</sup>
- 2.58** In his submission, the Commissioner stated that many victim-survivors have told him in the last year that 'they were threatened with loss of visa status and deportation, humiliation, or violence against themselves and their families if they reported their situation'.<sup>125</sup>
- 2.59** In answers to questions on notice, the Commissioner noted that: 'Many services exclude those who are not Australian citizens or permanent residents. This is especially problematic given the significant over-representation of those lacking long-term visas in the homeless population'.<sup>126</sup>

### **Funding and independence of the Anti-slavery Commissioner's office**

- 2.60** Another issue raised by stakeholders was whether the current funding and administrative arrangements for the Commissioner's office enable the Commissioner to fully deliver on his role under the Act. Ultimately, several stakeholders recommended changes to the funding and administration of the Commissioner's office to secure increased ongoing funding and enhance its independence.
- 2.61** With regard to the current funding and administrative arrangements, the Commissioner explained that section 7 of the Act establishes the independence of the Commissioner, specifying that he is not subject to the control and direction of the responsible Minister in relation to his functions.<sup>127</sup> However, the Commissioner advised that his office is currently resourced and budgeted through the DCJ.<sup>128</sup> The Commissioner stated that his office currently has 12 full-time equivalent positions supported by DCJ at Clerk Grade, and none at director-level apart from his position.<sup>129</sup>
- 2.62** The Commissioner further advised that DCJ had provided a 'small package' of operational support, totaling 'less than half a million dollars per year' for four years, covering travel, staff welfare, staff professional development and general administrative costs.<sup>130</sup> However, this funding does not cover projects the Commissioner is developing to achieve the objects of the Act, including the hotline, the digital public register, and reporting and monitoring infrastructure (described in detail earlier).<sup>131</sup>

<sup>123</sup> Evidence, Dr Cockayne, 30 October 2023, p 4.

<sup>124</sup> Evidence, Dr Cockayne, 30 October 2023, p 4.

<sup>125</sup> Submission 8, NSW Anti-slavery Commissioner, p 14.

<sup>126</sup> Answers to questions on notice, Dr Cockayne, p 14.

<sup>127</sup> Submission 8, NSW Anti-slavery Commissioner, p viii.

<sup>128</sup> Submission 8, NSW Anti-slavery Commissioner, p viii.

<sup>129</sup> Submission 8, NSW Anti-slavery Commissioner, p 13.

<sup>130</sup> Submission 8, NSW Anti-slavery Commissioner, p 27.

<sup>131</sup> Submission 8, NSW Anti-slavery Commissioner, p 27.

- 2.63** The Commissioner outlined that he has presented modelling to DCJ outlining a requirement for 30 staff within 3 years, depending on several factors including:
- the rate at which modern slavery victim-survivors present for assistance
  - staffing and data management for the hotline
  - monitoring and training needs of government agencies
  - awareness raising needs relating to the detection and exposure gap.<sup>132</sup>
- 2.64** The Commissioner explained that as his office is part of DCJ, his budget proposals to date have been considered in the budget process through that department, meaning that his proposals must compete with other departmental priorities.<sup>133</sup> He also highlighted that given he has no guaranteed access to Treasury or Cabinet Office officials, he has limited opportunities to advocate for the funding required to implement the key projects referred to above.<sup>134</sup>
- 2.65** The Commissioner also highlighted that while enjoys a cooperative relationship with DCJ, who have been helpful to him in establishing his office,<sup>135</sup> future Commissioners may not enjoy the same type of relationship, potentially putting their work at risk.<sup>136</sup>
- 2.66** Looking forward, the Commissioner asked that the committee consider whether the current 'discretionary arrangement best secures the policy objectives of the Act,' in particular maintaining the independence of the Commissioner as set out in section 7.<sup>137</sup> The Commissioner made two suggestions of how his office may be 'placed on a firmer statutory basis'.<sup>138</sup>
- 2.67** The first suggestion, which was also supported by the Australian Human Rights Commission and NSW Council for Civil Liberties, was the inclusion of the Commissioner's office as a 'Special Office' in the state budget papers and Appropriations Bill.<sup>139</sup> The Commissioner pointed to several independent statutory offices who have their own dedicated lines in the state budget papers.<sup>140</sup> He added that some of these bodies operate in a similar way to the Commissioner's office by, advocating across government for a 'vulnerable group,' such as the Office of the Children's Guardian, as well as playing a 'supervisory and monitoring role' like the Judicial Commission of New South Wales.<sup>141</sup>

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<sup>132</sup> Submission 8, NSW Anti-slavery Commissioner, p 27.

<sup>133</sup> Submission 8, NSW Anti-slavery Commissioner, p 28.

<sup>134</sup> Submission 8, NSW Anti-slavery Commissioner, p 28.

<sup>135</sup> Submission 8, NSW Anti-slavery Commissioner, p 27.

<sup>136</sup> Submission 8, NSW Anti-slavery Commissioner, p 27.

<sup>137</sup> Evidence, Dr Cockayne, 30 October 2023, p 3.

<sup>138</sup> Submission 8, NSW Anti-slavery Commissioner, p 27.

<sup>139</sup> Submission 8, NSW Anti-slavery Commissioner, p ix; Submission 6, Australian Human Rights Commission, p 2; Evidence, Ms Shelly, 30 October 2023, p 32.

<sup>140</sup> Submission 8, NSW Anti-slavery Commissioner, p 28.

<sup>141</sup> Submission 8, NSW Anti-slavery Commissioner, p 28.

- 2.68 The Commissioner's second suggestion was that his office could be given the ability to present budget proposals through the Attorney General to the Cabinet Office or Expenditure Review Committee of Cabinet, independently of DCJ.<sup>142</sup>

### **Tabling of the Commissioner's Annual Report**

- 2.69 The Commissioner is required to provide an annual report to the Presiding Officers of each House of Parliament in accordance with section 19(1) of the Act.
- 2.70 The committee received advice from Mr David Blunt AM, Clerk of the Parliaments and Ms Helen Minnican, Clerk of the Legislative Assembly that the Commissioner furnished an annual report for 2022-23 to the Presiding Officers on 16 October 2023, pursuant to section 19 of the Act, which provides:

#### **19 Annual and other reports to Parliament**

(1) The Commissioner is required to prepare, within the period of 4 months after 30 June in each year, a report of the Commissioner's operations during the year ended on that 30 June and furnish the report to the Minister. The report is to be furnished to the Presiding Officer of each House of Parliament within 14 sitting days after it is given to the Minister.

.....

(4) The Commissioner may, at any time, make a report on any particular issue or general matter relating to the Commissioner's functions and furnish the report to the Minister who is to furnish the report to the Presiding Officer of each House of Parliament.

(5) The Commissioner is to make a special report to the Minister on any particular issue or general matter requested by the Minister. The special report may be furnished by the Minister to the Presiding Officer of each House of Parliament.<sup>143</sup>

- 2.71 The Clerks confirmed that on this occasion, given the parliamentary sitting timetable, there was a period of four weeks from the date on which the Presiding Officers received the Anti-slavery Commissioner's annual report, until the tabling of the report when the Houses of Parliament resumed sittings on 21 November 2023.
- 2.72 Section 19(1) requires the annual report to be prepared by the Commissioner within 4 months of 30 June, that is by 31 October in each year. The report is initially furnished to the Minister and, subsequently, furnished to the Presiding Officers within 14 sitting (not calendar) days after receipt by the Minister. In effect, there was a month between receipt of the report by the Presiding Officers and its tabling in each House.

<sup>142</sup> Submission 8, NSW Anti-slavery Commissioner, p 28.

<sup>143</sup> *Modern Slavery Act 2018* s 19; Modern Slavery Committee, NSW Legislative Council, *Review of the Modern Slavery Act 2018* (2023) p 59.

- 2.73** This period results from the terms of the Act, which do not include any general reporting provisions for tabling direct to the Presiding Officers, and for the immediate tabling and publication of reports outside of the sittings, on the recommendation of the Commissioner. The Clerks noted that the specific reporting provisions applicable to the Commissioner differ in this respect from the general reporting provisions applicable to independent statutory officers, such as, the Ombudsman, Auditor-General and the Chief Commissioner of the Independent Commission Against Corruption. The Clerks further noted that the reporting provisions across relevant statutes can also vary according to the subject matter of the reports, for example investigation reports, non-compliance reports and annual reports.
- 2.74** According to the Clerks, there is no clear provision enabling the Presiding Officers to table and publish the annual report upon its receipt out of session of Parliament, other than by the Presiding Officers tabling the report on the next sitting day. The potential for delays in the publication of the annual report were evident on this instance.
- 2.75** The Clerks pointed to the development of the reporting provisions over time and amendments made to the original Modern Slavery Bill 2018. As introduced in the Legislative Council, the original Bill included provisions for the annual and other reports of the Commissioner and also contained general reporting provisions.
- 2.76** The relevant provisions of the Bill covering the specific types of reports by the Commissioner provided reporting direct to the Presiding Officers and not the Minister, as follows:

**Division 3 Reports by Commissioner**

19 Annual and other reports to Parliament

The Commissioner is required to prepare, within the period of 4 months after 30 June in each year, a report of the Commissioner's operations during the year ended on that 30 June and furnish the *report to the Presiding Officer* of each House of Parliament.<sup>144</sup>

- 2.77** The relevant general reporting provisions contained in the original bill, which applied to all reports by the Commissioner, were:

**20 Provisions relating to reports to Parliament**

(1) A copy of a report furnished to the Presiding Officer of a House of Parliament under this Part is to be laid before that House *within 15 sitting days of that House after it is received by the Presiding Officer*.

(2) The Commissioner may include in a report *a recommendation that the report be made public immediately*.

(3) If a report includes a recommendation by the Commissioner that the report be made public immediately, a Presiding Officer of a House of Parliament *may make it public whether or not that House is in session and whether or not the report has been laid before that House*.

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<sup>144</sup> Modern Slavery Bill 2018 s 19.

(4) If such a report is made public by a Presiding Officer of a House of Parliament before it is laid before that House, it attracts the same privileges and immunities *as if it had been laid before that House*.

(5) A Presiding Officer need not inquire whether all or any conditions precedent have been satisfied as regards a report purporting to have been made and furnished in accordance with this Act.<sup>145</sup>

**2.78** Similar general reporting provisions can be found in legislation governing some other statutory offices. Both the ability to report direct to the Presiding Officers and the general reporting provisions were removed from the bill, as passed by both Houses. The capacity to report direct to the Presiding Officers also was removed and the Commissioner is required to report to the Minister in the first instance, and then to the Presiding Officers, with the safety net of a maximum period of 14 days from the provision of the report to the Presiding Officers following the provision of the report to the Minister.

## Compliance and enforcement mechanisms

**2.79** Another key theme to emerge in this review was the importance of compliance and enforcement mechanisms available to the Commissioner and other office holders and bodies. In particular, stakeholders raised:

- reporting and auditing mechanisms
- the adequacy of modern slavery offences in the Act
- enforcement of modern slavery provisions in government contracts
- the impact of compliance on government agencies and businesses.

### Reporting and auditing mechanisms

**2.80** Stakeholders raised reporting and auditing as an important part of compliance and enforcement. In particular, the committee heard evidence about the Commissioner's forthcoming public register, ways to strengthen his powers in this regard, and the Auditor-General's powers to conduct modern slavery audits.

**2.81** Section 26 of the Act requires the Commissioner to maintain a public register that identifies:

- government agencies failing to comply with directions of the NSW Procurement Board, relating to goods and services that are the product of modern slavery
- state-owned corporations that have failed to provide the relevant Commonwealth Minister with a modern slavery statement under the *Modern Slavery Act 2018* (Cth) for a reporting period under that Act
- other information the Commissioner thinks appropriate.<sup>146</sup>

<sup>145</sup> Modern Slavery Bill 2018 s 20.

<sup>146</sup> *Modern Slavery Act 2018* s 26.

- 2.82** According to the Anti-slavery Commissioner, mandatory reporting of modern slavery risks by government agencies has only recently started occurring via the annual reporting process, with some entities not required to submit their first reports until early 2024.<sup>147</sup>
- 2.83** Several witnesses, including the Commissioner referred to the function of the public register as a 'name and shame' of non-complying entities,<sup>148</sup> but some witnesses expressed uncertainty about the effect of the public register as a deterrent to non-compliance.
- 2.84** For example, Dr Martijn Boersma, Director of the Modern Slavery Human Trafficking postgraduate programs at the University of Notre Dame Australia stated that reporting and compliance efforts are often 'treated as a box-ticking exercise, rather than an opportunity to take 'meaningful action' on modern slavery risks.<sup>149</sup>
- 2.85** Dr Boersma said that experiences in the UK and federal level in Australia showed that the market-based enforcement mechanisms implemented by those jurisdictions did not encourage compliance with reporting obligations.<sup>150</sup>
- 2.86** Instead, Dr Boersma suggested that a 'connected policy', which makes compliance with labour standards and adherence to a 'human rights due diligence framework' a more heavily weighted criterion in awarding government contracts to suppliers, would be a more effective mechanism.<sup>151</sup>
- 2.87** Dr Boersma proposed the recommendation that 'NSW Government bodies, councils and state-owned corporations should be encouraged to consider the range of exploitative practices that individuals may endure', recognising 'that the presence of "minor labour rights issues can serve as a catalyst for more severe abuses'.<sup>152</sup>
- 2.88** Ms Madeleine Bridgett, representing the NSW Bar Association highlighted that the public register is limited in the information it will display. Ms Bridgett explained that it will only show information about government agencies that do not comply with procurement directions, compared to the Australian Government's register of modern slavery statements which displays information on modern slavery risks submitted by all companies with under \$100 million annual turnover.<sup>153</sup>

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<sup>147</sup> Submission 8, NSW Anti-slavery Commissioner, p 19; Evidence, Dr Cockayne, 30 October 2023, pp 5-6.

<sup>148</sup> See, Evidence, Dr Cockayne, 30 October 2023, p 8; Evidence, Mr Beckett, 30 October 2023, p 51; Evidence, Ms Emma Cooper, Procurement NSW, 30 October 2023, p 21.

<sup>149</sup> Evidence, Dr Martijn Boersma, University of Notre Dame Australia, 30 October 2023, p 26.

<sup>150</sup> Evidence, Dr Boersma, 30 October 2023, p 25.

<sup>151</sup> Evidence, Dr Boersma, 30 October 2023, p 25.

<sup>152</sup> Submission 7, Dr Martijn Boersma, p 6.

<sup>153</sup> Evidence, Ms Madeleine Bridgett, NSW Bar Association, 30 October 2023, p 54.



- 2.89** Procurement NSW suggested in its submission that the Commissioner's enforcement capabilities could be strengthened by giving them powers to enforce their Strategic Plan or the current Commissioner's forthcoming guidance on 'reasonable steps' for government agencies to ensure that goods and services they procure are not the product of modern slavery.<sup>154</sup>
- 2.90** Ms Cooper expanded on this during evidence to the committee, noting that within the Act, compliance powers for procurement are tied to the Procurement Board's powers.<sup>155</sup> Ms Cooper suggested that there may be instances where stronger action, such as through a 'compliance power' is required by the Commissioner, rather than the Commissioner simply listing an entity on the public register.<sup>156</sup>
- 2.91** Ms Cooper also noted the Procurement Board is comprised of departmental secretaries and deputy secretaries across the New South Wales Government, meaning that certain directions made by the Procurement Board for action on modern slavery may be in effect, compelling themselves to comply with a direction.<sup>157</sup> She suggested it may be desirable for the Commissioner to have an independent power to compel actions to prevent modern slavery, thereby providing a clearer 'delineation of power' from the Procurement Board.<sup>158</sup>
- 2.92** Mr Song Hong, Executive Director of Procurement NSW added that the Commissioner is the appropriate 'independent person and body to be overseeing compliance'.<sup>159</sup>
- 2.93** In addition to the Commissioner's powers, the Commissioner noted the NSW Auditor-General has the power to conduct independent modern slavery audits.<sup>160</sup> However, the Commissioner stated that to his knowledge the Auditor-General had not yet exercised this function.<sup>161</sup>
- 2.94** The Auditor-General, Ms Margaret Crawford responded that as per section 38(G) of the *Government Sector Audit Act 1983* (GSA Act):
- risk-based modern slavery audits are to determine whether the audited agency is ensuring that the goods and services they procure are not the product of modern slavery.<sup>162</sup>

<sup>154</sup> Submission 16, Procurement NSW, p 3.

<sup>155</sup> Evidence, Ms Cooper, 30 October 2023, p 21.

<sup>156</sup> Evidence, Ms Cooper, 30 October 2023, p 21.

<sup>157</sup> Evidence, Ms Cooper, 30 October 2023, p 21.

<sup>158</sup> Evidence, Ms Cooper, 30 October 2023, p 21.

<sup>159</sup> Evidence, Mr Song Hong, Procurement NSW, 30 October 2023, p 21.

<sup>160</sup> Evidence, Dr Cockayne, 30 October 2023, p 4.

<sup>161</sup> Evidence, Dr Cockayne, 30 October 2023, p 7.

<sup>162</sup> Correspondence from Ms Margaret Crawford, NSW Auditor-General to Chair, 16 November 2023, p 1.

**2.95** Ms Crawford stated that when provisions enabling her to conduct modern slavery audits were added to the GSA Act, her office was not allocated resources to conduct this work.<sup>163</sup> Ms Crawford commented that she must 'prioritise efforts to ensure the best use of the finite resources'.<sup>164</sup> Ms Crawford said that as her work program is updated annually, her office will consider whether conducting a modern slavery audit is appropriate.<sup>165</sup>

### **Modern slavery offences**

**2.96** In his submission, the Commissioner noted that the Act designated several modern slavery offences, including making forced marriage of a child an offence and establishing 'other slavery and slavery-like offences' within the *Crimes Act 1900*.<sup>166</sup> Some of these offences include:

- causing sexual servitude (section 80D)
- conduct of business involving sexual servitude (section 80E)
- aggravated offence of using children for production of child abuse material (section 91G(3))
- slavery, servitude and child forced labour (section 93AB)
- child forced marriage (section 93AC)<sup>167</sup>

**2.97** The Commissioner stated that enforcement of modern slavery offences 'remains variable'.<sup>168</sup> The Commissioner also said that while significant resources have been dedicated to criminal behaviour involving child sexual abuse material, offences involving sexual servitude 'seem not to have been a significant focus of investigation or prosecution to date'.<sup>169</sup>

**2.98** The Commissioner told the committee that the NSW Police Force and Office of the Director of Public Prosecutions would best placed to answer specific questions about investigations and prosecution rates, but noted that modern slavery cases are 'extremely difficult to investigate' and that victim-survivors of modern slavery are 'often deliberately hidden from the sight of law enforcement'.<sup>170</sup> The Commissioner also told the committee that increased investigation and enforcement of these offences would require a policy decision to prioritise their enforcement.<sup>171</sup>

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<sup>163</sup> Correspondence from Ms Crawford to Chair, 16 November 2023, p 1.

<sup>164</sup> Correspondence from Ms Crawford to Chair, 16 November 2023, p 1.

<sup>165</sup> Correspondence from Ms Crawford to Chair, 16 November 2023, p 2.

<sup>166</sup> Submission 8, NSW Anti-slavery Commissioner, p 20.

<sup>167</sup> *Modern Slavery Act 2018* Sch 2.

<sup>168</sup> Submission 8, NSW Anti-slavery Commissioner, p 20.

<sup>169</sup> Submission 8, NSW Anti-slavery Commissioner, p 20.

<sup>170</sup> Evidence, Dr Cockayne, 30 October 2023, p 8.

<sup>171</sup> Evidence, Dr Cockayne, 30 October 2023, p 8.

- 2.99** The NSW Bar Association contended that investigation and prosecution of modern slavery offences 'is critical in ensuring that the objective of combatting modern slavery' is met.<sup>172</sup> Ms Bridgett representing the Association also stated that prosecutions are difficult to secure because of a lack of reporting of modern slavery offences, due to the possible risk of retaliation against victim-survivors.<sup>173</sup>
- 2.100** Several stakeholders suggested expanding modern slavery offences in the Act. Mr Beckett, representing the NSW Bar Association noted that schedule 2 of the Act, which sets out modern slavery offences, includes reference to offences under the Commonwealth Criminal Code which are classified as modern slavery offences.<sup>174</sup> Mr Beckett told the committee that consideration should be given to expanding this section to include references to modern slavery offences in other states and territories, particularly if offences have taken place across multiple jurisdictions.<sup>175</sup>
- 2.101** Mr Paul Green, Chairman of the SlaveCheck Foundation and former Member of the Legislative Council, argued that penalties for non-compliance with the Act should be re-introduced following their removal from the Act in the 2021 amendments.<sup>176</sup> Mr Green told the committee that he believed penalties, including imprisonment would be a significant factor in motivating compliance with the Act.<sup>177</sup>
- 2.102** The NSW Law Society expressed concern with the 2021 amendments, which repealed section 24 of the Act. This section required commercial organisations with an annual turnover of more than \$50 million to prepare modern slavery statements.<sup>178</sup> The Act also included a civic penalty of 'up to 10,000 penalty units' if a reporting entity failed to prepare a modern slavery statement or provided false information in its statement.<sup>179</sup>
- 2.103** The Law Society noted that the repeal of section 24 was motivated by the introduction of the Commonwealth Act, which required businesses with \$100 million or more in annual revenue to report on modern slavery risks.<sup>180</sup> The Law Society said that if the Australian Government does not amend the Commonwealth Act to reduce the reporting threshold to \$50 million, as recommended by a recent statutory review into that Act, then the NSW Government should reintroduce the reporting requirements for businesses in New South Wales with \$50 million or more annual turnover.<sup>181</sup>

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<sup>172</sup> Submission 11 NSW Bar Association, p 9.

<sup>173</sup> Evidence, Ms Bridgett, 30 October 2023, p 52.

<sup>174</sup> Evidence, Mr Beckett, p 53.

<sup>175</sup> Evidence, Mr Beckett, p 53.

<sup>176</sup> Evidence, Mr Paul Green, Chairman, The SlaveCheck Foundation, 30 October 2023, p 36.

<sup>177</sup> Evidence, Mr Green, 30 October 2023, p 36.

<sup>178</sup> Submission 3, NSW Law Society, p 3.

<sup>179</sup> Submission 3, NSW Law Society, p 3.

<sup>180</sup> Submission 3, NSW Law Society, p 3.

<sup>181</sup> Submission 3, NSW Law Society, p 4.

- 2.104** Project Paradigm stated that a specific offence for 'child sexual exploitation' should be inserted into schedule 2 of the Act.<sup>182</sup> Mr Conrad Townson, told the committee that his organisation was concerned about the omission of child sexual exploitation as a form of modern slavery within the Act, stating that it should be recognised 'within a wider continuum of exploitation, violence and abuse', consistent with how the United Nations views modern slavery.<sup>183</sup>

### **Enforcement of modern slavery provisions in contracts**

- 2.105** Some stakeholders referred to contractual provisions on modern slavery as another mechanism of enforcement.<sup>184</sup>
- 2.106** Mr Stephen Blanks, Past President of the NSW Council for Civil Liberties noted that under NSW Government service provider contracts, a standard modern slavery clause asks prospective service providers to confirm that they and any subcontractors they use have never been convicted of a modern slavery offence.<sup>185</sup>
- 2.107** Mr Blanks stated that for these contractual provisions to be 'workable', there should be a public register of entities and persons who have been convicted of modern slavery offences, particularly so that service providers can verify that any subcontractors they use have not been convicted of any such offences.<sup>186</sup> He also told the committee that service providers likely sign the contract, 'hoping that no issue ever arises' and that it is 'very difficult to assess' whether the inclusion of modern slavery clauses in government contracts with service providers have any 'practical impact'.<sup>187</sup>
- 2.108** Similarly, Procurement NSW advised that it was not aware of any instances reported to the NSW Procurement Board of contractual mechanisms being used to sanction an organisation or company for failing to comply with labour standards and modern slavery issues.<sup>188</sup>
- 2.109** The Commissioner said that his forthcoming Guidance will place 'emphasis' on the 'use of contractual mechanisms to address modern slavery risks'.<sup>189</sup> The Commissioner said this approach is reflected in the NSW Government's Model Contract Clauses relating to modern slavery, reflecting a 'shared responsibility approach'.<sup>190</sup>

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<sup>182</sup> Evidence, Mr Conrad Townson, Project Paradigm – Integrated Family and Youth Service, 30 October 2023, p 40.

<sup>183</sup> Evidence, Mr Townson, 30 October 2023, p 40.

<sup>184</sup> See for example, Evidence, Ms Cooper, 30 October 2023, p 18; Evidence, Mr Blanks, 30 October 2023, p 30.

<sup>185</sup> Evidence, Mr Blanks, 30 October 2023, p 30.

<sup>186</sup> Evidence, Mr Blanks, 30 October 2023, p 30.

<sup>187</sup> Evidence, Mr Blanks, 30 October 2023, p 30.

<sup>188</sup> Answers to questions on notice, Procurement NSW, 28 November 2023, p 1.

<sup>189</sup> Correspondence from Dr Cockayne to Chair, 27 November 2023, p 3.

<sup>190</sup> Correspondence from Dr Cockayne to Chair, 27 November 2023, p 3.

### Adequately resourcing compliance obligations

- 2.110** Finally, the committee heard evidence about the impact of compliance on government and business. The Commissioner stated that the committee should consider ways to 'ensure adequate resourcing for NSW government agencies to discharge their existing modern slavery due diligence, risk management and reporting obligations' under the Act.<sup>191</sup>
- 2.111** Procurement NSW noted that agencies may be employing dedicated modern slavery procurement officers and third party auditors, as well as introducing new digital systems and due diligence activities to ensure compliance with the Act.<sup>192</sup> Procurement NSW also highlighted that the NSW Government manages supply changes with comparable, and in some cases, larger modern slavery risks than large businesses.<sup>193</sup>
- 2.112** Procurement NSW said that the Commissioner's forthcoming Guidance on reasonable steps has the potential to create greater due diligence requirements for government agencies than is currently imposed on large businesses.<sup>194</sup> Procurement NSW noted that management of procurement risks by government agencies should be 'effectively balanced against primary service delivery, organisational priorities and other resourcing requirements'.<sup>195</sup>
- 2.113** In his submission to the inquiry, the NSW Small Business Commissioner said that although businesses are not directly required to report on modern slavery risks under the NSW Act, they may still be impacted by being asked to provide information to larger entities, such as government agencies.<sup>196</sup> The Commissioner noted that his office had issued guidance to small business on strategies they can implement to 'effectively mitigate risks and assist larger businesses they deal with as appropriate'.<sup>197</sup>
- 2.114** The Small Business Commissioner also stated that some small businesses experience additional compliance burdens, when different buyers request 'different and inconsistent information'.<sup>198</sup> The Small Business Commissioner stated that as large entities have greater negotiating power, they can impose requirements on small businesses without considering whether they are able to meet them.<sup>199</sup> According to the Small Business Commissioner, this may encourage larger entities to 'pass on' their responsibilities to small business, possibly being contrary to the intent of the policy.<sup>200</sup>

<sup>191</sup> Submission 8, NSW Anti-slavery Commissioner, p 29.

<sup>192</sup> Submission 16, Procurement NSW, p 3.

<sup>193</sup> Submission 16, Procurement NSW, p 3.

<sup>194</sup> Submission 16, Procurement NSW, p 3.

<sup>195</sup> Submission 16, Procurement NSW, p 3.

<sup>196</sup> Submission 9, NSW Small Business Commissioner, p 1.

<sup>197</sup> Submission 9, NSW Small Business Commissioner, p 1.

<sup>198</sup> Submission 9, NSW Small Business Commissioner, p 2.

<sup>199</sup> Submission 9, NSW Small Business Commissioner, p 2.

<sup>200</sup> Submission 9, NSW Small Business Commissioner, p 2.

- 2.115** In his evidence to the committee, the Anti-slavery Commissioner responded generally about concerns that the Act imposes a 'compliance burden', stating that the Act is a 'change mandate' designed to change the narrative around combatting modern slavery.<sup>201</sup> The Commissioner noted that as the Act is in its infancy, different stakeholders are still reacting to the steps they are required to take under the Act, and acknowledged there were a 'diversity of views' about its requirements.<sup>202</sup>

## Centring lived experience expertise

- 2.116** The committee heard from various stakeholders about the importance of centring those with lived experience expertise in the government's response to modern slavery.
- 2.117** In his submission, the Commissioner noted that one of the objects of the Act is 'to encourage collaborative action to combat modern slavery'.<sup>203</sup> The Commissioner stated that a 'key piece of this work will be encouraging the creation of safe, supported opportunities for centring lived experience at the heart of this anti-slavery community of purpose'.<sup>204</sup>
- 2.118** The Commissioner also noted that modern slavery is about 'denying people their full personhood – their agency and self-determination', and that responses to modern slavery 'must be focused on people, on restoring their agency and self-determination'.<sup>205</sup> The Commissioner provided examples of how his office has been centring lived experience expertise in their work, including through the establishment of a new Advisory Panel, comprised of over 20 per cent of people who have declared lived experience of modern slavery.<sup>206</sup>
- 2.119** The Commissioner also noted other collaborative bodies including the Trafficking Response Network and NSW Forced Marriage Network which are co-convened by the Australian Red Cross and Anti-Slavery Australia, in addition to the National Roundtable on Human Trafficking and Slavery.<sup>207</sup>
- 2.120** The Commissioner advised that there may be limited willingness among modern slavery survivors to provide feedback on service providers' offerings due to 'limited competition in the service-provision space'.<sup>208</sup> The Commissioner explained that that 'service-providers may be missing out on key user feedback that could help them design and deliver strengthened service offerings'.<sup>209</sup> The Commissioner said these dynamics contrast with other sectors, such as the domestic, family and sexual violence sector in which 'people with lived experience play a more prominent role in the development and delivery of policies, programmes and services'.<sup>210</sup>

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<sup>201</sup> Evidence, Dr Cockayne, 30 October 2023, p 7.

<sup>202</sup> Evidence, Dr Cockayne, 30 October 2023, p 7.

<sup>203</sup> Submission 8, NSW Anti-slavery Commissioner, p 17.

<sup>204</sup> Submission 8, NSW Anti-slavery Commissioner, p vi.

<sup>205</sup> Submission 8, NSW Anti-slavery Commissioner, p 17.

<sup>206</sup> Submission 8, NSW Anti-slavery Commissioner, p 17.

<sup>207</sup> Submission 8, NSW Anti-slavery Commissioner, p 17.

<sup>208</sup> Submission 8, NSW Anti-slavery Commissioner, p 18.

<sup>209</sup> Submission 8, NSW Anti-slavery Commissioner, p 18.

<sup>210</sup> Submission 8, NSW Anti-slavery Commissioner, p 18.

- 2.121** Expanding on his submission in evidence to the committee, the Commissioner noted that consulting people with lived experience expertise can be 'traumatising' for survivors.<sup>211</sup> However, he also said that consulting people with lived experience expertise is 'simply a question of good user design', and that effective policies 'should be based on close consultation with at a minimum and potentially co-designed with those that the policies are seeking to support and benefit'.<sup>212</sup>
- 2.122** Other stakeholders echoed the Commissioner's views, including the Freedom Hub, which submitted that 'survivors are the key stakeholder in Australia's modern slavery response, and their lived experience is vital for the evolution and accountability of Australia's policy response'.<sup>213</sup>
- 2.123** The Freedom Hub, an organisation that supports survivors of modern slavery, said that the Commissioner's Advisory Panel is a leading example of bringing people with lived experience together with academics and those with industry experience to collaborate on policy responses.<sup>214</sup> The Freedom Hub added that the 'NSW Government can further develop its collaboration with survivors by creating pathways for people who do not consent to publicly identify as a survivor of slavery'.<sup>215</sup> The organisation also said such an approach would 'allow opportunities for survivors' to engage in policy responses through 'writing or third parties to provide insights in a psychologically safe environment'.<sup>216</sup>
- 2.124** The Commissioner told the committee that despite the work his office is undertaking to involve those with lived experience expertise, this is at his discretion.<sup>217</sup> The Commissioner said that a suggestion to 'formalise' the participation of people with lived experience expertise in the work of his office, 'potentially in the functions of the commissioner ... is a very promising idea'.<sup>218</sup>
- 2.125** In response to a question on notice, the Commissioner made the following suggestions about how the Act could be amended to ensure appropriate opportunities are afforded to those with lived experience of modern slavery, and related expertise, in efforts to combat modern slavery:
- adding a new section 3(ba), as an Object of the Act: 'to promote, facilitate and support the participation of people with lived experience of modern slavery in efforts to combat modern slavery'
  - adding a new definition in section 5 of 'people with lived experience of modern slavery' to read: 'victims of modern slavery offences and those who have first-hand experience of, but are not the victims of, modern slavery offences'

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<sup>211</sup> Evidence, Dr Cockayne, 30 October 2023, p 6.

<sup>212</sup> Evidence, Dr Cockayne, 30 October 2023, p 6.

<sup>213</sup> Submission 10, The Freedom Hub, p 4. See also, Evidence, Ms Bridgett, 30 October 2023, p 51.

<sup>214</sup> Submission 10, The Freedom Hub, p 4.

<sup>215</sup> Submission 10, The Freedom Hub, p 4.

<sup>216</sup> Submission 10, The Freedom Hub, p 4.

<sup>217</sup> Evidence, Dr Cockayne, 30 October 2023, p 4.

<sup>218</sup> Evidence, Dr Cockayne, 30 October 2023, p 4.

- adding a new section 8A, 'Advisory Panel' to read:
  - (1) The Commissioner may appoint an Advisory Panel to provide advice and counsel to the Commissioner in the discharge of the Commissioner's functions.
  - (2) The Advisory Panel shall include both people with lived experience of modern slavery and other people with expertise and capabilities relevant to the discharge of the Commissioner's functions
- adding a new section 9(1)(ba) under 'General functions of the Commissioner' to read: 'to support the participation of diverse people with lived experience of modern slavery in efforts to combat modern slavery'
- Adding a new section 9(2)(ba) under 'General functions of the Commissioner' to read: 'the engagement with, and assistance and support to, people with lived experience of modern slavery'
- adding a new section 11(5)(c) stating that the Commissioner's Strategic Plan must address 'strategies for supporting the participation of people with lived experience of modern slavery in efforts to combat modern slavery'
- adding a new section 12(d) under the 'Commissioner's public awareness and advice functions generally' to read: 'to promote the participation of people with lived experience in the design, implementation and evaluation of laws, policies and actions to combat modern slavery'
- adding a new section 15(3) under 'Co-operation with other persons and organisations' to read: 'When possible, the Commissioner shall seek to work in co-operation with people with lived experience'
- adding a new section 19(2)(e) to state that the Commissioner's annual report must include 'a description of the Commissioner's co-operation and engagement with people with lived experience during that year'
- adding a new section 19(3)(d) to state that the Commissioner's annual report is to include a review of 'the extent to which, in taking action to combat modern slavery, the government of NSW has co-operated with people with lived experience of modern slavery'
- adding a new section 22(1)(c) under 'Functions of Committee' to read that a function of the committee is to 'promote the participation of people with lived experience of modern slavery in the deliberations of the Modern Slavery Committee'.<sup>219</sup>

## Victim-survivors' rights and support

- 2.126** Multiple stakeholders asked the committee to consider ways to better support victims of modern slavery. The committee heard that provisions in the *Victims Rights and Support Act 2013* have been ineffective and could be strengthened. Stakeholders also raised the impact that access

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<sup>219</sup> Answers to questions on notice, Dr Cockayne, pp 1-3.



to critical services such as healthcare and housing can have on whether victims are able to escape situations of modern slavery.

### **Amendments to the *Victims Rights and Support Act 2013***

- 2.127** The committee heard from two stakeholders regarding provisions in the *Victims Rights and Support Act 2013*, particularly as they relate to cases of modern slavery and the *Modern Slavery Act 2018*.
- 2.128** Anti-Slavery Australia explained section 19A of the *Victims Rights and Support Act 2013* operated to exclude several types of modern slavery, such as forced marriage, trafficking in persons, domestic trafficking in persons, trafficking in children, deceptive recruiting, debt bondage, and organ trafficking.<sup>220</sup> Anti-Slavery Australia argued that this presented a 'significant limitation on eligibility' for support or recognition payments and suggested the section be amended to increase eligibility.<sup>221</sup>
- 2.129** Anti-Slavery Australia further suggested that the definition of a 'victim of crime' in section 5(1) of the *Victims Rights and Support Act 2013* be amended to make specific reference to the definition of modern slavery in section 5 of the *Modern Slavery Act 2018*.<sup>222</sup>
- 2.130** Anti-Slavery Australia asserted that section 12 of the *Victims Rights and Support Act 2013* should be amended to provide for the Commissioner of Victims Rights to 'compel or request information relevant to the exercise of their functions' under that Act from Australian Government agencies to support financial payments to victims in relation to acts of modern slavery.<sup>223</sup> Anti-Slavery Australia advised that agencies, including the Australian Federal Police and the Commonwealth Director of Public Prosecutions should be included in section 3 of the *Victims Rights and Support Act 2013* as agencies the Commissioner of Victims Rights may seek information from.<sup>224</sup>
- 2.131** Next, Anti-Slavery Australia argued that a requirement under the *Victims Rights and Support Act 2013* for applicants to demonstrate 'injury' or 'harm' in order to access support or payments, 'constituted an unnecessary barrier to seeking justice for victim-survivors'. The organisation therefore recommended that the requirement be removed.<sup>225</sup>
- 2.132** Anti-Slavery Australia also recommended that amendments be made to section 40(1) of the *Victims Rights and Support Act 2013* which establishes that applications for financial support or recognition payments must be made within two years after an act of modern slavery, while applications for these payments related to acts of domestic violence, child abuse or sexual assault must be made within ten years.<sup>226</sup> Anti-Slavery Australia said that there might be various reasons why victim-survivors of modern slavery would be unable to seek a payment within that

<sup>220</sup> Submission 13, Anti-Slavery Australia, p 7.

<sup>221</sup> Submission 13, Anti-Slavery Australia, p 7.

<sup>222</sup> Submission 13, Anti-Slavery Australia, p 7.

<sup>223</sup> Submission 13, Anti-Slavery Australia, p 8.

<sup>224</sup> Submission 13, Anti-Slavery Australia, p 8.

<sup>225</sup> Submission 13, Anti-Slavery Australia, p 8.

<sup>226</sup> Submission 13, Anti-Slavery Australia, p 8.

timeframe, and recommended an exception be introduced to the limitation period for claims by victims of modern slavery.<sup>227</sup>

**2.133** Finally, Anti-Slavery Australia suggested amending section 42 to include a 'procedural fairness mechanism'.<sup>228</sup> The proposed amendment would be to allow applicants for support or recognition payments to be invited to provide further evidence or comments in support of their applicant when the Victims Services Commissioner is considering dismissing their application.<sup>229</sup>

**2.134** In its submission, the NSW Law Society commented that despite the *Modern Slavery Act 2018* making amendments to the *Victims Rights and Support Act 2013* to include statutory support for victims of modern slavery in New South Wales, these amendments have had 'limited practical impact for victim-survivors'.<sup>230</sup> The Law Society therefore suggested the establishment of a national compensation scheme for modern slavery victim-survivors.<sup>231</sup>

### **Access to critical services for victim-survivors of modern slavery**

**2.135** The committee heard from several stakeholders that access to critical services, particularly housing and healthcare can often impact on whether a victim of modern slavery can escape or seek to escape slavery conditions.<sup>232</sup>

**2.136** Mr Paul McKnight, Deputy Secretary, Law Reform and Legal Services at DCJ described the intersection between modern slavery and access to housing as an 'emerging issue' that was not 'front and centre' when the Act was passed, but would now need to be considered.<sup>233</sup> Mr Ali Mojtahedi, representing the NSW Law Society noted that victim-survivors of modern slavery would be unable to access public housing if they are not permanent residents or citizens, nor access Medicare if their visa conditions did not allow them to.<sup>234</sup>

**2.137** The Commissioner said modern slavery victim-survivors in New South Wales currently 'lack reliable, dedicated access to critical services, including housing and healthcare'.<sup>235</sup> The Commissioner advised that people with lived experience of modern slavery currently access support services in the following ways:

- public and private sector arrangements unrelated to their lived experience or status of modern slavery, for example domestic and family violence services, addiction, healthcare or homelessness services

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<sup>227</sup> Submission 13, Anti-Slavery Australia, p 8.

<sup>228</sup> Submission 13, Anti-Slavery Australia, p 8.

<sup>229</sup> Submission 13, Anti-Slavery Australia, p 8.

<sup>230</sup> Submission 3, NSW Law Society, p 2.

<sup>231</sup> Submission 3, NSW Law Society, p 2.

<sup>232</sup> See, for example Evidence, Mr McKnight, 30 October 2023, p 12; Evidence, Mr Mojtahedi, 30 October 2023, p 50, p 50; Evidence, Mr Beckett, p 51.

<sup>233</sup> Evidence, Mr McKnight, 30 October 2023, p 12.

<sup>234</sup> Evidence, Mr Mojtahedi, 30 October 2023, p 50.

<sup>235</sup> Answers to questions on notice, Dr Cockayne, p 11.

- a limited number of civil society organisations that provide support specifically for modern slavery victim-survivors but are limited in the places available, such as The Salvation Army and Talamunde Youth Service for housing, Anti-Slavery Australia for legal services and The Freedom Hub for recovery, training and employment services
- the Support for Trafficked People Program, funded by the Australian Government and delivered by the Australian Red Cross, which provides services such as case management support, medical treatment, accommodation payment support, referral to legal and migration advice and counselling
- the NSW Victims Support Scheme, under the *Victims Rights and Support Act 2013*, under which no payments have been made to date to anyone applying as a result of an act of modern slavery.<sup>236</sup>

**2.138** Based on more than 40 presentations by victim-survivors of modern slavery seeking support from the Commissioner, he also described access to housing as 'an absolutely critical factor in determining survivors' ability to exit and recover from modern slavery'.<sup>237</sup>

**2.139** The Commissioner also noted that New South Wales law and policy does not provide dedicated funding for support for people with lived experience of modern slavery, nor provide for them to be considered by the NSW Government or other providers in access to services such as accommodation, healthcare, or counselling.<sup>238</sup>

**2.140** The Commissioner therefore recommended the following amendments to the Act:

- amend section 3(b) of the Act, 'Objects of the Act' to read: '(b) to provide assistance and support for victims of modern slavery and people at risk of modern slavery, including access to accommodation, healthcare and essential services'
- amend section 9(1)(b) of the Act, 'General functions of the Commissioner' to read: '(b) to identify and provide assistance and support for victims of modern slavery and people at risk of modern slavery, in particular access to accommodation, healthcare and essential services'
- amend section 19(3) of the Act, 'Annual and other reports to Parliament', to state that the Commissioner's annual report is to include a review of:
  - (d) actions by the government of NSW during the year to ensure access for victims of modern slavery and those at risk of modern slavery to:
    - (i) safe, culturally-appropriate accommodation,
    - (ii) healthcare, and
    - (iii) other essential services.<sup>239</sup>

<sup>236</sup> Answers to questions on notice, Dr Cockayne, pp 11-12.

<sup>237</sup> Answers to questions on notice, Dr Cockayne, p 13.

<sup>238</sup> Answers to questions on notice, Dr Cockayne, p 12.

<sup>239</sup> Answers to questions on notice, Dr Cockayne, p 16.

## Cooperation and harmonisation between jurisdictions

- 2.141** The committee heard from some stakeholders about cooperation currently taking place between jurisdictions to combat modern slavery, particularly between the New South Wales and Australian governments and what this cooperation may look like in the future, once the Australian Government has appointed its own Anti-slavery Commissioner.
- 2.142** In his submission, the Commissioner noted that Australian Government's announcement that it will establish a federal Anti-slavery Commissioner will likely 'assist in raising the profile of modern slavery issues and general awareness', along with potential increased reporting and presentations to the NSW Anti-slavery Commissioner and the hotline he is developing.<sup>240</sup>
- 2.143** The Commissioner said that it is likely calls to the hotline will come from other states and territories in Australia, making cooperation with the federal Anti-slavery Commissioner particularly important.<sup>241</sup> The Commissioner added that while the appointment of a federal Commissioner 'may in time strengthen efforts to combat modern slavery,' it is possible in the short-term that the appointment may increase demand for support and assistance from survivors, as well as advice and training from organisations.<sup>242</sup>
- 2.144** The Commissioner said that he intends to co-operate with the federal Anti-slavery Commissioner under his general power of cooperation in section 15 of the Act, noting this section had been the basis for his engagement with other federal and overseas actors including the Australian Human Rights Commissioner, and US Ambassador-at-Large for Trafficking in Persons.<sup>243</sup>
- 2.145** The Commissioner said cooperation with the federal Anti-slavery Commissioner and other overseas actors is 'likely to take on increased importance in the years ahead'.<sup>244</sup> The Commissioner suggested amending the Act to make collaboration with other Australian and overseas actors as a specific function of the Commissioner in section 9. The Commissioner provided the following suggested wording for the function:
- to collaborate with any federal Anti-slavery Commissioner in Australia, and with other persons and bodies mandated by a government in Australia or overseas, or by an international organisation, to combat modern slavery.<sup>245</sup>
- 2.146** Ms Anne Sheehan, First Assistant Secretary, International and Human Rights Division at the Australian Attorney General's Department advised that her department is currently undertaking 'preparatory work for the establishment of the Federal Anti-slavery Commissioner'.<sup>246</sup> Ms

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<sup>240</sup> Submission 8, NSW Anti-slavery Commissioner, p 22.

<sup>241</sup> Submission 8, NSW Anti-slavery Commissioner, p 22.

<sup>242</sup> Submission 8, NSW Anti-slavery Commissioner, p 22.

<sup>243</sup> Submission 8, NSW Anti-slavery Commissioner, p 22.

<sup>244</sup> Submission 8, NSW Anti-slavery Commissioner, p 22.

<sup>245</sup> Submission 8, NSW Anti-slavery Commissioner, p 29; Answers to supplementary questions, Dr James Cockayne, NSW Anti-slavery Commissioner, 27 November 2023, p 2.

<sup>246</sup> Evidence, Ms Anne Sheehan, First Assistant Secretary, Attorney-General's Department, 30 October 2023, p 55.

Sheehan added however, that her department already engages closely with the NSW Anti-slavery Commissioner.<sup>247</sup>

## Further review of the Act

- 2.147** Multiple stakeholders argued that further reviews of the Act in future by the committee would be warranted. These stakeholders gave various suggestions on how the Act should be amended to provide for ongoing, periodic statutory reviews.
- 2.148** In his submission, the Commissioner noted that section 36 of the Act provides for the current statutory review to be held within two years of the commencement of the Act, but does not provide for periodic reviews of the Act.<sup>248</sup> The Commissioner considered that given rapid evolution in modern slavery risks and to help ensure the Act 'moves with the times', periodic legislated reviews of the Act should be held.<sup>249</sup>
- 2.149** The Commissioner suggested statutory reviews should be held once every four years, meaning at least one review is held in every term of Parliament.<sup>250</sup> The Commissioner explained that a review every four years would likely enable each successive Commissioner to have the opportunity to engage in at least one statutory review process.<sup>251</sup>
- 2.150** The NSW Bar Association noted the current review was taking place 'just over a year after the appointment of the Commissioner,' suggesting that there should be another review of the Act in two years time 'to assess more comprehensively whether the Act is meeting its policy objectives and whether the terms of the Act are appropriate'.<sup>252</sup>
- 2.151** Mr Paul McKnight, Deputy Secretary, Law Reform and Legal Services at DCJ said that while it was 'early days for the Act', the current review was a 'valuable exercise' to 'take stock of where the Act is up to now in its infancy'.<sup>253</sup> Mr McKnight said it was 'relatively rare' for an Act to have regular review mechanisms built into it, and that the 'normal pattern is for a single review'.<sup>254</sup> However, Mr McKnight suggested a possible point in time at which to conduct a further review might be towards the end of the timeframe of the Commissioner's first Strategic Plan in 2026.<sup>255</sup>

## Committee comment

- 2.152** Given the concerning statistics on the extent of modern slavery operating in the state, the *Modern Slavery Act 2018* is an important piece of legislation. Key components of the Act include the

<sup>247</sup> Evidence, Ms Sheehan, October 2023, p 55.

<sup>248</sup> Evidence, Dr Cockayne, 30 October 2023, p 28.

<sup>249</sup> Evidence, Dr Cockayne, 30 October 2023, p 28.

<sup>250</sup> Evidence, Dr Cockayne, 30 October 2023, p 28.

<sup>251</sup> Evidence, Dr Cockayne, 30 October 2023, p 28.

<sup>252</sup> Submission 11, NSW Bar Association, p 7.

<sup>253</sup> Submission 11, NSW Bar Association, p 7.

<sup>254</sup> Evidence, Mr McKnight, 30 October 2023, p 12.

<sup>255</sup> Evidence, Mr McKnight, 30 October 2023, p 12.

requirement for NSW Government agencies, local councils and state-owned corporations to report on how they are addressing modern slavery risks, and the creation of modern slavery offences.

- 2.153** The Act, to a large extent also provides for the role of the Anti-slavery Commissioner and the work of his office in combatting modern slavery. The committee strongly supports the work of the Commissioner and his office, and acknowledges his work to date in bringing to life the role of the Commissioner and implementing his functions under the Act. The committee also acknowledges the work of other key stakeholders in the field who are committed to supporting those with lived experience of modern slavery.
- 2.154** Nonetheless, like many inquiry participants, the committee is concerned that modern slavery remains undetected in New South Wales. In conducting this review, the committee considered whether the current Act is adequately addressing modern slavery risks and whether the Commissioner is effectively equipped to do so. While the committee strongly supports the Act and its objectives, the committee notes the evidence from various stakeholders about ways in which it can be enhanced in multiple areas such as detecting and exposing modern slavery, compliance and enforcement, support for victim-survivors and the role of the Anti-slavery Commissioner.
- 2.155** While the committee heard valuable evidence from government and non-government organisations playing a role in combatting modern slavery, a significant theme of the review was the importance of centring the expertise of people with lived experience in the response to modern slavery. To this end, the committee commends the Commissioner for the establishment of his own Advisory Panel, which comprises over 20 percent of people with declared lived experience of modern slavery to help guide him.
- 2.156** Ultimately, the committee is committed to consulting those who the Act is designed to support. While we had limited time available to conduct this consultation before finalising this report by the end of 2023, as required by the Act, we consider it vital to hear the views of people with lived experience expertise of modern slavery before recommending further changes to the Act. The committee therefore recommends that it continue to review the Act in the next six months specifically seeking evidence from people with lived experience expertise of modern slavery, before it makes further recommendations about changes to the Act. Once the committee receives evidence from people with lived experience expertise of modern slavery, it will consider their evidence and the evidence already received in this review to formulate recommendations.

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### **Finding 1**

That the committee needs to involve people with lived experience expertise in its review of the Act before making further recommendations, noting that this has not been possible given the requirement to complete the report within 24 months of the commencement of the Act.

### **Recommendation 1**

That the Modern Slavery Committee continue to review the *Modern Slavery Act 2018* in the next six months specifically seeking evidence from people with lived experience expertise and considering the evidence already received.

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- 2.157** However, the committee considers there to be a minor amendment to the Act that should be progressed. The committee heard that the Act does not explicitly provide for the Presiding Officers to table the Commissioner's annual or other reports out of session of Parliament, or otherwise make them public until the next sitting day after being furnished to the Presiding Officers. The committee considers that it is important that the Commissioner's reports be made publicly available as soon as is practicable after they are tabled, to ensure timely transparency and review by the Parliament of work undertaken to combat modern slavery.

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**Recommendation 2**

That the NSW Government seek to amend the *Modern Slavery Act 2018* to explicitly provide for the Anti-slavery Commissioner's annual and other reports to be tabled out of session or made publicly available immediately after being furnished to the Presiding Officers, as provided for in the original Modern Slavery Bill 2018.

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## Appendix 1 Submissions

No.	Author
1	Construction, Forestry, Maritime, Mining and Energy Union (CFMEU) NSW
2	Project Paradigm
3	The Law Society of New South Wales
4	New South Wales Council for Civil Liberties (NSWCCL)
5	National Retail Association
6	Australian Human Rights Commission (AHRC)
7	Dr Martijn Boersma
8	Office of the NSW Anti-slavery Commissioner
9	NSW Small Business Commissioner
10	The Freedom Hub Ltd.
11	New South Wales Bar Association
12	Confidential
13	Anti-Slavery Australia
14	The SlaveCheck Foundation Limited
15	Project Futures
16	NSW Treasury
17	Larissa Kaput



## Appendix 2 Witnesses at hearings

Date	Name	Position and Organisation
Monday 30 October 2023 Room 814 Parliament House, Sydney	Dr James Cockayne	NSW Anti-slavery Commissioner
	Mr Paul McKnight	Deputy Secretary, Law Reform and Legal Services, NSW Department of Communities and Justice
	Mr Mark Follett	Executive Director, Policy Reform and Legislation, NSW Department of Communities and Justice
	Mr Song Hong	Executive Director, Procurement NSW
	Ms Emma Cooper	A/Director, Procurement Policy, Procurement NSW
	Dr Martijn Boersma	Director, Modern Slavery and Human Trafficking postgraduate programs, University of Notre Dame Australia
	Ms Lydia Shelly	President, NSW Council for Civil Liberties
	Mr Stephen Blanks	Past President, NSW Council for Civil Liberties
	Mr Paul Green	Chairman, The SlaveCheck Foundation
	Mr Tim Murray	CEO, The SlaveCheck Foundation
	Mr Conrad Townson	Principal Advisor, Child Exploitation, Project Paradigm – Integrated Family and Youth Service
	Mr Tony Pignata	Managing Director, Integrated Family and Youth Service
	Mr Ali Mojtahedi	Chair, Law Society Human Rights Committee, Law Society of NSW
Mr Simeon Beckett SC	Chair, NSW Bar Association Human Rights Committee	

<b>Date</b>	<b>Name</b>	<b>Position and Organisation</b>
	Ms Madeleine Bridgett	Member, NSW Bar Association Human Rights Committee
	Ms Anne Sheehan <i>(via videoconference)</i>	First Assistant Secretary, International Law and Human Rights Division, Attorney-General's Department
	Ms Frances Finney PSM <i>(via videoconference)</i>	Assistant Secretary, Modern Slavery and Human Trafficking Branch, Attorney-General's Department
<b>Monday 20 November 2023 Macquarie Room Parliament House, Sydney</b>	Witness A	
	Witness B	
	Professor Jennifer Burn	Director, Anti-Slavery Australia
	Ms Sandeep Dhillon	Human Rights Practice Manager, Anti-Slavery Australia
	Ms Isobel McGarity	Lawyer, Anti-Slavery Australia

## Appendix 3 Minutes

### Minutes no. 1

Thursday, 3 August 2023

Joint Modern Slavery Committee

Room 1043, Parliament House, Sydney, 9.30 am

#### 1. Members present

Mrs Ayyad

Mr Borsak

Mr Donnelly

Dr Kaine

Ms Leong

Mrs MacDonald

Dr McGirr

Ms Wilkinson

#### 2. Tabling of resolution establishing the committee

The Committee Clerk tabled the resolution of the of 10 May 2023, establishing the committee, which reads as follows:

1. That under section 21 of the *Modern Slavery Act 2018*, a joint committee known as the Modern Slavery Committee be appointed.
2. That under section 23(1)(a) of the Act, the committee consist of four members of the Legislative Council comprising:
  - (a) two government members,
  - (b) one opposition member, and
  - (c) one crossbench member.
3. That a message be sent acquainting the Legislative Assembly of the resolution and requesting the Legislative Assembly to appoint four of its members to serve with the members of the Legislative Council on the committee.
4. In addition to the provisions of Schedule 1 to the Act, unless the committee decides otherwise:
  - (a) all inquiries are to be advertised via social media, stakeholder emails and a media release distributed to all media outlets in New South Wales,
  - (b) submissions to inquiries are to be published, subject to the Committee Clerk checking for confidentiality and adverse mention and, where those issues arise, bringing them to the attention of the committee for consideration,
  - (c) attachments to submissions are to remain confidential,
  - (d) the Chair's proposed witness list is to be circulated to provide members with an opportunity to amend the list, with the witness list agreed to by email, unless a member requests the Chair to convene a meeting to resolve any disagreement,
  - (e) the sequence of questions to be asked at hearings is to alternate between opposition, crossbench and government members, in that order, with equal time allocated to each,
  - (f) transcripts of evidence taken at public hearings are to be published,

- (g) supplementary questions are to be lodged with the Committee Clerk within two business days, following the receipt of the hearing transcript, with witnesses requested to return answers to questions on notice and supplementary questions within 21 calendar days of the date on which questions are forwarded to the witness,
- (h) answers to questions on notice and supplementary questions are to be published, subject to the Committee Clerk checking for confidentiality and adverse mention and, where those issues arise, bringing them to the attention of the committee for consideration, and
- (i) media statements on behalf of the committee are to be made only by the Chair.

### 3. **Election of the Chair**

The Committee Clerk called for nominations for the Chair.

Ms Leong moved: That Dr McGirr be elected Chair of the committee.

There being no further nominations the Clerk declared Dr McGirr the Chair.

### 4. **Election of Deputy Chair**

Dr McGirr took the Chair.

The Chair called for nominations for Deputy Chair.

Dr Kaine moved: That Ms Leong be elected Deputy Chair of the committee.

There being no further nominations, the Chair declared Ms Leong Deputy Chair.

### 5. **Briefing on the resolution establishing the committee and conduct of committee proceedings**

The secretariat briefed committee members on the resolution establishing the committee and conduct of committee proceedings.

### 6. **Conduct of committee proceedings**

The committee noted the Broadcast of Proceedings resolution (as amended by the Legislative Council on 19 October 2022), in particular the provisions relating to the filming, broadcasting, rebroadcasting and photography of committee proceedings, including:

4) That unless resolved otherwise by a committee, this House authorises:

(a) the filming, broadcasting and photography of members and witnesses in committee proceedings:

- (i) by representatives of media organisations, including from around the committee meeting table,
- (ii) by any member of the public, from the position of the audience, and

(b) the rebroadcasting of committee proceedings on the Legislative Council and Parliament's social media channels.

### 7. **Publication of minutes of the first meeting**

Resolved, on the motion of Mr Donnelly: That the committee publish the minutes of the first meeting on the committee's webpage, subject to the draft minutes being circulated to members.

### 8. **Correspondence**

Resolved, on the motion of Mr Donnelly: That the Chair write to Dr James Cockayne, Anti-slavery Commissioner, advising of the establishment and membership of the Joint Modern Slavery Committee and invite him to meet with the Committee and provide a briefing.

### 9. **Statutory review**

Resolved, on the motion of Mrs MacDonald: That the committee commence the statutory review in the *Modern Slavery Act 2018* and consider the timeline for review at the next meeting.

**10. Other business**

The committee discussed a potential inquiry to be formally considered at the next meeting, noting that it would commence after the statutory review.

**11. Adjournment**

The committee adjourned at 9.49 am, *sine die*.

Shaza Barbar

**Committee Clerk**

**Minutes no. 2**

Thursday 24 August 2023

Modern Slavery Committee

Room 1043, Parliament House, Sydney, 1.45 pm

**1. Members present**

Dr McGirr, *Chair*

Ms Leong, *Deputy Chair*

Mrs Ayyad (from 1.48 pm)

Mr Donnelly (until 1.58 pm)

Dr Kaine

Mrs MacDonald

Ms Wilkinson

**2. Previous minutes**

The committee noted the minutes of meeting no. 1 on 3 August 2023 were confirmed via email on 4 August 2023.

**3. Correspondence**

The committee noted the following items of correspondence:

***Received***

- 3 August 2023 – Letter from Dr James Cockayne, NSW Anti-slavery Commissioner offering to engage with the committee throughout the term of Parliament
- 8 August 2023 – Letter from Dr James Cockayne, NSW Anti-slavery Commissioner, confirming his attendance at this meeting to give the committee a private briefing
- 22 August 2023 - Letter from the Hon Dr Sarah Kaine MLC, Dr Joe McGirr MP and the Hon Aileen McDonald MLC requesting a meeting of the committee to consider a proposed self-reference into the Ethical Clothing Extended Responsibilities Scheme 2005 (NSW).

***Sent***

- 7 August 2023 – Letter from Chair, to Dr James Cockayne, NSW Anti-slavery Commissioner, advising him of the establishment and membership of the committee and inviting him to provide a private briefing to the committee.

**4. Briefing from NSW Anti-Slavery Commissioner**

Dr James Cockayne, NSW Anti-slavery Commissioner, accompanied by Tim O'Connor, Communications and Engagement Manager and Victoria Gordon, Senior Legal and Policy Officer, briefed the committee on the work of the Commissioner.

## 5. Conduct of the review of the *Modern Slavery Act 2018*

### 5.1 Proposed timeline

Resolved, on the motion of Dr Kaine: That the committee adopt the following timeline for the administration of the inquiry:

- Submissions close: 5 October 2023
- Hearing: October 2023
- Reporting: December 2023.

### 5.2 Stakeholder list

Resolved, on the motion of Ms Wilkinson: That the following stakeholders be invited to make a submission, with members to forward additional stakeholders to the secretariat by COB Monday 28 August 2023:

- Dr James Cockayne, NSW Anti-slavery Commissioner
- Office of the Director of Public Prosecutions
- Australian Human Rights Commission
- Auditor-General of NSW
- NSW Procurement Board
- Law Society of New South Wales
- NSW Bar Association
- Anti-Slavery Australia
- Be Slavery Free
- Australian Red Cross
- Australian Lawyers for Human Rights
- Women's Legal Service
- The Salvation Army
- Unions NSW
- Global Fund to End Modern Slavery
- Mr Paul Green, former member, NSW Legislative Council.

## 6. Inquiry into the Ethical Clothing Extended Responsibilities Scheme 2005 (NSW)

The Chair tabled a letter proposing the following terms of reference for an inquiry into the Ethical Clothing Extended Responsibilities Scheme 2005 (NSW):

1. That the Modern Slavery Committee inquire into and report on the Ethical Clothing Extended Responsibilities Scheme 2005 (NSW) (the Scheme) and its potential to mitigate the risks of modern slavery in the clothing manufacturing industry in New South Wales, and in particular:
  - a. the characteristics of the textiles, clothing and footwear (TCF) manufacturing industry in New South Wales, in particular:
    - i. the size of the TCF industry including numbers of outworkers
    - ii. the number of workers in the TCF industry and their employment status
    - iii. the demographic profile of workers in the TCF industry, including their gender, migration status, and the language spoken at home and in their workplace
    - iv. the lived experience of workers in the TCF industry
    - v. the nature and complexity of supply chains in the TCF industry
    - vi. the risks of modern slavery present in the TCF industry
    - vii. extent of participation by different parts of the TCF industry in alternative voluntary codes
    - viii. the nature and pattern of reporting of exploitation, abuse or modern slavery in the TCF industry

- b. the current application of the Scheme in New South Wales
- c. the conformance of the Scheme with Australia's commitment to relevant international standards and frameworks such as the UN Guiding Principles on Business and Human Rights and the OECD Due Diligence Guidance for Responsible Business Conduct
- d. if changes are required to the current scheme to better mitigate the risks of modern slavery in the TCF industry in New South Wales
- e. the enforceability of the Scheme in New South Wales, including methods for promoting compliance, such as incorporation by reference through exercise of the Anti-slavery Commissioner's power under section 27 of the *Modern Slavery Act 2018* (NSW)
- f. other industries that are vulnerable to the risks of modern slavery due to their supply chain characteristics, such as primary industries and construction, and the characteristics of those industries in New South Wales
- g. the merits of extending the Scheme to other industries that are vulnerable due to their supply chain characteristics to mitigate the risks of modern slavery
- h. any other related matter.

Resolved, on the motion of Dr Kaine: That the committee adopt the terms of reference.

## 7. Conduct of the inquiry Ethical Clothing Extended Responsibilities Scheme 2005 (NSW)

### 7.1 Commencement of the inquiry

Resolved, on the motion of Dr Kaine: That the committee commence the inquiry and call for submissions on 1 December 2023.

### 7.2 Closing date of the inquiry

Resolved, on the motion of Ms Leong: That the closing date for submissions be 29 February 2024.

### 7.3 Stakeholder list

Resolved, on the motion of Mrs MacDonald: That:

- the secretariat circulate to members closer to the commencement of the inquiry the Chair's proposed list of stakeholders to be invited to make a submission
- members have two days from when the Chair's proposed list is circulated to make amendments or nominate additional stakeholders
- the committee agree to the stakeholder list by email, unless a meeting of the committee is required to resolve any disagreement.

## 8. Briefing from the Department of Communities and Justice

Resolved, on the motion of Ms Leong: That the committee invite the Department of Communities and Justice to brief the committee on the operation of the *Modern Slavery Act 2018* prior to the public hearing on the review of the Act.

## 9. Adjournment

The committee adjourned at 2.45pm, *sine die*.

David Rodwell  
Committee Clerk

**Minutes no. 3**

Wednesday 5 September 2023

Modern Slavery Committee

Via videoconference, Parliament House, Sydney, 5.13 pm

**1. Members present**

Dr McGirr, *Chair*

Ms Leong, *Deputy Chair*

Mr Donnelly

Dr Kaine

Mrs MacDonald

Ms Wilkinson

**2. Apologies**

Mrs Ayyad

**3. Correspondence**

The committee noted the following items of correspondence:

***Received***

- 31 August 2023 – Invitation from Mr Jon Davies, Chief Executive, CPA UK for NSW Parliament to nominate delegates to attend its workshop, Strengthening Parliamentary Action to Address Modern Slavery and Human Trafficking in Supply Chains in Nairobi, Kenya between 14-16 November 2023.

***Sent***

- 30 August 2023 – Letter from Chair, to Mr Michael Tidball, Secretary, NSW Department of Communities and Justice (DCJ) inviting representatives of DCJ to brief the committee on the *Modern Slavery Act 2018*.

**4. Invitation to attend Commonwealth Parliamentary Association UK (CPA UK) – Strengthening Parliamentary Action to Address Modern Slavery and Human Trafficking in Supply Chains**

Resolved, on the motion of Mr Donnelly: That Dr McGirr and Ms Wilkinson be nominated to attend the three-day workshop between 14-16 November 2023 in Nairobi, Kenya.

**5. Adjournment**

The committee adjourned at 5.20 pm until 9.00 am Monday 11 September 2023 (briefing from the Department of Communities and Justice).

Shaza Barbar

**Committee Clerk**

**Minutes no. 4**

Monday 11 September 2023

Modern Slavery Committee

Room 1043, Parliament House, Sydney, 9.00 am

**1. Members present**

Dr McGirr, *Chair*

Ms Leong, *Deputy Chair*

Mr Borsak (until 9.35 am)

Mr Donnelly

Mrs MacDonald

Ms Wilkinson



**2. Apologies**

Mrs Ayyad  
Dr Kaine

**3. Previous minutes**

Resolved, on the motion of Mr Donnelly: That draft minutes nos. 2 and 3 are confirmed.

**4. Correspondence**

The committee noted the following item of correspondence:

***Received***

- 7 September 2023 – Mr Michael Tidball, Secretary, Department of Communities and Justice (DCJ) to the Chair, confirming departmental representatives to brief the committee.

**5. Review of the *Modern Slavery Act 2018*****5.1 Private briefing from DCJ**

Mr Paul McKnight, Deputy Secretary, Law Reform and Legal Services and Mr Mark Follett, Executive Director, Policy, Reform and Legislation, DCJ briefed the committee on the *Modern Slavery Act 2018* (NSW).

**5.2 Timeline of Australian Government response to the statutory review of the *Modern Slavery Act 2018* (Cth)**

Resolved, on the motion of Mrs MacDonald: That the Chair write to the Australian Government requesting a timeline of when it will respond to the recommendations of the statutory review into the *Modern Slavery Act 2018* (Cth) and the appointment of a Modern Slavery Commissioner.

**5.3 Background briefing**

Resolved, on the motion of Ms Wilkinson: That the committee request a background briefing paper from the research service to be provided to the committee by 16 October 2023 addressing the following issues:

- the operation of the *Modern Slavery Act 2018* (Cth) and how it compares to the NSW Act
- the changes that occurred between when the NSW Act was first passed in 2018, compared to the 2021 amendments
- issues/recommendations arising from the recent review of the Commonwealth Act, and possible relevance to the NSW Act.

**6. Adjournment**

The committee adjourned at 9.57 am until Monday 30 October 2023 (public hearing).

David Rodwell  
**Committee Clerk**

**Minutes no. 5**

Monday 30 October 2023  
Modern Slavery Committee  
Room 814, Parliament House, Sydney, 8.51 am

**1. Members present**

Dr McGirr, *Chair*  
Ms Leong, *Deputy Chair*  
Mrs Ayyad  
Mr Borsak (from 8.53 am)  
Dr Kaine (from 8.56 am)  
Mrs MacDonald  
Ms Wilkinson (via videoconference)

**2. Apologies**

Mr Donnelly

**3. Previous minutes**

Resolved, on the motion of Ms Leong: That draft minutes no. 4 be confirmed.

**4. Correspondence**

The committee noted the following items of correspondence:

***Received***

- 27 September 2023 – Letter from the Hon Mark Dreyfus KC MP, Attorney-General of Australia to the Chair, providing information about the Australian Government's response to the review of the *Modern Slavery Act 2018 (Cth)*
- 23 October 2023 – Email from Professor Rahat Munir, Macquarie Business School to the secretariat, providing an invitation to attend a CFO Forum Breakfast – Combating Modern Slavery Risks in the Supply Chain on Tuesday 14 November 2023
- 26 October 2023 – Email from Ms Brigid O'Connor, A/Director, Department of Communities and Justice to the committee, advising the committee of the release of a discussion paper for its review of NSW legal protections against forced marriage.

***Sent***

- 14 September 2023 – Letter from the Chair to the Hon Mark Dreyfus KC MP, Attorney-General of Australia, requesting information about the Australian Government's response to the review of the *Modern Slavery Act 2018 (Cth)*.

**5. Review of the *Modern Slavery Act 2018*****5.1 Parliamentary Research Service briefing paper**

The committee noted that on 13 October 2023, the secretariat circulated to the committee a briefing paper prepared by the Parliamentary Research Service addressing:

- The operation of the Commonwealth's Modern Slavery Act and how it compares to the NSW Act
- The changes that occurred between when the NSW Act was first passed in 2018, compared to the 2021 amendments
- Issues/recommendations arising from the recent review of the Commonwealth Act, and possible relevance to the NSW Act and review.

**5.2 Public submissions**

The committee noted the following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submission nos. 1-11 and 13-14.

Resolved, on the motion of Ms Leong: That the committee publish submission no. 16.

**5.3 Confidential submission**

Resolved, on the motion of Dr Kaine: That, as per Schedule 1, cl 7(1)(b) of the *Modern Slavery Act 2018* the committee keep submission no. 12 and attachment 2 to submission no. 8 confidential, as per the request of the authors.

**5.4 Sequence of questions**

Resolved, on the motion of Ms Leong: That the sequence of questions to be asked at hearings is to alternate between each member of the committee, with equal time allocated to each.

### 5.5 Evidence of Dr James Cockayne, NSW Anti-Slavery Commissioner

Resolved, on the motion of Dr Kaine: That the committee:

- extend the duration of Dr Cockayne's evidence at the hearing from 45 minutes to one hour
- reduce the duration of the Department of Communities and Justice's evidence at the hearing from 45 minutes to 30 minutes.

### 5.6 Briefing from the Clerk of the Parliaments

Resolved, on the motion of Ms Leong: That the committee invite the Clerk of the Parliaments to brief the committee on provisions in the *Modern Slavery Act 2018* relating to the tabling of the NSW Anti-Slavery Commissioner's Annual Report.

### 5.7 Public hearing

Witnesses and the public were admitted.

The Chair made an opening statement regarding parliamentary privilege and other matters.

The following witness was sworn and examined:

- Dr James Cockayne, NSW Anti-Slavery Commissioner

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Mr Paul McKnight, Deputy Secretary, Law Reform and Legal Services, NSW Department of Communities and Justice
- Mr Mark Follett, Executive Director, Policy Reform and Legislation, NSW Department of Communities and Justice.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Song Hong, Executive Director, Procurement NSW
- Ms Emma Cooper, A/Director, Procurement Policy, Procurement NSW.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Dr Martijn Boersma, Director, Modern Slavery and Human Trafficking postgraduate programs, University of Notre Dame Australia.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Ms Lydia Shelly, President, NSW Council for Civil Liberties
- Mr Stephen Blanks, Past President, NSW Council for Civil Liberties.

Mr Blanks tendered the following document:

- NSW Government contract modern slavery clauses.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Paul Green, Chairman, The SlaveCheck Foundation
- Mr Tim Murray, CEO, The SlaveCheck Foundation
- Mr Conrad Townson, Principal Advisor, Child Exploitation, Project Paradigm – Integrated Family and Youth Service
- Mr Tony Pignata, Managing Director, Integrated Family and Youth Service.

Mr Green tendered the following documents:

- Correspondence from Mr Kevin Hyland OBE to Mr Paul Green, regarding the SlaveCheck Solution
- SlaveCheck Foundation information sheet regarding modern slavery and SlaveCheck's Profit for Purpose Model
- Correspondence from Mr Paul Green, Chairman, The SlaveCheck Foundation, to the Hon Michael Daley MP, Attorney General regarding a Modern Slavery Innovation Pilot for NSW Government.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Ali Mojtahedi, Chair, Law Society Human Rights Committee, Law Society of NSW
- Mr Simeon Beckett SC, Chair, NSW Bar Association Human Rights Committee
- Ms Madeleine Bridgett, Member, NSW Bar Association Human Rights Committee.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Anne Sheehan, First Assistant Secretary, International Law and Human Rights Division, Attorney-General's Department (via videoconference)
- Ms Frances Finney PSM, Assistant Secretary, Modern Slavery and Human Trafficking Branch, Attorney-General's Department (via videoconference).

The evidence concluded and the witnesses withdrew.

The hearing concluded at 3.37 pm.

#### **5.8 Evidence relating to the NSW Auditor-General**

Resolved, on the motion of Dr Kaine: That the NSW Auditor-General be provided a copy of Dr Cockayne's evidence regarding the NSW Auditor-General's role under the *Modern Slavery Act 2018*, and be invited to provide a response to the committee.

#### **5.9 Tendered documents**

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

- Correspondence from Mr Kevin Hyland OBE to Mr Paul Green, regarding the SlaveCheck Solution, tendered by Mr Green
- SlaveCheck Foundation information sheet regarding modern slavery and SlaveCheck's Profit for Purpose Model, tendered by Mr Green.

Resolved, on the motion of Dr Kaine: That the committee accept and keep confidential the following document tendered during the public hearing:

- Correspondence from Mr Paul Green, Chairman, The SlaveCheck Foundation, to the Hon Michael Daley MP, Attorney General regarding a Modern Slavery Innovation Pilot for NSW Government, tendered by Mr Green.

Resolved, on the motion of Mr Borsak: That the committee accept and, subject to the advice of Mr Blanks, publish the following document tendered during the public hearing:

- NSW Government contract modern slavery clauses.

## **6. Adjournment**

The committee adjourned at 3.43 pm until 9.00 am, Monday 20 November 2023, NSW Parliament House, Sydney (public hearing).

David Rodwell  
Committee Clerk

**Minutes no. 6**

Monday 20 November 2023

Modern Slavery Committee

Macquarie Room, Parliament House, Sydney, 9.15 am

**1. Members present**Dr McGirr, *Chair*Ms Leong, *Deputy Chair*

Mrs Ayyad (via videoconference)

Mr Borsak

Dr Kaine (via videoconference)

Mrs MacDonald

Ms Wilkinson

**2. Apologies**

Mr Donnelly

**3. Previous minutes**

Resolved, on the motion of Mr Borsak: That draft minutes no. 5 be confirmed.

**4. Correspondence**

The committee noted the following items of correspondence:

***Received***

- 13 November 2023 – Email from Witness A, requesting that their organisation give *in camera* evidence to the committee at the hearing on 20 November 2023
- 15 November 2023 – Letter from Dr James Cockayne, NSW Anti-Slavery Commissioner to the Chair, confirming his attendance at a private briefing on 20 November 2023 and providing advice to the committee on facilitating the involvement of people with lived experience expertise in the review of the *Modern Slavery Act 2018*
- 16 November 2023 – Letter from Ms Margaret Crawford PSM, Auditor-General for New South Wales to the Chair, providing information about the Auditor-General's power to conduct modern slavery audits under the *Government Sector Audit Act 1983*.

***Sent***

- 7 November 2023 – Letter from the Chair to Dr James Cockayne, NSW Anti-Slavery Commissioner inviting him to a private briefing on 20 November 2023 with the committee about facilitating the involvement of people with lived experience expertise in the review of the *Modern Slavery Act 2018*
- 10 November 2023 – Letter from the Chair to Ms Margaret Crawford, NSW Auditor-General inviting her to respond to evidence given by the NSW Anti-Slavery Commissioner at the 30 October 2023 hearing.

**5. Review of the *Modern Slavery Act 2018*****5.1 Correspondence from the Auditor-General for New South Wales**

Resolved, on the motion of Ms Leong: That the committee publish the correspondence from the Auditor-General for New South Wales dated 16 November 2023 on the inquiry webpage, subject to the secretariat confirming with the Auditor-General's office that she has no concerns with the publication of her correspondence.

**5.2 Submissions**

The committee noted the following submission was published by the committee clerk under the authorisation of the resolution appointing the committee: submission no. 15.

### 5.3 Answers to questions on notice and supplementary questions

Resolved, on the motion of Ms Wilkinson: That:

- members be required to send supplementary questions to the secretariat within 24 hours of receiving the transcript of the 20 November 2023 hearing
- witnesses be required to respond to supplementary questions and questions on notice within 7 days of receiving them.

### 5.4 Sequence of questions

The committee noted that at its 30 October 2023 meeting, it resolved that the sequence of questions to be asked at hearings is to alternate between each member of the committee, with equal time allocated to each.

### 5.5 *In camera* hearing

Resolved, on the motion of Mrs MacDonald: That, as per Schedule 1, cl 7(1)(a) of the *Modern Slavery Act 2018*, the committee receive evidence from Witness A and Witness B *in camera*.

Resolved, on the motion of Ms Leong: That a support person for Witness A and Witness B be permitted to observe the *in camera* hearing.

The Chair made an opening statement regarding the *in camera* hearing and other matters.

The committee proceeded to take *in camera* evidence.

The following witnesses were sworn and examined:

- Witness A
- Witness B.

The evidence concluded and the witnesses withdrew.

Persons present other than the committee: Shaza Barbar, David Rodwell, Faith Aghahowa, Andrew Ratchford, James Ryan, Jessica Feenstra, Catherine Blake, Han Seokhoon and Paul Hoad.

### 5.6 Public hearing

Witnesses, the public and media were admitted at 10.02 am.

The Chair made an opening statement regarding parliamentary privilege and other matters.

The following witnesses were sworn and examined:

- Professor Jennifer Burn, Director, Anti-Slavery Australia
- Ms Sandeep Dhillon, Human Rights Practice Manager, Anti-Slavery Australia
- Ms Isobel McGarity, Lawyer, Anti-Slavery Australia.

The evidence concluded and the witnesses withdrew.

### 5.7 Tendered documents

Resolved, on the motion of Ms Leong: That the committee accept and keep confidential a document tendered by Witness A and Witness B during the *in camera* hearing, as per Schedule 1, cl 7(1)(a) of the *Modern Slavery Act 2018*.

### 5.8 Private briefing from the NSW Anti-Slavery Commissioner

Dr James Cockayne, NSW Anti-Slavery Commissioner, accompanied by Ms Sarah Shricker, Lived Experience Practice Lead in the Office of the Commissioner, briefed the committee on ways the committee may engage with people with lived experience expertise.

### 5.9 Facilitating participation of people with lived experience expertise in review of the *Modern Slavery Act 2018*

The committee discussed ways that it may engage with people with lived experience expertise in future.

### 5.10 Private briefing from the Clerks – Tabling of the Anti-Slavery Commissioner's Annual Report

Mr David Blunt AM, Clerk of the Parliaments and Ms Helen Minnican, Clerk of the Legislative Assembly briefed the committee on legislative provisions in the *Modern Slavery Act 2018* relating to the tabling of the NSW Anti-Slavery Commissioner's Annual Report.

## 6. Adjournment

The committee adjourned at 12.24 pm until 10.00 am, Thursday 14 December 2023, Room 1043, Parliament House (report deliberative).

David Rodwell  
Committee Clerk

## Draft minutes no. 7

Thursday 14 December 2023

Modern Slavery Committee

Room 1043, Parliament House, Sydney at 10.00 am

### 1. Members present

Dr McGirr, *Chair*

Ms Leong, *Deputy Chair* (from 10.05 am)

Mrs Ayyad (from 10.02 am)

Mr Borsak (from 10.01 am)

Mr Donnelly

Dr Kaine

Mrs MacDonald

Ms Wilkinson (via videoconference)

### 2. Previous minutes

Resolved, on the motion of Mrs MacDonald: That draft minutes no. 6 are confirmed.

### 3. Correspondence

The committee noted the following items of correspondence:

#### *Received*

- 21 November 2023 – Email from Ms Vanessa Gill, Executive Officer, Office of the NSW Auditor-General, advising there are no concerns with the Auditor-General's correspondence dated 16 November 2023 being published by the committee
- 27 November 2023 – Letter from Dr James Cockayne, NSW Anti-Slavery Commissioner to the Chair, seeking to clarify his evidence given during the public hearing on 30 October 2023 and providing additional information to that evidence
- 30 November 2023 – Email from Professor Jennifer Burn, Director, Anti-slavery Australia to the secretariat seeking to clarify her evidence given during the public hearing on 20 November 2023.

Resolved, on the motion of Mrs MacDonald: That the committee authorise:

- the publication of the email from Professor Jennifer Burn, Director, Anti-slavery Australia, received 30 November 2023, providing clarification to her evidence given at the public hearing on 20 November 2023
- the insertion of a footnote at the relevant point in the transcript of 20 November 2023 noting that correspondence clarifying the evidence had been received and providing a hyperlink to the published correspondence.

Resolved, on the motion of Mrs MacDonald: That the committee:

- note that Dr James Cockayne, NSW Anti-Slavery Commissioner's letter received 27 November 2023 providing clarification to his evidence given at the public hearing on 30 October 2023, has been published on the committee's webpage, as agreed by the committee via email
- authorise the insertion of a footnote at the relevant point in the transcript of 30 October 2023 noting that correspondence clarifying the evidence had been received and providing a hyperlink to the published correspondence.

#### 4. Review of the *Modern Slavery Act 2018*

##### 4.1 Answers to questions on notice and supplementary questions

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

- Answers to questions on notice from Project Paradigm, received 21 November 2023
- Answers to question on notice from NSW Law Society, received 24 November 2023
- Answers to questions on notice and supplementary questions, and additional information from Dr James Cockayne, NSW Anti-Slavery Commissioner, received 27 November 2023
- Answers to questions on notice from the Department of Communities and Justice, received 27 November 2023
- Answers to questions on notice and supplementary questions, and additional information from The SlaveCheck Foundation, received 27 November 2023
- Answers to questions on notice and supplementary questions from Procurement NSW, received 28 November 2023
- Answers to questions on notice and additional information from NSW Bar Association, received 29 November 2023
- Answers to questions on notice and supplementary questions from Anti-Slavery Australia, received 30 November 2023
- Answers to questions on notice from Dr Martijn Boersma, Director, Modern Slavery and Human Trafficking postgraduate programs, University of Notre Dame Australia, received 4 December 2023, excluding journal articles provided by Dr Boersma which are already publicly available.

Resolved, on the motion of Dr Kaine: as per Schedule 1, cl 7(1)(b) of the *Modern Slavery Act 2018*, the committee keep confidential the responses to supplementary questions from Witness A.

##### 4.2 Public submission

The committee noted that submission no. 17 was published by the committee clerk under the authorisation of the resolution appointing the committee.

##### 4.3 Consideration of Chair's draft report

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

Resolved, on the motion of Mr Donnelly: That paragraph 1.23 be amended by inserting at the end: 'However, while the Modern Slavery Bill 2018 received royal assent, it was not proclaimed. Accordingly, the legislation did not commence operation.'

Resolved, on the motion of Ms Leong: That the following new paragraph be inserted after paragraph 1.23: 'The *Modern Slavery Act 2018* (NSW) did not come into force until 1 January 2022 following amendments made in 2021.'

Resolved, on the motion of Ms Leong: That the following new paragraph be inserted before paragraph 2.1:

'In the Anti-slavery Commissioner's evidence he stated that modern slavery remains dangerously undetected and unexposed in NSW, with only around 120 to 230 cases out of a possible 16,400 cases



being reported each year, and there is reason to believe that 80 to 98 per cent of victim-survivors in NSW may remain unidentified, unassisted and unsupported.'

Resolved, on the motion of Ms Leong: That paragraph 2.4 be amended by:

- (a) omitting 'and not believing that coming forward is an option' after 'retraumatisation'
- (b) inserting 'or' before 'retraumatisation'.

Resolved, on the motion of Ms Leong: That the following new paragraph be inserted after paragraph 2.4:

'It should be noted that the Law Society of NSW expressed concern in their submission that "victim survivors are still being directed into the criminal justice system as an initial response" and that "on the NSW Anti-slavery Commissioner's website, the links to help and support are to the email of the Office of the NSW Anti-Slavery Commissioner and the Australian Federal Police only".'

[FOOTNOTE: Submission 3, Law Society of NSW, p 2.]

Resolved, on the motion of Ms Leong: That paragraph 2.6 be amended by inserting 'in part due to the role's lack of investigative powers' after 'he has little practical ability'.

Resolved, on the motion of Ms Leong: That the following new paragraph be inserted before paragraph 2.15:

'S 12(d) requires the Commissioner to establish and maintain a hotline (or utilise a hotline maintained by another person or body) for provision of advice and assistance to children and other persons who are, or may be, victims of modern slavery. To-date, this hotline has not been established.'

[FOOTNOTE: *Modern Slavery Act 2018* s 12.]

Resolved, on the motion of Ms Leong: That the following new paragraph be inserted after paragraph 2.19:

'Anti-Slavery Australia stated in their answers to supplementary questions that they also run a hotline where they receive referrals from other third parties – however that there is a "distinction between an information and referral service such as that offered by LawAccess NSW and legal advice hotlines such as the type maintained by Anti-Slavery Australia".'

[FOOTNOTE: Answers to supplementary questions, Anti-Slavery Australia, p 3.]

Resolved, on the motion of Ms Leong: That the following new paragraphs be inserted after paragraph 2.53 using direct quotes from the Anti-slavery Commissioner's evidence:

'The Commissioner's evidence also stated that many victim-survivors have told him in the last year they were threatened with loss of visa status and deportation, humiliation, or violence against themselves and their families if they reported their situation.

Many services exclude those who are not Australian citizens or permanent residents – made especially problematic given the over-representation of those lacking long-term visas in the homeless population.'

[FOOTNOTE: Submission 8, NSW Anti-slavery Commissioner, p 14; Answers to questions on notice, Dr James Cockayne, NSW Anti-slavery Commissioner, p 14.]

Resolved, on the motion of Ms Leong: That the following paragraph be inserted after paragraph 2.80 using direct quotes from Dr Martijn Boersma's evidence:

'Dr Boersma proposed the recommendation that NSW government bodies, councils and state-owned corporations should be encouraged to consider the range of exploitative practices that individual may ensure, recognising that the presence of "minor" labor rights issues can serve as a catalyst for more severe abuses'.

[FOOTNOTE: Evidence, Dr Martijn Boersma, University of Notre Dame, 30 October 2023, p 24.]

Resolved, on the motion of Ms Leong: That the heading before paragraph 2.103 be amended by omitting 'Compliance burden' and inserting instead 'Adequately resourcing compliance obligations'.

Resolved, on the motion of Ms Leong: That the heading before paragraph 2.109 be amended by omitting 'Centring lived experience voices' and inserting instead 'Centring lived experience expertise'.

Resolved, on the motion of Ms Leong: That paragraph 2.114 be omitted: 'Expanding on his submission in evidence to the committee, the Commissioner said that consulting people with lived experience expertise is "simply a question of good user design", and that effective policies 'should be based on close consultation with at a minimum and potentially co-designed with those that the policies are seeking to support and benefit.' The Commissioner noted however, this can be traumatising for survivors,' and the following new paragraph be inserted instead using direct quotes from the Anti-slavery Commissioner's evidence:

'Expanding on his submission in evidence to the committee, the Commissioner noted that consulting people with lived experience expertise can be traumatising for survivors. However, he also said that consulting people with lived experience expertise is 'simply a question of good user design', and that effective policies 'should be based on close consultation with at a minimum and potentially co-designed with those that the policies are seeking to support and benefit.'

Resolved, on the motion of Ms Leong: That the heading before paragraph 2.119 be amended by omitting 'Victims' rights and support' and inserting 'Victim-survivors' rights and support'.

Resolved, on the motion of Ms Leong: That paragraph 2.125 be amended by omitting 'various reasons why victims' and inserting 'various reasons why victim-survivors'.

Resolved, on the motion of Ms Leong: That the heading before paragraph 2.128 be amended by omitting 'Access to critical services for victims of modern slavery' and inserting instead 'Access to critical services for victim-survivors of modern slavery'.

Resolved, on the motion of Ms Leong: That paragraphs 1.7, 2.2, 2.4, 2.10, 2.24, 2.25, 2.30, 2.46, 2.47, 2.57, 2.91, 2.92, 2.129, 2.130 and 2.131 be amended by omitting 'victims' and inserting instead 'victim-survivors'.

Resolved, on the motion of Ms Leong: That the introductory paragraph to Chapter 2 and paragraphs 2.109 and 2.117 be amended by omitting 'the voices of' before 'people with lived experience expertise' or 'those with lived experience expertise'.

Resolved, on the motion of Ms Leong: That paragraph 2.148 be amended by omitting 'the voices of people with lived experience' and inserting instead 'the expertise of people with lived experience'.

Resolved, on the motion of Dr Kaine: That the following new finding be inserted after paragraph 2.149:

**'Finding X**

That the committee needs to involve people with lived experience expertise in its review of the Act before making further recommendations, noting that this has not been possible given the requirement to complete the report within 24 months of the commencement of the Act.'

Resolved, on the motion of Mrs Ayyad: That Recommendation 1 be amended by:

- a. omitting 'That the Modern Slavery Committee commence a second review of the *Modern Slavery Act 2018*' and inserting 'That the Modern Slavery Committee continue to review the *Modern Slavery Act 2018*'
- b. omitting 'that specifically seeks' after 'the next six months' and inserting 'specifically seeking'
- c. omitting 'considers the evidence received in the first review' and inserting 'considering the evidence already received.'

Resolved, on the motion of Mrs MacDonald: That:

The draft report, as amended, be the report of the committee and that the committee present the report to both Houses of Parliament;

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 Legislative Council 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;

The secretariat is tabling the report on 19 December 2023;

The Chair to advise the secretariat and members if they intend to hold a press conference, and if so, the date and time.

#### **4.4 Take Note debate**

Resolved, on the motion of Mr Borsak: That when the committee's report has been tabled, Mrs MacDonald move a motion in the Legislative Council under Standing Order 239 for a Take Note debate on the report.

#### **4.5 Anti-slavery Commissioner's response to the committee's report**

Resolved, on the motion of Dr Kaine: That the Chair write to the Anti-slavery Commissioner inviting him to respond to the committee's report by the end of February 2024.

### **5. Commonwealth Parliamentary Association UK workshop – *Modern Slavery in Supply Chains***

The Chair, Deputy Chair and Mr Alex Stedman, Director, Legislative Council Committees briefed the committee on the Commonwealth Parliamentary Association UK workshop they attended in Nairobi, Kenya from 14-16 November 2023.

### **6. Adjournment**

The committee adjourned at 12.01pm, *sine die*.

David Rodwell  
Committee Clerk





