

## Questions on Notice: Parliamentary Inquiry into the Modern Slavery Act 2018 and Associated Matters

### STATE OWNED CORPORATIONS

#### Question 1 (page 6-7):

**The Hon. DANIEL MOOKHEY:** For example, a State-owned corporation has to follow the Independent Commission Against Corruption procurement guidelines, amongst many other things. So it is the case, though, that it is not a blanket position that is being adopted. You not suggesting, are you, that the policy position to treat State-owned corporations the same is a blanket position?

**Professor BURN:** I would like to look into this further and provide further information. Could I take these questions on notice?

**Mr DAVID SHOEBRIDGE:** Perhaps take on notice the fact that the Government's own guidelines state:

State Owned Corporations, local councils and the Parliament of NSW are exempt although they are encouraged to adopt aspects of the policy that are consistent with their corporate intent.

Can you take on notice why would we not also encourage, including through obligations under this Act, that that includes issues in relation to modern slavery?

**Professor BURN:** Thank you. That is helpful.

#### Answer 1:

There are seven State-Owned Corporations (SOCs) in NSW. SOCs are established as separate legal entities under the *State-Owned Corporations Act 1989* (NSW) (SOC Act) with the intention to operate commercially and with a governing board. SOCs are distinguishable from government agencies in that they do not receive a budget appropriation and have their roles and responsibilities defined by the SOC Act and each individual enabling legislation. To the extent possible, the NSW Government treats SOCs as commercial organisations. This enables SOCs to maintain a high level of independence and operate on a level playing field with other NSW businesses.

The application of NSW Government frameworks or policies (including those applicable to other government agencies) to each SOC is specifically outlined in applicable legislation. For example, under the *Independent Commission Against Corruption Act 1988* (NSW), the provisions and powers of this legislation apply to a SOC on the basis that it falls within the definition of a 'public authority'. Similarly, NSW Government policies applicable to SOCs are governed by reference to the Treasury's Commercial Policy Framework, the *Government Sector Finance Act 2018* (NSW), the SOC Act and the relevant policy itself.

The NSW *Modern Slavery Act 2018* (NSW MSA) requires NSW Government agencies to take 'reasonable steps' to ensure the goods and services procured by and for the NSW Government are not the product of modern slavery. This obligation is applied to NSW Government agencies by amendment of Part 11 of the *Public Works and Procurement Act* (NSW) (Public Works Act) to enable the NSW Procurement Board to issue directions to agencies regarding addressing modern slavery (see Schedule 5.6 of the NSW MSA).

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Under the current drafting of the NSW MSA, SOCs are included in the definition of 'government agencies', however SOCs are not currently required to follow any directions issued by the NSW Procurement Board. This is because SOCs are not considered 'government agencies' under Part 11 of the Public Works Act (see the definition of Government agency in section 162). The Public Works Act provides the ability for a SOC to fall under the definition of 'government agency' where it is prescribed under the regulations. However, there are no SOCs prescribed under regulation and therefore no SOCs are subject to the directions of the NSW Procurement Board (unlike other NSW Government agencies).

The Modern Slavery Amendment Bill 2019 proposes to amend section 24 of the NSW Act to include SOCs in the modern slavery reporting requirements applying to commercial organisations. The purpose of treating SOCs as a commercial organisation for the purposes of the NSW MSA is so that SOCs are required to meet the requirements under section 24 of the NSW MSA, as applicable to commercial organisations. This approach is consistent with the NSW Government's view that SOCs should maintain a high level of independence and operate on a level playing field with commercial organisations.

### CHARITIES AND NOT-FOR-PROFITS

#### Question 2 (page 8):

**The CHAIR:** What about clubs? The club sector.

**Mr DAVID SHOEBRIDGE:** They are not charities.

**The CHAIR:** They are not-for-profits.

**Mr DAVID SHOEBRIDGE:** But they are not charities.

**The CHAIR:** But they are not-for-profits. Does that include them?

**Professor BURN:** We would have to go back to the definition. One of the problems in the drafting was that there is no definition of commercial organisation within the Act. But rather thinking about whether a club would be included, it would have to be organisation that supplies goods or services for profit or gain. The question—

**The CHAIR:** Then the issue is that the profit is reinvested into members' benefits and not return to shareholders as such. I just wanted to clarify that point. I do not know if you can get some advice on that and take it on notice.

**Professor BURN:** I would like to take that on notice, definitely.

#### Answer 2:

The draft *Modern Slavery Regulation 2019* exempts charities and not-for-profits from the reporting requirements under section 24 of the *Modern Slavery Act 2018* (NSW) (NSW MSA).

In particular, the exemption applies to organisations that:

- a) have a constitution that prohibits the distribution of profits or property to its members, and

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- b) does not conduct its affairs (including its affairs as a trustee of any trust) so as to provide pecuniary gain for its members (within the meaning of the *Associations Incorporation Act 2009*), and
- c) is exempt from paying income tax under the *Income Tax Assessment Act 1997* of the Commonwealth

Some stakeholder submissions to the Inquiry into the NSW MSA, including the Australian Institute of Company Directors and Clubs NSW, noted that the exemption for charities and not-for-profits as provided for in the draft Regulation may not exempt all not-for-profits from reporting obligations under section 24 of the NSW MSA. For example, Clubs NSW suggests that part (a) of the definition does not account for not-for-profits governed by statute, such as registered clubs in NSW.

The Government will take into consideration the recommendations of the Committee on this matter.

### MODERN SLAVERY RISK ORDERS

#### Question 3 (page 9):

**The Hon. DANIEL MOOKHEY:** How many of those 24 that you have mentioned have triggered action under those Acts?

**Professor BURN:** I will definitely take that on notice.

**The Hon. DANIEL MOOKHEY:** Have any?

**Professor BURN:** I will take that on notice. You asked me how many of the cases have triggered one of these orders—

**The Hon. DANIEL MOOKHEY:** Are we aware of any?

**Professor BURN:** No, not at all, but I will take it on notice.

#### Answer 3:

Since 2004, there have been 24 convictions for slavery and slavery-like offences and trafficking in persons offences, as set out in Divisions 270 and 271 of the Commonwealth *Criminal Code Act 1995*. Eight of the 24 convictions related to people convicted in NSW. The Department of Premier and Cabinet is not aware of any prevention orders that have been granted under the *Crimes (Serious Prevention Orders) Act 2016*, the *Crimes (High Risk Offenders) Act 2006* or the *Child Protection (Offenders Registration Act) 2000* for any of the eight convictions of modern slavery offences under the *Commonwealth Criminal Code*.

The NSW *Modern Slavery Act 2018* (NSW MSA) defines 'modern slavery offence' broadly to also include certain NSW criminal offences relating to child sexual abuse material, including sections 91G and 91H of the *Crimes Act 1900* (NSW). Child Protection Registration Orders are used in situations where a person is convicted of such offences.

#### Question 4 (page 10):

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**The Hon. GREG DONNELLY:** Professor, do you accept that it was the intention of the Parliament— if you go back and look at the second reading speech and follow the debate, there was the explicit intention to create these modern slavery risk orders. That was fundamental to what transpired in the Parliament, its intention. That is why I go back to my earlier comments about your interpretation of what "intention" is. This was done deliberately by the Parliament to create this. What I am struggling to comprehend is—do not misunderstand what I am saying—that I see this as a walking back. The proposition to repeal this very important part of the Act is walking back from what the Parliament intended. I do not understand how you, as the Interim Anti-Slavery Commissioner, is supporting this proposition. It is a walking back.

**Professor BURN:** The advice that we received was that the drafting in its current form raises significant technical and legal issues and it is in effect unworkable, to be better replaced by existing New South Wales schemes. We have addressed this within the government submission and I would be happy to take that on notice.

**The Hon. DANIEL MOOKHEY:** Professor Burn, when I asked you the question about whether or not they were predominantly legal or policy objections, you said it was a mixture of both and then you elucidated the reasons, which were all policy reasons stated by the agencies. Did those agencies make that clear in the previous inquiry that took place ahead of the passing of the law?

**Professor BURN:** I am unaware of that, but I can take it on notice.

**The Hon. DANIEL MOOKHEY:** Did any person in the second reading debates, in either Chamber, make those views known that those were the concerns, to the best of your knowledge?

**Professor BURN:** I will take that on notice.

### Answer 4:

The NSW Modern Slavery Bill 2018 (the Bill) was introduced as Private Member's Bill by Mr Paul Green, former Member of the Legislative Council. During the second reading debates, no member of the Legislative Council or Legislative Assembly identified issues with the proposed Modern Slavery Risk Order scheme in section 29 of the Bill.

In working to implement the NSW *Modern Slavery Act 2018* (NSW MSA), the Department of Premier and Cabinet received advice from stakeholders within the Communities and Justice Cluster and the Crown Solicitor's Office that the proposed modern slavery risk orders present significant legal, policy and practical challenges. These challenges are explained in the NSW Government submission. The Modern Slavery Amendment Bill 2019 proposes to repeal section 29 in its entirety.

### Question 5 (page 13 – 14):

**Mr DAVID SHOEBRIDGE:** The other concern is the absence of an unfettered right of appeal. Could you take on notice whether or not the standard appeal rights from a single member of the Supreme Court to the Court of Appeal would apply in relation to an appeal against an order under section 29? I ask because on the face of it I cannot see where the Act excludes that standard right of appeal from a single judge to the Court of Appeal. Could you take that on notice?

**Professor BURN:** Yes. I would be delighted to do that.

**Mr DAVID SHOEBRIDGE:** I do not understand the rationale for that. The third one is that, as currently drafted, section 29 is ambiguous as to whether it applies to civil or criminal proceedings. Surely we could make a provision that says that section 29 is a civil penalty order. As we know, there

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has been a very large growth in civil penalty provisions. We could simply determine that that is a civil penalty provision.

**Professor BURN:** Yes.

**Mr DAVID SHOEBRIDGE:** That would get rid of the ambiguity, would it not?

**Professor BURN:** If the Committee decided to retain section 29 modern slavery risk orders it would require redrafting.

**Mr DAVID SHOEBRIDGE:** I am taking you through these points and that is why I am taking you to this specific point. There is concern about ambiguity as to whether it applies to civil or criminal proceedings. You get rid of ambiguity by expressly stating it is either a civil penalty provision or it is not.

**Professor BURN:** Within a redrafting process.

**Mr DAVID SHOEBRIDGE:** Yes, but you could get rid of the ambiguity by removing it. That is what I am saying to you. Rather than remove the provision, you just determine what it is. Do you agree with that?

**Professor BURN:** Yes.

**Mr DAVID SHOEBRIDGE:** And of course, you would provide that the potential penalty under subsection (8) is not a civil penalty provision. Under that subsection, you may wish to say it is a standard criminal penalty. Could you take that on notice—whether or not that would remove the ambiguity?

**Professor BURN:** The other areas to take on notice—

**Mr DAVID SHOEBRIDGE:** I have some more to take you to, so could you take that on notice?

**Professor BURN:** No. I was just going to make some suggestions myself there about modern slavery risk orders.

**Mr DAVID SHOEBRIDGE:** Yes. Perhaps when I finish. Could you take that on notice, what I have just put you?

**Professor BURN:** Yes. Thank you.

**Mr DAVID SHOEBRIDGE:** The last one is that the provisions failed to identify how risk assessments of modern slavery offenders will be conducted and by whom. We could simply give that obligation to the commissioner, could we not? That would resolve it.

**Professor BURN:** I will have to take that on notice.

**Mr DAVID SHOEBRIDGE:** But that would be one way of dealing with it: If you do not know who is doing it, you just give the obligation to the commissioner and that would get rid of the concern around ambiguity, would it not? Do you envisage any problems with giving that obligation to the commissioner?

**Professor BURN:** It would be about the functions of the commissioner and the resourcing. I would like to take that on notice and look in more detail at some of the conference schemes, Mr Shoebridge.

### Answer 5:

Section 29 of the *Modern Slavery Act 2018* (NSW MSA) establishes Modern Slavery Risk Orders (MSROs). Under section 29, the Local and District Courts would have the power to issue an order to constrain the liberties of a person convicted of a modern slavery offence in addition to any sentence served.

The Department of Premier and Cabinet, on advice of stakeholders from the Communities and Justice Cluster and the Crown Solicitor's Office, identified significant legal, policy and practical challenges in relation to section 29. These challenges are outlined in the NSW Government submission. They include:

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- the provision for the courts to make MSROs on their own motion, and the absence of an unfettered right of appeal
- ambiguity about whether section 29 provides for civil or criminal proceedings, and
- lack of clarity about how the risk assessments of modern slavery offenders will be conducted, and by whom.

Should the Government elect to retain section 29 of the NSW MSA, the section would require significant redrafting to clarify the section and address issues that may give rise to constitutional challenge, and the establishment of an appropriately resourced supporting framework to organise appropriate assessments of offenders, to inform the courts' decisions. However, it would not be appropriate, or lawful, for the Commissioner to conduct offender risk assessments or apply for MSROs. The Commissioner's functions, as set out in Division 2 of the NSW MSA, are principally directed at raising awareness of modern slavery, evaluating the effectiveness of legislation and providing independent advice to Government. The Commissioner's functions do not include engagement with the criminal justice system or with modern slavery offenders, and specifically prohibit the Commissioner from investigating individual cases (see section 10(1)). To this end, the Commissioner is limited under section 13 to referring information about modern slavery or suspected instances of modern slavery to other Government bodies.

In addition to the practical, legal and policy challenges associated with the current drafting of the proposed MSROs, the NSW Government's proposal to repeal section 29 is informed by the availability of existing risk-based schemes that could be used to manage the behaviour of modern slavery offenders, and to protect victims of modern slavery offences. These include risk-based schemes under the *Crimes (Serious Crime Prevention Orders) Act 2016*, the *Crimes (High Risk Offenders) Act 2006*, and the *Child Protection (Offenders Registration) Act 2000*. Risk-based schemes are complex and require significant resourcing to implement and monitor. It is prudent to consider where existing risk-based schemes can be used to achieve the same outcome.

### **Question 6 (page 15):**

**The Hon. DANIEL MOOKHEY:** Yes. Schedule 2 on page 21 lists all the offences that we define as modern slavery for the purposes of using section 4 for a modern slavery risk order. What advice has the New South Wales Government obtained that says that every one of those offences is actionable under the alternative schemes that you have nominated to replace the modern slavery risk orders?

**Professor BURN:** Mr Mookhey, I will take that on notice.

**The Hon. DANIEL MOOKHEY:** Has advice to that effect been commissioned?

**The CHAIR:** The question was taken on notice. It is a good question.

**The Hon. DANIEL MOOKHEY:** Can you at least give us some satisfaction around that, given that the New South Wales Government has come here this morning and said, "Please repeal this section because we can action all this under alternative legal schemes"? Can you at least provide us with some assurance that, to the best of your knowledge, every one of those offences is actionable under the alternative schemes that you mentioned?

**The CHAIR:** The witness took the question on notice.

**The Hon. DANIEL MOOKHEY:** She is representing the Government.

**The CHAIR:** The witness is entitled to take the question on notice. You can re-ask the same question

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three different times, but she has taken it on notice.

**The Hon. DANIEL MOOKHEY:** But we have not seen advice to that effect. We have been provided with a whole bunch of other forms of advice, but we have not been provided with advice that says—

**The CHAIR:** The witness has said she will take the question on notice. The question has now been answered. It will be taken on notice.

**The Hon. DANIEL MOOKHEY:** It was a separate question, but you have ruled.

**The CHAIR:** Do you have further questions?

**The Hon. DANIEL MOOKHEY:** No—

**The CHAIR:** I look forward to reading the answer on notice.

**Mr DAVID SHOEBRIDGE:** You can imagine that for the offence of the trafficking of persons, if the people being trafficked were children then that could fall under some of the child exploitation offences and could therefore be captured by a part of those reporting obligations. But if they were adults they would not be captured by a part of other reporting obligations. So for an answer that says, "Small aspects of these offences may be captured by other regimes", can you identify which one?

**The Hon. DANIEL MOOKHEY:** I will be specific about the ones I have concerns about because, to the best of my knowledge, I cannot see any law or scheme that has been nominated that would cover them. Which of the other schemes would cover the particular offences of deceptive recruiting for labour or services and debt bondage?

**Mr DAVID SHOEBRIDGE:** And domestic trafficking in persons.

**The Hon. DANIEL MOOKHEY:** Domestic trafficking in persons is the other one. To the extent to which the nominated other schemes look at those offences, one of them deals with drug offences and the other one essentially deals with people who have been released from prisons in other circumstances. I would like to see which one of those schemes is meant to deal with the offence of debt bondage. If you have any further information that you can provide us with, it would be most welcome.

**Professor BURN:** I would just add here that it is quite complex. The schedule 2 offences are linked to the reporting scheme. They are categorised as modern slavery offences, which take us to supply chain reporting and reporting for government procurement—

**Mr DAVID SHOEBRIDGE:** Professor, I think we all accept you taking it on notice. It is complex. I think it is okay for you to take it on notice.

### Answer 6:

There are several risk-based offender management schemes in operation in NSW, several of which have been operable for several years, which could be used for the management of offenders, including offenders who have been convicted of Modern Slavery Offences (**MSOs**). The sorts of conditions, prohibitions and restrictions that can be imposed under these schemes mirror those that are proposed under the Modern Slavery Risk Order (MSRO) scheme. Available schemes include:

- Serious Crime Prevention Order Scheme, under the *Crimes (Serious Crime Prevent Orders) Act 2016*
- High Risk Offenders Scheme, under the *Crimes (High Risk Offenders) Act 2006*
- Child Protection Register, under the *Child Protection (Offenders Registration) Act 2000*
- Child Protection Prohibition Orders, under the *Child Protection (Offenders Prohibition Orders) Act 2006*
- Apprehended Violence Orders, under the *Crimes (Domestic and Personal Violence) Act 2007*
- Restricted Premises Framework, under the *Restricted Premises Act 1943*
- Summary Offences Framework, under the *Summary Offences Act 1988*

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The table below sets out the orders or other risk-based offender management schemes that may apply in relation to convictions for each of the MSOs.

Modern Slavery Offence	Available NSW risk-based offender management scheme(s)
<b>NSW offences</b>	
<b>s80D, Crimes Act 1900 (NSW); Causing sexual servitude</b>	Serious Crime Prevention Order
	<b>[Pending]</b> High Risk Offender Order <i>[on commencement of the Modern Slavery Amendment Bill 2019]</i>
	Child Protection Register
	Child Protection Prohibition Order
	Apprehended Violence Order
	Disorderly House (restricted premises) declaration
	Intervention under <i>Summary Offences Act 1988</i> (NSW)
<b>s80E, Crimes Act 1900 (NSW), Conducting business involving sexual servitude</b>	Serious Crime Prevention Order
	<b>[Pending]</b> High Risk Offender Order <i>[on commencement of the Modern Slavery Amendment Bill 2019]</i>
	Child Protection Register
	Child Protection Prohibition Order
	<b>[Potential]</b> Apprehended Violence Order <i>[depending on whether the protected person has grounds to fear, and does in fact fear, the MS offender committing a domestic or personal violence offence]</i>
	Disorderly House (restricted premises) declaration
	Intervention under <i>Summary Offences Act 1988</i> (NSW)
<b>s91G(1)-(3), Crimes Act 1900 (NSW), Use of child under 14 for production of child abuse material</b>	Serious Crime Prevention Order
	High Risk Offender Order
	Child Protection Register
	Child Protection Prohibition Order
	<b>[Potential]</b> Apprehended Violence Order <i>[depending on whether the protected person has grounds to fear, and does in fact fear, the MS offender committing a domestic or personal violence offence]</i>
	Disorderly House (restricted premises) declaration
	Intervention under <i>Summary Offences Act 1988</i> (NSW)
<b>s91H, Crimes Act 1900 (NSW), Production, dissemination or possession of child abuse material</b>	Serious Crime Prevention Order
	High Risk Offender Order
	Child Protection Register
	Child Protection Prohibition Order
	<b>[Potential]</b> Apprehended Violence Order <i>[depending on whether the protected person has grounds to fear, and does in fact fear, the MS offender committing a domestic or personal violence offence]</i>
	Disorderly House (restricted premises) declaration
	Intervention under <i>Summary Offences Act 1988</i> (NSW)
<b>s91HAA [NB: due to an existing s91HAA, this section will</b>	Serious Crime Prevention Order
	High Risk Offender Order
	<b>[Potential]</b> Child Protection Register <i>[noting that a s91HAA offence may be an offence that involves sexual touching or a sexual act against a child]</i>



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<p><b>require re-numbering on commencement], Crimes Act 1900 (NSW); Administering a digital platform to deal with child abuse material</b></p>	<p><b>[Potential]</b> Child Protection Prohibition Order <i>[noting that a s91HAA offence may be an offence that involves sexual touching or a sexual act against a child]</i></p>
	<p><b>[Potential]</b> Apprehended Violence Order <i>[depending on whether the protected person has grounds to fear, and does in fact fear, the MS offender committing a domestic or personal violence offence]</i></p>
	<p>Disorderly House (restricted premises) declaration</p>
	<p>Intervention under <i>Summary Offences Act 1988</i> (NSW)</p>
<p><b>s91HAB, Crimes Act 1900 (NSW), Encouraging use of a digital platform to deal with child abuse material</b></p>	<p>Serious Crime Prevention Order</p>
	<p>High Risk Offender Order</p>
	<p><b>[Potential]</b> Child Protection Register <i>[noting that a s91HAA offence may be an offence that involves sexual touching or a sexual act against a child]</i></p>
	<p><b>[Potential]</b> Child Protection Prohibition Order <i>[noting that a s91HAA offence may be an offence that involves sexual touching or a sexual act against a child]</i></p>
	<p><b>[Potential]</b> Apprehended Violence Order <i>[depending on whether the protected person has grounds to fear, and does in fact fear, the MS offender committing a domestic or personal violence offence]</i></p>
	<p>Disorderly House (restricted premises) declaration</p>
<p><b>s91HAC, Crimes Act 1900 (NSW), Providing information about avoiding detection</b></p>	<p>Serious Crime Prevention Order</p>
	<p>High Risk Offender Order</p>
	<p><b>[Potential]</b> Child Protection Register <i>[noting that a s91HAA offence may be an offence that involves sexual touching or a sexual act against a child]</i></p>
	<p><b>[Potential]</b> Child Protection Prohibition Order <i>[noting that a s91HAA offence may be an offence that involves sexual touching or a sexual act against a child]</i></p>
	<p><b>[Potential]</b> Apprehended Violence Order <i>[depending on whether the protected person has grounds to fear, and does in fact fear, the MS offender committing a domestic or personal violence offence]</i></p>
	<p>Disorderly House (restricted premises) declaration</p>
<p><b>s93AB, Crimes Act 1900 (NSW), Slavery, servitude and child forced labour</b></p>	<p>Serious Crime Prevention Order</p>
	<p>Apprehended Violence Order</p>
	<p>Disorderly House (restricted premises) declaration</p>
	<p>Intervention under <i>Summary Offences Act 1988</i> (NSW)</p>
<p><b>s93AC, Crimes Act 1900 (NSW); Child forced marriage</b></p>	<p><b>[Potential]</b> Serious Crime Prevention Order <i>[noting that the s93AC offence is an offence carrying a maximum penalty of at least 5 years imprisonment and may involve theft, extortion, obtaining financial benefit from the crime of another, money laundering and/or violence]</i></p>
	<p>Apprehended Violence Order <i>[depending on whether the protected person has grounds to fear, and does in fact fear, the MS offender committing a domestic or personal violence offence]</i></p>
	<p>Disorderly House (restricted premises) declaration</p>

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	Intervention under <i>Summary Offences Act 1988</i> (NSW)
<b>Commonwealth offences</b>	
<b>s270.3, <i>Criminal Code 1995</i> (Cth); Slavery offences</b>	<b>[Potential]</b> Serious Crime Prevention Order <i>[noting that the s270.3 offence is an offence carrying a maximum penalty of at least 5 years imprisonment and may involve theft, extortion, obtaining financial benefit from the crime of another, money laundering and/or violence; and is an offence, which, if committed in NSW, may be a serious criminal offence under the CAR Act]</i>
	<b>[Potential]</b> Apprehended Violence Order <i>[depending on whether the protected person has grounds to fear, and does in fact fear, the MS offender committing a domestic or personal violence offence]</i>
	Disorderly House (restricted premises) declaration
	Intervention under <i>Summary Offences Act 1988</i> (NSW)
<b>s270.5, <i>Criminal Code 1995</i> (Cth); Servitude offences</b>	<b>[Potential]</b> Serious Crime Prevention Order <i>[noting that the s270.5 offence is an offence carrying a maximum penalty of at least 5 years imprisonment and may involve theft, extortion, obtaining financial benefit from the crime of another, money laundering and/or violence; and is an offence, which, if committed in NSW, may be a serious criminal offence under the CAR Act]</i>
	<b>[Potential]</b> Apprehended Violence Order <i>[depending on whether the protected person has grounds to fear, and does in fact fear, the MS offender committing a domestic or personal violence offence]</i>
	Disorderly House (restricted premises) declaration
	Intervention under <i>Summary Offences Act 1988</i> (NSW)
<b>s270.6A, <i>Criminal Code 1995</i> (Cth); Forced labour offences</b>	<b>[Potential]</b> Serious Crime Prevention Order <i>[noting that the s270.6A offence is an offence carrying a maximum penalty of at least 5 years imprisonment and may involve theft, extortion, obtaining financial benefit from the crime of another, money laundering and/or violence; and is an offence, which, if committed in NSW, may be a serious criminal offence under the CAR Act]</i>
	Child Protection Register
	Child Protection Prohibition Order
	<b>[Potential]</b> Apprehended Violence Order <i>[depending on whether the protected person has grounds to fear, and does in fact fear, the MS offender committing a domestic or personal violence offence]</i>
	Disorderly House (restricted premises) declaration
	Intervention under <i>Summary Offences Act 1988</i> (NSW)
<b>s270.7, <i>Criminal Code 1995</i> (Cth); Deceptive recruitment for labour or services</b>	<b>[Potential]</b> Serious Crime Prevention Order <i>[noting that the s270.7 offence is an offence carrying a maximum penalty of at least 5 years imprisonment and may involve theft, extortion, obtaining financial benefit from the crime of another, money laundering and/or violence; and is an offence, which, if committed in NSW, may be a serious criminal offence under the CAR Act]</i>
	Child Protection Register
	Child Protection Prohibition Order
	<b>[Potential]</b> Apprehended Violence Order <i>[depending on whether the protected person has grounds to fear, and does in fact fear, the MS offender committing a domestic or personal violence offence]</i>
	Disorderly House (restricted premises) declaration
	Intervention under <i>Summary Offences Act 1988</i> (NSW)

<b>s270.7B, Criminal Code 1995 (Cth); Forced marriage offences</b>	<b>[Potential]</b> Serious Crime Prevention Order <i>[noting that the s270.7B offence is an offence carrying a maximum penalty of at least 5 years imprisonment and may involve theft, extortion, obtaining financial benefit from the crime of another, money laundering and/or violence; and is an offence, which, if committed in NSW, may be a serious criminal offence under the CAR Act]</i>
	<b>[Potential]</b> Apprehended Violence Order <i>[depending on whether the protected person has grounds to fear, and does in fact fear, the MS offender committing a domestic or personal violence offence]</i>
	Disorderly House (restricted premises) declaration
	Intervention under <i>Summary Offences Act 1988</i> (NSW)
<b>s270.7C, Criminal Code 1995 (Cth); Offence of debt bondage</b>	<b>[Potential]</b> Serious Crime Prevention Order <i>[noting that the s270.7C offence is an offence carrying a maximum penalty of at least 5 years imprisonment and may involve theft, extortion, obtaining financial benefit from the crime of another, money laundering and/or violence; and is an offence, which, if committed in NSW, may be a serious criminal offence under the CAR Act]</i>
	<b>[Potential]</b> Apprehended Violence Order <i>[depending on whether the protected person has grounds to fear, and does in fact fear, the MS offender committing a domestic or personal violence offence]</i>
	Disorderly House (restricted premises) declaration
	Intervention under <i>Summary Offences Act 1988</i> (NSW)
<b>s271.2, Criminal Code 1995 (Cth); Offence of trafficking in persons</b>	<b>[Potential]</b> Serious Crime Prevention Order <i>[noting that the s271.2 offence is an offence carrying a maximum penalty of at least 5 years imprisonment and may involve theft, extortion, obtaining financial benefit from the crime of another, money laundering and/or violence; and is an offence, which, if committed in NSW, may be a serious criminal offence under the CAR Act]</i>
	<b>[Potential]</b> Apprehended Violence Order <i>[depending on whether the protected person has grounds to fear, and does in fact fear, the MS offender committing a domestic or personal violence offence]</i>
	Disorderly House (restricted premises) declaration
	Intervention under <i>Summary Offences Act 1988</i> (NSW)
<b>s271.3, Criminal Code 1995 (Cth); Trafficking in persons – aggravated offence</b>	<b>[Potential]</b> Serious Crime Prevention Order <i>[noting that the s271.3 offence is an offence carrying a maximum penalty of at least 5 years imprisonment and may involve theft, extortion, obtaining financial benefit from the crime of another, money laundering and/or violence; and is an offence, which, if committed in NSW, may be a serious criminal offence under the CAR Act]</i>
	<b>[Potential]</b> Apprehended Violence Order <i>[depending on whether the protected person has grounds to fear, and does in fact fear, the MS offender committing a domestic or personal violence offence]</i>
	Disorderly House (restricted premises) declaration
	Intervention under <i>Summary Offences Act 1988</i> (NSW)
<b>s271.4, Criminal Code 1995 (Cth); Offence of trafficking in children</b>	<b>[Potential]</b> Serious Crime Prevention Order <i>[noting that the s271.4 offence is an offence carrying a maximum penalty of at least 5 years imprisonment and may involve theft, extortion, obtaining financial benefit from the crime of another, money laundering and/or violence; and is an offence, which, if committed in NSW, may be a serious criminal offence under the CAR Act]</i>
	High Risk Offender Order
	Child Protection Register

Attachment A

	Child Protection Prohibition Order
	<i>[Potential]</i> Apprehended Violence Order <i>[depending on whether the protected person has grounds to fear, and does in fact fear, the MS offender committing a domestic or personal violence offence]</i>
	Disorderly House (restricted premises) declaration
	Intervention under <i>Summary Offences Act 1988</i> (NSW)
<b>s271.5, Criminal Code 1995 (Cth); Offence of domestic trafficking in persons</b>	<i>[Potential]</i> Serious Crime Prevention Order <i>[noting that the s271.5 offence is an offence carrying a maximum penalty of at least 5 years imprisonment and may involve theft, extortion, obtaining financial benefit from the crime of another, money laundering and/or violence; and is an offence, which, if committed in NSW, may be a serious criminal offence under the CAR Act]</i>
	<i>[Potential]</i> Apprehended Violence Order
	Disorderly House (restricted premises) declaration
	Intervention under <i>Summary Offences Act 1988</i> (NSW)
<b>s271.6, Criminal Code 1995 (Cth); Domestic trafficking in persons – aggravated offence</b>	<i>[Potential]</i> Serious Crime Prevention Order <i>[noting that the s271.6 offence is an offence carrying a maximum penalty of at least 5 years imprisonment and may involve theft, extortion, obtaining financial benefit from the crime of another, money laundering and/or violence; and is an offence, which, if committed in NSW, may be a serious criminal offence under the CAR Act]</i>
	<i>[Potential]</i> Apprehended Violence Order <i>[depending on whether the protected person has grounds to fear, and does in fact fear, the MS offender committing a domestic or personal violence offence]</i>
	Disorderly House (restricted premises) declaration
	Intervention under <i>Summary Offences Act 1988</i> (NSW)
<b>s271.7, Criminal Code 1995 (Cth); Offence of domestic trafficking in children</b>	<i>[Potential]</i> Serious Crime Prevention Order <i>[noting that the s271.7 offence is an offence carrying a maximum penalty of at least 5 years imprisonment and may involve theft, extortion, obtaining financial benefit from the crime of another, money laundering and/or violence; and is an offence, which, if committed in NSW, may be a serious criminal offence under the CAR Act]</i>
	High Risk Offender Order
	Child Protection Register
	Child Protection Prohibition Order
	<i>[Potential]</i> Apprehended Violence Order <i>[depending on whether the protected person has grounds to fear, and does in fact fear, the MS offender committing a domestic or personal violence offence]</i>
	Disorderly House (restricted premises) declaration
	Intervention under <i>Summary Offences Act 1988</i> (NSW)

LOCAL COUNCILS

Question 7 (page 17):

**Professor BURN:** The problem is in the further provisions in the Modern Slavery Act that would exclude local councils from reporting.

**The Hon. DANIEL MOOKHEY:** Which provision?

**Mr DAVID SHOEBRIDGE:** Take us to them.

## Attachment A

The Hon. GREG DONNELLY: If they need to be fixed up, let us fix them up, not just turf out the local councils.

**Mr DAVID SHOEBRIDGE:** Take us to them, Commissioner.

**Professor BURN:** I need a minute to look at the Act.

**Mr DAVID SHOEBRIDGE:** I can give you my copy of the Act, Commissioner.

**Professor BURN:** No, I have my own.

**The CHAIR:** You might take that question on notice.

**Professor BURN:** I was very excited to be able to refer you to the provision.

**The CHAIR:** Our extended time together has expired. Do you have the answer now?

**Professor BURN:** We will provide it in greater detail.

### Answer 7:

The *Modern Slavery Act 2018* (NSW) (NSW MSA) requires 'government agencies' to take action to ensure the goods and services procured by and for the agency are not the product of modern slavery. This obligation is introduced by amending Part 11 of the *Public Works and Procurement Act 1912* (NSW) (Public Works Act) (schedule 5.6 of the NSW MSA). The amendments:

- make combating modern slavery an objective of the Procurement Board and
- enable the Board to issue directions setting out how agencies are to address modern slavery through government procurement.

Under s163(2)(a), local councils are specifically excluded from Part 11 of the Public Works Act and are not subject to directions of the Procurement Board. As such, although local councils are included in the definition of 'government agency' in the NSW MSA, the Act as drafted fails to give effect to this intention.