

Modern Slavery Committee

REVIEW OF THE MODERN SLAVERY ACT 2018

Monday, 30 October 2023

PRESENT

Mr Song Hong, Executive Director, NSW Procurement

Ms Emma Cooper, Director, Procurement Policy, NSW Procurement

QUESTIONS ON NOTICE

Question 1 (transcript page number 18)

The Hon. Dr SARAH KAINE: Welcome. Just a question, Ms Cooper, about your answer there about contracts being used as an enforcement tool. How many times, to your knowledge, have contractual mechanisms been used to sanction any organisation for failing to comply with any labour standard, let alone modern slavery issues?

EMMA COOPER: I'm not aware off the top of my head.

The Hon. Dr SARAH KAINE: Can you take it on notice?

EMMA COOPER: I guess, across the devolved procurement structure, we're not always aware of what agencies have enacted in that space. We can answer and we can investigate for our own —

SONG HONG: Within the New South Wales procurement board —

EMMA COOPER: What contracts —

SONG HONG: — as well as New South Wales procurement, we can manage that.

Response

Our records indicate there has been no reports to the NSW Procurement Board of this occurring, and no instances within NSW Treasury contracts.

Question 2 (transcript page number 19)

The Hon. Dr SARAH KAINE: There's a little quirky question — it's very bespoke, so you might need to take it on notice — that has come to my attention over some months. In the eTendering documents that are public, you can go in and have a look at what has been awarded. There's a particular question that says, "Consultation has occurred with" — I think it was with its previous naming — "employee relations within New South Wales government." And it has been there and is never filled in and isn't actioned. I just wondered if you could perhaps take on notice? It goes to Ms Leong's question about that intersection of these kinds of issues and labour standards. I wondered if perhaps you could investigate and return some information to me as to what this is being used for, if anything, and if not, why not.

EMMA COOPER: I suspect it's a historical policy provision that is no longer in effect. But we will have to investigate and let you know.

The Hon. Dr SARAH KAINE: That would be great. It has been a mystery.

SONG HONG: We'll come back to you. Thanks, Dr Kaine.

Ms JENNY LEONG: I just wanted to follow up before you move on, Dr Kaine, if I can, just to say the checklist and the guidance of the tools that you just mentioned then — is it possible to get a copy of those shared with the Committee? It would be useful, potentially.

EMMA COOPER: We can provide them. They are available on Buy NSW as well.

Ms JENNY LEONG: That would be amazing. Sorry to jump in, but I thought it's useful in the context of the Committee. Thanks.

Response

The industrial relations reporting fields in contract award notices were requested by NSW Industrial Relations during development of the eTendering website. These fields are not a statutory requirement under division 5 of the *Government Information (Public Access) Act 2009* (Government contracts with private sector).

The Construction and Compliance Unit in NSW Industrial Relations monitors compliance with, and receives reports of alleged breaches of, the NSW Industrial Relations Guidelines: Building and Construction Procurement. NSW Government construction contracts must require the principal contractor to comply with the guidelines and permit the Unit to access sites and documents, and monitor and investigate compliance.

The guidelines are available at: www.industrialrelations.nsw.gov.au/industries/key-industries-in-nsw/building-and-construction/

For further information, please contact NSW Industrial Relations.

The eTenders system is managed by the NSW Department of Customer Service and further questions on functionality of the system should be referred to the department.

Updated and detailed guidance prepared by the NSW Anti-slavery Commissioner is expected to be released by end of 2023.

Link to website: <https://info.buy.nsw.gov.au/resources/modern-slavery-and-procurement>

Templates available on buy.nsw

The following templates are provided to help buyers:

- [modern slavery checklist DOCX, 33.59 KB](#)
- [simple risk assessment template DOCX, 37.52 KB](#)
- [model tender schedule DOCX, 40.31 KB](#)
- [model contract clauses DOCX, 68.65 KB](#)

Question 3 (transcript page number 20-21)

Ms JENNY LEONG: Going to that point, given the fact that there is a devolved responsibility for this across agencies and recognising the competing priorities that exist, I wonder are there any other Acts – and I'm happy for you to take this on notice. Are there any other examples that this Committee might look to where there's requirements on reporting and prioritisation across agencies that would ensure that this modern slavery work is prioritised within all of those departments, given the competing priorities? It might be something that you want to take on notice. The commissioner has given examples in his submission around the ability of the investigative powers of the Building Commissioner, for example. From where NSW Procurement sits, is there any advice you can give us as to other examples the Committee could look at to strength that prioritisation in the review of the Act?

EMMA COOPER: I think we likely would have to take it on notice. It's beyond the accreditation system that's in place and the attestations of the agencies each year. I'm not aware, immediately, of other Acts with these kinds of powers.

SONG HONG: There are — I'm just going to choose my words.

Ms JENNY LEONG: That's why I give you the option to take it on notice, if you'd prefer.

SONG HONG: I'll make a statement, and then we'll come back to you. I agree with my colleague about other Acts, but there are other policies that require certain reporting, whether it would be Commonwealth legislation or New South Wales legislation. The example I can think of at the moment is climate change. That Commonwealth legislation reporting is coming in, and it's going to mobilise the agencies to figure out how they're going to report. They'll need to figure out, from a practical point of view, how that works. I'm not saying that modern slavery is the same as climate change, but in terms of mobilising and prioritisation, there are parallels in part because these are new legislation and new requirements. How do you mobilise a system that is being asked to deliver services and initiatives to the State of New South Wales, and then there's an ongoing requirement to do X, Y and Z? So the question will be how do you then feed that in and ensure that those things are prioritised within the broader scope of all the services and the issues that agencies are trying to deliver for the people of New South Wales. But we will see whether we can find some other legislation that has parallels.

Response

Aside from standard procurement governance arrangements and the powers provided to the Auditor General and NSW Ombudsman, NSW Treasury could locate limited examples of legislation that compels government agencies to prioritise and report on procurement-related issues.