

Report pursuant to section 22(3) of  
the Modern Slavery Act 2018 (NSW)  
in response to Report no. 1 of the  
New South Wales Parliament Joint  
Modern Slavery Committee, “Review  
of the Modern Slavery Act 2018”,  
December 2023

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Dr James Cockayne  
NSW Anti-slavery Commissioner  
March 2024

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## Introduction

This is a report made pursuant to section 22(3) of the *Modern Slavery Act 2018* (NSW) in response to Report no. 1 of the New South Wales Parliament Joint Modern Slavery Committee, “Review of the *Modern Slavery Act 2018*”, December 2023.

In preparing this report I have also taken note of the NSW Government’s response to the same report.

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## General response

I welcome this report, and the work of the Committee in undertaking the inquiry into the *Modern Slavery Act 2018* (NSW). I appreciate having had the opportunity to provide input to that inquiry both through a written submission and oral testimony.

I note the Committee’s recommendation for the Committee to continue to review the *Modern Slavery Act 2018* for a further six months from the date the Committee’s report was tabled in Parliament, being 19 December 2023. I take note of the statement of the Chair, on page vii of the Report, that

“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”.

I welcome the emphasis that the Committee has placed on the importance of and need for consultation with people with lived experience in considering changes to the Act. I remain committed to providing support to the Committee, upon its request, as it seeks to undertake this consultation in a safe and responsible manner.

I also note recommendation 2 to amend the Act to explicitly allow for the Anti-slavery Commissioner’s annual report to be tabled out of session or made publicly available immediately after being furnished to the Presiding Officers of each house of Parliament. I note also the Government’s response indicating that it acknowledges that this recommendation provides greater clarity for when the Commissioner’s report may be made publicly available and prevents any unnecessary delay. I note that the Government has indicated that it will consider this recommendation along with any further recommendations of the Committee in its final report.

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## Responses to certain ‘Key issues’

The Committee has indicated that it intends to continue to review the *Modern Slavery Act 2018* for a further six months. In light of this intended course of action, it may be useful to provide brief responses to a small number of matters canvassed in Chapter 2 of the report, Key issues. My intent here is not to provide what may constitute, *de facto*, a new submission to the ongoing inquiry into the Act by the Committee, but simply to clarify certain points of potential misunderstanding reflected in Chapter 2.

### Where does the Office of the NSW Anti-slavery Commissioner refer victim-survivors?

Paragraph 2.6 of the Report reads as follows:

*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'.*

This passage risks creating two misunderstandings.

First, even at the date that this statement was made, my Office's website pointed anyone wishing to report modern slavery to numerous non-government organisations that provide support and assistance to victim-survivors, including Anti-Slavery Australia and The Salvation Army, and not only to law enforcement. The Law Society of NSW's statement appears to relate not to my website but to a splash page created simply for the purpose of publishing my Strategic Plan in mid-2023. That splash page in turn directed users to my website, where the more complete information was available. The splash page is currently being discontinued.

Second, the statement risks misrepresenting how my Office makes referrals. When we receive an enquiry, we undertake a detailed process of triage that ensures we refer victim-survivors to the services they need. We have referred victim-survivors to more than 80 agencies. These are by no means limited to law enforcement, and often we do not refer survivors to law enforcement. Other venues for referral have included community legal services, crisis accommodation providers, domestic and family violence specialist services, industrial relations regulators, counselling services, peer support organisations, legal aid, statutory complaints bodies, the Australian Human Rights Commission and many others.

### **Is the Anti-slavery Commissioner entitled to require the disclosure of information in a manner that breaches legal professional privilege?**

In several places (including paras 2.15, 2.29-2.35), the Report notes concerns that the Anti-slavery Commissioner's requests for information (including under the duty of cooperation created by section 14 of the Act) may breach legal professional privilege, or otherwise be inconsistent with common law rights or privileges.

Section 14 of the Act protects and maintains existing rights and privileges. There is no reason to read it in a manner that is inconsistent with these rights and privileges. Basic rules of statutory construction make clear that the Act should be read to be consistent with, and protect, these rights and privileges, including legal professional privilege.

### **Training of and reporting by government agencies on procurement and supply-chain matters**

I would like to draw the attention of the Committee to several aspects of the Report discussing training of and reporting by government agencies on procurement and supply-chain matters.

#### *Training*

Paragraph 2.49 of the Report includes this statement:

*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.*

In response I would draw the Committee's attention to section 28 of the Act:

#### **28 Commissioner's public awareness and advice functions – supply chains**

- (1) The Commissioner may promote public awareness of and provide advice on steps that can be taken by organisations to remediate or monitor risks of modern slavery taking place in their supply chains, including encouraging organisations to develop their capacity to avoid such risks.
- (2) Without limiting subsection (1), the Commissioner may make information available to organisations and other persons about matters to consider in relation to employing persons to work in supply chains.

My Office provides ongoing advice, awareness-raising, guidance and training for public entities with modern slavery due diligence and reporting obligations. Between July 2023 and March 2024, we have provided approximately 40 hours of direct training to more than 2000 individuals in the private

and public sectors. We are currently working with NSW Procurement to develop online training materials to be made available to the 15,000 procurement officers across NSW Government.

### *Reporting and the Public Register*

Paras 2.80-2.88 of the Report do not fully reflect the status quo on reporting in New South Wales. Over 400 public entities, including all NSW Government agencies and local councils, now have mandatory modern slavery due diligence and/or reporting obligations. Section 26 of the Act requires me to keep a public register of certain entities that do not meet these obligations.

Paragraph 2.88 of the Report is notably misleading. First, because the Australian government's Modern Slavery Register relates to companies with a turnover *greater than* (not 'under') \$100 million annually. Second, because the paragraph does not accurately reflect my stated intentions for the public register required by section 26 of the Act. My intentions are on the public record, on page 16 of the *Guidance on Reasonable Steps*.

I have indicated that the Register will be published in 2024 and will comprise up to eight (8) schedules, as follows:

<b>Schedule No.</b>	<b>Content</b>	<b>How compiled</b>
1	Schedule of non-complying government agencies (section 26(1)(c)), including any identified by the Auditor-General under section 38H of the <i>Government Sector Audit Act 1983</i> (NSW)	Commissioner's monitoring of annual reporting and other sources
2	Schedule of non-complying State owned corporations (section 26(1)(c1) of the <i>Modern Slavery Act 2018</i> (NSW))	Reporting by SOCs to the Commissioner
3	Schedule of other NSW public buyers with modern slavery reporting obligations that are not conforming with the <i>Guidance on Reasonable Steps</i>	Commissioner's monitoring of annual reporting and other sources
4	Schedule of annual reporting by covered entities	Reporting by covered entities
5	Schedule of reported Heightened modern slavery due diligence procurements	Reporting by covered entities
6	Schedule of codes of practice developed under section 27 of the <i>Modern Slavery Act 2018</i> (NSW)	Commissioner's compilation
7	GRS High Risk Product List (under development for publication in 2024)	TBC
8	Schedule of operations and suppliers considered to have significant risk of modern slavery	All other Schedules, additional information received by the Commissioner

Additional, extensive information about reporting requirements for public entities is also provided in the publicly available [Guidance on Reasonable Steps](#).

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March 2024

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