

Review of the Modern Slavery Act 2018 — Part 2

Response of the NSW Anti-slavery
Commissioner

18 March 2025



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for victims of modern slavery

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Acknowledgement of Country

As New South Wales Anti-slavery Commissioner, I acknowledge that Aboriginal and Torres Strait Islander peoples are the first peoples and traditional custodians of Australia and the oldest continuing culture in human history.

I acknowledge that First Nations communities in New South Wales have survived practices that today we call modern slavery. The legacies of that treatment continue to affect Aboriginal and Torres Strait Islander people today, and through them affect the New South Wales community and economy.

My Office and I pay our respects to elders past and present and commit to respecting the lands we walk on, and the communities we walk with.

We celebrate the deep and enduring connection of Aboriginal and Torres Strait Islander peoples to country and acknowledge their continuing custodianship of the land, seas and sky. We acknowledge their ongoing stewardship and the important contribution they make to our communities and economies.

We reflect on the continuing impact of government policies and practices and recognise our responsibility to work together with and for Aboriginal and Torres Strait Islander peoples, families and communities, towards improved economic, social and cultural outcomes, self-determination and for real freedom.

We advise this resource may contain images, or names of deceased persons in photographs or historical content.

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<https://dcj.nsw.gov.au/legal-and-justice/our-commissioners/anti-slavery-commissioner.html>

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1 Introduction

I commend the work of the Modern Slavery Committee in conducting a comprehensive first statutory review of the *Modern Slavery Act 2018* (NSW) ('the Act'). In particular, I wish to commend the Committee's thoughtful, consultative and trauma-informed approach to engaging with people with lived experience of modern slavery in NSW. I have received feedback from survivors who participated in this process noting that they felt respected, heard and supported by the manner in which the Committee conducted the consultation. I hope to see the Committee's approach become a model for future parliamentary and governmental processes of engagement and policy co-design that centre the lived expertise of modern slavery survivors.

I acknowledge the Committee's findings and fully or partially support all its Recommendations. In particular, I support in full its recommendations to strengthen my information gathering and sanctioning powers, centre lived experience expertise, and ensure that my Office is adequately resourced to effectively support the Commissioner in performing their statutory functions. I look forward to continuing to work with the Committee and the NSW Government to fulfil those functions. I set out below my response to each of the Committee's recommendations.

2 Recommendations

2.1 Recommendation 1: strengthening the Commissioner's information gathering and sanctioning powers

That the NSW Government explore strengthening the NSW Anti-slavery Commissioner's information gathering and sanctioning powers under the Modern Slavery Act 2018 as follows:

- (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*
 - (d) record evidence.*
- (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.*

I support this recommendation.

As I noted in [93]-[100] of my submission to the Committee's Review of the Act, there is a dangerous detection and exposure gap fuelling the modern slavery crisis in NSW. The amendments to my functions proposed in this recommendation would significantly extend what is currently a largely passive mandate for detecting and exposing modern slavery.

Centrally, the recommendation would extend the Commissioner's ability to request information from its currently limited scope (covering government agencies, and non-government agencies providing support to victims of modern slavery), to a larger set of organisations, including private entities. This will significantly improve the Commissioner's ability to develop information providing the basis for effective investigation by law enforcement and other regulatory bodies, after referral from the Commissioner. At present, I often find that the information I am able to share with those bodies about suspected cases of modern slavery (including those reporting through 1800 FREEDOM, the hotline my Office provides pursuant to section 12(d) of the Act) falls short of information those agencies feel they can action; but, with only limited proactive information-gathering powers, it is difficult for me to develop suitable briefs for those agencies. The result is that information suggesting indicators of modern slavery is not going properly investigated.

I acknowledge that the Committee found that introducing inspectorate powers, *per se*, for the Commissioner is not a suitable course of action at this time. Given my role is still in its infancy, this is hard to contest. I look forward to the Committee considering the issue in future inquiries, when the Commissioner's practice and the Office's capabilities and expertise have developed further.

The Committee's recommendation, appropriately, does not call for the Commissioner to be granted extensive investigative powers. Primary responsibility for investigating alleged instances of modern slavery properly lies with the NSW Police Force and the Australian Federal Police (as lead agency for human trafficking and slavery investigations), or – where appropriate – with the Fair Work Ombudsman and Safe Work NSW. I work collaboratively with these agencies, in line with my statutory functions and obligations, and have shared information about suspected instances of modern slavery with the NSW Police or other investigative agencies on numerous occasions.¹

However, the Committee's recommendation would address some practical challenges that have arisen as a result of the current statutory limitations on my information-gathering powers.

My office is receiving an increasing number of reports through 1800 FREEDOM which take the form of tip-offs about practices that may constitute modern slavery. These reports have come from employees concerned about practices they have seen within their own organisation, entities who have identified red flags in their supply chains / operations and wish to investigate further, and concerned members of the community.

In many cases, where I refer these reports to or share information with law enforcement or regulators, the information is too limited to trigger formal investigation. In these circumstances, I am left with few options to obtain further information or identify victims who have not come forward to my Office. This information – which may in fact arise from instances of modern slavery – does not receive proactive investigation. Information-gathering powers will improve the value of my cooperation with investigative agencies by allowing me to substantiate reports of modern slavery before referring them, and to better triage reports to the correct agency or organisation.

¹ Section 13 of the Act permits me to work with and refer matters to the appropriate authorities, including the Commissioner of Police, the Ombudsman, the Secretary of the Department of Communities and Justice ('DCJ') or any other investigative or government agency. Section 20(1) allows me to use information I obtain while exercising my functions to make reports to the Secretary of DCJ, or a member of the NSW Police Force, in relation to child abuse or a child or young person at risk of significant harm. Section 20(2) positively requires me to do so where I have reasonable grounds to suspect that a child or young person, or a class of children or young persons, is at risk of significant harm.

Limited powers to gather information and conduct investigations would also strengthen my support and assistance mandate, as people who contact 1800 FREEDOM can be assured that action will be taken to follow-up credible reports of modern slavery.

Further, it is likely that my information-gathering functions will become increasingly salient as NSW public entities progress their implementation of the *Guidance on Reasonable Steps* (GRS), which my Office published in late 2023. Where modern slavery occurs in a NSW Government or local council's supply chain, the GRS sets an expectation that entities will provide or enable access to effective remedy. As government entities begin to receive reports of suspected modern slavery through these mechanisms, they are increasingly likely to seek my support in meeting this expectation. Additional information-gathering powers will make it much more feasible for me to provide appropriate support to these entities, and ensure victims of modern slavery access remedy.

Parts (2) and (3) of the recommendation relate to powers to direct covered entities in connection with their duty of cooperation, and in relation to obligations to report on significant operational issues. I welcome the introduction of these powers, which would enhance my capacity (and that of future Commissioners) to carry out my statutory function of monitoring covered entities' compliance with due diligence and reporting obligations under the Act. For this Recommendation to be implemented effectively, it will be important for these powers to be backed by suitable penalties, as discussed in Recommendation 7.

2.2 Recommendation 2: amendment of section 14

That the NSW Government seek to amend section 14 of the Modern Slavery Act 2018 to clarify that the provision does not provide the NSW Anti-slavery Commissioner powers to expect cooperation that is inconsistent with existing rights and privileges, including legal professional privilege and public interest immunity.

I support this recommendation.

My view on the correct interpretation of section 14 is, as I have stated consistently, that the duty of cooperation it creates is properly understood not to override or be inconsistent in any way with existing rights and privileges. However, I acknowledge that explicit clarification of this point is likely to provide comfort to Government and non-government entities covered by the provision.

2.3 Recommendation 3: training of frontline workers

That the NSW Government:

- *provide mandatory and ongoing training to government and non-government frontline organisations, including housing, education, healthcare, law enforcement and social services, to identify and respond appropriately to potential victim-survivors of modern slavery*
- *work closely with the NSW Anti-slavery Commissioner to develop this training to ensure that it is survivor-led and trauma-informed.*

I support this recommendation.

I understand the recommendation that the NSW Government 'provide...training' to mean that the government should develop a mandatory, benchmarked framework (i.e., minimum training requirements or standards, or a system of training accreditation) for the form and content of training to be provided to frontline workers. This training itself could be developed and delivered centrally by the NSW Government, by a consortium of public and private actors, or through suitable training providers. In either case, training should, to the extent possible, be co-designed and co-delivered alongside people with lived experience.

In my 2023-24 Annual Report, I recommended that the NSW Government work with my Office and external partners to form a taskforce which would assess frontline workers' training needs, identify

minimum requirements, and develop a framework for delivering this training. This approach would avoid duplicative and fragmented training efforts across government and non-government entities, and ensure consistent quality and content of training across frontline organisations. It would also provide my Office with a clear channel to provide input and feedback to the government on the content and delivery of the training.

I am currently providing advice and support to several NSW Government departments as they seek to strengthen their modern slavery training arrangements for frontline workers. In cooperation with the Secretary of the Department of Communities and Justice, I am also exploring ways to coordinate these efforts across agencies. Adoption of this Recommendation would support and align with these efforts.

2.4 Recommendation 4: budget proposals

That the NSW Government, on a trial basis, provide the NSW Anti-slavery Commissioner with the ability to present budget proposals through the Attorney General to the Cabinet Office or Expenditure Review Committee of Cabinet.

I support this recommendation.

This administrative change would help secure the independence of the Commissioner, as explicitly mandated by section 7 of the Act.

2.5 Recommendation 5: resourcing

That the NSW Government ensure that the Office of the NSW Anti-slavery Commissioner is adequately resourced to carry out its functions, including any additional functions that arise from this review.

I support this recommendation.

I have previously documented my concerns that the resources currently available to the Office of the NSW Anti-slavery Commissioner make it difficult to execute the functions given to the Commissioner under the Act. In particular, the paucity of resources has made it difficult to effectively and sustainably discharge functions relating to:

- (a) monitoring of supply-chain due diligence and reporting by NSW Government agencies, local councils, state-owned corporations and other covered entities; and
- (b) support and assistance to survivors of modern slavery, including through the 1800 FREEDOM hotline.

The Office is required to monitor more than 420 agencies for appropriate modern slavery risk management, across more than \$40 billion of procurement. And presentations to our 1800 FREEDOM hotline continue to rise, with more than 300 potential victims identified over the last 12 months – and 10 just in the last week. As discussed at 2.1 above, we are receiving a growing number of reports from whistleblowers, who tend to identify large numbers of potential victims (i.e. whole workforces).

I have appreciated the willingness of the NSW Government to maintain an open dialogue regarding the Office's resourcing needs. The Committee's Recommendation 5, if adopted by the Government, would help ensure the sustainability of my Office and the discharge of the Commissioner's statutory functions.

2.6 Recommendation 6: tabling of annual and other reports

That the NSW Government seek to amend the Modern Slavery Act 2018 to explicitly provide for the NSW 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.

I support this recommendation.

This recommendation has now been passed into law by the passage of the Justice Legislation Amendment (Civil) Bill 2024 (NSW) in February 2025. Schedule 4 of the Bill inserted the following subsections after section 19(5):

- (6) A report given to the Presiding Officer of a House of Parliament under this section, or section 22(3), must be laid before the House within 5 sitting days of the House after it is received by the Presiding Officer.*
- (7) If the House is not sitting, a report under this section or section 22(3) may instead be given to the Clerk of the House.*
- (8) A report given to the Clerk of a House under subsection (7) —*
 - (a) is taken to have been given to the Presiding Officer of the House and laid before the House, and*
 - (b) may be printed or published by the Clerk, and*
 - (c) if printed or published by the Clerk — is taken to be a document printed or published by the House, and*
 - (d) must be recorded, on the first sitting day of the House after the Clerk receives the report —*
 - (i) for the Legislative Council — in the Minutes of the Proceedings of the Legislative Council, or*
 - (ii) for the Legislative Assembly — in the Votes and Proceedings of the Legislative Assembly.*

The amendments to section 19 commenced upon assent on 2 March 2025.²

2.7 Recommendation 7: penalties

That the NSW Government explore the use, scope and efficacy of penalties to reduce the prevalence of modern slavery in New South Wales.

I partially support this recommendation.

Penalties to reduce the prevalence of modern slavery could take different forms, such as criminal sanction for those who engage in, or conduct a business involving, modern slavery; or penalties for individuals or entities who fail to comply with their obligations under the Act. I understand the Committee's recommendation to refer to the latter, since conduct involving commission of modern slavery is already addressed through the modern slavery offences identified in Schedule 2 of the Act.

The institution of penalties would help ensure that obligations under the Act – including obligations to cooperate with the Commissioner and to share information – are taken seriously by duty bearers.

² Parliament of New South Wales, [Justice Legislation Amendment \(Civil\) Bill 2024](#).

This would help ensure the effectiveness of any amendments made to the Act to enlarge the Commissioner's information-gathering powers, pursuant to Recommendation 1.

It is important also to contemplate how the introduction of additional penalties would interact with other obligations created by the Act. Section 31 imposes certain reporting obligations on NSW public entities since 2022. At present, the sanctions that arise for failure to meet these obligations include listing on the Commissioner's Public Register, and the potential for negative findings in an audit carried out by the NSW Auditor-General. Recommendation 7 suggests the need to contemplate additional penalties.

Penalties are an important tool to ensure compliance with both reporting and due diligence obligations, in line with guidance provided under the Guidance on Reasonable Steps. However, in order that the imposition of these penalties is fair and consistent, covered entities (which represent a wide spectrum of sizes, resources and risk profiles) must have clear, concrete obligations, as well as the resources to comply with them.

There are frameworks emerging which seek to provide these prerequisites. Since December 2023, covered entities have had the benefit of my Guidance on Reasonable Steps to provide a framework for meeting these obligations. The GRS goes a long way towards clarifying the content of covered entities' due diligence and reporting obligations, and makes clear that the nature of these obligations will depend on the entity's available resources and risk profile. Even greater clarity will be provided if or when the NSW Procurement Board issues a Direction requiring agencies within its purview to abide by the GRS.

Separately, the recommendations of the inquiry into procurement practices of government agencies in New South Wales and its impact on the social development of the people of New South Wales, conducted by the Standing Committee on Social Issues ('social procurement reforms'), will have significant impacts on the implementation and resourcing of anti-slavery reforms. These include:

- Recommendations 3 and 4, which relate to the use of model tender and contract clauses developed by my Office: both of these were supported by the NSW Government, and are currently being implemented.
- Recommendations 5-7, which relate to due diligence requirements, codes for supplier compliance in industries with vulnerable workforces, and labour baseline costs respectively: these were supported in principle by the NSW Government.

Implementation of the social procurement reforms will intersect with the implementation of due diligence and reporting requirements in the Act, and presents an opportunity for developing more effective enforcement arrangements.

Exploring the use, scope and efficacy of penalties will require adequate resourcing across the NSW Government procurement environment to ensure that agencies are sufficiently resourced to implement their obligations under the GRS – and avoid penalties. It will also require adequate resourcing of my Office to ensure that we can participate meaningfully in the design and implementation of the social procurement reforms, and provide covered entities the support and advice they need.

Finally, I note the Committee's acknowledgement that both the Act and the NSW Government's anti-slavery response are nascent, and that training and awareness-raising for frontline agencies will be a central component of enforcement and compliance. As discussed at 2.3 above, I strongly support action by the NSW Government to develop a mandatory, benchmarked framework for training to be provided to frontline workers.

2.8 Recommendation 8: amendments to the Act to support the participation of people with lived experience of modern slavery

That the NSW Government seek to amend the Modern Slavery Act 2018 by:

- *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'*
- *adding a new section 8A, 'Advisory Panel' to read:*
 - *The Commissioner may appoint an Advisory Panel to provide advice and counsel to the Commissioner in the discharge of the Commissioner's functions*
 - *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 'Cooperation with other persons and organisations' to read: 'When possible, the Commissioner shall seek to work in cooperation 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 cooperation and engagement with people with lived experience during that year'*
- *adding a new section 19(2)(f) to state that the Commissioner's annual report must include 'a report from the Commissioner's Advisory Panel on the issues the Panel has discussed and any actions they believe the Government or Parliament should take in relation to meeting the objects of the Act'*
- *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 cooperated 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'.*

I support this recommendation.

The amendments to the Act recommended by the Committee align with my submission to the Committee on the need to create safe, supported opportunities for centring lived experience at the heart of an anti-slavery community of purpose. Ensuring that the role of people with lived experience is embedded in the language of the Act will ensure that these efforts are pursued consistently and provide opportunities for circular feedback and improvement.

Implementing these recommendations will require adequate and sustainable resourcing. People who contribute their lived expertise to the design and implementation of policy and legislative measures

must be provided with appropriate adjustments where necessary, and appropriately compensated for their contributions.

Proposed section 19(2)(f)

Specific resourcing will be required to implement the amendment introducing proposed section 19(2)(f), which concerns the inclusion of a report from the Commissioner's Advisory Panel in the Commissioner's annual report.

Members of my Advisory Panel share their time and expertise on a limited part-time basis. Under policies adopted by my Office, they are entitled to remuneration for their time, reimbursement of approved costs related to work with the Panel, and in some cases access to other relevant supports (such as certain counselling services). I meet formally with my Advisory Panel once per quarter, and reach out to members with relevant expertise on an ad hoc basis for guidance on specific matters.

While my Advisory Panel is strongly supportive of the proposed section 19(2)(f), I note that producing an annual report will involve a substantial uplift in workload for Panel members, and a commensurate increase in remuneration costs for my Office.

Proposed section 19(3)(d)

I support the substance of the Committee's recommendation to add a new section 19(3)(d) requiring my annual report to include a review of the extent to which the NSW Government has cooperated with people with lived experience of modern slavery. However, for consistency, I would recommend aligning the language of this provision with Recommendation 9.

That is, section 19(3)(d) should require the Commissioner to include in their annual report a review of 'the extent to which the government of NSW has *integrated lived experience expertise into its broader response to modern slavery, including its policies and support services.*'

2.9 Recommendation 9: integration of lived expertise in modern slavery response

That the NSW Government ensure that its broader response to modern slavery, including its policies and support services, integrate lived experience expertise.

I support this recommendation.

As I discussed in my submission to the Committee's review of the Act, strengthening the effectiveness of the anti-slavery sector will require creating safe, supported opportunities for centring lived experience. Integrating lived experience expertise goes beyond consultation with or requesting feedback from survivors, and requires a truly participatory approach. Survivors with relevant expertise should be involved in policy development and design as peer researchers, and should co-deliver modern slavery policies and programs.

As discussed at 2.8 above, I recommend that the language of section 19(3)(d) is aligned with this recommendation. This will ensure that the information the Commissioner is required to include in their annual report aligns with, and provides oversight of, the government's actions to integrate lived experience expertise in its modern slavery response.

2.10 Recommendation 10: amendments to the *Victim Rights and Supports Act 2013*

That the NSW Government seek to amend the *Victim Rights and Supports Act 2013* by:

- amending section 5(1) 'meaning of "victim of crime"' to include specific reference to the definition of modern slavery in sections 5 (1)(a) and (b) of the *Modern Slavery Act 2018*
- amending section 19A(1) 'meaning of "act of modern slavery"' to read: 'act of modern slavery means an act, part of an act or series of related acts including planning of an act or series of related acts committed in, or partly within, New South Wales'
- amending section 3 'definitions' to include Commonwealth agencies, departments and law enforcement, such as the Australian Federal Police and the Commonwealth Director of Public Prosecutions, as agencies the Commissioner of Victims Rights may seek information from (therefore changing the scope of section 12 to allow the Commissioner of Victim Rights to compel information from Australian Government agencies in the exercise of their functions under the Act)
- removing the requirement for applicants to demonstrate 'injury' or 'harm' in order to access support or payments
- amending section 40(1) 'time for making, and duration of, applications' for victim support to introduce an exception to the limitation period for claims made by victims of modern slavery
- amending section 42 'consideration of applications' for victim support to include a procedural fairness mechanism that allows 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.

I support this recommendation.

There are emerging indications, including in reports to 1800 FREEDOM, suggesting that victims of modern slavery are experiencing difficulty accessing support under the *Victim Rights and Supports Act 2013* ('the VRS Act').

I would welcome the proposed amendments to the VRS Act recommended by the Committee in line with submissions made by Anti Slavery Australia and the Law Society of NSW. I would also propose two further amendments to the VRS Act to strengthen the supports available to modern slavery survivors and ensure they are provided on an equitable basis.

'Series of related acts' of modern slavery

Division 3 of the VRS Act provides that victims of an 'act of modern slavery' are eligible for certain supports, including financial assistance. Similarly, Division 5 provides for recognition payments to victims of an 'act of modern slavery'.

'Act of modern slavery' is defined in section 19A as 'an act or series of related acts' that involve or occur in the course of commission of a modern slavery offence. Section 19A(3) states that '...a series of related acts is 2 or more acts that are related because:

- (a) they were committed against the same person, and
- (b) in the opinion of the Tribunal or the Commissioner —
 - (i) they were committed at approximately the same time, or
 - (ii) they were committed over a period of time by the same person or group of persons, or
 - (iii) they were, for any other reason, related to each other.'

Subsection (6) states that, '[f]or the purposes of this Act, a series of related acts, whether committed by one or more persons, constitutes a single act of modern slavery.'

In practice, the effect of section 19A(3) and (6) appears to be that, often, circumstances where victims are subjected to conditions of modern slavery over an extended period are treated by decision-makers as a series of related acts for which a victim is only permitted to receive one recognition payment. These recognition payments are often capped at \$10,000.

In practice, this analysis is leading to absurd and unjust results. For example, a person who was subjected to sexual servitude for a period of months or years, forced by an individual to provide sexual services to multiple 'clients', and exposed to dehumanising and degrading treatment by a perpetrator, will recover less under the VRS Act than a person who was subjected to two separate assaults on separate occasions within a matter of weeks

I therefore recommend that section 19A is amended or clarified to provide that the Tribunal or the Commissioner must only find that 2 or more related acts constitute a 'series of related acts' if they are reasonably satisfied that this determination would not lead to unjust or inequitable consequences, having regard to:

- the period over which the victim was subjected to a modern slavery offence;
- whether other offences under the *Crimes Act 1900* (NSW) or the federal Criminal Code were committed against the victim by any person or persons during this period;
- whether the victim was subjected to torture or cruel, inhuman or degrading treatment or punishment; and
- any physical or psychological injuries suffered by the victim as a result of these acts.

Section 35

Section 35 defines the categories of recognition payment. It provides that:

(1) *A category A recognition payment is a payment given in respect of an act of violence or act of modern slavery that apparently occurred in the course of the commission of a homicide.*

(2) *A category B recognition payment is a payment given in respect of an act of violence or act of modern slavery of the following kinds —*

(a) a sexual assault resulting in serious bodily injury or which involved an offensive weapon or was carried out by 2 or more persons,

(b) a sexual assault, sexual touching or sexual act or attempted sexual assault involving violence that is one of a series of related acts.

(3) *A category C recognition payment is a payment given in respect of an act of violence or act of modern slavery involving any of the following —*

(a) a sexual assault other than one referred to in subsection (2) (b),

(b) an attempted sexual assault resulting in serious bodily injury,

(c) an assault resulting in grievous bodily harm,

(d) physical assault of a child that is one of a series of related acts.

(4) *A category D recognition payment is a payment given in respect of an act of violence or act of modern slavery involving any of the following —*

(a) sexual touching or sexual act,

(b) an attempted sexual assault involving violence other than one referred to in subsection (3) (b),

(c) a robbery involving violence,

(d) an assault (not resulting in grievous bodily harm).

The framing of these categories has the effect that a victim of modern slavery which did not occur in the course of commission of a homicide, or which did not involve some form of actual or attempted sexual assault, physical assault or robbery with violence, is ineligible for a recognition payment.

This is likely to exclude many survivors of forced labour, debt bondage and/or deceptive recruiting – all recognised modern slavery offences under Schedule 2 of the Act – from support under the VRS Act. In fact, it will exclude any victim of modern slavery who is coerced, not through physical violence, but through psychological or financial control or non-physical threats, such as threats to report a person to immigration authorities.

Modern slavery involves a fundamental violation of a victim's rights. Requiring that victims have suffered another secondary offence in order for them to be eligible for a payment in recognition of their experiences does not reflect the level of criminality involved in a modern slavery offence. I therefore propose that section 35 is amended to create a new *category E* recognition payment. This payment would be given in respect of an act of modern slavery, whether or not this act involves the offences that would entitle a victim to a recognition payment under categories A-D.

2.11 Recommendation 11: amendment to section 19(3)

That the NSW Government seek to amend section 19(3) of the Modern Slavery Act 2018 to require the NSW Anti-slavery Commissioner's annual report to include:

- *a review of the government's actions during the year to ensure access for victims of modern slavery to safe, culturally appropriate housing, healthcare and other essential services.*
- *details of mandatory and other training undertaken by government and nongovernment frontline organisations.*

I support this recommendation.

I addressed the need for improved access for survivors to essential services, as well as frontline worker training on modern slavery, in my most recent 2023-24 annual report. Both are key priorities for my Office, and I would be pleased to incorporate a review of these matters into my annual report on an ongoing basis. However, I note that gathering and reporting comprehensive and correct data on these points is likely to be challenging in practice, and will require additional resourcing for my Office. I note, in this respect, the Committee's recommendation 5 (discussed at 2.5 above) regarding the need for adequate resourcing of the Commissioner's functions, including additional functions.

In relation to the first point, there is currently no formalised framework governing NSW Government actions to ensure that victims of modern slavery have access to safe, culturally appropriate housing, healthcare and other essential services, or to report on these actions. It is unclear whether this review would encompass measures taken to ensure the *general* accessibility of housing, healthcare and other services. Liaising with NSW Government agencies to collect and analyse this data, and ensuring it is accurate and comprehensive, will require a considerable investment of time and resources.

Section 19(3) currently requires me to report on the extent to which the NSW Government has provided mandatory training on modern slavery to front-line agencies and the public generally during the year. In my 2023-24 annual report, I surveyed 32 NSW government agencies who employed frontline workers, being 'any person who interacts directly with members of the public in the workplace as part of their duties'.³ The second point proposes expanding this to mandatory and other training provided both by government *and non-government* frontline organisations. This is important, as many essential services are provided by or through non-government organisations.

In practice, however, this amendment substantially expands the scope of the Commissioner's reporting obligations and will require commensurate additional funding.

³ NSW Anti-slavery Commissioner's Annual Report Financial Year 2023–2024, Engaging for Freedom, pp 31-2.

2.12 Recommendation 12: review of the Act

That the NSW Government seek to amend the Modern Slavery Act 2018 to require the Modern Slavery Committee to undertake a review of the Act once per parliamentary term to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing the objectives.

I support this recommendation.

This recommendation aligns with Conclusion 7 in my submission to the Committee's review of the Act.

Despite the long history of anti-slavery efforts by many actors in NSW, the implementation of the Act is still in its early days, and the anti-slavery landscape continues to evolve. Reviewing the Act once per Parliamentary term will ensure Parliament remains actively engaged in assessing whether the legislation is fit for purpose, and whether further action from the NSW Government is needed to combat particular aspects of modern slavery.

Regular review of the Act will also provide a straightforward path for future Commissioners to advocate for change. Further amendments to update the Act may be needed as a greater body of evidence develops around the prevalence of modern slavery in NSW and the efficacy of actions to combat it.

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Call 1800 FREEDOM (1800 37 33 36)
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for victims of modern slavery