

**Submission
No 11**

**INQUIRY INTO REVIEW OF THE MODERN SLAVERY
ACT 2018**

Organisation: New South Wales Bar Association

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17 October 2023

Dr Joseph McGirr MP
Chair, Modern Slavery Committee

By email: modernslavery@parliament.nsw.gov.au

Dear Dr McGirr,

Review of the *Modern Slavery Act 2018* (NSW)

1. The New South Wales Bar Association (**Association**) welcomes the opportunity to provide a submission to the Modern Slavery Committee on the review the *Modern Slavery Act 2018* (NSW) (the **Act**) in accordance with the Terms of Reference.
2. The Association has been active in engaging with the proscription of modern slavery at both the Commonwealth and State level for a number of years. In New South Wales (NSW), the Act plays an important role in promoting human rights and freedoms, including civil, political, economic and social human rights, particularly in circumstances where there is no statutory bill or charter of human rights.
3. The Act came into force in January 2022, although the *Modern Slavery Act 2018* No 30 was assented to on 27 June 2018. There was a period of three and a half years from the time the Act was passed by NSW Parliament to the time the Act came into force.
4. In March 2020, the Standing Committee on Social Issues published the report, “*Modern Slavery Act 2018 and associated matters*”, following an inquiry into the Act, the consultation draft of the *Modern Slavery Amendment Bill 2019* (NSW) (**Amendment Bill**), and the consultation draft of the *Modern Slavery Regulation 2019* (NSW) (**Regulation**).
5. The *Modern Slavery Amendment Act 2021* (NSW) was assented to on 29 November 2021. Following this, as stated above, the Act came into force in January 2022.
6. Noting that the Act has been in operation for less than two years, the Association considers that the policy objectives of the Act remain valid and the terms of the Act remain appropriate for securing those objectives. Looking forward, the recent appointment of NSW’s first Anti-slavery Commissioner (**Commissioner**) provides a significant opportunity to increase awareness of the prevalence and nature of modern slavery in NSW, and enhance practical implementation of measures to address the Act’s policy objectives.

Objectives of the Act

7. Term of Reference 1(a) charges the Committee with inquiring into whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing the objectives. For that reason, it is necessary to have regard to the Act's present objectives.

Some context from recent modern slavery data

8. Any review of the Act should have regard to the prevalence of modern slavery, particularly in NSW. For that reason, the Association draws the Committee's attention to the recent data published by Walk Free in their report, *The Global Slavery Index 2023* (the **2023 Index**).¹
9. According to the 2023 Index, an estimated 50 million people were living in modern slavery on any given day in 2021, which is an increase of around 10 million people since the release of the 2016 data. Of these people, approximately 28 million were in forced labour and 22 million were in forced marriages. Women, children and migrants remain disproportionately affected.²
10. The 2023 Index estimates that on any given day in 2021, there were 41,000 individuals in modern slavery in Australia.³ There are an estimated 16,400 people in NSW who are victims of modern slavery.⁴ Modern slavery is estimated to cost NSW around \$956 million to \$9.6 billion.⁵
11. Despite these high figures, there were only 1,123 reports of modern slavery to the Australian Federal Police (AFP) – Australia-wide – in the four years from FY2017/18 to FY2021/2022.⁶
12. In the financial year ending 30 June 2022, the AFP received⁷:
 - a. 294 modern slavery reports;
 - b. 42 reports of forced labour;
 - c. of its modern slavery reports, 18 per cent related to sexual servitude and exploitation and 21 reports of trafficking in children.
13. The most common form of modern slavery cases reported to authorities in Australia is forced marriage, including child marriage.⁸

¹ Walk Free 2023, *The Global Slavery Index 2023*, Minderoo Foundation. Available [here](#).

² *Ibid*, p 24.

³ *Ibid*, p 118.

⁴ NSW Anti-slavery Commissioner's Strategic Plan 2023-2026, p. 8, available [here](#).

⁵ *Ibid*, p 9.

⁶ *Ibid*.

⁷ Walk Free, *Global Slavery Index – Country Study, Australia*. Available [here](#).

⁸ *Ibid*.

14. While, statistically at least, the incidence and reporting of modern slavery within Australia appear to be relatively low, there is concern that the statistics reflect a low level of awareness and knowledge of the issues, and the actual incidence may be much higher, both domestically and overseas.
15. Notwithstanding Australia's high ranking within the Asia Pacific and globally, the 2023 Index identified opportunities for the government in Australia *'to strengthen its response, for example, through improving measures to identify and support survivors, closing legal loopholes to raise the minimum age of marriage to 18 with no exemptions, and establishing the role of national Independent Anti-Slavery Commissioner under the Modern Slavery Act.'*⁹

The NSW Anti-Slavery Commissioner

16. The Association welcomes the appointment of NSW's first Anti-slavery Commissioner, Dr James Cockayne, who commenced in August 2022, and commends the Commissioner on his Strategic Plan 2023-2026, *Working together for real freedom (Strategic Plan)*.
17. The appointment of the Commissioner fulfils the objective of section 3(c) of the Act. The Commissioner, and the discharge by him of his statutory functions, have an important role in combating modern slavery in NSW.
18. The Commissioner's Strategic Plan sets out actions aimed at achieving five interconnected priorities - to build prevention capacity; enable remedy; foster responsible business practices; change the narrative; and to develop a community of purpose.
19. Notwithstanding the Commissioner's annual report is yet to be published, as required pursuant to section 19 of the Act, the Association is aware that the Commissioner has undertaken preliminary work to address the issue of NSW public procurement. Such activity is consistent with the Commissioner's obligation to regularly consult with the Auditor-General and the NSW Procurement Board to monitor the effectiveness of due diligence procedures in respect of goods and services procured by government agencies.¹⁰
20. As stated in the September 2022 Office of the NSW Anti-slavery Commissioner's Discussion Paper #001, *NSW public procurement and modern slavery*, *'[g]overnment procurement is an important lever through which states can discharge their duty to protect human rights and influence how business meets its responsibility to respect human rights – including the prohibition on slavery'*.¹¹
21. Additionally, the Association is aware that the Commissioner intends to develop:

⁹ Ibid.

¹⁰ See section 25 of the Act.

¹¹ Office of the NSW Anti-slavery Commissioner, Discussion Paper #001, *NSW public procurement and modern slavery* (September 2022) Available [here](#).

- a. a ‘Shared Implementation Framework’, in consultation with affected entities, which will be ‘a package of formal Guidance, implementation tools and materials, and training – to support entities subject to these new modern slavery due diligence and reporting obligations’;¹²
 - b. a ‘detailed NSW Anti-slavery Commissioner’s Guidance on Reasonable Steps for Public Buyers in mid-2023...cover[ing] a wide range of issues relating to ‘reasonable steps’ at every stage of the procurement process’;¹³ and
 - c. additional tools, materials and other infrastructure to support implementation of the NSW legislative provisions¹⁴
22. The Association welcomes the development of these resources and considers that these resources will assist with addressing the objectives of the Act. Further, these resources will also assist the Commissioner to fulfil his function pursuant to section 28 of the Act to ‘*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*’.
23. Section 26 of the Act places an obligation on the Commissioner to keep a register that is publicly available, free of charge, and in electronic form that identifies any government agency failing to comply with the directions of the NSW Procurement Board under section 175 of the *Public Works and Procurement Act 1912* (NSW), any State owned corporation that has failed to provide a modern slavery statement required under the *Modern Slavery Act 2018* (Cth), and any other information the Commissioner thinks appropriate.
24. Such a register was not publicly available on the Commissioner’s website at the time of preparing this submission. The Association welcomes the introduction of a public register and considers that the register will act as an important initiative in meeting the objectives of the Act.
25. Section 27 of the Act states that the Commissioner may develop, and make publicly available, ‘*codes of practice for the purpose of providing guidance in identifying modern slavery taking place within the supply chains of organisations and steps that can be taken to remediate or monitor identified risks*’.
26. The Association notes that the Commissioner has issued *Discussion Paper #004: A Code of Practice on Managing Modern Slavery Risks in Renewable Energy Value-Chains*.¹⁵

¹² Submission of the NSW Anti-slavery Commissioner to the Inquiry into the Modern Slavery Legislation Amendment Bill 2023 (ACT), dated 22 May 2023, p 5, available [here](#).

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Office of the Anti-slavery Commissioner, *Discussion Paper 004: A Code of Practice on Managing Modern Slavery Risks in Renewable Energy Value-Chains* (August 2023), available [here](#).

27. The Association welcomes the development of this Code of Practice, noting that there are hidden and difficult to identify modern slavery risks in the production and distribution of renewable energy, including lithium-ion batteries, photovoltaic solar panels and wind turbines.¹⁶
28. The Association notes that the market for renewable energy will increase given the urgent and pressing need to address climate change. On 28 July 2022 the United Nations General Assembly published A/76/L.75¹⁷ which significantly recognises ‘*the right to a clean, healthy and sustainable environment as a human right*’, affirms ‘*the importance of a clean, healthy and sustainable environment for the enjoyment of all human rights*’, and calls upon ‘*States, international organizations, business enterprises and other relevant stakeholders to adopt policies, to enhance international cooperation, strengthen capacity-building and continue to share good practices in order to scale up efforts to ensure a clean, healthy and sustainable environment for all*’.
29. The need for codes of practice in renewable energy is vital, and the Association considers that the development of such a code proposed by the Commissioner is important in meeting the objectives of the Act.
30. The Association submits, however, that codes of practice in other industries such as agriculture, manufacturing, hospitality, healthcare, mining, and construction, are also required in order for the objectives of the Act to be more fully met.

Modern slavery prosecutions

31. Investigating and prosecuting modern slavery offences is critical in ensuring that the objective of combatting modern slavery pursuant to s 3(a) of the Act is met.
32. The Commissioner notes that ‘*[c]onvictions for modern slavery offences are very difficult to secure*’.¹⁸ Taking organ trafficking as an example, the AFP is yet to secure a prosecution despite the legislation creating these offences being in effect for almost two decades.
33. Notwithstanding the hidden and often secretive nature of modern slavery, increased community awareness and knowledge as to what constitutes modern slavery offences within society more generally can act to increase reports of modern slavery to authorities such as the police, social services, and healthcare agencies.
34. The Association submits that the NSW Government should continue to raise awareness, and educate the broader society, about the nature of modern slavery, how to identify it, and how to report it, as a means of meeting the objective to combat slavery.

¹⁶ See, for example, paragraph 10 of the *Discussion Paper 004: A Code of Practice on Managing Modern Slavery Risks in Renewable Energy Value-Chains* (August 2023).

¹⁷ United Nations General Assembly, A/76/L.75, available [here](#).

¹⁸ NSW Anti-slavery Commissioner’s Strategic Plan 2023-2026, p. 12, available [here](#).

35. The Association considers that the barriers and challenges to the investigation and prosecution of human trafficking and slavery cases, identified by the Australian Institute of Criminology in the paper, *Attrition of human trafficking and slavery cases through the Australian criminal justice system*, should be addressed.¹⁹
36. Further, to ensure the public are aware of modern slavery offences and what offences are being prosecuted, the Association submits that the NSW Government should consider publicly reporting annually on the prosecution of modern slavery offences.

The importance of listening to those with lived experience of modern slavery

37. The Association commends the Commissioner for his commitment to engage with, listen to, and include in the design of the strategy, those with lived experience of modern slavery and the employment of a Lived Experience Advisor.
38. As stated by the British Red Cross:

Recognising survivors as the experts in their recovery is fundamental to ensuring that they can take back control of their lives following an experience that diminishes their sense of self and dignity.²⁰

39. Any support, services, strategies, action plans, or policy documents, relating to modern slavery must be informed and designed by those with lived experience of modern slavery.
40. Furthermore, the Association stresses that there must be support services independent from the NSW Police and the AFP, as a requirement to make contact with the police may deter some who have experienced modern slavery from accessing support, for example, if they are concerned that they have breached visa conditions or have a fear of contacting authorities.

Establishment of a new hotline

41. A key part of the Commissioner's Strategic Plan is the establishment of a new support and referral hotline to provide advice and assistance to people, including children, who have experienced or at risk of modern slavery, as required by section 12(d) of the Act.
42. The Association supports the establishment of a new hotline, and notes that the National Referral Mechanism in the United Kingdom, which enables first responders to report cases of modern slavery and refer potential victims to support and protection, may provide useful guidance in relation to the establishment of the NSW hotline.²¹

¹⁹ Lyneham, Samantha, *Attrition of human trafficking and slavery cases through the Australian criminal justice system*, Australian Institute of Criminology, (November 2021). Available [here](#).

²⁰ British Red Cross, *Why it is time to listen to survivors of human trafficking* (last updated 4 August 2022). Available [here](#).

²¹ See the UK 'Report modern slavery as a first response' Guidance, (last updated 20 September 2021). Available [here](#).

43. As stated above, the Association strongly recommends that the hotline be co-designed with those who have lived experienced of modern slavery.

Conclusion

44. Given the Modern Slavery Committee's review has taken place just over a year after the appointment of the Commissioner, the Association respectfully suggests that there would be benefit in the Modern Slavery Committee conducting a further review of the Act in two years' time in order to assess more comprehensively whether the Act is meeting its policy objectives and whether the terms of the Act are appropriate.

45. This would enable review of the Commissioner's annual report, the public register, any further data by the AFP or NSW Police regarding investigations and prosecutions of modern slavery offences, and any analysis of this data by the Australian Institute of Criminology.

46. Thank you for the opportunity to provide a submission to the Committee regarding the review of the Act. The Association welcomes the opportunity to continue to contribute to the development and improvement of modern slavery legislation in NSW.

47. Should you have any questions in relation to this letter, please contact _____ Senior Policy Lawyer, at _____ in the first instance.

Yours faithfully

Gabrielle Bashir SC
President