**REPORT ON PROCEEDINGS BEFORE**

# STANDING COMMITTEE ON SOCIAL ISSUES

## INQUIRY INTO THE MODERN SLAVERY ACT 2018 AND ASSOCIATED MATTERS

**CORRECTED**

**Macquarie Room, Parliament House, Sydney**

**Monday 4 November 2019**

**The Committee met at 9:15**

**PRESENT**

The Hon. Shayne Mallard (Chair)

The Hon. Daniel Mookhey (Deputy Chair)
The Hon. Greg Donnelly
The Hon. Wes Fang
Reverend the Hon. Fred Nile
Mr David Shoebridge
The Hon. Natalie Ward

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**The CHAIR:** Good morning and welcome to the Standing Committee on Social Issues inquiry into the Modern Slavery Act 2018 and associated matters. The inquiry is examining specific issues around the operability and drafting of the Act as well as the consultation drafts of the Modern Slavery Bill 2019 and the Modern Slavery Regulation. Before I commence I would like to acknowledge the Gadigal people, who are the traditional custodians of this land on which we meet. I would like to pay my respects to elders past and present of the Eora nation and extend Committee members' respects to the Aboriginal people present. Today the Committee will be hearing from a range of stakeholders including the Interim Anti-Slavery Commissioner, legal groups, representatives from the business community, advocacy and humanitarian organisations, trade unions and the former member of the Legislative Council, Mr Paul Green, who introduced the Modern Slavery Act 2018 to Parliament.

Before we commence, I would like to make some brief comments about the procedures for today's hearing. In accordance with the broadcasting guidelines, while members of the media may film or record Committee members and witnesses, people in the public gallery should not be the primary focus of any filming or photography. I would also remind media representatives that they must take responsibility for what they publish about the Committee's proceedings. It is important to remember that parliamentary privilege does not apply to what witnesses may say outside of their evidence at the hearing, and so I urge witnesses to be careful about any comments they make to the media or to others after they have completed their evidence as such comments would not be protected by parliamentary privilege if another person decided to take action for defamation. The guidelines for broadcasting of proceedings are available from the secretariat.

All witnesses in the hearings have a right to procedural fairness according to the procedural fairness resolution adopted by the House in 2018. There may be some questions that a witness could only answer if they had more time or with certain documents to hand. In these circumstances, witnesses are advised that they can take a question on notice and provide an answer to us within 21 days. I remind everyone here today that Committee hearings are not intended to provide a forum for people to make adverse reflections about others under the protection of parliamentary privilege. I therefore request that witnesses focus on the issues raised by the inquiry's terms of reference and avoid naming individuals unnecessarily.

Witnesses are advised that any messages should be delivered to Committee members through Committee staff. To aid the audibility of this hearing, may I remind both Committee members and witnesses to speak into the microphones. The room is fitted with induction loops compatible with hearing aid systems that have telecoil receivers. In addition, several seats have been reserved near the loudspeakers for persons in the public gallery who have hearing difficulties. I ask Committee members and witnesses to place their phones on silence for the duration of the hearing.

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**JENNIFER BURN**, Interim Anti-Slavery Commissioner, NSW Department of Premier and Cabinet, affirmed and examined

**The CHAIR:** I welcome our first witness, Professor Jennifer Burn, who is the Interim Anti-Slavery Commissioner. Do you wish to make an opening statement?

**Professor BURN:** I would, thank you.

**The CHAIR:** We will allocate 10 to 15 minutes for your opening statement; is that sufficient?

**Professor BURN:** I have much less than 10 minutes.

**Mr DAVID SHOEBRIDGE:** I think there was a suggestion that you might want to take us through some of the significant issues in a bit more detail.

**The CHAIR:** Yes, step us through the amendments to the bill that are proposed.

**Professor BURN:** I can do that in response to questions, but I would like to provide an opening statement. First of all, good morning, Chair and Committee members. To begin, I acknowledge the traditional owners of this land, the Gadigal people of the Eora nation, and pay my respects to elders past, present and emerging and extend that respect to Aboriginal and Torres Strait Islander people here today.

Modern slavery is a devastating reality for millions of people around the world including here in New South Wales. Among the 40 million modern slaves are men, women and children, mothers and daughters, fathers and sons. They are people forced into exploitative conditions that diminish their freedom and opportunity for a good life. One victim of slavery is too many. Over the past 16 years, I have represented hundreds of people exploited in conditions of modern slavery in New South Wales. As their lawyer, I have seen the trauma it causes. Slavery can and does destroy lives and the consequences of modern slavery can be lifelong. If a person is not identified as a victim of modern slavery then the injustice they have suffered can never be remedied.

I was in the Chamber on that historic day when Parliament passed the Modern Slavery Act and, in late 2018, I was invited to take on the role of the New South Wales Interim Anti-Slavery Commissioner. The main function of this role was to implement the Modern Slavery Act. The Act sets out a comprehensive blueprint to combat modern slavery. An important part of my role is to promote good practice and encourage collaborative action to combat modern slavery. This has involved developing measures to support victims, shaping a new purchasing framework so government agencies have the tools they need to address and respond to the risk of modern slavery in the government supply chains.

I have proposed amendments to the Modern Slavery Act to ensure it works efficiently and I have raised community awareness of the devastating reality of modern slavery. I have consulted extensively with government, business and civil society on designing an efficient and balanced supply chain reporting scheme. We have developed a scheme that will support the New South Wales business community in combating modern slavery and we have worked closely with the Commonwealth to ensure that the New South Wales scheme is consistent with the Commonwealth Modern Slavery Act. I am humbled by the goodwill and support I have received from many people and agencies in New South Wales. During this time I have had the privilege of working with a dedicated team within the Department of Premier and Cabinet to raise awareness of the Act and set it in motion. I am passionate about eradicating modern slavery and I believe it can be done if we draw together.

The Australian poet Anne M. Carson wrote about the hope of freedom from slavery. She wrote of a wall in Delphi that still "holds faded etchings of the names of slaves freed more than 2,000 years ago. Stories are patient, silent until we are ready for them." Slavery has been part of human history for thousands of years. Now, at this moment in time, we have a chance to end slavery by uniting survivors, government, business and civil society. We can abolish slavery, and perhaps by working together there will be no need to etch the names of freed slaves into stone, because there will be no more slavery. "Stories are patient, silent until we are ready for them." Thank you.

**The CHAIR:** Thank you. Mr Donnelly, do you want to raise your point?

**The Hon. GREG DONNELLY:** Yes, thank you. As a starting question I am seeking clarification, at least for myself and perhaps for other Committee members, and an understanding of who you represent specifically. I use an example that was raised in a pre-meeting discussion with Committee members. I was drawing out what Attachment A to what is the Government's submission—that is, the set of proposed amendments to the Modern Slavery Act 2018—specifically lays out in some detail.

**CORRECTED**

**The CHAIR:** Are you referring to submission 1?

**The Hon. GREG DONNELLY:** Yes, submission 1, the Government's submission.

**The CHAIR:** And the attachment at the back.

**The Hon. GREG DONNELLY:** Yes, Attachment A. I specifically mentioned, starting on the left-hand column and going down to [16], which is referring to page 17 of 20. I do not know if it is the same pagination. Point [16] states "Section 26 – new (d)", but specifically in that next column, not quite halfway down, it states—

**The Hon. NATALIE WARD:** Point of order: I am sorry. I am just not following where the Hon. Greg Donnelly actually is on the table. Could you clarify that?

**The Hon. GREG DONNELLY:** Sure. It is point [16]—in square brackets.

**The Hon. NATALIE WARD:** Right.

**The CHAIR:** Point [16], halfway down that—

**The Hon. GREG DONNELLY:** Halfway down. I am moving across to the third column, "Reason for amendment".

**The Hon. NATALIE WARD:** Thank you.

**The Hon. GREG DONNELLY:** About halfway down, it states:

> This amendment, requested by the Interim Anti-Slavery Commissioner, will give …

It then goes on. That is clearly, in the Government's submission, articulating that this was an amendment that you as the interim Anti-Slavery Commissioner requested. My question is, with respect to all the other amendments, are we to understand that you as interim Anti-Slavery Commissioner have sought and are seeking these amendments? Are we to take it that all of these amendments are in fact amendments that you have requested?

**Professor BURN:** Mr Donnelly, I think it would be useful if I clarified my role.

**The Hon. GREG DONNELLY:** That is what I am getting at. Are you representing the Government of New South Wales or are you appearing here as the interim slavery commissioner, or somehow trying to cover both bases?

**Professor BURN:** I am representing the New South Wales Government. I was appointed as the New South Wales interim Anti-Slavery Commissioner with the role of implementing the Act. I was offered that role in late December last year and effectively began working in that role in about February of this year. But I am not the Anti-Slavery Commissioner as provided for in the Modern Slavery Act 2018, because clearly that Act is not yet in effect.

**The Hon. GREG DONNELLY:** That is correct.

**Professor BURN:** The functions of the Anti-Slavery Commissioner as set out in the Act do provide for particular levels of independence with regard to certain functions. My role is to represent the New South Wales Government. I have been instrumental in the development of the amendments to the New South Wales Modern Slavery Act and the draft regulations.

**The CHAIR:** Thank you for clarifying that.

**Mr DAVID SHOEBRIDGE:** I just have one question: Do you come here in support of each of the amendments? Do you advocate in support of each of those amendments proposed in the Government's submission?

**Professor BURN:** Yes, I do, Mr Shoebridge.

**Mr DAVID SHOEBRIDGE:** Are there any that you wanted to add any additional information on because you think we could be assisted by some additional clarity from you?

**Professor BURN:** I see my role here today as assisting you to the fullest extent of my ability. I have been part of every one of these amendments to the Act. I can speak of meeting after meeting where we have diligently reviewed the Modern Slavery Act and developed this amendment bill with the intention of ensuring that it did reflect the intentions of the drafters and the Parliament.

**The Hon. NATALIE WARD:** Welcome, Professor Burn. I also wanted to clarify your role. Thank you, that was very helpful at the outset.

**CORRECTED**

**The CHAIR:** Sorry, do you want to pull that microphone closer, the Hon. Natalie Ward?

**The Hon. NATALIE WARD:** I also just wanted to clarify your role, if I may? I probably should know this; forgive me if I do not. You referred to the commissioner—do you see your role as assisting with clarifying what the commissioner's role would be? It seems that you as interim commissioner are one element. Do I take your earlier comments to be that you are helping to shape and form what the commissioner's role would be through this process?

**Professor BURN:** My role as an interim commissioner is as an employee of the Department of Premier and Cabinet. I have certainly had a role in shaping the amendment bill and policies that may develop out of that. A particular part of my role has been to work with stakeholders to consult about supply chain reporting and to work with Government to develop a framework for New South Wales Government procurement. But I separate my role as the interim commissioner from that of the commissioner who may be appointed under the Modern Slavery Act.

**The Hon. NATALIE WARD:** Yes, it seems so. I took that to be your point but I just wanted to clarify that. Does that give members clarification on the role?

**The Hon. GREG DONNELLY:** Yes, there was just one further point to follow up. Professor, you said through the work you have done that you have sought to understand and implement the intention of the bill passed by the Parliament. I say this with the greatest respect: You were not involved in the process of the negotiation over what were amendments that were ultimately dealt with in the Legislative Assembly and then ultimately endorsed by the Legislative Council. They were primarily negotiations involving the Hon. Paul Green, Reverend the Hon. Fred Nile and the Government to ultimately produce the bill that was endorsed by the Legislative Council—as you know, the bill commenced in the Legislative Council. My question is, with respect to you saying "understand the intention", have you been having detailed discussions since your appointment with the Hon. Paul Green, who is now no longer in the Parliament, of course, but was the one involved in the development of the bill in conjunction with Reverend the Hon. Fred Nile? They are the ones who understand the intention. They were the ones at the table.

**Professor BURN:** Soon after my appointment I met with the Hon. Paul Green—of course, I had met him previously to discuss some of the provisions in the Modern Slavery Act and the scope of some of the proposed amendments. As an example of this issue of intention—and I am clearly aware of the distinction between the parliamentary role and the Government role—but perhaps I could just give an example?

**The Hon. GREG DONNELLY:** Please, yes.

**Professor BURN:** In relation to supply chain reporting and specifically reporting by New South Wales government agencies, within the definition of "government agency" in the Modern Slavery Act are included local councils and State-owned corporations. That is clearly set out. That is an intention set out within the definition of "government agency". But then looking further into the Act and the obligations that flow from that, it was clear—using the example of local councils, they do not come under the authority of the NSW Procurement Board and do not report under the Public Works Act 1912. So the other parts of the Modern Slavery Act caused a confusion. There was an intention to consider local councils as a government agency but the other parts of the Act did not take that to its next step. In fact, local councils would not be required to report under the Modern Slavery Act as it was drafted.

**The CHAIR:** It would be interesting to tease out how those anomalies have occurred in the Act in itself. Before we go to Mr Shoebridge, I just want to canvass the view of members: Do we want the commissioner to go through the amendments briefly? I will come back to you, Mr Shoebridge; I just want to allocate time for that. I know Reverend the Hon. Fred Nile does.

**Mr DAVID SHOEBRIDGE:** I think that now we have started we might be better to just focus on those amendments that concern the Committee.

**The CHAIR:** Okay, alright.

**Mr DAVID SHOEBRIDGE:** I was just going to go to this very one if that is okay, Mr Chair.

**The CHAIR:** We are going to do that. Professor Burn, we are going to focus on amendments that concern the Committee.

**Professor BURN:** Okay.

**CORRECTED**

**Mr DAVID SHOEBRIDGE:** Professor, other members may structure their questions in a different way but I actually find attachment A that the Hon. Greg Donnelly was taking you to as a useful way to structure my thoughts.

**Reverend the Hon. FRED NILE:** I just had one quick question on the commissioner's own role.

**The CHAIR:** We will come back to Reverend the Hon. Fred Nile. Mr Shoebridge has the call right now. It will not be a minute.

**Mr DAVID SHOEBRIDGE:** One of the proposed amendments is to remove State-owned corporations from the definition of "government agency". As I understand it, the rationale put forward in this submission is that the New South Wales Government has a policy to treat State-owned corporations as just like every other commercial organisation. I refer to amendment No. 1. If the intent of the Modern Slavery Act is to go as far as possible as we can in New South Wales to prohibit slavery, or to prohibit any activities that are supporting modern slavery, surely exempting State-owned corporations particularly from, say, your power under section 25, or from your obligation to consult, say, under section 25, is taking it backwards. Do you agree in terms of meeting our anti-slavery objectives?

**Professor BURN:** I would like to respond to that by speaking about the proposal in relation to State-owned corporations.

**Mr DAVID SHOEBRIDGE:** Could you answer my question first and then, having answered my questions, feel free to add that additional—

**Professor BURN:** Your question was: Is there an intention to exempt State-owned corporations from the ambit of the Modern Slavery Act?

**Mr DAVID SHOEBRIDGE:** No, that was not my question. It is about removing State-owned corporations from the definition of "government agency", the rationale being, as the Government submission states:

> NSW Government policy generally is to treat State owned corporations the same as commercial organisations …

I am suggesting to you that it reduces the scrutiny of State-owned corporations—one example I gave you is the commission's obligations under section 25—and reduces the impact of the Act in addressing modern slavery. Why do you support that?

**Professor BURN:** The proposal is that State-owned corporations are not exempt. Rather, reflecting longstanding government policy, they are commercial organisations.

**Mr DAVID SHOEBRIDGE:** Professor, I did not say that they are exempt. I talked about exempting them from the definition of "government agencies". That is what I am asking you to address. It is not a straw man argument.

**Professor BURN:** The Government position is that State-owned corporations are not government agencies. They are more like commercial organisations and, therefore, the proposal is to bring them within the section of the Modern Slavery Act that deals with commercial organisations.

**Mr DAVID SHOEBRIDGE:** But I am putting to you, a person whose focus in this is to do what you can to remove slavery from supply chains and do what you can with organisations in this State to drive slavery out of any of the procurement or supply chain parts of the organisations, why do you support reducing the obligations on State-owned corporations? Is it simply because you sign on to that Government position because it seems to be taking this backwards in terms of the objects of the Act. I give you one point and ask you to address it. It means the commission will no longer have the obligation to consult under section 25 of the Act. That seems to be taking this backwards.

**Professor BURN:** In the same way that I addressed local councils earlier, the provisions that apply in relation to any commercial organisation bound by the effect of section 26 in the Modern Slavery Act would operate to exclude State-owned corporations from the definition of "government agency". It is the Government position that State-owned corporations would be required to comply with the supply chain reporting scheme in the Modern Slavery Act. That does not remove any scrutiny from the activities of State-owned corporations. They must identify—

**Mr DAVID SHOEBRIDGE:** That is just not true because section 25—I will read it to you—

**CORRECTED**

**Professor BURN:** I misstated when I said "26"; I actually meant to say section 24, which sets out the transparency and supply chain reporting scheme.

**Mr DAVID SHOEBRIDGE:** You say it reduces no obligations and reduces no oversight. Section 25 applies only to government agencies and that is the obligation "to consult … to monitor the effectiveness of due diligence procedures". You are proposing to remove that consultation provision and the due diligence monitoring in section 25 from State-owned corporations. I am asking you how you support that, given that it is obviously reducing some of the oversight for what are very large entities in this State. Why do you support that?

**The Hon. GREG DONNELLY:** The intention was to include deliberately State-owned corporations.

**Professor BURN:** Mr Shoebridge, there is an important mechanism here, which is that the Auditor-General has the power to audit State-owned corporations as well as local councils. But I will say that the scope of section 24 of the supply chain reporting scheme is not trivial; it is serious.

**Mr DAVID SHOEBRIDGE:** But I am asking you to address section 25. The State Parliament recently extended the Auditor-General's powers over local councils. That is a recent policy change. The idea is that the commissioner works with the Auditor-General to look at government agencies across the board, which include local government and State-owned corporations as drafted in this bill. You are proposing to remove that oversight. I am wondering how you can support that if your objective is to do what we can to remove the scourge of modern slavery.

**Professor BURN:** The Act, as it is drafted, does define State-owned corporations as government agencies but State-owned corporations do not fall within the scope of Procurement Board directions and they do not report under the Public Works Act.

**The Hon. DANIEL MOOKHEY:** Professor Burn, where do you derive that view that State corporations do not fall under the Procurement Board frameworks?

**Professor BURN:** Sorry, I did not hear it.

**The Hon. DANIEL MOOKHEY:** Where do you source that view that State-owned corporations are not subject to New South Wales government procurement frameworks?

**Professor BURN:** The government procurement framework is set out by the Procurement Board and the Public Works Act. That is the framework that regulates New South Wales government procurement. State-owned corporations do not fall within that framework.

**The Hon. DANIEL MOOKHEY:** Are you aware that State-owned corporations are governed by Treasury frameworks?

**Professor BURN:** I am aware that State-owned corporations are governed by Treasury, yes.

**The Hon. DANIEL MOOKHEY:** Are you aware that many of those Treasury frameworks make reference to Procurement Board policy decisions?

**Professor BURN:** I would suggest that the advice is in the way of a guideline and this is certainly the position that I am putting forward to you. It has been the advice from New South Wales procurement—

**The Hon. DANIEL MOOKHEY:** To the extent to which the Procurement Board makes procurement decisions, it often makes them in the way of guidelines for all agencies. I do not think much turns on the fact that there is a guideline distinction. The Government submission says:

> NSW Government policy generally is to treat State owned corporations the same as commercial organisations …

Whilst that is true for commercial settings relating to pricing, it is actually the case that with State-owned corporations, there is a mixture of obligations that apply to commercial organisations and obligations applying to Procurement Board directions around procurement.

**Professor BURN:** Yes.

**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?

**CORRECTED**

**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.

**Reverend the Hon. FRED NILE:** I have a question about your role. With the emphasis of the interim modern slavery commissioner at the moment, would that automatically become permanent at some stage or are you not anticipating a change in your role?

**Professor BURN:** Reverend Nile, if the Modern Slavery Act is proclaimed, there is a mechanism within the Act to appoint the commissioner. The commissioner will be appointed in a particular way but that is separate to my current role.

**Reverend the Hon. FRED NILE:** Could you apply for that?

**Professor BURN:** I could apply for it.

**The CHAIR:** Any of us could. Could you step us through the proposed amendments around not-for-profits, NGOs and charities?

**Professor BURN:** Just to clarify, I have found the questions and comments to be very helpful. I will look at them carefully and diligently.

**The Hon. DANIEL MOOKHEY:** We try to help.

**Professor BURN:** Thank you.

**The CHAIR:** It is probably why the Minister referred it to our Committee. It is a broad and very diverse Committee we have got here.

**The Hon. NATALIE WARD:** We appreciate you doing something.

**The CHAIR:** Could you step us through that section about not-for-profits, charities and NGOs, and how the amendments will impact upon them?

**Professor BURN:** Did you ask me about local councils as well, Mr Mallard?

**The CHAIR:** No, I did not. It is a good question to ask you about later.

**Professor BURN:** You are going to do that later?

**The CHAIR:** Yes. I would like deal with charities first. I have had a few people come talk to me about that.

**Professor BURN:** The issue with charities has been an interesting one; an area that we have taken a lot of advice and received many consultations in relation to. The drafting of the section in the Modern Slavery Act at section 24 that sets out the transparency in supply chains scheme would extend to charities and not-for-profits, that is the New South Wales Government view. A commercial organisation is an organisation that supplies goods and services for profit or gain and has a turnover of a specified amount in the Act of $50 million a year. The Government view is that not-for-profit and charities would fall into the scope of the Modern Slavery Act, but we received advice from a number of organisations that there was some lack of clarity and perhaps ambiguity about that drafting.

Therefore, in the Modern Slavery Amendment Bill, the Government made it clear that the provision would extend to not-for-profits and charities, recognising that not-for-profits and charities sometimes have commercial arms that supply goods and services for profit or gain for the benefit of the organisation. The Government position was to exclude money received from donations or grants but to look at the fundraising of the not-for-profits. The effect of the amendment bill is to clarify the Government position that charities would fall within the scope of the supply chain reporting scheme. Since then we have received further advice and consultation that this would impose a significant burden on some charities and not-for-profit groups. The proposal set out in the draft regulation is that charities be excluded at this stage but by making this provision in the regulation it creates a flexible framework that would allow this issue to be revisited at some other later stage. That is the current position—that charities are excluded.

**CORRECTED**

**The CHAIR:** The bill includes it and the regulation taking it away. That is what the confusion is. When you said the regulation, does that include not-for-profits as well?

**Professor BURN:** Yes.

**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[1]. 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.

**The CHAIR:** I would like that.

**Mr DAVID SHOEBRIDGE:** It seems to me a very unusual argument that if you have a charity that has a tiny aspect of their operations being a full profit venture—a tiny aspect—that classes the whole organisation as a commercial organisation. That is the first time I have seen a proposal yet that is the suggestion that we are—

**The CHAIR:** That is picked up by the definition.

**Professor BURN:** The way that we have approached it is to look at the actual turnover each year. If the turnover that is attached to the money-making arm to the shop or whatever that is, is $50 million up to $100 million, then that would fall within the provision – except the regulations have excluded it. It does not apply to small charities, rather those with a very successful money-making arm.

**The Hon. DANIEL MOOKHEY:** Could I just turn to—it is in the table—amendment No. [18], part 4, section 29. This is the amendment that deals with modern slavery risk orders. In your opinion, should Parliament pursue that particular amendment, should we characterise that as a minor amendment to the Act or a major amendment to the Act?

**Professor BURN:** It is a significant amendment to the Act. The amendment bill does propose the repeal of the modern slavery risk orders that are set out in section 29 of the Act.

**The Hon. DANIEL MOOKHEY:** I am just going to move up in your submission to the page of the submission that puts forward the argument for why we should pursue this which is on page 8. Firstly, it says in the table that this is a position that has been supported by government agencies—

**Professor BURN:** That this is?

**The Hon. DANIEL MOOKHEY:** A position which has been put forward by government agencies. It does not make any reference to stakeholders. Can we assume that therefore the only people who have so far articulated this view are government agencies?

**Professor BURN:** Government agencies have been in discussion with the department about this particular provision and that has resulted in the proposed amendment—

**The Hon. DANIEL MOOKHEY:** You are not putting this forward on behalf of stakeholders?

**The Hon. WES FANG:** Point of order: I understand the Hon. Daniel Mookhey but the witness was in the middle of answering the question. I request that she be given permission to finish her answer.

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[1] In correspondence to the committee received 10 December 2019, Professor Jennifier Burn, Interim Anti-Slavery Commissioner, provided clarification to her evidence.

**CORRECTED**

**The CHAIR:** I do agree. Allow the witness to answer the question.

**Reverend the Hon. FRED NILE:** Hear, hear!

**Professor BURN:** The agencies that we consulted in the development of the proposed amendment are Justice, Courts Administration, the Director of Public Prosecutions [DPP] and Legal Aid. I will also note that a number of submissions made to the Committee are in support of the repeal of section 29 that does set out the modern slavery risk order.

**The Hon. DANIEL MOOKHEY:** On page 8 it says:

> The most problematic provision of the NSW Act is section 29 … which provides for the making of Modern Slavery Risk Orders (Risk Orders), to constrain the liberties of a person convicted of a modern slavery offence

The reasons for why those agencies have an objection, are they predominantly policy based or are they drafting, legal or technical?

**Professor BURN:** In the submission we said that the issues are legal, policy and practical.

**The Hon. DANIEL MOOKHEY:** I am asking you to weight them.

**Professor BURN:** Sorry?

**The Hon. DANIEL MOOKHEY:** Just weight them. Which ones are the ones which are the dominant concerns for the agencies? Is it policy? Is it technical?

**Professor BURN:** I think it is a combination of those but I would like to address the modern slavery risk order.

**The CHAIR:** Please do.

**Professor BURN:** It was intended to provide protection for victims of modern slavery where there had been a conviction, bearing in mind there had only been 24 convictions in the whole of Australia since 2004 – the conviction rate is quite low. The question will arise whether this provision is the best provision in place to provide protection for people who are fearing, or in forms of, modern slavery. It was the advice that we received from Justice and DPP and Legal Aid and Courts Administration, that there were better schemes in place that would provide protection to those who are fearing forced labour or any form of modern slavery. Bearing in mind that 24 convictions is very low. We know that the Australian Federal Police has investigated over 800 cases since 2004, over 45 per cent of those cases have been New South Wales based.

**The Hon. DANIEL MOOKHEY:** In your submission, what you nominate as being the superior schemes to deal with the issue are the Crimes (Serious Crime Prevention Orders) Act, the Crimes (High Risk Offenders) Act, and the Child Protection (Offenders Registration) Act. Do you see that on pages 8 and 9 of your submission?

**Professor BURN:** Yes.

**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.

**Mr DAVID SHOEBRIDGE:** In fact there are real problems relying upon those schemes because they all have quite limited definitions of who can be covered by them and they all have quite distinct policy frameworks, distinct from prevention of slavery. For example, none of them deal with trying to stop somebody having ongoing commercial activities and they are quite distinct. Could you take that aspect on notice too?

**Professor BURN:** The provisions that we have suggested in relation to forced marriage are helpful and indicative, I would suggest, and the application and continued rolling out of the Modern Slavery Act will be an iterative process. The amendments made to the provisions of the New South Wales Act that provide for

**CORRECTED**

apprehended violence orders will now, it is proposed, extend to any victim of forced marriage where there is a fear of coercion. This is a major suggested reform, and one that could be further expanded.

**Mr DAVID SHOEBRIDGE:** The reason you say that these orders may not be needed is historically there have been only 24 convictions. One of the reasons we brought the Modern Slavery Act—

**The CHAIR:** The reason.

**Mr DAVID SHOEBRIDGE:** —into effect was historically there had only been 24 convictions and we wanted to toughen up the law and put in place additional ways of enforcing anti-slavery provisions. Relying on those past numbers seems an odd way of objecting to these powers. That was one of the reasons why we introduced the Act.

**Professor BURN:** It is an important point. What I would say is that the objects of the Act are set out very clearly: to raise awareness; to develop better responses to the identification and protection of people fearing, or in forms of modern slavery in New South Wales; to coordinate across government; and to coordinate with civil society. One important measure that is already developed is that the New South Wales Commissioner of Police has appointed a corporate sponsor for modern slavery. Assistant Commissioner Webb will have the role to coordinate New South Wales responses within the NSW Police Force. But you are right, this requires a whole-of-society response. Convictions are one part of this, but really the focus should be on prevention, early identification and support. I agree, using the conviction rates alone is just part of the puzzle. But, bearing in mind—

**Mr DAVID SHOEBRIDGE:** What I am suggesting to you is that is the wrong approach. Historical conviction rates are not a reason not to act under the Modern Slavery Act 2018.

**Professor BURN:** There are also issues, as we addressed in our government submission, about the actual framing and the drafting of the modern slavery risk order.

**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.

**The CHAIR:** I need to balance the questions out.

**The Hon. DANIEL MOOKHEY:** I agree.

**The Hon. NATALIE WARD:** Sorry, you have had some questions.

**The Hon. DANIEL MOOKHEY:** To the extent to which it is an unprecedented example of the New South Wales Government coming before a parliament after an Act has been passed by the Parliament and saying, "Now we would like to change the policy objectives because we disagree with the policy intention."

**The Hon. GREG DONNELLY:** That is what is happening.

**The Hon. NATALIE WARD:** Is there a question?

**CORRECTED**

**The Hon. DANIEL MOOKHEY:** Can you point to a single example of where that has happened in respect to any bill? Second question; has anyone in the New South Wales Government—

**The Hon. NATALIE WARD:** Point of order: That is way beyond the purview of this witness, it really is.

**The CHAIR:** It is outside the terms of reference.

**The Hon. DANIEL MOOKHEY:** I will rephrase.

**The Hon. NATALIE WARD:** I have asked for some time. I have not had the opportunity to ask a question and you have.

**The CHAIR:** Last question, and restrict your question to the terms of reference.

**The Hon. DANIEL MOOKHEY:** Professor, has anyone in the New South Wales Government said to you that their willingness to proclaim the Act or otherwise is conditional on whether or not these amendments are passed by the Parliament.

**Professor BURN:** Not at all.

**The CHAIR:** Again, that is outside the terms.

**The Hon. NATALIE WARD:** Professor Burn, is it the case that there are, as you have stated, technical issues with implementation of the bill in its present form?

**Professor BURN:** That is the case, Ms Ward.

**The Hon. NATALIE WARD:** Is it the case that the Government, from your experience, is deliberately trying not to implement this Act?

**Professor BURN:** Not at all.

**The Hon. NATALIE WARD:** Is it the case that there is a strong intention on your part to try to implement a workable Act?

**Professor BURN:** From the time I have been appointed that has been certainly my intention. I have been supported within the Department of Premier and Cabinet to that effect. The drafting of the Modern Slavery Amendment Bill; the drafting of regulations that will set out the nuts and bolts for a supply chain reporting scheme; the preparation of guidance material that will assist New South Wales businesses in meeting obligations under the reporting scheme; the development of procurement frameworks that will guide New South Wales Government agencies in their responsibilities to address the risk of modern slavery within their supply chains; all indicate an intention to continue this process.

**The Hon. NATALIE WARD:** Has this Committee been provided with a copy of the document you just held?

**Professor BURN:** I would be very happy to provide that to the Committee. It is in draft form, but it does reflect a significant body of work and it sets out detailed guidance for New South Wales businesses in how to address the reporting scheme set out in the Act.

**The Hon. NATALIE WARD:** The fact is that this is a complex, far-reaching Act that is not easy to implement. Would you agree with that statement?

**Professor BURN:** It has been an extraordinary process. The Act is far-reaching, it covers multiple areas, it has required considerable work, as evidenced in the Modern Slavery Amendment Bill. The other significant piece of work is the work that we have done with NSW Procurement to develop a framework there, and I could provide that framework for you as well. As you know, the New South Wales Government agencies must take reasonable steps—it is a positive obligation—reasonable steps to ensure that modern slavery is not present in the supply chains of the agencies.

We have developed a policy framework for that, along with daft contract clauses and requests for tender schedules. Those documents are in the consultation phase with New South Wales Government agencies and then there will be broader consultation in the community. These are draft documents, but very happy to provide them to the Committee.

**The Hon. NATALIE WARD:** The very fact of your appointment indicates the willingness to try to work through a very complex Act. I do not think that there is any lack of intention or will from anybody to see

**CORRECTED**

this happen, but it must happen in a way that is achievable and able to be implemented. Would you agree with that?

**Professor BURN:** I do agree with that, Ms Ward. I think my appointment, the work that we have done so carefully and diligently throughout the year demonstrates that.

**The Hon. NATALIE WARD:** For the benefit of Hansard, could you read out the title of the document?

**Professor BURN:** This one is called the "New South Wales Slavery Reporting Requirement – Guidance Material".

**The CHAIR:** I assume you have gone through all the submissions we have received. I noted the Housing Industry Association [HIA]—not that I agree fully with their submission—but they certainly—

**Mr DAVID SHOEBRIDGE:** Well-known civil rights proponents.

**The CHAIR:** They certainly highlighted to me the real complexity for different sectors of the business community, with all the subcontractors and so forth they have working for them, and they called for specific materials tailored to their industry. I think that is an important point, an education and awareness role to prepare all these diverse businesses, not just the construction, or it could indeed be hotels as I just mentioned.

**Professor BURN:** We have consulted with peak industry bodies, businesses and members of the community throughout the year. We have received broad support. I will look forward to consulting more with groups like the Housing Industry Association about the draft guidance material as soon as we are able to do that.

**The CHAIR:** I wish to touch quickly on a couple of matters. Some of the submissions we have received pointed out about the State and Federal legislation that the penalties in New South Wales law do not apply federally. The Federal legislation does not have a fines process but that is in the State Act, which is not yet proclaimed. If the amount is between $50 million and $100 million, an offender can be fined quite severely but over $100 million the offence is outside the ambit of fines. How do you feel about that anomaly? Do you think that is more a Federal concern?

**Professor BURN:** The development of legislative responses to modern slavery is new. The Commonwealth and New South Wales drew on the UK Modern Slavery Act and learnt from the lessons there. In the UK there is a supply chain reporting scheme, but compliance with the scheme is very low. Only 40 per cent of organisations that should report do report; and those that do report, report poorly. There are no sanctions there at all within the UK scheme. The Commonwealth does not provide for financial sanctions either, although notably the Commonwealth parliamentary report, *Hidden in Plain Sight*, recommended that penalties be introduced to incentivise compliance to try to change culture within businesses.

**The CHAIR:** So it is a carrot-and-stick approach.

**Professor BURN:** It is not intended to be harsh but it really rewards businesses complying with the legislation.

**The CHAIR:** That clarifies it for me.

**Mr DAVID SHOEBRIDGE:** Can I get back to section 29 when we get a chance?

**The CHAIR:** We will come back to that. Is that about voluntary opt-out?

**Mr DAVID SHOEBRIDGE:** No. This goes back to modern slavery risk orders.

**The CHAIR:** Will you touch on for the Committee the option to voluntarily report federally and then option out of the State? How would that work?

**Professor BURN:** I am very proud of the way in which we have developed the draft regulations. What we have tried to do is to make reporting easy for business. What we have said in the draft regulations is that companies who may be required to report in New South Wales may voluntarily report to the Commonwealth. That will meet the New South Wales reporting scheme to some extent. However, if the company provides false or misleading information then there may be a penalty within New South Wales and a copy of the report must be provided to the commissioner.

**The CHAIR:** You can do that for any level of turnover? I have this issue around the definitions of turnover and revenue.

**CORRECTED**

**Professor BURN:** We received the word "turnover" within the Modern Slavery Act and the Commonwealth uses "consolidated revenue". I have seen submissions on this point and I look forward to the Committee's recommendations.

**The CHAIR:** What would you suggest? I do not fully comprehend the difference between the two. I am not an economist; I am an accountant.

**Professor BURN:** I was looking it up myself. Really consolidated revenue is the revenue from the entity and any entity that that entity owns whereas turnover applies to the single reporting entity. Clearly it has been the intention of New South Wales to develop a reporting scheme that complements and is harmonised with the Commonwealth scheme. The actual designation of the reporting threshold in terms of whether it is turnover or consolidated revenue may be something that could be considered.

**Mr DAVID SHOEBRIDGE:** There would be merit in having the same terms between the same Acts.

**The CHAIR:** Yes, there would.

**Mr DAVID SHOEBRIDGE:** That would probably rope in some additional players into the New South Wales scheme. Is that what you are saying?

**Professor BURN:** Our approach was to make sure that the scheme was streamlined and complementary to the Commonwealth. I want to say something important there, just as an example of the way in which we have done that. The Act provided for the establishment of a supply chain reporting scheme as provided for in the regulations so we have developed the draft regulations. What we have done is incorporate the Commonwealth reporting criteria within the New South Wales draft regulations to ensure there is consistency across jurisdictions. We also recognise that sometimes organisations may have a fluctuating income and may apparently move between jurisdictions but by providing the ability for organisations to voluntarily report to the Commonwealth, we have addressed that issue.

**The CHAIR:** I am going to suggest to members that we will work through the morning tea break. Those of us who wish to have a cup of tea should do so. The witness will have an extra 15 minutes with the Committee, which I am sure she will enjoy. We will go through to 10:30. Mr Shoebridge had my attention first and then we will take questions from Mr Donnelly.

**Mr DAVID SHOEBRIDGE:** I wish to go back to section 29, which refers to the modern slavery risk orders, and work through the rationale that suggests it should be deleted. The first is the concern about the provision for the courts to make risk orders on their own motion. If that was the concern, that could be dealt with by amendment to remove the ability of courts to make an order of their own motion. That would seem to be one option for getting rid of that concern. Do you agree?

**Professor BURN:** There are multiple—

**Mr DAVID SHOEBRIDGE:** I will go through them all. I am just dealing with them one at a time.

**Professor BURN:** Okay. It could be an option to amend the provision.

**Mr DAVID SHOEBRIDGE:** That would remove that problem.

**Professor BURN:** It could.

**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 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?

**CORRECTED**

**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 risk order schemes, Mr Shoebridge.

**Mr DAVID SHOEBRIDGE:** All right.

**The CHAIR:** Mr Donnelly?

**The Hon. GREG DONNELLY:** Commissioner, the Government's submission was got in quite early. From memory, I think it was sent off in August so the Government's submission has been on the table for a while. The Government's submission is as it has been uploaded onto the website. It contains the submission document itself and then it has the Modern Slavery Amendment Bill 2019 and regulation 2019. My question is: As far as you understand it—and you are here to represent the Government today, and that is the capacity in which you are appearing before the Committee—is it the position of the New South Wales Government that it will require all the amendments proposed in the amendment bill document and the regulation to be accepted before a modern slavery bill or Act passes onto the statute books in New South Wales?

**Professor BURN:** The amendment bill and the draft regulations give effect to the Modern Slavery Act.

**The Hon. GREG DONNELLY:** That is not my question. My question is: Is it the position of the New South Wales Government that for the Modern Slavery Act to become in effect and operational in New South Wales, the amendment bill and the regulation must be accepted in toto?

**Professor BURN:** That would be a question for the Minister.

**The CHAIR:** I think that is outside the terms of reference. I note that the consultation draft of the bill that we have been given and the Minister's reference to us state that our purpose is to consult. That is what we have been directed to do in our terms of reference.

**The Hon. DANIEL MOOKHEY:** Do you have the proposed Act with you?

**CORRECTED**

**Professor BURN:** I do.

**The Hon. DANIEL MOOKHEY:** Do you mind turning to page 21? Not the amendment Act; the actual bill.

**Professor BURN:** The Modern Slavery Act?

**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 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.

**CORRECTED**

**The CHAIR:** The Hon. Daniel Mookhey has expanded on his question, which has been helpful.

**Mr DAVID SHOEBRIDGE:** It is complex.

**The CHAIR:** Do you want to touch on the amendments that impact on local government?

**Professor BURN:** Local councils are defined as government agencies within the Modern Slavery Act. They do not fall within the reporting requirements of the Public Works Act and they are not governed by the Procurement Board; rather the Local Government Act. However, there was clearly a view that local councils should be included within the reporting scheme. They are significant within the State. But we do recognise that the capacities of local councils vary. I saw in an Auditor-Generals' report this year that some councils have an annual revenue of $1 million while others have more than $600 million. The question is: Should local councils be included within a modern slavery reporting mechanism?

We are in discussion with the Office of Local Government on this point. We have suggested that the approach that we have developed with NSW Procurement that will guide New South Wales government agencies may be helpful for local councils. We are looking at that actively with the Office of Local Government. But it is important that the scheme that we develop is targeted and framed to identify the risk of modern slavery and is appropriate for implementation for organisations regardless of their size.

**The CHAIR:** Just to be clear, the amendment excises local government from the Modern Slavery Act?

**Professor BURN:** Yes. We are in discussions with the Office of Local Government about a non-legislative framework at this stage.

**The CHAIR:** Having been a councillor myself—and Mr David Shoebridge having being a councillor—I would have thought that many councils are probably proactively onto this in terms of their procurement. My thinking would be that you would apply it to the $50 million up councils. Those councillors would probably welcome that.

**Mr DAVID SHOEBRIDGE:** Could the commissioner answer that? If the concern is around small regional councils—and it is a legitimate concern—why do we not define local councils as those that have a turnover of $50 million or above? That would surely be a more sophisticated response.

**Professor BURN:** It is an important approach. The other approach is whether there should be a consistent scheme that applies across all New South Wales local councils. This is something that is under consideration with the Office of Local Government.

**Mr DAVID SHOEBRIDGE:** Could you take on notice whether or not that alternative approach—one based upon the revenue bases—is being considered? You probably do not want a scheme for a council with 4,000 residents in north-west New South Wales to be consistent with the one for the City of Sydney or—

**The CHAIR:** Or Woollahra.

**Mr DAVID SHOEBRIDGE:** Or Woollahra or the inner west.

**Professor BURN:** The principles that we have developed for local government,[2] which I could provide to you, do accommodate variations in size. The question for each of those councils or other groups is: Is there a risk of modern slavery within your supply chain? We recognise that the agencies are different sizes and have different functions and, therefore, have different risks. The fundamental question is: To identify the risks—

**The CHAIR:** Your position is that the guidelines will capture all councils, as opposed to an instrument that applies to those with a turnover of more than $50 million?

**Professor BURN:** That is the approach now.

**The Hon. GREG DONNELLY:** Can I put it to you that this is clearly a case of walking back.

**Professor BURN:** Which part?

**The Hon. GREG DONNELLY:** The part you have just mentioned. Let us go to page 7 of your submission, which clarifies supply chain reporting obligations for local councils. Let us be very clear about this: You are quite correct—I do not know whether you drafted this document yourself, but you certainly would have

[2] In correspondence to the committee received 10 December 2019, Professor Jennifer Burn, Interim Anti-Slavery Commissioner, provided clarification to her evidence.

**CORRECTED**

had some input into it—as with State-owned corporations [SOCs], "while there is evidence of an intention to treat local councils as government agencies under the Act" and it goes on. There certainly was an intention.

**Professor BURN:** There was an intention.

**The Hon. GREG DONNELLY:** Unambiguously an intention.

**Professor BURN:** It was there in section 5.

**The Hon. GREG DONNELLY:** Absolutely. With the explanation that you have just given, representing the Government of New South Wales and in your previous responses to questions, clearly one can only interpret the New South Wales government response, being articulated by you today, of walking back from the provisions in the Act. There can be no question about that. You are putting a substandard position vis-a-vis what is in the Act. The Act got right up to the point of not quite being proclaimed and then pause was hit. Clearly you are putting a position to this Committee in regards to local councils—

**The Hon. WES FANG:** Point of order: I think we need to have a question.

**The CHAIR:** Mr Donnelly is getting to the question, I think.

**The Hon. GREG DONNELLY:** Yes. Clearly, the proposition you have articulated today on behalf of the New South Wales Government is at odds with what was the clear intention of the Parliament. That is unambiguous, would you not agree?

**The CHAIR:** Professor Burn, you can answer that question if you like. It is a pretty strong statement.

**The Hon. GREG DONNELLY:** It is, because that is what you are doing.

**The CHAIR:** Would you like to respond to it?

**Reverend the Hon. FRED NILE:** Or take it on notice.

**The Hon. GREG DONNELLY:** No, do not take it on notice.

**The CHAIR:** Order! Allow Professor Burn to make a comment.

**Professor BURN:** The other parts of the Modern Slavery Act would have in fact excluded local councils from reporting, because they do not fall within the Public Works Act and they are not bound by the directions of the Procurement Board. The amendments that we have proposed have sought—and the discussions we are having with the Office of Local Government would, in fact, bring them to the table. That is the intent of government here.

**Mr DAVID SHOEBRIDGE:** The definition of "government agency" and the obligations are unambiguous. It includes local councils. I suppose the frustration is, when the government submissions says, "there is evidence of an intention to treat local councils as government agencies". That is not evidence of an intention to treat local councils as government agencies. That is not evidence of an intention; that is an express wording in the Act that defines them as government agencies. That kind of language is obfuscating and unnecessary. That is the problem.

**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.

**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?

**CORRECTED**

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

**The CHAIR:** That concludes the evidence from Professor Burn. Professor Burn, you took quite a lot of questions on notice. The committee secretariat will advise you formally of those questions on notice and you have 21 days in which to return your answers, although the sooner the better. The Hon. Natalie Ward asked you to table a document. Is it all right to publish that document or is it not in a format that you want it published?

**Professor BURN:** It is in draft, but it can be published.

**The CHAIR:** Thank you. We might recall you to appear before the Committee on another day.

**Professor BURN:** I would enjoy that.

**(The witness withdrew.)**

**CORRECTED**

**ALI MOJTAHEDI**, Chair, Human Rights Committee, Law Society of New South Wales, affirmed and examined

**TRENT GLOVER**, Member, Human Rights Committee, NSW Bar Association, sworn and examined

**The DEPUTY CHAIR:** I welcome Mr Trent Glover and Mr Ali Mojtahedi. Would either of you like to make an opening statement?

**Mr GLOVER:** Yes, I have a short opening statement. Thank you, members of the Committee. The NSW Bar Association welcomes the opportunity to participate in this inquiry, which is just one aspect of the important work within this Committee's remit. As mentioned in the Bar Association's submission, the Bar Association commends New South Wales for being the first Australian jurisdiction to introduce specific modern slavery legislation. The New South Wales Modern Slavery Act plays a key role in promoting human rights and freedoms including economic and social human rights. The Bar Association's submission focuses on some of the more technical aspects of the existing legislation and the proposed amending legislation, really with the view to ensuring the legislation, in the form that Parliament sees fit to enact, has certainty of operation to ensure regulatory certainty for businesses and other stakeholders.

Of course, the Committee will be hearing from businesses and other stakeholders later in the day and that evidence might be expected to focus on the broader policy considerations associated with the legislation. As members of the Committee will have seen, the Bar Association's submission focuses on terms of reference 1 (d) to (h) inclusive and the consideration of a further matter under terms of reference 1 (i). It is in this respect that the Bar Association hopes to be able to assist the Committee in its consideration of the issues that are the subject of this inquiry. Thank you.

**Mr MOJTAHEDI:** I thank you for the opportunity to give evidence in the inquiry into the Modern Slavery Act 2018 and associated matters. Today I appear before the Standing Committee on Social Issues on behalf of the Law Society and in my capacity as the Chair of the Law Society's Human Rights Committee. At the outset I would like to state that the Law Society commends the New South Wales Parliament for taking action to address modern slavery. Modern slavery is a serious and often hidden crime that affects some of society's most vulnerable people.

When the Modern Slavery Bill was introduced into the Legislative Assembly in May 2018, the Law Society wrote to the New South Wales Government and noted that the interaction between the New South Wales bill and the proposed Federal modern slavery law may require consideration. We are pleased that this inquiry provides an opportunity for potential legislative issues to be identified and appropriately addressed. We note that subsequent to the New South Wales modern Slavery Act being passed, the Australian Parliament passed the Commonwealth Modern Slavery Act in November 2018. The reporting requirement in that Act entered into force on 1 January 2019.

The Law Society of New South Wales is of the view that notwithstanding the passage of the Commonwealth Modern Slavery Act 2018 the proposed New South Wales anti-slavery scheme remains a necessary and important response to the issue of modern slavery. It will also help to reassure residents of New South Wales that the supply chains of products sold in this State are free from the scourge of modern slavery. Reasons for maintaining the New South Wales anti-slavery regime include the following: Due to its lower reporting threshold of $50 million per annum, the New South Wales Modern Slavery Act captures up to 1,650 entities that would not fall within the scope of the Commonwealth Act. The draft New South Wales modern slavery regulation promotes harmonisation with the Commonwealth Modern Slavery Act by providing that organisations that voluntarily report under the Commonwealth Act need not also comply with the New South Wales requirements.

The inclusion of penalties at section 24 of the Act represents an improvement on similar legislation worldwide. Experts have observed that low rates of reporting under the United Kingdom's Modern Slavery Act 2015 are a consequence, in part, of there being no pecuniary penalties for failing to report. Finally, the establishment of an Anti-Slavery Commissioner by the New South Wales Act is an important step which will help promote a coordinated response to modern slavery in New South Wales. The Law Society recommends that the New South Wales anti-slavery scheme be brought into effect once any legislative issues identified during the course of this inquiry are addressed. It also recommends that the implementation of the New South Wales anti-slavery scheme can be supported by a public awareness campaign to support compliance and drive a race to the top for reporting entities. I welcome any questions the Committee might have for me.

**CORRECTED**

**The CHAIR:** Thank you very much. Thank you both for your submissions; I found them very helpful. You both have different views on the enforcement orders, the modern slavery risk orders. Mr Glover, your organisation supports them while your organisation supports repealing them, Mr Mojtahedi. I think that is interesting. Correct me if I have got that wrong. We might open up having a discussion around that, because that is where we spent a lot of time with the last witness. I am interested that you have two different views as lawyers. Mr Glover, perhaps you could start by addressing that?

**Mr DAVID SHOEBRIDGE:** That is unusual: Lawyers with two different views.

**The Hon. NATALIE WARD:** It is very often the case!

**The CHAIR:** We put them on the one panel. It is unusual to do that.

**Mr GLOVER:** Thank you, Chair. We thought you may have seen a divergence in views. It is important to note at the outset that the divergence is not as marked as it seems. The position of the NSW Bar Association as expressed in its submission is that part 4 of the Modern Slavery Act 2018, which is the risk orders, could be dealt with under existing legislation such as the Crimes (Serious Crime Prevention Orders) Act 2016. The Bar Association simply raised that for consideration, having regard to some of the drafting issues existing in section 29 in its current format. There is already an existing regulatory framework that deals with matters such as the form and content of orders, who would be an eligible applicant for such orders and what the powers of courts are on the making of those orders. That regime is contained in the Crimes (Serious Crime Prevention Orders) Act.

**Mr DAVID SHOEBRIDGE:** But that would only catch a subset of the offences that are roped in by the Modern Slavery Act.

**Mr GLOVER:** Yes, that is right. The Crimes (Serious Crime Prevention Orders) Act relies on a definition in the Criminal Assets Recovery Act 1990, which no doubt members will be aware has some very complex drafting. Those provisions in section 6 of the Crimes (Appeal and Review) Act 2001 [CARA] pick up two specific Modern Slavery Act offences, being the offences in sections 80D and 80E, which are the first two of the enumerated offences in schedule 2. The remaining New South Wales offences in the Crimes Act 1900 are not contained in the Crimes (Serious Crime Prevention Orders) Act but may be the subject of the application of another aspect of the definition of a "serious criminal offence", which is a criminal offence that has a maximum penalty of more than five years' imprisonment. For example, section 91G (1) and (2), which is the third offence in schedule 2, those offences have a penalty of more than 14 years so may fall within the definition of a serious criminal offence.

**Mr DAVID SHOEBRIDGE:** But almost none of those Commonwealth provisions would be picked up.

**Mr GLOVER:** That is correct.

**The CHAIR:** But is your issue that as it stands now in the non-proclaimed bill, in the bill, that it is unworkable or it has got legal problems? Is that why you are diverting it to another definition in another part of the law?

**Mr GLOVER:** The Bar Association's position is that there is already an existing framework which is well established.

**The CHAIR:** So why duplicate it.

**Mr GLOVER:** Yes. Why carve out the modern slavery orders specifically?

**The Hon. DANIEL MOOKHEY:** But only to the extent to which these offences are covered by that Act, presumably?

**Mr GLOVER:** Yes, exactly.

**The Hon. DANIEL MOOKHEY:** Following that logic, though, you listed sections 80D and 80E as being the ones that you explicitly think are covered by those Acts.

**Mr DAVID SHOEBRIDGE:** Perhaps section 91G (1) and (2).

**The Hon. DANIEL MOOKHEY:** You have also made the point that is possible to argue under those Acts for sections 91G and 91G (3). Even if you accept that logic, it does strike that in order to solve one legislative ambiguity we are effectively saying we are going to rely on another—that is, to be able to get the other two offences in. That still leaves the overwhelming bulk of modern slavery offences, for which there is no clear pathway towards an enforcement mechanism under New South Wales law. Would you agree with that?

**CORRECTED**

**Mr GLOVER:** Certainly, if part 4 of the Modern Slavery Act was repealed with no corresponding consequential amendments made to the definition of "serious criminal offence", that would be the case.

**Mr DAVID SHOEBRIDGE:** Perhaps we could get the Law Society's view on it?

**Mr MOJTAHEDI:** The Law Society's submission looked at the Act as it is and expressed an opinion about the orders. It then expressed an opinion about the proposed changes. What it did not do so much was consider what would not be considered in terms of—I cannot remember the exact words that you used previously, but what would fall through the gaps, perhaps.

**The Hon. DANIEL MOOKHEY:** Can I take you to the ones which I raised before and you can tell me?

**Mr DAVID SHOEBRIDGE:** Pretty much all bar those three offences described by the Bar Association in schedule 2 would all fall through the gaps.

**Mr MOJTAHEDI:** Yes. The position that the Law Society took started with the idea that great care should be taken before extending preventative detention or extended supervision orders to new areas. We were of the view that the case for that had not adequately been made. As you would be aware, there are two purposes for the Crimes (High Risk Offenders) Act 2006; one is protection and the other is rehabilitation. The position that we took again was that in trying to bring the modern slavery elements into that Act the case had not been adequately made that it would address either one of those two issues.

**Mr DAVID SHOEBRIDGE:** But it is not a preventative detention regime in part 4. It is more akin to a kind of extended apprehended domestic violence order regime. It is not a preventative detention regime. I think it is a false—

**Mr MOJTAHEDI:** I accept that.

**Mr DAVID SHOEBRIDGE:** Were you here when we were asking questions of the interim commissioner?

**Mr MOJTAHEDI:** Yes.

**Mr DAVID SHOEBRIDGE:** I took the interim commissioner through the concerns raised on page 8 of the Government's submission. Can you see that there are three dot points at about point 7 of the page?

**Mr MOJTAHEDI:** Yes.

**Mr DAVID SHOEBRIDGE:** Do you agree that those issues raised in the three dot points could be dealt with by amendment?

**Mr MOJTAHEDI:** Without reading it, my memory of it was that there were concerns around a magistrate's ability to make an order without application. That was one of the concerns, if I am not mistaken.

**Mr DAVID SHOEBRIDGE:** You could exclude that. You could remove that.

**Mr MOJTAHEDI:** I accept that certainly—

**Mr DAVID SHOEBRIDGE:** The Supreme Court.

**Mr MOJTAHEDI:** The other concern, as I recall, was around—

**Mr DAVID SHOEBRIDGE:** I am happy to take you through. I do not mean to put you on the spot.

**Mr MOJTAHEDI:** No. I am also mindful that I do not want to be reading while I am addressing you.

**Mr DAVID SHOEBRIDGE:** I am happy to put them to you. The question of a right of appeal—there is no suggestion that the ordinary right of appeal from a decision of the single judge to the Court of Appeal has been excluded, is there?

**Mr MOJTAHEDI:** Even if that were the case, that is something that could be addressed. I accept that.

**Mr DAVID SHOEBRIDGE:** The ambiguity as to whether or not part 4 provides for civil or criminal proceedings could be addressed by expressly providing—that is a civil penalty provision, couldn't it? Or alternately, a criminal proceeding—

**Mr MOJTAHEDI:** I would have to turn my mind to that but my preliminary view would be that it is certainly possible.

**CORRECTED**

**Mr DAVID SHOEBRIDGE:** You may have a different view about sub eight as to whether or not that is expressly criminal provision as opposed to the making of the modern slavery risk order.

**Mr MOJTAHEDI:** I would have to turn my mind to it.

**Mr DAVID SHOEBRIDGE:** Then, the provision about how to identify how risk assessments are made—you could expressly give that obligation to the commissioner, could you not? Again you might want to say that you want it turn your mind to it, which is fine. This is a hard—

**Mr MOJTAHEDI:** I would be a little bit more cautious about that because what I am considering is what role the commissioner would have and should that risk assessment not be something that should be reserved for the judiciary.

**Mr DAVID SHOEBRIDGE:** You could give the commissioner a role in providing evidence or a framework to the court upon which the court makes the conclusion about the risk assessment.

**Mr GLOVER:** It might be, Mr Shoebridge, that you are referring to a similar risk assessment that takes place in the terrorism high-risk offenders legislation. There are specific provisions in that legislation that deal with the court to receive risk assessments performed by independent psychiatrists.

**Mr DAVID SHOEBRIDGE:** Correct. In this case you could have a risk assessment performed by the commissioner and then the court could turn its mind as to whether or not an order was required or the risk assessment could be tested in court. That would be a model, would it not?

**Mr MOJTAHEDI:** I probably would not be inclined to accept that would be a model without considering whether that could give rise to any legal problems, particularly in terms of—

**Mr DAVID SHOEBRIDGE:** I am more than happy for you to take that on notice. I wondering whether or not if those kinds of amendments were put in place and those issues were addressed, whether or not the in-principle objection would remain from the Law Society.

**Mr MOJTAHEDI:** As I tried to articulate in the beginning, the manner in which we advanced our submission was to look at what the Act is now and what the proposals are. What we have not given great consideration to is—

**The CHAIR:** Alternatives.

**Mr MOJTAHEDI:** —how do we amend what is now in order to make it workable. If that is something that this Committee would be assisted for the Law Society to consider and perhaps—

**The CHAIR:** "Or other related matters" is part of our terms.

**Mr DAVID SHOEBRIDGE:** I cannot speak on behalf of the Committee but I would be assisted by consideration about whether or not, in your view, part 4 can be maintained by amendment as opposed to simply being deleted.

**Mr MOJTAHEDI:** Certainly. I am also mindful that our submission did also cover that some of the concerns about who might fall through the gaps could be caught by other orders and we will certainly turn our mind to the comments that have been made not only to us but to the commissioner.

**The CHAIR:** Take that on notice.

**Mr DAVID SHOEBRIDGE:** Mr Glover, I appreciate the position put by the Bar Association but would those kinds of amendments be supported by the Bar Association in order, if you like, to limit or more clearly delineate the operation of part 4?

**Mr GLOVER:** Yes, it is difficult in some respects to know what the amendments are when we are discussing this in the abstract. The Bar Association's position was that part 4 achieves an important object of the Act. Can that object be achieved in the way that the Government had proposed, which was, yes, it is certainly possible to do that under the existing framework? But of course, as the Deputy Chair has mentioned, that does then raise consequential legislative uncertainty. The position of the Bar Association is that where this is a new legislation and indeed the first in Australia, the Parliament should take its time to ensure that the Act has as certain an operation as possible so that there is certainty for the stakeholders involved.

**Reverend the Hon. FRED NILE:** I am following up on the earlier comment that you made about comparing our scheme with the United Kingdom one. You said the UK scheme failed because of the lack of penalties. Are the penalties in the New South Wales scheme adequate in your opinion?

**CORRECTED**

**Mr MOJTAHEDI:** I think time will tell. I do not know. I would be speculating but in our view it is a sensible approach.

**The Hon. DANIEL MOOKHEY:** I will follow up from the line of questioning that Mr Shoebridge has initiated. Should we accept that the amendments as proposed by the Government to the Act, that is, to rely on the serious crimes offenders provisions? Would we need to amend that Act to provide the commissioner with powers to bring actions?

**Mr GLOVER:** That is certainly one regulatory approach. That is one regulatory response. Under the serious crimes prevention Act, there is a definition of "eligible applicant" for such orders. One of those persons is the Commissioner of Police.

**The Hon. DANIEL MOOKHEY:** And the New South Wales Crimes Commissioner is the other one?

**Mr GLOVER:** Yes.

**The Hon. DANIEL MOOKHEY:** And the Director of Public Prosecutions [DPP] is the other one?

**Mr GLOVER:** Yes.

**The Hon. DANIEL MOOKHEY:** But the modern slavery commissioner would have no standing to bring an action under that under the current scheme.

**Mr GLOVER:** That is quite right.

**The Hon. DANIEL MOOKHEY:** If we were to properly characterise what powers are available under that Act to deal with the same policy objectives that have been met by the modern slavery risk orders, is it an unfair conclusion that that Act, as currently written, covers only a couple of offences and actually does not trigger the enforcement structure that we are setting up by this Act?

**Mr GLOVER:** Section 29, as I understand it at the moment, does not give the commissioner standing to make the application for that order anyway.

**Mr DAVID SHOEBRIDGE:** The Attorney General or the DPP or the court—

**Reverend the Hon. FRED NILE:** Should we give the commissioner that standing?

**The Hon. DANIEL MOOKHEY:** Under this Act, too.

**Mr GLOVER:** The Bar Association's position is that the creation of the office of the modern slavery commissioner is a very important and significant one, particularly that it seemed to be independent of government. There is a useful comparison that can be made with the Commonwealth legislation where responsibility sits within the Department of Home Affairs. That person responsible for administering the Act is not necessarily independent of government in the way the commissioner is in New South Wales.

**The Hon. DANIEL MOOKHEY:** Does the Commonwealth legislation contain anything akin to modern slavery risk orders under part 4, section 29 of this Act?

**Mr GLOVER:** No.

**The Hon. DANIEL MOOKHEY:** Does the UK Act?

**Mr GLOVER:** Yes.

**The Hon. DANIEL MOOKHEY:** To what extent do the provisions in this Act and the UK Act differ, if any?

**Mr GLOVER:** Apologies. I will have to turn up the provisions of the UK Modern Slavery Act. That Act—at least it seems to me—operates quite differently because the offence provisions relating to modern slavery and modern slavery-type offences are actually located in that Act itself, whereas in Australia, obviously we have a different regime.

**The Hon. DANIEL MOOKHEY:** But is it correct in saying that if this was to be removed, then it is not likely you can rely on the Commonwealth Modern Slavery Act to take into place. Is that a fair characterisation?

**Mr GLOVER:** That is correct.

**The Hon. DANIEL MOOKHEY:** To the extent to which this is a superior form of legislation, one of the arguments that has been nominated for why it is is because it contains this provision. Would you two accept that that is a view that is held?

**CORRECTED**

**Mr GLOVER:** Sorry, could you repeat the question?

**The Hon. DANIEL MOOKHEY:** To the extent to which this Act has been nominated as being model legislation that is most likely to achieve its objectives—that it is a powerful Act—the argument that has been advanced is that it contains risk orders. That is one of the things that makes the New South Wales law special and that there is no such provision in Commonwealth law. Therefore this Act is powerful in the Commonwealth law. Do you agree with that?

**Mr GLOVER:** Yes. But the corollary of that or the next step in that chain of logic is that the regulatory mechanisms and the responses in the Act itself need to be enforceable and need to operate with certainty. The question—and what will seem to take up the majority of the committee's time today—is the operation of part 4. It is about making part 4 or wherever that regulatory response ends up as certain as possible in its operation.

**Mr DAVID SHOEBRIDGE:** If we were going to rely upon the Crimes (Serious Crime Prevention Orders) Act to do the work of part 4, you would need to include within that 2016 Act the list of offences in schedule 2. Then you would also need to empower someone like the proposed anti-slavery commissioner to have the power to make an application under the 2016 Act. It is not just a question of removing part 4 and saying, "Everything will be fine".

**Mr GLOVER:** Yes. Taking the first part of your question, that would seem to me to be quite a straightforward legislative amendment. You would not have to enumerate every offence provision in schedule 2. What you can do is just link the schedule 2 offences—an offence specified in schedule 2 of the Modern Slavery Act. Taking the second part of your question, which was to give the commissioner the ability to be an applicant for such orders, that would certainly require amendment in the Crimes (Serious Crime Prevention Orders) Act 2016 but at the moment that power does not exist within section 29 anyway so you would need to make that amendment to section 29 as well.

**Reverend the Hon. FRED NILE:** Just following up, would you recommend that we do that then? What you have just stated?

**Mr GLOVER:** It is important to note the Bar Association's position is concerned with the structure of the legislation itself and the workability of the legislation itself. It is a matter for Parliament to determine the best way that response is.

**The Hon. WES FANG:** That was very diplomatic.

**The CHAIR:** Very diplomatic.

**Mr DAVID SHOEBRIDGE:** Could I take you to the proposal to delete reference to section 32 of the Human Tissue Act? Mr Glover, in your submission you say that it should be retained. Can you take us through that?

**Mr GLOVER:** The Bar Association understands the Government's argument is that there is some inadvertent capturing of activities that are lawful in other countries such as those that permit donations of blood and other tissues. The consequence is that NSW Health will be at risk of breaching the obligation created by the New South Wales Modern Slavery Act that it take reasonable steps to ensure that it does not have modern slavery in its supply chain.

**The CHAIR:** Can I just clarify that it is not donation? It is commercial provision in other countries that is legal, is that right? That is the issue?

**Mr DAVID SHOEBRIDGE:** Yes. That is right.

**Mr GLOVER:** Yes. I was reading from the New South Wales submission that it is to the same effect. The Bar Association's position is that where there may be some uncertainty about the operation of section 32 of the Human Tissue Act, including unintended consequences from its operation affecting NSW Health, that really seemed to be a matter that is more appropriate to be addressed in section 32 itself rather than from simply removing section 32 from the list of modern slavery offences. I suspect the Committee will hear later from other witnesses today about the policy objectives and the need from a policy perspective to ensure that section 32 remains in the list of modern slavery offences.

**Mr DAVID SHOEBRIDGE:** There are exemption-making powers too. The regulations allow for exemptions to be made for persons or aspects of an organisation's activities. If the concern was blood products in NSW Health, there would be a capacity to make a regulation to exclude that in the operation of the supply chain provisions.

**CORRECTED**

**Mr GLOVER:** Yes, quite.

**Mr DAVID SHOEBRIDGE:** That seems to me an obvious solution to the problem.

**Mr GLOVER:** Yes. And what the New South Wales Government's submission does not grapple with is that the requirement is to minimise the effect of modern slavery in supply chains, not to eliminate it. You are not exposing NSW Health necessarily to criminal prosecution or liability for that in that respect.

**Mr DAVID SHOEBRIDGE:** The Law Society supports the exemption of State-owned corporations and local councils from the definition of government agencies. In doing that, is the Law Society adopting the position of the Government when it comes to State-owned corporations that they should be treated just like every other commercial entity? Is that the basis or is there a structural legal issue you are putting forward?

**Mr MOJTAHEDI:** My understanding is that with the amendments they would still be covered by section 24. Is that what the question was going to?

**Mr DAVID SHOEBRIDGE:** I think we all agree they would still be covered by section 24 provided they met the turnover or consolidated revenue definition. I am wondering what your rationale is for excluding State-owned corporations from those other provisions of the Act that are much more rigorous when it comes to government agencies? One of the many is that under section 25, the commissioner has to regularly consult with the Auditor-General and procurement to monitor the effectiveness of due diligence provisions in government agencies. What is the rationale for removing that oversight from State-owned corporations?

**Mr MOJTAHEDI:** I might have to take that on notice.

**Mr DAVID SHOEBRIDGE:** And the same for local government. I think we had that discussion earlier about the discrepancy between very small regional councils and very large metro councils or coastal councils or even some inland councils. You could understand how maybe applying the consolidated revenue approach to local councils to find those who were roped into the government agency provisions and those who are not, but what is the rationale for excluding all local councils?

**Mr MOJTAHEDI:** I do not know if the Law Society specifically made that submission. We supported a process whereby smaller regional councils were to be exempt and where there is a code of practice that there should be consultation with those councils to ensure that any process is rigorous and also does not put them in a detriment .

**Mr DAVID SHOEBRIDGE:** A regime that brought in the bigger councils under this specific statutory regime but perhaps had a non-legislative, policy-based framework for the smaller councils is something the Law Society might support ?

**Mr MOJTAHEDI:** My only reluctance in answering that is I am also mindful what the commissioner said earlier about the desirability of having a consistent approach. Where there are councils that might be larger, as we might call it, I question whether they would be covered by the Commonwealth legislation.

**Mr DAVID SHOEBRIDGE:** But a consistently low approach is not a good outcome. Exempting all councils would be consistent but it would go against the object of the Act.

**Mr MOJTAHEDI:** That might be so.

**The CHAIR:** Can I return to the human tissue discussion, I was just trying to find the reference. It is in the Government submission commentary to the amendments, page nine of 20, under "Replacing a reference to the Human Tissue Act with a reference to organ trafficking". It is not repealing it as such. It concludes by saying:

> by replacing the reference to section 32 of the Human Tissue Act in Schedule 2 of the NSW Act with references to the relevant Commonwealth organ trafficking offences.

I am not an expert in this area but to me they are saying that it picks up on this issue of unintended consequence of blood and other blood-related products from overseas countries that are appropriate. Why would we not just agree to that and have some harmony with the Federal law as well rather than doing a special exemption for NSW Health?

**Mr GLOVER:** I understand the point and it is certainly one response but New South Wales and the Parliament has chosen to enact section 32 of the Human Tissue Act. It very much has as its focus the effect of human trafficking in organs which is a very significant matter. Since New South Wales has specific legislation, its Modern Slavery Act should perhaps at least in a broad context reference the New South Wales Act.

**CORRECTED**

**The CHAIR:** But the Government submission is to reference the Federal Act which is interesting, but you cannot comment on that.

**Mr DAVID SHOEBRIDGE:** Aspects of one Federal Act which has a much smaller remit than section 32 of the Human Tissue Act.

**The CHAIR:** We might talk offline on that. I know you are an expert in this area. I acknowledge that. We have a conversation to have about that and maybe ask some other witnesses later.

**The Hon. WES FANG:** I wanted a little more clarity around the council issue. What would you determine the problems to be if we did separate smaller councils from larger councils in implementing the requirements of Modern Slavery Act into one and not the other? I understand what Mr David Shoebridge is saying about the intent. I have concerns about councils being compared similarly when I know smaller councils will struggle to satisfy those requirements. Where do we draw the line?

**Mr GLOVER:** This is not an aspect upon which the Bar Association made a submission. The Bar Association took the view that we are a little more removed from the local councils, so I will leave that to the Law Society to answer.

**Mr MOJTAHEDI:** I think it would be difficult to draw a line. If one were compelled to draw the line, then I would suggest that line would be the same line that exists for any other entity that is covered by the Act.

**The Hon. WES FANG:** You can see problems in classing smaller councils, larger councils?

**Mr MOJTAHEDI:** I think the preferable approach would be for there to be a consistent approach towards councils. I would leave it at that.

**Mr DAVID SHOEBRIDGE:** Consistent between a council with 3,000 residents and a million dollar turnover, and another council with 480,000 residents and a $500 million or $600 million turnover? You think consistency between those is actually desirable?

**Mr MOJTAHEDI:** I am not sure if I did but I perhaps should have used the word "preferable", but I accept that it is not desirable.

**The Hon. GREG DONNELLY:** The Government's submission to the inquiry is marked as submission No. 1. Appended to that submission is attachment A. I am not quite sure whether you have that—I am sorry not to give you notice about this question. It is headed "Summary of Proposed Amendments to the Modern Slavery Act 2018 New South Wales". If you work your way through it there are seven pages of proposed amendments. In terms of formulating your respective submissions I gather that you at least familiarised yourselves with the content of the table?

Your submissions are both very helpful. I am wondering whether or not there are any other amendments that are referred to in schedule A, which are proposed amendments by the Government to the legislation, that are worthy of some reflection or some comment? If you need to take this on notice feel free to do so. There are 74 pages worth of them. Obviously you have identified some key ones. Your submissions and contributions today to that effect have been helpful. Is there anything else we should have an eye out for that you would like to draw to our attention?

**Mr DAVID SHOEBRIDGE:** We have read your submissions.

**The Hon. GREG DONNELLY:** I beg your pardon?

**Mr DAVID SHOEBRIDGE:** Apart from what is in the submissions.

**The Hon. GREG DONNELLY:** Indeed, yes. Other than what is in your submissions, which are focused on key amendments? If you wish to take it on notice, or if your submissions speak for themselves and that is all you want to comment on, so be it. I am raising it with you whilst you are here.

**Mr GLOVER:** Thank you for the question. I think you could tell by our reflecting on the table that we were both considering it. From the Bar Association's perspective, we had anticipated that obviously this legislation is significant and has generated a lot of public interest, and obviously the inquiry has received in excess of 100 submissions. So what the Bar Association's approach was to really focus on certain amendments in respect of the Bar Association's, if you like, area of expertise and experience, and leave some of the other matters to be raised by stakeholders otherwise.

**The Hon. GREG DONNELLY:** Understood.

**CORRECTED**

**The Hon. DANIEL MOOKHEY:** I am going to seek some constitutional advice from the Bar Association. To what extent is the bar aware of whether or not the Crown can refuse royal assent to an Act passed by Parliament?

**Mr GLOVER:** I am not able to answer that question, I am sorry.

**The Hon. DANIEL MOOKHEY:** To the extent to which I have been able to find out, the last time the Crown in any capacity refused consent—

**The CHAIR:** I will rule that question out of order. You are way outside the terms of reference here. We are dealing with amendments to the bill.

**The Hon. DANIEL MOOKHEY:** We are dealing with whether or not the bill has been proclaimed.

**The CHAIR:** No. You find that in the terms of reference. I am ruling it out of order. The Bar Association does not need to give advice on the Government's action.

**Mr DAVID SHOEBRIDGE:** It would be interesting, perhaps.

**The CHAIR:** Have a conversation over a cup of tea.

**Mr DAVID SHOEBRIDGE:** Could I ask on a different point?

**The CHAIR:** If it is to the terms of reference, yes, certainly Mr Shoebridge.

**Mr DAVID SHOEBRIDGE:** I promise not to ask about compulsion of the Governor. It is about the question of turnover or consolidated revenue. Is there merit in deleting turnover and replacing it with consolidated revenue in order to have consistency and what would be the effect of it?

**Mr MOJTAHEDI:** We did make that submission. My simple answer is yes, and could I try to make good that submission? The term "consolidated revenue" is defined in the Commonwealth Act. The term "revenue" does not have its own specific definition in the New South Wales Act but one has a general understanding of what that means. If I could just bring your attention to what the definition of consolidated revenue is. Under section 4 it is defined as the—

**Mr DAVID SHOEBRIDGE:** Of the Federal Modern Slavery Act.

**Mr MOJTAHEDI:** Correct. I am sorry. I apologise. The total revenue of the entity for a reporting period, or if the entity controls another entity or entities, the total revenue. In our submission, not only for the purpose of consistency, but also the Commonwealth definition could possibly also capture more than the simple term "revenue".

**Mr DAVID SHOEBRIDGE:** And would avoid organisations restructuring in order to prevent having to comply with the State Act as well?

**Mr MOJTAHEDI:** I had not considered that, but possibly yes.

**The CHAIR:** Any further questions? We might conclude early and take up the morning tea that we lost. Thank you for coming in today and giving us your learned advice and submissions, we appreciate it. You took some questions on notice, which the secretariat will advise you of in due course. You have 21 days maximum, but you can do that earlier if you like, to provide those answers to the Committee.

**(The witnesses withdrew.)**

**(Short adjournment)**

**CORRECTED**

**NICOLA STREET**, National Manager—Workplace Relations Policy, Australian Industry Group, affirmed and examined

**CHRISTIAN GERGIS**, Head of Policy, Australian Institute of Company Directors, sworn and examined

**ELIZABETH GREENWOOD**, Policy Manager, Workers Compensation, Workplace Health & Safety and Regulation, NSW Business Chamber, sworn and examined

**MELISSA ADLER**, Executive Director, Industrial Relations and Legal Services, Housing industry Association, affirmed and examined

**GUY NOBLE**, Manager Workplace Services (NSW), Housing Industry Association, affirmed and examined

**The CHAIR:** Good morning. You are important stakeholders. The Committee will have an hour with you and we are cognisant of that. We received your submissions, four of them. I invite you to make a brief opening statement regarding your position on the bill and the proposed amendments.

**Ms STREET:** Thank you for the opportunity for the Australian Industry Group to address the Committee on the New South Wales Modern Slavery Act and associated matters. Firstly, the Australian Industry [AI] Group considers that crimes of modern slavery have no place in society and should be eradicated. AI Group supports businesses playing a role along with others in the community to combat modern slavery and we support measures that are effective in achieving this objective.

The AI Group has had extensive involvement in representing industry in relation to modern slavery reporting both in respect of the Federal Government's Modern Slavery Act and its related resources and, more recently, in the New South Wales Government's development of an amendment bill and regulation that seek to address some of industry's concerns. Through this process we emphasise that any reporting framework on business should not be onerous on reporting entities, should be non-punitive, and should be supplemented with sufficient education and practical guidance for businesses to be more aware of how modern slavery may manifest in business and supply chains more broadly.

In relation to both the Commonwealth and New South Wales Acts our group has strongly advocated that the two pieces of legislation should not result in duplicate reporting obligations on the reporting entities. This issue we have outlined in our submission to the Commonwealth Senate committee's inquiry that was created in respect of the Modern Slavery Bill, as it was a bill before it was ultimately passed by the Federal Parliament. It is also the subject of comprehensive feedback we provided to the New South Wales Government following the passage of the New South Wales Act. Since then our members have been involved in consultations with the New South Wales Government in respect of modern slavery, generally, but also in relation to industry concerns about this issue of duplicate reporting.

Ai group's overall position on the New South Wales Act is that it is imperative that it adopt a reporting framework that is consistent and harmonised with the Commonwealth legislation. To that end we would like to highlight some specific areas of the Act, the amendment bill and draft regulation. Firstly, AI Group is supportive of the draft regulation narrowing the coverage of the New South Wales Act to remove duplicate reporting requirements on businesses in New South Wales captured by both schemes. Specifically, the draft regulation at clauses 9 and 10 identify appropriate and necessary exemptions from the requirement to prepare a modern slavery statement under section 24 of the New South Wales Act.

Secondly, however, a stark and unfair inconsistency with the Commonwealth Act remains. This is in respect of enforcement obligations for businesses who do not prepare a statement. In this respect we do not support the amendment bill in its current form. The New South Wales Act contains very significant penalties of up to $1.1 million for New South Wales businesses who do not prepare and publish a modern slavery statement in accordance with the Act. In contrast, the Commonwealth Act contains a non-punitive approach. This results in a two-tier reporting system for New South Wales businesses with different consequences based on business size. We see this as an inequitable and inconsistent enforcement approach and it sends an inappropriate message to the community at large that combating modern slavery is more pressing for smaller businesses with fewer resources and weaker commercial leverage than for larger organisations.

To resolve this we have suggested an amendment to be added to the amending bill that deletes the penalty provisions in section 24, which relates to section 24 of the current New South Wales Act, and if deemed necessary inserting a provision of the kind included in the Commonwealth Act, which provides for a three-year review. The

**CORRECTED**

three-year review mechanism would enable the New South Wales Government to evaluate the effectiveness of the New South Wales Act and consider whether additional measures are required to improve compliance with modern slavery reporting. We refer the Committee to our submissions filed in this inquiry. I am happy to take further questions.

**The CHAIR:** Thank you for that. Mr Gergis?

**Mr GERGIS:** Thank you, Chair, for inviting me to give evidence today on behalf of the Australian Institute of Company Directors [AICD]. The AICD has more than 44,000 members drawn from directors and senior leaders across large and medium and small business, government and not-for-profit [NFP] sectors. The AICD supports the introduction of legislation to combat modern slavery. However, we consider that the appropriate level is at the Federal level. We support the Commonwealth law and consistently communicate to members the need to take seriously modern slavery risks, including through articles and webinars. While we appreciate that a large amount of work has been done to ensure alignment between New South Wales and Commonwealth regimes the AICD remains concerned about inconsistencies that remain, particularly the penalties proposed under New South Wales law and the lower turnover threshold.

The AICD is of the view that the introduction of the New South Wales regime will impact upon the operability and effectiveness of the Commonwealth modern slavery legislation. We believe that the threshold set by the New South Wales Government of $50 million is too low and will capture organisations without the capacity, resources and experience to deal with the compliance and reporting regime. A higher threshold, which captures only larger organisations with more resources and capacity to comply effectively with the law, ultimately may result in stronger compliance and improved practices across the economy; in other words, it will set a higher benchmark. We believe that a punitive approach—that is, penalties—is inappropriate at this time as organisations adjust to the new reporting requirements. We instead encourage the Government to focus on helping organisations identify risk areas and educating them on how to mitigate risks to address identified instances of modern slavery.

A regime focused on transparency, like that at the Federal level, is a more effective way to encourage compliance and collectively improve performance and share lessons with other organisations and regulators. To that end we are currently running roadshows on modern slavery across Australia as the AICD and have prepared a member resource and board oversight of modern slavery risks, which was released in October.

**Mr DAVID SHOEBRIDGE:** Mr Gergis, you are a little too close to the microphone. It is popping.

**Mr GERGIS:** I am sorry for that.

**The CHAIR:** That is all right.

**Mr DAVID SHOEBRIDGE:** If the Parliament should proceed with the New South Wales regime, the AICD supports an exemption for charities and not-for-profits. These organisations would face a proportionately greater administrative burden and compliance costs compared to larger commercial organisations. We would like to emphasise that no exemptions sought by not-for-profits and charities at the Commonwealth level due to the higher monetary threshold at the Commonwealth level and the lack of penalties at the Commonwealth levels. As set out in our submission, we also have some technical comments around the exemption that has been drafted by the New South Wales Government not capturing all NFPs. I am happy to take any questions on that throughout the course of today's evidence. Thank you.

**Ms GREENWOOD:** The Australian Business Industrial [ABI] and the New South Wales Business Chamber welcome the opportunity to appear before the Standing Committee on Social Issues inquiry into the Modern Slavery Act 2018 and associated matters. ABI and the chamber strongly support actions necessary to eradicate modern slavery in all its forms and the policy objectives underpinning the proposed modern slavery legislation. However, as representatives of business we want to ensure the policy objectives can be achieved without imposing unnecessary costs. We support better regulation principles but believe that substantive issues are best dealt with elsewhere, namely the Federal Government framework. The policy makers in New South Wales need to clearly articulate why the Federal Legislation is unsatisfactory to resolve issues as they exist in New South Wales.

Once this can be demonstrated we need then to identify the best options to address the issues, including non-regulatory options. We are not convinced that proposed New South Wales requirements appropriately balance costs and benefits insofar as they create significant additional burdens for business without offering additional benefits above what is already provided for by other regulatory frameworks. Where possible, requirements should be consistent with and mirror Federal requirements so as to avoid duplication. Our submission has raised some concerns where this is not the case. We would be happy to discuss in further detail.

**CORRECTED**

**Mr NOBLE:** The Housing Industry Association [HIA] thanks the Committee for the opportunity to appear this morning. We have provided a written submission in response to the Act and the amendment bill. The HIA is the peak industry association for the residential building industry. We have a membership of 60,000 and our members are involved in all aspects of residential building. Every day our members build single family homes and medium-density housing; carry out home repairs and renovations; and build apartment buildings. Builders, trade contractors, allied professionals, manufactures and suppliers of building products are all able to be members of the HIA. Our membership includes companies operating as multinational and international corporations through to sole traders.

The HIA would like to make a couple of key observations. We support appropriate actions being taken by the business community to address the risk of modern slavery in their supply chain. However, it is HIA's view that it is unnecessary to have two schemes running simultaneously. The New South Wales and Commonwealth Acts contain comparable reporting requirements with different thresholds and consequences for non-compliance supply. The HIA submits that it is inappropriate for penalties to apply in a scheme that has a lower reporting threshold when penalties are absent in the higher threshold scheme. The HIA estimates that the number of homes a builder would need to complete per year to reach the $100 million threshold under the Commonwealth scheme would be around 285 homes. Under the New South Wales scheme that jumps to 143 homes a year.

This means that the New South Wales scheme would apply to at least the top 20 builders in New South Wales, if not more. The coverage of the scheme is broader than that though, due to the nature of the residential building industry, in which hundreds, if not thousands, of smaller contractors would be part of the supply chain of labour and materials for these direct reporting entities. If the Act is going to come into force the HIA would urge the publication of guidance material that is industry specific. We are happy to assist the Committee this morning if you have any questions for us.

**The CHAIR:** Thank you for your opening statements and your submissions, which are helpful and quite detailed. I will start with the first obvious question. All of you—except for Ms Street—recommended that we do not proceed with the New South Wales Act and just rely on the Federal Act. There is a consensus there from business, I guess. Have you heard evidence that the Federal Act is not as strong as the State Act in that the penalties are an incentive to comply—in the UK they did not have the penalties and it did not work there initially in terms of disclosure—and that there is no commissioner at the Federal level? It is not independent or quasi-independent; it is within the remit of the home affairs Minister. I would like each of you to comment on that, keeping in mind that—as far as I am aware—this is a proposal to remove duplications that were there. For example, the $50 million to $100 million reporting in New South Wales, or you can opt into the Federal one and not have to report in New South Wales. I would like to hear your comments about your proposal not to proceed.

**Mr GERGIS:** We obviously agree—and I think everyone at this table and on the Committee agrees—that modern slavery is a serious issue that needs to be addressed in Australia and globally. In our view the most effective approach is to require the largest and most well-resourced companies to publish modern slavery statements. We believe this will support best practice and have a positive effect on supply chains. It will benefit all organisations. We consider the higher monetary threshold that applies at the Commonwealth level to be appropriate and the right course of action. It is also inappropriate for larger organisations complying with the Commonwealth regime to not be subject to penalties whereas at the State level they would be subject to penalties.

It is important to note that just before the Commonwealth bill passed through Parliament, the Commonwealth introduced an amendment—it was proposed in the Senate and ended up being passed—that as part of a three-year review they would consider penalties and whether they are appropriate. That is to ensure that organisations are not taking a poor approach to compliance because of the lack of penalties. So we can see what the compliance record is and then determine whether or not penalties are appropriate. We consider that to be a really sound approach.

**Ms GREENWOOD:** Our view is that there is already Federal legislation in place. There is no need for penalties. One point is that a percentage of New South Wales companies will always be within the Federal supply chain. That would be covered. There is guidance already being provided, both within Australia and overseas. In terms of the construction industry, there is a UK organisation called Stronger Together that publishes industry-specific guidance material. In New South Wales we find it peculiar that under section 10 the commissioner is not allowed to look at, or does not have the power to look at, individual cases. With trafficking and slavery, it is difficult to see how those offences would be in the supply chain. The labour offences would be in the supply chain but we believe they are adequately covered by our industrial relations framework within Australia. There has been a recent task force, and Federal legislation has addressed quite a few of the recommendations made by that task force.

**CORRECTED**

In terms of charities and not-for-profit organisations, at the Federal level there is a roundtable and a lot of those charities and not-for profit organisations are members of that roundtable. They met quite regularly and share the programs that they are implementing to address trafficking and slavery. In the UK it seemed to be more of an awareness exercise. When the Federal legislation first came in we were quite concerned about the obligations being imposed on business. We were assured by the Department of Home Affairs that it was more of a light touch and was to raise awareness around the supply chain and where businesses are sourcing products from in New South Wales as well as overseas. I must admit that it is not clear to me with this legislation.

It seems to me that it is purely looking at modern slavery within Australia. In that case, there are only about 3,000-odd cases. If it is going further and overseas then that makes more sense. But as I said before, it is not quite clear from the legislation that it is going beyond the boundaries of Australia. We believe that you are better off having a bottom-up approach when it comes to modern slavery. I think there are perhaps more targeted initiatives that could be adopted. For example, you have SafeWork NSW and Fair Trading inspectors on the ground. Surely we would be better off training them and giving them the skills to identify the risk areas and act appropriately, and then called in the Federal agencies to act on those suspicions.

**The CHAIR:** That is helpful.

**Mr NOBLE:** We would echo those remarks, especially given the fact that the Commonwealth legislation does have the statutory review after three years and, if that Act is found to be not functioning as deemed appropriately—if it is not working as such—then there is an opportunity to introduce penalties into that Act. We think that is quite a sensible approach. We think the New South Wales Act should be a wait-and-see matter to see what is happening at the Commonwealth level and to see how effective it is. We applaud some of the proposed amendments that are in the amendment bill in respect of the reporting areas, but ultimately it is going to be a matter of time to let others see what does actually eventuate.

I think that most of the New South Wales companies that would be caught in the 50 to 100 would be almost crazy not to opt into the Commonwealth system and report at the Commonwealth level. I understand that report also has to be given to New South Wales. Essentially, we do not see the need for the two regimes. We think there may be some confusion as well. We have had members phoning up thinking that were caught by the Commonwealth and those assuming that the New South Wales Act was already in force and they need to respond. We have been putting out information to our membership, but it takes time to filter through. We have just started undertaking the task of preparing materials, guidance initially—thank you for the tip. We will certainly be having a look at what our partners in the UK are doing in that regard.

**The CHAIR:** Ms Street, you do not explicitly say abandon the State bill in your submission.

**Ms STREET:** No, that is right. Our primary position would be the penalty provisions in section 24 (b). I would add that the Commonwealth Act has only been implemented from 1 January this year. We still have companies that have only just commenced the reporting period for this financial year. Really the end of 2020 will be the time when we can assess how companies are responding. Like the other organisations, we are providing members with resources, sharing best practice models as to what they can do. I would note that there is in the Commonwealth regime an online register as well, which we anticipate will provide a level of scrutiny for organisations. It also has the potential to be used as part of procurement practices commercially. We think that in a few years we will see some of those things unfold.

**Mr DAVID SHOEBRIDGE:** I can understand why business does not want penalties, but I cannot understand the submission, in light of the UK experience, where you, Ms Greenwood, would put to us that there is no need for penalties. Have you read any of the review document of the UK experience, particularly on supply chains?

**Ms GREENWOOD:** I have not; however, I have done a bit of research about what has happened since 2015. For example, the Brazilian government and the Indian government have adopted alternative approaches. In Brazil a name-and-shame register, where they are aware of businesses that are at high risk of or have the practice of modern slavery. It seems as though the outcome of what we are trying to achieve is to stamp out these practices. It also appears to me that that is a bottom-up approach.

**Mr DAVID SHOEBRIDGE:** One of the ways of convincing yourself would be perhaps to read the UK review. I will read an extract from it talking about supply chains and dealing with the fact that there is no penalty regime in the UK. This is what the government's own review panel had to say:

> Almost all the expert advisers agree that a more robust and systemic approach to tackling non-compliance is necessary.

They go on to say:

**CORRECTED**

> Government should make the necessary legislative provisions to strengthen its approach to tackling non-compliance, adopting a gradual approach of initial warnings and fines as a percentage of turnover, court summons and directors disqualification.

It is unambiguous that not having penalties has not worked in the UK, and now they want to impose penalties. I do not understand where your position comes from.

**Ms GREENWOOD:** I would take it back a step and I question the effectiveness of supply chain reporting. If you start at the top and you work way down the supply chain and you ask those further down particular questions about whether they are engaged in practices, either they are or they are not. If they are, they might say no, they are not. Let us take the truck example, the recent one with the trafficking, and let us take the construction industry. You need to have, say, timber delivered to your building site. If you do the supply chain reporting, you will need to address your transport companies and ask them whether or not they engage in those practices. Either the do or they do not. If they do, chances are they will say they do not. Even if they do say yes, you can report on the risk, but you cannot just stop using transport companies. You can use other transport companies, but what if those transport companies employ a rogue driver? They might honestly say no, we do not engage in these practices, yet a driver, to earn a bit of extra money on the side, might be engaging in trafficking.

**Mr DAVID SHOEBRIDGE:** Your scepticism about supply chain reporting is not supported by any part of the 150 detailed pages of review from the UK. Is it your personal opinion—is it based upon some kind of study, some kind of expert report, or is it your personal opinion?

**Ms GREENWOOD:** That would be my personal opinion.

**The Hon. GREG DONNELLY:** Ms Greenwood, circling back to a comment you made referring to the matter of the Commonwealth legislation and discussions with the Commonwealth in regard to that legislation that passed the Federal Parliament last year, I am not sure whether you were involved in those discussions concerning the interests of your members. I think you said that either the relevant Minister or the relevant department assured your organisation that the effect of the legislation was that it was light touch—

**Ms GREENWOOD:** Yes.

**The Hon. GREG DONNELLY:** —and awareness only. That was put to you as the essence of the Commonwealth legislation. You were reassured the legislation that is now in place and operating was light touch and awareness only. Was it because it was light touch and awareness only, and the assurance that you were given, that you were ultimately prepared to support the legislation?

**Ms GREENWOOD:** I was not brought in at an early stage of the consultation. I was brought in at a later stage. But when we discussed the burden on business we actually arranged an event where we had both the New South Wales interim commissioner and the Department of Home Affairs come and present to our members. They had a slideshow and gave us an example of the type of approach that would be required.

**The Hon. GREG DONNELLY:** Sorry, required at the Commonwealth level?

**Ms GREENWOOD:** Yes, at the Commonwealth level. I made the comment at the time that businesses are used to risk management practices—you look at work health and safety. They are very familiar with that. However, they are not necessarily going to know where those risks are in the supply chain. There would need to be quite comprehensive guidance material to enable businesses to comply with those obligations. In fact, that guidance material has been published.

**The Hon. GREG DONNELLY:** I put it to you that the only reason your organisation has gone quiet on the position with respect to the Commonwealth legislation is in fact because it is "light touch" and awareness only. What you are facing here with respect to the New South Wales Act, which was passed by the Parliament—let us be very clear about this: the Act in New South Wales was passed by this Parliament. It is the Government that has failed to proclaim the legislation. That is the issue here. The New South Wales legislation passed the Parliament before the Commonwealth legislation passed its Parliament. The New South Wales legislation does have some teeth and some bite. That is why you are taking the position that you are, because you in fact do not want something that is not light-touch or is awareness only. That is the position, is it not? The New South Wales legislation, if it was proclaimed and in place, would in fact not be light-touch and awareness only; it would have substantive provisions within it. It would have some bite, wouldn't it? That is the point.

**Ms GREENWOOD:** It would have bite, but that is not the reason why we are opposing it. The reason we are opposing it is looking at the outcome and whether the outcome is going to be addressed by the regulation.

**The Hon. GREG DONNELLY:** How do you know it is not going to have the outcome that is desired? On what basis do you come here and say that the New South Wales legislation as passed by the New South Wales

**CORRECTED**

Parliament is not going to have the desired outcome that the members of this Parliament in both Houses ultimately got behind and supported? On what basis do you say it is not going to have that outcome?

**Ms GREENWOOD:** We believe that it is sufficient to have the Federal legislation.

**The Hon. GREG DONNELLY:** That is not answering my question.

**The CHAIR:** Allow the witness to answer the question.

**Ms GREENWOOD:** Can you ask the question again, please?

**The Hon. GREG DONNELLY:** Yes. The question was that I was making a distinction between the Commonwealth legislation and the New South Wales legislation. The New South Wales legislation has some teeth and some bite. You have said this morning in your evidence that essentially your organisation accepted the Commonwealth legislation because it was light touch and it was an awareness-only regime.

**Ms GREENWOOD:** That was our understanding of it.

**The Hon. GREG DONNELLY:** Do you disagree with that position?

**Ms GREENWOOD:** I do not disagree with that, because that is my understanding of what it was.

**The Hon. GREG DONNELLY:** To refer to the Commonwealth legislation as light touch and awareness only—that was the position that your organisation accepted and that ultimately led you to allow that legislation to pass through without any strong opposition. Contrary to that is the New South Wales legislation, which has some teeth and some bite. The reason you are opposing the New South Wales legislation is because it has got teeth and bite. I put it to you that that is the only reason you actually are opposing it. You do not have any evidence that it is not going to have the desired outcome that we politicians in this Parliament informed ourselves about in terms of getting behind and supporting that legislation.

**The CHAIR:** I might give the witness a chance to answer the question now.

**Ms GREENWOOD:** Well, as I said before, we do not believe that is necessarily the right regulatory approach to adopt.

**The Hon. GREG DONNELLY:** That is a policy position, isn't it? That is a policy position.

**Ms GREENWOOD:** It is a policy position that we do not believe that is necessarily the right way to go about it.

**The CHAIR:** That is not an unreasonable position to put for your members.

**The Hon. NATALIE WARD:** Thank you all for your submissions and for coming along today. Can I perhaps put a counter proposition to you? None of you come here today saying that you do not in any way want to provide protection to those facing the possibility of forced labour. Is that correct?

**Ms GREENWOOD:** Not at all.

**Mr GERGIS:** Yes.

**The Hon. NATALIE WARD:** Is it the case that the organisations, the bodies and entities which you represent want to comply with this legislation, but in doing so you need regulation that is certain, firstly, and is enforceable? Is that not the case?

**The CHAIR:** For Hansard, rather than nodding each of you might just indicate verbally.

**The Hon. GREG DONNELLY:** Well four of them do not want the Act. Four of them do not want—

**The Hon. NATALIE WARD:** Mr Donnelly, you have had your time.

**The CHAIR:** Order! I ask members not to interrupt.

**The Hon. NATALIE WARD:** I have been very polite. I have listened to you and I would like the opportunity to ask some questions, if I may.

**The CHAIR:** I ask witnesses to articulate that loudly for Hansard, that is all.

**The Hon. NATALIE WARD:** Am I to understand that you are here today to tell this Committee that you want some certainty in the legislation and the ability to comply with it? As I read your evidence and your submissions, there is the potential for inconsistency between the Commonwealth and the State legislation. Is that the case?

**CORRECTED**

**Ms STREET:** Yes. Speaking for the Australian Industry Group, the interaction between the New South Wales and Commonwealth Acts is a very real issue for business. It is not that they do not want to address modern slavery; it is that we are getting questions such as, "Which system am I under?", "What are the differences?" and "What do we need to do differently to comply with each piece of legislation?" Our submission as put to the Committee seeks to address some of those inconsistencies. We think that if those amendments are made that will go to a large part in resolving a lot of that confusion.

**The Hon. NATALIE WARD:** In fact, I think your words were "appropriate and necessary" amendments.

**Ms STREET:** That is correct, yes.

**The Hon. NATALIE WARD:** So that your members can comply.

**Ms STREET:** Correct. That is right.

**Mr DAVID SHOEBRIDGE:** But that is not a uniform position across the board.

**The Hon. NATALIE WARD:** I might hear from the witnesses if I may, Mr Shoebridge. Do other witnesses have comments about that?

**Mr GERGIS:** I am happy to comment. Of course our organisation opposes modern slavery. We supported the Commonwealth legislation. We just do not consider it appropriate at the State level. It is worth pointing out—and we have not really discussed this—that these are really complex issues. They take time and resources to effectively grapple with. I think you risk a tick-a-box approach to compliance, which would be an abhorrent approach for organisations to take on such a serious issue if the threshold is too low or there is confusion around how to comply.

The view of the relevant assistant Minister introducing the amended bill at the Commonwealth level was that a lack of awareness or lack of understanding by organisations in this initial phase of modern slavery would be the most likely cause for non-compliance with the Commonwealth regime, hence you needed a transitional period where organisations have the opportunity to upskill themselves and their staff and learn from overseas practice in the UK and others about how to grapple with these issues. If you have three years of poor practice where organisations are not doing a good enough job then obviously penalties are something that you need to consider seriously. That would be our position.

**The Hon. NATALIE WARD:** That was my next question: Would you foresee that non-compliance would be a result of reluctance or confusion with the complexity?

**Mr GERGIS:** I would hope to think it would usually be a lack of understanding of the obligations, rather than a deliberate obfuscation of modern slavery in their supply chains.

**The Hon. NATALIE WARD:** Industrial relations can be complex, but you choose to comply with it. Tax can be complex, but you choose to comply with it. In fact, incentivisation towards compliance can result in very good outcomes—for example, with heart health in the food industry. There are many industries and businesses that have some symbol indicating that they have a particular methodology that they comply with. That is an incentivisation to consumers and to other purchasers along the track. Would you favour that incentivisation approach? That is how I read your evidence. It seems obvious. This is not a case of you do not like it because it has got teeth; it is a case of you want to comply but you need the opportunity to be able to have some clear outcomes to do so.

**The CHAIR:** I indicate the nodding yes of witnesses.

**Ms GREENWOOD:** Yes.

**The Hon. NATALIE WARD:** Yes, for Hansard you need to speak. Can I invite you to comment on that aspect in a proactive way about how you might comply?

**Ms GREENWOOD:** I believe incentivising businesses to comply is a favourable approach to penalties.

**The Hon. NATALIE WARD:** Can I ask, then, in doing so have any of you had any opportunities to have an interaction with interim commissioner? We have appointed one in New South Wales. You need to speak, for Hansard and for Committee members.

**Ms STREET:** Yes, we have. As Australian Industry Group, we have had a number of member consultations with the Interim Anti-Slavery Commissioner who quite helpfully explained what modern slavery looks like in a business environment. Our assessment is that there is still a lack of understanding within business

**CORRECTED**

as to how modern slavery risk presents itself in supply chain environments. We hear a lot about worst-case scenarios like that incident occurring over in Essex—the horrifying case in the lorry. Being able to get businesses to understand what are the red flags they should be looking for in their own operations and supply chains—we anticipate that more guidance and information will be forthcoming. That is something that we would certainly promote within our membership to ensure that there is that understanding in order to comply with reporting.

**Mr DAVID SHOEBRIDGE:** It is good to have a commissioner. There is a big gap in the Commonwealth, isn't it?

**Ms STREET:** Yes.

**Mr GERGIS:** I think there is value for it. I do not think it was proposed necessarily at the Commonwealth level to my knowledge—and apologies if that is not the case. I think at the State level, I think there is merit having a commissioner in terms of raising awareness, working with organisations such as our own around how do you identify issues and how do you come up with practical guidance to help combat modern slavery more effectively. All of our organisations would be happy to work with the commissioner, should a New South Wales regime remain.

**The Hon. NATALIE WARD:** I agree with you. You said you are supportive of the draft regulations adopting mandatory criteria against which modern slavery standards must report. Are you supportive of the mandatory scheme?

**Ms STREET:** Yes. That is consistent with the Commonwealth so that we are not dealing with two different schemes.

**Reverend the Hon. FRED NILE:** We all know that paperwork requires staff and staff require wages. Has anyone got an estimate of the two respective streams would cost employers in round terms to implement the legislation—the reporting requirements and so on?

**Ms GREENWOOD:** We have not done the exercise but we noted that the New South Wales Government put an estimate of about $21,000. We think that is probably a bit underdone given that there will no doubt be a need to consult with lawyers and to ensure that they are compliant.

**Mr DAVID SHOEBRIDGE:** Isn't the real cost of getting rid of slavery—

**Reverend the Hon. FRED NILE:** So would you not know those legal costs at this stage?

**Ms GREENWOOD:** We have not done the exercise, no.

**The CHAIR:** There is a case that economies of scale will come down after the first compliance as you put in place the infrastructure, the software or supplier dialogue. That will come down. That is probably an initial cost that is expected to come down.

**Ms GREENWOOD:** You would expect it to come down once we are more familiar with what is required.

**The CHAIR:** Complying with GST cost a fortune in the first year but it has come down.

**Mr DAVID SHOEBRIDGE:** If you get rid of slavery then your supply chains actually have to pay proper wages and you are going to pay slightly more for your supply chain. That is one of the real costs to business. Slavery is kind of a cheap way of producing products—grossly unethical and morally wrong—but getting rid of that is going to cost you money in the supply chain.

**The Hon. NATALIE WARD:** No-one's business model is predicated on saving money from modern slavery. That is an offensive question. Do not answer him.

**The Hon. WES FANG:** Point of order: The imputation contained within that question is highly offensive, I believe.

**Ms GREENWOOD:** Yes.

**The Hon. WES FANG:** I think that the Hon. Natalie Ward is correct in highlighting that nobody builds their business case on slavery. I would suggest that that question is well outside the terms of reference.

**The Hon. GREG DONNELLY:** That is not what he said.

**The Hon. NATALIE WARD:** You need to rephrase that.

**CORRECTED**

**The CHAIR:** Order! The question can be answered any way the witnesses wish to. If they are offended by that, they can raise that with me. But I think your submission's opening statement says you find it abhorrent and that it needs to be removed from society. The question in my view is inconsistent with your submission and the oath you have taken to give evidence today.

**Ms GREENWOOD:** Correct.

**The CHAIR:** If anyone wants to respond to that—

**Mr DAVID SHOEBRIDGE:** Sorry, my question is not about your ethical standards or your ethical framework. My question is about the cost.

**Reverend the Hon. FRED NILE:** It was more a statement. You are making a statement.

**The Hon. NATALIE WARD:** And that was an offensive statement.

**Mr DAVID SHOEBRIDGE:** The question Reverend the Hon. Fred Nile asked was about the cost of compliance to business. I am asking you about the cost to business of removing slavery from your supply chain because it will make the products in your supply chain more expensive. Have you done any analysis or do you disagree with that position?

**The Hon. NATALIE WARD:** With the imputation that that is what they choose.

**The Hon. GREG DONNELLY:** That is not right.

**Mr DAVID SHOEBRIDGE:** I am not asking about choice.

**Ms GREENWOOD:** I am interpreting that question as implying that business will condone slavery if it means a lower cost of producing a good or service.

**The CHAIR:** Are you saying you did interpret it that way?

**Ms GREENWOOD:** I did interpret it that way.

**Mr DAVID SHOEBRIDGE:** Could you actually answer my question, which is not about the imputation that you put on it? Have you done any analysis about whether or not systematically getting rid of slavery out of your supply chains is going to add additional costs to your supply chains? Have you done any of that analysis?

**Ms GREENWOOD:** We have not, but if—

**Mr DAVID SHOEBRIDGE:** It is not just to you, Ms Greenwood; it is to the panel.

**Ms GREENWOOD:** —modern slavery, if you are talking about being paid under award rates—

**Mr DAVID SHOEBRIDGE:** No, I am not; I am talking about slavery—

**The Hon. GREG DONNELLY:** Modern slavery.

**Mr DAVID SHOEBRIDGE:** —which is quite different an under-award payment.

**Ms GREENWOOD:** It is just difficult to see how trafficking of organs can be part of a supply chain.

**Mr GERGIS:** I am happy to make a comment, if you like, Mr Shoebridge. We have not done such analysis but I think your question, Mr Shoebridge—I think is a good question—is predicated on an assumption that there is modern slavery that organisations are aware of and that they are making a conscious decision to ignore it in order to lower costs. I am not aware of organisations doing that. There may be organisations doing that but it is not something that I am aware of, Mr Shoebridge.

**Mr DAVID SHOEBRIDGE:** The founder of Fortescue Metals is on the record of saying that he is aware of a prominent Australian businessman who said, "I don't look for slavery in my supply chain because I do not want to find it." He is on record as saying that.

**Mr GERGIS:** That is appalling then.

**Mr DAVID SHOEBRIDGE:** I am not making this up. This is what is actually happening. Has anyone looked at what the cost of getting rid of slavery would be?

**The CHAIR:** I think the answer you have got is "no".

**The Hon. DANIEL MOOKHEY:** I have a question specifically to AIG. Is Ansell Australia a member of yours?

**CORRECTED**

**Ms STREET:** I am not aware of that.

**The Hon. DANIEL MOOKHEY:** Ms Greenwood, are you aware of that?

**Ms GREENWOOD:** I am not aware. I can take that on notice.

**The Hon. DANIEL MOOKHEY:** Could you take that on notice but for both organisations? I am also happy for the AICD, if you have directors from Ansell that are members of your organisation, which would be useful. Did you see in the media two weeks ago that Ansell's top supplier of rubber gloves, which are, in turn, sold on to New South Wales government hospitals, was found to have engaged in systemic modern slavery issues? Did that reach your awareness?

**Ms STREET:** I am not aware of that particular story.

**The Hon. DANIEL MOOKHEY:** Are you aware that the United States has banned imports of gloves produced by that provider because they have been engaged in such modern slavery practices?

**Ms STREET:** No, I am not aware of that particular ban.

**The Hon. DANIEL MOOKHEY:** Are you aware that Ansell Australia has said publicly that it is not going to stop buying from that supplier and that it is going to continue to persist with its existing audit methods. To be fair to it, it has said that its auditors have raised concerns. Are you aware of Ansell Australia announcing that position?

**Ms STREET:** I am not aware of that position. I am happy to comment on that.

**The Hon. DANIEL MOOKHEY:** Could you?

**Ms STREET:** Yes, because I think it goes to the issue of remediation in modern slavery. This is quite a complicated issue within industry. There are various views as to how you remediate or deal with a company that you have discovered has been using slave labour. A number of NGOs say that you actually work with that supplier; you do not abandon them and you do not pull out of that community if that is the case. We are not suggesting that that approach—yes, you would need more information to comment on whether or not it is appropriate but it could be reflective of a number of different approaches in remediating slavery and risk.

**The Hon. DANIEL MOOKHEY:** I accept your point that part of the reason why you wish to use supply chain approaches is you want to their procurement powers to drive up standards and that it might not necessarily involve disconnecting the contract. But the problem is that Ansell has said that it is not pleased with the progress that has been made by its provider and as a result it is gradually reducing its purchasing. The issue that I raise that what is to stop someone else from New South Wales going and buying from the provider. Ansell can exit. Isn't the point of us having a commissioner and having a New South Wales-specific law that raises additional penalties to cause directives like this to look at this type of behaviour? To be fair to Ansell, it is trying to look for a supplier of rubber gloves that does not use slaves and it might be taking some time. Should everybody not know about that and should we not have a commissioner in place to make sure that everybody else does?

**The Hon. NATALIE WARD:** I think there are four questions there that I could—

**The Hon. DANIEL MOOKHEY:** Ms Ward, you asked about 10 before we interrupted you.

**The CHAIR:** Order! Please direct that question to witnesses.

**The Hon. DANIEL MOOKHEY:** My point is that is that not half the reason why we want a commissioner under New South Wales law that is not provided under Federal—to alert the rest of the markets and the rest of your members do not make the same mistakes that Ansell has?

**Ms STREET:** We are supportive of the role of the anti-slavery commissioner within the New South Wales scheme and the provisions, we understand, in legislation to allow for information to be provided about instances or risks of slavery. The powers that the commissioner would have would be relevant in the New South Wales law.

**The Hon. DANIEL MOOKHEY:** On a separate matter, have any of you raised with the Commonwealth jurisdiction that perhaps one way to resolve the inconsistencies that so worry you would be for them to adopt the New South Wales provisions? Is that not another logical way forward if it is the case that there is such inconsistency? Why should New South Wales give way to the Commonwealth if our law is better?

**Mr GERGIS:** We have not raised with the Commonwealth and we take the view that the Commonwealth legislation is preferable.

**CORRECTED**

**Mr DAVID SHOEBRIDGE:** Is that because of one of the principal reasons, the absence of penalties?

**Mr GERGIS:** It is because the threshold is really important. One of the points we have not raised—Mr Shoebridge, you raised the experience in the United Kingdom— the threshold there was actually very low. My understanding was it was around £36 million and so the lower the organisation in terms of threshold—let us say threshold is a proxy for sophistication—the more risk you have of a more tick-a-box compliance driven approach rather than a really serious exercise in trying to uncover supply chain modern slavery risks. So having that higher $100 million threshold is a better approach.

That means then that organisations that are very large, that operate in lots of jurisdictions, can actually start to set a benchmark and engage with civil society and hopefully start to introduce and publish as well, and share their learnings with other organisations so that in a way that can cascade throughout the market. That is an important approach. Also, because as we mention around modern slavery risk, it is a complex issue. It is hard. Organisations and the experience overseas, it has taken a long time to work out what is going on in their supply chain. Automatically, from the off, having penalties attached I think is problematic.

In the New South Wales legislation, my understanding is that penalties apply if a statement is not prepared or it is false or misleading, but that includes that a person ought reasonably to know it is false or misleading. Normally I would say that that is a reasonable position, but with modern slavery it may be very difficult to know that it actually exists. That is why a gradated, phased-in approach is preferable. As we have said a few times, that three-year review, penalties will be front and centre I am sure in that three-year review.

**The Hon. DANIEL MOOKHEY:** Can I ask, why should we not proclaimed this Act and also have a three-year review to see whether or not the concerns that you have raised are actually born out of reality?

**Mr GERGIS:** That is a matter for New South Wales Parliament but as I have said, I think there preferable approach is to work really collaboratively with industry, recognising that the vast majority of people in industry are not trying to hide—you would hope—modern slavery risks, try to understand, "How do you deal with this effectively?" And then, if you are finding people that are engaging in modern slavery, then obviously the book should be thrown at them.

**Mr DAVID SHOEBRIDGE:** To go back to the threshold point, you talk about the Commonwealth threshold being superior and you reference the UK experience, I do not recall anywhere in the review in the UK that they proposed lifting the threshold. The discussion there was not about those entities with an entity of £36 million being less sophisticated or not. The primary discussion there was about the absence of powers of a commissioner, the absence of compulsion. They are all major failings that have almost an exact parallel with the Commonwealth Act. I am happy for you to point me to something in that UK review that spoke about the threshold because I might have missed it. I will be honest, I may have missed it.

**Mr GERGIS:** I am not aware of the details of that review. I should say that my understanding is that the practice in terms of reporting in the UK was much better at the larger end of town, the bigger organisations with better resources. Also—and I am happy to be corrected on this—my understanding is there is no set criteria in the UK around what was supposed to be included in the modern slavery statements. So of course, then you are going to have much more varied practice because of the lack of clarity about what you are reporting on and the difficulties in comparing apples and apples when one organisation has made reporting on three criteria and another one is reporting on five and maybe there is only a little bit of overlap.

**Reverend the Hon. FRED NILE:** That is a good point. Should the Government have an education campaign explaining what is modern slavery because a lot of people have not got a clue?

**Mr GERGIS:** One hundred per cent. I am sure all of our organisations would be happy to work with the Government to do that. At the New South Wales level it is particularly acute given the threshold is $50 million. That might sound like a high threshold but a lot of us would say it is not a particularly high threshold. You really want to make sure, particularly for those organisations between that $50 and $100 million, you are really concerted campaign to alert them to these new obligations should the Parliament proceed with the legislation and also to hopefully give them some resources about how to grapple with these issues throughout their supply chain.

**The CHAIR:** That is a key advantage of the commissioner role as opposed to—no disrespect to public servants—but as opposed to being in a department. The commissioner is a figurehead, empowered to educate and raise awareness. We have only got a few minutes left. I wanted to ask a specific question about your submission from the Institute of Company Directors. A concern around the consultation paper on the regulation notes the intention of the exemption for NFPs and charities, however you are concerned that certain charities and NFPs may not be captured by the proposed wording. Do you want to expand upon that?

**CORRECTED**

**Mr GERGIS:** Sure, our view is that modern slavery is a critical issue and particularly organisations, NFPs and charities, will offend their values and ethos. We think it is a proportionally higher burden for NFPs and charities than larger, more commercial for-profit entities. I should point out that we had no opposition at the Commonwealth level to having modern slavery regulation capture charities and NFPs, but as I said, that was a $100 million threshold and there were no penalties attached. There were some specific technical comments. I am happy to talk to them if you like but that is around some of the wording in the proposed legislation. I will grab it from my previous submission.

The way it has been worded, for example, around the exemption and requiring an organisation to have a constitution, that would exclude a number of organisations that do not have constitutions because they could be charities created by statute. For example, religious organisations are in that boat. Also, my understanding is many clubs are not charities, NFPs are not charities and they do not pay tax because of the mutuality principal. There is a few very technical comments which we have alluded to in our submission which we think, if the intention of the New South Wales Government is to exclude NFPs and charities in their entirety, there is a few ways to tighten that up to make sure the field is covered appropriately.

**Mr DAVID SHOEBRIDGE:** Do you really think it is appropriate to exclude very large not-for-profits and very large charities? An example of a not-for-profit would be a large private hospital but yet they may have very large supply contracts with an organisation like Ansell. What is the rationale for excluding very large not-for-profits?

**Mr GERGIS:** Mr Shoebridge, I would say again we would come back to the monetary threshold and saying that $100 million was the appropriate threshold rather than $50 million.

**Mr DAVID SHOEBRIDGE:** But you are not suggesting that not-for-profits as a class should be excluded, because you could see how, I give the example of the large private hospital, there would be no reason not to require a large private hospital to have sophisticated arrangements for removing slavery from its supply chain.

**Mr GERGIS:** I have not looked specifically at the question of private hospitals but we do support a general exemption for NFPs and charities, as I have said, subject to their meeting the criteria set out in the New South Wales proposed amendments.

**The CHAIR:** I was interested in the NSW Business Chamber discussion. I do think it is valid to think about regarding abuse of the scheme, for example, by a disgruntled employee and the issue of absolute privilege for publishing statements. Do you want to just expand upon that? We are all aware that sometimes disgruntled employees can use mechanisms to target a business. It is not unheard of. Do you want to just expand upon that and what safeguards you are suggesting in your submission?

**Ms GREENWOOD:** We are just saying that section 16, as it currently stands, there is no need to amend it. The amendment that has been put forward, we see a few problems with it. The new subsection (2) and subsection (3) do not specifically refer to the information, document or thing being provided in good faith so that would need to be strengthened. In addition, the blanket protection from defamation. For example, you have got the criminal and the civil and the duty of confidentiality. Criminal—there is no real issue with that, but when it comes to civil, a contractual term that prohibits someone from reporting modern slavery, we would argue is void for breach of public policy. In terms of defamation, given that the good faith component needs strengthening, we just think that is too wide a crack, if you like. Because if, say, a disgruntled employee makes an allegation, then why should the business not bring defamation proceedings against that individual? If it was based on truth, then the statutory defences would apply.

**The CHAIR:** Your remedy suggested in your submission is as a minimum measure before any information is published by the commissioner, the commissioner should be required to notify the entity to whom the information relates and allow the entity to submit a confidential and unredacted version for the commissioner, not for publication. All you are calling for is that before the commissioner publishes that they have a requirement to communicate?

**Ms GREENWOOD:** Following the principles of natural justice, although we do not agree with the inclusion of that subsection (d) because it seems to be a blanket.

**The Hon. DANIEL MOOKHEY:** You mean businesses that trade as sole traders should be able to sue for defamation. Is that the argument?

**Ms GREENWOOD:** Anyone should be able to sue, any business should be able to sue for defamation.

**CORRECTED**

**The Hon. DANIEL MOOKHEY:** Under the defamation laws corporates cannot sue for defamation. Are you aware of that?

**Mr DAVID SHOEBRIDGE:** Unless they have less than a certain number of employees. But these are standard immunities that apply to pretty much every statutory office. There is nothing special about them. They allow the commissioner and the staff to go about their work without the threat of slap suits and litigation being brought against them. These are perfectly standard immunities. What is it that is special about slavery that sees your organisation wanting to limit these statutory immunities?

**Ms GREENWOOD:** It has got nothing to do with slavery. We are just saying that the current section is more than adequate protection in our view.

**Mr DAVID SHOEBRIDGE:** I put it to you they are standard.

**The CHAIR:** Mr Shoebridge, I will draw a line under the questioning today. Your time with us has ended. Thank you for coming in and spending your time with us today. Your submissions have been appreciated. Your contribution to the inquiry has been very much appreciated. You may have taken questions on notice. The secretariat will notify you in due course of the questions you took on notice. You have 21 days to respond to those questions on notice. I encourage you to do so sooner.

**(The witnesses withdrew.)**

**(Luncheon adjournment)**

**CAROLYN LIAW**, Researcher, Anti-Slavery Australia, affirmed and examined

**PAUL REDMOND**, Member of the Management Committee, Anti-Slavery Australia, Sir Gerard Brennan Professor, Faculty of Law, University of technology Sydney, sworn and examined

**CAROLYN KITTO**, Co-Director, Be Slavery Free, sworn and examined

**POPPY BROWN**, Director, New South Wales and Australian Capital Territory, Australian Red Cross, affirmed and examined

**The CHAIR:** Good afternoon and welcome back. I welcome our witnesses to the inquiry into the Modern Slavery Act 2018 and associated matters by the Standing Committee on Social Issues. We have received a submission from each organisation, which our witnesses can assume Committee members have read. We thank you for them. I invite you to make a brief opening statement relating to your submission and the Committee's terms of reference. Professor Redmond, I understand you are representing—

**Professor REDMOND:** Anti-Slavery Australia.

**The CHAIR:** That is right, with Ms Liaw. Is that right?

**Ms KITTO:** Yes. We were going to make our opening statements in a slightly different order, if that is okay, Chair: me, then Ms Brown and then Ms Liaw.

**The CHAIR:** All right. That sounds organised, which the Committee encourages.

**Ms KITTO:** Thank you. I represent a coalition of a number of NGOs and civil society groups working to end modern slavery. Thank you for the opportunity to address this inquiry's Committee today. As I said, Be Slavery Free is a coalition of civil society. It is a name and fame NGO that focuses on ending slavery. This is the session after lunch so, to assist with that and as a sign of what we are addressing today, we are giving you a Haigh's chocolate bar.

**Mr DAVID SHOEBRIDGE:** You don't know the amount of paperwork you have just required.

**Ms KITTO:** No, no. I have checked: It is under the threshold, Mr Shoebridge, so you are fine. What we are talking about today is one of the most heinous crimes in the world. It is backed by organised crime and that should concern us all. Debates should not be about whether we treat whether we treat it like a parking violation; should be about the part we should all play in ending it. I know many company directors and business leaders in industries that cannot wait to be part of the solution to this problem.

Where does the chocolate come in? It has been 20 years since the confectionery industry said it would end slavery and child labour and 20 years later it is about to fail on its 2020 self-set targets. A farmer would probably receive 4 per cent of the value of a chocolate bar that is not certified and there are 2.2 million children—that is the population of Brisbane—in child labour, a portion in slavery and many in worst forms of child labour. It is at breaking point. This is not an issue that we can simply wait and see. An Act like this Modern Slavery Act points all businesses to the ways forward. It creates a level playing field. It is holistic. It is people oriented.

I want to be clear that this legislation and the Commonwealth legislation are in fact a both light-touch legislation. I would be happy to be asked about heavy touch approaches, if the Committee is interested. Compliance need not be onerous, complex or expensive. Every day it is estimated that 25,200—I will say that again: 25,200—new people enter into slavery. That is the population of Armidale or of Goulburn every day. Surely New South Wales does not want to wait and see if we can do something about it. The slave traders are winning and this Act will help us to solve the problem. The New South Wales Government has an opportunity to send a message to every business that they are invited to join in ending modern slavery.

It will send a message to every slave trader that doing business in New South Wales supply chains has just become a bit riskier and less lucrative. It will send a message to every citizen of New South Wales that we are a State which cares about people and their human rights and we are a good place for anyone to do business. The position of our submission is that New South Wales should proceed with all haste and this Act must be proclaimed as soon as possible.

**Reverend the Hon. FRED NILE:** Hear, hear!

**Ms KITTO:** The question is: Do we want to do it or not? Thank you, Chair.

**CORRECTED**

**The CHAIR:** Thank you. Ms Brown?

**Ms BROWN:** The Australian Red Cross would like to thank the Standing Committee on Social Issues for the invitation to give evidence as part of this important inquiry. Australian Red Cross is part of the largest humanitarian network in the world—the International Red Cross and Red Crescent Movement. We are present and active in over 190 countries in the world. In line with the statutes of the movement we have a special relationship with the public authorities, being identified as auxiliary to the humanitarian services of government, while at the same time maintaining our independence to carry out our work in line with our fundamental principles.

In line with the fundamental principles of humanity, neutrality and impartiality, a key priority of the Red Cross is to assist people made vulnerable through the process of migration and people who are impacted by modern slavery, including those who have been trafficked or who are or may be forced into marriage. Modern slavery is a serious and complex global humanitarian issue and many Australians would be surprised to find modern slavery occurring right here in Australia. Red Cross has been delivering the government-funded Support for Trafficked People program in Australia for over 10 years. We provide individual casework support for people referred by the Australia Federal Police using a strengths-based approach which is responsive and flexible to client needs and is guided by clients' voices. We are on call 24/7 365 days of the year.

We have supported 415 people nationally who have experienced modern slavery—40 per cent of whom are from New South Wales. Of the people we support in New South Wales, 36 per cent were referred to us for labour exploitation in either a commercial or personal setting. Over the past 10 years we have seen an increase in the number of people referred to us for support. In the last financial year we had 68 new referrals, which is nearly three times the number we had in 2009-10. The number of people referred for labour exploitation in a commercial setting was 4½ times larger than in the similar period in 2009-10. Evidence from the Australian Institute of Criminology estimates that there are approximately four undetected human trafficking and slavery victims for every victim detected in Australia. Therefore, we are only supporting a fraction of the people experiencing modern slavery at the moment in New South Wales.

In order to ensure the needs of people at risk of and subject to modern slavery are met, we support a holistic and integrated response. We see that it is important for Federal, State and Territory responses to be well connected. Red Cross commends the New South Wales Government for their significant efforts to address modern slavery to date. We consider the New South Wales Act to be an important complement to the Commonwealth Modern Slavery Act as a number of the provisions, including the ones dealing with support for victims of modern slavery and the role of an anti-slavery commissioner, make it unique and bring added value to Australia's response to modern slavery. We again welcome the opportunity to appear today and assist the Committee to bring the darkness of this issue into the light. Thank you.

**Ms LIAW:** Anti-Slavery Australia welcomes the opportunity to appear before the Committee. We are a legal and research centre at the University of Technology Sydney and have supported victims of modern slavery since 2003 by providing free legal and migration advice. We are currently assisting over 130 people who have experienced modern slavery here in Australia. The majority of our clients experienced modern slavery while residing in New South Wales. There has been an increase in demand for our services in recent years. This is through contacts on our hotline as well as through our forced marriage website, mybluesky. We have also seen an increase in contacts since the launch of the forced marriage campaign Project Skywarp, which was developed in collaboration with the Australian Federal Police at Sydney Airport last month.

I wish to make three points before passing you on to Professor Redmond, who will provide comment on the transparency in supply chain provisions and public procurement. Firstly, we welcome and support the position of an anti-slavery commissioner in New South Wales. Generally there is very limited awareness of the existence of modern slavery, including how to identify such harms and how to appropriately respond. This role is vital in increasing levels of awareness of modern slavery here in New South Wales. Secondly, whilst we welcome and support the proposed amendments to the Victims Rights and Support Act, we wish to emphasise that people who have experienced modern slavery have often be subjected to weeks, months or years of physical, psychological and/or emotional abuse, which prevents them from seeking help or leaving their traumatic situation.

We request that the Committee recognises the serious and prolonged nature of this harm and allows survivors to rebuild their lives by recommending that the Victims Rights and Support Act be expanded to allow survivors access to a specific recognition payment. Finally, we would like to draw the Committee's attention to the fact that children and adults at risk of forced marriage often experience weeks or years of subtle psychological and emotional abuse and controlling behaviours from family members. These forms of intimidation and abuse are not easily captured by the current provisions in our apprehended violence order [AVO] system. Thank you.

**CORRECTED**

**Professor REDMOND:** As Ms Liaw mentioned, I am focusing on section 24 and the transparency provision in relation to supply chains. Firstly, I would like to comment, either in an opening statement or in questions—as suits the Committee—on the questions around paragraph (g) of the terms of reference and argue for the retention of the Act. Secondly, I would like to argue for the retention of section 24 in particular. Thirdly, I would welcome an opportunity to respond to some of the contrary positions taken to our own by other submitters. Fourthly, there is a cluster of issues that we would welcome an opportunity to contribute to—for example, the exemptions, the section 26 "dirty list", opportunities for a joint register between the Commonwealth and the State and other matters like that. Will the Committee like to allow me a couple of minutes now to move quickly through those issues?

**The CHAIR:** We have 45 minutes and I think it would be very helpful.

**Professor REDMOND:** That is good. In relation to arguments for the retention of the Modern Slavery Act, much has already been picked up in the morning session, but we would emphasise the importance of the anti-slavery commissioner's functions around raising awareness, education, business support and advocacy. Secondly, we would emphasise the importance in the Act of the victims support, protection and compensation mechanisms. Thirdly, we want to emphasises the public procurement provisions proposed and that were included in section 176 (1) (a). That is a very important provision. Fourthly, a strength of the Act is the penalty provisions. There was discussion in the preceding session about the independent review of the UK Act and the response recommended to Government in relation to the notorious and serious failure of compliance which was, in fact, attributed directly to weak enforcement and the absence of penalties.

I would add that that review committee proposed that modern slavery statements should have the same status as financial reporting. In relation to penalties, we would also say that the reality is going to be that there will be a gradual approach to the implementation of penalties. It would not be something that would start immediately. In fact, it has been flagged in some of the documentation that there would be a period of learning on both sides. Finally, of course, a very significant aspect of the New South Wales bill is that it provides a model of an alternative to the Commonwealth bill. It is a step towards something stronger. The New South Wales Act is the strongest of all the anti-slavery reporting provisions in the world. It should be a source of great pride to this State. The notion of abolishing it is—in the view of Anti-Slavery Australia—an affront.

With regard to arguments for the retention of section 24, where the Act is to remain but the transparency provision is seen to be contentious, we want to emphasise that reporting requirements have got peculiar strengths. They have a capacity to embed into a corporate culture concern for the risk that has been identified. Secondly, the reporting provisions will essentially rely upon the sanction of interest by consumers, society and investors. They give information to those external monitors. Having armed the external monitors, it also reinforces the impulse towards reputation protection. Of course, being a year-on-year review, it enables assessment of continual improvement.

A second advantage of the transparency provision is that it reflects the weaknesses in corporate sanction. The corporate law largely stops at national borders; supply chains do not. In fact, supply chains moving into low-cost sites of production—low-cost because there are low social protections—are rich in modern slavery. Companies have leverage over that modern slavery that government does not have. It is important to capture that leverage. Third, if we withdraw section 24 from the Act we are confining its efficacy and our regulation just to domestic supply chains. It is in global supply chains where the greatest risk of modern slavery exists. That is, in fact, captured and protected only through transparency provisions like section 24.

Of course, there has been some reference to overlap. There is, in fact, no overlap between the Commonwealth and the State Acts. It is neatly articulated that the alleged areas of inconsistency are in relation to penalties and threshold. I will come to threshold. The New South Wales threshold is the threshold recommended by the Hidden in Plain Sight report of the joint standing committee. It is also close to the dollar value of the UK's standard. More importantly—and this is picked up very nicely in the evidence by the Housing Industry Association and in its submission—there is a cascading effect of the Commonwealth statute.

Everybody who will be tendering to a company that is required to report under the Commonwealth Act would be accountable in relation to their own inquiries into modern slavery. When the procurement provision of the Public Works Act kicks in that will similarly apply. That cascading effect means, even for those who are not bound to report, there is a de facto requirement. It is so much better for those who are bound by business imperatives to report and have the support, the enablement and the process offered by the New South Wales Act.

If I can come to some criticisms or contrary positions taken. Of course, penalty and threshold are there and I addressed them, I hope. What is missing from this discussion—and it is reflected, I think, in some

**CORRECTED**

misunderstanding of what is involved in the process required under section 24 and its modern slavery statement in regulation 7—is the language used in those provisions is the language of the United Nations Guiding Principles on Business and Human Rights. That language says that business enterprises—all of them—have a responsibility to respect human rights, not just in their own action through the harms they cause and contribute to but in their business relationships. To know and to show that you are doing that, you need to go through a due diligence process.

The language in regulation 7 and the Commonwealth section 16 is the language of the human rights due diligence process. It says that you need to map modern slavery in your operations and in your supply chains and those of your controlled entities. Secondly, you need to make an assessment of that risk—which risks are the most salient, measured by criteria of how severe are they, what is their scale, are they irremediable? If you do not act now, will that harm is beyond remediation? You make that judgement and you address that risk by taking steps to integrate a plan of action into your operations and you check its effectiveness. That is all that is required; you do not need to get assurances from everyone and guarantees from everyone down your supply chain. You make an assessment of risk; that is what the statement is asking you to do.

Picking up on the alleged inconsistency between the Acts, there is none such. On the question of costs, Reverend Nile this morning raised the question of the cost for reporters. It is a striking aspect of the UK provision, which is similar in its threshold, that cost is not seen as an item of concern. In fact, I notice the submission by Corrs Chambers Westgarth is precisely to that point. If I can pick up the point raised in the previous discussion with the Australian Institute of Company Directors, the low threshold is likely to attract a tick-the-box approach. The threshold is akin to the UK threshold. In the UK it is very striking that, if you take the largest 100 stock exchange-listed companies, which is picked up in the FTSE 100 Index, 42 of those three years out from the commencement of the Act had not even done the basic requirements to complete execution by a director and resolution by a board.

But if it is true that the smaller the organisation, the less attention is likely to be paid to modern slavery investigation then the more important it is to have a penalty provision. I think those are the major points and I have already listed the exemptions. We would welcome an opportunity to discuss whether the exemptions should be extended as they are, and the question of councils and the impact of section 26, which we see as having an inhibiting effect upon searching for modern slavery. We think it is rather like the widows mite; if you find modern slavery in your supply chain, it should be an occasion of celebration, not of shame. Section 26 has an inhibiting effect upon it.

**The CHAIR:** I might get you to expand on section 26 and why it does that.

**Professor REDMOND:** It is interesting. Section 26 says if modern slavery is found to exist in a supply chain, you must report that. It will go on a register and it makes the reporting entity think the incentives are perverse because they drive you against reporting. The solution proposed for that is that you will give the commissioner an opportunity, in proposed section 26 (1) (d), to make a statement around best practice. That does cure the harm to reputation that is done to an organisation that has gone to the trouble of mapping and finding and addressing modern slavery in its supply chain. Modern slavery will be in many, many supply chains—that is inevitable. I think the solution proposed should be taken out. Anti-Slavery's position is that section 26 should be repealed. It does more harm than good, and considerably more harm.

**The Hon. DANIEL MOOKHEY:** Thank you for your evidence. Ms Kitto, you invited us to ask your view on why this law is light touch and, by implication, is a light-touch piece of legislation. Do you want to expand upon that view?

**Ms KITTO:** I think there is a lot of debate about whether it is a light touch as we have penalties and a threshold, so does that make it a strong touch. I would still say that this Act is in the category of a light touch. One of the sorts of things that could be added to make this a strong touch that may need to be added down the track is, for example, the US government has just banned the importation of 527 items into the US because they are connected with modern slavery. In West Africa, where we work, they are working on a name-and-shame approach. We work on cocoa in West Africa and there is currently a team from the US government determining whether imports from West Africa should be banned into the US because of their connection over the last 20 years to modern slavery.

What will that do? It will probably mean our chocolate will cost more—sorry, folks—but it should probably cost more anyhow. It will mean that confectionery companies will have to go elsewhere to look for their chocolate, because it supplies 75 per cent of the world's cocoa. Who will it affect? It will actually affect the 2.2 million children who are in modern slavery more than anything else. It will affect Abou, whom we met, who

**CORRECTED**

was trafficked from Burkina Faso at the age of 11 and spent six years working on a farm with machetes and dangerous chemicals. When he was found by an NGO at the age of 17, it took them three years to get him home because, as an 11-year-old, he did not know the name of his village, it was just home.

This is a light-touch approach that says we all share a responsibility for this—civil society, government, business, consumers. We can take a stronger touch if it does not work. The EU has a system of giving yellow cards. The United States has a system, in its Trafficking in Persons [TIP] report, of tiers and once you get to the tier 3 or tier 2 watchlist, there is a threat that imports from your country will be banned. We are not talking about any of that hard stuff when we are talking about this Act or the Commonwealth Act.

**The Hon. DANIEL MOOKHEY:** Ms Liaw, you made reference to the number of cases that you are dealing with. I think you said it was somewhere around 120.

**Ms LIAW:** Over 130.

**The Hon. DANIEL MOOKHEY:** Are they enslaved as Australians or residents of Australia?

**Ms LIAW:** Both. We work with quite a number of individuals who would be migrants or migrant workers. We also have clients who are Australian citizens or permanent residents.

**The Hon. DANIEL MOOKHEY:** Have the people who have been enslaving others in an Australian jurisdiction been criminally prosecuted?

**Ms LIAW:** Prosecution rates or conviction rates are quite low. To date, there have been about 21 or 22[3] successful convictions across the country of all types of modern slavery offences, which is quite small in terms of the numbers of referrals that the Australian Federal Police receive and also quite small in comparison to the number of people we work with on a year-to-year basis.

**The Hon. DANIEL MOOKHEY:** If we would have this Act proclaimed forthwith, would it be the case in your view that it will make prosecutions easier and more likely?

**Ms LIAW:** It will make identification of individuals impacted by modern slavery perhaps easier. Of course, there are no guarantees. However, in terms of increasing awareness, which we have already seen with the introduction of both the Commonwealth and New South Wales Acts, we have received increased referrals and increased interest from both civil society as well as the public and business in terms of increasing their level of awareness. We have seen knowledge that modern slavery exists within Australia increase already. We are hopeful that this will increase knowledge that it exists as well as how to identify potential victims of modern slavery and what referral or support mechanisms are available.

**The Hon. GREG DONNELLY:** I gather that you are all familiar with the Government's submission to this inquiry, submission No. 1, and that you have all read it? Attached to that submission is a rather lengthy attachment A. I am not sure whether you have it at hand to refer to it. Attachment A is seven pages long—quite lengthy. The position as we understand it—this is taking shape as the inquiry unfolds—is that what is agreed is that there is an Act that has passed the New South Wales Parliament. That Act received royal assent but was not proclaimed. You understand that that is the position with regards to the New South Wales Act. The Commonwealth legislation is in a different situation. It passed the Commonwealth Parliament late last year, received proclamation and I think operated from 1 January this year.

The position we understand is that the Government of New South Wales effectively would agree with the New South Wales legislation being proclaimed if the Act that is passed picks up all of those amendments contained on these seven pages and that the draft regulation, which I am sure you are familiar with, is endorsed by this Committee. In other words, if this Committee handed down a report that said, "We accept the seven pages' worth of amendments and we accept the draft recommendation", what would probably happen pretty quickly thereafter is that those changes to the Act would be made, the regulation would be drafted up in a proper form—not a draft form—and we could actually have a Modern Slavery Act in New South Wales pretty forthwith.

However, that is not the situation we find ourselves in because we have competing views here. There are a number of organisations and individuals such as your own that are articulating that fundamentally the bill that has passed in New South Wales is sound and the Government should proceed and proclaim it and it should become enforceable law in New South Wales. The question that I have for you all—you can all answer it separately—

[3] In correspondence to the committee received 4 December 2019, Ms Carolyn Liaw, Researcher, Anti-Slavery Australia, provided clarification to her evidence.

**CORRECTED**

is how do we break this situation? We have the Government on one side saying, "You can have legislation in New South Wales but these are the amendments we want and this is the regulation we want. If you do not want these amendments and do not want this regulation, we agree to disagree and the stalemate will continue". That is really where we are and what this inquiry is all about. You would be aware that there has already been an inquiry in regards to modern slavery when the bill was being prepared. How do we break this logjam?

**The CHAIR:** Thank you, Mr Donnelly. Would witnesses like to comment on that?

**Ms KITTO:** I am a bit of a problem solver, so I like the question. Inevitably there are going to be groups that fall into predictable lines around this. I guess that is what you have seen here today. A way forward is that there are many parts of these amendments and many parts of the Act that everybody agrees on. I have not heard anyone say that modern slavery is a good thing or that we should be putting in place legislation to help it thrive. We are really just grappling with what it is that we should do. Many of these amendments are actually tinkering to improve or to make clear what is happening. A way forward is to proclaim the Act, changing the things that everyone agrees on and reviewing the things that they do not agree on in two years' time.

**Mr DAVID SHOEBRIDGE:** There are some pretty fundamental disagreements. I suppose what the Hon. Greg Donnelly is asking is—I am not saying we are at this point, but if the Government is saying to us, "Well, you either get the Act with all the amendments we have identified, in which case you can have it in a fortnight, or"—

**The Hon. GREG DONNELLY:** And the regulation.

**Mr DAVID SHOEBRIDGE:** With the regulation—"or we are going to go off for a two-year political scuffle". If we have got that sort of awful choice in front of us, is there a position that the organisations in front of us have? You might reject that choice.

**Ms KITTO:** The two-year political scuffle is not acceptable. I think that there is enough civil society backing for us to—we will not go quietly for two years waiting for this to happen. There are too many lives at risk and too many people being abused.

**The CHAIR:** We really need to home in on that group we have identified, and Mr Shoebridge alluded to, that there is disagreement on in terms of the stakeholders. We are doing a legitimate consultation process and the Government will have to respond to our report. Do you want to highlight the ones you think are in the too-hard basket for us? We could talk about it all day.

**The Hon. DANIEL MOOKHEY:** Could I put one specifically?

**The CHAIR:** Yes, sure.

**The Hon. DANIEL MOOKHEY:** Would you favour the removal of modern slavery risk orders under section 29 of the Act?

**The CHAIR:** That is one of them.

**Ms KITTO:** I think Anti-Slavery Australia is the legal expert on that one.

**Ms LIAW:** We do not have a firm position on the modern slavery risk orders. We have not given extensive thought or consideration to modern slavery risk orders. It is unclear what the utility of the orders would be in terms of post-conviction, given that conviction rates are quite low. However, there is some evidence and there has been some review of the operation of the UK slavery and trafficking prevention risk orders. There may be some examples we could extract from the review of the UK system, as well as the independent review of the UK Modern Slavery Act. In terms of the clients that we work with, we would advocate for amendments to the current apprehended violence order system.

**The Hon. DANIEL MOOKHEY:** Professor Redmond, do you have a view?

**Professor REDMOND:** For myself, if that was the offer I would say that the perfect is often the enemy of the good and it should be accepted. The things that are troubling such as section 26 one can live with. The exemptions for various bodies, not for profits and the like, I think they are the matter of a three-year review. I think that offer should be accepted. I think this Act will remain a world-leading statute with these changes. I am not an expert on the section 29 problem of the risk orders. The first three years will be a settling-in period anyway, in which there will be advice from the commissioner to businesses and not a prospect of immediate application. I think we should take the good.

**The Hon. DANIEL MOOKHEY:** But you would not favour the abandonment of section 26?

**CORRECTED**

**Professor REDMOND:** Even with section 26, I would not like it to be an obstacle to the introduction of this legislation with all its strengths as they are, the strengths we spoke about: The role of the commissioner, et cetera, the penalties and the like. It is a good model. I think one can live with the areas that ideally you would like to change.

**The CHAIR:** You should come and work for the Government—the upper House.

**The Hon. GREG DONNELLY:** You appreciate that the Parliament will pass this.

**Professor REDMOND:** Indeed, yes.

**Ms KITTO:** I think one of the things to introduce to the conversation is that the reality is nobody actually really knows how to end modern slavery. There are a lot of smart people—some of them sitting here with me—who have worked on this issue for a long time. We are starting to get some successes but by and large we are still losing because government regulation actually has the potential for the largest impact. What we are doing in an Act like this is we are trying to see how we can make it better. I would agree with Professor Redmond that sometimes perfect is the enemy of the good. Just because we do not know what the perfect end is does not mean we cannot take the first step towards the good.

I would also comment on prosecutions. I was presenting with the Australian Federal Police the other week and somebody asked a question about prosecution rates and why they are so low. One of the responses was: Prosecution is not necessarily a sign of success in modern slavery. It could be that reuniting a family is the criterion of success. It could be that preventing the crime from happening is the criterion of success—not allowing the crime to happen and then getting a prosecution. We are in territory that we all need to work on this together.

**Mr DAVID SHOEBRIDGE:** Could I ask you collectively—I might start with you, Ms Brown—in terms of there being suggestions to exclude not-for-profits and charities entirely from the operation of the Act? The reason I look to you is because the Australian Red Cross had a turnover or a consolidated revenue of about $900 million or so last year. Do you support the Australian Red Cross potentially being subject to these reporting requirements?

**Ms BROWN:** We would certainly support all organisations that meet the criteria being covered by the requirement and reporting, including the Red Cross. But we would note to the Committee that the financial burden of reporting on not-for-profits in general should be considered as part of—whether to include not-for-profits as part of the requirements. Potentially the Government could look to providing some level of support to not-for-profits to be able to comply with requirements because not-for-profits will generally not have the financial ability—they may have the knowledge capacity—to be able to meet requirements as well as corporate Australia might.

**Mr DAVID SHOEBRIDGE:** But again, if we have a turnover kind of model, which is the criterion for roping in, there is probably going to be a capacity once you get to that kind of turnover, is it not?

**Ms BROWN:** There would be. But I guess from the definition of a not-for-profit, the vast majority of a not-for-profit's income, apart from a small amount of risk buffer, is expended on the activities that we do. We do not have a profit buffer to be able to help us to support those reporting requirements. But I absolutely agree that not-for-profits, including Red Cross, should be covered.

**The Hon. WES FANG:** Why would that be different for a non not-for-profit entity?

**Ms BROWN:** We would contend that in the profit that for-profit organisations would be making, there would be a small amount of profit that they would be able to use to comply with the reporting requirements. From a not-for-profit's perspective—obviously we are not paying shareholders—but we are expending the vast majority of all of our funds. Sometimes not-for-profits actually make a loss in terms of providing services to the vulnerable people that they support.

**Mr DAVID SHOEBRIDGE:** To the point that Mr David Shoebridge made, when we are talking about an expenditure of $900 million, surely there would be the capacity of an organisation to absorb those costs if we are expecting corporate entities to do the same.

**Ms BROWN:** Certainly, we would have the knowledge capacity. In terms of the financial capacity, even charities and not-for-profits with large turnovers tend to be making very small surpluses or losses. They do not necessarily have the financial ability to pay fees or extra staff to be able to look at some of those things.

**The Hon. WES FANG:** That all needs to be factored into the cost of doing business, does it not?

**CORRECTED**

**Ms BROWN:** Absolutely. From a not-for-profit perspective, if we were looking at having a government-funded program, we would hope that if the New South Wales Government was funding us to do a program, we would hope that that was also built into the funding that the New South Wales Government would provide us.

**The CHAIR:** I think the Government has noted in its submission and a number of not-for-profit submissions said that the burden is disproportionately larger on the not-for-profits because you do not have that fat. They might have the high turnover but they do not have the fat in there to do that. That is an observation from the Chair. Mr Shoebridge, you lost the talking stick; I will give it back to you.

**Mr DAVID SHOEBRIDGE:** It was while I was with you, Ms Brown. It was the reference to section 32 of the Human Tissue Act. The Government's concern is that it covers blood products and other non-organ human tissues outside of organ trading. I suppose we have the Red Cross here and you do a fair bit of blood product work. I was going to ask you about your views on it.

**Ms BROWN:** We do a fair amount of blood product work. Unfortunately, that is not my specific area of expertise in the Red Cross but I certainly can take a question on notice around the impact on the blood service.

**Professor REDMOND:** May I also respond to the penultimate question? This is somewhat contrary to the position of Anti-Slavery Australia but I think it is important to draw a distinction in not-for-profits and charities between their operations and their supply chains. Generally the risk of modern slavery in the operations of not-for-profits is lower than in the case of a business. But in their supply chains, I think there is no discernible difference. That goes to the question of whether there should be an exemption.

**Mr DAVID SHOEBRIDGE:** Everybody is hunting for the same cheap T-shirts.

**Professor REDMOND:** Exactly.

**Reverend the Hon. FRED NILE:** My question has arisen from your earlier comments about the number of children with this chocolate you gave us today—2½ million children?

**Ms KITTO:** It is 2.2.

**Reverend the Hon. FRED NILE:** It is 2.2.

**The CHAIR:** Not this chocolate.

**Ms KITTO:** Not, that chocolate.

**Reverend the Hon. FRED NILE:** If you are successful, who feeds and clothes those children? What happens to the children? That is their source of income even though it is all illegal. I know the Red Cross is involved in that.

**Ms KITTO:** It is a good question and an important question.

**Reverend the Hon. FRED NILE:** Do we get governments to provide alternative income for them or housing?

**Mr DAVID SHOEBRIDGE:** Point of order: The question is really outside the terms of this inquiry. It is an interesting philosophical point how we help people once we free them from slavery but it is outside the terms of reference of this inquiry. If we are going to have a fight about it, let it go.

**Reverend the Hon. FRED NILE:** I am asking the question based on the evidence from the witnesses.

**The CHAIR:** I was about to say that, Reverend Nile. Ms Kitto introduced it strongly in her statement. I think it is a valid question. It was in your evidence.

**Ms KITTO:** It is an important question and it is a question that concerns people of compassion who do not want there to be unintended consequences. The reality is that these children are in slavery. They do not earn any money. It is not like they are getting a pittance or even pocket money that they can send home to their parents or their families. The solutions are multifaceted and they are different in different industries, but we will talk about the chocolate industry. Half of the cocoa farmers in West Africa live below the extreme poverty line, and yet they provide a product that you and I in developing countries primarily, and increasingly in India and China, want to eat. They are under the poverty line because only 4 per cent of the value of that chocolate bar goes back to them. That is from an industry that is worth hundreds of billions of dollars.

What are the solutions? The Côte d'Ivoire and Ghanaian governments have just introduced a living income differential where any company that wants to source from those countries will have to pay an additional

**CORRECTED**

US$400 a tonne. That money will go straight back to the farmers. That means that the farmers will not have to use their children and that their children can go to school. A child who is educated is more likely to not be then caught into modern slavery. The question is: Will the large confectionery companies in the world accept what the governments of those countries are intervening to finally say, "We have to end this"?

**The CHAIR:** How does that link to our bill?

**Ms KITTO:** That links to our bill because those companies will need to make statements, the Australian chocolate companies. Haigh's, which I cited in my report, we went and saw them and we said, "Are you aware that there could be child slavery in your supply chain?" They said, "Yes, and we do not want to run a business that is connected with that." We worked with them. We came up with a solution and they are moving forward on that solution. That solution has been incredibly good for them. It cost them money but they have made it back in profits because people want to preference buying Haigh's Chocolates because of what they are doing about modern slavery. Other chocolate companies, there is one that we sent 168,000 postcards to for nine years before they agreed to talk to us, both those companies will have to report under the New South Wales legislation. Up until the beginning of this year, one would have had to have said, "We are not prepared to look at this issue" and the other would have said, "We are doing something about it" and then consumers make a choice about who they buy from.

**Reverend the Hon. FRED NILE:** In your introduction you used the term, that the Federal Government and New South Wales Government in this legislation are well-connected, implying there was some area of cooperation—well-connected—is that true?

**Professor REDMOND:** The point I was making was that the New South Wales Act sits comfortably with the Commonwealth Act, it does not overlap. In fact, one advantage of having a New South Wales Act is that if a company that would otherwise be required to report under the Commonwealth Act, in a particular year if it falls below the threshold, then it does not need to stop business. The same regulation will apply to it under the New South Wales Act. They are neatly fit together like a jigsaw puzzle; pieces are well structured in a way there is not inconsistency or overlap. They fit neatly there is no duplication. That was the point I was trying to make. In fact, I make the larger point that it is very handy for such a reporting entity who has to report each year based upon their revenue each year, in fact they could move between the two systems easily if they fall below the Commonwealth threshold.

**The CHAIR:** They can make voluntary disclosures to the Federal—

**Professor REDMOND:** They could make it under. They could indeed do that under the Commonwealth Act. You are quite right.

**Reverend the Hon. FRED NILE:** I am just following up that question. It was also stated that the UK model has been a failure. What can we learn from the failure of the UK anti-slavery model?

**Professor REDMOND:** There are a number of accounts of evidence of that failure. I am happy to produce a document to the Committee, to prepare that. In fact, the independent review created by the Home Secretary in reporting to the Home Secretary is a very, very good model of documenting the weaknesses and what the reforms might be. There are others also. The Business & Human Rights Resource Centre has done a series of surveys of modern slavery statements and testing the quality of the statements. The overall effect is that, for example, in 2018 the Home Office estimated that of the 17,000 estimated reporting entities under the UK Act, 40 per cent three years on had never filed a report. The Business & Human Rights Resource Centre talks about the quality of those reports and finds that each year it is the same small number of groups, companies like Marks & Spencer, up the top reporting well, down the bottom it is the same laggards simply going through and doing the bare minimum—

**Reverend the Hon. FRED NILE:** Estimations.

**The CHAIR:** Thank you for that, Professor. Ms Liaw, in your opening statement you talked about in your submission some further amendment to the Crimes (domestic and personal violence) section 35 of the bill. There is some proposed tightening up, I guess would be the words I would use, of that part of the Act. Would you like elaborate on what you are suggesting?

**Ms LIAW:** We would suggest that there are amendments that expand the parties that are able to apply for AVOs. Currently it is limited to the guardians, police officers and Department of Communities and Justice—I think there is the new name. We would welcome an expansion of parties that are able to make an application including parties such as ourselves because given, particularly with respect to forced marriage, many individuals are unlikely or do not feel comfortable providing evidence to police to support the application of an AVO. We would also, as referenced in our submission, expand the prohibitions or conditions available within AVOs usually

**CORRECTED**

related to travel. That is with respect to forced marriages as well. Many of the individuals that we work with that experience or are at risk of forced marriages are taken overseas to be subject to the forced marriage.

**The CHAIR:** You support the amendments that are in the Government Act but you think we should I would be further.

**Ms LIAW:** Yes. That is correct.

**The CHAIR:** That is helpful.

**The Hon. DANIEL MOOKHEY:** Do you think the Anti-Slavery Commissioner should have the power to seek an AVO?

**Ms LIAW:** We would have to take that on notice to further consider the application of that.

**The Hon. DANIEL MOOKHEY:** Professor Redmond, you were involved in the construction of the Commonwealth legislation, were you not?

**Professor REDMOND:** I was, yes. I was on the advisory committee on the guidance document. I was on a number of earlier committees going back to the Supply Chains Working Group, yes.

**The Hon. DANIEL MOOKHEY:** Under the Federal legislation, do Federal reporting requirements apply to State Government?

**Professor REDMOND:** Under the Commonwealth legislation? I do not think that is the case, no.

**The Hon. DANIEL MOOKHEY:** You are aware that all State Governments are amongst the largest purchasers of goods and services in the country and the economy?

**Professor REDMOND:** Yes.

**The Hon. DANIEL MOOKHEY:** You are aware that, for example, the New South Wales Government is the largest procurer of goods and services bar none in the economy, is that correct?

**Professor REDMOND:** I would believe that to the be the case but I do not know for certain.

**The Hon. DANIEL MOOKHEY:** One feature of the New South Wales law that is not present in the Federal law is that the New South Wales Government itself has obligations under the New South Wales law, is that accurate?

**Professor REDMOND:** Yes.

**The Hon. DANIEL MOOKHEY:** And to the extent to which the New South Wales law is not proclaimed, the biggest purchaser of goods and services in the country bar known is not subject to modern slavery mapping provisions, that is correct?

**Professor REDMOND:** That is right.

**The Hon. DANIEL MOOKHEY:** So the one entity that is likely to be able to actually through its big procurement power, take actions to resolve it is exempt from the Federal law. You were here earlier when we were talking about the Ansell incident?

**Professor REDMOND:** Yes.

**The Hon. DANIEL MOOKHEY:** You are aware that Ansell sells millions of rubber gloves to NSW Health, for example? Are you aware of that?

**Professor REDMOND:** Yes. I can imagine that is the case.

**The Hon. DANIEL MOOKHEY:** Would you agree that is one example of how, if the New South Wales Act was to be proclaimed, that NSW Health would be required, for example, to identify that as a risk in its supply chain?

**Professor REDMOND:** Yes, indeed.

**The Hon. DANIEL MOOKHEY:** And you are aware that under this Act that the Procurement Board would have the power to order NSW Health to adjust its practices?

**Professor REDMOND:** Indeed.

**The Hon. DANIEL MOOKHEY:** Do you think that is one of the superior aspects of this?

**CORRECTED**

**Professor REDMOND:** Undoubtedly. The proposed section 176 (1) (a) is a major step forward, a major asset, a major benefit of this legislation.

**The Hon. DANIEL MOOKHEY:** Can you explain, if only the Commonwealth law was to be applied, how NSW Health could be told to stop buying rubber gloves that have been produced by slaves?

**Professor REDMOND:** I do not think it could be. I am not aware of any way in which you could be.

**The Hon. NATALIE WARD:** Just a follow-up to my colleague's questions, New South Wales has an interim Anti-Slavery Commissioner, are you are aware of that?

**Ms KITTO:** Yes.

**The Hon. NATALIE WARD:** Does any other State have such a commissioner?

**Ms LIAW:** No.

**The Hon. NATALIE WARD:** Is there a Federal Commissioner?

**Ms LIAW:** No.

**The Hon. NATALIE WARD:** Thank you.

**The Hon. DANIEL MOOKHEY:** Would you agree, by the way, that that is one of the superior features of the New South Wales law? The fact that there is this commissioner?

**Ms LIAW:** Of course.

**Ms KITTO:** Yes.

**The Hon. DANIEL MOOKHEY:** And do you think the fact that that was expressly created by the Act, by the Parliament on a bipartisan basis, do you know why that was not taken up by the Feds, Professor Redmond?

**Professor REDMOND:** No, I do not know why. It was certainly put by a number of submitters to the Federal process that there should be such a provision but the Commonwealth declined to do that and in fact, has kept the function in house within the Department of Home Affairs under the border control section.

**The CHAIR:** They are a pretty powerful department, I must admit that. Thank you very much for coming in and giving us your expertise, your experience and understanding of the issues. Your submissions are very much appreciated and your thoughtfulness here today. Some of you took questions on notice, the secretariat will notify you of those. You have 21 days if not sooner to respond. That is the end of your evidence session.

**Professor REDMOND:** Mr Chair, before you close, may I ask for an indulgence? I forgot to say at the outset that Anti-Slavery Australia adopts as its own submission paragraphs 4 to 12 of a personal submission I made to this Committee. I have copies of that submission here.

**The CHAIR:** I am aware of your personal submission. I noted you were representing—

**Professor REDMOND:** Anti-Slavery in this context.

**The CHAIR:** We have got your submission. We will take those copies. Thank you for that submission as well. The inquiry has over 100 submissions.

**(The witnesses withdrew.)**

**CORRECTED**

**JESSICA HATHERALL,** Co-Chair, National Business and Human Rights Subcommittee, Australian Lawyers for Human Rights, affirmed and examined

**NATALIA SZABLEWSKA**, Co-Chair, National Business and Human Rights Subcommittee, Australian Lawyers for Human Rights, affirmed and examined

**MADELINE BRIDGETT**, Co-Chair, National Business and Human Rights Subcommittee, Australian Lawyers for Human Rights, affirmed and examined

**LIZ SNELL**, Law Reform and Policy Coordinator, Women's Legal Service NSW, sworn and examined

**KELLIE McDONALD**, Senior Solicitor, Women's Legal Service NSW, affirmed and examined

**AMY SINCLAIR,** Regional Representative for Australia, New Zealand and Pacific, Business and Human Rights Resource Centre, affirmed and examined

**The DEPUTY CHAIR:** I will invite one representative of each organisation to make a short statement if they would like to. Given there are four organisations, could you try to keep it to three minutes if possible.

**Dr SZABLEWSKA:** I will make the opening statement for Australian Lawyers for Human Rights [ALHR]. We would like to thank the Standing Committee on Social Issues for the opportunity to appear today. ALHR has been in operation since 1993 and is a leading national human rights organisation which represents Australian solicitors, barristers, academics, judicial officials and law students who practice and promote international human rights law in Australia. It is our strongly held view that the New South Wales Modern Slavery Act should not be repealed. The New South Wales Act complements the Commonwealth Modern Slavery Act 2018 and, subject to further amendments, can be an exemplar for anti-slavery legislation, both in Australia and internationally

We support measures designed to promote the human rights of the many thousands of people annually who are victims of modern slavery, including victims of human trafficking, forced labour and servitude. ALHR notes that by having a lower reporting threshold than the Commonwealth Act the New South Wales Act extends the scope of mandatory modern slavery reporting to cover up to an additional 1,650 reporting entities. This is the number given in the Government submission to this very inquiry. Further, the New South Wales Act has additional modern slavery safeguards, which do not form part of the legislative regime in the Commonwealth Act, including penalties for non-compliance and provision for an anti-slavery commissioner. Penalties for non-compliance is an important legislative requirement of any modern slavery legislation as it sends a clear message to entities and society that modern slavery is a serious offence. The penalty provision will also ensure that entities take seriously their obligations to report risk of modern slavery taking place in their supply chains and they take steps to assess and manage those risks.

Similarly, the appointment of an anti-slavery commissioner adds an important safeguard in preventing modern slavery in New South Wales. Notwithstanding these additional safeguards, ALHR encourages the Committee to harmonise the Act as far as possible with the reporting requirements provided for in the Commonwealth Act. ALHR is also of the view that it is necessary to ensure the New South Wales Act is consistent with the Commonwealth Criminal Code 1995 by introducing the proposed amendments to this Act, and that further clarification needs to be provided in the forthcoming guidance material of the requirements and penalties for all entities with employees in New South Wales with an annual turnover of more than $50 million. It is both highly desirable and practicable for the draft regulation to be amended to give greater effect to the supply chain reporting obligations in this Act.

ALHR supports the creation of a public piece of entities required to report under the scheme, alternatively sanctioning for three years the publishing of the public register pursuant to section 26 paragraph 1 of the Act. This may avoid possible negative consequences associated with naming and shaming of businesses and the subsequent effect of discouraging businesses from being transparent in identifying, disclosing and addressing modern slavery in their supply chains. ALHR does not support repealing the modern slavery offence of trading in tissue pursuant to section 32 of the New South Wales Human Tissue Act 1983.

The Criminal Code currently does not capture the solicitation of commercial organ transplants extraterritorially and as such there is a lacuna in the law regarding legal organ transplants which occur overseas and involve Australians. Until the Criminal Code is amended to ensure sufficiently the protection for Australians travelling overseas for an organ transplant, the offence of trading in tissue in the New South Wales Act should not

**CORRECTED**

be repealed. In conclusion, and for the reasons further outlined in our submission, we urge the Committee to work towards bringing the draft regulation and the New South Wales Act into force without delay.

**The CHAIR:** The representatives of the Australian Lawyers for Human Rights are all together. Ms Snell?

**Ms SNELL:** We begin by acknowledging the traditional custodians of the land on which we gather, the Gadigal people of the Eora nation, and pay our respects to elders, past, present and emerging. We thank the Committee for the opportunity to appear today.Women's Legal Service NSW is a community legal centre that aims to achieve access to justice and a just legal system for women. We seek to promote women's human rights, redress inequalities experienced by women and foster legal and social change through strategic legal services, community development, community legal education and law and policy reform work. We prioritise women who are disadvantaged by their cultural, social, and economic circumstances. We provide specialist services relating to domestic and family violence, sexual assault, family law, discrimination, victims' support, care and protection, human rights and access to justice. We have experience of working with women who have experienced modern slavery such as trafficking, forced marriage and forced labour.

Our submission focuses on those aspects of the Modern Slavery Act 2018 and the Modern Slavery Amendment Bill 2019 that impact on the Victims Rights and Support Act. We confine our comments to this issue only. We recommend a number of amendments to the Victims Rights and Support Act consistent with the beneficial approach of this Act, including that the definition of victim of crime and act of modern slavery include all forms of modern slavery. By ensuring that all victims-survivors of all forms of modern slavery are able to access all forms of victims support, including recognition payments, a person is able to establish an act of violence and injury occurred to the standard of proof of reasonable likelihood and the form of evidence not be prescribed, the removal of the requirement to prove injury in cases of an act of modern slavery.

And we also recommend that this extend to acts of violence involving sexual assault, child abuse, child sexual abuse and domestic violence, removal of all time limits for financial assistance and recognition payments for an act of modern slavery as well as removal of all time limits for financial assistance and recognition payments relating to an act of violence involving sexual assault, child sexual abuse, domestic violence or child abuse; providing victims of an act of modern slavery as well as victims of domestic violence, sexual assault, child sexual abuse or child abuse with access to funded legal assistance for their support claims; reviewing and amending the Victims Rights and Support Regulation 2013. We also note that currently there is no mechanism for people who are subjected to forced labour to access their work entitlements, such as pay. We believe that that requires an amendment to the Fair Work Act, noting that that is a Commonwealth Act.

**The CHAIR:** Thank you very much. Yes, Ms Sinclair?

**Ms SINCLAIR:** We appreciate the opportunity to respond to your questions this afternoon. As I mentioned briefly, I am the Australian representative at the Business & Human Rights Resource Centre. We are the leading global NGO that is working exclusively to advance respect for human rights in business. We track the human rights impacts of companies around the world and we rate them and rank them on the human rights performance. This includes assessing how companies are responding to modern slavery by scrutinising their Modern Slavery Act statements. Our submission is focused on the transparency of supply chain provisions of the New South Wales Act, section 24.

We operate the modern slavery registry, which currently houses over 10,000 modern slavery statements that were issued after the UK Act. Professor Redmond referenced the work we have done in this area in his evidence. We have been instrumental in leading work on modern slavery reporting and we have contributed significantly to the development and shaping of modern slavery laws in Australia. I have been very involved in the Federal process and served alongside, on the drafting committee, with Professor Redmond. We support the New South Wales Act, which will extend the scope of modern slavery reporting to a further between 1,400 and 1,600 companies in New South Wales.

In our work at the centre we are continuing to see instances of modern slavery in corporate supply chains come to light regularly. Already today we have heard reference to Ansell, which is an Australian company that has been implicated in the labour abuses happening at its Malaysians supplier, Top Glove, and only last week the wage theft scandal involving Woolworths started to unfold. I would add that, while this is not a modern slavery issue per se, it does go to raise really critical questions about company attitudes towards their staff. We consider that the New South Wales Act has a really significant role to play in driving change within companies to curb exploitation in corporate supply chains. That is both with respect to raising awareness about what the issues are

**CORRECTED**

as well as bringing about changes in corporate behaviour in terms of their policies and the introduction of processes to prevent modern slavery from arising.

The provisions of the New South Wales Act that introduced penalties and an Anti-Slavery Commissioner represent key legislative refinements not only on the Commonwealth Act but also on modern slavery reporting laws internationally. In this regard we really consider the New South Wales Act to be leading the way globally in terms of legislative action to address supply chain issues. We look also to emerging moves to introduce laws that require companies to begin to investigate and report on modern slavery. We increasingly have seen laws being introduced around the world in a number of jurisdictions—in the US, the EU and the UK, Switzerland, France, the Netherlands—and we consider the New South Wales Act to represent a key part of this global movement is to stamp out egregious exploitation of workers and supply chains. We strongly recommend that the scheme—the Act, the regulation and the amending bill—be brought into effect. Thank you.

**The CHAIR:** Thank you very much for that. I open the hearing to questions of the panel. Deputy Chair?

**The Hon. DANIEL MOOKHEY:** I do not wish to pull rank.

**Mr DAVID SHOEBRIDGE:** I am happy to step up as a lowly member of The Greens and mere Committee member. Has anyone of you had the benefit, shall I say, of hearing the evidence we have had today? One of the key issues is about section 29, the modern slavery risk order. The Government's submission raises a number of concerns the Government has about section 29 and its remedy is to repeal that provision of the bill. Does anyone of you have any views about modern slavery risk or orders?

**Dr SZABLEWSKA:** We do not have a position on this particular issue.

**Ms SNELL:** We are focused only on victims support rights, so no.

**Ms SINCLAIR:** Our key focus is section 24 and the transparency provisions.

**The CHAIR:** You missed out there.

**Mr DAVID SHOEBRIDGE:** Then can I ask you this: Does any of you have a position on the exclusion of State-owned corporations and/or local councils from the definition of "government agency", which is one of the other provisions being proposed?

**Dr SZABLEWSKA:** In relation to public bodies including councils and our position in relation to that particular sector, it is fairly similar to our position on not-for-profits and charities in the sense that we do recognise that there might be some additional burdens or difficulties for this particular sector or entities to respond and provide modern slavery statements. However, we believe that in principle there should not be exemptions simply based on the type of entity we are dealing with. It is rather about the impact that the work and actions of those entities have and, therefore, whether and through what means they can contribute directly or otherwise to modern slavery.

**Mr DAVID SHOEBRIDGE:** Pretty much every State-owned corporation is a significant entity with very substantial revenue. Almost all of them have an obligation to return profits to the State Government. Given that, do you think there is a case to exempt them from being government agencies?

**Dr SZABLEWSKA:** I will answer that question in this way: I think potentially there is a misunderstanding that this legislation, in a way, introduces new obligations. With what we are talking about here, the human rights obligations already exist and have been incorporated in many different types of legislation. If we are talking about councils and government agencies, they already have human rights obligations. Therefore, it is unclear to us on what grounds they will be excluded in relation to reporting any risk of modern slavery within their supply chains. This is part of a bigger compliance to human rights obligations.

**Mr DAVID SHOEBRIDGE:** We had a number of submissions from advocates for the business community who suggested that it was unprincipled to have penalties under the New South Wales Act, with potentially lower turnover thresholds, and no penalties under the Commonwealth Act. Their solution to that was to remove the penalties under the New South Wales Act or to remove reporting requirements under the New South Wales Act. Do any of you have any observations about the critique that it is somehow unprincipled to retain those provisions in the New South Wales Act?

**Ms SINCLAIR:** The penalty regime in the New South Wales Act has been applauded globally as representing best practice. The UK Act does not have penalties and we have seen, since 2015 when it came in, that not only have reporting levels been low, with between only one third and a half of companies required to report actually reporting, but also the standards of reporting have been very low. The reason for that is that the

**CORRECTED**

Act does not have teeth. The inclusion of penalties in the New South Wales Act is a key legislative improvement. It really is leading the way in terms of modern slavery reporting legislation. We would strongly recommend that the penalties be retained.

**The CHAIR:** Is there a proposal of an amendment to remove penalties?

**Mr DAVID SHOEBRIDGE:** No, but the suggestion from four of the five business panellists was that the New South Wales Government should not proceed because of that disparity.

**The Hon. WES FANG:** To be fair they also did say that alignment with the Federal program may be another option.

**Reverend the Hon. FRED NILE:** Thank you. I appreciate what you have been saying. Ms Sinclair, in your submission you stated:

> The inclusion of penalties for non-compliance with the provisions of s24 of the NSW Act, and provision for an Anti-Slavery Commissioner, represent key improvements, not only on other Australian legislation, but on comparable modern slavery reporting laws worldwide. In this respect, the NSW Act is leading the way globally in terms of legislative action to address the scourge of modern slavery in corporate supply chains

I take it from that statement that you support that the New South Wales Act be urgently proclaimed and put into action? As you know, it is sitting on a shelf at the moment.

**Ms SINCLAIR:** We would very much support seeing the Act come into effect as soon as practicable. A good date would be 1 January so that there is alignment with the Commonwealth reporting time frame and the financial period of reporting entities.

**Mr DAVID SHOEBRIDGE:** One of the significant criticisms of the UK model is that even when those organisations do report, the disparity in the reporting is so marked. I noticed a reference to the initial reporting by Qantas under the UK Act, which was a one-page letter that made a variety of nice sounding statements, compared to some of the reporting by organisations which I am normally not much of an advocate, such as Rio Tinto, which has quite detailed, complex responses. Are you satisfied that either the Commonwealth or New South Wales Acts have sufficient detail in them so that we are going to get adequate responses, particularly on supply chains?

**Dr SZABLEWSKA:** I will build on a previous question and some of the issues that have been raised by businesses. We also support businesses in the sense that we believe there should be an avoidance of duplication. Hopefully there will be further clarification as to what is required of them. In terms of the Acts of the Commonwealth and New South Wales—and the issue has been raised on a number of occasions today—it is a blueprint. There is no other blueprint. What we are learning is what the experience has been elsewhere. Therefore, I do not think there is anyone who can provide an answer to how to do it and how to do it to ensure that we can get where we want to get.

There will be a period of learning for everyone and there will be period of time for businesses to learn how to do due diligence properly and how to do the reporting properly. This goes back to why having penalties in the New South Wales Act is so important. It sends a very clear message that it is not simply for companies to choose to do it and that they are expected to comply with the requirements. We do perceive that there will be a period of time when some companies might not do their job to a standard. Having the penalties will ensure that those companies will ensure over time that they make their statements better than they might have been in the past.

**The Hon. DANIEL MOOKHEY:** Ms Sinclair, do you want to respond to that?

**Ms SINCLAIR:** I would be very happy to respond to that. You are right, there is a huge variety in the standard of the reports that we have been seeing. I think it is really important to emphasise that it is an iterative approach and we are seeing progress over time. One of the key elements and key positive aspects of the Act that we have seen play out in the UK is in terms of awareness levels. CEO engagement around modern slavery reportedly doubled within the period of the first year after the Act came in in the UK. In terms of the criteria that companies are required to report against and whether or not they produce enough information, one of the really critical pieces of information, that it is really important that companies disclose broadly against, is the risk of modern slavery that they have found in their supply chains and operations and how they have gone about responding to that.

The whole rationale for this type of legislation is that it is disclosure and transparency legislation. It is about providing information so that those companies that are leading the way—Vodafone, M&S and Burberry—can provide information that can then be used by companies that are smaller or less well engaged on human rights. They can then be brought along more effectively and more quickly. As well as providing information that is useful

**CORRECTED**

to businesses, it also yields very valuable information for civil society organisations such as mine, which are scrutinising and seeking to engage with companies, and consumers who are looking to identify who the ethical companies are. Really critically—and I do not know whether this came up in the morning sessions—it is also providing information for investors so that they can be making informed investment decisions about their current or potential investee companies. Modern slavery statements provide a really good parameter as to how seriously a company is taking its actual or potential human rights risks and, therefore, what potential risks look like to a company seeking to invest.

**The Hon. DANIEL MOOKHEY:** Ms Sinclair, you said your organisation is involved, amongst other things, in rating organisations and supply chains to the extent to which they are taking action against modern slavery and, implicit in that, the extent to which modern slavery is present in supply chains. Is that correct?

**Ms SINCLAIR:** Yes, that is correct. We assess and we scrutinise across the board in a number of different areas. With respect to modern slavery, we have been scrutinising modern slavery statements that have been issued since 2015. We operate the register where they are housed in the UK and we have benchmarked and ranked companies in terms of how they are responding to modern slavery with a view to driving a race to the top and better performance and being able to identify those laggard companies that are yet to begin to engage, so that they can be educated and brought along.

**The Hon. DANIEL MOOKHEY:** In the course of that rating exercise, have you come across Australian businesses that have modern slavery in their supply chains?

**Ms SINCLAIR:** Companies are not very transparent about when they have found modern slavery, which is one of the areas in which we have been seeking to improve the quality of statements over time.

**The Hon. DANIEL MOOKHEY:** Is that part of the reason why you are so supportive of the transparency requirement, so you have better data and there is a bit more scrutiny of the practices of Australian businesses in this regard?

**Ms SINCLAIR:** Yes, absolutely.

**The Hon. DANIEL MOOKHEY:** In the course of auditing and rating exercises, have you encountered organisations at the top of the supply chain that make the point that they do not know what is going on lower in the supply chain?

**Ms SINCLAIR:** Yes, we have encountered that.

**The Hon. DANIEL MOOKHEY:** You have said that organisations at the top get a bit of a line of sight as to what is going on and they therefore should know that if they are going to contract, in the business sense, within the threshold of between $50 million and $100 million that they have an independent source of information to see whether their potential supplier is compliant. Is this one of the reasons why some of those organisations support broader disclosure requirements for transparency, including the lower threshold in New South Wales?

**Ms SINCLAIR:** Yes, it is important that companies are thinking about this and asking questions so that they begin to look at their supply chain. That means they can have visibility right from the top, from the brand retailers that have the most to lose potentially in terms of damage to reputation, right down through the various stages of the supply chain to the producers. That is a matter of raising awareness and asking questions all the way down their supply chain.

**The Hon. DANIEL MOOKHEY:** That may not be punitive.

**Ms SINCLAIR:** It need not be punitive. The UN Guiding Principles on Business and Human Rights, which were unanimously endorsed by the UN in 2011, provide the global reference point on corporate responsibility with respect to human rights. This is what companies are required to be doing anyway. They should be conducting due diligence, investigating their supply chains, asking questions, identifying areas of risk and then seeking to remediate that risk.

**The Hon. DANIEL MOOKHEY:** Is it the case that one of the principal advantages of having a lower threshold in the New South Wales law, compared to the Federal law—you mentioned 1,300 or 1,400 additional—

**Mr DAVID SHOEBRIDGE:** It was 1,600.

**The Hon. DANIEL MOOKHEY:** —reporting organisations. Is it the case that Australia's biggest businesses would have a better basis of information to know with whom to contract based on which suppliers are compliant with modern slavery law or at least undertaking the risk-based assessment that we would require of them under the New South Wales law?

**CORRECTED**

**Ms SINCLAIR:** Yes, one of the benefits of the New South Wales Act is that it has a lower threshold and it will therefore require 1,400 or 1,600 more companies to be investigating and asking these questions and finding out this information.

**The Hon. DANIEL MOOKHEY:** My point is that if you are a bigger organisation, effectively having a lower threshold and more businesses reporting means you are diminishing counterparty risk with whom you were doing business, are we not? If I am doing a contract with you and I know that you have to report, even though you was smaller than me, I can rely on the fact that there is information to assess that and therefore I am less trusting of you and I have a way to audit what you are saying. Is that not the case?

**Ms SINCLAIR:** The companies at the top still need to be protecting their own reputation and doing their own investigation.

**The Hon. DANIEL MOOKHEY:** But they are in a better position to do that if they have access to more information about what is taking place in their supply chain. Is that correct?

**Ms SINCLAIR:** The more information that is available the better, correct.

**Mr DAVID SHOEBRIDGE:** That brings us to section 26. Some witnesses earlier suggested that section 26 might work against the interests of the Act. In addition to the publicly available statements, section 26 is about the public register that identifies organisations that have disclosed, in their modern slavery statement, the fact that its goods and services are or may be a product of supply chains in which modern slavery may be taking place and also any responses. Do you have a view about section 26?

**Ms SINCLAIR:** Yes, our view is that it should be repealed and that it is contrary to the sentiment of the Act, which is to encourage disclosure and provide information. However, we are supportive of the new statements register that is being proposed, where all statements will be disclosed publicly so that they can be publicly—

**Mr DAVID SHOEBRIDGE:** You could remove section 26 if you had a publicly available register for the section 24 statements.

**Ms SINCLAIR:** Correct—

**Mr DAVID SHOEBRIDGE:** Is that your collective position?

**Ms SINCLAIR:** —because it could potentially disincentivise companies to look for modern slavery if you feel that you are going to be punished as a result by being named and shamed.

**Dr SZABLEWSKA:** Yes, this is our position on section 26 as well. In our submission we propose what we term as a public repository, which would combine the public list of all entities that are required to report under the New South Wales Act. The statements register as well is allowing the companies to voluntarily present best practice and potentially update it annually. That means it can be used by others to learn how to do it and also to ensure that companies engage with the subject matter.

**Mr DAVID SHOEBRIDGE:** Rather than the Government's amendment, which allows a clarifying statement from the commissioner in relation to section 26, your preference is to repeal section 26 but have a publicly available and, I assume, online searchable register of supply chain statements. Is that a preferred model?

**Dr SZABLEWSKA:** That is correct.

**Reverend the Hon. FRED NILE:** I put that question another way. If, however, this further delays the implementation of the New South Wales bill and maybe prevents it from being implemented at all, would you be happy to retain that section?

**The CHAIR:** It is one that the Government has not recommended to take out.

**Ms SINCLAIR:** If that was a deal-breaker then it would be better to have the Act in its current form and consider amendments to the register provisions at a later date.

**Dr SZABLEWSKA:** We have the same position on the subject matter. If section 26 was to go ahead, we would therefore recommend that we ensure that good practice is highlighted. That is why it is sometimes referred to as the "dirty list" and we need to ensure that it does not become the reason why companies will no longer honestly engage in due diligence.

**Reverend the Hon. FRED NILE:** That could be fixed with regulations that came out after the bill.

**The CHAIR:** Dr Szablewska, I want to touch on the issue of organ trafficking in your submission. You said that until the Commonwealth organ trafficking laws are amended, section 32 of the Human Tissue Act 1903

**CORRECTED**

should not be repealed as there are currently inadequate legal protections regarding trafficking in human organs, both domestically and internationally. Could you expand upon that?

**Dr SZABLEWSKA:** I will ask my colleague to answer.

**Ms BRIDGETT:** I have specifically come here for that.

**The CHAIR:** You should have told us.

**Ms BRIDGETT:** I am sure Mr Shoebridge knew that. The important point to be made about the Commonwealth organ trafficking provisions is this: Currently those provisions deal with trafficking in persons for the purposes of removing organs. They do not deal with trafficking in human organs. It is very important that the Committee understands the distinction between those two offences. The trading in tissue provision is such a vital, important provision because it actually does deal with the commercialisation of organ transplants. What it deals with is the purchasing and the selling of tissue—"organ" is defined as part of tissue. Currently the Commonwealth provisions do not deal with trafficking in human organs. I refer the Committee to the *Compassion, Not Commerce: An Inquiry into Human Organ Trafficking and Organ Transplant Tourism* report. That report that came out of the Federal inquiry into human organ trafficking in June 2018.

It made recommendations then for the Commonwealth to ascend to the Council of Europe Convention against Trafficking in Human Organs, which is a specific piece of international legislation. It is a convention that deals with trafficking in human organs. It came about because there was a gap in international laws around trafficking in human organs. That is what we see domestically here, that we have that gap. We have the lacuna in the law. We do not have a law that covers if a person is to travel overseas to have an organ transplant—that is, either the organ is illegally sourced or the transplant itself is illegal for various reasons. We do not have a law that covers that at the moment.

The other issue with the Commonwealth provisions is that the extraterritorial application of its laws is limited. As I understand it, section 32 in the Modern Slavery Act will have extraterritorial application for the trading in tissue. The Australian Lawyers for Human Rights supports that. It does not support that section being repealed. It is a very important piece of legislation, given the shortage in supply for organs in Australia. We should be very proud of our organ donation program here in Australia. We have an excellent program. However, we still have around 1,400 to 1,500 people per year on a waiting list for an organ. What that means is that desperate people and families resort to travelling overseas. They will go to places like China. There has recently been conclusive evidence in the China Tribunal, which was held in the United Kingdom and found beyond reasonable doubt that China has committed crimes against humanity regarding organ transplants using prisoners of conscience. I have brought a copy of the summary report of the China Tribunal for the Committee. I am happy to hand that to the Committee.

**The CHAIR:** Is that report public?

**Ms BRIDGETT:** It is public and you can download it.

**The CHAIR:** We will table that.

**Ms BRIDGETT:** Thank you, Chair.

**The CHAIR:** The Government's concern, expressed in the amendments, is the unintended consequence of the current bill is that NSW Health trading in legal blood products from overseas would be captured. Therefore, its proposal is to take that out and just refer to the Federal Act which, as you said, is about people as opposed to organs.

**Ms BRIDGETT:** Trafficking in people, yes.

**The CHAIR:** Yes. How would you address that issue?

**Ms BRIDGETT:** It can be simply addressed by just putting another exemption into the Human Tissue Act 1983.

**The CHAIR:** In the Act?

**Ms BRIDGETT:** Yes. There is currently what I call the therapeutic tissue exclusion in the Act. It can be remedied very simply and you can just put an exemption into the Act.

**The CHAIR:** To NSW Health?

**CORRECTED**

**Ms BRIDGETT:** Yes, NSW Health, Red Cross—I heard earlier that Red Cross has taken that question on notice. There can be a list of organisations that are exempt, but it has to be for the clear purposes of what those organisations deal with in terms of what they are purchasing and selling.

**The CHAIR:** We want to make sure the bill is futureproof in terms of the evolving nature of that sector.

**Mr DAVID SHOEBRIDGE:** Isn't there that regulation-making power in section 24 (8)? It states:

> The regulations may exempt or provide for the exemption … of any organisation or class or organisation from any or all of the reporting provisions.

My understanding was that that was actually put in there to deal with some of these concerns that were raised in the second reading debate.

**The CHAIR:** Right.

**Mr DAVID SHOEBRIDGE:** Do you have a view about whether or not that could address those concerns? You could take that on notice. That would be helpful.

**Ms BRIDGETT:** I can take that on notice. I could say that there is also no harm in adding an exemption to the Human Tissue Act if that—

**The CHAIR:** Making it explicit.

**Ms BRIDGETT:** —becomes a problem for NSW Health. But I will take that on notice, Mr Shoebridge.

**The CHAIR:** It is another loop to go through—and another chance for the upper House to get involved.

**The Hon. DANIEL MOOKHEY:** Sorry, Ms Snell, I did not want you to escape without any question whatsoever. You made a point in your opening statement that you would like the victim support Act to effectively be amended. Did you say to include wages, and can you expand on the form of reparations you are talking about?

**Ms McDONALD:** I do not know that it would be appropriate to amend the Victims Rights and Support Act 2013 as a mechanism for victims of modern slavery to get wages. However, I think it is important to note that the victims of forced labour are not able to, by virtue of not being able to establish that there is an intention to create legal relations—there is no offer, consideration and voluntary acceptance of a contract—

**The Hon. DANIEL MOOKHEY:** There is no employment contract, yes.

**Ms McDONALD:** Yes, there is no employment contract, therefore they cannot enforce their rights under the Fair Work Act 2009. They cannot recover wages that they would otherwise have been entitled to had they been an employee.

**The CHAIR:** Well, on that point—

**Mr DAVID SHOEBRIDGE:** Ms Snell, you made the same point, didn't you, for victims—

**The CHAIR:** It is the same organisation.

**Reverend the Hon. FRED NILE:** The Chair was just going to speak when you cut him off.

**The CHAIR:** No, sorry, hang on: It is the same organisation.

**Ms SNELL:** Yes. I think the point we are making was whilst there is a mechanism in the Victims Rights and Support Act that talks about loss of earnings in the case of forced labour, it is not captured for the reason that Ms McDonald has outlined.

**The CHAIR:** We are hearing from the unions this afternoon. I am sure that will be picked up. Thank you. Time has concluded for your presentation to us. Thank you all for your thoughtful submissions and taking the time to give us evidence today about your organisations and your experiences. It is really appreciated from all of you. It really added value to our inquiry. Some of you took questions on notice; the secretariat will advise you and you have up to 21 days to respond to that to help us with our report. Thank you very much for coming in.

**(The witnesses withdrew.)**

**(Short adjournment)**

**MELINDA TANKARD REIST,** Movement Director, Collective Shout, affirmed and examined

**HEATHER MOORE,** Policy and Advocacy Adviser, The Salvation Army Australia, affirmed and examined

**CASEY O'BRIEN MACHADO,** Policy and Social Justice Adviser, The Salvation Army Australia, affirmed and examined

**The CHAIR:** You are welcome to make an opening statement of five or 10 minutes. We have your submissions.

**Ms TANKARD REIST:** Collective Shout is a grassroots campaigning movement challenging the objectification of women and sexualisation of girls in media, advertising and popular culture. We target corporations, advertisers, marketers and media that exploit the bodies of women and girls to sell products and services. More broadly, we tackle other expressions of sexploitation, including the interconnected industries of pornography, prostitution and trafficking, and violence against women. We note the special vulnerabilities of women and children in slavery and slavery-like practices. We would also like to commend the submission of the Coalition Against Trafficking in Women who, we note, have not been able to part of the hearings today. We want to acknowledge its submission, which highlights commercial sexual exploitation as a recognised hotspot of modern slavery.

We commend the New South Wales Government for taking modern slavery seriously. You are the first State to move legislation against it and only the second in the world to provide for an anti-slavery commissioner. We agree with observations made today by others that the Modern Slavery Act 2018 provides a robust and more comprehensive response to the issues of modern slavery than the Commonwealth Act. We are concerned about the potential watering down of what has been achieved here in New South Wales. Given the time constraints, I am going to go directly to our main concern. You will note from our submission that we have made a number of recommendations but I am really going to focus on only one of those today—that is, our concern regarding the potential watering down of the Act in relation to digital platforms. I direct you to page 2 of Collective Shout's submission.

We are particularly distressed about the transnational cyber trafficking of children for sexual exploitation. This is the use of digital platform to live stream acts of child sexual abuse performed on demand. We believe this issue, which has not been so far mentioned today, needs greater attention. Any attempt to water down measures against this practice should be strongly resisted. You are probably familiar with Anti-Slavery Australia's significant 2017 report *Behind The Screen: Online Child Exploitation in Australia*. In that report ASA stated:

> More Australian based offenders are regularly accessing, downloading from, or even administering vast international networks that encourage the distribution of materials.

Australian-based offenders were "procurers, groomers and administrators of vast online child exploitation networks" and were driving abuse locally and in countries like the Philippines and parts of Eastern Europe. I documented some of those horrendous cases in a piece for the ABC in July 2017, which I described as "paid-per-view torture". The child victim is a part of the slavery supply chain. Combating modern slavery has to include combating the global epidemic of this pay-per-view torture of children in the growing trade of predators commissioning the live sexual abuse of a child viewed via their computer screens and facilitated by their ISPs. ISPs and telcos including Telstra, Optus, iiNet and TPG are providing the infrastructure for the live streaming of the abuse of children to be possible.

ISPs are part of a chain which contributes to the distribution of child sexual exploitation material but they have not been brought to account. I have documented, as has Anti-Slavery Australia and IJM, the lack of cooperation on the part of ISPs who are contributing to this trade. I would like to acknowledge here also the significant submission by the UK Anti-Slavery Commissioner Kevin Hyland who writes about the necessity of legal instruments as being long overdue to require those who supply and provide the internet virtual highways to guarantee they will control the traffic and materials that transmit across their systems. Hyland says:

> This should be part of a legally binding framework and should be linked to the provision and upgrading as service providers seek to win contracts to supply 5G technology

That is Kevin Hyland, the UK's first Independent Anti-Slavery Commissioner up until 2018. As IJM states in their submission which I also commend to you, the New South Wales Government should recognise that the online exploitation of children is a form of modern slavery and strong legislation can defer demand naturally, Collective Shout agrees. As we stated in our submission before you regarding schedule 1 [26] in this draft bill would repeal

**CORRECTED**

the uncommenced section 91HAA of the Crimes Act 1900. There is no explanation given in the explanatory memorandum as to the rationale for this provision. We are deeply concerned about that lack of explanation and IJM also says that there has not been enough explanation given about this. They said, "We request that the New South Wales Government—

**Mr DAVID SHOEBRIDGE:** Mr Chair, we only have 45 minutes for this whole panel is my concern.

**Ms TANKARD REIST:** You did mention at the start a little bit longer I thought. I have come to my last paragraph.

**The CHAIR:** You do that. The area you are talking about is exactly one of the reasons why I was really pleased to see you coming here today. We want to talk about that. We will come back to you with some more questions. Do you want to finish on that?

**Ms TANKARD REIST:** There is one last point here. IJM's recommendation is one that we support, requesting the New South Wales Government provides further advice as to how Commonwealth legislation provides adequate provisions for the prosecution of a person sharing child abuse material via a digital platform or network. They say it is not immediately clear to them which part of the existing Commonwealth legislation adequately enables prosecution of people administering websites or networks that share this material. Our view is that we have to do more to protect children from being used as tools in the production of live streamed child abuse.

**The CHAIR:** Thank you for that. We are definitely coming back to that discussion.

**Ms MOORE:** I will be making an opening statement on behalf of The Salvation Army. Thank you very much for the opportunity to come and speak with you today. I know you received a lot of submissions so we are very grateful that we are able to speak to you today. Noting that much of the inquiry—I have listened to most of the evidence today—has focused a lot on their supply chains provisions of this Act, the Salvation Army wants to focus on some other elements of the Act. That said, we were heavily involved in the passing of the Federal Act so we are happy to answer questions on some of those as well. Australia aspires to be a leader in this issue, in anti-slavery, and in many ways it is a leader. One of the areas where Australia is lacking in comparison to other countries around the world is in the consistent engagement with the breadth of locally based stakeholders who are most likely to encounter victims across the country. Notwithstanding certain State offences that intersect with Commonwealth crimes, this law marks the first time any State or Territory in Australia has legislated with specific intent to address slavery and trafficking in its own right.

The Salvation Army appears before the Committee today as one of the few organisations with a technical understanding, a real operational understanding, of the criminal justice and victim support provisions of this law. Further to our experience, we have independently funded and managed the country's only refuge dedicated exclusively to assisting survivors of modern slavery since 2008. We have also worked closely with the Australian Red Cross and other service providers to support mutual clients and we have continued to provide a safety net for those who are not able to access the Government's Support for Trafficked People Program for the last 11 years. Drawing on this experience, there are two main points I would like to make in my statement today.

The first, in response to calls from some submitters to the inquiry for this Act to be repealed in its entirety, the Salvation Army would say that State action, particularly in terms of data collection, raising awareness and building the capacity to identify and support more victims as well as improving accountability for perpetrators, is absolutely critical. The second point is that equally important to legislating for the State action is responsible implementation that puts victims at the centre of our efforts. We talk a lot about victim-centred approaches but what does that actually mean in practical terms? I could probably talk to you all day about what victim-centeredness means to the Salvation Army but two main points I would make now are proper resourcing for proper implementation; and proper planning to ensure that there is an effective response on the other side of efforts that will undoubtedly discover victims.

I would submit to you today that there is a lot of attention going on right now—rightfully so—a lot of attention is being placed on how we are going to find victims. We are going to scrutinise supply chains, the Commissioner will be raising awareness and training police, but I want their Committee to ask themselves one question today: What efforts has the State made to respond to the increase in victims that will inevitably occur as a result of all of the efforts to identify victims. I would submit that this is not something that can be postponed to the strategic plan of the commissioner. There are some real, serious questions that the Parliament should be considering now before it decides to progress, particularly with the offences. Just to give you a couple of quick ideas, particularly around how the State will grapple with immigration status; how the State will support victims who are not prepared or who are not able to cooperate with law enforcement when the Federal support system for victims of trafficking hinges on cooperation with the criminal justice process. That is just a couple of examples.

**CORRECTED**

Personally, I appear today as someone who has directly participated in the passage and implementation of State legislation, a State-based anti-trafficking law, specifically. The California Trafficking Victims Protection Act and related legislation passed nearly 15 years ago which asserted the State's role and responsibility to combat contemporary forms of slavery. That legislation complimented the existing activities under the national counter-trafficking framework but also provided a safety net to compensate for some of the deficiencies in the Federal program. It also instituted statewide risk mapping, data collection and systemic training of key State agency staff to enable them to respond appropriately and hold them accountable for doing so. State-based victim support frameworks can and often do add an additional layer of complexity. I think that will be an argument that you will hear from some small numbers of submitters against having a State system, but in my experience these are manageable through effective execution of memoranda of understanding that delineate communication and coordination protocols across government and non-government agencies that balance the interest of victims with those of the State.

We are here to debate proposed amendments and draft regulations to the New South Wales Modern Slavery Act ,but submissions to the inquiry demonstrate there remains not insignificant disagreement about whether this legislation should actually exist. I did really want to address that in this statement. Some submissions assert that the criminal justice and victim support provisions of the Act can and should be carried out through existing mechanisms. Whilst it is true that State agencies are in a position to participate and carry out any trafficking activities, this does not necessarily lead to them doing so. In our submission to the Legislative Council Select Committee Inquiry into Human Trafficking in New South Wales a couple of years ago we provided several examples of how State police and other agencies failed to respond appropriately where they were the first to encounter a victim of trafficking. Our submission also described how there is no formal mechanism to link, evaluate and report on State agency any trafficking activities under the national roundtable or in the national action plan to combat trafficking and slavery.

As service providers in this space for over 10 years The Salvation Army can attest to the regular pushback by State agencies across the country, not just in New South Wales, on the basis that this is a Commonwealth crime and therefore it is not my responsibility. I am saying that to you today because offences are more than just about prosecution, they provide the lever that unlocks all these other responses. This is something that the Committee should well understand. I will bring my comments to a conclusion in just a second. As I was saying, on the basis that this is a Commonwealth crime and is therefore strictly a Commonwealth responsibility. This is in spite of an overwhelming evidence base internationally for community-based collaboration to address slavery and trafficking. The Salvation Army prepared a paper for the national roundtable on this subject and I would like to share this with the Committee today. This is a public document and it has also been shared with Professor Burn as well.

In conclusion, what I would like to emphasise today is that this legislation is absolutely essential because it removes any question about the obligations of State actors to participate in, to shape, indeed, to lead any trafficking and any slavery efforts. Federal agencies cannot do this alone. This is indicated by the very low number of victims who have been identified in Australia since Australia ratified the Palermo protocol. One of the witnesses this morning from the business panel suggested there are 3,000 people in slavery in Australia. That figure is actually to 15,000, that is the Global Slavery Index figure. As you also heard, the national estimate issued by the Federal Government earlier this year said four out of five victims go unidentified. So we definitely have a victim identification issue and the State participation in identifying, referring and supporting victims is the next logical step in our national response. In fact, this law has the capacity to be a game changer for Australia's operational response.

**The CHAIR:** Ms Moore, we might wrap that up there.

**Ms MOORE:** Thank you very much. I will just say one last sentence. As I said earlier, you are hearing that it is some of the most progressive legislation in the world, but it will only be so if it is properly resourced and properly implemented, and proper implementation requires having a sound victim response framework in place prior to, not after, not something to be worked out later, but prior to the victim support provisions of the Act, the criminal justice provisions of the Act coming into place. Otherwise we risk putting victims of trafficking at further risk and re-exploitation. Thank you.

**The CHAIR:** We will come back to that because that is a very important point about victim response and how we equip ourselves for that. I will ask the first question and return to your opening statement, Ms Tankard Reist. You would have seen the Government's submission, the amendment and justification for the recommendation to delete 91HAA. I might just read that out for the purposes of the hearing:

**CORRECTED**

> The Bill proposes to delete section 91HAA due to a conflict with the equivalent Commonwealth provision, which cannot be fixed by a redrafting of the provision (Item [26] of the Bill). The Commonwealth's provision(s473.5 of the *Criminal Code*) specifically exempts Internet service providers and Internet content hosts from the reach of their offence provisions, whereas the new NSW offence specifically targets them ...

I am not a lawyer. There are lawyers around the table and I rely upon them a lot to help us through this process.

**Reverend the Hon. FRED NILE:** I am not a lawyer.

**The CHAIR:** Reverend the Hon. Fred Nile is not a lawyer either.

**Mr DAVID SHOEBRIDGE:** One day, Reverend, one day.

**The CHAIR:** There is plenty of time. We would like your view on the practical side of that point. I am very driven by issues around conflicts and the Constitution getting involved in terms of these things. I am totally on side with your issue, I think we all are, but I need to understand the advice we are being given about the legal conflicts.

**Ms TANKARD REIST:** We think it would be useful for the Committee to seek further advice on these so-called adequate provisions. We do not think they are adequate and we have seen a pattern of exempting internet service providers [ISPs] for some time now, which is why we have supported the work of Anti-Slavery Australia and International Justice Mission [IJM] in this space. Our view was that the proposed offence of administering a digital platform used to deal with child abuse material would give law enforcement officers an additional tool in seeking to bring these criminals to justice and to protect children from abuse. We have said in our submission that the explanation is just not strong enough and we do not think that the repeal of the provision is justified and that more information needs to be provided.

I do not know if you had a chance to look at my piece that I wrote for the ABC but it was documented there and shown on the ABC *The 7.30 Report*, that in the first five months of 2017 there were 79 cases where telecommunications companies did not provide the online information, such as subscriber records, internet protocol [IP] addresses or mobile data required to make an arrest. This equated to a fifth of the cases being pursued. Those 79 cases could not be investigated and prosecuted because ISPs decided to protect the so-called privacy of their paying customers over the wellbeing of tortured children. Our argument is that ISPs and telcos are commercially mediating the abuse of children and not enough is being done to call them to account. On that ABC *The 7.30 Report* Alex McDonald asked what happens when there is insufficient information. Australian Federal Police Commander Lesa Gale responded:

> It stops. It ceases. It means we cant do anything more. It means, if there is a child that's been exploited, that nothing further can be done.

A child will not be rescued, an abuser can keep abusing. We think there is not enough information here as to why this repeal is justified. We need more to be done in this area, not less, not a weakening or a softening or a rolling back of what should be basic human right protections for the most vulnerable children in the world. This is a global epidemic, it is growing, this trans-national cyber trade in the bodies of defenceless children and we think it sends a really bad signal to roll that back.

**The CHAIR:** Is the issue here that this boils down to, effectively, a conflict between two laws and section 109 of the Federal Constitution, if it is challenged—which it would be I imagine—would default to the Federal one? Really it is an issue that Canberra needs to address.

**Ms TANKARD REIST:** Of course we think Canberra needs to deal with that, and we have been saying that as well. But the fact is that two other States have been able to move legislation against this. So why should New South Wales be left out? If I can draw your attention to the fact that two States have enacted legislation which criminalises the administration of computer networks for the purpose of sharing child exploitation material. In Victoria the Crimes Amendment (Child Pornography and Other Matters) Act 2015 made it an offence to administer or encourage the use of a child pornography website and to provide information to a person that is likely to assist them in avoiding capture or prosecution for committing one of these offences.

In Queensland the Serious and Organised Crime Legislation Amendment Act 2016 introduces similar offences to the Victorian legislation and also includes an aggravating factor of using a hidden network or an anonymising service, which further increased the sentence for these offences. So they have worked it out.

**The CHAIR:** That is very helpful.

**Ms TANKARD REIST:** Why not New South Wales?

**The CHAIR:** It is helpful to point that out.

**CORRECTED**

**The Hon. DANIEL MOOKHEY:** Ms Tankard Reist, on the issue of the digital platforms, I presume you paid attention to the Commonwealth debate that provided that exemption?

**Ms TANKARD REIST:** You know, we have limited resources to be across every element.

**The Hon. DANIEL MOOKHEY:** But for this one you paid some attention.

**Ms TANKARD REIST:** But we are not persuaded that the evidence for repealing the offence is strong enough. We are not persuaded that it is covered by the Commonwealth when internet service providers [ISPs] continue to be exempted. You might be aware of this Five Eyes security agreement to crack down on the big tech companies that may be hosting child exploitation material. Again the ISPs appear to be left out of this. If we are going to call on Facebook and Google and Twitter to cut down on it, which was represented by the Commonwealth with the Home Affairs Minister being part of that Five Eyes security agreement, why again do we continue to exempt the ISPs and the telcos?

**The Hon. DANIEL MOOKHEY:** I can understand the policy dimension of that but in the Federal debate, to the best of your knowledge, did you hear the Minister in his second reading speech—I think it was a he, or the assistant Minister—ever say that it is the intention of the Commonwealth Parliament to preclude States from criminalising the digital platform provisions?

**Ms TANKARD REIST:** I cannot remember the exact wording.

**The Hon. DANIEL MOOKHEY:** No—because he did not say that.

**Ms TANKARD REIST:** Okay. Well, that is why I did not hear it.

**The Hon. DANIEL MOOKHEY:** Is it written in the Commonwealth law that no State Government is allowed to criminalise this behaviour by ISPs?

**Ms TANKARD REIST:** No, obviously not because two State Governments have done it.

**The Hon. DANIEL MOOKHEY:** I ask you these questions because, to the extent that there is a conflict of laws that need to be resolved under section 109, unless the Commonwealth has explicitly stated that it wants to cover the field and they do not want States acting here, States have jurisdiction. To the extent to which we are being told there is a conflict of laws issue—I do not know if you are a lawyer or not—

**Ms TANKARD REIST:** No, I am not.

**The Hon. DANIEL MOOKHEY:** —I do not see how we could rely upon any such claim in the absence of an express provision in Commonwealth law that it intends to cover the field.

**Ms TANKARD REIST:** So why remove the offence here then?

**The Hon. DANIEL MOOKHEY:** Exactly. My point is that it is not as though the Commonwealth had said to the States, "Don't act". It is just that the Commonwealth has said it will not act. Do you agree with that?

**Ms TANKARD REIST:** So why repeal it in New South Wales then?

**The Hon. DANIEL MOOKHEY:** That is a very good question that you are asking.

**Ms TANKARD REIST:** That is what I am trying to understand.

**Mr DAVID SHOEBRIDGE:** You are furiously agreeing.

**The Hon. DANIEL MOOKHEY:** We are in furious agreement here, Ms Reist.

**The Hon. GREG DONNELLY:** We agree with you.

**Ms TANKARD REIST:** This is very unusual for me.

**The Hon. DANIEL MOOKHEY:** I know. I understand that.

**The CHAIR:** It is very unusual for us.

**The Hon. DANIEL MOOKHEY:** I will not lie. I did not expect to be in furious agreement with you on this point. The point is we cannot rely on legal advice that says there is a conflict of laws unless we have some evidence from the Commonwealth that the Commonwealth does not want the State of New South Wales to act in this respect.

**Ms TANKARD REIST:** Yes.

**CORRECTED**

**The Hon. DANIEL MOOKHEY:** And you have not come across any such evidence by the Commonwealth that it wants to preserve this as only something in which the Commonwealth can act.

**Ms TANKARD REIST:** Yes.

**The CHAIR:** You have given us evidence about other examples. We may well put questions on notice.

**Reverend the Hon. FRED NILE:** They have allowed the other States to do it.

**The Hon. DANIEL MOOKHEY:** Yes.

**The CHAIR:** We may put questions on notice to the interim commissioner about those other States in regard to that conflict. I am sharing questions among the lawyers.

**Mr DAVID SHOEBRIDGE:** Continuing on with what the Hon. Daniel Mookhey was talking about, one of the first questions is whether or not with section 474 of the Commonwealth Criminal Code Act 1995 there was an intention to cover the field; in other words, smother the capacity of the States to legislate in the same area. I think you have had that discussion. You are not aware of any discussions or any comments to the effect that the Commonwealth wanted to prevent the States from acting in the same area?

**Ms TANKARD REIST:** I certainly hope not.

**Mr DAVID SHOEBRIDGE:** Perhaps you might take that on notice and respond.

**Ms TANKARD REIST:** Yes, sure.

**Mr DAVID SHOEBRIDGE:** The other aspects where there might be an issue of conflict would be whether or not the proposed State law in any way impairs or detracts from the operation of the Criminal Code. You might take on notice whether or not you have formed that view because I would have thought that on at least a basic reading of it they are capable of simultaneous obedience. You can obey both and having the State one in no way impairs or detracts from the Federal one.

**Ms TANKARD REIST:** Yes. Well, that would be a good outcome.

**Mr DAVID SHOEBRIDGE:** Yes. That might be a reading you take.

**Ms TANKARD REIST:** If that is the correct reading, sure.

**Mr DAVID SHOEBRIDGE:** Do you think you could take that on notice?

**Ms TANKARD REIST:** I can, but we think the New South Wales provisions are much stronger.

**The Hon. DANIEL MOOKHEY:** Oh, we agree.

**Ms TANKARD REIST:** The penalties are stronger.

**Mr DAVID SHOEBRIDGE:** And it covers conduct that is not covered—

**Ms TANKARD REIST:** Correct. It covers conduct.

**Mr DAVID SHOEBRIDGE:** It is a bit like those Venn diagrams where you have the two circles and there is a significant overlap but there are also areas where each, both the Commonwealth and the State, operates independently of the other. Perhaps you might wish to take some legal advice about those issues—about whether it is capable of simultaneous obedience and whether or not section 91HAA in any way impairs or detracts from the Criminal Code.

**Ms TANKARD REIST:** Yes.

**Mr DAVID SHOEBRIDGE:** Thirdly, whether or not you believe the Commonwealth sought to cover the field. They seem to be the three constitutional questions we need answered.

**Ms TANKARD REIST:** Sure. Is this something the Committee can resolve? I mean, you guys tell me how many lawyers are around the table.

**The CHAIR:** You are talking about resourcing.

**Ms TANKARD REIST:** I am.

**The Hon. DANIEL MOOKHEY:** But we are asking you because, if we are to reach conclusions as a Committee, we need to have some evidence to support that conclusion.

**CORRECTED**

**Ms TANKARD REIST:** Of course. I just think it is not clear enough to be able to make a judgement that this is going to be taken care of at the Commonwealth level. What we have seen over a period of time is watering down and exemptions and ISPs and telcos continuing to facilitate these practices and not being brought into line.

**Mr DAVID SHOEBRIDGE:** Sometimes Committees receive confidential information but it is also sometimes useful to get a view of this on the public record. I am asking whether or not you are in a position to put anything on the public record that answers those questions.

**The CHAIR:** The members of the Committee are right: We need evidence. We can put some questions on notice but, from memory, there are only two submissions—yours and one other—that address this issue.

**Ms TANKARD REIST:** International Justice Missions [IJMs], yes.

**The CHAIR:** Yes, that is right.

**The Hon. GREG DONNELLY:** For the record, just to be clear: What we are dealing with—and I think the witnesses are aware of this—is that we have an Act that has been passed by the Parliament. What the Government has done is refused to proclaim that legislation and effectively has put onto the table a submission, which is submission No. 1 to this inquiry, and appended to that a whole raft of amendments that the Government says, if agreed to along with the regulation, would find the New South Wales Act being satisfactory and something that the Government could live with. I have to say in terms of doing that—I am sure you would have seen this from submission No. 1—there is limited explanation why the Government has identified a number of the amendments and said, "This is what we want." The Committee is forced to elucidate from our witnesses who appear before us what they believe are the reasons behind this.

**The CHAIR:** Your evidence has been very helpful, I must say.

**Ms TANKARD REIST:** Thank you.

**The CHAIR:** I am conscious of the time. I will turn to the Salvation Army. I promised we would come back to you. First of all, thank you for your submission. It is interesting that you talked about issues such as statewide New South Wales Police Force training, which is a good thing to point out in terms of preparing the State for the modern slavery bill, but you concluded by talking about victims' support and that we need to be proactively ready for that. Do you wish to outline what you suggest we should be talking about in that regard?

**Ms MOORE:** Sure. I would point out that is I believe the interim commissioner already is undertaking dialogue with the police around that.

**The CHAIR:** I am sure.

**Ms MOORE:** I think that is in hand. The point I am trying to raise is that you need the offences to make it clear to the police that this is their issue. Although I am sure some people would disagree I think history tells us that we do need some kind of mechanism now to make it official, but then that training undoubtedly will uncover more victims. As you said, what do you do when you start to identify people? It is unclear to me what considerations have been made around victims' support. I am not sure if there is just an assumption that victims will be referred onto the Support for Trafficked People program, but I think there are some questions around how that is actually going to happen. Some specific recommendations I can make to you around what the State can do would include—we did not comment on this because it is actually quite large; we are open to providing a supplemental submission, if that is required—extending eligibility of victims of trafficking to a range of support services that are funded primarily by the State.

The State also could actually look at developing its own victim response funding where you allow tenders and support various organisations with transferable skills may apply and deliver support for trafficked people within the State. Just in the interests of time, I would also refer the Committee to another submission with which I was involved by the Good Shepherd and the Monash University where there is a series of recommendations made by Good Shepherd around forced marriage. There are some specific amendments there including extending eligibility for people at risk of forced marriage through amendments to the family violence legislation in the State.

**The CHAIR:** Thank you. If you want to supplement that answer on notice with more detail, you are welcome to.

**Mr DAVID SHOEBRIDGE:** Could I just address one question to that supplementary?

**The CHAIR:** The Hon. Greg Donnelly has the call.

**CORRECTED**

**The Hon. GREG DONNELLY:** Ms Tankard Reist, you obviously gave particular attention to point number two in your submission. With respect to the remaining points, do you want to draw our attention to any of the other points in particular or would they just be considered supplementary to your main points?

**Ms TANKARD REIST:** I think so. That was the main thing that we wanted to emphasise in the limited time we have. The other points are fairly self explanatory. Unless you had a specific point you wanted to ask me about?

**The Hon. GREG DONNELLY:** No. They do read pretty clearly.

**The CHAIR:** The submission is taken as a whole.

**Mr DAVID SHOEBRIDGE:** This question is directed to Ms Moore or Ms O'Brien Machado. In its submission the Women's Legal Service put forward 10 recommendations to the Victims Rights and Support Act that it says are necessary to make sure that the Act can support victims of slavery. If you are taking questions on notice, could you review each of those 10 recommendations from that submission and see whether or not you endorse them?

**Ms MOORE:** Sure.

**Reverend the Hon. FRED NILE:** You recommended that the victims compensation scheme should accommodate survivors of trafficking and slavery, including forced marriage. How do you see us going about that? Do you want us to connect that to the Modern Slavery Act or to a separate Act?

**Ms MOORE:** Are you referring to our submission?

**The CHAIR:** What page are you on, Reverend the Hon. Fred Nile?

**Ms MOORE:** On page 9 of our submission we endorse this Act's extension of support to survivors of acts of slavery occurring in New South Wales.

**The Hon. GREG DONNELLY:** Ms Tankard Reist, going back to your point number two and the recommendations on page 4, we may—I do not say we will—face a prospect of some passing of time before we get a modern slavery Act in New South Wales.

**Reverend the Hon. FRED NILE:** We hope not. We hope it will not be delayed.

**The Hon. GREG DONNELLY:** It has been delayed. That is a matter of fact. It is in the hands of the Government. With respect to a delay or a lengthy delay—

**Reverend the Hon. FRED NILE:** It is in the hands of this Committee.

**The Hon. GREG DONNELLY:** It has got nothing to do with this Committee; it has to do with the Government.

**Reverend the Hon. FRED NILE:** They are our recommendations.

**The CHAIR:** Order!

**The Hon. GREG DONNELLY:** Would you invite consideration by the Committee to look at—in terms of a recommendation—this egregious area that you are dealing with in point number 2 and what other States have done in terms of going it alone so that we do not face—in this area, where there are obviously very egregious things going on—contemplating proceeding with a particular matter. That is, finding a way forward so we do not find that as a Parliament we deal with this by a bill or Act that keeps getting kicked into the long grass over time?

**Ms TANKARD REIST:** Are you asking me if you should be looking at what Victoria and Queensland have done, separate to what happens with this process?

**The Hon. GREG DONNELLY:** Possibly, yes.

**Ms TANKARD REIST:** I think you should use any means at your disposal to act on this. I have read multiple case studies and I have documented them—others have as well. They just rip your heart out. The torturing of small children for sexual pleasure is beyond the imagination of most of us here, isn't it? The figures are just the tip of the iceberg. It is seen to be the fastest growing new crime. Transnational cyber sex crime now involves small children. I suppose I would say that whatever is going to address that quickly is a good thing. Obviously we would all prefer that what we have now is not watered down or overturned or rolled back. That would be the preference.

**CORRECTED**

But if we do not get that obviously I am going to say, "Yes, let's look at what the other States have and how that can be implemented here." Many of the criminals are in your own State. New South Wales is quite well known for providing many of these perpetrators and predators—some of whom have been caught but many of whom have not. We are talking about massive global criminal operations. We are not talking about lone rangers who are looking at this stuff and commissioning the abuse. It is highly organised and is often hidden and secretive. That is a long answer to say that of course we would support and welcome anything that could help reign this in.

**The CHAIR:** To supplement that, I will be putting a question on notice to ask the acting commissioner about those two pieces of legislation in the other states. I will be asking her to come back to us with advice about why it is conflicting. That is new information for us. That is why we are having the inquiry.

**Ms MOORE:** I did want to make one other recommendation to you. I think the adoption of only certain offences from the Commonwealth Criminal Code into the State Crimes Act creates a lot of confusion. In fact, I am surprised you have not heard more concern about this. If you are not already seeking additional legal advice, I would encourage you to do so. Including only certain offences—that of servitude, slavery, child forced marriage and child forced labour—creates some confusion, particularly for State police in terms of when they are bound to respond. It imposes an unrealistic, almost unmanageable decision on State police to decide, "Well, can I deal with this case right now?" It often takes a lot of time for facts to emerge in order to decide what threshold the case might amount to. Our recommendation would be to create full harmonisation with the Commonwealth slavery and trafficking offences to eliminate any confusion about when—

**The CHAIR:** Full harmonisation of that area of the Crimes Act? I do not think you have elaborated on that in your submission.

**Ms MOORE:** No, we did not. It is something that we considered afterwards.

**The CHAIR:** Could you take that on notice and come back to us with an expanded explanation of that?

**Ms MOORE:** Sure.

**The Hon. GREG DONNELLY:** We want to harmonise up; not harmonise down.

**Mr DAVID SHOEBRIDGE:** Particularly given that the effect of that would be to remove certain conduct from criminal sanction?

**Ms MOORE:** Let me be clear: I am not a lawyer, which is why I am advising the Committee to seek legal expertise. I can endeavour to do that myself. One of the potential impacts of doing this is that in addition to creating some confusion for first responders about when it is their issue and when they have to bring in the AFP, it also inextricably links that response to a criminal justice response. I think what you need is greater separation between protection priorities and whatever ends up transpiring or not in the criminal justice space. Does that make sense?

**The CHAIR:** Yes, it does. That is very helpful. The way the Committee systems works is that we are basically fishing for evidence to back in our positions. We bring our own experiences to the table.

**Mr DAVID SHOEBRIDGE:** I thought we were just a totally neutral petri dish waiting to be explored.

**The CHAIR:** When I chair it is a petri dish. That concludes the evidence of these witnesses. Thank you for your submissions and for bringing forward your life experiences for this Committee. You took some questions on notice. You have 21 days to get them back to us. Thank you very much.

**(The witnesses withdrew.)**

**CORRECTED**

**BERNIE SMITH,** Branch Secretary/Treasurer, Shop, Distributive and Allied Employees' Association NSW, sworn and examined

**MARK MOREY,** Secretary, Unions NSW, affirmed and examined

**KATE MINTER,** Executive Officer, Unions NSW, affirmed and examined

**The CHAIR:** Good afternoon. I invite one or all of you to make an opening statement.

**Mr MOREY:** I have got a short one and I think Mr Smith will make one as well. Thank you for the opportunity to make a submission to the inquiry. Unions NSW has made a brief submission to the inquiry which focuses on the importance of introducing the modern slavery legislation as soon as possible. The legislation is an important step in shining a spotlight on the practice of modern slavery. Slavery exists here in Australia. Unions NSW works with unions and migrant organisations to represent the interests of temporary migrant workers. Increasingly we have seen examples of unscrupulous employers using precarious visa conditions and working rights as a tool to exploit and silence temporary migrant workers. We have campaigned for greater protection for workers in these circumstances, including union representation and rights, but the Modern Slavery Act 2018 is a key piece in this work, providing an opportunity to increase the transparency and highlight instances of modern slavery.

The Unions NSW submission outlines key elements of the Act we believe must be included, namely maintaining the $50 million to $100 million threshold for reporting. This will include businesses not captured by the Federal legislation and it aligns well with the United Kingdom legislation. Removing the exemption for businesses with fewer that 20 employers will allow companies who engage a large number of independent contractors from reporting. Maintaining penalties for non-reporting is crucial to ensure buy-in from the business community. Additionally, Unions NSW would like to see the commissioner play an active role in ensuring the reports prepared by businesses have been sufficiently prepared and meet a standard of quality that ensures businesses are genuinely investigating their supply chains.

The specific inclusion of government procurement should be included. There is a strong community expectation that governments do all in their power to remove slavery from their supply chains. I would also like to make an additional recommendation to the legislation which was not included in our original written submission in relation to reporting requirements and supply chains. Unions NSW also believes it is important that this captures franchising arrangements. The current legislation is not clear on whether they are captured as being part of a supply chain. As my colleagues at the Shop, Distributive and Allied Employees' Association NSW [SDA] can attest, some franchising arrangements have bred exploitation as a result of the economic pressure exerted on franchisors. As such, it is important that this is captured in the legislation as an important supply chain relationship through which risks for modern slavery must be identified.

**Mr SMITH:** Thank you for the opportunity to address the Committee. The Shop, Distributive and Allied Employees' Association NSW is the union for retail, fast food and warehouse workers in New South Wales. It is the largest union in New South Wales. Our submissions focus on some key issues and that is what we intend to address in terms of evidence here today as well. We do believe that the New South Wales Act has an important role to play and complements the Commonwealth legislation in two ways. Firstly, it captures companies with $50 million to $100 million in turnover, which we think is important. Secondly, it has penalties that the Commonwealth scheme does not have, which is also important in terms of compliance—we see compliance without penalties as problematic.

As mentioned by Mr Morey, we do have a particular focus on the issue of franchisees. In our submission's terms of reference 1 (b) and 1 (i) in terms of supply chains, we do stress the need to be clear that supply chain reporting should capture head franchisors all the way down through franchisee chains, however they are described. Head franchisors should have to treat franchisees as part of their supply chains. The 7-Eleven issue was emblematic of the issues we see in the franchising system, but not isolated to just 7-Eleven. It is a serious issue across a number of franchise systems that we believe should be addressed. Workers were stuck in a business model that requires them to breach their visas and are then stuck where they are find it very hard to speak out. We think it is very important how this Act interacts both with the Commonwealth legislation but also with how people are treated in terms of threats of deportation.

I note in terms of government procurement—I think we address this in our submissions—that it should be taken at a very broad level. When the 7-Eleven issue did break as a problem we wrote to the Government to question the sale of Opal cards through 7-Eleven networks until such time as they had given undertakings and

**CORRECTED**

commitments about their labour practices. However, that was not forthcoming. We think there should be a very broad view of government procurement and use of government services in the private sector in relation to the Modern Slavery Act 2015. We note and approve of the mandatory reporting from $50 million in New South Wales, which the Commonwealth could take a lesson from. However, there is something in the Commonwealth legislation that would be beneficial to the New South Wales legislation, which is the idea of voluntary reporting for those businesses below $50 million. This would be particularly beneficial to those businesses that are serious about their supply chains and making sure their supply chains are compliant.

I am proud to say that on Friday the Australian Workers' Union [AWU], the Transport Workers Union [TWU] and the SDA signed an historic memorandum of understanding [MOU] with Coles to try to eliminate all forms of exploitation in the supply chain of Coles, particularly in the horticultural area, which we see an area where abuse of people's rights is rife. It has the goal of a safe, sustainable, ethical and fair retail supply chain in which no worker, regardless of their employment status, citizenship or visa status needs to fear exploitation, wage theft, bullying, sexual harassment, unsafe work or modern slavery. That will take a variety of forms. The MOU will work towards promoting lawful employment practices throughout supply chains and undertaking significant education for workers. There will also be a pilot program in a selected region to try to make sure there is proper enforcement in those areas. We think that voluntary reporting would be very beneficial in exposing supply chain problems or businesses choosing only to deal with companies that voluntarily report.

Finally, we do not see there is any reason for any delay. We think the sooner this Act is put into place the better. We think it is very important that the anti-slavery commissioner office is properly resourced. The last thing I will say is that if there is a role for unions to play at all in this regard to assist in the enforcement of this Act then we would be willing to play whatever role we can. I note a brother of mine who works in Legal Aid has recently been involved in a modern slavery case in the Australian Capital Territory in relation to prostitution, which is underway at the moment. That was brought to Legal Aid's attention by United Voice Australia down there. I think we have a role to play, where we can, to assist in this process.

**The Hon. DANIEL MOOKHEY:** Mr Smith, these questions follow up from your statement about the memorandum of understanding you said that you entered into with Coles.

**Mr SMITH:** Yes.

**The Hon. DANIEL MOOKHEY:** That was on Friday?

**Mr SMITH:** Yes, it was on Friday.

**The Hon. DANIEL MOOKHEY:** Under that memorandum of understanding, how long would it take for you and Coles to reach a conclusion on it?

**Mr SMITH:** The Australian Workers' Union, the Transport Workers Union and ourselves announced the retail supply chain alliance in May. We have been in consultation with Coles since that time.

**The Hon. DANIEL MOOKHEY:** Is Coles one of the biggest procurers, if not the biggest procurer of fresh food in Australia?

**Mr SMITH:** Between themselves and Woolworths they would take a very large proportion of the fresh food market.

**Mr DAVID SHOEBRIDGE:** Quite sensibly not taking a position on that.

**Mr SMITH:** I would say Woolworths has probably got a larger share of the market, perhaps, but I could not say definitively.

**The Hon. DANIEL MOOKHEY:** Between the two of them, they would be accounting for the purchase of close to, what, 60 per cent to 70 per cent of Australian fresh fruit produce?

**Mr SMITH:** Not quite that amount, but it is very significant.

**The Hon. DANIEL MOOKHEY:** In terms of trucking movements, they would be responsible for the purchase of domestic freight movements close to 70 per cent from the best of your knowledge?

**Mr SMITH:** You would have to do ask the Transport Workers' Union that one—demarcation.

**The Hon. DANIEL MOOKHEY:** I might do that.

**Mr SMITH:** But I could take the question on notice and supply that information to the Committee.

**CORRECTED**

**The Hon. DANIEL MOOKHEY:** In the course of your conversation with Coles—Coles would be dealing with, what, thousands of suppliers, would they?

**Mr SMITH:** Yes.

**The Hon. DANIEL MOOKHEY:** Has Coles ever made the point to you that part of the reason why they might struggle to deter the labour abuses in their supply chain is because they do not have knowledge about what is going on in the lower parts of their supply chain or the subcontracting chains? That is correct?

**Mr SMITH:** Yes. The real problem is that if you look at—I think they describe them as tier 1, tier 2, tier 3 and tier 4 suppliers of produce. The tier 1 are the major brokers, and so there is a fair bit of transparency at that level. Tier 2, there is some transparency. By the time you get to tier 3 and 4, whose goods are then amalgamated with other farms' goods, it becomes very murky in terms of the transparency of that level. Part of the reason that Coles has seen the benefit in working with unions is to try to get enforcement at top down and bottom up at the same time.

**The Hon. DANIEL MOOKHEY:** Visibility as well, presumably, not just enforcement?

**Mr SMITH:** Yes.

**The Hon. DANIEL MOOKHEY:** No-one wants to preclude medium enterprises that trade between $50 million to $100 million from being able to participate in these supply chains. But would you agree that if those enterprises that are between $50 million to $100 million have to report, it would make your responsibilities a lot easier, as it would Coles' responsibilities a lot easier, to get visibility at the tier 3 and tier 4 level in their supply chain?

**Mr SMITH:** Yes, particularly given issues with the grocery code of conduct. There are some issues about how Coles would have to contract with their suppliers, which provides further problems with transparency down the chain. So, yes, there would be benefits to that.

**The Hon. DANIEL MOOKHEY:** You are aware that under the New South Wales Act, section 27 (1) of the Act provides the Anti-slavery Commissioner with, effectively, a means to recognise the agreement that you sign with Coles and actually uphold it as an industry agreement or as an agreement that is more likely to foster compliance with anti-slavery laws? You are aware of that?

**Mr SMITH:** I was not, but I am now.

**The Hon. DANIEL MOOKHEY:** Are you aware that there is no such provision in the Commonwealth legislation?

**Mr SMITH:** It would not surprise me, because we found a number of elements in the New South Wales legislation that are not present in the Commonwealth legislation.

**The Hon. DANIEL MOOKHEY:** To the extent to which you and one of Australia's biggest corporations enter into an agreement, you can get recognition of that agreement under the New South Wales law but you cannot get that recognition under the Commonwealth law. Do you think it would be making your life a lot easier if you could get recognition of that under the Commonwealth law and be upheld as an example of good practice?

**Mr SMITH:** Definitely. There were actually issues with us in finalising our memorandum of understanding because of contractual issues down the supply chain, so recognition of such an agreement would be very beneficial.

**The Hon. DANIEL MOOKHEY:** Given that you can now recognise your agreement or seek to have your agreement with Coles recognised by the Anti-slavery Commissioner of New South Wales, do you think that it is more likely to induce, for example, Woolworths to want to enter a negotiation with you as well?

**Mr SMITH:** I would think that all good, ethical operators in the industry would want to follow the lead of a good, ethical operator in the industry and set a standard. I would hope that people would be seeking to eliminate any form of exploitation in their supply chains.

**The Hon. DANIEL MOOKHEY:** Under the memorandum that you just said, do you have the opportunity to bring complaints to Coles' attention and seek remedy?

**Mr SMITH:** Yes.

**CORRECTED**

**The Hon. DANIEL MOOKHEY:** And to do that expeditiously without having to notify law enforcement, effectively? Or you can do it in the marketplace before coming to the regulators?

**Mr SMITH:** Yes. The aim of the memorandum is to—

**The Hon. DANIEL MOOKHEY:** Stop the practice.

**Mr SMITH:** —have best practice in the industry. We are looking to change practices, rather than remove people, unless they are continually demonstrated to not adjust their practice to become best practice in the industry. That would then enable the removal of those people from the supply chain. But we want to see local communities and local economies flourish by having good, ethical supply chains. We think there are economic benefits to local communities and to rural communities. Just for example, the proper payment of workers in a supply chain would mean that those workers would have a whole lot more money to spend in those local communities for the periods of time that the transient workforce is in those communities, as opposed to the very limited funds that people being exploited have to spend in the local community. That itself would be the—

**The Hon. DANIEL MOOKHEY:** But it is not the case that the farms that comply with the law will be disadvantaged by those who do not. In fact, once we have a level playing field for business, it makes law-abiding businesses able to attain a fair commercial footing, as opposed to competing with businesses that employ slaves.

**Mr DAVID SHOEBRIDGE:** It does not employ slaves.

**The Hon. DANIEL MOOKHEY:** It does not employ slaves; it uses slaves.

**Mr SMITH:** Yes, however they might be recompensed. Anecdotally, to, there is the significant issue of labour hire suppliers in the industry. We may even have producers who believe they are paying them at the right amount and are paying an amount sufficient to cover wages, but a labour hire provider perhaps acting unethically can also then take a significant proportion of that and the person performing the actual work finds themselves in a position where they do not receive what they are entitled to.

**Mr DAVID SHOEBRIDGE:** But the further we push reporting down that supply chain, the more robust it is going to be, which I think is the Hon. Daniel Mookhey's statement.

**Mr SMITH:** Yes.

**Mr DAVID SHOEBRIDGE:** That is one of the real benefits of having the lower threshold in the New South Wales Act.

**Mr SMITH:** I do believe that some people have complained about compliance costs, but the reality is that most of the issues around compliance are records that these businesses should have already. If you employ somebody, you need to have proof of right to work in the country, so it is not a new requirement for people to have that sort of record. Keeping times and wages records are not a new requirement for people to keep those times and wages records. So most of the compliance issues in terms of employment-related matters are matters that people should already be doing. If we have that reporting pushed all the way down the chain, it makes it very easy for everyone up the chain to ensure that there is proper compliance with each stage.

**Reverend the Hon. FRED NILE:** I would like to ask you a very important question about this Modern Slavery Bill. In your submission, you said this Act should be implemented as soon as practicable, but you do not actually mention a date. Some other submissions have talked about January 2020. Would you be supportive of that date that it must be implemented?

**Mr SMITH:** I would have been supportive of yesterday, but January 2020 would be great. The sooner it can be done, Reverend Nile, the best.

**Reverend the Hon. FRED NILE:** You said the legislation should be implemented without delay.

**Mr DAVID SHOEBRIDGE:** That is 1 January.

**Mr SMITH:** Yes.

**The CHAIR:** The Committee's reporting date is Valentine's Day—14 February.

**Reverend the Hon. FRED NILE:** We have to get a change of our reporting date.

**The CHAIR:** We may have to get all the staff back from Christmas—talk about modern slavery.

**Mr DAVID SHOEBRIDGE:** I think we have to report on or before 14 February.

**Reverend the Hon. FRED NILE:** That is what I just said. We have to change our reporting date.

**CORRECTED**

**Mr DAVID SHOEBRIDGE:** I am agreeing with you. One of the issues in terms of consistency between the State and Commonwealth Acts is the different definitions of turnover or consolidated revenue. The New South Wales Act uses the term "turnover" and it is not defined, whereas the Commonwealth Act uses the term "consolidated revenue". "Consolidated revenue" picks up revenue of not just the head entity, but also any other entities that are controlled by that head entity. Some people have said for consistency, and other people have said because it is a superior term, that we should be adopting the Commonwealth term "consolidated revenue" rather than "turnover". Do you have a view about that?

**Mr SMITH:** We have not really thought about it. But thinking about it now, I think we would be more likely to support "consolidated revenue". What we see is companies, when they break themselves up into different entities to avoid—not that everyone does it, but to avoid thresholds and reporting requirements. On a practical basis, I think "consolidated" would be a better way to go.

**Ms MINTER:** It might be worth considering, as well, within the legislation who has oversight around what those are for each company and how you are ensuring that the right companies are reporting when they should be, because unlike the Federal legislation, the State has penalties for non-reporting. But who is actually calculating what that turnover was and who is eligible, and who should be reporting and who is not?

**Mr DAVID SHOEBRIDGE:** Yes. The other question is whether that would pick up franchises. It probably would not, because a franchise relationship is not an ownership or control relationship.

**Mr MOREY:** That is right.

**Mr DAVID SHOEBRIDGE:** You would be asking for there to be some roping-in provisions where you aggregate the turnover amongst franchise operators. Is that right?

**Mr SMITH:** Yes, we would not oppose that at all. Our view is that the more companies that are caught by this, the better. I think in our submission we said there should not be any exemptions for businesses with over $50 million of turnover or however it is described. So if there is a way to capture more businesses, I think that is a good thing. So, yes. So if you have franchises like 7-Eleven, operating from common systems with common reporting requirements, even if the principal franchising entity's turnover or revenue was less than $50 million, you would want to see an aggregation of all those franchises in order to rope them in in those circumstances.

**Mr SMITH:** I believe so. I might take it on notice about what the best way to do that is, but, yes, our view is that we should definitely be capturing as many businesses as possible and they should not be artificially broken up in a way to avoid reporting requirements. I am happy to take that on notice.

**The CHAIR:** In the example you gave of 7-Eleven, we acknowledge the problems that have occurred. There are a lot of mum-and-dad operators and franchisees. We do not want them to have to do statements. The corporate head office should be examining the supply chain.

**Mr SMITH:** For the group.

**The CHAIR:** You will take it on notice but that is a complicated area.

**Mr SMITH:** I will check it but I do believe that that operator should be able to provide head office with a statement quite easily because the compliance cost to that franchisee would be very low because it is largely material they should already have records of. So I do not think that would be a significant—

**The CHAIR:** Buying through some sort of centralised buying operation too. It is just the staff issue—

**Mr SMITH:** So, then, they should be able to provide an assurance to the head franchisor.

**Mr DAVID SHOEBRIDGE:** The bulk of the supply chain could be dealt with through the head office because, normally, if you have a franchise, you are obliged to buy from certain suppliers and then that would just leave the specific local operations to be signed off.

**The CHAIR:** It is an interesting point. Take it on notice.

**The Hon. GREG DONNELLY:** Mr Morey, paragraph 10 on page four of your submission states:

> 10. The Federal Modern Slavery Act 2018 and the NSW Modern Slavery Act 2018 are complimentary to each other. The NSW Legislation is a better piece of legislation which includes more comprehensive reporting requirements and protections for people who have or are experiencing modern slavery.

I will take a moment to explain the predicament this inquiry is confronting. We have a situation where the Parliament passed the modern slavery legislation—in fact it received royal assent—but the Government paused when it got to the point of proclamation. That is the situation we are in. On or around May this year

**CORRECTED**

it became clear that this is what the Government had done. It had not told people what it was doing but it was discovered on or around early May this year. The Government then took steps to set up the current inquiry. It was very quick off the mark getting its submission in. In fact, it got its submission in by August. I am sure you have seen its submission—it is submission number one—or you would be generally familiar with it.

Attached to that submission is seven pages of amendments to the legislation. In addition to the seven pages of proposed amendments, there is a proposed regulation. The Government's position, as we understand it from the evidence this morning from the Interim Anti-Slavery Commissioner, was that if there was agreement to all of the amendments and the regulation, we could probably get this deal done pretty quickly. We could get this legislation through—that is the existing Act, picking up the amendments with the regulation—and we could probably have it all done within a couple of weeks.

But the challenge is—is it not—that with respect to what the Government is proposing with these amendments, a number of them go way beyond dealing with, dare I say, inconsistencies or rub points with the Commonwealth over constitutional matters; they go to re-basing the New South Wales legislation to elements closer to the Commonwealth legislation. So we actually have an exercise of circling back to the legislation and trying to re-base it to something more equivalent to the Commonwealth legislation. As a statement of general principle, what does Unions NSW say—and, indeed, the Shop Distributive and Allied Employees' Association can make its own comments as well—about a government that, after passing a piece of legislation through the Parliament, does not proclaim it and then undertakes an exercise like we are going through here?

**The CHAIR:** I think that is, again, Mr Donnelly—

**The Hon. WES FANG:** Point of order: While I understand the passion of Mr Donnelly, the scope is well outside the terms of reference of this inquiry and the question is out of order.

**The CHAIR:** I have ruled that.

**The Hon. GREG DONNELLY:** To the point of order: What "scope" is out of order?

**The CHAIR:** Mr Fang is referring to the question being outside the terms of reference. I ruled on that earlier today—that the question of the Government's motives is outside the terms of reference. If you want to rephrase it in such a way that does not call for comment on the Government's decision to defer this—

**The Hon. GREG DONNELLY:** If a government—

**The CHAIR:** No, it is outside the terms of reference. We will take that as a comment.

**Mr MOREY:** Maybe I could respond in this way. Before the powers of the State Government around industrial relations were referred to the Federal Government under constitutional powers, there was always a leapfrogging between the State jurisdiction and the Federal jurisdiction to improve legislation. So, often, the State would be ahead of the Feds or the Feds may be ahead of the State, and then we would leapfrog over each other. So, where this legislation is strong and good, it should be, in our view, implemented as soon as possible.

**Reverend the Hon. FRED NILE:** Hear, hear.

**Mr MOREY:** Whether, then, the Feds need to improve on what they are doing—

**The CHAIR:** Leap over again.

**Mr MOREY:** Jump over it again. But we should always be trying to improve legislation, not coming back—

**The Hon. DANIEL MOOKHEY:** We should have a race to the top, should we not?

**Mr MOREY:** Absolutely.

**The CHAIR:** That is a very pertinent response.

**The Hon. DANIEL MOOKHEY:** Reverend the Hon. Fred Nile might have a question.

**Reverend the Hon. FRED NILE:** I have one general question. In your submission, you made a very strong point that the reporting exemptions for companies with 20 or fewer employees should be rejected. You give the obvious reason; companies could then have a small number of employees and use independent contractors. Could you comment on that?

**Mr MOREY:** An example that we have been working on with the Transport Workers' Union is in relation to food delivery services; so, Foodora, Deliveroo, those types of companies. What we find there is they

**CORRECTED**

have small head offices that are making very large profits, yet their workforce is extremely widely spread throughout the city—large numbers of employees, all deemed to be independent contractors. And so they would be able to get around this provision by saying they have less than 20 employees, yet they have a massive million-dollar turnover. We believe that those companies should also be subjected to this legislation, particularly from the work that we have done with the Transport Workers' Union in finding that the majority of those who are riding bicycles are often here on holiday visas, student visas, they work in excess of the 20 hours, and, then, if there is a problem industrially, with workers compensation or anything like that, they are afraid to speak out because they are told, "If you speak out, we will report you and you will get deported." In those circumstances, I think it is very pertinent that that exemption does not apply.

**The Hon. DANIEL MOOKHEY:** Does Unions NSW operate a migrant workers centre, effectively, or an assistance service?

**Mr MOREY:** We do. We have a service called Visa Assist. We are now in a collaborative project with an immigration law centre, and what we do is we now offer immigration advice to people who are prepared to join their union. Many of these people are in precarious employment.

**The Hon. DANIEL MOOKHEY:** In the course of you establishing that service, presumably you would have had reports to you about abuses that would give rise to the need for such a service?

**Mr MOREY:** That was one of the reasons why we set the service up; the number of people who were in employment situations or independent contracting situations who were being significantly exploited and feeling that they cannot speak out about these things for fear of being deported.

**The Hon. DANIEL MOOKHEY:** Have you or the law firm come across scenarios in which people are, effectively, bonded to an employer in exchange for the employer sponsoring a visa?

**Mr MOREY:** There have been a couple of those and, anecdotally, through other people, particularly migrant communities, that we have spoken with, one of the biggest fears is not being able to maintain employment or maintain a sponsor arrangement, and so people are more likely to stay in exploitative employment arrangements. One of the other things is that often the perception is that because they are from overseas and they want to stay, they do not quite understand what is going on. These people actually understand very clearly that they are being exploited and they make a choice, often, to remain there because they do not want to endanger their immigration status.

**The Hon. DANIEL MOOKHEY:** But you would agree that the practice of debt bondage should be illegal?

**Mr MOREY:** Absolutely, 100 per cent.

**The Hon. DANIEL MOOKHEY:** And, presumably, you would agree that the practice of deceptive recruiting for labour or services should be illegal?

**Mr MOREY:** Yes, it should be.

**The Hon. DANIEL MOOKHEY:** I read in the paper, maybe a year ago, that Unions NSW provided a translation service for advertisements that were in non-English speaking newspapers. Is that correct?

**Mr MOREY:** Yes, we did.

**The Hon. DANIEL MOOKHEY:** From memory—and correct me if I am wrong here—that revealed that effectively jobs are being advertised for slave rates and slave wages, is that correct?

**Mr MOREY:** That is correct.

**The Hon. DANIEL MOOKHEY:** And that is happening right now in New South Wales.

**Mr MOREY:** That is correct.

**The Hon. DANIEL MOOKHEY:** To the extent to which you know, has any employer who was engaging in that practice been prosecuted?

**Mr MOREY:** No, and actually the last survey that we did had a number of construction jobs in it. We were contacted by the Australian Building commission and we reported those businesses to them. To this date we do not believe that any of those businesses were prosecuted.

**The Hon. DANIEL MOOKHEY:** Do you mean the Australian Building and Conduct Commission?

**CORRECTED**

**Mr MOREY:** Yes.

**Reverend the Hon. FRED NILE:** They have not been prosecuted?

**Mr MOREY:** We have had no notification from them that any action was taken.

**The Hon. DANIEL MOOKHEY:** But to the extent to which action was ever to be taken against them, you would agree though that there is a role for the law to say to those people that you should not do it again? There should be ability for orders to be made on those people not to do it again.

**Mr MOREY:** There should be significant repercussions because what we find is these are not one-offs. These are often systematic schemes that are put in place. Anecdotally we have been told of an accountancy firm assisting employers to spread the financial remuneration so that they do not have to pay things like superannuation, how to keep people off the books while they are undertaking work. There is actually, we believe, a cottage industry now in exploiting people from overseas.

**The Hon. DANIEL MOOKHEY:** My other colleagues are now excited enough to ask some more questions so I will just ask one more.

**Mr DAVID SHOEBRIDGE:** We were being polite.

**The CHAIR:** That is the last question for Mr Mookhey.

**The Hon. DANIEL MOOKHEY:** You are aware that the Government is proposing, by way of the amendment sheet that my colleague Mr Donnelly referred to, eliminating from the New South Wales law part 4 of the Act which is modern slavery risk orders. I will read this for you. The current law as passed by the Parliament yet to be proclaimed says:

> that, on the balance of probabilities, there is reasonable cause to believe, having regard to the nature and pattern of conduct of the person, that the person poses a risk of engaging in conduct constituting modern slavery

It is a preventative order to stop it from taking place in its first instance. If this was to be removed would you agree that the businesses that you just referred to would not face any legal sanction under the New South Wales law or the Commonwealth law. They can continue to effectively go on with it until someone prosecutes them and convicts them? Would you agree with that?

**Mr MOREY:** That would be our understanding of the situation, yes.

**The Hon. DANIEL MOOKHEY:** Do you think we should keep modern slavery risk orders or should get rid of them?

**Mr MOREY:** We should keep modern slavery risk orders. We should keep anything that will deter people from doing this. I know people will jump in and say the obvious question, "What about mum and dad businesses?" In fact, I think what you will find is most mum and dad businesses are adhering to the law—

**The Hon. DANIEL MOOKHEY:** Do not employ slaves.

**Mr MOREY:** They do not employ slaves and they are very supportive in ensuring that there is a level playing field and their business is not being undercut because they are doing the right thing. I do not think at this stage there is any penalty significant enough to deter people from doing it systematically. I say that—systematically—because this is what is actually going on. It is systematically occurring out there by people who are exploiting these people. You will find most mum and dad businesses will be very supportive of such provisions because it will protect their viability economically in the marketplace.

**Mr DAVID SHOEBRIDGE:** Mum and dad are doing alright if they have a turnover of $50 million.

**Mr MOREY:** They are some pretty successful mums and dads.

**The CHAIR:** Not to be lighthearted but you should look at family run businesses in terms of that—wages.

**Mr DAVID SHOEBRIDGE:** We had evidence from some of the business representatives that the creation of a State commissioner was unnecessary and that a preferable option would be to simply require the existing Fair Trading and Fair Work inspectors to also cover issues about modern slavery. Do you have a view about the adequacies of the existing inspectorate, both Fair Work and Fair Trading, when it comes to addressing modern slavery issues?

**The Hon. DANIEL MOOKHEY:** Or in general?

**CORRECTED**

**Mr MOREY:** Our experience is: If you are actually going to police something and regulate something, you do not put additional work on to under resourced departments. Particularly in these environments and dealing with this, you need people who are skilled in their knowledge and understanding about how these operations work. They have to be keenly focused on it and often these cases take a long time to put together and prosecute. Finally, if you are really committed to outlawing slavery and making sure people are not doing it then you would find the resources to ensure you have a department that is effective and efficient in implementing the law and deterring these operators from doing this.

**Mr DAVID SHOEBRIDGE:** Do either yourself or any of your affiliated organisations have experience of referring matters to the Fair Work Ombudsman or the Fair Work Inspector and getting a timely and effective result when it comes to allegations of modern slavery?

**Ms MINTER:** I would not say that unions would refer issues to any of those organisations where they had the capacity to be able to assist workers directly, but in the extent that workers that we have engaged with, migrant workers directly who have gone to assistance there, they do not always find the assistance that they are hoping for. There has been some criticisms around the threshold at which someone needs to be experiencing exploitation before the Fair Work Ombudsman is able to assist. That is a significant problem particularly given that modern slavery might not be identified in the first instance of it being reported by a worker directly to the Fair Work Ombudsman. We have also got serious concerns around the information sharing between the Fair Work Ombudsman and the department of immigration.

We have sought some assurances from the Fair Work Ombudsman that they will not share information about visa status of workers working outside of their visa restrictions to the department of immigration. They have not been able to provide any clear evidence that that does not occur. They have alluded to an understanding or a memorandum that they have with the department of immigration but have been unable to provide any clear assurances that an actual document exists. And from our perspective, if anyone is experiencing modern slavery who is a temporary migrant worker, for that information to be shared from the Fair Work Ombudsman to the department of immigration is a significant concern around the viability for them to remain in the country but also their border safety. We would have significant reservations with the Fair Work Ombudsman taking on this role and being entrusted with this type of information.

**The Hon. DANIEL MOOKHEY:** But New South Wales unions refer complaints to SafeWork NSW all the time about alleged infringements of workplace health and safety laws? We learnt from SafeWork NSW from estimates just a week ago that only one in three or thereabouts of the complaints referred by unions to SafeWork NSW about workplace health and safety breaches even reached the stage of preliminary investigation. Given that they are not investigated, does that accord with your experience of SafeWork NSW?

**Mr MOREY:** Yes it is very difficult to get results out of them.

**The Hon. DANIEL MOOKHEY:** To the extent to which they are unable to currently undertake their mandate which is to enforce New South Wales health and safety laws, do you think the perhaps giving them the responsibility for enforcing modern slavery laws might be a burden that they are just simply not resourced to do?

**Mr MOREY:** I just do not think they could do it under the resources that they currently have.

**The Hon. DANIEL MOOKHEY:** Let alone the capability.

**Mr MOREY:** We believe they cannot deal with the workplace health and safety [WHS] or workers' health matters and incidents that occur across various industries currently. I do not see how giving them an additional portfolio to look after they would be able to do it on any level other than superficially. Probably put out a few pamphlets and do a few ads as what they did recently with silicosis.

**The Hon. DANIEL MOOKHEY:** But having a specific Commissioner that's only mission is to enforce to the extent to which we provide under the modern slavery laws, that might be, on the balance of probabilities, more likely to yield the result than just giving it to SafeWork NSW and saying, "It is amongst everything else you have to do."

**Mr MOREY:** Yes, and we are advocating for a resource body that has the skills and the ability and the sole focus to address these issues, not as an adjunct to what other people are doing on the jobs currently.

**Mr SMITH:** Can I add to that. All of these bodies are under resourced and add to that one other key issue. If you look at the Fair Work Ombudsman versus all the State inspectorates that used to exist and the Fair Work Ombudsman at the Commonwealth level—their equivalent. The inspectors they have today do not add up to the number of inspectors back when there was a more heavily State-based system. SafeWork NSW does not

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have sufficient investigators or inspectors to carry out their work. I know that when some of our members make complaints about Boxing Day trading and working on Boxing Day, and there were not overwhelming numbers of complaints because the nature of the work—

**The Hon. DANIEL MOOKHEY:** There is 231 of them and 31 are vacant now.

**Mr SMITH:** And none of those people were really followed up in relation to their complaints as well. But one of the big reasons you see so much wage exploitation today is that another very large player has been taken out of enforcing this. There was a time when I started as a union official that I could walk into any retailer, any fast food operator or any warehouse and check the books and the wages of every single employee or anybody working on those premises which had a huge number of additional people out there checking what was happening.

Today that is not the case. Today we can go to check the books only if you have someone brave enough in an already exploited workforce to put up their hand and say, "I am the person who wants to have their wages checked in this workplace." That will only be that person's wages that we can check. If you take the case of 7-Eleven, where we had very few members, if we had book-checked 7-Eleven, we would have found nothing because our members are paid completely correctly. Every Shop, Distributive and Allied Employees Association member working at a 7-Eleven in New South Wales was paid their full rate of pay, all their penalty rates and everything. We would have found nothing if we had book-checked 7-Eleven because we did not get to go underneath the union membership.

**Reverend the Hon. FRED NILE:** Is that because they knew they were union members so they treated them correctly?

**Mr SMITH:** It pays to belong, does it not?

**The CHAIR:** Order! On that advertisement, we will conclude. Thank you for your submission and for attending today with your expertise. You have taken some questions on notice. You have 21 days to get back to us on them. Thank you.

**(The witnesses withdrew.)**

**CORRECTED**

**MARIE MIRZA,** former adviser to Mr Paul Green, sworn and examined

**PAUL GREEN,** Former member, New South Wales Legislative Council, sworn and examined

**KIMBERLEY RANDLE,** Executive Director and Principal Lawyer, Fair Supply, sworn and examined

**The CHAIR:** Mr Green, you have been here all day and heard all of the evidence today. We look forward to your response to that. Do you want to make an opening statement?

**Mr GREEN:** Yes. Both of my friends here will also contribute. First I make a declaration of interest that I am a current member of the Christian Democratic Party and a previous member of Parliament. I also acknowledge my wife in the public gallery, who has very much been a large part of the journey of implementing this Act to this very point. Thank you all for your invitation to appear here today. I do know that you are all men of humanity. I note firstly that it would be proper for me to bring a scripture at this appropriate time of Proverbs 31:8-9, which states:

> Speak out on behalf of the voiceless,
> and for the rights of all who are vulnerable.
>
> Speak out in order to judge with righteousness
> and to defend the needy and the poor.

Mr Chair, I note that this is the New South Wales Social Issues Committee and therefore it should fight for the most vulnerable in our communities. This is no exception when it comes to modern-day slavery and human trafficking, as you are the voices of reason for the poor and the exploited, particularly in New South Wales. Some of these children, as you would know, are someone's son, daughter, grandchild, brother or sister. They could be your family or your friends. However, I am also aware of the political realities of inquiries. I remember John Howard once quoted something like, "You don't run inquiries if you don't know the outcomes." I think that says a lot.

I cannot see how the terms of reference, particularly item (g), could be considered in all good conscience, even though there is now some Commonwealth legislation that crisscrosses this State legislation—that item (g) could be seriously considered to abolish this Act. If the purpose of this Committee is truly social justice, then the recommendations from this Committee will only strengthen the current legislation, not abolish it. New South Wales is a leading State in Australia and has led the way on the global social justice issues such as modern-day slavery. It is also around the ninth largest economy in Asia Pacific, a large part of the world's population, as we know. They need our help and that is particularly where the federal commissioner would be advantageous as opposed to a New South Wales independent commissioner.

The former United Kingdom Anti-Slavery Commissioner Kevin Hyland called New South Wales Modern Slavery Act more than likely the strongest Act in the world. I take that as a great compliment for our State. Further, he noted that in other situations, we would have legislation for child protection and sexual discrimination so why would it be so strange for us to have laws that protect some of our most vulnerable from being exploited? My question is: At what point do we remove laws that say it is not okay to have slavery or slavery practices in our businesses? Of course, it is not. So why do we allow such practices? We heard a lot today about risk orders. I am happy if I can table these points in terms of the modern slavery risk orders to give members a bit of clarity about why we have that in the bill in such terms.

**The CHAIR:** Can that be made public?

**Mr GREEN:** Yes, I am happy for that to be made public. While negotiating these amendments over the bill, there was a push to soften or even strip out the backbone of this legislation when I first put it through Parliament. I think nearly 40 amendments were brought to me to swallow the ability to get this legislation up. I am thankful that the Premier negotiated with me and we were able to get something like 37 or 40 amendments down to three. Sadly, here we are now facing the possibility again of stripping the backbone out of this legislation. As noted earlier, cyber sex trafficking is growing exponentially as you do not need to move people across borders if you can move images in real time. We know that that quote came from Mr Scipione that cyber sex trafficking is such a deplorable growth in that area in Australia. That is because they do not need to move people across the waters to exploit them but rather the internet has been used to do it.

Mr Chair, many perpetrators hide their identity online while committing these crimes. We should hold cyber sex trafficking providers accountable. We heard a witness, Melinda Tankard Reist, give evidence of that earlier and how Victoria and Queensland have also made laws to make sure that they are playing the part to hold internet service providers who are hosting such cyber sex trafficking images accountable. Just as if we were held

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accountable for republishing something that was defamatory, we would be accountable. Yet there is no policing on the net and Australians across Australia are paying as little as $40 to watch child sexual abuse online. It is just shameful that so many people would make that investment. Across the globe, you could fill 16,838 A380s with kids who have been involved in human trafficking or slavery. That is about 9.1 million children. It is absolutely demoralising.

We heard about wage theft from the unions. We have heard a bit about human organ trafficking. I think that was the "Shoebridge amendment" in the bill. I hope Mr David Shoebridge is passionate about retaining that amendment, because we are. Some of the witnesses spoke about duplication. The only suggested duplication around the reporting of modern slavery statements is to do with the threshold of New South Wales, which is, by the way, a global standard. I heard it was about £34 million. That is the equivalent of $50 million. We note that the Commonwealth Act was considered to be not best practice, but a light touch and for awareness only, as the business community witnesses shared today.

The Commonwealth Act would also not cover the New South Wales Government. If the New South Wales Act was abolished the Government would be freed up in how it responds to human trafficking and modern slavery issues in the Act that are current. We would not like to see that. We want the Government to lead by example. The Catholic church and John McCarthy, a former Ambassador to the Holy See, are with us today. Andrew Forrest is here from the business sector. We nearly have this covered. If we can get everyone to do their part I believe we can abolish human trafficking and modern day slavery.

I note also that Mr Forrest, who uses a lot of goods and services, suggested that his business would be cautious to use any services that were not working to be aware of their modern slavery footprint in their business no matter what their turnover was. Penalties are only there because the global experience is that compliance is very sluggish. Today we have heard evidence about that. Obviously the business sector would like to abolish the penalties but our view would be to leave the penalties therefor businesses who continue to try to bet their competitors by exploiting their suppliers through goods and services. We note that the UK review found that not having penalties has not been very helpful in getting businesses to comply. I fully support the recommendations of my friend Kim Randle from Fair Supply in her submission. I suggest that the Committee seriously consider adopting those recommendations.

I would add one further recommendation that an advisory committee be set up to work through the contentious amendments in this particular bill. There are many that are probably complementary. The New South Wales Government has an obligation to provide an ethical response and a moral obligation to defend the weak and exploited. In my opinion it would be at the very least disingenuous for the Premier of this State to abolish the Act, rather than abolishing human trafficking and modern day slavery in New South Wales through the vehicles of her Ministers or departments. It is easy for all of us today as we discuss this topic. We will all go home to a nice warm meal, good company—more than likely—and a lovely bed. But victims throughout New South Wales and beyond, who are calling silently for help, are waiting for people like us to save them. What happens with this inquiry will be this Committee's legacy on modern slavery. I hope it will be a legacy that the honourable members can be proud of.

**The CHAIR:** Thank you Mr Green.

**Ms MIRZA:** Thank you for the opportunity to appear before the Standing Committee on Social Issues inquiry into the Modern Slavery Act 2018 and associated matters. Essentially I am here to support Mr Green. I was an advisor for eight years and assisted Mr Green in facilitating the parliamentary process of this Act. Hence I would like to give a brief opening statement regarding the parliamentary process that we undertook from start to finish. The policy and consultation process for the Modern Slavery Bill and subsequent Act could be considered exceptional. I disagree with the New South Wales Government's submission that the usual development policy process was not followed. I am sure the honourable members are aware of the many pieces of legislation that go through our House and the lower House without the same adequate consultation and process.

It should be duly noted that there has already been a select committee inquiry into human trafficking in New South Wales that resulted in 34 recommendations. The New South Wales Modern Slavery Act addressed the findings and recommendations of that select committee inquiry into human trafficking in New South Wales. We also were privileged to host the UK Anti-Slavery Commissioner, Kevin Hyland, when he came out. We had some meetings with him and he gave us a good briefing into what we should move forward with with this bill and the subsequent Act. The Modern Slavery Bill went through rigorous and extensive policy development work, consultation and feedback. Just to name a few of the processes we went through, Parliamentary Counsel drafted numerous versions of the bill to determine constitutional certainty, to ensure that it was complementary to the

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Commonwealth legislation and to include significant feedback from the many stakeholders, a lot of whom appeared at today's hearing.

We established a cross-party working group that consulted and assessed all the feedback. There was consultation with over 30 interested stakeholders, who provided significant feedback, and numerous forums throughout New South Wales, including in Sydney, south-west Sydney, Wollongong, the South Coast and Western New South Wales. The Premier, the Hon. Gladys Berejiklian; the Attorney General, the Hon. Mark Speakman; and the former Minister for Family and Community Services, the Hon. Pru Goward, personally supported the bill and provided some amendments that Mr Green has already spoken about.

It should be noted on the record that the Premier did hold carriage of this bill in the lower House, with significant cross-party support. The former Opposition leader, Luke Foley, and the shadow Attorney General, Paul Lynch, supported the bill and its amendments, as well as Labor members in the lower and upper Houses. The crossbench members in the lower House and the upper House also supported the bill and subsequent amendments. Ultimately, there was significant cross-party support, with what we would say were minor amendments agreed to. The bill was passed by both Houses of Parliament and assented by the Governor. Yet here we are, with the Act yet to be proclaimed, going through the same process again. As previous speakers would have said, the New South Wales Act is perhaps the strongest response to modern slavery. The Act should be proclaimed without further delay.

**The CHAIR:** Ms Randle, I note that your submission is submission number 25. Are you speaking to that as well?

**Ms RANDLE:** Yes. Thank you very much for the opportunity to speak this afternoon. As you have just said, I will be speaking to submission number 25. I will also be speaking to the urgency of the bill being proclaimed. The Modern Slavery Act 2018, the draft Modern Slavery Regulation 2019 and the Modern Slavery Amendment Bill 2019 provide a strong base for New South Wales to build an internationally recognised framework for reporting entities to identify and address the risks of modern slavery in their operations and supply chains. The preservation of the New South Wales Act is important to demonstrate the effectiveness of New South Wales' approach to addressing modern slavery. It is imperative that the appointment of a independent anti-slavery commissioner, the lower reporting threshold and the availability of penalties remain core components of the Modern Slavery Act 2018.

I encourage the Government and this Committee to preserve the intentions of the Act—which I believe are contained in the objectives of the Act—to: combat modern slavery; provide assistance and support for victims of modern slavery; provide for an anti-slavery commissioner; provide for detection and exposure of modern slavery that may have occurred, be occurring or is likely to occur; raise community awareness of and provide for education and training about modern slavery; encourage collaborative action to combat modern slavery; provide for the assessment of the effectiveness and appropriateness of laws prohibiting modern slavery and improve the implementation and enforcement of such laws; provide for mandatory reporting of risks of modern slavery occurring in the supply chains of certain corporate bodies; make forced marriage of a child and certain slavery and slavery-like conduct offences in New South Wales; and further penalise involvement in cybersex trafficking by making it an offence to administer a digital platform for the purpose of child abuse material.

The urgency of the New South Wales Modern Slavery Act being proclaimed is illustrated by these two stories that I would like to share with you. The timing—these stories have occurred in this jurisdiction between the passing of the New South Wales Modern Slavery Act and today's date. In May 2019 57-year-old Rungnapha Kanbut was found guilty by a jury of two counts each of possessing a slave, exercising powers of ownership over a slave and dealing with the proceeds of a crime greater than $10,000. Ms Kanbut is listed to be sentenced on 15 November of this month in the court in this jurisdiction.

During the trial, the survivor, a Thai sex worker, told the story of being spat on, bruised and bleeding, by Sydney clients as she and another survivor were forced to pay off a supposed $45,000 debt through their sex work. She told the court her hours were 10 a.m. until 10 p.m. but that she would often work until 8 a.m. the following day with only a few hours break before starting work again. In her evidence the survivor of slavery told the court that she was told that she would have a free day off work each week but that never happened, and that she never travelled to or from work on her own. She said that the $45,000 debt took her months to pay back and she was never told why she owed it. She said this in her victim impact statement:

> Don't think about running away because you really can't run away anyway. You have to pay the debt first.

This is certainly not the only report of modern slavery occurring in this State during the time period between when the New South Wales Modern Slavery Act was passed and today. A joint investigation between the Australian

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Federal Police [AFP], the Philippine National Police and International Justice Mission resulted recently in the arrest of a woman and the rescue of a 12-year-old girl believed to be the victim of a live-streamed child abuse involving a Sydney man. The referral related to a New South Wales user who had uploaded the child abuse material to social media. He was subsequently identified as being a 63-year-old man located in the greater Sydney suburb of North Rocks, and has been arrested and charged. He is next due to appear in the Parramatta Local Court, again in this jurisdiction, on 22 November. An AFP senior officer in Manila said:

> Sadly there is an appetite for child abuse material online which leads to vulnerable children becoming pawns in a form of abuse that can have devastating impacts.

These stories highlight the urgency of the New South Wales Modern Slavery Act being proclaimed to fulfil its intentions to combat modern slavery occurring in this State. Thank you.

**The CHAIR:** Before we start questioning I just make the observation that it is not the inquiry's brief to speculate on the Government's motivation regarding delay.

**The Hon. GREG DONNELLY:** That is mine.

**The CHAIR:** I was just heading you off there, to save you time. The House has adopted the terms of reference—granted it was the Government but I think it was unanimous; I might be corrected—and that is what we are looking at: the specific amendments. You have raised (g) and we have had a lot of discussion about that today. I acknowledge your very strong position on (g) but I just wanted to put that in context. We will talk about the amendments, if that is okay.

**The Hon. DANIEL MOOKHEY:** Hello, Mr Green. It is nice to see you again. Thanks, Ms Randle and Ms Mirza as well. Mr Green, I finally get to exact some revenge on you now! Mr Green, you have been described publicly as the architect of the Act. Do you accept that label?

**The CHAIR:** "Author", you said earlier.

**Mr GREEN:** I did say "author" but it is just a way to maybe put the point of the matter that I motivated the Act with my privileged position, but there were many stakeholders that put this Act together.

**The Hon. DANIEL MOOKHEY:** Sure. As essentially the principal designer of the Act, did you mean to include the modern slavery risk orders, part 4 of the Act, as a deliberate act on your part?

**Mr GREEN:** Yes. I might get Marie to talk on that a little bit because it is quite a comprehensive Act—the whole lot—but I can tell the Committee without being a lawyer, around the table, that we got some comments from the Government that had some concerns about the risk orders and where they fit. We sought advice. It was very clear—and I think you took evidence today, where it was given—that there were probably a couple of situations where the risk orders could be translated to another Act somewhere else and be covered, but it is fairly obvious that there are times that it does not fit, and those risk orders would be an appropriate part of legislation to have in this Act.

So while others would say that some could be translated, it is my opinion, and certainly the advice that we continually received from those people who were pretty ambitious of having it in the Act, that there would be situations that would not be able to be processed by the court, that this would allow the court to do what they need to do. Just remember, the risk orders are all about this—prevention, prevention, prevention. Not consequences but prevention. So we are trying to stop people from going out there and exploiting people or heavying people and bullying people to get a result. So it is about prevention.

**The Hon. DANIEL MOOKHEY:** The New South Wales Government, in its submission, said that removing part 4 of the Act, the modern risk orders, is a minor amendment to the Act. Do you agree that that would be a minor amendment?

**Mr GREEN:** Sorry, what was the minor amendment?

**The Hon. DANIEL MOOKHEY:** Removing part 4 of the Act.

**Mr GREEN:** I would say this about removing anything. Members would be very aware that we have an excellent team of legislative parliamentary counsel, who are very thorough. They do not miss much, if anything. I take issue with the Government's submission suggesting that the Act has some shortfalls or holes. We knew it was not perfect by all means. Like I said earlier, we were hoping we can learn some things from the Commonwealth Act that will strengthen it, but at no point should parts of this Act be repealed. It is the toughest Act in the world, and we want to lead with the toughest hand.

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Can I say the Act, very specifically, is not about being a stick; it is about being a carrot. I have been a great supporter of businesses—very small businesses and all businesses across New South Wales. When I came into Parliament we were the eighth, I think, on the economic scale. Over my eight years we led it to number one across New South Wales. We are for business. You can look at the voting record of the Christian Democratic Party and see how much we are for business. We want the carrot, not the stick.

I can understand the business sector wanting to repeal anything to do with penalties and anything to do with costs because it is tough out there to run a business. My goodness, the insurance to open up and all the stuff that they have got to do—provide stock, employ people. The last thing they need is another burden of cost, but in saying that, there are HR responsibilities, there are occupational health and safety responsibilities and there are also responsibilities about goods and services coming from somewhere. When you accept doing business you accept that you are going to do business in a clear, transparent way that is not going to gain a profit on the back of exploitation.

**The Hon. DANIEL MOOKHEY:** Did you accidentally include local government in this Act?

**Mr GREEN:** I spoke earlier—I made a comment in my speech about it—about the different pillars of society. One being government; two being business in general. I talked about Andrew Forrest and John McCarthy and the Catholic Church leading by example by slave-proofing their supply lines. That was the faith groups. Then there are the not-for-profits in general and voluntary. No-one is above the law, and if we are going to eradicate slavery and slavery-like practices everyone has to have ownership of it.

**The Hon. DANIEL MOOKHEY:** So it was not a mistake of yours to explicitly write into the Act that local government should have a mention as well?

**Mr GREEN:** Everyone should take responsibility for this. It is a global issue. I think it is a top three global issue. There is a green saying: think globally, act locally. This is about acting locally from grass roots up, we want to abolish—

**The Hon. DANIEL MOOKHEY:** Is this a Mr Green saying or The Greens?

**Mr GREEN:** It is not my saying but it was saying some time ago. I guess the thing is that the Act was always going to open up other industries and other agencies like state-owned corporations for instance. But at the end of the day we are not going to be apologetic for an Act that includes everyone. No-one is above the law when it comes to exploitation. We want to stamp out, eradicate, abolish human trafficking and slavery like practices. So if that includes local government. I take on board, coming from local government, that there are small local government areas in regional areas. Once again it is not equal giving, it is equal sacrifice to this. Some have a lot to do a lot with and some have very little to do a lot with. The spirit of this is to work together to eradicate human trafficking and modern slavery or slavery-like practices.

**Mr DAVID SHOEBRIDGE:** Mr Green, welcome back. There seems to be a potential dilemma to be faced with the position we are in at the moment. Take it from me that I do not support any winding back of the Act—in fact, I see areas where it could be strengthened. That is not a criticism of the initial drafting; that is with the benefit of submissions we have heard. But if we are at the point where the Government says that unless the Parliament—and largely that is the upper House—agrees to a set of amendments broadly consistent with what is presented then we will not have a bill on the statute books, what is your position on what the collective response from Parliament should be? If we have discussions and we are in that invidious position, what is your position?

**Mr GREEN:** For eight years we have negotiated legislation with about a 98 per cent success rate on most amendments across the House. My position is always to negotiate, but in good faith. We do not want a disingenuous, time-wasting situation where we are meeting for the sake of defer, deplete or delete sections of the legislation. We are not interested in that.

**Mr DAVID SHOEBRIDGE:** We have seen the draft bill presented by the Government and we know what it does. It strips back section 29 and removes local government. It takes out the State-owned corporations. It takes away section 91 (h) et cetera. If that is the package on the table, what is your position? If it is that or no bill, what is your position?

**Mr GREEN:** My position is to negotiate the best we can, but in good faith. We removed something like 35 amendments and this amendment bill is virtually most of those amendments revisiting us. We dealt with those in the House and we got the numbers across both Houses to agree with the amendments we agreed to. I appreciate that the integrity and the honesty of that negotiation meant that we would not be later dealing with a lot of amendments that are now before us because we agreed that the Government would accept that we would not have them in this bill.

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**The Hon. GREG DONNELLY:** That the Government did accept.

**Mr GREEN:** That the Government did accept.

**The Hon. GREG DONNELLY:** With negotiation with the Government, involving no less than the Premier, and ultimately the amendments were settled between yourself, the Reverend Fred Nile, the Premier and other senior officials to craft a set of amendments that were acceptable in the Assembly. They passed the Assembly and the bill, which came from the House in the first place, went back to the Council and the Council, having looked at your detailed and comprehensive negotiations, agreed to settle with the proposition. Is that the position?

**Mr GREEN:** I cannot say that I have cross-checked these amendments with the initial amendments, but I can say that they are fairly close, from memory. I am a bit rusty on 12 to 18 months of work.

**Mr DAVID SHOEBRIDGE:** I was going to ask you to take on notice whether or not any of the amendments that are currently on the table have been brought back from earlier negotiations. That would be useful.

**Mr GREEN:** I would have two research that.

**Reverend the Hon. FRED NILE:** When they were rejected.

**Mr GREEN:** Simply in headline terms, I know that some of them were the issue of negotiation—things like the risk order. The Premier was concerned about businesses and we both shared the idea that we do not want to be a burden on business or business costs. On the business side of things, we also note that there are a lot of businesses under the threshold that would like to buy in at this level, because they know it is good for their product and good for their brand to voluntarily come forward and say, "We support this and we are going to buy in now. Not only that, it is more than likely that we will get the next job because we are ethically responding to a need that we know our consumers and customers are looking for". We have seen this recently.

**The CHAIR:** Unions NSW made a sensible recommendation.

**The Hon. DANIEL MOOKHEY:** Mr Green, we appreciate you will come back to us on the specific amendments to see whether or not they are items that you discussed, but the substance of the Hon. Greg Donnelly's question is: Is this effectively the Government trying to revisit the position? The reason we are asking you is that you were the principal negotiator with the Government. Is it essentially that they are coming back to the table to ask for more? Did they ever flag with you their desire to defer proclamation and make—

**The CHAIR:** I am going to rule this question out of order. I have allowed scope because we are talking about amending the bill. I think the question on notice is just within the terms of reference in terms of what amendments they have put but—

**Ms MIRZA:** If you do not mind, I might respond—

**The CHAIR:** No, I am talking. But you are going towards the issue of government motivation and I said earlier I would rule that out of order. Let us get to the amendments that are before us. The question on notice was just within the terms of reference.

**The Hon. GREG DONNELLY:** To the point of order—

**The CHAIR:** I am afraid that I have already ruled on the point of order.

**The Hon. GREG DONNELLY:** Point of order—

**The CHAIR:** There has been goodwill in dealing with these amendments today.

**Mr DAVID SHOEBRIDGE:** We have nine minutes and I do not think we should be taking points of order.

**The CHAIR:** I agree.

**Mr GREEN:** Let me just make it very clear, if I could, that there was goodwill on the Government side to get this bill up.

**The CHAIR:** The Premier did the second reading in the House.

**Mr GREEN:** That is right, and I thank the Premier very much for leading the way on this. I had lots of takers to carry this bill into the lower House. To the Premier's credit, she took it and she was very complimentary. We had goodwill from all parties on this. I will hand to my former adviser, who virtually wrote the bill and negotiated with all the parties on many of these things.

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**Ms MIRZA:** Further to the amendments, you asked whether they with the previous ones and whether we are going over them.

**The Hon. DANIEL MOOKHEY:** Yes, in one form or the other.

**Ms MIRZA:** Yes, a lot of them were part of that suite of 40 amendments that were put forward by the Government that we had gone through, addressed and discussed. They had been agreed to—the modern slavery risk orders, for example, and you were discussing the proclamation. That was not meant to be a delay as such; the proclamation was determined as to the Commonwealth legislation going through. That was our advice and that was all we were going to wait for.

**The Hon. DANIEL MOOKHEY:** Specifically, the advice was that the Government would wait for the Commonwealth Act to be proclaimed.

**Ms MIRZA:** Yes, and to make sure it was constitutionally in line. That was what delayed the proclamation.

**Mr GREEN:** One of the reasons I wanted Ms Randle to be here is that we have some questions about cyber trafficking and other things where we were told it was constitutionally incorrect. Parliamentary Counsel does not make those errors of judgement, as you well know; they are very learned. I know that as committee members you get a lot of information and we are not privileged to get all the information you are getting. I would contest the comments in the Government's submission saying the bill is just short of being poorly drafted. The reason my former adviser gave all that information was to show you the context of how we arrived at this bill.

**The Hon. DANIEL MOOKHEY:** Ms Randle, you said that your legal practice is engaged in helping businesses to comply with modern slavery laws.

**Ms RANDLE:** Yes, correct.

**The Hon. DANIEL MOOKHEY:** You made the point in your opening statement that you had a view that delaying proclamation is effectively allowing practices to continue in this jurisdiction without necessarily the protections that would be available under this law.

**Ms RANDLE:** Yes.

**The Hon. DANIEL MOOKHEY:** You said on that basis you think the proclamation is urgent.

**Ms RANDLE:** Yes.

**The Hon. DANIEL MOOKHEY:** Can you expand on that? What is the opportunity cost of us not proclaiming this law?

**Ms RANDLE:** My view is that proclamation of the Act provides a requirement for additional organisations because of the difference in the level of the reporting threshold to examine their supply chains and essentially requires them to increase transparency in their supply chains. There is significant evidence that illustrates the correlation between supply chain transparency and identification of modern slavery. Put simply, if more businesses are required to examine their supply chains and increase transparency and visibility over their supply chains for the purposes of identifying modern slavery risks on tier 1 of their supply chain then there is an increased likelihood of modern slavery being identified, addressed and mitigated, which I believe are the objectives of the New South Wales Modern Slavery Act.

**The Hon. DANIEL MOOKHEY:** By delaying proclamation there is a set of businesses that otherwise would be checking that are not checking right now.

**Ms RANDLE:** I cannot speak to whether businesses are checking or not checking, but the legislation would certainly—

**The Hon. DANIEL MOOKHEY:** Would require them to.

**Ms RANDLE:** —require those businesses that are between the reporting threshold of the New South Wales legislation and the $100 million consolidated revenue threshold of the Commonwealth legislation.

**The Hon. DANIEL MOOKHEY:** Were you here earlier when a witness said that they thought that the New South Wales Act would expand the reporting requirement to an additional 1,600 companies, or thereabouts, 1,400 companies?

**Ms RANDLE:** I was not here earlier when that evidence was given.

**CORRECTED**

**The Hon. DANIEL MOOKHEY:** It is in the Government's submission. That is 1,600 companies that otherwise would have to be checked if this Act was to be proclaimed.

**Mr GREEN:** Correct.

**The CHAIR:** We interrupted your answer. Please answer the question.

**Ms RANDLE:** I was not here earlier. If that was in the Government's submission, then—

**Mr GREEN:** I was here, Mr Chairman, it was correct.

**The Hon. NATALIE WARD:** Welcome back, it is great to see you, Mr Green.

**Mr GREEN:** Likewise.

**The Hon. NATALIE WARD:** And thank you for your submissions. In the short time we have left I will be brief and succinct. I expect all of our intentions are good and all of us agree with the basic concept that we should be doing everything we can to ensure that modern slavery is not happening. That said, do you agree with this proposition, that regulations need to be enforceable and they need to be as certain as possible?

**Mr GREEN:** I think the draft regulations are already done and the thing is, this is an evolving, working document, as you could appreciate because the business sector and everyone has virtually given evidence that we are really not going to know what the outcomes are until we work through these processes. The regulations are there and obviously they are going to need to be massaged as we go to address some of the issues out there in the business sector.

**The Hon. NATALIE WARD:** As we know, no regulation is perfect, otherwise we will all be out of a job. No legislation is perfect.

**Mr GREEN:** That is right. That is why we should have this bill out there already because we could be a little advanced on those regulations.

**The Hon. NATALIE WARD:** The other view, Mr Green, might be that if there are amendments that could be made to clarify some aspects, to make them more certain, that that is something that perhaps we might undertake. Do you agree with that proposition?

**Mr GREEN:** I do not think it helps repealing stuff. I think if you are starting from there, you are not going to be drafting regulations for stuff you are repealing and we would be of the view—

**The Hon. NATALIE WARD:** If there is an example of—

**The Hon. GREG DONNELLY:** Point of order—

**Mr GREEN:** With all due respect, just for a moment.

**The CHAIR:** Order! I am chairing, member. Allow the witness to answer the question.

**The Hon. NATALIE WARD:** Sorry, I was just conscious of the time, that is all.

**Mr GREEN:** I think like a goldfish. My attention span is very quick, so I could lose it, sorry. In terms of the regulations and the issues—

**The Hon. NATALIE WARD:** Have you had an opportunity to look at the Government's submission?

**Mr GREEN:** Yes.

**The Hon. NATALIE WARD:** And some of the proposed amendments?

**Mr GREEN:** Yes, I have.

**The Hon. NATALIE WARD:** There are some in their that are, for example, drafting errors or can clarify what parts of the Government—I am trying to get to a proposition, what are the areas that are not of contention?

**Mr GREEN:** That is a good point. And one of my recommendations would be about an advisory committee to work through them, because there are recommendations in the Government. We are not adverse to harmonising with the Federal Government anti-slavery Act. What we are against is downgrading ours to meet that Act. Ours is the benchmark, they should come up, we should not go backwards. The stuff in these amendments where it compliments and strengthens the New South Wales Act, that is fantastic and it may harmonise it with the

**CORRECTED**

Federal Act, no problem with that, or it may just be the fact that it actually strengthens the Act on its own merits, and that is a good thing. But where it is taking away to make the Act weaker, obviously we refute that.

**The Hon. NATALIE WARD:** That is a very helpful suggestion. Obviously, on the one hand there is urgency, and we have heard some evidence about that, but also there is perhaps an imperative to try to have a working group that can get this right and can work through some of those issues. Some of those may be very easily fixed if they are simply drafting amendments, others are clearly more difficult. How do you balance those two competing propositions?

**Mr GREEN:** I think you pick the lowest fruit first. And there are a lot of amendments that probably would be complimentary and I think the stakeholders would be in that. But there are some that have been pivotal today where we have heard about the different reporting. I can assure you when I spoke with the Premier about the threshold, that one of the things we did was to harmonise it in such a way that if you are reporting federally, because you meet the $100 million threshold, you do not have to go and then again report through New South Wales. It is not like that.

**The CHAIR:** Thank goodness.

**Mr GREEN:** There was a comment today about the duplication of the Act and I would say to those people, "Where?" Because we have done everything to make sure we are not having businesses duplicate. That is the last thing they need, red tape. If it is there and it can be completed at a Federal level, tick the box. If you are not going to be ticked, which we have heard about, nearly 1,500 to 1,600 businesses will not be ticking that box federally, because they do not meet that benchmark—

**The Hon. NATALIE WARD:** We want to make it easier for them too.

**Mr GREEN:** That is right.

**The Hon. NATALIE WARD:** We want to help them to do that.

**Mr GREEN:** Yes. And the other thought is if they are a global business, they could be reporting to the UK, to other countries around the world. We do not want them to reproduce more work, we just want to make sure that they have been ticked off. Could I add to that, the penalties for this, we kept hearing about the threshold and the penalties, can I just assure you the penalties are the last resort for a business misleading the commissioner and they are profiting against their competitors on the back of exploitation. I make that very clear. The last point of a prosecution is that if you are doing the wrong thing and you are getting rich on the back of people and exploitation, you therefore will be held to account.

**The CHAIR:** We have to move on.

**The Hon. NATALIE WARD:** If I can just finish.

**The CHAIR:** The last question for you. Other members want to ask questions.

**The Hon. NATALIE WARD:** The bad guys here are the perpetrators. I am trying to be very brief.

**Mr GREEN:** That is right. It is a race to the top.

**The Hon. NATALIE WARD:** The bad guys are not business necessarily, we are trying to get to the bad guys and through them ensure the right thing is done.

**Mr GREEN:** Exactly.

**The Hon. NATALIE WARD:** So, for example, if we can give guidance on how information can be voluntarily disclosed to the commissioner, if we can make that easier or clearer for business, then surely we should do so.

**Mr GREEN:** And we would do that through—I met with Robyn Hobbs, I do not know if she is the continuing one but she was certainly the Small Business Commissioner back when I spoke with her, and she has seen a large part of her portfolio of going around and helping and advocating for businesses.

**The Hon. NATALIE WARD:** Do you see her as part of this?

**Mr GREEN:** Yes, a part of the consultation. She came and saw me with the concerns of businesses and we agreed that there would be a very big position for her to educate businesses.

**The Hon. NATALIE WARD:** And potentially participate in this group that may or may not look at this?

**CORRECTED**

**Mr GREEN:** And participate, absolutely.

**The CHAIR:** Ms Randle, I am a little bit confused and want some clarification. I know you are here with Mr Green, advising him.

**Ms RANDLE:** No, sorry. I am not in a capacity of advising Mr Green. I am here in my capacity of having—

**The CHAIR:** I beg your pardon. Then this makes it more relevant. In your submission No. 25 you say in the executive summary:

> Overall, Fair Supply is supportive of the proposed amendments set out in the Modern Slavery Amendment Bill 2019.

Then you have 11 recommendations that you think will benefit.

**Ms RANDLE:** Yes.

**The CHAIR:** I want to go to recommendation 8, which states:

> The amendment to repeal Modern Slavery Risk Orders should proceed and that victims will be afforded sufficient protections from offenders under existing schemes.

**Ms RANDLE:** Yes. So, my view is that there are existing schemes in New South Wales that would afford the protection for victims. My recommendation, as contained in the submission, would be to support the repeal and the intention of the repeal to amend existing schemes so that victims are afforded protections that—

**The CHAIR:** I just wanted to clarify that was your position and that is your submission and that is what you are here for.

**Ms RANDLE:** That is my position and I am here to comment on my submissions.

**The CHAIR:** It helps us when we are doing our report.

**Mr GREEN:** Mr Chair, if I could quickly clarify. I said at the beginning that I fully endorse—

**The CHAIR:** You did indeed.

**Mr GREEN:** —all her recommendations. Of course I do not support that one.

**The CHAIR:** You will have to write to us and correct the *Hansard.*

**Mr GREEN:** *Hansard* is critical.

**Reverend the Hon. FRED NILE:** Just to clarify, before you mentioned in your remarks, and it was just said again, about this advisory committee. What is the advisory committee? What is its membership and its role? How will it help get this bill proclaimed by 20 January?

**Mr GREEN:** The only way that is going to happen, Mr Chair—I was asked—the only way that would happen is if there was a change of heart of the House to actually bring forward a motion that would change the reporting date and institute a new reporting date for the Government to get back to the findings of this inquiry and change the expediency of this matter.

**The CHAIR:** Thank you, Mr Green.

**Mr GREEN:** In terms of the other comment, could I just get Ms Mirza to answer that.

**Ms MIRZA:** In terms of the advisory committee that you asked about?

**Mr GREEN:** Yes.

**Reverend the Hon. FRED NILE:** That is something new that we have not heard about.

**Ms MIRZA:** There was a modern slavery committee that was meant to be part of the initial Act. That is already in there. There is a modern slavery committee that can work through all of these—

**Mr GREEN:** The upper House and lower House.

**Reverend the Hon. FRED NILE:** An advisory committee?

**Mr GREEN:** That is right. It was a joint committee that would overlook the legislation and its—

**The CHAIR:** This Committee has been given the authority of the House to deal with the amendments.

**CORRECTED**

**Mr GREEN:** I understand that. But in the legislation we did have something to drive the process forward.

**Mr DAVID SHOEBRIDGE:** Did you have any discussion with the Government—or do you have any views—about whether or not, instead of proceeding with section 29, which deals with the risk orders, all of those offences in schedule 2 to the bill could be included in the definition of an offence of a sexual nature in the current Crimes (High Risk Offenders) Act, and therefore allow for supervision orders and that scheme to operate under the Crimes (High Risk Offenders) Act? Did you ever have that discussion with the Government?

**Mr GREEN:** I can say it was broad and I can say that we talked to people who were very passionate about that being in there. I would not be adverse to negotiating to work through these amendments, as the Hon. Natalie Ward suggested. It is not a die in a ditch thing for me. I have just listened to stakeholders who know their area of expertise and who are out there doing the work day in and day out. They are saying, "We need this in there." That is why it is the toughest regime in the world. It was one piece of legislation that the Government could not control. That is no disrespect to the Government or the Federal Government. It was a crossbench Act and that is why it is so tough and one of the strongest in the world.

**Mr DAVID SHOEBRIDGE:** As I understood it, the Bar Association's position was that it saw a potential benefit in roping the modern slavery offences—the schedule 2 offences—into the existing Crimes (High Risk Offenders) Act because there is a well understood structure, it has faced constitutional challenges, and you could basically have a plug and play element to take into effect section 29. You are not necessarily adverse to that?

**Mr GREEN:** I am not adverse to that. Can I just say, you have just quoted the whole Act. It is a plug and play Act. We did not rewrite all these laws for this to happen. We actually made it so they often integrated with other Acts so we did not have a whole pile of rework to Acts to do. It is a very smart bill for the reason that it does not need a lot of its own law, although we have had to produce some. It is often complementary. We got advice about the modern slavery risk orders and were told they needed to go over and above the ADVOs and other orders. We were told they needed to be specifically different for the sake of the victim. They way it was handled needed to be different for different reasons. I am not the expert there. All I can say is that we looked at that issue at the time with some very good legal help and were of a view that they were right in saying that it really needed a niche piece for modern risk orders. But if that can be worked out differently I am sure that is negotiable.

**The CHAIR:** Mr Green, it has been great to reacquaint ourselves with you.

**Mr GREEN:** Likewise, Mr Chair.

**The CHAIR:** I wish there were happier reasons for catching up, but it is good to see you. Thank you for the work you have done and the evidence you have given to the panel. You have taken some questions on notice. You have 21 days to respond.

**Mr GREEN:** I thought Ms Mirza answered the question.

**The CHAIR:** We will advise you if there have been any questions on notice. That concludes the hearings for today.

**Mr GREEN:** I would like to thank all the members. As I said, you are all good people of humanity. I hope we have a great result for all the victims out there across our State and nation.

**The CHAIR:** Thank you.

**(The witnesses withdrew.)**

**(The Committee adjourned at 17:40.)**