

**REPORT ON PROCEEDINGS BEFORE**

**MODERN SLAVERY COMMITTEE**

**REVIEW OF THE MODERN SLAVERY ACT 2018**

**CORRECTED**

**At Room 814, Parliament House, Sydney, on Monday 30 October 2023**

**The Committee met at 9:00.**

**PRESENT**

Dr Joe McGirr (Chair)

**Legislative Council**

The Hon. Robert Borsak  
The Hon. Dr Sarah Kaine  
The Hon. Aileen MacDonald

**Legislative Assembly**

Mrs Tina Ayyad  
Ms Jenny Leong (Deputy Chair)

**PRESENT VIA VIDEOCONFERENCE**

Ms Kylie Wilkinson



**The CHAIR:** Welcome to the first hearing of the Committee's review of the Modern Slavery Act 2018. I begin by acknowledging the Gadigal people of the Eora nation, the traditional custodians of the lands on which we are meeting today. I pay my respects to Elders, past and present, and celebrate the diversity of Aboriginal peoples and their ongoing cultures and connections to the lands and waters of New South Wales. I also acknowledge and pay my respects to any Aboriginal and Torres Strait Islander people joining us today.

I ask everyone in the room to turn their mobile phones to silent. Parliamentary privilege applies to witnesses in relation to the evidence they give today. However, it does not apply to what witnesses say outside of the hearing. I urge witnesses to be careful about making comments to the media or others after completing their evidence. In addition, the Legislative Council has adopted rules to provide procedural fairness for inquiry participants. I encourage Committee members and witnesses to be mindful of these procedures.

**Dr JAMES COCKAYNE**, New South Wales Anti-slavery Commissioner, affirmed and examined

**The CHAIR:** I welcome Dr James Cockayne. Thank you for taking the time to give evidence today. Would you like to start by making a short statement?

**JAMES COCKAYNE:** Yes, please. Chair and Committee members, thank you for the opportunity to provide evidence to this important inquiry. I acknowledge that we are meeting on the country of the Gadigal people of the Eora nation. I acknowledge First Nations Elders, past and present, and any First Nations peoples present or watching today. I acknowledge that First Nations communities in New South Wales have survived practices that today would constitute modern slavery offences. Chair, you have my submission to the inquiry. I won't rehash it in detail. I would like to simply highlight five key points, if I may.

First, I agree with all the other submissions that have indicated that the objects of the Act remain valid. Modern slavery is still clearly occurring in New South Wales. The best available survey-based estimates suggest there may be 16,400 cases of modern slavery in New South Wales currently. Since I took up the role of Anti-slavery Commissioner in August last year, more than 120 specific victims have come forward to my office or come directly to our attention. As I explain further in my strategic plan, we estimate that the costs of the current victim caseload in New South Wales will run to as much as \$9.6 billion.

Secondly, I submit that the terms of the Act remain broadly appropriate for securing the policy objectives. As many of the submissions you have received note, we are in the early days of implementation of this Act. We are still building the operational capabilities required from capabilities to provide assistance and support to those victims who do come forward, including a hotline, to capabilities to monitor reporting by more than 400 public entities that now have modern slavery due diligence obligations. The Act came into force on 1 January 2022. I have been in the role just 15 months and I have had dedicated staff for just 10 months. Many of the provisions of the Act are still being used for the first time. I have provided the Committee an advance copy of my annual report for 2022-23, which provides extensive detail on my activities over the last 15 months. I will present this to the President of the Legislative Council and Speaker of the Legislative Assembly later today. Unfortunately, that is not yet a public document. Some of the people who may be providing evidence today haven't had the benefit of access to our annual report and won't do so until the report is published by the Presiding Officers.

Thirdly, I draw the Committee's attention to the detection and exposure object of the Act under section 3(d). Though the Act empowers the Anti-slavery Commissioner to gather information for limited purposes and to promote good practice in investigation, it also explicitly prevents me from playing an investigative role. Instead, the Act adopts what we could call a passive approach to detection and exposure, in the sense that it relies on victims or members of the public coming forward and on existing law enforcement investigation approaches. Yet the Australian Institute of Criminology tells us that just one in five victims is being identified. One question the Committee may wish to consider, therefore, is whether these statutory terms best secure the detection and exposure objectives of the Act. In my submission, I have pointed to existing models under New South Wales law where the Parliament has equipped independent statutory officers with more proactive detection and exposure powers.

Fourthly, I have some very brief observations on the duty of cooperation under section 14. This is already playing a central role in the discharge of my statutory functions. It has underpinned collaboration with diverse government agencies, ranging from government departments to the Commissioner of Victims Rights, the Women's Safety Commissioner and the Ageing and Disability Commissioner. It has also underpinned cooperation with non-government service providers, ranging from the Salvation Army and Australian Red Cross to certain universities in New South Wales.

As drafted, the duty does have very clear limits. First, it requires only "reasonable assistance". I respectfully do not agree with the submission from Anti Slavery Australia that the duty imposes an "unreasonable burden" on non-government service providers. This has not been the feedback that we have received from other non-government service providers. Indeed, on its own terms, section 14 requires only what is "reasonable". It does not require anyone to do anything unreasonable. Secondly, as a simple matter of statutory construction—another limit—section 14 does not entitle the Anti-slavery Commissioner to expect cooperation that is inconsistent with rights and privileges such as legal professional privilege. I agree with the submissions of Anti Slavery Australia and the Law Society of NSW to this effect.

Yet, precisely because section 14 must be read in light of legal professional privilege, I disagree with the suggestions that section 14 should be amended or even repealed in order to protect privilege. That is unnecessary, I submit, and a total repeal would be disproportionate to achieve the limited effect of ensuring section 14 is read consistently with privilege. Instead, I would submit that the repeal of section 14 would in fact set back the achievement of the policy objective of engendering greater cooperation in the fight against modern slavery. As

Anti Slavery Australia itself put it in a submission to the process that established this Act back in 2018, a submission which supported the duty of cooperation:

The ability of the Commissioner to work cooperatively and collaboratively with government and non-government organisations is critical in responding to human trafficking and slavery.

Section 14 is critical to that work and should not, I respectfully submit, Chair, be amended.

Fifth, and very quickly, finally, Chair, please allow me very briefly to draw the Committee's attention to resourcing questions. These are relevant in understanding whether the terms of the Act are securing the policy objectives. The Act creates various resource-intensive obligations for the Anti-slavery Commissioner. One is the creation of an advice and assistance line for victims. I am in the middle of a project to better understand the size and characteristics of the at-risk population in New South Wales. This will allow me to develop a reliable, well-costed business case for a hotline and enter into resourcing discussions with New South Wales Government, I hope in early 2024.

The Act also requires me to monitor due diligence efforts by more than 400 public entities with annual procurement worth more than \$42 billion. I will shortly release 200 pages of guidance on reasonable steps for public entities in New South Wales, plus model contract and tender clauses, a risk identification tool and other materials. These have been developed through a year of work with more than 20 government agencies, local councils and other affected stakeholders, including the Federal Government. Implementing this guidance will create training, contract management, analytic and stakeholder engagement needs for the reporting entities. Again I look forward to a resourcing discussion with New South Wales Government in due course.

As my submission highlights, my work to achieve these statutory obligations is funded at the discretion of the Department of Communities and Justice. The department has been very helpful. I'm very grateful for the support of secretary Michael Tidball, deputy secretary Paul McKnight and Mark Follett and their teams in particular. But the question arises whether this discretionary arrangement best secures the policy objectives of the Act, notably the independence of the commissioner, as stressed in section 7. As submissions from myself and the Australian Human Rights Commission note, there are other models that the Committee could consider, such as designating the Anti-slavery Commissioner a special office in the State's budget papers. Thank you, Chair, for the opportunity to provide evidence today. I look forward to your and the Committee's questions.

**The CHAIR:** Thank you very much, Dr Cockayne. We will now proceed to questions and we will commence with a crossbench question, Ms Leong.

**Ms JENNY LEONG:** Thank you, Dr Cockayne, for those opening remarks, for the submission that you have made, and for the work that you and your team are doing. I wonder if you could unpack a little bit more for us the position that you have taken as the commissioner in relation to fostering collective action, but then the obligations that you have specifically in terms of delivering on the hotline and other requirements. I am particularly interested in how you see the challenges around where the limits are on not investigating specific cases, but being responsible, as we see in the order of 35 or more direct reports of instances, which will no doubt increase in the hotline, and how you see those elements of the Act intersecting, given that there may be limits on the resourcing that you have. I am curious to see how you would see that play out and particularly any changes you would see to the Act to try and reconcile the detection work with the hotline reporting, but not engaging in individual case work.

**JAMES COCKAYNE:** Thank you, Deputy Chair. I think it's very important to understand that the Act itself as written creates a change mandate in this State, not just for me but for the State as a whole. The Act was introduced because there was a recognition that more needs to be done by government actors and by non-government actors to more effectively identify and assist victims of modern slavery. We're early in the days of that process of change and I think it will take time for it to succeed. My role, as I see it, reading the Act closely, is primarily a catalytic one. Often in the Act, whether it's on public procurement, or indeed on assisting victims that emerge that come forward for assistance, my role is not to resolve matters necessarily. It's not a command and control function by any means. It's to seek to catalyse collective action. This is something we've explored in more depth in our strategic plan for the next three years, *Working together for real freedom*.

The challenge is—as you've pointed to I think implicitly, Deputy Chair, in your question—to use the available resources to best catalyse collective action by different players. The Act is helpful in that it sets out in section 14 a basic duty of cooperation of certain players, but there is limited recourse straightforwardly where those actors seek not to be maximally cooperative, if I can put it that way. Similarly, on public procurement, my role—as I sometimes put it colloquially in dealing with government agencies and others that have reporting obligations—is more like that of a teacher than a school principal, in the sense that, yes, I am charged under the Act with monitoring that reporting and we will be providing advice on how to strengthen the efforts that reporting

entities take, but it is not a sanctioning role. I do have the power and, indeed, the responsibility to keep a public register of noncomplying entities, but that's where the limits of my sanctioning role end.

I make the distinction between the role of a teacher and the role of a principal in the sense that there is another actor in the system that frankly has stronger sanctioning powers where entities do not meet their obligations to take reasonable steps in their supply chains. That is the New South Wales Auditor-General, who was granted by the legislative process an independent modern slavery audit power. It's best that I don't speak to how that might be used. Those are obviously questions for the Auditor-General. In many different ways the Act adopts this line, but my role is to encourage and catalyse action by others. We are working out exactly what that looks like when it comes to the question of investigation. The limit on my role to not get involved in investigation is in section 10(1) of the Act. It's quite a complicated little provision, in the sense that it has many clauses, the first of which says that I am not to get involved in investigations or the resolution or handling of complaints. But then there's a subsequent clause that says "but" I can take individual cases into account when I'm considering a general issue. "General issue" is not defined.

The way we approach this is that when a person presents to us as a potential victim of modern slavery, we use section 14. Having heard that person, we use section 14 to open a conversation with the relevant other actors to provide a fact base for effective cooperation. We are charged with referring victims of modern slavery to relevant service providers. We need a strong fact base to understand where best to refer them and to not waste people's time. Although I am not permitted to engage in investigation, we certainly use section 14 to gather information in order to provide a strong fact base for the conversations we have with government and non-government actors to encourage action to support victims of modern slavery. I hope that gives you a sense.

**Ms JENNY LEONG:** Thanks, Dr Cockayne. That's useful. The other thing that I think is very clear from your strategic plan is the commitment to want to involve people with lived experience in the guidance and direction. I think that is a very good and clear approach for where we need to be headed in this space. I wonder, do you have any thoughts around potential amendments to the Act to ensure that that is not just at the will of a certain commissioner that may have a commitment to that, but rather what could be done in terms of strengthening the Act, both in terms of the role of the commissioner, the role of the Committee and others in ensuring those lived experience voices and expertise are being used to shape the objects in the delivery of ending modern slavery?

**JAMES COCKAYNE:** This is a critically important point, so I would say two things briefly. The first is I wholeheartedly agree that it is critical to involve lived experience in not only the design of policy interventions but also, wherever possible, their execution. We have in our team a lived experience practice lead, who has experience of modern slavery herself. We very deliberately included such a role in our first employee cohort to ensure that we were walking this talk; that we were, from the very beginning, being informed by that experience in the way we design and deliver our own work. I also have on my advisory panel of 29 people over 20 per cent with declared lived experience of one form or another of modern slavery. But, as you rightly point out, Deputy Chair, this is at my discretion at the moment. The second point I would make is that the suggestion to formalise this in some way—potentially in the functions of the commissioner, potentially through a more substantive provision—is a very promising idea. I'd be happy to take on notice to come back to you with a more formal suggestion of what that might look like, if that would be useful to the Committee.

**Ms JENNY LEONG:** Thank you, I appreciate that. Further to that, on the idea of engaging and ensuring a diversity of voices, one of the other submissions made by the Council for Civil Liberties specifically refers to the need to ensure that there's resourcing and support for CALD communities. I wonder, in terms of the communications and websites and information you currently have available, how many languages that's available in, and what the resourcing support is for ensuring that there is communication in multiple languages of the information that's put out by the office of the commissioner.

**JAMES COCKAYNE:** This is also critically important. I am the Anti-slavery Commissioner for New South Wales, not for one segment—geographic or cultural—of New South Wales. Again, through the advisory panel, we're drawing on a rich array of cultural perspectives. I am pleased that the CEO of Multicultural NSW, Joe La Posta, is a part of that advisory panel, partly to help ensure that we get this right. We have made some of our initial communications, notably a fact sheet, available in 19 languages, which I have buried somewhere in this fantastic briefing pack that my team has carefully prepared for me.

**Ms JENNY LEONG:** You don't need to list the 19 but feel free to submit them.

**JAMES COCKAYNE:** Thank you, we might take that on notice. Coming to the tail end of your question, Deputy Chair, frankly, how much we can do is going to be a function of resourcing—very straightforwardly. It is critical, and we take a very risk-driven approach in our work. We will focus our communication particularly on those cohorts which we understand to be at greatest risk of the specific type of modern slavery that we're seeking to engage with. We are learning, still, about which communities those are in New South Wales, and what

languages they speak. We are certainly committed to communicating in multiple languages. We've started that work, and there's a lot more to do.

**The Hon. Dr SARAH KAINED:** In conversations we have had before, I've probably expressed my concerns about the lack of investigative, enforcement and sanctioning powers that you've referred to this morning. I note in your submission that you do allude to potential changes in conclusion 4. I wonder if you could elaborate more on that? What would those extended powers look like? You've given some examples, but perhaps if you could explain a bit further. I'm a bit concerned about us leaving it to some sort of some normative process, people coming on board with the anti-slavery agenda—if you could explain what you were referring to.

**JAMES COCKAYNE:** I would be happy to do so. Let me begin by being very clear that I am not specifically advocating for additional powers. I do believe that the overriding analysis is that we are very early in the implementation of this Act, and there's quite some distance to go to understand what the existing powers can achieve. I also recognise, in reflecting on the terms of the Act and whether they secure the objects of the Act—I went through every object of the Act in preparing for this discussion. The one that most obviously stood out to me is the detection and exposure power—or object of the Act—because the way the Act currently approaches detection and exposure is that it relies on two channels.

First, it relies on victims coming forward. There are many good reasons why victims will not come forward and share their situation, including intimidation and fear of retaliation against themselves or their families, here or offshore; the re-traumatisation involved in presenting; and simply that they may not believe that they have that opportunity. Modern slavery is about the denial of voice, the denial of agency. So it's a lot to expect of somebody in that situation—someone who's being treated as if they're owned—to somehow find the opportunity and the means by which to come and express their situation.

The second way that the Act currently relies on this situation changing is on existing law enforcement and other frontline workers developing capabilities to better identify and support victims of modern slavery. We think that second one has great potential, and I recognise that the Act gives me a responsibility to make that happen. There is important work going on, for example, in the NSW Police Force and the AFP, to train their own personnel and other frontline workers. I'd like to commend, in particular, the Look a Little Deeper program developed by the Australian Federal Police. I'd like to commend the efforts of the NSW Police Force that are now looking to roll that out across their frontline personnel. That will take considerable time to achieve its effect. Meanwhile, in my office, we are looking to mobilise healthcare actors. We think that they are another critical frontline cohort that has the opportunity to identify victims of modern slavery and help refer them to appropriate treatments. American research suggests that as much as 84 per cent of people who are experiencing human trafficking will present during their exploitation to a frontline medical worker.<sup>1</sup> So that's the model in place. That indirect approach will take time, too.

What I've done in the submission is identify that there are certain other approaches available in New South Wales parliamentary precedent that equip independent statutory officers with more proactive ability to detect and expose violations of human rights or risks to human rights—in addition to, so certainly not supplanting, established investigative powers of law enforcement. The two that I've identified in particular are the powers of the Building Commissioner, which involve the ability to access premises and to inspect those premises, to inspect documents; and the similar abilities of the Children's Guardian.

The reason I think those are potentially interesting models might come to life a little better if I give you a real-life example. Just recently I had the great pleasure of visiting Griffith and Leeton—where, in fact, the Chair kindly joined us one evening for a public event. While I was there we spoke to a number of workers who are operating in conditions where, in particular, their accommodation, their recruitment process and their transport are placing them at risk of falling into forced labour, debt bondage—or they may in fact have already experienced deceptive recruiting.

Beyond speaking to those workers on the street, there is very little I can do to understand this general issue. So even before we think of this as a question of whether I can investigate individual cases—which I cannot, under the Act—to understand the general issue, I have no ability to engage with them on their work sites unless, for example, I request to do so through a farm or a labour hire contractor or some other employer. The experience of the other authorities, such as the Fair Work Ombudsman, is that doing that by request leads to a suppression of indicators or evidence, frankly, of violations of workplace obligations, or indeed the criminal law in this case. So

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<sup>1</sup> In [correspondence](#) to the committee received 27 November 2023, Dr James Cockayne, NSW Anti-Slavery Commissioner, provided a clarification to his evidence.

it may be that there is a need for some slightly more proactive opportunity to engage. But, as I said, I'm not seeking to press that case now. But I'd be happy to provide additional details on notice, if that would be useful, Dr Kaine.

**The Hon. Dr SARAH KAINE:** That would be great, if you could, thank you. In your submission, you note that most agencies required to report have only just started reporting. I wonder how many you'd received so far, and the depth of these reports. What are you getting in these reports?

**JAMES COCKAYNE:** Yes, I can be more respectful and much briefer in my answer in this one, Dr Kaine, because we haven't received many at all yet, because the reporting cycle is linked to their annual reporting cycle and most of them are hitting that just about now. We haven't actually formally provided them the reporting pathway. The exception is State-owned corporations that, because of the way the Act is written, have to provide us a copy of their modern slavery statement under the Federal Act. We've been engaging with them since December and I'm pleased to say that we had seven out of eight complying initially and, after engagement by me and my team, we now have eight out of eight fully complying with the provisions of the Act.

**The Hon. Dr SARAH KAINE:** In terms of the content, I know that the obligation is in the Federal Act. Is that enough for you? Are you seeing what you need through that?

**JAMES COCKAYNE:** Well, the Act gives me no real ability to review that content. It's a simple, "Have they submitted the copy of the statement to me or not?"

**The Hon. Dr SARAH KAINE:** You can assess it.

**JAMES COCKAYNE:** What we will be doing is we will be drawing the State-owned corporations' attention to the guidance that we're about to publish. The guidance is 200 pages long and it's mainly addressed to all of the other reporting entities, the 400-and-something other reporting entities. For the first year of their reporting we don't expect them to follow that guidance because it's just coming out and they're already reporting now. But we set out very clearly in the guidance which value chains or sectors we expect them to focus on for the next three years actually. In the first year it will be ICT, renewables and cleaning; the second year we add domestically produced agriculture and horticulture products; and the third year we add construction. We've given them that signal because the whole point here is to use the guidance to train limited available resources on higher risk procurement processes.

**The Hon. AILEEN MacDONALD:** I just note that since 2018 the modern slavery numbers appear to be growing so it's probably timely that we have this Act in. To do nothing would mean that it would continue to grow. I think you're at the second stage, where you're collaborating in putting together the strategic plan and engaging all stakeholders. What's the next phase? Is that adapting, as Dr Kaine said—possibly having amendments to the Act and different powers to the commission?

**JAMES COCKAYNE:** That's a very searching question, Ms MacDonald. My view is that we may need to spend several years bringing the current provisions to life and potentially any amendments that the Committee may propose as the result of this inquiry, and that some of that activity may be more administrative and policy oriented rather than legislative. Let me flesh that out a little bit. The history of engagement on modern slavery issues in this country has primarily been a conversation between the Federal Government and the non-government service provider sector. There are good reasons for that to do with the fact that much of the work in this area responds to a UN treaty 20 years ago and that obviously is in the Federal Government's domain. But, as a result, perhaps unintentionally, State- and Territory-level actors that provide the services that are often critical to victims' exit from and recovery from modern slavery, so health care, accommodation, legal aid, other such services—those State- and Territory-level actors have been somewhat missing from the conversation. I don't use that term pejoratively. It's simply not been the way the conversation has been structured.

We have the opportunity now with the Act in New South Wales to really engage those actors and help them bring a limited modern slavery focus to their work and see how the work that they're already conducting or that's very easily within reach can make a significant difference in the lives of people exposed to modern slavery. That probably looks like administrative action. It means things like convening working groups, joint projects, resourcing questions. It's a policy question too, thinking about how government allocates resources to different areas of activity to achieve this outcome. That would be my view: that the next phase is probably more around policy and administration to build a community of purpose here in New South Wales, rather than necessarily significant legislative change.

**The Hon. AILEEN MacDONALD:** You mentioned "build prevention capacity", so that's with the health workers. What about changing the narrative? I noticed in some of the other submissions they were talking about compliance burden. How would you change that narrative? Or what would you do to change that narrative?



**JAMES COCKAYNE:** Changing the narrative is the fourth priority out of five in our strategic plan for the next three years. We think one of the keys to achieve this will be to centre lived experience in talking about their experiences of modern slavery of course but also talking about what good policy in response looks like. Lived experience and lived expertise are simply a question of good user design in a way—that policies to be effective should be based on close consultation with at a minimum and potentially co-designed with those that the policies are seeking to support and benefit. That isn't an easy process. Involving those with lived experience—this can be highly traumatising for them.

The process for them to engage effectively needs to be very carefully built through close consultation. It hasn't been the traditional practice here in New South Wales or, I would say, more broadly in Australia to centre lived experience in advocacy. It's a fairly recent phenomenon. Some of you had the benefit of hearing from Sophie Otiende, the powerful advocate for this perspective, the CEO for the Global Fund to End Modern Slavery, when she kindly joined us here at New South Wales Parliament on 22 June to promote this plan. I think Sophie's powerful example shows how the narrative can be changed if we centre lived experience. But we're going to have to build that work very carefully.

Now, in terms of the compliance burden, I think—as I said, this Act is a change mandate and we're in the very early days of different actors reacting to the steps that they're required or encouraged to take under the Act. It's fairly natural that there would be a diversity of views about how this is playing out. I think it will take some time for the true shape and rhythm of what that cooperation looks like and, indeed, we have plans in my office to involve those service providers in a collective communication approach so that we can help identify and promote the great work that they're doing. But that kind of collective approach to communication advocacy resourcing strategy is fairly new and it's going to take some time for the constellation to settle down into place.

**Mrs TINA AYYAD:** You mentioned earlier, Commissioner, that in the USA 84 per cent of people who are victims of modern slavery will present to frontline healthcare workers while they're being trafficked. In this instance is there any evidence to suggest the same is happening in New South Wales with no reporting systems. And, if there was a reporting system, what would the process entail?

**JAMES COCKAYNE:** We do have reporting systems in place at the moment, Ms Ayyad. Of course, the AFP is the primary one. The AFP are the gatekeepers for access to the Support for Trafficked People Program that's funded by the Federal Government. We know from direct testimony to me that some survivors of modern slavery don't want to go through that process of engaging with the criminal justice process. They find it deeply traumatising. That means that, currently under the Federal system, they don't right now have access to the Support for Trafficked People Program, but I should note that will change in 2024. The Federal Government has funded an expansion of that program and is developing at the moment an arrangement to allow referrals not through the criminal justice system. In New South Wales there are also opportunities for victims of modern slavery to engage directly with non-government service providers. Anti Slavery Australia, which has been doing powerful pioneering work in this space for 20 years, has a hotline, including a dedicated hotline for survivors of forced marriage, My Blue Sky. They provide very important legal advice and assistance. So we do have people coming forward.

Additionally, my phone number and our email address, [antislavery@dcj.nsw.gov.au](mailto:antislavery@dcj.nsw.gov.au), are available publicly, and we do get presentations. We've had, I think, 36 people who have directly come to us and said, "I want support and assistance," as I'm required to provide them under the Act. Additionally, we have had 85 other specifically named individuals come to my attention through our work. They haven't come forward for that assistance, but they've come to my attention. We quite frequently ask them, "Do you want support and assistance?" Quite often they say no.

There are pathways but they're not highly integrated. What we don't have yet is a hotline, as required under section 12(d) of the Act. The short reason for that, Ms Ayyad, is simply that we're doing the homework to build it right. We need to know who is going to call, what language will they be speaking, and what age will they be. Will they be minors? Because then I have different mandatory reporting obligations—or children and young people, I should say, not minors. What kinds of modern slavery will they have suffered? That will hugely determine what kinds of referral pathways we'll need to have in place. We're doing the homework to build a model for that, which we'll take to government in the new year for a resourcing discussion.

**The Hon. ROBERT BORSAK:** Thanks, Mr Cockayne, for coming here today and giving us this evidence. In your opening statement, you said that probably the only function that has the opportunity to investigate modern slavery conditions—and, of course, it would be in government—is the Auditor-General. Have you seen anything in their reports that points you in that direction?

**JAMES COCKAYNE:** Thank you, Mr Borsak. If I did say that, allow me, please, to clarify. The Auditor-General's power specifically is a modern slavery audit power. It is an audit power; it is not a broader

investigative power. It relates to the due diligence efforts of organisations otherwise within the jurisdiction of the Auditor-General. In addition to the Auditor-General—and I will come back and answer the second part of your question, Mr Borsak—of course other authorities do have investigative powers, notably the NSW Police Force and other law enforcement actors in New South Wales. To answer the second part of your question—have I seen anything in the Auditor-General's reporting on this—to my knowledge, the Auditor-General has not yet exercised her modern slavery audit power.

**The Hon. ROBERT BORSAK:** Why do you think that is?

**JAMES COCKAYNE:** It's a question for the Auditor-General, I think.

**The Hon. ROBERT BORSAK:** You don't want to offer an opinion on that?

**JAMES COCKAYNE:** No, thank you.

**The Hon. ROBERT BORSAK:** You talk about, in your submission, the fact that enforcement has been variable. What do you see as the problems around the variability of enforcement by the people who do have the ability to enforce modern slavery laws?

**JAMES COCKAYNE:** That's an excellent question, Mr Borsak. The line that you refer to in my submission, I believe, was specifically discussing the enforcement of the criminal law. Here I might offer an opinion, but again I think the NSW Police Force and the DPP and other criminal justice actors are probably better qualified to answer the specifics of how they go about selecting cases for investigation and prosecution. What I can speak to are general patterns around modern slavery. These are extremely difficult cases to investigate as a general matter. People who are suffering modern slavery are often deliberately hidden from the sight of law enforcement actors.

**The Hon. ROBERT BORSAK:** By definition, they don't come forward. That's your evidence, isn't it?

**JAMES COCKAYNE:** That's right. I think if we wanted to see an increase in investigation and enforcement, there would need to be a policy decision taken to prioritise the enforcement of these provisions more highly. One that I have drawn attention to quite recently is section 91HAA of the Crimes Act, which is—

**The Hon. ROBERT BORSAK:** Can you just explain that?

**JAMES COCKAYNE:** Yes. It's the provision, essentially, that creates a criminal offence for administering a digital platform, aware that the platform is used to distribute child sexual abuse materials. Recently the e-Safety commissioner at the Federal level fined X, formerly known as Twitter, for failing to answer questions she had about the use of that platform to distribute child sexual abuse materials. I pointed out in the public through a statement that if there is evidence that such materials are being traded on a platform like X, and X is aware of this, then there is a question whether that violates section 91HAA of the New South Wales criminal law, and perhaps that is something that could and should be investigated and prosecuted.

**The Hon. ROBERT BORSAK:** Thank you. In your evidence, you talk about the development of a code of practice under section 27. Can you tell us where you think you're up to in relation to that? I think you also say in your evidence that there is a large appetite for guidance and training, and obviously a code of practice would be something that should be in place as soon as possible. Can you give us a bit of an update as to where you see yourself being up to in that process?

**JAMES COCKAYNE:** Yes, I'd happily do that, Mr Borsak. There are two things that we have underway in the procurement and supply chain space. The first is the guidance that I mentioned earlier. We hope that that will be published in the next month, and then it will go to the NSW Procurement Board for consideration for endorsement through a direction, we anticipate. That applies to the 400-plus reporting entities captured by the Act. Separately, section 27 of the Act empowers me to develop codes of practice for identifying and—I paraphrase here—addressing modern slavery risks in supply chains, not only in the public sector but more broadly. The term used is "organisations". We're using that to develop, as you point out, a renewable energy value chain code of practice. We're currently drafting that code of practice. We're working with the Clean Energy Council to help us get an understanding of what the potential user needs of that code will be. We'll then release that draft—we hope prior to the end of the year—for several months of public notice and comment and feedback. We'll then review the draft and look to publish the code in the middle of next year.

**The Hon. ROBERT BORSAK:** You promulgate the code, but you say you don't have any ability to investigate the potential effect of the code or potential breaches. Would it be useful to you to have a power to be able to publicly expose abuse? After all, modern slavery and slavery in general, whether it's here or overseas, does cost good jobs and well-paid positions in New South Wales. What do you see and how can you deal with that in terms of actually doing more than just educating?

**JAMES COCKAYNE:** It's a very good question. At the moment, if a reporting entity doesn't follow the guidance we're about to issue, there are various steps I can take to draw their attention to that, and then they have to respond in their annual reporting. If they don't, or if I'm dissatisfied with their response, there is the possibility that they go on the public register required by section 26. There is that ability to, for lack of a better word, name and shame. I'd also note that the legislative amendments made when this Act came in also give me immunity from defamation law in New South Wales. I take that as a very important—

**The Hon. ROBERT BORSAK:** Start defaming them, then.

**JAMES COCKAYNE:** We have already begun to identify individual companies in public where we see potential modern slavery risks. For example, Linx Employment TAS Pty Ltd is an entity that we issued a public statement encouraging people to come forward with information. But, Mr Borsak, if I may, it comes back to the point that I cannot, under the powers given to me, proactively investigate that matter. I am able to draw attention to a general issue, but I am not permitted to proactively investigate that matter. I am in a passive situation, waiting for people with information to come forward and share that information with me.

**The Hon. ROBERT BORSAK:** That takes me right back to my first question of you: Do you want more power to investigate, not just educate?

**JAMES COCKAYNE:** I think that's a matter for the Committee, thinking about whether the current arrangements secure the object of detection and exposure.

**The Hon. ROBERT BORSAK:** Give us some guidance.

**JAMES COCKAYNE:** Mr Borsak, I have offered models of what that might look like, if you were so minded. I think you can probably take that as an indication that I think it's a matter worth exploring.

**The CHAIR:** I think Ms Wilkinson has a question that Dr Kaine is going to ask for her because she has had trouble connecting in.

**The Hon. Dr SARAH KAINE:** Yes, she has deferred to me due to coughing attacks. The question is about the codes of practice and supply chain. I just wanted to ask, in terms of the different components of that code, obviously one of the key drivers of poor behaviour, particularly when it comes to treating workers, is price or costs. How are you factoring in a means of considering cost or trying to avoid cost and price exerting that downward pressure on that supply chain? What in your codes are you looking at to address that economic imperative to engage in poor labour practices?

**JAMES COCKAYNE:** That's an excellent question from Ms Wilkinson. Ms Wilkinson, if you're watching—

**Ms JENNY LEONG:** She's behind you.

**JAMES COCKAYNE:** —I hope you recover quickly. I think I can give you two useful answers to this question. The first is in relation to the guidance to public entities—so these are the 400-plus entities I keep mentioning, all government departments, all local councils and so forth. Costing and pricing of procurement contracts—let's call them generically—is a matter we draw to the attention of buyers that are reporting under that guidance. What I mean by that is the guidance makes clear that managing modern slavery risks in supply chains is a shared responsibility for buyers and suppliers, and that there may be moments when the costing structures imposed by a contract are actually creating incentives for suppliers and those in the supply chain to create working conditions that are conducive to modern slavery precisely because of the cost pressures.

Figuring out how to address that while respecting the existing procurement rules around value for money and other factors is going to be a critical question in the work we'll be doing with those 400-plus entities over the next three, four, five years. How do you actually run a tender in a way that respects the rules while allowing you to optimise your attention to social outcomes such as modern slavery? That's the practical question here.

**The Hon. Dr SARAH KAINE:** Dr Cockayne, if I could ask a supplementary on my behalf—that's for the guidance for the public sector?

**JAMES COCKAYNE:** Yes.

**The Hon. Dr SARAH KAINE:** The question was a little bit more about the codes of practice for the private sector supply chains.

**JAMES COCKAYNE:** Yes, allow me to come to that. On that question, it's an open question right now because we are still drafting, and we are looking at models from other jurisdictions on how they have approached this. Specifically on the point that you have raised, one model that has recently—I'd say—caught my eye is the model being used by the Labour Hire Authority in Victoria, which has done some outstanding work using

information to value chain providers in the private security sector, precisely to help different actors along the value chain understand what fair cost pricing looks like. It is the lack of transparency around market information in the value chain that allows all the middlemen—it's often men—actors to extract rents and to drive risk down onto vulnerable workers. So it may be as simple as working with specific supply chains and value chains to publish fair pricing information. That, however, is a highly technical exercise, which may take some time.

**The Hon. Dr SARAH KAINE:** There is precedent in the cleaning sector with the Cleaning Accountability Framework.

**JAMES COCKAYNE:** Exactly. I think with the renewables work, what we are looking at at the moment is the code—it will be technology neutral. We will then have a series of implementation guides that look at specific technology value chains because you're going to have, frankly, different pricing structures in each of those value chains. So this is certainly the direction of travel but, again, it may be partly a function of resourcing—how far and fast we can move along that pathway in the years ahead.

**The CHAIR:** You've indicated both in your submission and again this morning several areas where it seems to me there will be increased work for you and your team going forward: expanding lived-experienced involvement in implementation; the implementation of the hotline, which you're scoping at the moment, but I think could be quite resource intensive; and the exercise of reviewing the procurement information that comes in once the reports are in and so on. I wonder if you could offer—in terms of resourcing going forward, how are the discussions going with you and the Government on that?

**JAMES COCKAYNE:** Constructively. This is a brand new area of work for the State. I think it's natural that it would take some time to understand the practical import and implications of the Act, and we are in the middle of that process now. We are beginning to identify exactly these potential areas of demand for resourcing. I think the areas we have identified—exactly those areas that you've identified, Chair, in your helpful summary—of those, the two that will require significant additional resourcing are the hotline and the procurement work. The procurement work, I would note, isn't necessarily only about resourcing to my office. That actually may be a relatively small component. It is more about ensuring that the 400-plus reporting entities have the work not just to do the reporting but, frankly, to do the contract management, the risk analytics and so on to really embed this work in their own practice going forward.

I am in continuing conversation with government about the need, despite the straitened fiscal times, to consider how to effectively resource that work, and I am optimistic that that conversation will continue into the new year. In fairness, we have not—except in a couple of specific areas relating to digital requirements—put specific propositions yet to the Government. We have had constructive conversations with the department. It might be worth it, Chair, if you'd allow me to say just 30 seconds more on our conversations with the department, as opposed to the Government more broadly. At the moment, the resourcing complement that I am afforded is at the discretion of the department.

I have had very constructive engagement with the secretary of the department, Michael Tidball, with deputy secretary, Paul McKnight, and others working with deputy secretary McKnight. Earlier this year I was asked to model our needs going forward, despite it being fairly early. That was a reasonable request. I identified the minimum baseline requirements to meet my statutory obligations—the bare minimum—as being 18 full-time personnel. Given the other demands on the department's budget, the department kindly provided 12 personnel. We are operating currently with that complement, and I think there is a further conversation—as I have had, which is now underway—with broader government to think about additional resourcing needs going forward.

**The CHAIR:** Does the 18 include the hotline?

**JAMES COCKAYNE:** The 18 would provide absolute bare bones, but it depends a little bit on the demand for the hotline, Chair, in fairness. We need to model what we think that demand will be and how full service—if I can put it that way—the hotline will be. I would note that under section 12(d) of the Act there is the possibility to—what I would call—piggyback the hotline. It is not necessarily the case that we have to build a hotline from scratch. I sometimes refer to this as a hotline arrangement. The terms of 12 (d) allow me to essentially work with another hotline provider to ensure they are addressing the needs of this particular cohort. That might still have resourcing implications, though, of course.

**The CHAIR:** I'm just mindful that we are coming up to the time allotted for this. I think there are a couple of items that you have raised in your submission that we may come back to you on for further information.

**JAMES COCKAYNE:** Yes.

**The CHAIR:** You have alluded to the timing, for example, of a future review.

**Ms JENNY LEONG:** Dr Cockayne, I'm surprised by your earlier comment that the reviewing of the statements is not within your remit. I am concerned, and I appreciate that you may not be familiar with the submission made by the Scarlet Alliance to the Federal process, but in that they raise concerns that there was a lot of lack of understanding within those who are making the statements as to what actually constitutes modern slavery, and other concerns that people in the community may wrongly position as modern slavery. I am concerned, given the requirement for people to make statements, but ask you where does the responsibility sit for the reviewing of those statements, ensuring that they are not doing more further harm or misinformation, but also then ensuring the necessary action is taken as a result of those statements? If it doesn't sit with you, do you think it should? If not, should the Act have some provision for who has responsibility for reviewing those statements?

**JAMES COCKAYNE:** There may be a small misunderstanding here, which is my error, Deputy Chair. I was speaking only of the eight State-owned corporations, not the 400-plus. When the amendments to this Act were made in 2021, essentially State-owned corporations were hived off and put under the purview of the Federal reporting system. It is therefore under the Federal reporting system. It's for the Federal Government to determine how to review those statements, and indeed there is a review, as you've alluded to, currently underway to look at that. I'm only speaking about those eight State-owned corporations.

For the 400-plus other reporting entities, the Act provides a balance of responsibilities between myself and the Auditor-General, and to some extent actually also the Procurement Board in the sense that I have an obligation to consult with the Procurement Board on the effectiveness of due diligence. So absolutely, yes, I do have responsibility to review the reporting by those 400-plus entities. We're already actively involved with them to provide them guidance on what we're looking for. It's only in the case of those eight specific State-owned corporations, things like Sydney Water and Forestry Corporation and so on, that that responsibility lies with the Federal Government, because they're reporting under the Federal scheme.

**Ms JENNY LEONG:** So just to clarify then in relation to those 400 entities, you believe the current Act gives you the powers both to address any misinformation or issues that are raised in those statements as part of your education powers but simultaneously the ability to raise and alert in the public sphere any concerns or trends you see in those statements.

**JAMES COCKAYNE:** The Act currently gives me the obligation to monitor that reporting specifically. It then gives me various powers to identify issues and notify government agencies of specific issues. That then triggers extra reporting obligations for them. At any point along that process if I consider that an entity is not meeting its reporting obligations, I can put them on the public register under section 26 and I also have the ability under other functions to educate, to train, to advise. So we already have government agencies coming to us looking for advice on specific procurements. We provide that advice in line with the forthcoming guidance. In fact, some of the model contract clauses that we've been developing are already finding their way into public procurement despite the fact that the guidance hasn't yet formally been published. As I said, it's a little bit like a teacher. We will mark their homework but that's with a view to improving their capabilities over time, and we do have the ability to raise publicly specific concerns if we see them.

**The CHAIR:** Thanks, Dr Cockayne. We might bring that to a close. Thank you for your evidence. The secretariat will contact you in relation to any questions on notice or additional information.

**(The witness withdrew.)**

**Mr PAUL McKNIGHT**, Deputy Secretary, Law Reform and Legal Services, NSW Department of Communities and Justice, affirmed and examined

**Mr MARK FOLLETT**, Executive Director, Policy Reform and Legislation, NSW Department of Communities and Justice, affirmed and examined

**The CHAIR:** Welcome, Mr McKnight and Mr Follett. Thank you for making time to give evidence this morning. Would either of you like to start by making a short statement?

**PAUL McKNIGHT:** We thought we would just take committee questions if that suits the Committee.

**The CHAIR:** All right. No worries.

**Ms JENNY LEONG:** I have a question specifically around training within New South Wales government departments and also within DCJ, recognising the intersection that is identified in a number of the submissions and the work of the commissioner between, for example, housing and homelessness as a risk factor in relation to indicators of modern slavery risks but also the need to access supports once someone is identified as being subjected to modern slavery. Can you talk about the training that has been conducted within DCJ but also I guess any insights you have as to the broader training that's provided and resourcing that's provided for training and prioritisation of this Act as it relates to the Department of Customer Service, police, health and others?

**PAUL McKNIGHT:** I might need to take some of the detail of that on notice. But what I would say generally speaking is that I think, as the commissioner was saying earlier in his evidence, it is fairly early days for the Act and fairly early days for the commissioner. This has been the first round of annual reporting that the commissioner has undertaken. I think he has canvassed some key departments to assess the training that they are undertaking and report on the level of that. He has certainly highlighted training being undertaken by the New South Wales police, which is obviously a first-line responder, and also I think outlined some of the work being done in the domestic and family violence area by our own department.

But I think there is capacity to build in the training area across government. With the commissioner's support that is something that we will need to work on across government. The commissioner is particularly focused on frontline entities and the issues of how we identify people who are in first responder, in health systems, in police systems, in child protection systems and how we dig a little deeper into their life experience and identify what they're doing. But I think, generally speaking, as I say, there is a little more work to do in that space. Mark, did you want to—

**MARK FOLLETT:** No, I think that's right. In terms of some specific points, the commissioner spoke about the procurement efforts, which are really focused and through the Procurement Board, and that will, I think, as this Act and the commissioner's office really evolve and get their teeth into that awareness raising function, really expand to reach all the procurement areas within the government agencies. That's a really key facet. As Paul said, in relation to DCJ, there has been some work in relation to forced marriage, which I think flows from a lot of this work and the commissioner's work in that space in considering how our current parameters address forced marriage and whether they're sufficient and whether any changes are required there.

**Ms JENNY LEONG:** If I may, just a quick one on the review timing. I think all of us feel that this review may be a little soon given the timing of the delays. I recognise in the commissioner's submission they made reference to the fact that there is no ongoing review. Obviously that's something that needs to be looked at in updating the Act potentially. Can I ask you your thoughts on the timing of the next review, which may be different to what the regular review would be? For example, potentially every four years seems to be a standard review of an Act but, given that we haven't seen some of the elements of this Act even put in place, what are your thoughts around the timing of when you think would be a useful first stage of the next time to review the Act versus what might be the ongoing timing for the Act review?

**PAUL McKNIGHT:** It is early days for the Act. It is a valuable exercise, I think, to take stock of where the Act is up to now in its infancy with the first strategic plan having been released and the commissioner now up and running in his role. It's relatively rare for an Act of Parliament to have regular review mechanisms built into it. The normal pattern is for a single review. It used to be that five years was the standard. Five years feels like a good amount of time to get a sense of how an Act is working. There are some Acts where we, either administratively or it is built in, have a regular review mechanism, but it is relatively rare.

In relation to this Act and where we would naturally think about how its performing, again, whether that is a statutory obligation or whether we just do that as a matter of administrative practice, it would feel to me that something toward the end of the first strategic plan time frame might give us a sense of how the Act is performing on the ground for us and what difference it's making in the community. I think that's a three-year time frame. But

I think there is a sense in which you don't know how long it's going to be until you actually do see what's occurring on the ground. I would expect the commissioner to have views about that as well as things unfold.

**MARK FOLLETT:** One thing I might just add to that, if I may, is that with this particular legislation there's a particular overlap with the Commonwealth. Obviously the Commonwealth responds to the recent recommendations of how they're going to reform their Modern Slavery Act and what that might mean for the establishment of a Commonwealth office is worth bearing in to the timing for which this Act might be reviewed again. Understanding how those two regimes are going to work together is really critical for this space.

**Ms JENNY LEONG:** Thank you, Mr Follett. I appreciate that.

**The Hon. Dr SARAH KAINE:** Thank you both for being here today. I have a question about interjurisdictional collaboration. I note the commissioner's submission talks about working with the potential Federal anti-slavery commissioner. What work is being done by DCJ in terms of interjurisdictional intent once those different jurisdictions finalise what their plans are?

**MARK FOLLETT:** Prior to the commissioner taking on the role, Mr McKnight and I both acted for a short time in the role of commissioner. During those periods we met with the Commonwealth quite a lot; I think I met with them once, with Home Affairs. I don't want to speak for the commissioner, but I know that he's engaged thoroughly with the Commonwealth. It's obviously critical given the types of offending behaviour and the levers that we have. A number of the offences that are referred to in the New South Wales Act are in the Commonwealth regime as well so that engagement is really critical and will continue to be.

Again, one area where DCJ will necessarily need to engage and will engage closely with the Commonwealth is forced marriage, where there is an overlap between New South Wales State responsibility and Commonwealth responsibility. That's obviously one element of the criminal aspect. There's also the overlap with the procurement element and the State-owned corporations, the voluntary reporting to the Commonwealth regime. From those two points of the regime where there's clear overlap and there's clear work, there's also the ongoing relationships we have as a department with Home Affairs and Commonwealth AGD in relation to overlapping legal policy issues that we interact with the Commonwealth on various things, whether that's through the Standing Council of Attorneys-General or just general agency-to-agency cooperation.

**The Hon. Dr SARAH KAINE:** Given the continuum that is modern slavery, is there any engagement with the Fair Work Regulations and the Fair Work Ombudsman in terms of identification and those kinds of issues?

**PAUL McKNIGHT:** Not with our department as such. There may well be interactions between, say, the police and the Fair Work Ombudsman. You'll be conscious that the workplace regulation and the private sector is a Commonwealth system.

**The Hon. Dr SARAH KAINE:** Sure.

**PAUL McKNIGHT:** I would expect that some of the issues that the commissioner identified this morning in terms of his visits to workplaces, he would engage with Fair Work on those. There's nothing stopping him doing that. In fact, the Act provides him with a framework for general cooperation with responsible authorities. I would hope there is that flow of information being put in place.

**The Hon. Dr SARAH KAINE:** Could you maybe take on notice to find out if there have been any formal communications or otherwise?

**PAUL McKNIGHT:** Yes.

**The Hon. AILEEN MacDONALD:** I think that you've covered harmonising the Act with the Federal Act and, in doing so, aligning so it's not duplicating any reporting arrangements. I think you have answered that question, unless you want to elaborate.

**PAUL McKNIGHT:** Yes. Now that the Commonwealth has responded to its review and has committed to the creation of a modern slavery commissioner at the Commonwealth level, I think the Act itself is ripe for review in terms of the provisions it provides for. It looks at the Commonwealth strategic plan, so obviously that needs to be updated. I think the commissioner has proposed the suggestion that there might be a function of cooperating with a Federal commissioner. I think that's something the Committee may well want to think about. In general, as the Commonwealth system gets more mature and the work at the Commonwealth level ramps up—and we would expect it to do that—there is a piece of thinking to do about how the New South Wales commissioner and the Federal commissioner interrelate to make sure that we're not stepping on each other's toes and overlapping in functions and responsibilities. That will need to play out over time as the Feds get more active in this space.

**The CHAIR:** Just to clarify, the Commonwealth has responded in terms of indicating they're going to establish an anti-slavery commissioner. Have they responded to the report's recommendations? I don't think they have.

**MARK FOLLETT:** I don't think as yet they've formally issued a response to those recommendations but they've made announcements around the establishment of the office, and I believe that there were announcements around the budget for the office going forward.

**The CHAIR:** But we're still to hear the response to the other recommendations?

**MARK FOLLETT:** I think there were 30-odd recommendations.

**The CHAIR:** That clearly would inform, in my view, the role of the Federal anti-slavery commissioner, and clearly then that will provide some work around how that aligns, I suppose, in terms of functions. There has been a suggestion, as you've mentioned, of including a function around cooperation in the role of the New South Wales Anti-slavery Commissioner. Does anything else need to change in the Act to make sure that that cooperation takes place? Does the commission need any additional powers, or do you or your office need any additional powers to make sure that we can get that alignment?

**PAUL McKNIGHT:** It's a bit hard to know until the Commonwealth, as you say, responds to the report in detail. I think in a sense it's not entirely a legal issue; it is an issue of operation and an issue of interjurisdictional cooperation between the commissioners and between agencies that really makes the difference. I think we have a real sense that we need to work together to combat modern slavery. For me, it is really a matter of providing an indication in the Act that that is required and then getting on and doing it at the operational level.

**The CHAIR:** So it's probably going to be an operational issue, rather than an issue around the Act, beyond perhaps considering incorporating that responsibility for cooperation?

**PAUL McKNIGHT:** Yes.

**The CHAIR:** Can I just go to an issue that Ms Leong raised earlier around equipping frontline agencies and, I guess, in particular, Health? It seems to me that is going to be a critical component of both increasing the public discussion but, frankly, identifying and helping people who may be the victims of modern slavery. Would you see that as a responsibility of the Department of Communities and Justice, on the advice of the Anti-slavery Commissioner, in terms of training programs in that area, or would it be the responsibility, say, of NSW Health to develop those programs itself? Do you lead that across the agencies? Just take me through how that might best work.

**PAUL McKNIGHT:** I think the model we have under the Act for the commissioner—really, at the centre of what that Act provides for the commissioner is a commissioner's role in leadership and capacity-building across the government sector. Really, we're looking to the commissioner to help us build our capacities to deliver services in the areas in which we deliver services. In the case of a health training package or a health issue, what we're looking for from the commissioner is some assistance I think to NSW Health, primarily, to build its capacity. The same is true of policing and, indeed, the responsibilities of DCJ. We're really looking, I think, that the philosophy for us underlining the Act is this idea that we should all be doing better and the commissioner is there to help us lift our game in the areas where we are responsible. You see that in the procurement space; you see that in the health space, in the policing space. That's how I see the roles and responsibilities sitting. We're all trying to uplift capacity in the sector.

**The CHAIR:** I suppose my concern is that—the Anti-slavery Commissioner's role is to get us all to lift our performance. Now, that could extend from the Anti-slavery Commissioner providing us with an overview of the problem and some examples, all the way through to a system in which all frontline workers are required to actually undertake some formal online training. Clearly, the resource implications at either end of that spectrum are very different. I'm just interested in the role of DCJ in making sure that happens across those agencies and making sure they commit the resources of their staff to be trained, for example. I guess it then gets onto another issue for me, which of course is the issue around resourcing the commissioner.

**PAUL McKNIGHT:** We don't have that role. As a department, we do not have an oversight or a general responsibility across government on this issue. We have a responsibility in our own area, but other departments have responsibilities in relation to their areas. I think the commissioner is very sensibly thinking about priority questions there, about where you get most impact in the system for the energy that you want to put into building capacity. As identified, health is one of those really priority areas. I think that makes sense in terms of where people go for service in the community and who people are seen by. Would you like me to—

**The CHAIR:** Discuss resourcing, more broadly.



**PAUL McKNIGHT:** Resourcing, yes.

**The CHAIR:** The commissioner has indicated that—it seems to me, anyway, that there needs to be an uplift in resources moving forward. I'm just wondering how that is being worked through with yourselves and the Government.

**PAUL McKNIGHT:** Indeed. At the moment, the commissioner's budget is in the realm of \$2.5 million a year. The department was required to fund the commissioner out of existing resources in the set-up of the commissioner. I note in this regard that the Commonwealth have announced funding for their anti-slavery commissioner. They've committed \$8 million over four years, so that's a \$2 million-a-year outfit. In general, budget decisions will be taken by Government in the course of the budget, and, undoubtedly, there will be discussions about that. That's the situation that we found ourselves in at the moment, I think. I note Dr Cockayne's comments this morning about the really constructive conversations that he has had with the department, and I think those conversations have been very constructive.

**Ms JENNY LEONG:** I just have one follow-up on that, if I can. I guess it's in part for yourselves. Just before I ask that question, Chair, if the Committee agrees to it, maybe I can suggest that we give the commissioner the ability to answer and take any of the questions we've asked of Mr Follett and Mr McKnight on notice and submit those if the commissioner wants to provide any additional information, given the number of occasions Mr Follett and Mr McKnight have responded saying they don't want to speak on behalf of the commissioner, and no doubt the commissioner would have thoughts.

**The CHAIR:** Yes, that's a very good idea.

**Ms JENNY LEONG:** Not wanting to force the commissioner to do that, but perhaps we can submit the questions that we've made and allow the commissioner the ability to also provide a response, if he so wishes, to some of those. I just wanted to touch briefly on any thoughts you have in relation to the Act as it stands and the challenge that exists with particularly accessing housing and homelessness services, recognising the special rapporteur—it was focused very much on the intersection between modern slavery and housing and homelessness pressures. I'm wondering if you have any initial thoughts or if you want to take on notice what changes could be made in the Act to ensure those reporting instances of modern slavery or at risk of modern slavery are able to access the other services that DCJ provides, and if there's additional legislative change that would be required to other Acts beyond the Modern Slavery Act to ensure the delivery of that. I'm not expecting you to do that in the next three minutes, but if you want to touch on it now and then provide any additional advice—

**PAUL McKNIGHT:** There's nothing in the Act that prevents the commissioner working with departments like our own in areas where they are responsible. I think housing and homelessness seems to be an emerging issue that I'm not sure was really front and centre when the Act was passed and is now a piece of the puzzle that we need to think about. There's nothing that stops the commissioner working with our department on that, and I think there may well be scope for that kind of work to go on. I haven't really thought about whether the Act needed to change to specifically reflect that, but we can take that on notice.

**Ms JENNY LEONG:** Thank you.

**The CHAIR:** Thank you very much for your evidence. The secretariat will contact you in relation to any questions on notice.

**(The witnesses withdrew.)**

**(Short adjournment)**

**Ms EMMA COOPER**, Acting Director, Procurement Policy, Procurement NSW, affirmed and examined

**Mr SONG HONG**, Executive Director, Procurement NSW, sworn and examined

**The CHAIR:** I welcome our next witnesses. Thank you for coming and for making time to give evidence and answer questions. Would you like to start by making a short statement?

**SONG HONG:** My professional name is Song Hong, but legally I go by the name of Sung-Soo Hong. Good morning, Chair and Committee members. Thank you for having us here today and for the opportunity to participate as witnesses at this review hearing. We look forward to supporting the Committee in relation to the review of the Modern Slavery Act, particularly as it relates to government-wide procurement. Let me begin by acknowledging the traditional owners of this land, the Gadigal people of the Eora nation. I pay my respects to Elders past, present and emerging and extend that respect to Aboriginal and Torres Strait Islander people here today.

Last Friday NSW Treasury made its submission to this Committee's review of the Modern Slavery Act 2018. In that submission, it notes the role and remit of NSW Procurement and provides an update on our work with the Anti-slavery Commissioner, the NSW Procurement Board and government agencies since the Act passed Parliament. NSW Procurement is a central branch that sits within the commercial group of NSW Treasury. We implement innovative, outcome-driven procurement approaches to maximise value for money and make it easier to do business with government. In that regard, NSW Procurement is responsible for a number of government-wide procurement functions, including whole-of-government procurement policies as well as government-wide electricity, waste, professional services, professional contingent labour, and fleet- and travel-related contracts and schemes. We support government departments and agencies with the necessary resources and capability to achieve their business objectives within a devolved procurement framework.

As it relates to the Modern Slavery Act 2018, NSW Procurement does not have any statutory powers. Instead, in accordance with part 11 of the Public Works and Procurement Act 1912, we provide advice and recommendations to the Minister for Domestic Manufacturing and Government Procurement and the NSW Procurement Board, comprising department secretaries and deputy secretaries. The Public Works and Procurement Act empowers the Procurement Board to issue directions and policies to government agencies. Specifically, the board has the power to issue directions about the reasonable steps that are to be taken to ensure that goods and services procured by government agencies are not the product of modern slavery within the meaning of the Modern Slavery Act 2018. It should be noted that the Procurement Board has authority to direct government agencies as defined in the Public Works and Procurement Act, including all government departments, executive agencies and public bodies.

NSW Procurement has been supporting the Anti-slavery Commissioner in consulting with the Procurement Board on the best ways to direct and work with government agencies to comply with their duties and responsibilities under the Modern Slavery Act. We expect that such a direction will be agreed and issued by the Procurement Board in the near future, upon the release of the Anti-slavery Commissioner's final guidance to government agencies.

Since the commencement of the Modern Slavery Act on 1 January 2022, NSW Procurement has undertaken numerous initiatives, including leading an education piece and briefing government agencies on their procurement-related duties and responsibilities under the Act. This initial education piece included drafting and releasing guidance on steps procuring agencies could take to address modern slavery risk at each stage of the procurement process, which is available on the buy.nsw procurement website; developing and publishing tender schedules and contract clauses; holding four virtual information sessions in April 2022; releasing a series of online training modules in July 2022; hosting a monthly working group throughout 2022 to keep agencies updated on the implementation; and meeting with whole-of-government category managers to brief them on the Act.

As you are aware, the ongoing New South Wales Anti-slavery Commissioner, Dr James Cockayne, was appointed on 1 August 2022. Since then, NSW Procurement has supported the commissioner and his program of work specifically as it relates to government procurement, the commissioner's draft guidance that is expected to be released by the end of this year, and practical implementation across government agencies. As noted, the commissioner is currently developing comprehensive guidance on reasonable steps that procuring agencies must take to ensure their supply chains do not contain products of modern slavery and how to report on these steps. NSW Procurement has provided the commissioner with feedback on the guidance and will provide further support material to assist agencies to implement the guidance once it is released in final.

Once the commissioner's comprehensive guidance is published and the Procurement Board direction is issued, procuring agencies will need to embed this new guidance and direction into their respective procurement

practices. Ultimately, these steps will, over time, help to ensure that goods and services procured by and for government agencies are not the product of modern slavery. Thank you for the opportunity to provide the Committee with this information. We look forward to your questions.

**Ms JENNY LEONG:** Thank you, Ms Cooper and Mr Hong, for those opening remarks. If I may ask, what are your thoughts on the powers within the Act that exist to ensure that adequate training and priority is given across the many government areas that are responsible for ensuring that we are not engaging in procuring goods or services that are connected with modern slavery? Do you have thoughts on whether the current powers and the current Act allows us to ensure that resourcing and priority is given within departments or do you feel like there are changes that need to be made to address those?

**SONG HONG:** There was a lot in that question. I will address some of it but, if I don't address all of it, please let us know. In relation to the Modern Slavery Act, in terms of NSW Procurement, as I mentioned earlier, we don't have any statutory powers within that Act. However, within the Act that applies to us, we do provide guidance to agencies and we work with the Anti-slavery Commissioner on numerous things, including education and guidance. As stated, we have run various education forums with government departments and government agencies. We also have online training tools, and we have put courses on there for government agencies to be able to learn and be updated on what is happening. Those courses would be updated as the commissioner issues his final guidance as well. In relation to education, we do have remit within the Act that I mentioned before—the Public Works and Procurement Act. And then, as you are aware, the Modern Slavery Act goes beyond government procurement. Ms Cooper?

**EMMA COOPER:** If I could also add, as in our submission, we note the Act does include particular powers for the commissioner in relation to providing advice, education and training on ways to prevent modern slavery taking place and to assist victims. However, it does not specifically refer to the education training functions on preventing modern slavery and supply chains. We do think that could be clarified as to where that responsibility lies. At the moment, it does sit between NSW Procurement and the commissioner, to some extent.

**Ms JENNY LEONG:** I appreciate that. Recognising the very early stages of the Act and the commissioner's work and the guidelines just being developed, what do you foresee as the biggest impediments or challenges around supply chain transparency of areas of either policy within government or legislative change that you think could support the work of NSW Procurement in delivering on the objects of the Act? I am happy for you to take this on notice if there is additional detail.

**SONG HONG:** I'll go first, then Ms Cooper can join. I guess government procurement is quite complex just because of the breadth and depth, not only of the agencies within government, but also the various social sustainable economic drivers that government is trying to influence within the State. There is always more that can be done, but government also needs to prioritise what needs to happen within the State. In relation to the Modern Slavery Act and the objectives of that Act, it is critical that government focuses on it, noting that within the broader remit of government procurement, Procurement can do so much, but it can't do everything. In relation to specifically around—I think you mentioned about resourcing. We do need to continue to support agencies on resourcing and education across the sector, but we also need to educate businesses within New South Wales and in Australia and around the world. That is more within the remit of the Anti-slavery Commissioner.

**EMMA COOPER:** I don't have anything to add to that.

**Ms JENNY LEONG:** One other question I wanted to raise with you is that there is indication in one of the submissions that the Committee has received around looking at minor labour rights infringements and issues of increasing reporting around that as potential indicators for areas of risk for modern slavery. I wonder if you have thoughts around that in terms of the work that you might do with existing fair work provisions and other considerations within the procurement process, and whether or not you have thoughts around the idea of potentially seeing the ability to report on minor labour infringements as a way to increase the awareness within departments around supply chains and concerns around modern slavery risks.

**SONG HONG:** Do you want me to take it?

**EMMA COOPER:** You can start. There's a lot there.

**SONG HONG:** There's a lot there. From a procurement point of view we will put in, again, processes and guidance to agencies in terms of how they apply the Act and also to ensure that we move modern slavery within the supply chain of government. As it relates to labour, it depends, again, partly also what types of labour. As I mentioned before, within New South Wales procurement we oversee professional contingent labour. That's probably not a category—I'll say the word "probably" because it's probably not the category where there is modern slavery. There is probably modern slavery in other areas of the labour market. Again, as I mentioned earlier, there is more that can be done, but from a procurement point of view I sort of look at it as a baseline: What is the

baseline that we can do from a procurement perspective. Again, we have put in contracts in which we have model clauses in terms of what we expect of our suppliers. We will put in over time a desktop review of suppliers within the supply chain.

As we work with the commissioner in terms of the higher-risk categories, we will start having a look at what additional due diligence will be required of those suppliers and there will be—again, I think the commissioner is working towards a list of the higher-risk profile. Again, there will be elements of labour in there and the question will be what additional work will need to be done to support the commissioner in his work, but also to support our agencies as to how they are doing due diligence. But, as I mentioned before, we can't do everything across New South Wales government, but especially in the higher-risk categories that is something that we continue to focus on. Hopefully that answers your question.

**Ms JENNY LEONG:** Thank you, yes.

**EMMA COOPER:** I guess I would add that this goes to some of the Anti-slavery Commissioner's points around leverage, so using our leverage as large procurers in New South Wales and where we have that leverage, and building it where we don't. But also it goes to visibility. We have the contract as our enforcement mechanism, if you like, and that can both constrain disclosure of issues, as well as encourage them. The commissioner has emphasised a collaborative approach with suppliers, rather than an enforcement or compliance focus, if you are black-and-white compliance focus, and I think that is important because we need to build trust for the disclosure of incidences of modern slavery and that we can work cooperatively with suppliers—perhaps our tier one suppliers aren't responsible, but suppliers in our supply chains—to influence outcomes and not put victims at more risk, which is a complex ask, particularly in a procurement context where we're not experts in this area.

**The Hon. Dr SARAH KAINE:** Thank you, Ms Cooper and Mr Hong. I think I may have had you in front of me the consultants inquiry and may indeed have in front of me the social issues procurement inquiry in some months' time as well.

**SONG HONG:** You will.

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

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

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

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

**SONG HONG:** Within the New South Wales procurement board—

**EMMA COOPER:** What contracts—

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

**The Hon. Dr SARAH KAINE:** I guess that leads to my next question, which is about the devolved structure, because a lot of the consultations you're talking about are at the procurement board level. It came out a bit in the consultants inquiry, as well, that a devolved structure doesn't necessarily give transparency about what's happening in those agencies. How confident can we be that arrangements negotiated about the implementation and spread of understanding about the provisions of the Act actually get down—and I'm talking delegations for procurement go quite the way down departments. If there's no enforcement capacity of the board or they don't investigate claims, how do we know that it's actually happening down that chain?

**EMMA COOPER:** I think the first round of annual statements in the annual reports will assist, but they won't tell us to the level of granularity that you're inferring. We work through the accreditation system, the attestations, and at the policy level we work officer to officer to discuss these issues and field quite a lot of inquiries. In terms of penetration, we influence as best we can from the centre, but the penetration is going to also be reliant on individual Ministers and secretaries pushing the message through their organisations and delegations.

**SONG HONG:** If I could add to that, although there are procurement delegations, but ultimately even within the procurement Act it points to the agency head, whether the CEO or the secretary. But also from a budgeting point, ultimately the secretary and the Minister are responsible and accountable. There are means for the culture to drive this down. It needs to be from the top down and not just from a procurement perspective.

**The Hon. Dr SARAH KAINE:** Yes, I understand that. In your understanding, how many times does whoever is the notional head, or the person delegated instead of the procurement board, actually check to see that the statements given or that the affirmations are actually—is there any checking that the tick-off that we've checked for modern slavery—is there any kind of random checking?

**EMMA COOPER:** We don't do it from the central function. Agencies, through their internal audit and procurement functions, cabinet functions, would be checking. We have provided a checklist for agencies to confirm that and the risk assessment tool, so they can do the initial checking and confirm the level of risk management that's required, because it will vary quite widely across our contracts.

**The Hon. Dr SARAH KAINE:** Agency to agency.

**EMMA COOPER:** Yes.

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

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

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

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

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

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

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

**The Hon. Dr SARAH KAINE:** In your submission you talk about the Act and the associated reasonable steps defined by the Anti-slavery Commissioner could require greater due diligence by New South Wales government agencies than is currently placed on large businesses. Am I reading that that you think that's a problem?

**EMMA COOPER:** No, I don't think it's a problem. I think it's something that needs to be considered in terms of resourcing and the level of effort that's going to be required by Procurement personnel, given the breadth and extent of our procurement, the number of—over 120,000 suppliers per annum. It's much larger than most large businesses, in terms of our supply base. It's just a commensurately broader expectation and a very high bar that's set in terms of preventing modern slavery in our supply chains.

**The Hon. Dr SARAH KAINE:** So it was more about resourcing than a normative judgement about whether we should be—

**EMMA COOPER:** No, I think there's—well, I probably shouldn't give an opinion.

**The Hon. Dr SARAH KAINE:** I didn't mean to try and trap you into one. I'm sorry, Ms Cooper.

**EMMA COOPER:** I think we would support that it's an appropriate measure for government to not be enabling modern slavery in its supply chain.

**SONG HONG:** Yes, and, again, we can always do more due diligence. Given this is a new Act, we need to continue to work with the commissioner as well as our agencies and, to be honest, suppliers, in terms of what that bar looks like. As I mentioned before, depending on the risk factors, with the higher risk we would need to do more. With the ones that are lower risk, we would consider something that's of a lower standard. When I say standard, as in—not to say this issue isn't an issue. It's more there are certain industries that we need to focus on. If we had to pivot, we'd pivot towards the ones that are higher risk.

**The Hon. AILEEN MacDONALD:** The emphasis on supplier engagement will likely to lead to changes in government procurement practices. My concern is in that supply chain, because you would deal with a

significant number of small businesses. How would you ensure that small business is able to continue to be part of that procurement process so they're not left out?

**EMMA COOPER:** In the interim guidance we've published we've actually called this out specifically—that agencies need to be mindful of not putting in measures that will be discriminatory against small and medium enterprises. We also see that we will need to provide additional support to small businesses and set a reasonable benchmark on what can be provided. I also note, the Small Business Commissioner has issued guidance for small businesses, a template modern slavery policy for them to use, and indicators of how they could go about addressing these requirements. It is something that has concerned us with the Act and its implementation.

**The Hon. AILEEN MacDONALD:** You mentioned with regard to training—would that be something that your departments would do or that you would also look to have this clarified more?

**EMMA COOPER:** I think it could be clarified more. Obviously, as Procurement personnel who are running tenders within the bounds of probity and fairness, there's a question mark as to the extent of our role in training suppliers to respond to our tender questions, so potentially a demarcation would be needed.

**The Hon. AILEEN MacDONALD:** I'm just concerned also, when we're talking about procurement, we lose the message of why we're doing this supplier chain. How do we ensure that modern slavery is—why we're doing these extra compliance measures so that it doesn't become a tick-a-box exercise?

**EMMA COOPER:** Again, Dr Cockayne has been very clear that he does not want a tick-a-box exercise. He sees it as about engagement and capability building. I think that's our view too. The message is very clear that this is a very harmful practice, both for individuals and if we want to make an economic argument, that's also there. That's very much the lens which we start with the procurement policy—the why. Why are we so concerned, and why do you need to take this into account? I think there's quite strong engagement on that message.

**Ms JENNY LEONG:** In the comments that were made in the submission around the chief procurement officers being invited to contribute to the submission being made, I note that you received comments from Transport for NSW and NSW Health. Do you have thoughts as to why there wasn't additional information/contributions made from other chief procurement officers—recognising that everyone has their own priorities, and pointing to, potentially, how much of a priority this is for individual departments versus the commissioner, this Committee and the Act?

**SONG HONG:** I'll try to give a view. Again, this is my personal view, not the view of any of the chief procurement officers. Number one, Transport and Health are the two biggest departments within the New South Wales Government, and they have the largest procurement spends. As a result, they see a lot more, in terms of how this Act will be able to positively impact society but also the workload that it will generate. So both those procurement officers submitted to our submission. In relation to the other chief procurement officers, as you mentioned, some of them have much smaller teams—sometimes in the single digits. So it does come down to—there is a prioritisation question. There is also a question of whether, within NSW Procurement, Transport and Health will be able to cover the breadth of all the issues, and you've got the central agency and two of the largest agencies who have submitted contributions to the submission. I can't go into the minds of each of the other chief procurement officers, but I would hazard a guess—if I had to hazard a guess—that they would rely on what we have submitted. Plus, also, the two largest agencies have submitted with us.

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

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

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

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

**SONG HONG:** I'll make a statement, and then we'll come back to you. I agree with my colleague about other Acts, but there are other policies that require certain reporting, whether it would be Commonwealth

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

**Ms JENNY LEONG:** Thank you, I appreciate that.

**The CHAIR:** You may have covered this already and I've just missed it in your evidence. I apologise if that's the case. In paragraph 4 of your submission, you refer to strengthening of the commissioner with powers to enforce his strategic plan or guidance on reasonable steps within public agencies. My recollection is that, prior to this, we talked about cooperation, a collaborative approach, as being more likely to be successful. I'm wondering if you could take me through your thinking on this and where those powers might operate, how they might be useful, if we were to strengthen those.

**EMMA COOPER:** Within the current structures of the Act, it's very much that the compliance powers for procurement are tied to the Procurement Board's powers, so the issuing of a direction under the Public Works and Procurement Act and therefore the statutory obligation on agencies to comply with that direction. The other power that the commissioner has is essentially a "name and shame" aspect in that he has a register where he can list agencies that have not complied with a specific issue that he's called out. In thinking about this, it was whether there should be some thought given to whether the commissioner has a compliance power as well similar to a board direction to actually direct action by agencies. It's a carrot and stick argument as well. We certainly would prefer a cooperative approach and engagement, but there may be instances where something a bit firmer may be required.

**The CHAIR:** I think the way that you described it earlier—forgive me if I don't understand this exactly—was that essentially the Procurement Board gives directions.

**EMMA COOPER:** Yes.

**The CHAIR:** You advise the Procurement Board. It has the authority to give directions to agencies. Why wouldn't the commissioner provide advice to the Procurement Board and require the Procurement Board to then enforce his directions? Or is that what you were thinking of? What you just said—if I can just be clearer—was that somehow the commissioner might have a power outside of that chain of command, as I see it. I'm not quite sure how that would work.

**EMMA COOPER:** So the Procurement Board has that power. I suppose it's whether the commissioner should have an independent power to compel a particular action to prevent modern slavery. The Procurement Board is made up of the secretaries of the agencies, so there is that question mark on compelling themselves to comply. That sort of delineation of power by providing a power to the commissioner could potentially be a clearer remit. There's also the question of investigation powers. If the board issues a direction, it has the power to investigate compliance and enforce compliance, but the Anti-slavery Commissioner does not. So the commissioner is required to work via the Procurement Board on the compliance piece. I think it's calling it out rather than saying there is a specific answer here. I can see benefit on both sides in both systems.

**SONG HONG:** And maybe if I can add—if I think about modern slavery and the skills that we have within New South Wales government, the procurement teams know how to procure. Modern slavery is a very specific risk and a very specific area to focus on. I think the Anti-slavery Commissioner is the right independent person and body to be overseeing compliance.

**The Hon. Dr SARAH KAINE:** I have a question that you almost started answering there, Mr Hong. How many people work with Procurement NSW and, of those, are there any who have particular expertise—yes, procurement is about procuring goods and services, but you have to look at other things, including value for money and other things. Do any of them have expertise in either labour standards-type issues or modern slavery issues? To your knowledge, going on from your last answer, are there any people amongst the agency sitting there with those skills?

**SONG HONG:** I'll have a first crack. Within New South Wales procurement—within modern slavery, I would actually say no in terms of the skill sets. I think it's a growing area that requires greater focus. However, that said, we have policy people and, again, Emma leads the policy team. So there are policy people who oversee numerous policies that impact procurement and one of those areas is social procurement and within that area

modern slavery would be there. We do have teams within New South Wales procurement that, as I mentioned earlier, oversee the professional Contingent Workforce Scheme.

Again, from a labour practice perspective, we do speak to a lot of labour hire firms, not necessarily in the blue-collar space but definitely in the professional space. But there are parallels you can learn, so there are people who have that sort of human resources background. In terms of the wider—I would expect that there would be skill sets across government that sort of span both policy as well as professional contingent labour. But then if you start focusing on more vulnerable areas, I would say the Department of Communities and Justice. Our focus isn't on that area, so I would expect that there would be people within that department that have a greater focus on things such as modern slavery and are more attuned in terms of what's happening in society. With that, I'll leave—

**The CHAIR:** Yes. I'll follow up on that as well. Sorry, Ms Cooper.

**EMMA COOPER:** Yes, I have two members of the policy team dedicated to modern slavery. It's in their portfolio. One of them, I would say, is becoming an expert in this area and has a particular passion for it—so not great numbers but that is building. I would say across the agencies I have been aware in the past of people particularly employed to address modern slavery issues in supply chains. I'm not aware of any at the moment.

**The Hon. Dr SARAH KAINE:** Again, either in your own team, and I know that that's very particular, or in your knowledge of other agencies, has there ever been any—as we know, noncompliance in one area is a very strong indicator of noncompliance in another area, particularly with labour standards. Has there been any mapping of those that we procure from in terms of their noncompliance with labour standards to try to be a bit proactive in identifying where risk might lie—so risk mapping based on known cases of noncompliance by organisations that New South Wales procures from?

**SONG HONG:** To link to one of your earlier questions, where we said we'll come back to you in terms of known compliance issues with agency suppliers—I agree, the idea that you flagged is a great idea and the starting point for us would be, "Well, within the centre, have there been instances where we have been notified of labour issues within the supply chain?", and from there we can map things out. In terms of what's happening bottom-up within agencies, we are not aware of—

**The Hon. Dr SARAH KAINE:** I guess my question is a little more bespoke than that in that if you have an organisation that has been noncompliant in another area, even in another jurisdiction, the likelihood that they're noncompliant in other areas—there's a link there. It's not so much that we've found noncompliance in our contract but, as a risk factor, are there any mechanisms for noncompliance—

**EMMA COOPER:** There are two aspects of it. One is the risk identification tool that the Anti-slavery Commissioner is developing definitely takes that approach. It does look across, in this case, categories and looking for high-risk categories where there is—and noncompliance with labour laws is one of the risk factors that would be input into that. We have also been piloting digital risk assessment tools that are available in the market. They include things like reputation checks. They do a scan of media outcomes of prosecutions et cetera and give you a summary based on ABN and supplier name. We've been using that, running a pilot across a number of agencies to test that out with a view to seeing if those tools will be helpful for us in our risk assessment going forward.

**The CHAIR:** That's been interesting—that line of questioning—because it comes back to the point I was trying to explore a little earlier. This was the suggestion that the commissioner should have these powers to enforce the strategic plan or guidance on steps. In fact, earlier in your submission you actually believe that the commissioner should be responsible for mandatory training across procurement agencies on the basis that that way there'd be a standardised model delivered. The issue for me is we've now got the office of the Anti-slavery Commissioner growing and growing. Even the exercise of enforcing a strategic plan and reasonable guidance through procurement as an independent agency seems to me would be very difficult with their current resources, let me put it that way. To be honest, it seems a more reasonable approach would be for the commissioner perhaps to have some authority to direct the Procurement Board and then ask the Procurement Board to undertake that, at least in the first instance as we're developing awareness and knowledge in this area. I'm just wondering if you had any comments on that?

**EMMA COOPER:** I'd expect the commissioner to leverage our procurement training tools and systems. We have a capability team in New South Wales procurement. He's already engaging with them on, for example, the online training modules—the agency briefings where before he was appointed. But we have been discussing quite closely a training program to coincide with the reasonable guidance steps. I suppose what I was envisioning was the commissioner sets the benchmark on content and topics covered but that we leverage existing systems rather than recreate them to train and work with agencies.

**SONG HONG:** I think it's worth noting that we have been working very closely with the commissioner on all of this, not only giving him feedback, but also, from a practical perspective, working with him on various



aspects of his authority and the guidance he's about to release. We're not doing it independently of each other. We are trying to ensure that what he's trying to do can be implemented across government, so we are trying to leverage the things that we have to support him on that front.

**The CHAIR:** So, in that model, the commissioner develops the package, if you like—the content—which is then available for your training tools to roll out in your—

**EMMA COOPER:** I think he would set the topics and the benchmark on the content. We would probably do the developing of the actual tool. We have expertise in how to write those modules and things like that. He has the final say or sign-off on the content to say, "That meets my requirements."

**The CHAIR:** Okay, that's very helpful. To go back to this issue of the powers, a similar model might apply to a power to direct the Procurement Board to implement, rather than have—at least at this point in time—the Anti-slavery Commissioner do some sort of independent audit of the implementation and strategic plan.

**EMMA COOPER:** Potentially, yes.

**The CHAIR:** Thank you very much for your time and your evidence. The secretariat will contact you to follow up in relation to any questions taken on notice.

**The Hon. Dr SARAH KAINÉ:** I will send a supplementary with the details of that very niche question for you.

**(The witnesses withdrew.)**

**Dr MARTIJN BOERSMA**, Director, Modern Slavery and Human Trafficking postgraduate programs, University of Notre Dame Australia, affirmed and examined

**The CHAIR:** Good morning and welcome, Dr Boersma. Thank you for making time to give evidence before the Committee today. Would you like to start by making a short statement?

**MARTIJN BOERSMA:** Thank you for having me here today and giving me this opportunity to provide evidence. Public spending is a matter of considerable magnitude, and with this size of public spending comes the inherent risk of links to labour exploitation and human rights violations. Yet the size of this spending also can be used as a force for good, enabling government bodies to leverage their purchasing power and champion the cause of human rights and ethical labour practices.

Both the UN Guiding Principles on Business and Human Rights and the Sustainable Development Goals have laid down a clear mandate for governments around the world to uphold human rights in their procurement processes. The New South Wales Government, recognising the importance of this mandate, has taken commendable steps through the introduction of the New South Wales Modern Slavery Act, which underscores its commitment to transparency, accountability and integrity in public spending. While these efforts must be commended, it should also be acknowledged that we live in a fast-changing world, which means that it is imperative to continually adapt and evolve. Learning from the Commonwealth experience, it is clear that the current state of modern slavery reporting and risk assessment leaves a lot to be desired. We must discourage entities that need to report from taking a mere compliance-based approach to one that truly embodies the spirit of the Act, ensuring substantive action through meaningful risk-mitigation steps, transparency about progress and/or lack thereof, and producing useful data which is publicly available.

Additionally, accountability should not merely rest at the apex of the supply chain, but cascade through every layer of the supply chain. By embedding stringent anti-slavery protocols at each level, we can combat risks and enforce standards that reflect that strong commitment. We must also recognise and address the varying degrees of exploitation that individuals endure, from poor working conditions all the way through to forced labour. In conclusion, the New South Wales Modern Slavery Act 2018 has created a very solid foundation, but efforts made towards ensuring both fiscal and ethical responsibility in public procurement require continuous attention and resolve.

**Ms JENNY LEONG:** Thank you, Dr Boersma, for your submission. I wonder if you can speak specifically to the recommendation you make around ensuring or encouraging due diligence around a range of exploitative practices. Looking at the idea of how minor labour rights might be reported, do you see that there's scope within this Act to potentially expand the remit of the Act to allow that, given the indications that those minor labour rights infringements can have on potential modern slavery risks?

**MARTIJN BOERSMA:** Yes, absolutely. I think it is commonly accepted that there is a continuum of exploitation that exists. The UK, in their reporting guidelines for their Modern Slavery Act, acknowledge that, and the Commonwealth Act acknowledges it as well. From my experience in looking at how Australian entities have been reporting under the Commonwealth Act, there is a bit of a binary approach: Either we see modern slavery or we don't really see anything at all. With the acknowledgement of the fact that there is a broad spectrum of exploitation occurring and the fact that people are not once and for all fixed on that spectrum—they can move along that spectrum. Conditions can change and working conditions can deteriorate.

By not acknowledging that spectrum, and by overlooking what might be called lesser labour abuses, you might run the risk that a particular entity that does a risk assessment of the supply chain would not necessarily find anything that they would classify as forced labour, thereby overlook a particular risk factor, which in combination with other risk factors and in combination with time may eventually lead to worse kinds of exploitation. I think it's really important—and again this is learning from experience, through the evidence and the research that's been put into the Commonwealth Act. We do need to acknowledge that spectrum and look at what might be termed lesser labour abuses, whether that's wage theft, whether it's unreasonable productivity rates or a range of different entitlements not being paid such as super et cetera. Those can all cumulatively and over time result in worse types of exploitation. I think that's very important.

**Ms JENNY LEONG:** Given your expertise and research in this area, do you have any thoughts particularly on the intersection between both housing and homelessness risks and visa and migration risks—around the limits that that poses or the potential risks that poses to people not wanting to report instances of modern slavery, or how that interacts? I'm interested in any thoughts or reflections you might have on that, and any guidance you might want to provide, now or on notice, on where we could look to in terms of good examples or international best practice models on how the New South Wales Government might approach the intersection between those elements.

**MARTIJN BOERSMA:** That's a very good question. I think that this really touches on what we just discussed in terms of, potentially, conditions deteriorating, and the fact that people might experience precarity for a range of different reasons, whether that is homelessness, whether that is through the fact that they're temporary migrants, or through the fact that their visa may or may not have expired and they're still working for a particular employer et cetera, with the balance of power shifting towards the employer, obviously, because they're breaching their visa conditions. Those are really good examples that need to be taken into consideration, because again that adds to the precarity that a person can experience. Someone who might be here, who might be living in a share house, who is still on a temporary visa that's valid in a particular employment relationship, might next month see themselves booted out of the share house, find themselves breaching their visa conditions et cetera. Obviously that then severely adds to the precarity they experience. Any sort of risk factor that an entity might have identified before that has obviously then dramatically changed. So in terms of the first part of your question and the necessity to address that, there is a dire need to address that. But in terms of the second question—best practice examples—I think there are not too many out there, so I would like to take that question on notice and get back to you at a later stage on that.

**The Hon. Dr SARAH KAINE:** Thank you, Associate Professor Boersma, for being here today. I should declare to the Committee that I do know Dr Boersma. We were colleagues for about a decade at UTS. It is lovely to see you again. I just wanted to ask you a question. We've been talking a bit about enforcement this morning, and enforcement powers or lack thereof, and how we get there. I wondered if you have any views on the way in which the New South Wales Act could be enforced, particularly with the aim of increasing compliance and substantive action to reduce risks.

**MARTIJN BOERSMA:** Yes, very good question. Again, we can look to the Commonwealth experience for learnings. The idea there is that there is some sort of market-based enforcement model where consumers and investors might take away their money if a company or an entity does a poor job of reporting. Conversely, the idea is that a reporting entity will be rewarded if they do a good job. Investors will flock towards this particular entity and so will consumers. From the UK experience, as well as the Australian experience with the Commonwealth Act, we see that that's not the case. Obviously in New South Wales it's different. Here, obviously, the entities are not necessarily public-facing to the degree that the entities reporting under the Commonwealth Modern Slavery Act are. So a different type of enforcement mechanism is warranted.

From my perspective, public procurement is, obviously, always walking a fine line between getting bang for your buck and doing it ethically. But one of the suggestions I made in my submission was to look at ways in which there could be, potentially, a procurement connected policy, which makes compliance or the demonstration of compliance with labour standards and demonstration of adherence to the human rights due diligence framework a more heavily weighted criterion in potentially awarding a government contract. Obviously government contracts can be quite lucrative, so the purchasing power that a government has there is quite significant. Also, working on the basis that a lot of entities getting awarded government contracts might do so on a repeated basis, they would have longer term relationships with the Government.

I think instilling or creating that criterion for labour standards compliance on rights and due diligence in awarding a contract in the first place, and providing that as a basis for an ongoing relationship with a supplier, would also reserve them the right to not award a contract on the basis of not having those provisions in place. That will be a good enforcement mechanism, which brings a bit of a carrot as well as a stick approach to that.

**The Hon. Dr SARAH KAINE:** Could I ask a follow-up. It goes to one of your previous answers. Are you able to provide, on notice, any of your own research or any other on the idea of this market-based enforcement and perhaps where it hasn't worked? Particularly you cited the UK as an example. If you could provide some of that for the Committee, I think that would be really helpful.

**MARTIJN BOERSMA:** Yes, absolutely. I'm happy to do that. I can quickly already give you some figures.

**The Hon. Dr SARAH KAINE:** That would be great.

**MARTIJN BOERSMA:** So when the UK Modern Slavery Act came into force in 2017, in the first round of reporting around 43 per cent of companies on the London Stock Exchange didn't bother to submit a report, and around half of companies that were in the top 100 suppliers to government also didn't submit a report. So even if the potential repercussion came from government, as the contracting party, even in those instances there wasn't enough fear amongst those companies of noncomplying. Unfortunately we've seen that trend continue in Australia as well. A recent business project that I did that ran from 2022 to earlier this year found the same findings, sadly. But I'm happy to provide those bits of research, absolutely.

**The Hon. Dr SARAH KAINE:** That would be great.

**The CHAIR:** Are you able to elaborate on that in the Australian context, as you've just indicated?

**MARTIJN BOERSMA:** Yes.

**The CHAIR:** I think the UK Act is quite different. Well, you can comment on that if you like. But just take us through the impacts so far on the Australian procurement scene and reporting. You are making the point that the name and shame isn't enough, so I'm interested in the data on that. I'm just mindful, of course, that we're almost at the start of the process here, so surely we've got to keep that in mind as well. So just go through what your data is, perhaps, on the Australian experience.

**MARTIJN BOERSMA:** What we did, together with a team of colleagues from many different universities around Australia, under a Commonwealth grant given to us by the National Action Plan to Combat Modern Slavery, is we looked at four high-risk industries and we gathered the statements of 102 entities to look at the degree to which they had substantively complied but also technically complied with the Act. We found that around about three in four companies that we looked at had not actually complied with the basic reporting criteria of the Act. But then when we started to delve deeper, when we tried to look at what would constitute meaningful compliance, we found even more underwhelming results from that. For instance, companies that were sourcing garments from China—obviously we know there have been widespread reports of State-sponsored forced labour in Xinjiang.

We found that over half of the companies sourcing garments from China that were required to report didn't mention Xinjiang as a risk factor in their annual modern slavery reports. So that is obviously one of the best-known examples of forced labour, which was glaringly overlooked. We found that in other sectors as well. We looked at the Thai seafood industry as well, we looked at garment manufacturing, we looked at the production of gloves and we also looked at horticulture. In many of these industries the types of reports that we all sometimes see in the media and that you can read pretty much almost on a weekly basis were not mentioned in their own reporting statements. I think that the awareness amongst reporting entities about risks in new industries, and definitely the degree to which they are transparent about those risks, is not really something to be encouraged about.

**The CHAIR:** Can I follow that up. Given that they have made those reports, is there not a mechanism for that to be called out, or is it just simply reliant on informed people like yourself trying to make that information public? Is that a weakness in the Commonwealth legislation?

**MARTIJN BOERSMA:** Yes, I would say so. I think the naming and shaming is not really working. Tragically, the people who are looking at modern slavery reporting statements are just people like myself and fellow academics, who scrutinise these and try to make some waves by potentially partnering with other civil society organisations, producing a report and trying to get a media headline, but I don't think there is an active fear. One example is we did a second round of analysis with the initial 102 statements, and a number of companies that we analysed in the first round just didn't bother to submit a report in the second round at all. Clearly, there was no real fear there of some sort of backlash.

We reached out to a number of those entities as well and didn't get a response. So the naming and shaming approach, and the reliance on the market to balance the financial interests with the social interests, is not something that seems to be working. Clearly, the report that has been tabled to the Federal Parliament now, with the recommendations of Professor John McMillan, have suggested fines. I think I'm partly in favour of that. The problem there is obviously that you might find a shift towards more technical compliance in order to avoid the fine, rather than substantive compliance that is actually based on meaningful action. But at least the naming and shaming approach, in my opinion, and as the research shows, doesn't seem to be working very well.

**The CHAIR:** Is there anything that we should be considering in the New South Wales Act or the role of the NSW Anti-slavery Commissioner that would, if you like, strengthen the impact of naming and shaming within the current or proposed changes to the Commonwealth Act? You might want to take that on notice and think that through.

**MARTIJN BOERSMA:** I think that, again, coming back to the idea of making compliance with human rights due diligence frameworks and doing risk mitigation, making that a more heavily weighted criterion in awarding government contracts—that can be a very persuasive lever. If the naming and shaming would be accompanied by—for lack of a better term—a blacklist or a list, at least, of entities who are not compliant and who are not eligible to potentially receive government funding, I think that would add some gravitas to the naming and shaming, with not just having a name on a website, but also having a real-world consequence attached to that.

**The CHAIR:** You've made that point about the connected policy before so thank you for that. I apologise, I butted in.

**The Hon. AILEEN MacDONALD:** No, you're all right. Doctor, just following on from the Chair, I think by the Government implementing the legislation and then going through the procurement process and demonstrating its commitment and promoting ethical supply chains, would that not then influence the private sector to also have a greater corporate responsibility? And then, perhaps in doing so, rather than naming and shaming, they can do it themselves, saying, "We are doing this," and promoting it themselves. It can be a two-way thing rather than just naming and shaming. The ones that are being responsible can also add to that discussion more.

**MARTIJN BOERSMA:** I think it's very important for government to lead by example. I think that if you're going to ask private entities to take certain steps to address modern slavery, then certainly in terms of public spending you have a responsibility to show how it's done. The difference between the public sector and the private sector here is that for the private sector we're told there is a business case to do this. The business case is that it will attract investors or detract investors, and the same for consumers. Obviously with public spending, that doesn't really happen.

With public spending you rely more on the moral case by showing and leading the way on how it's done and practising what you preach. I think that is a very important element there as well. I think that if we are to make strides in the private sector as well in the next years—and I take the point of the Chair as well saying that we're early on in this journey. Again, if we see the New South Wales Government and public procurement making great strides, setting good examples, introducing guidelines and criteria and formats, contract clauses that can stand up as best practice, then we give off a really good signal to the private sector as well.

**The Hon. AILEEN MacDONALD:** By knowledge sharing and building capacity and, as you said, developing best practice, so then we adjust our supply chains and our work environments so that they comply with the criteria. My mind then turns to the criminal aspect of modern slavery and how to address that, because once you start getting the community aware that modern slavery isn't what we've always imagined it to be and that it can be in the supply chain. But as we start seeing that working through, how do we then go to the criminal aspect of it?

**MARTIJN BOERSMA:** I think that Commissioner Cockayne was here obviously earlier this morning and referred to the development of a hotline. I think it is important that we also communicate to mainstream media what modern slavery is. It's oftentimes misidentified. And there is also a downside with a potential hotline as well. In the United States, for example, there have been a number of false positives occurring: people, for example, being on flights being flagged as being potentially trafficked and that was not the case, which resulted in lawsuits and the like.

But oftentimes even in mainstream media I see reports using the term "modern slavery" and the offence described is actually not typically modern slavery. So we need to be cautious of that as well in terms of identifying and then referring and potentially prosecuting. Because, again, there is a lack of understanding oftentimes amongst people what constitutes modern slavery and forced labour and the different types of exploitation that occur there, and that is very important. But I'm pretty sure that Commissioner Cockayne will obviously have the expertise in his team to deal with those incoming hotline calls when they do come in.

**The Hon. ROBERT BORSAK:** Dr Boersma, in your paper you talk about the continuum of exploitation. Do you want to just elucidate around where, say for example, low wages, long working hours, inadequate health and safety measures move along that continuum to become slavery?

**MARTIJN BOERSMA:** Yes, I'm happy to. I can give an example of a research project that I was involved in from 2019 to 2022 which focused on the Australian commercial real estate cleaning supply chain. It's typically an industry with a low barrier of entry. You don't have to have many qualifications, if any, to become a cleaner. There is a large transient workforce there. People are oftentimes international students. And those are immediately already two risk factors that you can identify. What might then add to that is, for example, what we're currently experiencing, which is the cost-of-living crisis.

People who are already working in an industry with a low barrier of entry with, I suppose, low wages, with unpredictable hours sometimes, they might then also experience a high cost of living which might then, for example, lead them to breach the number of hours that they can work a fortnight, which is limited for international students. At that point, they are in breach of their visa conditions, at which stage a nefarious employer might say, "Hold on a minute. I could do you in but what we can do is actually you work a few more hours or I pay a little bit less or I start to pay you cash in hand. You have to work that site, that site." The power balance shifts to a degree that, again, a nefarious employer could take advantage of them and almost hold some totalitarian sway over these people because they are so in fear of being referred to immigration and subsequently deported. That is one example of how someone might move along that continuum quite swiftly.

**The Hon. ROBERT BORSAK:** Do you think organised representation where those things are discovered would play a role?

**MARTIJN BOERSMA:** Yes, absolutely. As part of that research project, that is a multi-stakeholder initiative where many different stakeholders from the cleaning industry had come together to address this issue, and a number of different actors are involved. There is the Fair Work Ombudsman, the peak bodies in the cleaning industry, cleaning contractors, building owners, but also the trade union representing cleaners, the United Workers Union. I suppose having a collective of workers—and there are many different ways in which they can form a collective—is very helpful in opposing that power imbalance with an employer, helping them be more across their rights, helping them access potential support channels as well and dealing with that power imbalance as well, yes.

**The Hon. ROBERT BORSAK:** We heard evidence earlier that the commissioner can obviously, I guess, name and shame, but what other due diligence processes should we have available to us to try to make sure that people who have moved along that low wage continuum into the slavery area—how we could best address that from a diligence point of view?

**MARTIJN BOERSMA:** I think the commissioner referred to that this morning as well in the approach that his office is taking towards dealing with this and having a strategic approach by saying, "We're actually identifying the high-risk industries and the high-risk sectors first, because obviously resources are limited and we cannot be everywhere all at once." So dealing with those highest-risk industries—I believe he mentioned IT as well as one of them, energy supply chains as well—is a good way of strategically allocating resources to deal with that because the evidence in those industries of labour rights abuses are rife. If we start there and then apply the international gold standard human rights due-diligence frameworks, which are slowly but surely developing, that would be a very good place to start.

**The CHAIR:** Can I just follow up on that? You, Dr Boersma, described a study that you are involved in between 2019 and 2022 where you were able to document people who had moved along that continuum. Is that correct? Did I understand that correctly?

**MARTIJN BOERSMA:** Yes, so what we did is we, as part of that research project, interviewed stakeholders along that entire supply chain. Again, this is a very problematic supply chain which has had issues of labour standards noncompliance for decades and hence all stakeholders coming together. As part of that specific project, we didn't directly interview people who were trapped in modern slavery but we had many worker engagement meetings that we attended and observed where we found all the classic risk factors that people would experience if they moved along the continuum. We did have at times also reports of people having their ID being confiscated or other unreasonable and illegal demands being made of them. For example, if they would want to move to another building site, they would have to pay the contractor to move to a different building site et cetera et cetera.

The issues that we found—and the whole point of that research project was to find labour standards not compliant in the supply chain—were rife. We didn't find the worst types of noncompliance; that's potentially also because cleaning contractors would voluntarily put forward sites to be audited, so you would have some sort of discretion there and would not necessarily put forward a site that you would think would be most likely to have high signs of noncompliance. We found across the entire spectrum not the worst kinds, but we found all sorts of noncompliance occurring. Again, in combination those types of noncompliance can cause worse types of exploitation.

**The CHAIR:** Is that information published?

**MARTIJN BOERSMA:** Yes. If you're desperate to read some obscure journal article, I'm happy to forward that to you as well.

**The CHAIR:** I would appreciate seeing your research on that because I think that sounds like a very precise piece of work around describing that continuum, which I think would be useful. Thank you.

**MARTIJN BOERSMA:** No problem.

**The Hon. Dr SARAH KAINE:** Dr Boersma, you talk in your submission about stakeholder engagement. We hear a lot about stakeholder engagement across government and what we do. Can you describe what you understand to be meaningful stakeholder engagement and what you think would be appropriate in this area?

**MARTIJN BOERSMA:** First off, I need to commend Commissioner Cockayne's office for the way he's approached this—the way he's put together an advisory council that includes evidence or a survivor voice. There's a whole range of different people from different backgrounds providing input there. I think it's pivotal that the parties that are ultimately subjected to any policy, criterion or model contract clause or whatever are ultimately also involved in the development of those clauses because they're ultimately the people who need to comply with

that. From researching the cleaning industry, it's really important that you have these people on board at an early stage so that you're able to overcome any challenges that they might have identified in terms of them not being able to comply with something.

Secondly, in addition to that, I think that it's very important to have sustained, ongoing stakeholder engagement. I think that what I've seen in the research that I've performed of colleagues in the private sector under the Commonwealth Act, a lot of the stakeholder engagement is I suppose like a one-off-type engagement. It's not really sustained engagement. Obviously, as we've all acknowledged and the Chair acknowledges as well, we are at the start of a journey. We're still finding how this works and how we can make it more efficient. How we can make it work better, we need to have continuous engagement with those people who are subjected to all these different requirements as well. It can't be a one-off, set-and-forget exercise, which will ultimately lead to more technical compliance but rather ongoing, sustained engagement.

**Ms JENNY LEONG:** If I can just follow up on that briefly, Dr Boersma. I'm happy for you to take this on notice. Do you have any thoughts on how the Committee might recommend to strengthen the Act to ensure that that level of consultation, the voices of survivors and those with lived experience are included in the work that is being done, recognising the commissioner does that work? I think the challenge becomes how we're not just relying on good collaboration or good relationships and ensuring the Act is going to deliver those things, no matter what the state of the departments, the governments or the commissioner in the future. If you have thoughts around that, that would be appreciated.

**MARTIJN BOERSMA:** Yes, I can offer a brief response and I'd like to take the rest on notice. I think not all collaboration is created equal. A lot of the initiatives that I've seen over time that are trying to address labour abuses or labour exploitation range from really diligent, multi-stakeholder initiatives where people come together to try to make a change versus endless talks in hotel rooms somewhere and then lobbies where it's more of a, "We want to be seen to be perceived to do something rather than actually address it." But I'm happy to take the rest of that question on notice, if that's alright?

**Ms JENNY LEONG:** Thank you, I appreciate it. That would be great.

**The CHAIR:** It sounds as though that research you did involved multiple stakeholders at all different levels, including people with responsibilities.

**MARTIJN BOERSMA:** Yes.

**The CHAIR:** It sounds as though during that there might have been some—well, there must have been some goodwill in the engagement to start with but perhaps some learning for them.

**MARTIJN BOERSMA:** Yes, there was some goodwill. There was also a bit of force there as well. In the case of the cleaning supply chain, it was the large institutional building owners—whether that's the super funds or the financial institutions—that were basically afraid of their buildings being cleaned by people who were exploited. Obviously there's nothing companies fear more than a bad headline. Ultimately they brought their facilities managers and the cleaning contractors on board. There was a lot of goodwill. There was also a bit of stick in addition to carrot there. But that's one example of industry coming together to try to solve a longstanding issue.

The interesting thing about that is the Australian real estate commercial cleaning supply chain is actually a relatively simple, straightforward supply chain, unlike some of the supply chains that you would see in public procurement. Even there, with a straightforward supply chain, it was already very challenging to put into place. Clearly, ultimately all stakeholders got there, but I suppose it gives an insight into the size of this challenge that we are facing. Again, coming to your point of being early on in that journey or trying to get there, it's definitely necessary to keep on at it, if you will, because even in that straightforward, merely domestic supply chain the challenge was already significant, let alone if we talk about complex international supply chains.

**The CHAIR:** I think we might finish with the questions. Dr Boersma, thank you very much for giving evidence today. The secretariat will contact you because I think there were a couple of items that we'll follow-up with you. Thank you very much.

**(The witness withdrew.)**

**Ms LYDIA SHELLY**, President, NSW Council for Civil Liberties, sworn and examined

**Mr STEPHEN BLANKS**, Past President, NSW Council for Civil Liberties, affirmed and examined

**The CHAIR:** Good afternoon. Thank you very much for coming to give evidence today. Would you like to start by making a short statement?

**LYDIA SHELLY:** I would. Australia has largely an unrecognised history of benefiting from slavery. This includes the forced labour and exploitation of First Nations people and the blackbirding or enslavement of sugar slaves. Modern slavery is not a shameful chapter from our past; it is very much in our present and largely remains unseen. We note the astounding figures of an estimated 41,000 people being enslaved in Australia as of June 2023. In 2022 authorities, you've heard, received 294 modern slavery reports in Australia. Unfortunately, that's an increase of 31 per cent from 2021.

Modern slavery is often hidden in our favourite restaurants, on farms that produce our food, on building sites and in homes within our own neighbourhoods. None of us are young and free in our country if there are people and businesses that still treat people like slaves, exercise ownership over other people, force them to undertake unpaid labour and bond them in servitude or expose them to sexual exploitation or forced marriages. There's no place for modern slavery in Australia and our own individual rights, liberties and freedoms cannot be built on the backs of those who are enslaved. Thank you.

**The CHAIR:** Thank you for your submission. Mr Blanks, do you want to make a short statement?

**STEPHEN BLANKS:** No.

**The CHAIR:** We'll proceed to questions.

**Ms JENNY LEONG:** Thank you to both of you for appearing before the Committee. Congratulations, Ms Shelly, on your recent election as the President of the Council for Civil Liberties.

**LYDIA SHELLY:** Thank you.

**Ms JENNY LEONG:** I would like to turn a couple of things in your submission. The first one, I was wondering if you wanted to expand any further on specifically the points you make on page 3, under the bottom heading of "NSW Modern Slavery Act", talking specifically around the questions around State-owned corporations and potentially the gap that they fall in in relation to where they are required to be reported under the State to the Commonwealth Act. The second is just your comment in relation to the different definitions of modern slavery that exist in the Commonwealth Act and the New South Wales Act, recognising that we are in a position where we're reviewing this Act while there is also a review of the Federal Act, if you have any thoughts around that, particularly as good advice for the Committee as we move into this process that's running in parallel to the Federal process.

**STEPHEN BLANKS:** Can I start by taking a slight diversion with that question because, by pure coincidence, a client of mine at my legal practice this morning sent me a New South Wales Government long-form service provider contract with the now standard modern slavery clause in it. From a contractual point of view, it addresses the problems which arise from the different definitions by including both. So the requirement is to—

**Ms JENNY LEONG:** That's one way around it, Mr Blanks.

**STEPHEN BLANKS:** Yes, refer to both the Commonwealth Act and the New South Wales Act. Obviously for any service provider who takes their contractual obligation seriously, that just imposes a bit of an additional burden, which is undesirable, and it would be good to iron that out. There's one other aspect of the compliance requirements which I might note, and that is that a warranty is given that the service provider and any subcontractor has never been convicted of a modern slavery offence. For that to be workable, there needs to be a register easily publicly accessible of entities and person who have been convicted so that a service provider can go to a single place and find out whether or not there is any issue with the service providers they're using.

Other than that, it's a bit of lawyer's feast, but occasionally people do ask for advice on whether they really have to comply or how difficult it is to comply. I think it's always a balancing act that one needs to have these clauses, obviously, but taking into account that some employers are small businesses, some service providers are small businesses. The way in which they comply is probably by signing the clause and hoping that no issue ever arises rather than actually having the codes of practice in place that are contemplated. I think that's just inherent in it. Coming back to your question more generally, I think one of the issues that arises under the legislation is the extent to which it impacts on businesses under the reporting threshold.



I heard just little bits of the evidence from the previous witness talking about the cleaning industry. Largely speaking, there are many providers in that industry above the threshold but there would be many below the threshold as well. I think the previous witness was correct in identifying visa insecurity as creating an environment where modern slavery problems can arise. In terms of dealing between New South Wales and the Commonwealth to try to eliminate modern slavery, I think the visa system needs to be looked at as part of the overall situation as to what might be contributing to the problem.

**Ms JENNY LEONG:** Ms Shelly, in another submission we've received there are concerns around the fact that currently the referral pathways for addressing issues of modern slavery are all through the criminal justice system, particularly through the AFP, and recognising the limits to that for people who may be from backgrounds where they don't feel comfortable going down a criminal justice pathway. You mention in your submission the need to ensure that culturally and linguistically diverse communities are engaged in how that is done. I wonder if you could speak more broadly to that and, I guess, how you see the Committee might be able to recommend, ensuring that there's better recognition of the diverse communities that are impacted and ensure that we are not fuelling potential risks around racism and other things that occur by highlighting certain groups or areas where this kind of modern slavery may occur.

**LYDIA SHELLY:** Thank you for that question, because that's something that is of very big concern for us. In relation to these types of referrals or these types of experiences with respect to survivors of modern-day slavery, it's really important to understand that it occurs in a context and in a background where other political issues might also be in the media or they might be very alive to the fact that they might not feel confident in certain agencies or in certain institutions, which are, by necessity, having to be engaged with in order to help protect and support people from leaving those horrible set of circumstances.

I think it's really important to understand that there's a diverse range of communities that are going to be stakeholders in ensuring that modern slavery doesn't have a refuge in New South Wales. But effectively what we would say would be required is essentially having not only more education and training around modern slavery—what it is, how to identify it—but also any other referral pathways outside the criminal justice system would certainly need to be looked at. Almost like the social services, providers would need to be engaged with outside of the criminal justice system.

There's also hesitation sometimes for CALD communities to engage with certain agencies because they've had very negative experiences with them in the past. So this needs to be looked at holistically. We also need to make sure that CALD communities are part of the process in terms of not only looking at the reviews and the recommendations that come out of this review, but in terms of long-term concerns and long-term engagement regarding what is the best practice for that particular community in ensuring that we can essentially get the training and the education out. It includes things as basic as making sure that there are resources available in other languages, but also there needs to be some sensitivity in how the education and training rolls out.

**The Hon. Dr SARAH KAINE:** Mr Blanks, when you were answering a previous question, I think you said it could become a feast for lawyers, the whole area. I wondered if you might elaborate a bit on what in particular. I guess the second part of the question is, given that's the case, what within our bounds in terms of New South Wales jurisdiction could be done to alleviate that?

**STEPHEN BLANKS:** Let me just perhaps go back on what I said. The feast for lawyers is that clients who receive contracts—and it's not just government contracts; it's now commonplace with all service provider contracts and provision of goods—there will be some kind of modern slavery clause in the contract. The cynical view of that is everybody is just setting up a documentary proforma so that when somebody up the chain asks the question, they say, "Well, I've got the clause in my contract, so I've done the right thing." Whether it has any practical impact on the supply chain is very difficult to assess, because I think the lawyers will all be focused much more on ensuring the appropriate clauses are in the contract rather than actually getting the clients to look at their supply chains, and it may be very difficult to actually look at the supply chains. So there is that aspect of it which makes it a legal problem rather than an actual social problem to be solved.

**The Hon. Dr SARAH KAINE:** You've just articulated it as a very big wicked question, I guess, but any suggestions as to anything that we can do in reviewing the Act that might mitigate those circumstances?

**STEPHEN BLANKS:** I don't know whether you would want to go so far in legislation to say that. There has to be something more than just a paper trail. There has to be actual consideration of rates paid to workers all the way through the supply chain.

**The Hon. ROBERT BORSAK:** You go to the heart of the issue on page 4, where you talk about what might be done for the Anti-slavery Commissioner's benefit. You might want to talk a little bit around this. You start off with "build prevention capacity". What are you talking about there?

**LYDIA SHELLY:** Prevention capacity for us also includes the issues we touched on before in terms of community engagement at the outset, in terms of training and education as well.

**The Hon. ROBERT BORSAK:** How is that going to inform the commissioner in terms of getting his job done better?

**LYDIA SHELLY:** With respect, with that aspect, this can only work with the stakeholders, which are essentially communities and those who are affected by modern slavery essentially contributing to that space and to that office. That's very important. It won't work otherwise.

**The Hon. ROBERT BORSAK:** The next area you talk about is "enable remedy". How do we improve the access for people that are running under the radar in the modern slavery environment? How do we actually do that? What's the gold standard for helping them out?

**LYDIA SHELLY:** There's a few different things that I could say on that. Firstly, in relation to funding of the commissioner's office, it would need to be removed, I think, from DCJ's budget. They should have a separate line item, in terms of the budgeting for this office. There also needs to be greater engagement with respect to the communities that are most at risk and then it goes down to education and training.

**The Hon. ROBERT BORSAK:** Education and training of who?

**LYDIA SHELLY:** On the role of the commission and on what actual modern slavery means and what it looks like in those various communities.

**The Hon. ROBERT BORSAK:** In the communities, and also to the people that are hiring and firing these people?

**LYDIA SHELLY:** Correct.

**STEPHEN BLANKS:** Can I just qualify that? I don't mean to contradict in any way anything Lydia said, but there may be cases where the enslavers are within the communities of the enslaved. So the engagement with the communities needs to be done in a very sensitive way to ensure that its engaging with all interests in the community.

**The Hon. ROBERT BORSAK:** That's where I was going. I'm not really sure that I have an understanding in my head about how you actually do that.

**Ms JENNY LEONG:** I will weigh in and maybe ask for reflection on that, just to say that I think that's one of the risks that we see. As we just heard, for example, the procurement board that is made up of the secretaries are the ones that would recommend to themselves to comply more with that. I think that there are, similarly, risks where government tends to speak to leaders within communities and have certain hierarchies within that space. I think that is the challenge. I don't know if you have any reflections on that, Ms Shelly, but I think that's maybe where Mr Borsak is going with that. The risk is that the formal structures and the hierarchies where the consultation happens is different to how you ensure communities that may be most at risk or the vulnerable parts of those communities are connected with.

**LYDIA SHELLY:** I think every single community will have to have a different strategy, in terms of engagement. But there will be a commonality, if you like. In terms of the engagement and consultation process, it can be extremely difficult. We see this not just in relation to this Act but in relation to a lot of reviews and a lot of consultation between government and communities. Often the people that are being consulted are not necessarily the people—and I agree with what Stephen has said in his comments—that will be most effective in either reporting back their concerns on the issue or implementing or facilitating their own communities in understanding the very important issues that we've touched upon today. I don't have a magic answer for you; I'm just raising it as it is a concern. I guess the difficulty is that governments need to identify the people that may also exist outside formal leadership institutions or structures within that particular community that are best able to get the information out and best able to consult with government.

**The Hon. ROBERT BORSAK:** Mr Blanks was talking earlier about ticking the boxes from a legal standpoint, as far as procurement contracts are concerned. How do you stop that being just an exercise of box ticking? The next recommendation you have here is "foster responsible business practices". Letting them just tick boxes isn't the way to do that, obviously.

**STEPHEN BLANKS:** No.

**The Hon. ROBERT BORSAK:** How do we hold them responsible? How does government hold them responsible without just saying, "Go to the AGM. We've got a policy." At what stage and how do we actually

manage to hold them accountable? What should this Committee do in terms of recommendations to stop it just being a box-ticking exercise?

**STEPHEN BLANKS:** It's a very good question. I'm a lawyer—

**The Hon. ROBERT BORSAK:** Then I expect at least five different answers.

**STEPHEN BLANKS:** —so box ticking is part of it. As I said in answer to Dr Kaine's question, part of the requirement, I think, has to be attention being paid to the actual rates of pay and terms of engagement of the workers involved in the supply chain. That information, quite possibly, has to be passed upwards through the supply chain so that it is visible. There is commercial, confidential sensitivity around that. But, at the end of the day, that is the issue which determines whether an arrangement is in contravention.

**The Hon. ROBERT BORSAK:** It's pay and conditions, isn't it?

**STEPHEN BLANKS:** That's right.

**The Hon. ROBERT BORSAK:** Does a professional association do that? If the employer is not conforming in relation to proper pay and conditions and also, for example, taking away passports from visiting workers from wherever they happen to be, who is going to actually do that? Should it be the Government? Obviously the commissioner, at the moment, doesn't have the powers to do any of those things. Who should do it?

**STEPHEN BLANKS:** There are some government agencies which do have the power to do that.

**The Hon. ROBERT BORSAK:** Name them and shame them. Why aren't they doing it?

**STEPHEN BLANKS:** That is the question. The department of industrial relations presumably has that as one of its core functions. I ask this question rhetorically: What is the degree of interaction between the modern slavery commissioner and that department? Is the department of industrial relations effectively taking measures to prevent modern slavery?

**The Hon. ROBERT BORSAK:** I suppose it's more than a rhetorical question. Whether you are going to get an answer to that at this stage—it seems to me that there is a lot of dancing around this issue, but no-one is actually prepared to grab it by the throat.

**STEPHEN BLANKS:** At the end of the day, someone is going to say that actually paying proper wages to all workers is going to be inflationary and the general community would be against that. That's the tension.

**The Hon. ROBERT BORSAK:** So we are supposed to tolerate slavery because it might generate inflation somewhere?

**STEPHEN BLANKS:** I think one has to explain to the community that it's appropriate to pay proper prices to enable proper—

**The Hon. ROBERT BORSAK:** This now moves to your next point about "change the narrative".

**STEPHEN BLANKS:** Yes.

**The Hon. ROBERT BORSAK:** Who should be doing that—the Government or professional associations or the commissioner?

**STEPHEN BLANKS:** Everybody.

**LYDIA SHELLY:** I think we all have an obligation, whether it's as private citizens or members of government or not-for-profit organisations. We all have skin in the game here.

**The CHAIR:** Which is why it's in the strategic plan of the Anti-slavery Commissioner.

**The Hon. Dr SARAH KAINE:** My question is a direct follow-up. I share many of the sentiments that Mr Borsak has been expressing, and yourself, Mr Blanks. It does get quite complex, doesn't it, with international supply chains? Domestic supply chains are one thing, and I already asked a question about what we could do with interagency support. But when it comes to tracking a supply chain to other jurisdictions, I still think the logic of trying to find out what's happening is where we are. Have you got any suggestions as to the practicalities of that? As I said, I think the theory of it is correct, but that becomes a logistical consideration as well.

**STEPHEN BLANKS:** It certainly is a logistical consideration. I don't have a clear answer to what engagement with international agencies, what international agencies would be appropriate to engage with. I'm not expert in this field, so what I have been exposed to is media reporting on some shocking exposures of some

particular practices in particular industries. We have to get beyond relying on media exposure of things in order to properly regulate them, but how one does that, I'm not sure I know the answer to.

**LYDIA SHELLY:** May I just add that it's certainly something that we would support in terms of the commissioner having a specific function to liaise and cooperate with both international and other domestic agencies that are responsible for addressing the issue of modern slavery. It's also an issue with respect to ensuring that the agencies don't silo information away from each other. I think there also needs to be a review or a look at the ways that certain agencies that have an interest in preventing modern slavery share and facilitate information that would prevent modern slavery, and also in terms of the enforcement of penalties around that.

**The CHAIR:** Mr Blanks, I'm fascinated about this clause that's appearing in one form or another in contracts now. Is it just a generic attestation that the person has sourced goods that are not subject to modern slavery, or is there a bit more detail in it? I guess where I'm going with this is, given the comments of Mr Borsak, Dr Kaine and Ms Leong, for example, is it worth thinking through a more detailed attestation that actually, apart from saying, "We haven't indulged in modern slavery; we don't know anyone that's in our supply chain," that you actually include in that, "We can attest that the workers that produced the goods have had fair rates of pay and conditions"—and whatever else you might add? In other words, a generic "We haven't committed modern slavery." You are right: Your mind goes blank, your eyes glaze over and you tick the box. But if someone had to actually attest that each of the workers in a supply chain had fair pay and conditions, that might get people to think a little bit more deeply, or would it simply be it's no longer a tick-a-box exercise?

**STEPHEN BLANKS:** Firstly, the clause in the New South Wales contract, which my client sent me this morning, is 2½ pages, so it's quite detailed. I have seen suggested clauses in Commonwealth contracts which are just a paragraph, particularly for small business ones, so there is a range of what you can do. As to whether a requirement of the sort that you suggested of actually ascertaining what the pay rates are of all the workers in the supply chain below you might be, I would expect there would be fairly oppositional reactions from business saying the cost of compliance with that would be too high and unnecessary. It would be a fascinating discussion, but I'm not sure whether it's realistic to expect that as a narrative.

**The CHAIR:** The 2½-page clause must have some considerable detail in it, or is it just 2½ pages of—

**STEPHEN BLANKS:** I'm happy to leave you with a copy. I've got a print-out here. Ms Shelly has just noted that the clause about compliance—that is, that no-one in the supply chain has been convicted of any offence—seems to be restricted to conviction in New South Wales. From a drafting point of view that could be broadened, I would have thought. That's just one aspect of it. There is an obligation to undertake due diligence on the service provider in the supply chain underneath them. There isn't a definition of what due diligence is. And that's the grey area, and perhaps it depends on the industry and the particular risks.

**The Hon. AILEEN MacDONALD:** It may be difficult, but if there was a system where you had a goods with a QR code and people would just scan the QR code and it can give you all of that information that you have just said in terms of where the product's coming from, who along the supply chain has been involved—I'm sure as we got more sophisticated in the use of that, it would be almost like a passport with a product or service that if you had a modern slavery check QR code as part of that compliance.

**STEPHEN BLANKS:** Technically that would be possible. I think the business issue to overcome is whether all suppliers ought to be required to disclose their pay rates to their workers, and that is going to be a difficult issue. To really address the modern slavery problem, that's going to be what's required.

**The Hon. AILEEN MacDONALD:** I mean, the WDEA has reporting obligations, I'm sure. It doesn't have to put each individual's pay rates, but if they're complying with the pay structures, I'm sure if they could—

**The Hon. Dr SARAH KAINE:** The problem is checking veracity too, though, isn't it—checking veracity of any report of anything that's done.

**The CHAIR:** It is.

**The Hon. AILEEN MacDONALD:** It's just an idea.

**The CHAIR:** There being no more questions at this point, I thank Ms Shelly and Mr Blanks for your evidence today. The secretariat will follow up with you in relation to any information, for example a copy of that—

**STEPHEN BLANKS:** I can leave a copy of that. It's got a couple of bits of handwriting on it from me.

**(The witnesses withdrew.)**

**(Luncheon adjournment)**

**Mr PAUL GREEN**, Chairman, The SlaveCheck Foundation, sworn and examined

**Mr TIM MURRAY**, Director, The SlaveCheck Foundation, affirmed and examined

**Mr TONY PIGNATA**, Managing Director, Integrated Family and Youth Service, sworn and examined

**Mr CONRAD TOWNSON**, Principal Advisor, Child Exploitation, Project Paradigm - Integrated Family and Youth Service, affirmed and examined

**The CHAIR:** Good afternoon and welcome. Thank you for making time to give evidence today. Would you like to make a statement?

**PAUL GREEN:** We'll make a couple of statements. It's about three minutes, so we won't keep you too long. The SlaveCheck Foundation is a registered charity which administers the "for purpose" aspects of the SlaveCheck modern slavery solution, known as SlaveCheck. SlaveCheck helps businesses globally to comply with anti-slavery legislation as part of leading, coordinating and managing the systematic elimination of modern slavery. We do this via a global, survivor-centric modern slavery due diligence system comprised of people, process and technology, self-funded via a profit-for-purpose business model. I am the chairman and beside me is my CEO, Tim Murray, who I will hand over to to make an opening statement.

**TIM MURRAY:** Thanks, Paul. There's a lot of information contained in that one paragraph. I will give a very quick background on where we come from and where the SlaveCheck solution came from. I'm a civil engineer. For 33 years I've been using technology to solve system-level problems. I first heard about modern slavery in 2018, so I'm not a human rights expert or anything, and I started to see that the UK Act was faltering. Companies were stalling. Companies were giving up. Some weren't even bothering to start. Through my research I could see that this was going to be, firstly, a headache for corporates. I don't believe they could actually possibly comply with the legislation by themselves without the sort of infrastructure we're talking about—and they needed to.

Slavery just keeps getting worse and worse, so we built a due diligence system. Being an engineer, we like checks and balances, so we designed a due diligence system five years ago. The legislation is sort of catching up. Now the EU has got the due diligence system. Professor McMillan's recommendations about the Federal Act is that it gets strengthened into a due diligence system, and that was really our recommendation. Corporates will do what they need to do. If they don't have to do a due diligence system, they won't do it. The legislation needs to be strong enough so that the New South Wales commissioner, or any commissioner, has something with teeth that they can actually implement. Did we get it right? This is a third-party appraisal of what we're doing. It comes from Kevin Hyland, who you might know. He was the inaugural UK anti-slavery commissioner. This is just "What is SlaveCheck?" and it says:

In this context, I do not doubt that SlaveCheck is unique and offers effective opportunities by virtue of addressing many of the major challenges that are frustrating corporates and global efforts to reduce slavery numbers, including:

- A modern slavery 'clearinghouse' to automate and scale the process of reporting entities engaging and assessing all tiers of suppliers in their supply chains;
- Applying a generic global classification system (*United Nations Standard Products and Services Codes*) to harmonise the tracing of products and services from source to end-consumer;
- Engaging and managing NGOs at scale, enabling them to bid for funded in-field solutions, crowdfunding those programs, monitoring deliverables and the ongoing effectiveness of the programs;
- A systemic approach to engaging victims via a globally integrated network of trusted victim voice portals ...

I suppose that's a good summary of what we're doing.

**PAUL GREEN:** Mr Chair, we're going to table that letter from Mr Hyland, given the fact that he was the inaugural UK anti-slavery commissioner. I just bring to your attention that I think there's only two anti-slavery commissioners in the world: One is in New South Wales, and the other is in the UK—a new slavery commissioner there. So we're still ahead of the game. The reason we're before this inquiry is New South Wales led with the Modern Slavery Act, and we want to keep leading. We believe this Government can lead globally with the actions that we're going to be suggesting through the evidence that we'll give the Committee. We do ask the Committee that maybe—given that I've been here prior, listening to all the information that's been gone through this morning at the inquiry—you give us the grace to write some draft recommendations that we could forward to the Committee to consider in your deliberations later on.

**The CHAIR:** Thanks, Mr Green. We might start with questioning for Mr Green and Mr Murray. Ms Leong, would you like to start?

**Ms JENNY LEONG:** I appreciate, Mr Green, your history with this piece of legislation. I wonder if you have comments or thoughts on the changes that occurred in relation to the removal of any penalties and the changes in relation to the limits on—or the increase in the corporations required to comply from \$50 million to \$100 million turnover.

**PAUL GREEN:** Thanks for that question, Deputy Chair. Bringing this legislation to being was obviously a very humbling experience. But obviously there were compromises to achieve those outcomes. I can put those on the record; there's a different government today. The compromises were that the previous Government didn't go as hard as the then Labor Opposition would have liked. We would have liked to have seen the commissioner with the types of powers that we've been discussing this morning through this inquiry, where he is able to take the lead on education and, of course, some level of investigation. Obviously, some of the compromises in that was because of the negotiation around the table, but I was always confident that, if the Opposition was to make it in government, they may want to tweak the legislation to bring back many of the recommendations that were taken out from the amendment bill, which was a bit sad—that they took so many out.

Some of it was an improvement, but I would be looking—Kevin Hyland would say this: It was the best legislation in the world at the time, and the world followed New South Wales. So I would be looking, as a Committee, to put many of those things back in and make it what it was: a legislation without compromise. And that comes down to the penalties. I'm not a person to use a stick too quick. I believe in the carrot. I believe in trying to get organisations to do the right thing. Naming and shaming shouldn't be a first base. It should be third base. I do believe that companies should be in a situation that they're able to get educated and assisted to be educated and do the right thing. The difference between SlaveCheck against our competitors—the SlaveCheck Foundation—is simply that we just believe companies need to go beyond compliance, not just stick at compliance. We understand that businesses want to tick the box and get on with what they do, and that is business. We as an organisation have taken that on board and put a solution, program and platform forward, which Mr Murray will tell you when someone asks him a question about it.

We have a system that actually allows business to continue to do business, but we just don't tick boxes. We want compliance and we want the finances from that compliance to reach down to the actual victims. This is all about the victims. When I wrote the legislation, it wasn't for the glory of legislation and it wasn't for the glory of businesses looking good because they're doing right by human trafficking or ending slavery. It was for the sheer fact that I wanted to reach out to the voiceless and the voiceless victims and try to find them and help them become who they ought to be and want to be and restore their lives. The penalties, as you know—people have already asked in previous sessions what will it take for compliance. I'll tell you what it'll take: sending a couple of directors to jail. Then everyone will have your attention.

That's why I put those penalties in there. It's not for the people doing right; it's for the people that think that they can exploit the vulnerable, the young, on the back of their profits. Some of those people need to go to jail to send a very strong voice to say, "Hey, we're not messing around here. You exploit people; you will face the full hand of the law." But obviously we want them to come by in a place that—most of them want to do good. They want to reach out, and SlaveCheck certainly is a vessel that we're trying to change that solutions platform to not be burdensome, as the Hon. Aileen MacDonald talked about in earlier sessions. We don't want it to be a burden. We want to be able to save people's lives, to help them; and like you also, Deputy Chair, we want these people to have a home, have a bed and have a life.

**Ms JENNY LEONG:** In relation to the penalties comment and the focus of the current commissioner for people with lived experience and your comments just then in relation to ensuring victim-survivors are supported as the primary purpose, in the conversations that you had previously or in the negotiations, was any entertainment given to the idea of the penalties being used to be able to be put back into restorative programs and other measures? I wonder if you have any thoughts about that as a model for how penalties might be issued in a way that would enable additional support for those victim-survivors.

**PAUL GREEN:** Yes. I'm mindful of your question. I'm mindful that I've got people here that would look after kids, which is fantastic. Can I just say we did put a provision in through the victims compensation scheme that people would fit into that if they were a victim and they were able to meet, sadly to say, that criteria to be able to reach out and get support. Of course, part of that crime would be the redemption of those proceeds of crime back to that scheme. So it's self-funding. It's cost-neutral, virtually, from those people that take advantage of the vulnerable. We would like to make sure that that stays in the legislation and that it's self-funded. Like I said, the Government doesn't have to find money for that. You just go to the criminals, the pimps or the johns or whoever it is that are exploiting people—large companies who are willingly doing it, I'm talking about. They've got enough money to support those victims. I think we should have legislative pathways to do that. Can I just quickly hand over to Mr Murray, because I know he would want to talk about the victim portal momentarily as well.

**Ms JENNY LEONG:** My time is finished, so maybe we can go to the next questions and then no doubt there'll be a chance for Mr Murray to speak as well.

**The Hon. Dr SARAH KAINE:** Thank you, Mr Murray and Mr Green, for appearing today and all your work in this area. I note that in your recommendations you talk about the Act compelling due diligence beyond reasonable measures, and I note that the SlaveCheck system is about due diligence. I'm not entirely clear still about what SlaveCheck does and how it forces or compels due diligence and outcomes down a supply chain.

**TIM MURRAY:** Compliance is a process. There's all talk about lack of transparency in supply chains. There's no transparency in global supply chains. That's the problem. If you had 100 per cent transparency, there'd be no modern slavery—

**The Hon. Dr SARAH KAINE:** Sorry, can I just stop you there. Why? What's the lever that means that if you knew about things—we heard evidence from—

**TIM MURRAY:** Because it's a crime, right? It's a crime. So 194 countries have signed up that "It's criminal in our country". If you say, "Well, in that room there is full of slaves", you just call the police and in they go. The trouble is no-one knows what rooms they're in. They're hidden.

**The Hon. Dr SARAH KAINE:** So your mechanism somehow allows for the reporting—or it's for companies to report? Is it self-reported, what people do? I'm just trying to understand how you get the information.

**TIM MURRAY:** Well, it's a top-down, bottom-up approach and that's come from Harvard. That's not our model. That's from Siddharth Kara at Harvard. So corporates have to start working down through the supply chain. We've provided an automated system to automate that. It's free for suppliers. It's simple for suppliers. The feedback we're getting from suppliers is "This is great. We can do this once and share it with all our customers." That progressively works down. But from the bottom up, the principle—the urgency is around victims. There are 50 million victims out there. Why aren't they engaging? There was a session at the conference in Melbourne which you might have attended—the Federal Government's conference. Wonderful session. Basically, the title of it was what happens when a victim is actually discovered.

All the agencies were there, Federal police and so on. And they're saying, firstly, very few are reporting. Secondly, when they do report, no-one knows what to do with it. So it sits. There's confusion so nothing is happening. That word travels back through the victim community. They don't trust reporting. They don't want to engage with police because they don't know—they could be deported. They could be arrested. There is a lot of fear. So the feasibility study that we're currently running—and we're actually paying survivors \$100 an hour to help us, to guide us and design what victims want. It's actually to give them a safe place to engage. So that's the bottom-up approach.

**The Hon. Dr SARAH KAINE:** That's very helpful—the bottom-up approach I'm getting a feel for. I'm still not understanding—when you're saying companies are really loving the system, what is it?

**TIM MURRAY:** The two threads of transparency are company-to-company connections, so basically knowing where your stuff is coming from. Each company—all they have to worry about is their direct suppliers. And then that company—all they need to worry about is their direct suppliers. It's like a daisy chain. It's all automated. The second thread is the product code—this is the United Nations Standard Products and Services Code. Once we've got companies saying these are the products we do, and you go down, then coming up from the bottom up, the first responders are taking calls from victims. A crucial piece of information we need is, "What are you doing? What are you working at?" That gives us this data point of where this victim is entering the supply chain.

**The Hon. Dr SARAH KAINE:** I'm interested in the company-to-company interaction. You talk about this daisy chain of information. What is being exchanged and what kinds of checks—it's one thing for a company in a supply chain audit to provide information and it's another thing which says, "I do solemnly declare that I pay the appropriate rates and that I don't have any modern slavery." What is the validation process between each level of that chain that means they can be sure that there's been some validation process?

**TIM MURRAY:** We're not even asking anyone to say, "We don't have any modern slavery." There's three parts to the modern slavery. The slavery risk profile consists of their organisational details, which is at the top of their modern slavery statement. There are what product codes they use, so they actually code what products they've got. Then there's a self-assessment questionnaire. Now these self-assessment questionnaires—there's a lot of momentum built up around these audits of SAQs. They add no value to it. They don't contribute to compliance, and they don't do anything—they're actually part of the problem of why slavery is getting worse. *The Guardian* just reported that there's lots of evidence now that the actual deep, in-field audits are corrupted. There's plenty of

evidence around that, and it's long been suspected. Wesfarmers pretty much gave up their major auditing program because they realised that in these sorts of places it's very difficult to get—

**The Hon. Dr SARAH KAINE:** Just so that I'm clear, the company-company—it's a process of providing top-level information about what the company does; the high-level aspects of their modern slavery statements; a generalised risk assessment based on a desktop audit—

**TIM MURRAY:** No, it's a self-assessment questionnaire.

**The Hon. Dr SARAH KAINE:** Each company provides the next one with their self-assessment and those other aspects of risk. In terms of veracity—and you've quoted issues with on-site assessment—essentially, we're relying on self-assessment and publicly available information about a company to provide to the next tier.

**TIM MURRAY:** That's right, and all of that is signed by a director.

**PAUL GREEN:** And the evaluation can be put on the product code as well, because you get value out of that information and data. The thing we don't want—we want to make it very clear—is businesses to have death by audit. Because it's not working, and it's not changing any life out there.

**The Hon. Dr SARAH KAINE:** But we're relying on businesses to tell the truth to each other, which hasn't worked well really.

**PAUL GREEN:** That's true, and it's not good enough. We know that. That's why we're here today. We've got to do something different, and that's what we're putting forward in terms of our model, while also revisiting the legislation that we're here for. Can I just say to my colleagues on the left—16,838, that's what it was when I wrote this legislation. Some 16,838 children on board A380s are in slavery. That's how many A380s full of children were in slavery in 2018. I guess these guys would tell you their concerns and how we need to do something about that too.

**The Hon. AILEEN MacDONALD:** What could SlaveCheck do to ensure 100 per cent transparency in the global supply chains, using those systems and—

**PAUL GREEN:** Can I just say that the main thing about transparency, which is true—how do you get transparency? If you shine a light on it, it's out in the open. We've got to break the back of the socio-economic benefits of trafficking and slavery, and one way we've got to do that is using the tool of transparency.

**TIM MURRAY:** Coming back to this top-down, bottom-up approach, so corporates within corporates would say, "This is our business. Here are the codes we use." When we have a victim report, we need to know what they're doing and the code so that we can associate peeling prawns for code—that's the point of entry. Then we construct these links from both the inter-company connections and the product-to-product codes. We can trace that code where it's probably realistically going.

**The Hon. AILEEN MacDONALD:** How do I as a consumer know that if somebody has engaged SlaveCheck, the product I'm purchasing or the service is as you say it is? Not a tick on the box that says "SlaveCheck free" or something.

**PAUL GREEN:** I'm glad you brought that up, because that's where we would love to go one day. We'd love to have that "certified free". We've got a survey here that we could hand out to the members that tells us that people will spend more if they know that their product is slave-free. They will pay up to, I think, 40 per cent more—what was it?

**TIM MURRAY:** It was 20 to 100 per cent more.

**PAUL GREEN:** It was 20 to 100 per cent more if they knew their product was slave-proof. The ultimate solution—and again, this has come from the Harvard research lab, a syndicate from Harvard—is demand-side governance. That means the consumer side. If consumers are empowered—if you read that research, Harvard did some research across Canada where if it's marked slave-free, it sold 14 per cent more. That's on our website. The ultimate solution is to give consumers an app that can read the barcode and give a red, green or amber. One of the reasons we did that research was do consumers want this? Because a lot of corporates say, "Look, our customers don't care about it. That's the research they've done." And that's not—they haven't done any research.

**The Hon. AILEEN MacDONALD:** It's probably because they think it's already happening.

**TIM MURRAY:** They think Twigg Forrester has fixed it, but it's not. Really, consumers is where the ultimate governance will come from. No legislation. Sophie Otiende said that in her speech here to the commission. She said policies won't fix it. Corporates won't fix it, governance won't fix it; we all have to work together. Coming back to your original question about transparency, you'll never get 100 per cent transparency



because it's a moving feast. If we got 50 per cent transparency, imagine that. Imagine if 50 per cent slaves went to 30 per cent, and the number was actually coming down. As we build transparency, we think that will—

**PAUL GREEN:** The other thing that comes up, bottom up, is the lived experience that the commissioner is passionate about. It's great to see how much he is invested in that side of the department, because that lived experience will help us actually scratch where people are itching.

**The Hon. AILEEN MacDONALD:** And then help them, as well, in a different way.

**PAUL GREEN:** That's right.

**The Hon. ROBERT BORSAK:** Mr Pignata, we haven't heard from you yet.

**The CHAIR:** We're going to do that shortly. We're just finishing up with SlaveCheck first.

**The Hon. ROBERT BORSAK:** You mentioned a few minutes ago in your evidence that Wesfarmers basically gave up. Why did they give up? Do you know?

**TIM MURRAY:** No, I didn't say "give up". They basically had about 100 people working on in-field audits, and I think they've scaled that back. They're realising that it's just not giving them the level of transparency that they were hoping for, so now they're looking at plan B. If you read their last statement, the 2022 statement—I don't know if they've done 2023—the last statement basically said, "We still don't know how we're going to get past tier-1 suppliers. That's in their public statement. This is what happens. The audits and the self-assessment questionnaires—they get partial tier-1 and then it just grinds to a halt. It's happened in the UK and everywhere, and there's a pretty obvious reason for it.

**The Hon. ROBERT BORSAK:** What's that?

**TIM MURRAY:** If there's no stick, they won't do it. Also, they realised it's futile. They realised there's no point us doing this—the questionnaire that Woolworths sends out. We've got customers who do the same thing. They say, "We get asked all these questions that don't apply to us. We've got to fill in a form, PDF it and send it off every year, and it doesn't even relate to us so what's the point?" That "what's the point"—I mean, last year in the UK, 29 per cent of reporting entities reported. That's all, and that's down from 46 per cent. It'll be interesting to see this year what happens. Corporates are just saying it's a waste of time, and there's no fine, so don't worry about it. We market SlaveCheck to corporates and they say, "Look this is awesome, but we don't have to do this. We've got a crappy statement; we know it's crap." Seriously, that's what they say, "So what?"

"We've got rid of it. We don't worry about it anymore." So that has to change.

**PAUL GREEN:** Mr Chair, that's the culture that the Committee has been talking about the change this morning. What's the change agent? We've got to change to say, "Hey, we are all in this together," and, "Imagine how many people we can save if we all work on this focused and with some sort of purpose and a plan that doesn't just benefit a couple of people out there with a particular organisation ticking boxes." They are ticking boxes but they are also walking home with a very nice pay cheque, and that's not getting to the victims. We've got to work to get to the victims.

**The Hon. ROBERT BORSAK:** We are talking about corporates but what about government?

**PAUL GREEN:** Thank you. We love that question because we think the Government should lead by example. Kevin Hyland—the reason we read out his letter is he said this is a game breaker. It's only a pilot, so we are not saying that it may or may not produce what we think, but we know it will do a damn sight better than what is currently being produced. Slavery is increasing. We want the Government to take on a pilot. To be quite honest, we've been meeting with the Government and we've been working towards a pilot. I don't think that the Attorney General will mind divulging that he thought, to some degree, that this would be a game changer. When we spoke to Kevin Hyland about the pilot and what we are doing and about the victims portal part of it, he actually used the same words: "This is a game changer."

We are not trying to knock anyone out of the game. Well, that actually brings on two things that are very important. We are not trying to knock anyone out of this system in trying to resolve and abolish human trafficking, Mr Chair. What we are trying to do is we are trying to close the net. So this is why every State should have an anti-slavery commissioner. We should have a national anti-slavery commissioner because the national anti-slavery commissioner is going to be looking over Asia-Pacific. That's where they need to be. They need to be working with other anti-slavery commissioners from around the world.

Our State anti-slavery commissioners need to be looking over their own backyard. Because I can tell you the amount of work that we have seen Dr Cockayne get through already is an immense amount of work. Imagine trying to get that from the national anti-slavery commissioner for New South Wales. It's just not going to happen.

Every State should have an anti-slavery commissioner. They pull the net close on domestic slavery and then the national guy works with international anti-slavery commissioners to do what Theresa May is doing, which is I think she's just started a global commission for anti-slavery.

**TIM MURRAY:** She's pushing for it.

**PAUL GREEN:** Yes, she's pushing for it. If we want to close the net, we've got to work together.

**TIM MURRAY:** Just very quickly—

**The CHAIR:** Just quickly, because we do want to get onto Project Paradigm, Mr Murray.

**TIM MURRAY:** In terms of you asking, "But what about government?" it's about procurement. Governments are massive purchasers, massive procurement. Fifty per cent of global slavery is in electronics. So how much is in our Department of Defence? How much slavery is in the Defence Force? If the Government says, "Governments don't have to report," well, there you go.

**The Hon. ROBERT BORSAK:** The New South Wales Government is the largest employer in Australia.

**PAUL GREEN:** Around 46,000 suppliers. Why should the New South Wales Government do business with anyone that is profiting on the back of slavery? They should not be allowed to trade with us.

**TIM MURRAY:** Yes.

**The CHAIR:** We might move now to Mr Pignata and Mr Townson from Project Paradigm. Would you like to make a short statement at the outset?

**CONRAD TOWNSON:** Yes, I do have a short statement. At present the New South Wales Modern Slavery Act encompasses any offence described in schedule 2, or an offence of attempting, or of incitement, to commit an offence described therein. Currently there is no specific offence of child sexual exploitation listed under schedule 2. The New South Wales Crimes Act only focuses on the production of child abuse material and the use of children to produce child abuse material. The Commonwealth Criminal Code describes the offence of trafficking and domestic trafficking in children, as well as modern slavery offences conducted elsewhere. Project Paradigm is concerned about the omission of child sexual exploitation as a specific form of modern slavery within its definitions, noting it is imperative that, to be effective, the Act must recognise child sexual exploitation within a wider continuum of exploitation, violence and abuse, congruent with how the United Nations views modern slavery.

One of the key stated objectives of the New South Wales Modern Slavery Act is to provide for detection and exposure of modern slavery that may have occurred, or be occurring, or that is likely to occur. Over the course of the past two years, Project Paradigm has been working closely with professionals from agencies across New South Wales, both government and non-government, providing training, practice guidance and support. We are acutely aware of many incidents of face-to-face child sexual exploitation occurring across various community settings. Our concern is that whilst child sexual exploitation remains uncharacterised under schedule 2, statutory agencies, support services and invested authorities will fail to prevent, disrupt and respond to children and young people effectively, thereby minimising the existence of child exploitation or framing incidents as extreme outlying cases outside of the expected norm.

It is common for victims to be entrapped in circumstances that, if viewed within an adult context, would be considered sexual servitude or debt bondage—both of which fit within the Commonwealth Modern Slavery Act. It would be progressive in a national context, and congruent with intention, if the New South Wales Modern Slavery Act amended schedule 2 to accurately reflect child sexual exploitation within the definition and descriptions of child trafficking, alongside a clear definition in its own right, accurately reflecting the United Nations' position on child sexual exploitation. It is worth noting that currently Australia does not have a nationally consistent definition for child sexual exploitation.

**Ms JENNY LEONG:** Thank you, Mr Townson and Mr Pignata. I wanted to ask a bit more—I'm not familiar with your service and with Project Paradigm, so I wonder if you could explain a little bit more about how the organisation is funded and who resources it. I was looking on your website last week and I just couldn't see how it's funded. Is it set up as a not-for-profit? Are you funded by another organisation? How large or small is the structure? It would be useful to know.

**TONY PIGNATA:** Our organisation, Integrated Family and Youth Services, has been around for about 45 years. Our history has been one of child protection. Our very first service was to take kids off the street and give them a safe bed at night. For many years we've seen the intersection with children in care and child sexual exploitation. What we have done is we took it upon ourselves to start with Conrad's position. We started with a

national campaign, we have funded some more positions and we are trying to get our training and community awareness out across the country.

Someone mentioned earlier we need to do it together. One of the greatest weapons that Project Paradigm has at its disposal is education and training. That's education and training to health workers, to police, to child safety officers and to social workers to recognise the signs of a child being exploited. They wouldn't be traditional signs. Often the children who are being exploited might be from 12 to 17 years old. They might be hostile. If you ask them, "Are you being exploited?" they will tell you where to go and tell you that they are in a loving sexual relationship. It doesn't matter that the perpetrator might be 30, 40 or 50—or that they are receiving some remuneration. From our point of view, we've funded this project out of our own dollars and off our own fundraising because we see the need every day.

**Ms JENNY LEONG:** And your service is funded through government grants or through private donations?

**TONY PIGNATA:** Yes, mostly through State grants to run foster care and residential services for children in care.

**Ms JENNY LEONG:** So that's your core business?

**TONY PIGNATA:** Yes.

**Ms JENNY LEONG:** Do you have a large cohort of staff? You mentioned that Mr Townson is employed for Project Paradigm. There is just one person working on that work, and then what is the scale or size?

**TONY PIGNATA:** There are three people in Project Paradigm. The rest of our staffing numbers around 850 around Queensland, running foster care and residential services, with some disability, housing and homelessness.

**The Hon. Dr SARAH KAINE:** In your submission you talk about a coordinated multi-agency response. It has been a bit of a theme in various parts of the day. Could you expand a bit about that? What do you mean? What does it look like? What has your experience told you?

**CONRAD TOWNSON:** I can speak to that. As you would tell from my accent, I hail from the UK. Multi-agency responses is actually a strong legislated theme that you see in response to child sexual exploitation, trafficking and also child criminal exploitation. When we're talking multi-agency responses, we're essentially saying multi-agency within a professional community context, and that could be police, youth justice, health, child safety agencies, education. The benefit to having a multi-agency response is it means you get far more effective information sharing and intelligence gathering. If we're actually going to look at the issue, we need to profile the issue, and to effectively profile an issue you need to actually involve multiple stakeholders. You cannot do it purely from a law enforcement perspective. You actually need to get a true context across the different layers of the community.

What we find—and these gentlemen to the right actually spoke briefly about this—is that you will see issues in the way victims interact with agencies. So if we think from an intelligence-gathering perspective, they're far more likely to provide useful intelligence to non-government entities, and so we see the potential for there being an alternative role to the traditional support mechanisms that NGOs or not-for-profits provide but also intersecting far more clearly with your statutory agencies. It is very effective.

My previous role in the UK was working in a UK Home Office-funded role as a civilian but I was placed within a police public protection unit, and I spent a significant amount of time training new recruits, but I also spent a lot of time interviewing young people that had gone missing, young people who were being exploited who had disclosed, and I would share information in real time with police colleagues. We got arrests the same day. That's the benefit of true multi-agency working. This goes more broadly than just young people. Victims in modern slavery are more likely to disclose to people other than statutory agencies, and a lot of that is built on distrust of people in authority. To coin a phrase that you regularly hear, we can't arrest our way out of this problem. We've actually got to engage professional community on the first stance but then your broader community as well.

**PAUL GREEN:** Mr Chair, if I could, because I know it was a question from before, the hotline was never meant to be an authoritative hotline through the policing mechanism. It was for that very reason that my colleague on my left said. It was about the victims being too afraid of authorities. The commissioner talked about piggybacking off the back of an NGO. That was the very reason that we did it because they find it less threatening and they might disclose a lot quicker and a lot easier to a third party than they would to an authoritative agent.

**The Hon. AILEEN MacDONALD:** I just wonder how you would see this coming in with the Act. We'd have to amend the Act to include it, but how would we do that?

**CONRAD TOWNSON:** I think ultimately defining. The defining language and characterisation of it within the Act is actually quite crucial. The fact that we don't do that at the moment means that you have cases that remain unreported and missed.

**The CHAIR:** Can you just take me through that, because I've gone through your submission and I get the point you're making. Could you actually just give me the words so I understand what would be in here that's not in here now? You just said words that would characterise child sexual exploitation.

**CONRAD TOWNSON:** Yes. I tend to default to the UN definition because we don't have a nationally consistent definition. Looking at the UN defining language, the UN refers to it as a form of abuse where there is some form of remuneration or whereby perpetrators benefit monetarily, socially, politically from the abuse, and it's very much characterised by a form of coercion and control that is detrimental to the victim's emotional and physical health and outcomes. That's essentially the way the UN define it.

When we actually break that down into more detail, we see it happening domestically in Australia, and you've got what are considered to be essentially four different typologies. You'll have organised crime or sophisticated organised exploitation and trafficking. You'll have a form that's probably the most common, and that is where we see young people being targeted through relationships. We see what we call inappropriate relationships: That's where you have adults who set themselves up as role models but then utilise the young person for sexual or criminal gain. And then we have what we call peer-to-peer recruitment, and that's where perpetrators will utilise young people to recruit other young people.

In New South Wales we're seeing an increase in cases of young people who are sleeping rough or homeless and they're being targeted by adults in the community who are offering them somewhere to stay, and there's an exchange then of sexual acts or favours for them to be able to stay. The problem we have is once they enter that cycle or that system and process, they're often forcibly made to take drugs intravenously that keep them compliant and dependent, and then you get this cycle of debt bondage or sexual servitude playing out. That is an extremely common thing that we see right across the States. I was in Tasmania last week. I was listening to real-time case studies that describe exactly that—South Australia. I regularly speak with agencies in New South Wales, especially in the western suburbs of Sydney, where we see this is a common thing.

Unfortunately, the lack of defining terminology or language means that we keep it hidden because we're not capturing data, we're not actually capturing prevalence and we're then reliant on individuals to actually interpret the issue rather than it being properly defined congruent with the UN. That actually has an impact on responses to victims because it means then you tend to find there is less of a trauma-informed approach when victims are being responded to or supported. You also find that with a lack of understanding in a defined context, you actually don't get appropriate disruption taking place from a law enforcement perspective. I regularly have conversations and work alongside the AFP on specific cases, and this is a common theme. So we don't even have law enforcement at local levels interpreting the issue properly.

**The Hon. AILEEN MacDONALD:** I see in the fact sheet under "What is modern slavery?" it lists a number and the last one says, "online sexual exploitation of children". But to get to online, you actually have to have the physical—

**CONRAD TOWNSON:** Yes and no, potentially. It's a little bit more complicated in that, if I take the issue of sextortion for instance, Australian young people are one of the highest victim groups for sextortion. What we're seeing happening is especially teenage boys being targeted by overseas gangs and they are tricked into sending images and then they're entrapped then in this cycle of essentially blackmail, so they're extorted or sextorted either for providing further images, sexually explicit content or money.

We've had cases in recent years where we've seen young people try to problem-solve their way out of it by getting hold of their parents' credit cards and handing over \$15,000 to perpetrators overseas. If we were actually viewing it congruent with other overseas jurisdictions like the UK and the US, we'd be actually considering it a national security issue because we're essentially seeing young people being targeted by overseas gangs. When we look at what is frequently the organised aspect of child exploitation in domestic contexts, we should really be viewing it as a national security issue.

**The Hon. ROBERT BORSAK:** Much of what you're talking about, of course, in relation to child exploitation rotates, as you're explaining, around the sexual or quasi-sexual exploitation of children. Do you see other forms of exploitation?

**CONRAD TOWNSON:** Yes.

**The Hon. ROBERT BORSAK:** Would you like to elucidate on those?

**CONRAD TOWNSON:** Yes, absolutely. We've actually had a number of high-profile cases. There was one in *The Guardian* about two weeks ago reporting on the criminal exploitation of children in northern Queensland. What we regularly see are cases where you will see young people trapped into running drugs and performing petty or low-level crimes in exchange for something in turn. But once they end up essentially on the opposite side of the law, they'll often interact with the youth justice system. The perpetrators then leverage off that dynamic to sexually exploit them. It's not unusual to see young people criminally exploited first before then being entrapped into sexual exploitation.

**The Hon. ROBERT BORSAK:** We hear occasionally about child marriage and that sort of thing going on. Have you come across that much?

**CONRAD TOWNSON:** Yes, we do see cases of that. Again, it becomes complex depending on—it can be contingent on regions. It's worth bearing in mind that Australia ranks number three for refugee resettlement globally. We see entire communities created almost overnight. With that, we're inheriting issues where we don't have the infrastructure to appropriately respond. Forced marriage is one of them; child marriage. We see things like female genital mutilation feature, and then you'll see these also intersecting with things like child exploitation. It's important that when we look at modern slavery we're understanding that the typologies don't necessarily operate in a vacuum. They'll often intersect with other crime types, but because our systems tend to silo them we actually don't get the full picture. It requires an actual analytical approach to really understand what we're seeing.

**The Hon. ROBERT BORSAK:** I'm just thinking about Indigenous communities here in Australia. How does that play into what your model is all about?

**CONRAD TOWNSON:** We regularly deliver training to Indigenous workers in remote communities. Some of these themes are common themes we see reported. The issue we have is it's contingent, again, on on-the-ground people actually understanding what it is they're seeing. I can give you an example. In the Northern Territory you've got the Stuart Highway running from Adelaide to Darwin. We're seeing young people from Indigenous communities being sexually exploited at truck stops on the Stuart Highway by their own family members, by people in their community. It adds a complex layer because the disclosure rates are actually quite low, because the fallout from disclosing within your own cultural community context can actually have quite significant repercussions. We certainly see it in culturally and linguistically diverse communities, where, again, tight-knit communities, if we disclose, what's the repercussion of that? Essentially you're talking, in a lot of cases, ostracisation. They become cast out. That is a major inhibitor. When we're actually looking at the dynamics of how we intervene or what disruption looks like, we do really need to be sensitive to that fact and the complex dynamics that sit there.

**The Hon. ROBERT BORSAK:** In context, when you say you need to be sensitive to it, are you saying that we're not doing enough now or we're turning a blind eye because these are Indigenous communities or remote communities?

**CONRAD TOWNSON:** Certainly my experience, and certainly reports I've had back from people working in those communities, would say it's all of the above.

**Ms JENNY LEONG:** Sorry, can I just clarify there, Mr Townson, you were talking about one case in the Northern Territory, or are you just now broadly generalising about First Nations communities across the country?

**CONRAD TOWNSON:** Yes, this is where we do have to be careful. If we generalise, we're not actually understanding the complex dynamics—

**Ms JENNY LEONG:** Indeed, which is why it would be great if you could clarify the evidence that you were providing.

**CONRAD TOWNSON:** We've seen multiple cases on the Stuart Highway in communities there, in the same way that we've seen cases reported by Indigenous workers in Weipa and Aurukun. I've met with workers in Darwin where they've reported similar themes. I've met with workers from the Kimberley region where they've seen similar themes. I think the problem is when I've talked firsthand with workers who are providing intervention or support to those individuals on the ground, they feel that there's not enough support or resourcing to deal with the issue.

**Ms JENNY LEONG:** Do you think, going to your point around the idea of the fact that one of the biggest risks was for teenage young people who are sleeping rough to then have to engage in these practices to be able to secure a roof, that other mechanisms for how we would address this would be by ensuring that there was adequate housing and social services support to not force those people into those situations?

**CONRAD TOWNSON:** That certainly plays a factor, especially in certain regions where you have high levels of homelessness or lack of housing. I've consulted on cases where we've seen entire families living in cars. That's becoming a common theme now. That in and of itself creates a vulnerability.

**Ms JENNY LEONG:** Indeed. Thank you. Sorry for cutting you off, Mr Borsak.

**TONY PIGNATA:** If I could just finish that, the risk factors are quite broad for CSE. Generally it's also the lack of a significant adult in a child's life, and that's not relegated to children in care. We're seeing a term called "affluent neglect" pop up in our suburbs now, where children are left to their devices for much of the day. Those children are also being exploited. Our traditional lens that we use on where these crime types occur has shifted significantly in the last years.

**The CHAIR:** I guess what you've described there, certainly in my mind, fits within offences of modern slavery. The description you've put together of abuse in return for remuneration or social advantage, using coercion and control with a harmful outcome would apply to an adult or a child in those circumstances. It certainly fits within my understanding of modern slavery and it's certainly one form of it. Just to clarify, your organisation's interest is specifically with children—

**CONRAD TOWNSON:** Yes.

**The CHAIR:** —less than 18, 16?

**CONRAD TOWNSON:** Under 18. Actually, it's an important point there around age. The complex coercive control and power and control dynamics that perpetrators use mean that actually you'll have young people over the age of consent but still under the age of 18 considered to be in a consensual relationship, but the understanding more broadly is lacking in the coercive control that's occurring in the background. The UN actually speaks very clearly about the issue of jurisdictional age of consent and the fact that it's irrelevant when it comes to child sexual exploitation. When we say "children" we're referring to anyone under the age of 18.

**The CHAIR:** The other comment I was going to make is that it certainly fits within my understanding of modern slavery, and I appreciate the evidence you've given. Of course, to think that we would only tackle that by looking at a modern slavery commissioner would be to completely underestimate the complexities, which I think Ms Leong has highlighted, in what we need to do in that space. I am mindful of the time. Dr Kaine?

**The Hon. Dr SARAH KAINE:** One very quick question to Mr Murray and Mr Green. I just had a quick look at the SlaveCheck website. It's "SlaveCheck Pty Ltd", so that's a private business, but then there's a SlaveCheck Foundation? I don't quite understand the difference and who does what. Is one for profit and one not for profit?

**PAUL GREEN:** No, that's exactly how it works. It's profit for purpose.

**TIM MURRAY:** When we say it's self-funded, corporates pay us for compliance and that allows us to provide quite massive infrastructure around the solutions side of engaging NGOs. With this victim voice feasibility study we're doing, we provide all that infrastructure for free, for example. It's a bit like Robin Hood: We take from the corporates and give to the foundation.

**PAUL GREEN:** And the other thing is, as you said, for other organisations that can't afford it, it actually can be free because it's been paid for by corporates.

**The Hon. Dr SARAH KAINE:** So 100 per cent of the profits go to the foundation?

**PAUL GREEN:** I don't know what the—that would be up to the CEO to divulge that. I think it would be commercial in confidence if we did give you that. We're happy to give you the pilot in confidence, Mr Chair—the pilot that we talked about—if it can remain confidential.

**The CHAIR:** It would have to remain in confidence. Okay.

**PAUL GREEN:** Yes, because it's commercial.

**Ms JENNY LEONG:** If I can just follow up on Dr Kaine's point—and maybe you can take it on notice in the interests of time—it would be really helpful just in terms of the Committee's understanding of the scope of both of your organisations' work if we could get a little bit more detail about how it is funded and how the structure of the organisation works in terms of who and how, given the scope of the work you're doing, as well as any indication you're able to provide on the diversity of your workforce. Given their significant impact to culturally and linguistically diverse people when it comes to modern slavery, it would be great to know what kind of diversity there is within senior management and decision-makers, given the importance of lived experience being a key factor in how we do this appropriately and culturally appropriately.

**The CHAIR:** We will end this session now. I thank you all for your evidence. The secretariat will contact you in relation to any questions on notice and follow-up matters. Thank you very much for appearing.

**(The witnesses withdrew.)**

**Ms MADELEINE BRIDGETT**, Member, New South Wales Bar Association Human Rights Committee, affirmed and examined

**Mr SIMEON BECKETT, SC**, Chair, New South Wales Bar Association Human Rights Committee, affirmed and examined

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

**The CHAIR:** Good afternoon. Thank you for appearing to give evidence at the Modern Slavery Committee's inquiry into the review of the Modern Slavery Act 2018. Would you like to start by making a short statement?

**SIMEON BECKETT:** The New South Wales Bar Association welcomes the opportunity to provide a submission to the Modern Slavery Committee on the review of the New South Wales Modern Slavery Act 2018. I am appearing today as Chair of the New South Wales Bar Association's Human Rights Committee, together with Madeleine Bridgett, a barrister and member of the Human Rights Committee. Alanna Condon, one of the senior policy lawyers with the New South Wales Bar Association, is also here in the back of the room. Madeleine, in particular, is a subject matter expert, with long involvement in modern slavery law reform for the Bar Association and various other non-government organisations.

The Bar Association made a detailed submission to this Committee, dated 17 October 2023, and we commend it to the Committee. While we addressed a number of matters in detail in that submission, it is important to remark that because of the delay in commencement of the New South Wales Modern Slavery Act, it still is, relatively speaking, in its early days. Indeed, the commissioner has only been in that position for just over 12 months, I understand, and the register to be established under section 26 of the New South Wales Act has not been as yet made public.

There has also been a major structural reform to bring the New South Wales Act into line with the Commonwealth Modern Slavery Act, including the omission, importantly, of section 24 of the New South Wales Act. This has meant that New South Wales entities which have consolidated revenue less than \$100 million are not automatically caught by the requirements of the Commonwealth Modern Slavery Act, as opposed to the \$50 million thresholds under the old provision. This has, of course, lessened modern slavery reporting obligations in New South Wales from what the Act required prior to that amendment.

As such, the main issues for the commissioner and for this Committee, I would have thought, is to ensure that the primary aspects of the New South Wales Modern Slavery Act are operating as intended, including, in particular, cooperation with State agencies; integration with Commonwealth reporting; development of the register that I mentioned earlier; development of codes of practice; establishment of the hotline; development of the strategic plan by the commissioner, which I understand has been tabled before this Committee; and moving on to the commissioner's annual report to Parliament. With that in mind, we are free and open to answer any of the questions that you, Dr McGirr, or any of your colleagues might have.

**ALI MOJTAHEDI:** I thank the Committee for the invitation to the Law Society to appear today and give evidence. I appear in my capacity as the Chair of the Law Society's Human Rights Committee. The Law Society strongly supports strengthening modern slavery laws at both State and Commonwealth levels. As Professor McMillan wrote in the *Report of the statutory review of the Modern Slavery Act 2018 (Cth)*:

It is a universal truth that slavery is abhorrent and intolerable. All levels of society bear a collective responsibility to combat slavery. The Global Slavery Index published by Walk Free earlier this year found that Australia, along with the United Kingdom and the Netherlands, had one of the strongest government responses to modern slavery. However, it is clear from recent reports by Professor McMillan, as well as other research—for example, that conducted by the Human Rights Law Centre and others—that progress towards meaningful change to address the risks of modern slavery has nevertheless been very slow. The Law Society acknowledges, given the interconnectedness of our world, that modern slavery is a complex problem which demands cross-cutting interventions, led through a partnership of public and private sector actors. The New South Wales Government, through the regime created by its Modern Slavery Act 2018, must ensure a robust response in this jurisdiction that prioritises meaningful action for victim-survivors of modern slavery.

In our submission to this Committee, we highlighted the following priority matters that have come to the attention of our solicitor members working in this space. Firstly, we note that the hotline is yet to be established for the provision of advice and assistance to victim-survivors of modern slavery. This is a crucial tool in supporting victims, identifying modern slavery and encouraging collaborative action. We remain concerned, however, that



victim-survivors are still being directed into the criminal justice system as an initial response. Secondly, we encourage further steps to strengthen access to effective remedies, including advocacy by the New South Wales Government for the establishment of a national compensation scheme, and improvements to the New South Wales Victims Rights and Support Act 2013 to better address the needs of modern slavery victim-survivors. Further, we are not aware that a publicly available electronic register is yet to be established, as required under section 26 of the Act. Thirdly, we suggest amendments to the "duty to cooperate" provisions to ensure that service providers are clear about the assistance that they can provide victim-survivors without breaching confidentiality, other duties or relationships with their clients.

Our submission also addresses the issue of the repeal of section 24 of the New South Wales legislation. In this context, we note the recommendations in Professor McMillan's report, including that the Commonwealth legislation be amended to lower the reporting threshold to \$50 million as well as the creation of civil penalties for noncompliance with the reporting requirements. In case the Australian Government does not enact the recommendations of the Commonwealth statutory review, we suggest the re-adoption of the lower reporting threshold and the relevant penalties in New South Wales, along with the requirement for corporate entities to implement due diligence processes. This would ensure that New South Wales enterprises are appropriately targeted, thereby enabling a robust response to modern slavery in this jurisdiction. Thank you again for the opportunity to appear.

**Ms JENNY LEONG:** Thank you so much for appearing today. I am happy to take comments in relation to this question from either or both of you. I wonder if you could speak about the evidence that we have heard today and concerns raised by past studies about the concept of naming and shaming not being enough, recognising that there are voluntary elements here and there are no penalties for lack of compliance. I wonder if you could both speak to it from a human rights perspective as to what would be best practice, in terms of ensuring that the Act is meeting the State's obligations to address modern slavery.

**MADELEINE BRIDGETT:** I firstly acknowledge the traditional custodians of the land that we meet on here today. I pay my respect to all Elders, past and present, and any Aboriginal and Torres Strait Islander people in the room. I don't want to ever answer a question with a question but, so that I can answer the question properly, what particular part were you referring to?

**Ms JENNY LEONG:** Basically, there's a concern that has been raised about the changes in the Act that occurred that removed penalties and also increased the threshold for compliance. The evidence that we heard earlier suggested that, in other jurisdictions, because there are no penalties, it means that then people's tick-a-box exercise in how they are complying and the kind of statements they are providing are not there. Also, the argument is made that the market will determine that this is a higher risk and then it will all be fine and those companies will start complying. That was the general view. I wonder, if we were wanting to strengthen the New South Wales Act to ensure that there was adequate compliance, what you think would be the best approach to go about that.

**MADELEINE BRIDGETT:** Thank you. That's really helpful. As Simeon said, I have been involved in this process for a number of years. I have seen different approaches taken to what is the best way to get people to comply with their reporting obligations or to comply with procurement obligations or to comply with whatever the obligation is, with respect to modern slavery. I think, initially, particularly in civil society, people were going for "It's a race to the top." A business will do well without penalty because they'll be at the top and then people will want to buy things from them because they'll put themselves out there as being compliant to modern slavery. I think that horse bolted.

I think people soon realised that, actually, without penalty, we may not get compliance, whether it be business entities or whether it be government agencies or State-owned corporations. The Bar Association, in the submission that Simeon mentioned—we did advocate for penalties. We took the view that, without penalties, there may well not be the compliance that is necessary. Modern slavery is a difficult concept for people to understand and comprehend. Businesses aren't usually in business because they are dealing with concepts like modern slavery. To leave it to a business or to even a government agency or a State-owned corporation, I think, runs the risk of perhaps not having the compliance that is required to address modern slavery in New South Wales.

**SIMEON BECKETT:** If I can just add to that, apart from what Madeleine has said about fines, with respect to reporting obligations, there are a number of different levels of any sort of compliance that you might want to require. It is ultimately a political decision as to whether you take a relatively soft kind of reporting obligation. I say "soft" not in a derogatory way but it's a way in which to get the information out and educate the population, particularly businesses as well as governments, about modern slavery in their procurement lines of supply and so forth and realising that the fact that something that arrives in a box from overseas doesn't provide you with sufficient background as to how the object was manufactured from whoa to go.

There are different lines in which you might include that. There might be civil penalties that might be applied, all the way up to criminal penalties that might be applied to a particular organisation where there had been some process of modern slavery. Obviously, particularly in the criminal code at the Commonwealth level and in the State code, there are modern slavery offences there. But there are a number of steps in between, in terms of what that compliance might be.

In some way, you are asking a blue-sky question about what sort of structure should apply to that. It appears that the State Government and the Commonwealth Government have both chosen a reporting obligation and they have applied that at a relatively sizeable level—over \$100 million, in terms of consolidated revenue. They have started there and hopefully things will improve and those thresholds will lower as information becomes more widely known. Whether that's the appropriate way in which to approach this issue is, again, ultimately, a political question.

**The CHAIR:** Can I just clarify? Yes, that's where it is at the moment. But I sort of picked up in your evidence that you thought perhaps there should be penalties at least of some sort in addition to just the naming and shaming regimes.

**SIMEON BECKETT:** This is the 2019 submission you are referring to?

**MADELEINE BRIDGETT:** This was the submission that we did on the amendment Act. Is that the one?

**The CHAIR:** Yes.

**MADELEINE BRIDGETT:** The Human Rights committee of the Bar Association took the view that there should be penalties. That was in respect to those particular provisions around the modern slavery statement reporting obligations. The New South Wales Act looks very different now that section 24 is repealed. I think there is a really big question about what is it that you want people to comply with, in terms of what's required in the New South Wales legislation. There's not that much left, if I could be crude. There is a slight lacuna in the law—and we were discussing this earlier—about capturing organisations and government agencies that actually might be, without even perhaps knowing it, engaging in risks of modern slavery. That's why I asked the question about what particular part of this legislation, because so much has actually now been stripped out.

**Ms JENNY LEONG:** Indeed. Potentially that's why the question was so broad. To the comment about the blue-sky approach, we are in a very unique situation with the Act as it stands, having had very strong penalties and a lower threshold in the initial form. The political reality has changed significantly since that time. We are opening that up and where that is that. But it's helpful to have you refer back to your submission to that 2019 process. Potentially that's a good insertion into consideration in the report.

**SIMEON BECKETT:** What we could undertake to do is we'll find that old submission. I think I have a copy online at least. We can provide it to you.

**The CHAIR:** We should be able to find it.

**Ms JENNY LEONG:** You would hope that we can find it. What would be helpful is if there's a chance to look at those recommendations and see whether they would hold and whether there is any update on those, given the Federal law's advancement now. That may be of use.

**MADELEINE BRIDGETT:** I just wanted to add one further point to that discussion. It's so important to understand—and I know that you know this—the history of this legislation as it happened and what happened. The New South Wales Act was on foot at the same time the Commonwealth Act was on foot. People in civil society didn't really know about the New South Wales Act at the time, and the Commonwealth Act was there. There wasn't, I don't believe, as much consultation around the New South Wales Act at the time. It kind of came through and it was through—there was a little bit of consultation, not a lot of consultation. The Commonwealth seems to be—section 24 has been taken out.

There may be a question around, well, what does that mean for New South Wales, and who is not being captured now. Let's just say that Professor McMillan's recommendations go ahead about lowering the threshold and doing penalties—let's just assume that, but let's just take that as a hypothesis—there still may well be gaps. It's about thinking about where are those gaps going to be and are they in high-risk industries. For example, are they in agriculture, are they in manufacturing? Could it be that an organisation or government agency that has an annual income of \$10 million, let's say, actually has, say, some of the highest risks of modern slavery. Money doesn't equate risk, and risk doesn't equate money. It's about really understanding what does it look like in New South Wales. I don't think we really do know what that landscape looks like.

**The CHAIR:** I think the issue of the Commonwealth, what that will look like, is also a relevant factor because, of course, we need to make sure that we've got an alignment there. I might go to Dr Kaine now.

**Ms JENNY LEONG:** Maybe if we can, we will have time for Mr Mojtabehi afterwards.

**The Hon. Dr SARAH KAINE:** Mr Mojtabehi, I have a question about the duty to cooperate that you mentioned in your opening but also in your submission. We had some earlier evidence today by the commissioner about this in particular. I wanted to understand a bit more the concerns that you articulate about this potentially unreasonable burden—and you give an example. Has that come from service providers themselves? Have you got further examples? I'm just trying to understand how urgent, or how significant, this issue is?

**ALI MOJTABEDI:** That viewpoint has come from committee members of the Law Society who have practised in this space. The concern around the duty to operate really goes to creating greater clarification as to what that duty requires and I suspect largely arising from the—I think there's section 35, which applies to the Commissioner of Police where examples are raised around circumstances where compliance is not required, one of which includes legal professional privilege. The commissioner earlier today expressed the view that surely legal professional privilege would apply to section 14, and I suspect that's probably right. But, given the inconsistencies of drafting between two sections, it would help for there to be some clarity about, firstly, what are the obligations, what are the circumstances in which they arise, when do they not arise—particularly for organisations who might not have the expertise of statutory construction understanding. In our submission we don't go so far as to say it needs to be repealed. We don't say that. But we do say that it would assist the organisations that are subject to that provision to have some clarity around it.

**The Hon. Dr SARAH KAINE:** To be clear, if we were to frame that as a recommendation, the recommendation might be to consider definitional clarity around the duty to cooperate?

**ALI MOJTABEDI:** Indeed, either through regulation or otherwise.

**The Hon. Dr SARAH KAINE:** For Mr Beckett and Ms Bridgett, in your submission you talk about attrition of cases through the criminal justice system, I understand. I wondered if you could tell us a bit more about that and if there's anything—again, trying to be as practical as possible about what we're doing here—relevant to our considerations in terms of the Act? Have I not got the right—

**SIMEON BECKETT:** You have got—that's a reference to another report.

**MADELEINE BRIDGETT:** Is there a particular paragraph in our submission?

**The Hon. Dr SARAH KAINE:** If you want to take that on notice you can, because I'll crosscheck now while we go to other questions maybe.

**MADELEINE BRIDGETT:** We could come back to it. I'm happy with that.

**The Hon. Dr SARAH KAINE:** Okay, no worries.

**SIMEON BECKETT:** I think it was a reference to an academic paper. Can I pick up the section 14 issue? Because I think this is quite an important one and I must say that the Bar Association has not addressed it in its submission, but it is important. I think what my colleague from the Law Society has said is that there's a lack of clarity if one compares section 14 to section 35. Obviously, with respect to the Commissioner of Police, the commissioner's lawyers were all over that and introduced a very wide power indeed, and a very low bar upon which the commissioner could refuse to provide that material to the commissioner.

In terms of the power under section 14, first of all it's an extraordinary power. It would be a very sizeable power in terms of a government agency. It's an even wider power in terms of a private organisation—for example, the individuals who might be going to a support agency which would be privately funded, it might be a non-government organisation, a private organisation. Arguably, that might include people providing counselling services to victims of modern slavery, for example. And all of the Committee members, I would be sure, would be aware of sexual assault consultation privilege, for example, under the Evidence Act and those sorts of privileges, which are not set out in any detail at all in section 14.

Other powers, such as legal professional privilege, that's a rolled-gold basis, I would have thought, upon which to tell the commissioner that you would not be providing that information, because it's a common-law privilege, which is not abrogated by section 14 (2). That's my personal opinion; that's not something that's been through the Bar Association. But it's an area in which I practise and which I can very confidently say that that would be the case. Also, public interest immunity would be another basis upon which to do that. For example, if an informant had provided certain information to a particular body, revealing the name and identity of that informant would then endanger possibly other law enforcement activities which may occur.

The other one, of course, I mentioned was in terms of confidentiality between a counsellor and a patient, for example—all those things. In my opinion they need to be certainly considered. The Bar Association could have a look at this issue. It's different in many ways to a court. It's about compulsory powers that have been

provided to a government entity, which stretch beyond public realm into the private realm and there needs to be some close consideration to the extent of those powers.

**ALI MOJTAHEDI:** Can I just add one other thing? I think it would also be useful for there to be clarity about what happens to that information once it's collected, what are the protections around it, who can it—will it—be shared with. And the consequences of that I think would be quite useful for people who wish to engage with the office of the commissioner.

**MADELEINE BRIDGETT:** Could I also just add one further thing to that as well—not just what happens to the information, but why it's being sought in the first place. If it is, as subsection (5) would have it, which is very broad, it's basically saying that the information needs to be provided despite your privacy and relevant to the exercise of a function of the commissioner under this Act. That's saying that the commissioner could then ask for any information to do with any of his functions—or she, if that is the case in the future, or they. There's the question about why is that information being sought, and not just what gets done with it and what will happen to it in the future, but why is it being sought.

**Ms JENNY LEONG:** Mr Mojtahedi, I wanted to check with you specifically around the comments you make in your submission around support services and visas, and access to those services not being dependent on going through a criminal justice pathway. I wonder—and I am happy to take comments as well from Ms Bridgett, if you have them—about any recommendations or advice you would have about how we could ensure that within the Act, recognising that there is a provision for a hotline, but also concern that has been raised with us previously from other submissions around people not wanting to report through the Federal Police pathways and the challenges around that?

I appreciate that maybe this is a purely policy thing but, given the challenges around this in New South Wales, I wonder if there are any thoughts that you do have around how that might be incorporated into the Act. That would be very welcomed.

**ALI MOJTAHEDI:** How it might be incorporated into the Act, I might have to take that on notice. But, Deputy Chair, you raised earlier with other witnesses the question of access to housing. I know the commissioner, in giving his evidence, also talked about the importance of healthcare providers and them being able to identify modern slavery. So much of that is connected with immigration status and visas. One cannot access public housing if one is not a permanent resident or a citizen. One cannot access Medicare if the visa doesn't allow them to. Unless the visa is a permanent visa or has conditions that allows access, not everyone has access. All these factors become quite relevant and quite important—when, hopefully, there is a Federal commissioner—for the commissioners to work together in raising these issues. I think I've forgotten your question now, I'm sorry. I went off on a tangent.

**Ms JENNY LEONG:** No, that's all right. Specifically it was around the challenges we have, and it goes to the points that have been made in almost all the submissions we've received talking about the intersection with homelessness and visa-related issues and modern slavery risks, but, simultaneously, the importance of having survivor-led experiences. None of that is currently captured in the Act as it stands. So while everyone working in this space, in the expertise, identifies those as key risk factors and benefits, what would be appreciated are any thoughts any of you have in relation to how some of that might be required in the Act, as opposed to being at the good will of who the commissioner may be at the time and their commitment to those things or the relevant Minister of the day.

**ALI MOJTAHEDI:** The Act, as it stands, requires the commissioner to set up a hotline or an advice line. I think the commissioner noted before—and it's set up under 12 (d)—that I think the language used was being able to piggyback off other services. There's no reason why access to other services, particularly through the community legal sector, could not be made available to people who wished to engage with the commission. One of the concerns raised in the Law Society submission is that the primary point of referral at this point appears to be through the criminal justice system or the Federal police. It might be appropriate, in my view, if the primary point of referral was to a service that would provide tailored legal advice, referrals to other social services, perhaps, so that any person wanting to access the commission or other services can do so in an informed way.

**MADELEINE BRIDGETT:** I think it needs to go further than that. I think anyone can kind of contact the commissioner's office but I'm not sure the commissioner's office is actually set up to deal with people who are contacting the commissioner's office and saying, "I'm homeless. I've just been beaten up. I'm being told that if I don't pay this person a certain amount, he's going to kill my family in another country." The commissioner's office is not set up for that and my reading of the Act is that's not what the commissioner's functions are. So how possibly this could be a strength, coming back to your question, is that it's a matter of looking at what is available and what isn't available to people who are experiencing modern slavery. So we should assume mostly that people who are experiencing modern slavery are not going to go to the Australian Federal Police and report it.

I did notice that the New South Wales Anti-slavery Commissioner has got a separate website, apart from the DCJ website, which I didn't realise there were two websites for the commissioner. But on the one that's—I think it's New South Wales modern.slavery.org.au. Down the bottom where it says where to get help, it actually directs people to the commissioner's office or to the AFP. So there are many services in New South Wales that actually do provide support to people who are experiencing modern slavery. They're the services that need to be promoted. They're the services that need to be funded, if they're not adequately funded. And services like NSW Health, for example, the staff there may not have the training and the expertise to know how to deal with someone who walks into emergency with a broken leg but then happens to say, "I'm actually being exploited in this workplace", or "I'm having to send all my money to this person who's got my passport."

They're the things that perhaps there could be strengthening in the Act on how do we build the knowledge base and the experience and the skills of services that might already be in existence, to build their capacity to deal with the issue. Again, this is not through—kind of just answering your question here, and I'm happy to take it, through the Bar Association, if you want us to provide something further. But I do think that there's a lot more scope to strengthen the Act around service provision that is focused on lived experience and it's run—at the heart of it is about hearing from lived experience: how they want their services delivered, what they need to be delivered, and not from a top-down but a bottom-up, if you like, approach.

**Ms JENNY LEONG:** That would be great, Ms Bridgett. If it is possible to take some of that on notice and provide any further thoughts and detail you have around that, that would be appreciated. Can I just clarify, are you suggesting that the ability then would be to expand the provisions within the Act but not the scope of what the commissioner's role is?

**MADELEINE BRIDGETT:** If I can just take some time to think about that and take that on notice because we're here representing the Bar Association, and I've not really given thought on what it would look like in terms of legislative regime, per se. But what we do know about what's happening out there is that this is a hidden issue that people are not going to go the AFP. We're not going to pick it up in that data. We have a hotline; that's all well and good to have a hotline, but if there's nowhere to refer people, what's the hotline going to, apart from maybe collect some important data—which will be important, nonetheless. But if the hotline is to also support people, if the support isn't out there—so it's about building on what's already existing out there, finding gaps about service provision and where are the service gaps, and can we build on what we've already got there and build people's capacity to kind of support people who are experiencing modern slavery. They're my kind of thoughts, Deputy Chair.

**The Hon. AILEEN MacDONALD:** From what I can gather, the Act remains relevant, the time line's relatively new so it's hard to provide a review when we're so new into it and it could be strengthened by having penalties, but the hotline is a priority. But in implementing that hotline, it should be trauma informed with a victim-survivor focus. Would that be it, in a nutshell—not that I'd like to put things in a nutshell?

**SIMEON BECKETT:** I think so. Can I just say, first of all, that the role of the commissioner and the regulatory environment that is set up by the Modern Slavery Act in New South Wales, and of course by the Commonwealth, is relatively limited in all of those things. It's essentially about reporting obligations from individual entities, public and private, and then just putting all of that—this is the name and shame component of it—on a register that's publicly accessible. And then a process by which the commissioner engages in research and consultation about how that's working and how other elements of modern slavery might be better improved in terms of particularly knowledge of individual companies and so forth. So it's restricted to that.

And then there's reporting obligations, obviously, to this Parliament about how that would work. What that's doing, and I think what Madeleine has very eloquently said, is that you're just scratching the surface—that there are a number of people who are living in the Australian community who are victims of modern slavery. Do the mechanisms within New South Wales, for example, work in terms of supporting those people, whichever way it might go? It might be in terms of getting health and housing and so forth—that's one particularly social justice aspect to it. Another might be a legal process and different legal processes in terms of any civil claim that they might have, or whether they are victims in terms of a criminal process.

All of that engages a whole number of different government departments and non-government organisations who provide that support at the moment. Asking that question is—opening that up is quite a sizeable thing to do. It needs to be properly thought through. It needs to be a thorough review and so forth because you're talking about some of the most vulnerable people who are living in our community at the moment. There are a number of ways in which you might do it. You might add some of those aspects onto the role that the commissioner fulfils at the moment, but it's a long, long way short of a comprehensive regime to deal with the victims of modern slavery. I think we're seeing in terms of the discussion here today just how limited the Act is—that the demand is so much higher.

**The Hon. ROBERT BORSAK:** Mr Beckett, in relation to your submission—and that's the Bar Association submission—paragraph 31 talks about investigating modern slavery offences. Obviously, the objective is combating slavery pursuant to section 3 (a) of the Act. Then you go to paragraph 32, which says—I guess this is going around the issue that we're talking about already; there really isn't much in the way of teeth in what the commissioner has got available to him—that convictions for modern slavery offences are very difficult to secure. Obviously then the name and shame isn't going to be enough. Is that right to say that?

**MADELEINE BRIDGETT:** I'm happy to have a go at that. I think it's really important not to conflate certain issues. There's the individual who might go to the police and report or not report and then there's the obligations of organisations, government agencies, State-owned corporations. It's important to kind of separate those. The New South Wales Modern Slavery Act as it stands now is really about two things as I understand it: the functions of the commissioner and the obligations for State-owned corporations. That's how I understand it in a very, very small, sort of simplified way.

**The Hon. ROBERT BORSAK:** I'm reading from this submission here. What's the problem with—how is that conflating one or the other, simply saying convictions for modern slavery offences are difficult to secure? I'm just asking the question why individuals shouldn't be prosecuted and why it is difficult—

**MADELEINE BRIDGETT:** Right, that's not what I heard before but I can answer that question. Sorry, I thought you were asking me about the obligations and what that had to do with prosecutions. Why are there not many prosecutions? The first thing is that most people will not go and report it, including the individual or including someone who might know someone who is a perpetrator, because there are just so many risks to reporting it. For example, someone will be put on a plane the next day and have to go back home because of the visa issues. I think evidence is sometimes also difficult—so whether police are sort of investigating these when the allegation is made and what investigations are being undertaken. It's a fairly hidden—it's a little bit in the realm of trying to get guilty convictions in sexual assault cases. The evidence could be one person's word against another and that makes it quite difficult. Exposing it—people just don't want to expose it because there's just so much at risk. Does that answer your question?

**The Hon. ROBERT BORSAK:** Yes, I think that's sort of going to what the question is, but it also surely does relate to the organisations that may be inadvertently sponsoring these activities by not doing proper reporting. That's really where I was coming from before, bringing the two things together. How do you see that working? Because we've been told today that all that can really be done is you can look at the problem and you can identify the problem but there's not much more that you can do. What more should be done if we're going to get successful prosecutions? Because we also heard evidence today that people will start to take notice when you start putting people in jail.

**MADELEINE BRIDGETT:** My view is it's not just a matter for the commissioner to do that. That's where his role around educating and raising awareness and training people is so important. To get prosecutions, first of all, you have to recognise that it's modern slavery. Someone has to recognise that that is actually modern slavery. The Hon. Mr Borsak, if you're working in—I hope I pronounced your surname correctly. But if you're working in an organisation—

**The Hon. ROBERT BORSAK:** You just left the first part out: Robert. Some people say I'm not honourable but that's okay.

**MADELEINE BRIDGETT:** If you're working for an organisation and you're working with a whole group of people and you might be working with some workers who have to go out in the field and pick apples—I'm just going to say that as an example—and there might be some exploitation happening but you don't actually see it as exploitation or you don't recognise it as exploitation, then it's going to be really difficult for it to get from where you are to the New South Wales police, or the Australian Federal Police depending on what kind of crimes are being committed, to actually investigate that. There's a whole lot more that the commissioner can and is doing—it's only been a year—to kind of raise that awareness and do that education and do that training. But it's such a fundamental part of his function because it is such a hidden issue and it's a hidden crime and people need to almost see it to be able to do something—

**The Hon. ROBERT BORSAK:** Are you saying, then, that it's okay to be at the level we're at at the moment because what we're trying to do is educate and work our way up to a more aware society that will more easily be able to put their finger on it and then the institutions, whether it's the police or whether it's somebody else, can actually then conduct prosecutions once it's more in the open?

**MADELEINE BRIDGETT:** Yes. If you just have a look at the UK and what's been happening in the UK, it's taken the Anti-Slavery Commissioner in the UK many years to be able to kind of build the knowledge

and the understanding and the skills and the training that people need to be able to recognise it. It's such a short—this review is being done, unfortunately, in such a short term of the commissioner's role. It's only been a year.

**SIMEON BECKETT:** Can I just supplement that answer? One of the things about the modern slavery commissioner is that, even though he or she has the power to refer matters to the police, it wouldn't be correct to see the current commissioner's role as being part of the law enforcement mechanisms. It's not an adjunct to the police in New South Wales or to the AFP. It's not an investigative unit. In terms of why there haven't been more prosecutions and how we might have better prosecutions, which might include looking at amendment of the relevant offences either in the State or the Commonwealth—is really a separate and important issue, but it's a separate issue, I think, in terms of what the Modern Slavery Act in New South Wales does at the moment.

There needs to be proper funding, of course, for that and there needs to be a proper understanding of the nature of what must be incredibly difficult offences, especially if, for example, some of the key things about sexual or general servitude, work bondage and so on—they might occur in other countries. And the person arrives on the plane—all of those parts, all of those elements of the offence having occurred offshore—and then the person is working for a particular labour hire firm who is then picking the apples in the field. So you're a long way down that chain before it comes to Australia, but it may be the result of a criminal act that has occurred in some other jurisdiction. So there are super difficulties in all of that.

**The Hon. ROBERT BORSAK:** If you look at the suggestion of slavery in the lithium mines, for example, in Africa, those sorts of things—where the beneficiaries of large amounts of that renewable technology come into Australia via China or somewhere else, how do we address that in the current circumstances when it's not a matter of educating the Chinese to do it? They're going to do it anyway. How do we deal with that?

**SIMEON BECKETT:** At the moment it's about that reporting obligation and compliance with—what is it?—section 16 of the Commonwealth Modern Slavery Act and the relevant New South Wales requirements.

**The Hon. ROBERT BORSAK:** Are you suggesting the Australian Government should say, "Don't buy this stuff. It's got slave products in it"?

**SIMEON BECKETT:** Let's see the examples before we get there. I don't know.

**MADELEINE BRIDGETT:** There was actually a bill on foot and I believe it's still on foot at the Commonwealth—at the Federal level on banning imports from countries that use forced labour. I believe it's back on foot but, again, I can take that on notice.

**The Hon. ROBERT BORSAK:** Yes, I did hear something of it but I don't think it's—

**SIMEON BECKETT:** Private members—

**MADELEINE BRIDGETT:** Yes, it was part of the Customs Act amendment.

**The Hon. ROBERT BORSAK:** I can understand why they're dragging their feet.

**The CHAIR:** That's been very helpful and very instructive. I don't have any further questions from my perspective.

**Ms JENNY LEONG:** I might ask one. People have addressed the difference in the definition of modern slavery between the State Act and the Federal Act. I don't know if you have any comments on that now. I guess the other part of that is, given the Federal Act, whether or not you see there is any benefit in how our State Act is relating to the Federal Act that hasn't been addressed so far.

**SIMEON BECKETT:** I think one of the issues—I was trying to get on top of this this morning. I'll just try and bring up the Commonwealth Act and the definition there of modern slavery, which doesn't appear to include modern slavery offences in the Crimes Act in New South Wales. There's no provision to include within the definition of modern slavery under the Modern Slavery Act of the Commonwealth those offences under the New South Wales Crimes Act which, under the New South Wales Act, are termed to be modern slavery. They're set out in the schedule, and in fact the New South Wales schedule helpfully includes both New South Wales and Commonwealth provisions. I might say that it doesn't include those provisions from other States and Territories, which might have similar offences, and that might be an area where some consideration might be given, especially if the offences have occurred across State lines—across jurisdictions. There's some development there. That's quite an obvious one to have a look at.

I also think that you're dealing with two different types of reporting regimes in the sense that you've got the Commonwealth reporting regimes, but as Madeleine said earlier, there are likely to be some holes in that, for example where you're talking about a New South Wales entity which is not a State-owned corporation, and what are the compliance mechanisms for that. It's not that it's absent, it's more that it goes through a different route—

as I understand it, under the Public Works and Procurement Act. A direction is issued under section 175, and then it's compliance with that direction, which is how you get the Modern Slavery Act reporting done by a State entity, which might be quite sizeable indeed but doesn't fall within the definition of entity under the Commonwealth law. There might be a lacuna there. The result that has is not that there is no reporting, it's more that you have two different regimes. You have the New South Wales Public Works and Procurement Act regime, and the Commonwealth Modern Slavery Act. That's quite clear as to what you have to report on—that's what we're talking about. All of that is set out in in section 16: Mandatory criteria for modern slavery statements.

**MADELEINE BRIDGETT:** I would just add one point to that. The public register, pursuant to section 26—

**SIMEON BECKETT:** Of the New South Wales Act.

**MADELEINE BRIDGETT:** —yes, of the New South Wales Act—with regard to the Public Works and Procurement Act, is only to keep the register for a government agency failing to comply with directions. So you don't get a really good insight into, perhaps, agencies that don't have to report under the Commonwealth that fall under this procurement provision in the New South Wales Act. It's just an observation.

**Ms JENNY LEONG:** There's a gap.

**MADELEINE BRIDGETT:** There's a gap, yes. The importance of a public registry is this: that people can go on—although my attempt this morning to get onto the Commonwealth modern slavery public registry showed about 1,700 statements when I put about two words in there. But search engine issues aside—

**Ms JENNY LEONG:** It wasn't the best user experience?

**MADELEINE BRIDGETT:** It wasn't the best user experience. Exactly, Deputy Chair. The point is to be able to go on there and actually look up and say, "Oh, I wonder if I should go and buy something from this person tomorrow, or this shop, or should I access this service. How good are they on modern slavery?" Well, we're not going to find that under section 26. It's not that kind of public registry.

**The Hon. Dr SARAH KAINE:** I just wanted to follow up. It was paragraph 35, but I think you can make me go and do my own homework, because you provide the reference and the link in the paper to those barriers and challenges. I'm happy to go and do my own homework on that one, so just rounding that out for you.

**MADELEINE BRIDGETT:** Oh yes, it's a good article.

**The CHAIR:** Just on the public register, basically what you're saying is there might be a gap there in what information would be available that we ought to clarify?

**SIMEON BECKETT:** Yes.

**The CHAIR:** Thank you. We might excuse you. Thank you very much. The secretariat will be in contact with you in relation to any questions on notice and follow-up material.

**(The witnesses withdrew.)**



**Ms ANNE SHEEHAN**, First Assistant Secretary, International Law and Human Rights Division, Federal Attorney-General's Department, before the Committee via videoconference, affirmed and examined

**Ms FRANCES FINNEY, PSM**, Assistant Secretary, Modern Slavery and Human Trafficking Branch, Federal Attorney-General's Department, before the Committee via videoconference, sworn and examined

**The CHAIR:** I welcome Ms Sheehan and Ms Finney. Thank you for making the time to give evidence. Would you like to start by making a short statement?

**ANNE SHEEHAN:** Thank you. We do have a very short statement. Thank you to the Committee for inviting us to appear at today's hearing. I thought it would be useful for the Committee to be made aware of some of the work underway at the Commonwealth level in relation to modern slavery, and also to make some very quick remarks about the interaction between the Commonwealth and the New South Wales modern slavery Acts. To start with that work at the Commonwealth level—as I'm sure the Committee would already be aware, the Commonwealth Modern Slavery Act came into effect on 1 January 2019 and recently underwent a statutory review led by Professor John McMillan.

The review's 30 recommendations are extensive and include a number of significant and complex proposals for reform. The Government is in the process of considering those review recommendations at the moment. Another key priority from the Australian Government is to establish a Federal anti-slavery commissioner to further enhance Australia's response to combat modern slavery. It is expected that the commissioner will work across government, industry and civil society to support compliance with the Act, to improve transparency and supply chains and to help counter modern slavery in Australia and abroad. The department is currently undertaking preparatory work for the establishment of that Federal anti-slavery commissioner. In terms of the intersection between the Commonwealth and the New South Wales Acts, the key points that we wanted to make there relate to two key areas of intersection.

These include the requirement in the New South Wales legislation that State-owned corporations must volunteer to comply with the Commonwealth Modern Slavery Act and provide modern slavery statements to the Minister; and secondly, the requirement that a strategic plan of the NSW Anti-slavery Commissioner must address a strategy to combat human trafficking in accordance with the Commonwealth National Action Plan to Combat Modern Slavery. Of course, I just wanted to finish by saying that we engage closely with the NSW Anti-slavery Commissioner on efforts to combat modern slavery, and we very much look forward to continuing to do so. I am happy to assist the Committee with questions that you have today.

**Ms JENNY LEONG:** Thank you both for appearing in front of us today. Thank you for giving us the update on where the Commonwealth Act is currently at. I have two questions. One is for any considerations or thoughts you have in relation to the intersection between the objects of our modern slavery Acts, both in New South Wales and the Federal Act, when it comes to the intersection with visa and migration challenges. We heard evidence earlier today around potential risks of cohorts, including international students, being at further risk to modern slavery as a result of their visa requirements limiting their hours of work. That's just one example, but there are many others. I wonder if there has been much work at the Federal level to look at how the Modern Slavery Act interacts with other areas around visa and migration work? The second question was—actually, maybe I'll leave it at that and come back to the second question in a minute.

**FRANCES FINNEY:** Thank you for the question. I think probably the best way for me to answer is that it's not so much in consideration of the Commonwealth's Modern Slavery Act where visa and migration and international students' settings are included. What we have in terms of the broader framework for combating modern slavery is quite a comprehensive whole-of-government approach, where those settings relating to visas, international students and other groups migrating to Australia, visiting Australia or studying in Australia would be captured under the Migration Act and migration regulations. In relation to the Modern Slavery Act of the Commonwealth, the focus is on combating all forms of modern slavery in whichever industries or sectors where those risks may arise. So that's how the focus is captured under the Commonwealth Modern Slavery Act.

But I'd also mention that a third area of intersection is through our work across government via the National Action Plan to Combat Modern Slavery 2020-2025, which includes a comprehensive overview of modern slavery risks, prevention, protection, prosecution, research and partnership activities that span a number of different aspects of Commonwealth legislation policy and practice, and that go towards combating modern slavery in a range of sectors, including international students. So more specific questions in relation to visas and migration can also be responded to by our Department of Home Affairs and the Home Affairs portfolio as well, who we work with closely. Home Affairs has also introduced some relevant legislative amendments to help combat the risks of exploitation in these sectors.

**Ms JENNY LEONG:** If there are any policy frameworks or any policy guidelines that indicate how the intersection between the Modern Slavery Act at a Federal level and the migration laws and other things are addressed, that would be helpful. Particularly to give you an example, in New South Wales, on the issue of homelessness and housing, obviously people on certain visa statuses are not able to access certain homelessness services and other services. But we wouldn't want to see that as a reason for why people are not reporting. I think what we are trying to get at is if there are any examples where, at a Federal level, there is good coordination happening between different agencies, recognising where the risk factors are. That would be useful.

**The CHAIR:** Can I just add to that comment. You've mentioned housing, but health is also critical.

**Ms JENNY LEONG:** Indeed.

**The CHAIR:** We've heard evidence today about the importance of—well, probably health is the one area where people with experience of modern slavery might interact with, let's put it this way, non-criminal, non-traditional, non-police actors. They might be inclined to reveal—perhaps if we train that workforce appropriately—and have their concerns recognised. But the issue that I think Ms Leong is getting at is that for many people here working on different classes of visas, they don't, of course, necessarily have access to the public healthcare services. So any information on that interaction would be helpful. I'll just leave that as a comment.

**The Hon. Dr SARAH KAIN:** Thank you very much to both of you for appearing. I have a question which follows on a bit from the answers you've given in terms of inter-agency collaboration. Today we've heard a lot about inter-agency collaboration and inter-jurisdictional collaboration. The question which I have asked of other witnesses is do you have ongoing or continuing work with the Department of Employment and Workplace Relations with regard to the types of activities that are usually signalled as risk factors for modern slavery? I know we are in a bit of a flux about what's going to happen with the Federal jurisdiction altogether, but I just wondered if you could let me know of any discussions and what that kind of collaboration looks like.

**FRANCES FINNEY:** Sorry, we just had a couple of audio issues there, but I think I've understood the question. In terms of the interactions with the Department of Employment and Workplace Relations, they are a member of our Interdepartmental Committee on Human Trafficking and Slavery, and they are also a member of our National Roundtable on Human Trafficking and Slavery, which includes broader government and non-government members. The Department of Employment and Workplace Relations also has specific action items, under the national action plan that I mentioned earlier, to ensure that they are part of that joined-up approach and that their efforts to combat exploitation, before those practices go to the serious end of modern slavery, are also captured in the broader plan as well.

**Ms JENNY LEONG:** I was wondering if it was possible for you to give us details on what, if any, obligations there are for commercial organisations under \$100 million in annual revenue to ensure they are addressing modern slavery risks. I appreciate the various mechanisms are currently set at \$100 million, but whether or not there are any requirements as you see it for business organisations below \$100 million ensuring that they're assessing and managing their potential risks around modern slavery.

**FRANCES FINNEY:** In relation to the Commonwealth Act, as you've said there are currently no reporting requirements for those entities doing business in Australia under the \$100 million consolidated revenue threshold. However, there are impacts, if you like, on some of those entities where they are part of supply chains of those reporting entities where they might be reaching into to seek assurances around their modern slavery practices and risks. And then thirdly, I'll just mention that as part of the review of the Commonwealth Act, that was one of the recommendations that Professor McMillan made in terms of the threshold for reporting that government is considering.

**Ms JENNY LEONG:** I appreciate that. The other question was, given the report and the timing of the review and the New South Wales review, I wonder if you have thoughts on—and I appreciate this may be difficult to answer. The challenge we have is we're undertaking a review of our Act in a time frame where the Commonwealth Act is also being reviewed, and so there is a need, I think everyone would agree, to have a further review of the New South Wales Act at some point in the future subject to the Commonwealth Act. Do you have thoughts around the timing of when that review might happen? I guess the other part is whether or not we should be considering specific amendments at this stage to the New South Wales Act to ensure connection and interaction between the New South Wales commissioner and the Federal commissioner.

**ANNE SHEEHAN:** You're right, and I think it's probably a little bit difficult for us to answer that in terms of advice to the New South Wales Government on when it should conduct a review. It's of course not for us to be suggesting what amendments might be made in the future to the New South Wales Act. But I think just from a general perspective, I think it is very useful to look at both Acts and look at how they do align with each other.

I think that, yes, it probably would be a valuable thing to continue to review both Acts with that in mind. I think there might have been another part to your question that I didn't address.

**Ms JENNY LEONG:** That's all right. I'm happy to leave it there.

**The CHAIR:** I might just follow that on a touch. In New South Wales we obviously have an Act. Currently the way it seems to me to fit with the Commonwealth is that there are obligations under the New South Wales Act for government agencies and procurement within the government to have systems put in place. Given the size of the New South Wales Government and its procurement exercises, that is both of value in and of itself and an important signal to the market more generally; that's number one. Number two, the Anti-slavery Commissioner has a task around raising public awareness but also importantly harnessing, I think, government agencies that provide important social support. We mentioned health and housing as two examples of that. That seems to me to be both very useful actions to be happening at the New South Wales level that would complement the Commonwealth Act. I'm just interested in what happens in other States and whether Professor McMillan or the Commonwealth have bent their minds to similar sorts of actions being required of other States or negotiated with other States, again, in relation to their government entity's reporting and the support services for victims.

**FRANCES FINNEY:** I wouldn't speak to other jurisdictions in terms of their settings and their policies and priorities. But what I can say is that we do engage regularly across all State and Territory governments with respect to modern slavery in public sector procurement. We do have a forum where we engage with them, and recently the New South Wales office of the Anti-slavery Commissioner has joined that forum. The idea is to promote best practice and awareness, and where we have learnings and we have resources and tools that we can share across jurisdictions, we're definitely doing that. More broadly in relation to other jurisdictions, there are a number of intersections across law enforcement and policy and in some legislative settings as well, such as in forced marriage, where we are working with the various agencies across the jurisdictions again to try and promote that, firstly, awareness; secondly, action; and, thirdly, consistency.

**The CHAIR:** Thank you very much. We don't have any other questions for you. We're going to bring that to a close a little bit earlier than we'd anticipated. Thank you very much for making yourselves available. If there is anything that we need to follow up on, the secretariat will be in touch with you.

**(The witnesses withdrew.)**

**The Committee adjourned at 15:30.**