

Office of the
Anti-slavery
Commissioner

Review of the Modern Slavery Act 2018 (NSW)

Submission of the Anti-slavery Commissioner, Dr James Cockayne

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OFFICIAL

Review of the Modern Slavery Act 2018 (NSW): Submission of the Anti-slavery Commissioner, Dr James Cockayne

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Acknowledgement of Country

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

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

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

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

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

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Summary

In 2018, New South Wales Parliament passed the *Modern Slavery Act 2018* (NSW) (the ‘Act’). The Act came into effect in 2022 following amendments in 2021. The Act creates a new, independent statutory office – the role of Anti-slavery Commissioner. This is a summary of the submission of the first ongoing NSW Anti-slavery Commissioner, Dr James Cockayne, to the Modern Slavery Committee’s Review of the Act under section 36.

The Anti-slavery Commissioner’s submission provides comments on the Act under the following three areas:

- Do the policy objects of the Act remain valid?
- Do the terms of the Act remain appropriate for securing its objectives?
- Conclusions

Do the policy objects of the Act remain valid?

The first section of the submission addresses each of the objects in section 3 of the Act and provides the following reasons why they do indeed remain valid.

There is a continuing need to combat modern slavery in NSW: The first object of the Act is “to combat modern slavery” (section 3(a) of the Act). By the best available survey-based estimate, there are 41,000 people in modern slavery in Australia right now, with around 40 per cent of those people – 16,400 – likely in New South Wales¹. This represents a serious ongoing violation of human rights in New South Wales and comes at enormous cost not only to the victims of modern slavery themselves, but also to the people of New South Wales, through negative economic impacts, public health risks, and risks of links to other criminality. This cost may be as high as \$9.6 billion.

Victims need urgent and ongoing assistance and support: The second object of the Act is “to provide assistance and support for victims of modern slavery” (section 3(b)). Since the Commissioner’s appointment, he has heard from a diverse range of stakeholders, including those directly impacted by slavery and slavery-like practices, about what modern slavery is, how we can identify it, and about victims’ needs. Despite the absence of formal investigative powers, since January 2023 the Commissioner has identified more than 110 specific people at risk of, or having suffered, modern slavery. The rate of presentations is increasing rapidly as the Commissioner’s Office becomes more visible. There remains important work to be done, in accordance with the object of the Act, to identify, assist and support these people – including the development of a hotline as mandated under section 12 of the Act.

The role of the Anti-slavery Commissioner is still being brought to life: The third object of the Act is “to provide for an Anti-slavery Commissioner” (section 3(c)). The Commissioner and his Office have been busy in the 14 months since the Commissioner’s appointment, bringing the role of Anti-slavery Commissioner to life. This is further outlined in the advance embargoed draft copy of the Commissioner’s upcoming annual report, and the first strategic plan to combat modern slavery in New South Wales published in June 2023.

Modern slavery remains dangerously undetected and unexposed: The fourth object of the Act is “to provide for detection and exposure of modern slavery that may have occurred or be occurring or that is likely to occur” (section 3(d)). Modern slavery remains dangerously undetected and unexposed in NSW, with only around 120 to 230 cases out of an estimated 16,400 being reported

¹ Walk Free, Global Slavery Index: Australia (Perth, 2023).

each year. Reporting arrangements will be further challenged as new forms of modern slavery, such as forced participation in online scams, emerge.

There is a continuing need for awareness-raising, education and training: The fifth object of the Act is “to raise community awareness of, and provide for education and training about, modern slavery” (section 3(e)). There is a continuing need for awareness-raising, education and training on modern slavery across New South Wales. The Commissioner and his Office will continue the important awareness-raising and communications activities undertaken since the Commissioner’s appointment (further outlined in the enclosed advance embargoed draft annual report), with the critical focus of putting people with lived experience at the heart of all efforts.

Collaborative action to combat modern slavery faces continuing structural and cultural barriers: The sixth object of the Act is “to encourage collaborative action to combat modern slavery”. Ultimately, the role of the Anti-slavery Commissioner is a catalytic one, to foster collective action to sustainably deliver better outcomes, prevent modern slavery and effectively address it where it does occur. The Commissioner has begun working to foster a community of purpose in NSW and established a new Advisory Panel. However, there is more work to do to address structural and cultural barriers impeding effective collaboration and strengthened effectiveness in the sector. A key piece of this work will be the creation of safe, supported opportunities for centring lived experience at the heart of this anti-slavery community of purpose.

We are in the early days of assessing the effectiveness and appropriateness of modern slavery laws: The seventh object of the Act is to “provide for the assessment of the effectiveness and appropriateness of laws prohibiting modern slavery and to improve the implementation and enforcement of such laws”. We are in the early days of assessing the effectiveness and appropriateness of modern slavery laws. The Commissioner has initiated work to strengthen understanding of the victim and at-risk population in the state, to underpin efforts to assess effectiveness and appropriateness.

Mandatory reporting of risks of modern slavery in the supply chains of government agencies has just begun: The eighth object of the Act is “to provide for mandatory reporting of risks of modern slavery occurring in the supply chains of government agencies” (section 3(h)). Under the Act and related legislation, since 1 July 2022, more than 400 public entities, with a combined annual procurement spend of more than \$42 billion, have had legal obligations to take reasonable steps to ensure they do not buy goods and services made with modern slavery. Most are just submitting their first mandatory reports now, with others not reporting until early 2024. The Commissioner’s official *Guidance on Reasonable Steps*, which is expected to be published in the coming weeks, sets out an extensive programme for strengthening procurement and risk management practices. Government agencies and other reporting entities will report on these efforts over the coming years. This will require ongoing monitoring, support, engagement and training from the Anti-slavery Commissioner.

There is a large appetite for training on modern slavery risk management in supply-chains: The ninth object of the Act is “to provide for education, training and guidance about identifying and addressing modern slavery taking place within supply chains of organisations” (section 3(k)). There is a strong ongoing appetite in NSW, from both the public and private sector, for such training. The Commissioner recently announced the development of a Code of Practice under section 27 of the Act to tackle modern slavery risks in NSW’s renewable energy value-chains, and it is anticipated there will be significant demand for training in relation to this Code, once it is available.

NSW offences relating to modern slavery have been enacted, but enforcement appears to be variable: The tenth and eleventh objects of the Act are “to make forced marriage of a child and certain slavery and slavery-like conduct offences in New South Wales” and “to further penalise involvement in cybersex trafficking by making it an offence to administer a digital platform for the purpose of child abuse material or encourage another person to use a digital platform to deal with child abuse material”. While the adoption of the Act and related legislation had the effect of securing these objects of the Act, at least by writing these offences into law, the enforcement of the modern slavery offences in the *Crimes Act 1900* (as defined by Schedule 2 of the Act) remains variable.

Do the terms of the Act remain appropriate for securing its objectives?

The second section of the submission examines whether the terms of the Act remain appropriate for securing its objectives.

Cooperating with a federal Anti-Slavery Commissioner and with other governments' anti-slavery bodies: Cooperation with a federal Anti-Slavery Commissioner and with overseas actors mandated by governments to tackle modern slavery is likely to take on increased importance in years ahead. The Committee may wish to consider whether such co-operation should be elevated from a power of the Commissioner under the Act (section 15), to one of the Commissioner's specific functions under section 9. The Conclusions section of the submission sets out a simple drafting proposal.

Identifying and providing assistance and support for victims of modern slavery: The Act mandates the Commissioner to identify, provide assistance and support for, and provide referrals for, victims of modern slavery (sections 9, 10 and 12). Machinery is still being developed to discharge these functions and provide appropriate, trauma-informed referral and support for the dozens of complex modern slavery cases now presenting to the Office. The submission highlights the following trends for the Committee's consideration that have emerged in this area:

- **Co-operation with the Commissioner:** State and territory government agencies and service providers have been somewhat 'missing' from Australia's anti-slavery efforts, which have historically been driven by federal government action in close cooperation with civil society organisations. There is clearly both a need and an opportunity for action to mobilise government and non-government agencies in the state to provide victims of modern slavery better services and support, including law enforcement, housing, healthcare, financial, legal and migrant settlement support. This will require close and ongoing co-operation by relevant government and non-government agencies with the Commissioner, in line with section 14 of the Act.
- **Hotline resourcing:** The establishment and maintenance, or utilisation, of a hotline for victims of modern slavery – as required by section 12 of the Act – will play a critical role in securing the objects of the Act. At present this project is not yet funded.
- **GIPA Act:** A potential exemption for the functions of the Anti-slavery Commissioner in relation to the *Government Information (Public Access) Act 2009* (NSW) may need to be examined in the future, but appears premature at this time, for reasons explained in the submission.

Considering alternative approaches to the "detection and exposure" gap: The submission discusses the gap between the estimated 16,400 people in modern slavery in NSW and the roughly 120 to 230 reports received each year. The submission argues that we must take proactive steps if we wish to pierce the veil of silence behind which victims of modern slavery are often deliberately kept trapped. A 'passive' approach to reporting will not secure the "detection and exposure" object of the Act, because victims are often unable to report – and when they do, their situation of modern slavery often goes unrecognised by frontline workers. While equipping these workers to better identify modern slavery will be critical, it will take many years. The Modern Slavery Committee may consequently wish to consider how to equip the Anti-slavery Commissioner or other authorities with more proactive detection and exposure powers. The submission points to powers given to other independent statutory officers in New South Wales, such as the Building Commissioner and the Children's Guardian, as potential models.

Resourcing modern slavery procurement reforms: Implementing the 'reasonable steps' and other public procurement provisions under the Act will not be a resource neutral exercise, either for the entities that must take these reasonable steps, and then report on them; or for the Anti-slavery Commissioner, who is obliged by the Act to monitor the effectiveness of this due diligence and reporting and to keep a public register of non-complying agencies. The submission argues that the supply-chains objects of the Act will only be secured if this work is adequately resourced across government agencies and other reporting entities.

Resourcing the work of the Commissioner: The submission describes the current resourcing arrangements for the work of the Commissioner, established during the previous Parliament. This sees the Commissioner supported out of the budget of the NSW Department of Communities and Justice. The Commissioner notes with gratitude the constructive and cordial collaboration he has enjoyed from the Department and from two successive Attorneys General, while also noting that the Committee may wish to consider how the work of the Commissioner would be affected, under the current resourcing arrangement, if a future Commissioner did not enjoy such a constructive relationship with the Department or the administering Minister.

The submission notes that section 7 of the Act establishes the independence of the Commissioner, while the current resourcing arrangements make the Commissioner dependent on the Department for resourcing and for advocacy during the state's budget processes. The submission explains the current resourcing commitment and explains how this compares to anticipated baseline resourcing needs to discharge current statutory obligations. The submission points to alternative approaches to resourcing independent statutory offices that are currently in use in New South Wales, as a source of potential inspiration, should the Committee wish to consider how adjustments to the resourcing arrangements for the Commissioner could work in practice.

The need for periodic reviews of the Act: The Act does not currently provide for periodic reviews, which may prevent it being updated to remain fit for purpose. The submission proposes consideration of amendment of the Act to provide for review every 4 years.

Conclusions

The third section of the submission provides the following seven conclusions for the Modern Slavery Committee's consideration:

Conclusion 1 – Objects of the Act

As the objects of the *Modern Slavery Act 2018* (NSW) remain valid they should not be amended.

Conclusion 2 – Cooperation with federal Anti-Slavery Commissioner and others

The Modern Slavery Committee should consider amending section 9 of the Act to indicate that one of the functions of the Commissioner is “to collaborate with any federal Anti-slavery Commissioner in Australia, and other persons and bodies mandated by a government in Australia or overseas to combat modern slavery”.

Conclusion 3 – Support and assistance to victims of modern slavery

The Modern Slavery Committee should take steps to ensure that victims of modern slavery in New South Wales receive the support, assistance and referral they need. This could include:

- encouraging NSW government agencies and persons and bodies that provide services to, or advocate for, victims of modern slavery in the state, to provide reasonable support and assistance to the Anti-slavery Commissioner, as required by section 14 of the Act, including through active and ongoing participation in the coordination of support and assistance to specific survivors of modern slavery;
- encouraging the NSW Government to ensure adequate resourcing for the Commissioner's work to support and assist victims of modern slavery, notably to establish and maintain the hotline required by section 12 of the Act.

Conclusion 4 – Addressing the detection and exposure gap

The Modern Slavery Committee should consider if or how the Act could be amended to better equip the Anti-slavery Commissioner to detect and expose modern slavery to secure the existing object in section 3(d) of the Act. This could include consideration of existing detection and exposure powers given to other New South Wales statutory officers, such as the NSW Building Commissioner and the Children's Guardian.

Conclusion 5 – Ensuring adequate resourcing for procurement due diligence and reporting

The Modern Slavery Committee should consider how to ensure adequate resourcing for NSW government agencies to discharge their existing modern slavery due diligence, risk management and reporting obligations under the Act and related legislation, and to ensure adequate resourcing of the Anti-slavery Commissioner to meet their statutory function of monitoring this reporting.

Conclusion 6 – Budgetary arrangements

The Modern Slavery Committee should consider whether a legislative or administrative measure providing greater fiscal certainty for the independent work of the Anti-slavery Commissioner could help ensure the effective implementation of the Act and the achievement of its objects. This could involve inclusion of the Anti-slavery Commissioner as a Special Office in the state budget papers and the Appropriations Bill.

Conclusion 7 – Periodic review

The Committee should consider amending section 36 of the Act to provide for a review of the Act every 4 years.

Do the policy objectives of the Act remain valid?

The objects of the Act remain valid

1. It is a privilege to be the first person to occupy the role of Anti-slavery Commissioner in New South Wales on an ongoing basis, after the distinguished service of Professor Jennifer Burn AM as Interim Anti-slavery Commissioner in 2019-2020.
2. The role of Anti-slavery Commissioner was created by the enactment and ultimate implementation, from 2022, of the *Modern Slavery Act 2018* (NSW) ('the Act'). That legislation was the culmination of many years of advocacy and hard work by people inside and outside government, whose efforts are to be greatly applauded.
3. I welcome the opportunity to provide a submission to the Modern Slavery Committee's Review of the Act under section 36.
4. This submission is offered based on my experience in the role since I took office on 1 August 2022, and drawing on my prior experience working on anti-slavery issues at the international level.² As an independent statutory office holder, my views of course do not represent those of the NSW Government or any other government or agency.
5. The Objects of the Act are set out in section 3:

The objects of this Act are as follows —

- (a) to combat modern slavery,
- (b) to provide assistance and support for victims of modern slavery,
- (c) to provide for an Anti-slavery Commissioner,
- (d) to provide for detection and exposure of modern slavery that may have occurred or be occurring or that is likely to occur,
- (e) to raise community awareness of, and provide for education and training about, modern slavery,
- (f) to encourage collaborative action to combat modern slavery,
- (g) to provide for the assessment of the effectiveness and appropriateness of laws prohibiting modern slavery and to improve the implementation and enforcement of such laws,
- (h) to provide for mandatory reporting of risks of modern slavery occurring in the supply chains of government agencies,
- (i) to make forced marriage of a child and certain slavery and slavery-like conduct offences in New South Wales,
- (j) to further penalise involvement in cybersex trafficking by making it an offence to administer a digital platform for the purpose of child abuse material or encourage another person to use a digital platform to deal with child abuse material,
- (k) to provide for education, training and guidance about identifying and addressing modern slavery taking place within supply chains of organisations.

6. These objects remain valid, for the reasons set out below.

There is a continuing need to combat modern slavery in NSW

7. The first object of the Act is "to combat modern slavery" (section 3(a)).
8. The most comprehensive survey-based estimate currently available of the number of people living in modern slavery in Australia comes from Australian human rights organisation Walk Free, founded by Dr Andrew Forrest AO. Their estimate uses a method co-developed with the United Nations' leading labour rights body, the International Labour Organisation. By this estimate, there are 41,000 people in modern slavery in Australia right now.³ If past reporting

² Founder of Finance Against Slavery and Trafficking, co-convened by the Foreign Ministers of Australia, Liechtenstein and the Netherlands; founder of Delta 8.7, the UN's Modern Slavery Knowledge platform; Chair of the US Council on Foreign Relations Study Group on Trafficking in Persons; member of the World Economic Forum Global Futures Council on Equity and Social Justice.

³ Walk Free, [Global Slavery Index: Australia](#) (Perth, 2023).

patterns hold, around 40 per cent of those people – 16,400 – are likely in New South Wales. This is a significant increase on the best available estimates at the time the Act was introduced, of 6,000 people living with modern slavery in NSW.⁴

9. This represents a serious ongoing violation of human rights in New South Wales. The human right to be free from slavery (UDHR Article 4) is one of the few human rights from which governments can never derogate.
10. This human rights tragedy comes at enormous cost not only to the victims of modern slavery themselves, but also to the people of New South Wales. Using a method developed by UK Home Office researchers and applying it here in New South Wales, we can infer that these cases of modern slavery will likely cost the NSW economy around \$9.6 billion in total – in healthcare costs, law enforcement costs, pain and suffering, and lost economic outputs.⁵
11. Modern slavery holds New South Wales back in many ways. It reduces productivity, depresses competition and innovation, reduces tax revenue, creates corruption and governance risks, increases the burden of disease and increases environmental risks.⁶ And this is before we consider the reputational, legal, governance and capital cost risks for NSW organisations buying products made with modern slavery. According to one estimate, Australia imports over \$27 billion worth of goods made with modern slavery each year, including electronics, garments, solar panels, textiles and fish.⁷

Victims need urgent and ongoing assistance and support

12. The second object of the Act is “to provide assistance and support for victims of modern slavery” (section 3(b)).
13. Over the past year, I have travelled across NSW listening to business owners, farmers, supply chain experts, corporate executives, academics, policy specialists, service providers and workers in vulnerable industries such as security, cleaning, sex work, hospitality and agriculture. I have met with those directly impacted by slavery and slavery-like practices and spoken to communities around the state about what modern slavery is, how we can identify it, and about victims’ needs.
14. I have heard that the people experiencing modern slavery in NSW include workers trapped in forced labour on farms in regional NSW, and in domestic servitude in urban households. They include women and children, made vulnerable through domestic and family violence or homelessness, groomed and coerced into sexual exploitation, in person or through social media platforms. They include cleaners and security guards working in office blocks, caught in the grip of debt bondage. They include girls forced to marry in NSW or overseas. They include people living with disability who are being exploited in segregated workplaces or in institutional care. And many more people, including First Nations and Pacific Island communities, are living with the personal, community and intergenerational trauma caused.
15. Since I took on the role – and despite the role’s lack of investigative powers to compel the production of information, a matter discussed further later in this submission – more than 35

⁴ Walk Free, *Global Slavery Index: Australia*, (Perth, 2018), p 88, available at <https://cdn.walkfree.org/content/uploads/2023/04/13181704/Global-Slavery-Index-2018.pdf>. This estimate for NSW is based upon 40 percent of the Walk Free 2018 estimate of 15,000 Australia wide.

⁵ Figures calculated based on NSW case data and methodologies used in: S Reed, S Roe, J Grimshaw and R Oliver, *The economic and social costs of modern slavery*. Research Report 100 (London: UK Home Office, 2018); S Lyneham, C Dowling and S Bricknell, *Estimating the dark figure of human trafficking and slavery victimisation in Australia*. Statistical Bulletin no. 16 (Canberra: Australian Institute of Criminology, 2019), available at <https://www.aic.gov.au/publications/sb/sb16>.

⁶ J Cockayne, *Anti-slavery as smart public policy*, NSW Parliament House Theatre, 10 November 2022. See also J Cockayne, *Developing Freedom: The Sustainable Development Case for Fighting Modern Slavery, Human Trafficking and Forced Labour* (UN University, 2021).

⁷ Walk Free, *op. cit.* (2023).

people have presented directly to me as victims of modern slavery, for my assistance, support and referral under section 9(1)(b) of the Act. A further 75 people have been identified by name as people at risk of modern slavery, based on information shared with me in the course of exercising other functions under the Act. The rate of presentations continues to increase rapidly, as my role becomes steadily more visible. I anticipate the rate growing further still, especially once we institute a formal hotline as required by section 12 of the Act. (This will depend on availability of resources, as discussed further later in this submission.)

16. Most of these presentations by people with lived experience of modern slavery point to complex histories of abuse, trauma, injury and disease, domestic and family violence, homelessness and/or housing insecurity. Many of those who present have complex legal, financial, housing, visa and/or migration settlement needs in the short-term, and lack access to stable employment and healthcare, creating long-term support needs. Some of those at risk appear to be operating outside established support systems altogether, and are thus at serious risk due to lack of access to food, adequate shelter or healthcare needs, including antenatal care.
17. There remains important work to be done, in accordance with the object of the Act, to identify, assist and support these people.

The role of the Anti-slavery Commissioner is still being brought to life

18. The third object of the Act is “to provide for an Anti-slavery Commissioner” (section 3(c)).
19. While this role now exists, the development of the role and the infrastructure necessary to allow the Commissioner to discharge their statutory duty remains in its early days.
20. The role of Anti-slavery Commissioner was created by the Act which came into force on 1 January 2022. A competitive recruitment process followed. I took up the role only on 1 August 2022, upon appointment by the NSW Administrator (acting for the Governor) after a recommendation by the Executive Council.
21. The Act falls within the portfolio of the NSW Attorney General and is supported by and out of the budget of the NSW Department of Communities and Justice.
22. When I commenced on 1 August 2022 there were no dedicated staff available to support my work on a full-time basis. I was supported by one full-time communications officer and a temporary staff member from September to November 2022. Since January 2023, with the helpful support of the Department of Communities and Justice, I have recruited twelve talented people into an Office of the Anti-slavery Commissioner, which sits within the Office of the Secretary of the Department of Communities and Justice. This small staff includes a dedicated group with public service, social work, legal, research, policy, communications, administrative and business and human rights expertise, as well as a lived experience practice lead who is herself a survivor of modern slavery.
23. The Department has indicated that they will support this staffing complement, IT services, access to office premises and limited operational costs (to cover travel, communications, and other administrative costs) for four years. As I explain further later in this submission, this arrangement leaves as yet unfunded certain projects required to deliver functions and systems mandated by the Act, including the provision of a hotline under section 12 of the Act.
24. In accordance with section 11 of the Act, I published a Strategic Plan 2023-2026, *Working Together for Real Freedom*, in June 2023.⁸ The Plan is enclosed with this submission. This is the first strategic plan to combat modern slavery in New South Wales. It was developed

⁸ See <https://dcj.nsw.gov.au/documents/legal-and-justice/anti-slavery-commissioner/plans-and-discussion-papers/working-together-for-real-freedom-nsw-anti-slavery-commissioners-strategic-plan-2023-2026.pdf>.

through extensive consultation, with over 2,500 people across New South Wales, including, as required by the Act, the Attorney General.

25. In accordance with section 19 of the Act, I will shortly be providing an annual report to the Minister, and to the Presiding Officers of each House of Parliament. This annual report provides the most comprehensive overview of my activities in the role to date. Accordingly, I enclose with this submission, for the Committee's consideration, an advance embargoed draft copy of the annual report. The annual report will be available to the general public upon tabling in Parliament.
26. As the annual report demonstrates, I and my Office have been very busy in the 14 months since my appointment, bringing the role of Anti-slavery Commissioner to life through awareness-raising, work to support government agencies taking reasonable steps to ensure they do not buy products of modern slavery, policy engagement, and development of basic capabilities to provide support and assistance to victims of modern slavery. This work has proven challenging given limited resources, as I discuss later in the submission. It is also inevitably challenging because the provisions of the Act are new and previously untested. For example, we are still in the early days of identifying the practical effect of key provisions such as section 14 (duty of cooperation), which creates an obligation for government agencies and certain non-government agencies to cooperate, but provides the Commissioner little practical recourse should those agencies contest or avoid that obligation.

Modern slavery remains dangerously undetected and unexposed

27. The fourth object of the Act is "to provide for detection and exposure of modern slavery that may have occurred or be occurring or that is likely to occur" (section 3(d)).
28. It is evident that this remains a valid object. Modern slavery remains dangerously undetected and unexposed in New South Wales, creating real risks of harm to the state's reputation, economy and public health. And reporting arrangements will be further challenged as new forms of modern slavery emerge.
29. On average, law enforcement authorities detect just 120 victims per year in New South Wales (around 40 per cent of the national average of around 300). Based on these figures and the presentation of victims to date to my Office, there is reason to think that between 80 per cent and 98 per cent of victims in NSW may remain unidentified, unassisted and unsupported.⁹
30. We must take proactive steps if we wish to pierce the veil of silence behind which victims of modern slavery are often deliberately kept trapped. As many victims have told me in the last year, they were physically, mentally and financially intimidated into not reporting their situation. They were threatened with loss of visa status and deportation, humiliation, or violence against themselves and their families, here and overseas. Victims of modern slavery also frequently exhibit fear of arrest due to a lack of identity documents or a valid visa, lack of trust of law enforcement officers, and do not enjoy access to accessible, in-language, trauma-sensitive reporting pathways.¹⁰

⁹ Lower figure (floor) derived from Australian Institute of Criminology Research: S. Lyneham, C. Dowling and S. Bricknell, [Estimating the dark figure of human trafficking and slavery victimisation in Australia](#), Statistical Bulletin no. 16 (Canberra: Australian Institute of Criminology, 2019). Higher figure (ceiling) calculated based on current presentations and identifications in NSW: 230 presentations (120, on average, to police each year + 110 identifications via my Office to date in 2023), and 16,400 estimated victims in NSW. $(16,400-230)/16,400*100\% = 98.6\%$.

¹⁰ International Organization for Migration (IOM), *Migrants and their Vulnerability to Human Trafficking, Modern Slavery and Forced Labour*, 23 July 2019, pp. 10, 36, available at

31. All of this works to keep the estimated 16,400 victims of modern slavery in New South Wales hidden from sight, at great risk to themselves – and potentially creating risks to others. In Griffith, which I have been visiting at the time of writing this submission, I have heard testimony indicating that victims of forced labour, debt bondage and modern slavery have dropped out of sight and lack access to basic healthcare, income and survival needs. Some are presenting with serious antenatal medical concerns. Others are beginning to shoplift in order to survive. And some may also be being coerced into forced criminality by organized crime. All of this creates serious, undocumented public health and law and order concerns.
32. None of this is surprising. Someone who is having the powers of ownership exercised over them – a defining feature of slavery, according to the High Court of Australia¹¹ – is unlikely to be at liberty to come forward and report. So proactive steps will need to be taken to detect and expose modern slavery.
33. It is important to understand that the Act as it stands gives the Commissioner little practical ability to proactively and directly address this dangerous detection and exposure gap. The mandate given to the Commissioner is much more indirect.
34. The Act is explicit that the Commissioner’s mandate is not an investigative one (section 10(1)). Instead the Act mandates the Commissioner to make referrals to other investigative agencies (section 13). Where the Commissioner has ongoing concerns, the Commissioner’s only real recourse is through advocacy and public awareness-raising (sections 9(a) and (g)), through reporting concerns to Parliament (section 19(4)), or by raising issues with government agencies and then placing them on a public register if they fail to respond to significant issues in their mandatory annual reporting (sections 26 and 31(1)(a)).
35. The development of frontline workers’ ability to identify modern slavery will be critical. The Act also recognises the need for the Commissioner to encourage good practice by others (sections 9(1)(c) and 9(2)), suggesting a recognition that at present such agencies may not have the necessary training and systems to effectively identify, detect and expose modern slavery. For example, to date, training on modern slavery risks is not mandatory for frontline workers such as the New South Wales Police Force, healthcare workers or SafeWork NSW.
36. Even where victims do present to frontline workers, their circumstances more often than not currently go unrecognised as pointing to the presence of modern slavery. This is reflected in the experiences of the victims of modern slavery that have formally presented to me for my assistance and support. A large share report circumstances that clearly constitute modern slavery under Commonwealth and/or NSW criminal law, notably presenting as cases of forced labour, deceptive recruiting and/or sexual servitude across agriculture, horticulture, commercial sex work, and cleaning services in NSW. Yet in most cases, these situations were not recognised by authorities (federal or NSW) as exhibiting indicators of modern slavery.
37. Education and training of frontline workers to recognise modern slavery will be critical to addressing this detection and exposure gap. I welcome the steps that are now being taken by government agencies such as the NSW Police Force and NSW Health to train their staff on modern slavery, and the key role played by the Australian Federal Police’s *Look a Little Deeper* training initiative.
38. In my recent Strategic Plan 2023-2026, *Working Together for Real Freedom*, I announced a new initiative, “It’s Healthy to Fight Slavery”, to encourage good practice by frontline healthcare workers in detecting and identifying victims of modern slavery, in line with my functions under section 9(2) of the Act. International research has found that up to 87 per

https://publications.iom.int/system/files/pdf/migrants_and_their_vulnerability.pdf; Walk Free, A Qualitative Assessment of Modern Slavery in the Pacific Region, March 2020, pp. 31, 33, 47, <https://cdn.walkfree.org/content/uploads/2020/10/06163210/Walk-Free-Foundation-Pacific-Report-04-2020.pdf>.

¹¹ *R v Tang* (2008) 237 CLR 1.

cent of sex trafficking victims will present to a healthcare worker during their period of exploitation, yet they are rarely identified as experiencing modern slavery.¹²

39. The development of a hotline, as required by section 12 of the Act – once suitably resourced – may also go some way to helping to fill the detection and exposure gap, because it will make reporting easier.
40. But beyond this, while section 3(d) of the Act states that the Act intends “to provide for detection and exposure of modern slavery that may have occurred or be occurring or that is likely to occur” the Act neither equips the Anti-slavery Commissioner to proactively identify, detect and expose individual modern slavery cases, nor does anything significant to create formal incentives or additional resources for other agencies to detect and expose individual modern slavery cases.
41. This is important to understand – because the reality is that development of frontline workers’ capabilities in New South Wales will take several years, at a minimum. Consequently, efforts to address the detection and exposure gap will take many years to produce results, especially if they continue to rely on victims and whistle blowers to come forward and do not equip, incentivize or resource governmental actors to proactively detect and expose these cases. In the meantime, the significant detection and exposure gap poses ongoing dangers:
 - to victims’ enjoyment of human rights, health, mental well-being and financial well-being, and
 - to the community, through the public health and economic implications of modern slavery, noted earlier, and through broader protection risks.
42. These risks may grow as modern slavery evolves, particularly in the context of online exploitation. Over the last year, for example, it has emerged that modern slavery now plays a major role in global online and phone scams. The UN has warned that hundreds of thousands of people are being trafficked into centres where they are forced to participate in online and phone scams and INTERPOL has issued a global warning about this new crime typology.¹³ Such scams cost the Australian public over \$3.1 billion in 2022.¹⁴ While the Act empowers the Commissioner to consider such developments as a “general issue” (section 10(1)), it does not further equip the Commissioner to “detect or expose” cases. The framework under the Act instead provides a more passive model that assumes these cases will emerge through other channels. By then, of course, significant harm may have been incurred.
43. The risk therefore, is that we will constantly be playing catch-up, and waiting for victims who have been deliberately deprived of their voice to speak up, before acknowledging and addressing these problems. That poses risks not only to them, but also to the people of New South Wales.

There is a continuing need for awareness-raising, education and training

44. The fifth object of the Act is “to raise community awareness of, and provide for education and training about, modern slavery” (section 3(e)).

¹² LJ Lederer and CA Wetzel, (2014) *The health consequences of sex trafficking and their implications for identifying victims in healthcare facilities*, 23(1) *Annals of Health Law*, 61, p. 77.

¹³ UN Office of the High Commissioner for Human Rights, *Online Scam Operations and Trafficking into Forced Criminality in South East Asia: Recommendations for a Human Rights Response* (2023); and see INTERPOL, *INTERPOL issues global warning on human trafficking-fueled fraud*, 7 June 2023, available at <https://www.interpol.int/en/News-and-Events/News/2023/INTERPOL-issues-global-warning-on-human-trafficking-fueled-fraud>.

¹⁴ Australian Competition and Consumer Commission, *Targeting scams* (April 2023).

45. There is a continuing need for awareness-raising, education and training on modern slavery across New South Wales.
46. Foundational research commissioned by the Office in June 2023 found that seven in ten people (72%) surveyed in NSW and Australia recognise that modern slavery exists, and 65 per cent of those people recognise that some businesses in Australia are engaging in modern slavery. This suggests there is basic general awareness of modern slavery in the community. Yet beyond these general and broad understandings, knowledge and awareness falters. For example, three quarters of respondents falsely believed that human trafficking is the most reported modern slavery offense – in fact, it is forced marriage. This early data suggests there is still work to do to improve the public understanding of modern slavery.
47. The annual report (advance embargoed draft copy enclosed) provides details of my Office’s early awareness-raising and communications activities in my first year in the role of Anti-slavery Commissioner. Highlights have included visits to six regional centres and attendant local media coverage, featuring on Channel 10’s *The Project* and ABC’s *The Drum*, news stories on AAP and SBS, as well as two opinion pieces in *The Daily Telegraph* and radio interviews across NSW and national networks.
48. We have put people with lived experience at the heart of our efforts. In an address at NSW Parliament shortly after I took on the role,¹⁵ I emphasised that modern slavery is all about denying people their full personhood – their agency and self-determination. Our responses must be focused on people, on restoring their agency and self-determination *through* our work, including our awareness-raising efforts. We will be continuing this work in months and years ahead.

Collaborative action to combat modern slavery faces continuing structural and cultural barriers

49. The sixth object of the Act is “to encourage collaborative action to combat modern slavery” (section 3(f)).
50. This will be critical to the successful achievement of the other objects of the Act. Ultimately, the role of the Anti-slavery Commissioner is a catalytic one. It is not the Anti-slavery Commissioner’s role to *deliver* better outcomes for people, nor to investigate specific cases, but to foster collective action – by government, civil society, business, unions, researchers, and indeed people with lived experience – so that together, these stakeholders sustainably deliver those better outcomes, preventing modern slavery and effectively addressing it where it does occur.
51. To make that happen, we need to foster a community of purpose here in NSW. The first year of my tenure has been dedicated to laying down foundations on which that kind of growth might emerge.
52. I have established a new Advisory Panel, which includes 29 people from across the NSW community, over 20 per cent of whom have declared lived experience of modern slavery.¹⁶ This Panel will be critical to helping us find pathways for rapid growth and community mobilisation, which continue to face significant structural and cultural barriers, despite important initiatives such as the Trafficking Response Network and the NSW Forced Marriage Network, both co-convened by the Australian Red Cross and Anti-Slavery Australia, and the National Roundtable.

¹⁵ J Cockayne, [Anti-slavery as smart public policy](#), NSW Parliament House Theatre, 10 November 2022.

¹⁶ See Office of the Anti-slavery Commissioner, [Media Release: Leading experts join NSW’s world-leading fight against modern slavery](#) (25 July 2023) and [Media Release: Additional experts join the NSW Anti-slavery Commissioner’s Advisory Panel to enhance effort against modern slavery](#) (25 September 2023).

53. The limited availability of resources for the provision of services to survivors of modern slavery, which historically have been sourced overwhelmingly from Commonwealth grants and private charitable giving, has fostered a sense of competition between service-providers. This may at times have limited collaboration.
54. Yet there are also natural structural limits on competition in the sector, because different service-providers tend to operate in different market segments. This can also reinforce the tendency to a siloed approach, and impede sector-wide collaboration on policy advocacy, workforce development, standards of care and governance. There is also limited external oversight of the quality of services delivered in the sector, and notably lower barriers to participation than in other sectors involving work with vulnerable groups, such as children or at-risk youth.
55. Victims of modern slavery with whom I have engaged over the last year also suggest that limited competition in the service-provision space can chill their willingness to provide critical feedback on those services. This means that service-providers may be missing out on key user feedback that could help them design and deliver strengthened service offerings. And in some cases, this dynamic can also contribute to clients' feelings of continued dependency and inability to leave, which risk deepening trauma from periods of exploitation. These dynamics stand in contrast to the situation in adjacent sectors, such as Domestic, Family and Sexual Violence (DFSV), where people with lived experience play a more prominent role in the development and delivery of policies, programmes and services.
56. There are clear and prudent reasons why service providers are cautious about the involvement of survivors in anti-slavery work, notably the need to safeguard people with lived experience from further harm. Yet these are risks to be managed – through the informed decision-making of survivors. Participation in advocacy and policy work can, for some survivors, offer healing and growth. It should be for survivors to make their own informed choices.
57. Creating safe, supported opportunities for centring lived experience at the heart of an anti-slavery community of purpose will be crucial to achieving this object of the Act – encouraging collaborative action that actually combats modern slavery. This is ultimately a question of user-based design. Lived expertise helps to ensure that the scarce resources available to the anti-slavery sector are effectively and efficiently deployed. As the CEO of the Global Fund to End Modern Slavery, Sophie Otiende, herself a survivor, said at NSW Parliament House on 22 June 2023:

The importance of survivors leading this movement cannot be underestimated. My hope is that we come to the consensus that the anti-slavery movement, in general, is better off if we all centre the voices of people with lived experience and impacted communities in our work.

We are in the early days of assessing the effectiveness and appropriateness of modern slavery laws

58. The seventh object of the Act is to “provide for the assessment of the effectiveness and appropriateness of laws prohibiting modern slavery and to improve the implementation and enforcement of such laws” (section 3(g)).
59. We are in the early days of assessing the effectiveness and appropriateness of modern slavery laws. The “data and exposure” gap discussed above is a major impediment to this work – because we have such limited insights into the victimised and at-risk population. I have taken steps to begin to address this impediment, by initiating a scoping study to explore how, using available data sets or through development of new data sets, we might within the next one to two years develop a reliable baseline analysis of the victim and at-risk populations in New South Wales, including size, geography, demography and types of modern slavery. Without this basic information, it will be very difficult to assess the effectiveness of prevention and prohibition laws.

Mandatory reporting of risks of modern slavery in the supply chains of government agencies has just begun

60. The eighth object of the Act is “to provide for mandatory reporting of risks of modern slavery occurring in the supply chains of government agencies” (section 3(h)).
61. In FY23, the NSW Government spent nearly \$42 billion on goods, services and infrastructure.¹⁷ Under the Act and related legislation, since 1 July 2022, more than 400 public entities have had legal obligations to take reasonable steps to ensure they do not buy goods and services made with modern slavery. For most of the entities with such reporting obligations, the first cycle of reporting is occurring currently, via their statutory annual reporting. Some entities are not required to submit their first annual reports until early in 2024.
62. Government agencies and others with reporting obligations have sought guidance from my Office on both their reporting obligations, and their broader statutory due diligence obligations, since I commenced in the role. After consultation with the NSW Procurement Board (section 25 of the Act), I have worked with a range of NSW government agencies, other reporting entities, and other stakeholders to develop official *Guidance on Reasonable Steps*, which is expected to be published in the coming weeks.
63. This detailed *Guidance on Reasonable Steps* sets out an extensive programme of internal adjustments to procurement and risk management practices which government agencies and other reporting entities will undertake, and report on, over the coming years. This will require ongoing support, engagement and training from the Anti-slavery Commissioner, and the development of monitoring capabilities that contribute to the effectiveness of due diligence

There is a large appetite for training on modern slavery risk management in supply-chains

64. The ninth object of the Act is “to provide for education, training and guidance about identifying and addressing modern slavery taking place within supply chains of organisations” (section 3(k)).
65. There is a strong ongoing appetite in NSW, from both the public and private sector, for such training, and a growing ecosystem of service-providers, from large professional service firms to small consultancies. I have received numerous requests for the provision of training from a range of public and private sector organisations, but the role I can play in helping to secure this object of the Act will depend heavily on the resourcing made available by the Parliament and Government.
66. One area that appears, on evidence to date, to be likely to be a significant source of demand for such training relates to modern slavery risks related to renewable energy value-chains. I have recently announced the development of a Code of Practice under section 27 of the Act to tackle modern slavery risks in NSW’s renewable energy value-chains, amid growing evidence of forced labour in the production of integral components such as the polysilicon used in most solar panels and the cobalt used in lithium-ion batteries. This Code, currently under development in consultation with the Clean Energy Council and others, aims to offer protections and greater certainty to taxpayers, investors, renewable energy companies, and workers, to ensure the transition to renewable energy is a just transition. It will also assist

¹⁷ NSW Government agency provided invoice data, aggregated in NSW Government Spend Cube (September 2023).

public entities in NSW to satisfy their legal obligations to take reasonable steps not to buy goods or services made with modern slavery. We anticipate significant demand for training in relation to this Code, once it is available.

NSW offences relating to modern slavery have been enacted, but enforcement appears to be variable

67. The tenth and eleventh objects of the Act are “to make forced marriage of a child and certain slavery and slavery-like conduct offences in New South Wales” (section 3(i)) and “to further penalise involvement in cybersex trafficking by making it an offence to administer a digital platform for the purpose of child abuse material or encourage another person to use a digital platform to deal with child abuse material” (section 3(j)).
68. The adoption of the Act and related legislation had the effect of securing these objects of the Act, at least by writing these offences into law.
69. However, it is notable that enforcement of the modern slavery offences in the *Crimes Act 1900* (as defined by Schedule 2 of the Act) remains variable. While there has been considerable attention to and resources devoted to criminal behaviour relating to child sexual abuse material both online and offline (sections 91G, 91H, 91HAA of the *Crimes Act 1900*),¹⁸ other offences such as those involving sexual servitude (sections 80D, 80E) and slavery and slavery-like offences (sections 93AA-93AC) seem not to have been a significant focus of investigation or prosecution to date.¹⁹

¹⁸ The Australian Federal Police (AFP) received \$68.6 million to establish the [Australian Centre to Counter Child Exploitation \(ACCCE\)](#) focusing on online abuse and sexploitation with a Research Working Group and Protection Triage Unit receiving 40,232 reports and 186 offenders charged in 2022-23. Australian Centre to Counter Child Exploitation (2022). [Overview](#). Australian Federal Police and ACCCE (2023). [Marking the last 12 months. 2022-2023 Highlights](#). Australian Federal Police.

¹⁹ NSW Bureau of Crime Statistics and Research (BOCSAR) categorises sexual servitude as labour exploitation under “other offences against a person” and not under sexual assault. NSW BOSCAR does not collect data on human trafficking, debt bondage, forced marriage and other slavery-like offences. NSW Bureau of Crime Statistics and Research (2023). [New South Wales Recorded Crimes Statistics. Quarterly Update. June Quarter 2023](#). NSW BOSCAR.

Do the terms of the Act remain appropriate for securing its objectives?

Cooperating with a federal Anti-Slavery Commissioner and with other governments' anti-slavery bodies

70. Although the Act is in the early days of implementation we can already see certain trends and developments emerging which may offer the Committee information relevant to its consideration of whether the terms of the Act remain appropriate for securing its objectives.
71. The first of these relates to the announcement by the Australian Government that it intends to create a federal Anti-Slavery Commissioner, and has allocated funds towards this initiative.
72. Since the mandate for this role has not yet been publicly announced, it is difficult to speculate how this might affect the operation of the Act, notably the work of the NSW Anti-slavery Commissioner.
73. Nevertheless, it seems likely that the creation of a federal role will assist in raising the profile of modern slavery issues and general awareness. This may well lead to increased reporting, and potentially to increased presentations directly to the Commissioner or to any hotline created under section 12 of the Act. Given the likelihood that calls to any NSW hotline will come from other states and territories in Australia, cooperation between my Office and any new federal Anti-Slavery Commissioner in relation to the statutorily required hotline will likely be high on my agenda for engagement.
74. While the creation of a federal Anti-slavery Commissioner role may in time help strengthen efforts to combat modern slavery in NSW, in the short-term this may well translate into increased demands for support and assistance from survivors, and advice and training from organisations.
75. It is my intention to co-operate with any federal Anti-slavery Commissioner, under the general power of co-operation provided by section 15 of the Act. This already underpins co-operation with other federal actors, such as the Human Rights Commissioner, Ms Lorraine Finlay, whose portfolio includes modern slavery issues. And section 15 has also provided the basis for co-operation with other relevant actors, such as the US Ambassador-at-Large for Trafficking in Persons, Cindy Dyer, when she recently visited Australia.
76. Such cooperation with a federal Anti-Slavery Commissioner and with overseas actors mandated by governments to tackle modern slavery is likely to take on increased importance in years ahead. The Committee may wish to consider whether such co-operation should be elevated from a power of the Commissioner under the Act (section 15), to one of the Commissioner's specific functions under section 9. In the Conclusions section, below, I lay out how this might be achieved.

Identifying and providing assistance and support for victims of modern slavery

77. The Act mandates the Commissioner to identify, provide assistance and support for, and provide referrals for, victims of modern slavery (sections 9, 10 and 12). Section 12 specifically provides for the establishment and maintenance, or utilisation, of a hotline "for provision of advice and assistance to children and other persons who are, or may be, victims of modern slavery".
78. Beyond these functional provisions, however, the Act does not create a machinery for the Commissioner or supporting personnel to manage the diverse and complex instances of modern slavery that are now presenting to my Office. We are now identifying dozens of individuals who may be at risk of modern slavery each month, but my Office is still in the

early days of developing the capabilities needed to effectively on-board, manage and refer these complex matters.

79. At present the Office of the Anti-slavery Commissioner has around 1.0 FTE of personnel time available for this function, split across the Commissioner and two 2 highly professional public servants with significant relevant experience, both at Clerk Grade 9/10. The cases that have presented involve complex histories of abuse, mental and physical illness and injury, domestic and family violence, and trauma. They sometimes involve allegations of institutional abuse or child abuse.
80. Handling these cases and allegations in a trauma-informed and shame-sensitive way is a time-consuming practice, made more complex by the fact that the information relevant to these matters is often held by diverse government and non-government agencies. Section 14 of the Act empowers me to request information and reasonable assistance from these organisations, but this often takes considerable time, given that these organisations have not previously encountered or navigated a request for assistance under this provision. The Act provides me limited recourse where an agency decides to ignore or contest its obligations under section 14, and ultimately leaves agencies in the driver's seat when it comes to deciding what assistance is reasonable. While there is an obligation on these agencies to co-operate, I cannot compel production of information or documents. While most entities with which I have engaged to date have, on the whole, proven cooperative, there are often complex questions of privilege, privacy, confidentiality and safety to be worked through. This takes considerable time.
81. Several notable trends have already emerged from this early practice.

Cooperation with the Commissioner

82. First, it has become apparent just how novel the proposition is to many state government agencies that they should seek to identify and address modern slavery risks in their own activities and operations. This is notable given how critical state government agencies and service-providers are in securing the access of vulnerable groups to exactly those things that survivors of modern slavery tell us they need: housing, healthcare, family services and child protection, legal and financial advice and support, and migrant settlement services.
83. Still, this is less surprising when the historical trajectory of anti-trafficking and anti-slavery initiatives in Australia is recalled. Anti-slavery has been treated more as a humanitarian and charitable matter – to be addressed primarily by organisations such as the Red Cross and Salvation Army – than a question of welfare. State and territory government agencies and service providers have been somewhat ‘missing’ from anti-slavery efforts, which have historically been primarily driven by federal government action in close cooperation with charities. State and territory agencies are not, for example, routinely included in the processes or meetings of the National Roundtable on Human Trafficking and Slavery.
84. Nonetheless, it is increasingly clear that NSW government service providers’ lack of specific focus on the identification and needs of those at risk of modern slavery is a missed opportunity. It has flow-on implications, as those vulnerable to modern slavery become entrenched in that vulnerability, through limited access to housing, healthcare, financial and legal support. This brings compounding public health, law and order and economic costs.
85. There is clearly an opportunity for action to mobilise government and non-government sector agencies in the state to address these gaps. This does not require a legislative amendment: section 14 already provides for these organisations to provide reasonable assistance to the Commissioner, and section 15 provides for co-operation and working jointly. I intend in months ahead to use these powers to encourage relevant organisations to cooperate to support victims of modern slavery, including through coordinated case management, and in other ways.

Hotline resourcing

86. Second, it is apparent that the establishment and maintenance, or utilisation, of a hotline as required by section 12 of the Act will play a critical role in securing the objects of the Act. Discharge of this statutory responsibility is, however, dependent on three things being in place:

- a good understanding of the victim and at-risk population that is likely to use the hotline. Without such information, or valid assumptions, it may prove impossible to develop a reliable model or business case for the hotline. What language will callers use? Will they still be experiencing modern slavery or are they likely to call only after exit? Will it be primary victims, secondary victims or third party whistle blowers and informants who call the hotline? What forms of modern slavery will they be reporting? What will be their preferred communication channel (voice, chat, app, SMS)? What kind of services will they need? Developing solid answers to these questions will require careful consultation with people with lived experience, NSW communities and hotline developers and operators here in NSW and overseas. We have commenced this scoping work, and related work to inform our understanding of the size, location, demography and characteristics of victim and at-risk population in NSW.
- an evidence-based model for both the development and maintenance of the hotline, and for referrals to service providers. This will require research into models used in other jurisdictions and extensive consultation with stakeholders (notably service providers). We will also draw on the lessons we are learning from our ongoing support enquiries work through presentations by survivors of modern slavery.
- resourcing. At present there no project funding for this work has been secured.

GIPA Act

87. A third issue that has arisen in recent months is whether records arising out of the Commissioner's engagement with survivors of modern slavery are subject to release under the *Government Information (Public Access) Act 2009* ('GIPA Act'). The GIPA Act creates a presumption in favour of disclosure of government information, unless there is an over-riding public interest against non-disclosure. There have been suggestions that the potential for conversations between survivors and the Office of the Anti-slavery Commissioner to be disclosed, under the GIPA Act, could lead some organisations to advise survivors not to engage the Office.

88. While this question has not been tested in practice, my view is that there are likely, in any given case, to be grounds available under section 14 and Schedule 1 of the GIPA Act that permit non-disclosure of government information arising from the Commissioner's interaction with survivors. These grounds include: law enforcement and security, individual rights (notably the health data and privacy rights of the survivor), child rights or business interests.

89. A further question arises whether there would be any advantage to certain functions of the Anti-slavery Commissioner (namely, the functions provided for in sections 9(1)(b) and 9(1)(d)) being incorporated into Schedule 2 of the GIPA Act. Under section 19 of the GIPA Act, certain agency functions identified in Schedule 2 are not subject to the 'open access information' requirements of the GIPA Act, which set out requirements for an agency to disclose certain open access information.

90. Notably, Schedule 2 includes an exclusion for the Commissioner of Victims Rights in relation to

functions relating to dealing with confidential information concerning victims contained in applications for victims support under the *Victims Rights and Support Act 2013* and functions relating to dealing with confidential information concerning victims contained in the Victims Register established under the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020*.

91. This might suggest some utility in providing an analogous exemption for the functions of the Anti-slavery Commissioner that deal with confidential information concerning victims contained in communications with the Anti-slavery Commissioner under the Act.
92. Still, there is as yet no demonstrated urgency to such exemption, especially given the conclusion that there are likely to be grounds available under section 14 and Schedule 1 to refuse disclosure, and the benefits of such an exemption are not yet self-evident in the anti-slavery context. It may be premature to pursue any legislative amendment in relation to this matter.

Considering alternative approaches to the “detection and exposure” gap

93. As explained earlier in this submission, there appears to be an enormous detection and exposure gap relating to modern slavery cases in New South Wales. Yet the Act creates few incentives for the New South Wales Police Force, NSW health system, child protection authorities, family services or other frontline workers such as SafeWork NSW to allocate scarce resources to bridging this gap. Nor, as explained earlier, does it equip the Anti-slavery Commissioner to proactively bridge the gap.
94. Section 9(1)(b) does explicitly mandate the Commissioner to identify and provide assistance and support for victims of modern slavery. Section 9(1)(d) further mandates the Commissioner to co-operate or work jointly with others to this end. Section 14 creates certain duties of cooperation with the Commissioner, for government agencies and certain non-government organisations.
95. However, section 10 of the Act indicates that “[t]he Commissioner does not generally have the function of investigating or dealing directly with the complaints or concerns of individual cases”, while going on to say that the Commissioner “may take” individual cases “into account and draw conclusions about them solely for the purpose of, or in the context of, considering a general issue”. ‘General issue’ is undefined.
96. The effect of these provisions when read together appears in practice to be that the Act creates no proactive mandate or incentive for any relevant agency to ensure the “detection and exposure” Object of the Act.
97. The Act does allow the Commissioner:
 - to gather information from and cooperate with other agencies (section 14 of the Act)
 - to report to the Parliament on general matters (section 19(4))
 - to refer individuals, families, friends and advocates to government and non-government programs and services (section 10(2)), and
 - to refer matters to investigative agencies such as the Commissioner of the Police, Ombudsman and Secretary of the Department of Communities and Justice (section 13).
98. But because the Commissioner is constrained from “investigating or dealing directly with the complaints or concerns of individual cases” (section 10(1)), the resulting arrangement is a passive one when it comes to the detection and exposure of individual cases. The Commissioner is not mandated to look proactively into individual cases in order to detect or expose them and then refer them on to investigative agencies – though the Commissioner may take into account specific cases while “considering a general issue”. The net effect is to make the Commissioner’s detection and exposure mandate a largely passive one. The information available to the Commissioner to pass on to investigative agencies will generally be such information as comes across the Commissioner’s desk through self-initiated presentations by victims of modern slavery (which we know are rare), through third-party

reporting, through gathering information on general matters, through cooperation with other organisations, or by chance.

99. This stands in marked contrast to the approach taken by the NSW Parliament to address similar challenges of detection and exposure of grave risks to human rights that require specialist knowledge, where detection and exposure powers have been given to other independent statutory officers to complement and reinforce the investigative powers of police and other actors. For example, under Part 3 of the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020*, the NSW Building Commissioner is given a range of inspection and information-gathering powers to address building defects, including the right to enter and inspect premises. Likewise, under the *Children's Guardian Act 2019*, the Children's Guardian is given various powers of records review, questioning and inspection (section 8Y), to address risks to children and their rights.
100. If, therefore, the Modern Slavery Committee wished to consider how the Act might be amended to equip the Commissioner to take a more proactive approach to address the dangerous detection and exposure gap driving the modern slavery crisis in New South Wales, without transforming the Commissioner into an investigative agency, it is clear that suitable legislative models are available for its consideration.

Resourcing modern slavery procurement reforms

101. As explained above, the Act, and related legislative changes, create new obligations for government agencies, local councils and other bodies to develop new modern slavery due diligence and reporting arrangements. This is a substantial piece of work affecting over 400 public buyers in New South Wales, which will have major benefits in years ahead. These will include improved modern slavery risk management in public supply-chains, and, potentially, improvements in the state's costs of capital resulting from access to sustainable finance on better terms.
102. These legislative changes require relevant entities to take reasonable steps not to buy products of modern slavery. The Commissioner's *Guidance on Reasonable Steps*, developed over the past year in collaboration with government agencies and other stakeholders (as described above), sets out a roadmap for how entities can develop the internal capabilities to take these reasonable steps.
103. This is not a resource neutral exercise, either for the entities that must take these reasonable steps, and then report on them, or for the Anti-slavery Commissioner, who is obliged by the Act to monitor the effectiveness of this due diligence and reporting (sections 9(1)(e), 9(1)(f), 25, and 31), and to keep a public register of non-complying agencies (section 26).
104. Such a process of operational and practice reform requires the Commissioner to provide cross-functional training and education support, and to monitor the mandatory reporting coming in from over 400 entities captured by the legislation.
105. At present no dedicated resourcing for this work has been made available to any of the affected entities, though it is apparent from feedback provided by NSW Government agencies that meeting their statutory due diligence and reporting obligations will not be resource neutral. It will require dedicated staff time to identify and manage modern slavery risks, for reporting, and for capability up-lift.

Resourcing the work of the Commissioner

106. As explained in the first part of this submission, notwithstanding the commitment of the Act to the independence of the Anti-slavery Commissioner (section 7), under administrative

arrangements established in the previous Parliament, the work of the Anti-slavery Commissioner is currently resourced out of the budget of the NSW Department of Communities and Justice. The Office that supports the Commissioner is an administrative entity of the Department.

107. I am thankful to have enjoyed cordial and constructive communication and support from the Department, and from the two Attorneys General in whose portfolio the Department has fallen, in the time I have been in the role. I am grateful to the current Attorney General, the Hon. Michael Daley MP, his predecessor, the Hon. Mark Speakman SC MP, and to Secretary Michael Tidball, for their constructive engagement and cooperation.

108. Nonetheless, it may be useful for the Committee to consider whether the current statutory arrangement will best and always secure the objects of the Act.

109. At present, the Office of the Anti-slavery Commissioner operates with 12 FTE posts supported by the Department of Communities and Justice, all of these at Clerk Grade (i.e. none at Director level, apart from my own). I previously presented modelling to the Department indicating that the discharge of the statutory functions of the Commissioner will require at a minimum 18 personnel and could require over 30 posts within 3 years, depending on:

- the rate at which victims of modern slavery present for assistance, support and referral, and the complexity of their situations;
- the staffing and data management needs for a hotline;
- the monitoring and training needs of the NSW government agencies and others undertaking modern slavery procurement reforms to comply with the Act and related legislation;
- general awareness-raising needs to prompt reporting and addressing of the detection and exposure gap.

110. The Department of Communities and Justice has also agreed a small package of operational support (well less than half a million dollars per year), for four years. This covers all convening, travel, administrative, staff welfare and professional development and general administrative costs. It does not include any earmarked funds to support projects developing new infrastructure that may be necessary to achieve the objects of the Act, such as:

- the hotline required by section 12 of the Act. This work is presently unfunded. I am currently undertaking scoping research with a view to developing a business case and a New Project Proposal for consideration by the Government;
- the digital Public Register, reporting and monitoring infrastructure necessary to support public procurement reforms across NSW Government to comply with the Act (sections 9(1)(e), 25, 26 and 28).

111. The Modern Slavery Committee may wish to consider whether the successful implementation of the Act should hinge on administrative decisions taken within a Department or instead be placed on a firmer statutory basis. This may also be relevant in considering section 7 of the Act (Independence of the Commissioner), which states:

The Commissioner is not subject to the control and direction of the Minister in respect of the exercise of the Commissioner's functions under this Act.

112. The present budgetary arrangement, where the Commissioner is dependent for access to personnel and resources on the support of a Department reporting to the Minister, sits uneasily with this section 7, no matter how effectively the existing arrangement may currently be functioning. Future Commissioners may simply not enjoy such close and cordial relations with the Department of Communities and Justice as I do now. Should this be allowed to place the work of the Commissioner in supporting victims, in supporting other government departments, including in their modern slavery due diligence and risk management efforts, and in otherwise discharging their statutory functions, at risk?

113. Following on from the current administrative arrangement, the Commissioner's budget proposals have to date been fed into the State budget process through the Department of Communities and Justice and the Safer Communities cluster. This means, straightforwardly, that the Commissioner must compete with other Departmental priorities, despite his notional independence from the Department, for presentation into Cabinet budget processes. Moreover, the Commissioner has no guaranteed access to Treasury or Cabinet Office officials responsible for handling budgetary and Expenditure Review Committee processes, limiting opportunities to advocate for the funding required to discharge statutory obligations such as the establishment and maintenance, or utilisation, of a hotline.
114. It may be useful for the Committee to consider whether any other funding model or administrative arrangement might be better suited to achieve the objects of the Act, and whether that is properly achieved through a legislative amendment or through an administrative or policy decision.
115. Several independent statutory offices in New South Wales are currently afforded their own dedicated lines in the state budget papers and the Appropriations Bill. Notably, these include bodies that, like the Anti-slavery Commissioner, advocate across government for the interests of a vulnerable group and support government agencies' implementation of effective systems, policies and codes of practice (Office of the Children's Guardian), and play a supervisory and monitoring role (Judicial Commission of New South Wales).
116. Another possibility could be to provide, through legislative amendment or administrative or policy measure, for the Anti-slavery Commissioner to be entitled to present budget proposals through the Attorney General to the Cabinet Office and/or Expenditure Review Committee, independent of the Department of Communities and Justice.

The need for periodic reviews of the Act

117. Section 36 of the Act currently provides for this statutory review, now under way. However, it does not provide for periodic reviews of the Act. Given how rapidly modern slavery risks are evolving (as discussed earlier in this submission), it would seem prudent to allow for such periodic reviews. Legislative provision for a review of the Act on a periodic basis would help ensure the Act moves with the times.
118. The obvious frequency for such a review is once every 4 years. This would ensure that the Parliament considers potential statutory amendment of the Act at least once each term. And as Commissioners are to be appointed for up to five years (section 6(2) of the Act), it seems likely also to ensure that each Commissioner is afforded at least one opportunity to engage with a statutory review process.

Conclusions

Conclusion 1 – Objects of the Act

As the objects of the *Modern Slavery Act 2018* (NSW) remain valid they should not be amended. _____

Conclusion 2 – Cooperation with federal Anti-Slavery Commissioner and others

The Modern Slavery Committee should consider amending section 9 of the Act to indicate that one of the functions of the Commissioner is “to collaborate with any federal Anti-slavery Commissioner in Australia, and other persons and bodies mandated by a government in Australia or overseas to combat modern slavery”.

Conclusion 3 – Support and assistance to victims of modern slavery

The Modern Slavery Committee should take steps to ensure that victims of modern slavery in New South Wales receive the support, assistance and referral they need. This could include:

- encouraging NSW government agencies and persons and bodies that provide services to, or advocate for, victims of modern slavery in the state, to provide reasonable support and assistance to the Anti-slavery Commissioner, as required by section 14 of the Act, including through active and ongoing participation in the coordination of support and assistance to specific survivors of modern slavery;
- encouraging the NSW Government to ensure adequate resourcing for the Commissioner’s work to support and assist victims of modern slavery, notably to establish and maintain the hotline required by section 12 of the Act.

Conclusion 4 – Addressing the detection and exposure gap

The Modern Slavery Committee should consider if or how the Act could be amended to better equip the Anti-slavery Commissioner to detect and expose modern slavery to secure the existing object in section 3(d) of the Act. This could include consideration of existing detection and exposure powers given to other New South Wales statutory officers, such as the NSW Building Commissioner and the Children’s Guardian.

Conclusion 5 – Ensuring adequate resourcing for procurement due diligence and reporting

The Modern Slavery Committee should consider how to ensure adequate resourcing for NSW government agencies to discharge their existing modern slavery due diligence, risk management and reporting obligations under the Act and related legislation, and to ensure adequate resourcing of the Anti-slavery Commissioner to meet their statutory function of monitoring this reporting.

Conclusion 6 – Budgetary arrangements

The Modern Slavery Committee should consider whether a legislative or administrative measure providing greater fiscal certainty for the independent work of the Anti-slavery Commissioner could help ensure the effective implementation of the Act and the achievement of its objects. This could involve inclusion of the Anti-slavery Commissioner as a Special Office in the state budget papers and the Appropriations Bill.

Conclusion 7 – Periodic review

The Committee should consider amending section 36 of the Act to provide for a review of the Act every 4 years.

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