



THE LAW SOCIETY
OF NEW SOUTH WALES

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29 November 2022

Dr James Cockayne
Anti-slavery Commissioner
NSW Department of Communities and Justice
Locked Bag 5000
Parramatta NSW 2124

By email: antislavery@justice.nsw.gov.au

Dear Dr Cockayne,

Strategic Plan to Combat Modern Slavery

The Law Society appreciates the opportunity to respond to the discussion paper, 'Developing a Strategic Plan to Combat Modern Slavery'. The Human Rights, Business Law and Government Solicitors Committees have contributed to this submission.

As set out in the discussion paper, the Strategic Plan is not only a legislative requirement under the *Modern Slavery Act 2018* (NSW) (**NSW Act**) but is an important step in 'providing a framework for accountable action, setting out goals, providing a basis for prioritising among actions, and helping to ensure effective resource allocation'.¹ Some relevant considerations for inclusion in the Strategic Plan from the perspective of the Law Society are outlined below.

Consultation with Victim-Survivors of Modern Slavery

We are pleased that from the outset of the process of developing the Strategic Plan, you have indicated an intention to engage with victim-survivors of modern slavery. In this context, we draw attention to recent research which shows the benefits of a human rights approach to the design and implementation of responses to modern slavery, which prioritises the lived experience of victim-survivors.² It is important that any victim-survivors who are engaged in the consultation process and strategic planning are appropriately compensated for their time and expertise, noting that they may need to be protected by appropriate risk mitigation strategies (legal and non-legal, including a trauma-informed approach) to be able to safely share their experiences.

Partnerships with the Legal Community

The Law Society considers that access to justice is vital for victim-survivors of modern slavery. We note that the experience of victim-survivors involves the intersection of different areas of

¹ Office of the NSW Anti-slavery Commissioner, 'Developing a Strategic Plan to Combat Modern Slavery' (Discussion Paper, October 2022) 2.

² Frances Simmons and Jennifer Burn, 'Beyond Storytelling: towards survivor-informed responses to modern slavery' (Report, September 2022) < <https://antislavery.org.au/beyond-storytelling-towards-survivor-informed-responses-to-modern-slavery/> >.

law (e.g. migration, employment, criminal, and family law) and therefore an integrated way of delivering legal services is essential.

As part of the Anti-slavery Commissioner's functions to promote action to combat human slavery, and to identify and provide assistance and support for victim-survivors, we encourage consideration in the Strategic Plan of the funding of specialised legal assistance services. We also suggest broad consultation with community legal centres that currently work in partnership with victim-survivors of modern slavery to look at ways to build the capacity and knowledge of lawyers across the profession on this issue. Important skills include the ability to identify cases of modern slavery, provide a safe and appropriate first response to victim-survivors, understand the legal options available and work with referral services.

We recognise that the legal needs of victim-survivors often intersect with other areas, for example access to accommodation, medical assistance and psychological support. We envisage that there is a role for the Anti-slavery Commissioner in establishing links between such services, so that victim-survivors receive culturally appropriate, trauma-informed and responsive support. Their needs also include appropriate financial support and compensation, which at the current time we consider to be inadequate under the provisions of the *Victims Rights and Support Act 2013* (NSW). We have separately raised these concerns with the NSW Department of Communities and Justice in response to the statutory review of the Act.

The Law Society recognises the barriers faced by many victim-survivors in accessing justice, including a limited understanding of the Australian legal system, poor English language skills, distrust of authorities, fear of deportation or loss of income, financial constraints and stigma.³ These factors reinforce the need for investment in specialised legal assistance and support services for this vulnerable cohort.

We further note the victim-survivors of modern slavery are often subject to criminal or administrative actions themselves, including deportation. Therefore, we suggest that the Strategic Plan comment on the importance of collaborations between State and Commonwealth authorities to ensure that the traditional barriers which may limit the assistance afforded to victim-survivors of modern slavery are reduced.

Working with the NSW business community and government agencies

There remains critical work to be done to equip businesses to properly identify and address modern slavery risks in their domestic and global supply chains. Recent research on the extent to which the *Modern Slavery Act 2018* (Cth) (**Commonwealth Act**) is driving effective action by companies showed concerning results, including a failure by 66% of companies to comply with the mandatory reporting requirements and a failure to demonstrate effective responses to risk.⁴

We suggest that you work with companies to develop their capabilities in human rights due diligence. In the context of this year's review of the Commonwealth Act, we note experts have called for the introduction of effective due diligence laws, which will 'require companies to take action to identify harm before it eventuates', coupled with penalties for those companies who fail to take such action.⁵ In addition, we consider that knowledge-sharing and capacity-building remain important ways to encourage change. You and your office can act as a central point to

³ Law Council of Australia, 'The Justice Project' (Report, August 2018) 29.

⁴ Human Rights Law Centre et al., 'Broken Promises: Two Years of corporate reporting under Australia's Modern Slavery Act' (Report, 17 November 2022) 2.

⁵ Business & Human Rights Resource Centre, 'Submission to Attorney General's Department of the Australian Government in relation to the Review of the Modern Slavery Act and related Issues Paper' (21 November 2022) 4.

bring together businesses, to assist their understanding in how modern slavery can manifest in the supply chains common to particular industries and best practice to address these risks.

Furthermore, there should be formal education and training opportunities to improve contract management practices, procedures and skills, in addition to due diligence, for both public and private sector contract managers. These are crucial to managing risk and countering a culture of 'turning a blind eye' to malpractice. We note that the legal profession can play a role in assisting in this type of education.

Similarly, there needs to be a focus on the way in which the various public sector agencies conduct their procurement processes to take account of, and accurately report upon, the potential risks in their procurement supply chains, including greater awareness of the role played by sub-contractors. Although the NSW Act requires 'reasonable steps' to be taken to ensure that goods and services procured by and for government agencies are not the product of modern slavery, it would be beneficial for you to establish formal links and cooperate closely with the NSW Procurement Board to ensure that those 'reasonable steps' are best practice, rather than a mere 'tick and flick' process. This support would help to embed a consistent and robust framework of thorough investigation, coupled with frank and meaningful reporting.

The NSW Government spends around \$40 billion per annum on the procurement of goods, services and construction.⁶ Given this level of engagement, it is in a strong position to effect real and positive change through its procurement and contracting. In this regard, we endorse the recommendation in the 'Broken Promises' report that government should provide increased opportunities to those entities that demonstrate best practice and leadership in this area, including prohibiting non-compliant entities from bidding on public contracts.⁷

The Strategic Plan should therefore consider the consequences for government procurement processes. In this context, we understand that government must take a considered and proportionate approach to its procurement and contracting requirements, so that it recognises and balances the compliance costs and impact on industry, taking into account the size of different entities and opportunities in its supply chain.

Community awareness

In our view, there is a role for you to engage with the public through information sharing and capacity building. It is important that members of the NSW community at large develop a greater understanding of modern slavery, and the actions that they can take at the grassroots level to address this problem. This is particularly pertinent in light of evidence about low levels of public understanding of the modern slavery risks present in consumer goods.⁸

It is also necessary for the general public, as investors and shareholders, to have a more robust understanding of the level of compliance of different companies with their anti-slavery obligations. There is an opportunity to enhance the community's literacy in this area, for example, how to read anti-slavery statements and what to consider when investing in certain industry sectors.

It would also be beneficial if more members of the community knew the indicators and warning signs that may suggest human trafficking and/or slavery. We note that there exists helpful

⁶ NSW Government, 'Why supply to government?' <<https://info.buy.nsw.gov.au/supplier-guidance/supply-to-government/why-supply-to-government>>.

⁷ 'Broken Promises' (n 4) 9.

⁸ Choice, 'Government urged to strengthen Modern Slavery Act' (21 November 2022) <<https://www.choice.com.au/shopping/everyday-shopping/ethical-buying-and-giving/articles/modern-slavery-act-review>>.

information online (for example, on the website of the Australian Federal Police). However, a public, multi-lingual campaign would assist to raise awareness of such indicators, as well as actions that can be taken once risk has been identified. In this context, it is important that the Strategic Plan emphasise the importance of facilitating easy and anonymous reporting of suspected breaches.

Training is particularly important for front line workers (eg police and health care workers) who, due to the nature of their work, may come into contact with persons subject to slavery. Careful consideration should be given to who is best placed to deliver such training and ensure its effective roll-out.

Cooperation with the Commonwealth Government

It is important that the Strategic Plan prioritises coordination and communication with the Commonwealth Government, particularly in light of the current review of the Commonwealth Act. It should also take into account the existing National Action Plan to Combat Modern Slavery⁹ and the International Engagement Strategy on Human Trafficking and Modern Slavery: Delivering in Partnership.¹⁰ As noted by Anti-Slavery Australia:

Low levels of engagement between and across Commonwealth, State and Territory governments, departments, agencies and law enforcement hinders the prevention of modern slavery, the identification of people in modern slavery and the quality of support provided to survivors.¹¹

We encourage further collaboration, including through the Business Engagement Unit at the Commonwealth Attorney General's Department, to ensure that the modern slavery regime in NSW and Australia is comprehensive, complementary and effective.

Data sharing: Leveraging the Commonwealth's Monitoring and Evaluation Framework

To collect and provide better information on slavery and to improve outcomes, we recommend that the Strategic Plan considers:

- using the same Monitoring and Evaluation Framework as set out in the Commonwealth's National Action Plan to collect, measure and monitor the performance of NSW government agencies, departments and state-owned corporations; and
- using the same indices and data points developed by the Commonwealth under its National Action Plan as the basis for collection of information on slavery.

This will further enhance data collection and information sharing between government agencies, and with business and civil society organisations. Better data will improve the communication across government, both within NSW and across the Commonwealth. It will also assist in identifying people affected by modern slavery and tailoring the support and resources needed to support victim-survivors.

The Law Society looks forward to further engagement with your office as development of the Strategic Plan continues. We note that a series of expert workshops are being conducted in conjunction with the James Martin Institute and welcome the opportunity for the legal profession to be involved in such consultations.

⁹ Australian Government, 'National Action Plan to Combat Modern Slavery 2020-25' (Report, 9 December 2020).

¹⁰ Australian Government, 'Australia's international engagement strategy on human trafficking and modern slavery: Delivering in partnership' (Report, 2022).

¹¹ Anti-Slavery Australia, 'Response to the Attorney-General's Department Consultation Draft: National report for Australia's third Universal Periodic Review' (Submission, 29 July 2020) 4.

Questions at first instance may be directed to Sophie Bathurst, Policy Lawyer, at sophie.bathurst@lawsociety.com.au or (02) 9926 0285.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Joanne van der Plaat', written in a cursive style.

Joanne van der Plaat
President