



Submission to the Hon. Paul Green
Member of the Legislative Council
Parliament of NSW

Modern Slavery Bill 2018

27 April 2018



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Anti-Slavery Australia is a specialist legal research and policy centre at the University of Technology Sydney with the mission to abolish human trafficking, slavery and slavery-like practices such as forced labour and forced marriage in Australia. Anti-Slavery Australia provides legal advice and representation to men, women and children who have experienced human trafficking, slavery and slavery-like conditions in Australia.

Acknowledgements

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EXECUTIVE SUMMARY

'Let today be a stepping stone to stamping out modern slavery, not only in Australia but also worldwide'.¹

Anti-Slavery Australia welcomes the opportunity to provide comments on the Modern Slavery Bill 2018 as introduced by the Hon Paul Green in the NSW Legislative Council on 8 March 2018.

In particular, Anti-Slavery Australia commends the proposal to establish the office of the Anti-Slavery Commissioner and the requirements that New South Wales government agencies take steps to ensure that the goods and services they procure are not the product of modern slavery.

This submission draws upon Anti-Slavery Australia's research and advocacy as well as our legal casework experience with survivors of human trafficking and slavery within Australia.

Anti-Slavery Australia provides further comment on the Anti-Slavery Commissioner, supply chains, court orders and victim support.

1. ANTI-SLAVERY COMMISSIONER

1.1. Functions of the Commissioner

Anti-Slavery Australia welcomes and supports the proposal that the Governor may appoint an independent Anti-Slavery Commissioner (**Commissioner**) in New South Wales. This appointment will guide and strengthen the State's response to human trafficking and slavery by fulfilling the functions set out in s 9 of the Bill, including:

- (a) to advocate for, and promote, action to combat modern slavery and to identify and provide assistance and support for victims of modern slavery,
- (b) to make recommendations and provide information, advice, education and training about action to prevent, detect, investigate and prosecute offences involving modern slavery,
- (c) to co-operate with or work jointly with government and non-government agencies and other bodies and persons to combat modern slavery and provide assistance and support to victims of modern slavery,
- (d) to monitor reporting concerning risks of modern slavery occurring in supply chains of corporate and other bodies,
- (e) to monitor the effectiveness of legislation and governmental policies and action in combating modern slavery, [and]

¹ Mr Paul Green, MLC, Modern Slavery Bill 2018 Second Reading Speech, NSW Parliament, 8 March 2018.

- (f) to raise community awareness of modern slavery,

Anti-Slavery Australia supports the educative function of the Commissioner, to encourage good practice in the prevention, detection, investigation and prosecution of modern slavery, as well as the identification of victims of modern slavery (s 9(2)).

For over ten years, Anti-Slavery Australia has provided legal and migration advice to vulnerable men, women and children who have experienced human trafficking and slavery in New South Wales. Resolution of such cases can be complex and involve multiple agencies. Based on the Centre's legal practice experience, Anti-Slavery Australia recommends that the Commissioner has the discretion to investigate individual cases, especially those cases that indicate systemic failure. It is our strong recommendation that in such cases, the Commissioner should have the discretion to initiate an investigation where there has been such a systemic failure to identify, investigate and support victims. Anti-Slavery Australia suggests that this proposed amendment could be given effect through the inclusion of 'generally' in s 10(1). That is:

The Commissioner does not, *generally*, have the function....

1.2. Liaison with Commonwealth Agencies

Through the ratification of international conventions and treaties including the Trafficking Protocol², the Australian government has responsibilities to meet international standards. As human trafficking, slavery and slavery-like practices often involve conduct that enlivens multiple international instruments as well as specific laws in the Commonwealth and State jurisdiction, Anti-Slavery Australia strongly recommends that the functions of the Commissioner, be expanded to require the Commissioner to consult and co-operate with the Commonwealth and its agencies and bodies.

1.3. Hotline

Anti-Slavery Australia notes that the Commissioner will establish and maintain a hotline or utilise a hotline maintained by another government or non-government organisation for the provision of advice and assistance to those who are or may be victims of slavery: s 12 (d). To avoid duplication, Anti-Slavery Australia endorses the provision that extends to consideration of the use of an existing hotline or similar service. Any assessment of the potential for a hotline should include a review of existing hotlines and other such referral mechanisms, as well as consultation with stakeholders to consider whether existing services could be adapted to fulfil this function. For example, Anti-Slavery Australia operates a specific online service for any person in or facing forced marriage. Monitored by experienced legal staff, this online service could be adapted to extend to all forms of slavery and human trafficking.

² Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, opened for signature 15 November 2000, UNTS 2237 (entered into force 15 November 2000).

1.4. Duty to Co-operate

The ability of the Commissioner to work cooperatively and collaboratively with government and non-government organisations is critical in responding to human trafficking and slavery. However, Anti-Slavery Australia submits that the definition ‘non-government agency’, outlined in section 5 of the Bill, is extremely broad; covering ‘any commercial or non-commercial body or organisation of this or any other jurisdiction’, and when read in conjunction with sections 14 and 16 of the Bill, the ‘duty to co-operate’ appears expansive.

As a legal centre, communication between Anti-Slavery Australia and our legal clients is privileged. Anti-Slavery Australia also notes that the confidentiality and privacy of trafficked and enslaved people is central in the context of assisting and protecting survivors; as outlined in the Trafficking Protocol, as well as Australia’s National Action Plan to Combat Human Trafficking and Slavery 2015-19.

2. SUPPLY CHAINS

Modern slavery in the supply chains of goods and services produced and consumed in Australia is a serious violation of human rights and Australia’s criminal law. Anti-Slavery Australia generally welcomes supply chain transparency measures. However, we offer a number of suggestions, particularly given the Commonwealth’s intention to introduce similar measures nationally.

2.1. Organisations Required to Report

Anti-Slavery Australia notes that the Bill proposes to limit reporting to ‘commercial organisations’ who have employees in New South Wales and who supply ‘goods and services for profit or gain’³. This restriction of the breadth of the Bill to ‘commercial organisations’ will clearly exclude large organisations that would otherwise meet the financial threshold but who do not supply goods or services for profit or gain, such as churches and universities. Anti-Slavery Australia notes that the national operating revenue for higher education providers, including, for example universities in NSW in 2016, was over \$30 billion⁴.

Anti-Slavery Australia observes that the types of organisations that will be required to report under the Bill is narrower than that found in the supply chains reporting requirements proposed by the Commonwealth Government. The Commonwealth Government is proposing to require ‘entities’ to report on their supply chains and is proposing to define entities broadly to include ‘bodies corporate, unincorporated associations or bodies of persons, superannuation funds and approved deposit funds’⁵.

³ Modern Slavery Bill (NSW) s 22(1).

⁴ Department of Education and Training (Cth), *Finance 2016: Financial Reports of Higher Education Providers* (2018) 3.

⁵ Attorney-General’s Department (Cth), *Modern Slavery Supply Chains Reporting Requirement: Public Consultation Paper and Regulation Impact Statement*, 14.

Anti-Slavery Australia suggests that consideration be given to broadening the types of organisations required to report.

Should the Bill be amended to require a broader set of organisations or entities to report on their supply chains, Anti-Slavery Australia suggests that it would also be beneficial for the requirements of modern slavery statements, found in section 22(5), to be amended. Anti-Slavery Australia recommends that all references to 'business' in section 22(5) be changed to 'operations'. That is,

- (5) Without limiting subsection (4), the regulations may require a modern slavery statement to include information about the following:
 - (a) the organisation's structure, its *operations* and its supply chains
 - (b) its due diligence processes in relation to modern slavery in its *operations* and supply chains,
 - (c) the parts of its *operations* and supply chains where there is a risk of modern slavery taking place, and the steps it has taken to assess and manage that risk...

Such an amendment would also be consistent with the supply chains reporting measures currently under consideration by the Commonwealth Government⁶.

Finally, as the Australian Government has announced that a modern slavery reporting scheme will be introduced this year,⁷ it makes sense for a decision about the scope of the supply chain provisions to be held over until the Modern Slavery Bill (Cth) is introduced into the Australian Parliament and the national context is clearer.

2.2. Public Procurement

In a nationally leading initiative, the Modern Slavery Bill requires government agencies to respond to and address the risk of modern slavery in the supply chains of government bodies and agencies. Anti-Slavery Australia welcomes enthusiastically the measures in the Bill that create greater transparency in public procurement.

The Modern Slavery Bill would amend the *Public Works and Procurement Act 1912* to include a statutory responsibility on New South Wales state departments and agencies to ensure that goods and services are not the product of modern slavery and that the NSW Procurement Board must consult with the Anti-Slavery Commissioner.

Specifically, the Modern Slavery Bill proposes that all NSW government departments and statutory bodies include a statement in their annual reports addressing modern slavery and the procurement of goods and services. Schedule 5 of the Bill proposes that the *Annual Reports (Departments) Regulation 2015* and the *Annual Reports*

⁶ Ibid, 16.

⁷ The Hon Julie Bishop, MP, Media Release, Launch Walk Free Foundation Report on Modern Slavery, 17 April 2018.

(*Statutory Bodies*) *Regulation 2015* be amended to include measures taken in respect of modern slavery.

3. COURT ORDERS

Anti-Slavery Australia submits that the utility of ‘modern slavery risk orders’ is too narrow as they are contingent on a person having first been convicted of an offence listed in Schedule 2 of the Bill. Anti-Slavery Australia’s experience is that those fearing slavery are in need of a court order that would give them protection similar to the way that an apprehended domestic violence order operates. Examples of vulnerable people who may need a protection order may include a vulnerable adult in fear of forced marriage, or a migrant worker subject to abuse and threats.

4. SCHEDULE 4: AMENDMENT TO CRIMES ACT 1900

Anti-Slavery Australia notes that the definition of ‘marriage’ in the context of ‘child forced marriage’ outlined in schedule 4[7] of the Bill (the proposed section 93AC), is narrower than that contained in section 270.7A of the *Criminal Code Act 1995* (Cth). Anti-Slavery Australia submits that it is unclear whether or not this narrower definition will cover religious ceremonies, whether performed in Australia or abroad.

Anti-Slavery Australia notes that the Bill includes a clause that ‘a person under 16 years of age is presumed, unless the contrary is proved, to be incapable of understanding the nature and effect of a marriage ceremony’ (section 93AC(5)). This is the same presumption that is outlined in section 270.7A(4) of the *Criminal Code Act 1995* (Cth) through an amendment to the *Criminal Code Act* in 2015. In practice, Anti-Slavery Australia’s view is that the rebuttable presumption provision in the Commonwealth *Criminal Code* has not been effective in addressing situations where children have been party to a forced marriage. We recommend excluding the presumption by making it clear that persons under 16 cannot consent to a marriage (of a cultural or religious form).

5. SCHEDULE 5: AMENDMENTS OF OTHER ACTS AND REGULATIONS

5.1. Crimes (Domestic and Personal Violence) Act 2007

Anti-Slavery Australia supports the inclusion of forced marriage as a form of ‘personal violence offence’ into the *Crimes (Domestic and Personal Violence) Act 2007*. However, the proposed amendments to the definition of ‘personal violence offence’ only refer to the newly created offence of child forced marriage (proposed section 93AC of the

Crimes Act 1900) and excludes victims who are over 18 years old from specifically seeking protection when threatened with forced marriage.

Anti-Slavery Australia strongly advocates for protections to be afforded to, at minimum, **all** individuals at risk of forced marriage regardless of their age. In our experience, the risk of forced marriage is not limited to children. Additionally, the type of violence experienced by victims of forced marriage is often subtle, through coercion, threats or deception and may involve overseas conduct. Anti-Slavery Australia submits that consideration should be given to the wide-ranging Forced Marriage Protection Orders found in the United Kingdom⁸.

5.2. Victims Rights and Support Act 2013

5.2.1. Meaning of 'victim of crime'

Anti-Slavery Australia has provided and continues to provide legal advice to many men, women and children who have experienced human trafficking and slavery in Australia. In our experience many domestic trafficking cases do not involve supply chains. Anti-Slavery Australia notes that the proposed amendment to the meaning of 'victim of crime' is unclear. It refers to any conduct resulting in the exploitation of children or conduct resulting in the exploitation of other persons in supply chains. In either case it does not cover the breadth of trafficking, slavery and slavery-like offences and limits 'victims' to persons who have suffered harm in 'the supply chains of government agencies or non-government agencies'. Anti-Slavery Australia recommends that the amendment contained in schedule 5.7[1] be altered.

The current Bill proposes amending the meaning of 'victim of crime' to read:

- (1) For the purposes of this Part, a victim of crime is a person who suffers harm as a direct result of an act committed, or apparently committed, by another person in the course of a criminal offence *or in the course of conduct of a kind referred to in paragraph (b) of the definition of **modern slavery** in section (5) (1) of the Modern Slavery Act 2018.*

Paragraph (b) of the definition of modern slavery in s 5(1) of the Bill currently reads:

modern slavery includes the following:

...

- (b) any conduct involving the use of any form of slavery, servitude or forced labour to *exploit children* or other persons taking place *in the supply chains* of government agencies or non-government agencies.

⁸ *Forced Marriage (Civil Protection) Act 2007* (UK) c 20. For further information see Anti-Slavery Australia, Submission No 9 to the Legislative Council Select Committee on human trafficking in New South Wales, Parliament of New South Wales, *Inquiry into human trafficking in NSW*, 17 February 2017, 18-19 and Anti-Slavery Australia, Submission No 156 to the Joint Standing Committee on Foreign Affairs, Defence and Trade, Parliament of Australia, *Inquiry into establishing a Modern Slavery Act in Australia*, 36-39.

Anti-Slavery Australia recommends that the amendment in schedule 5.7[1] of the Bill be altered to instead refer to a 'modern slavery offence', as defined in section 5(1) of the Bill. The amended provision would read:

- (1) For the purposes of this Part, a victim of crime is a person who suffers harm as a direct result of an act committed, or apparently committed, by another person in the course of a criminal offence or *modern slavery offence as defined in section (5) (1) of the Modern Slavery Act 2018*.

5.2.2. Meaning of 'act of modern slavery'

Anti-Slavery Australia recommends that the amendment contained in schedule 5.7[3] that inserts the '[m]eaning of "act of modern slavery"' into the *Victims Rights and Support Act 2013*, be further amended.

Section 19A of the proposed Bill provides that:

- (1) In this Act, **act of modern slavery** means an act or series of related acts, whether committed by one or more persons:
 - (a) that has apparently occurred in the course of commission of an offence or other conduct constituting modern slavery within the meaning of the *Modern Slavery Act 2018*, and
 - (b) that has involved subjecting one or more persons to any form of slavery, servitude or forced labour of a child within the meaning of section 93AB of the *Crimes Act 1900*, and
 - (c) that has resulted in injury or death to one of those persons.

Anti-Slavery Australia suggests that this section could be clarified as it is uncertain how the provision would operate in, for example, situations of forced marriage or where an adult has been subjected to forced labour or debt bondage.

Anti-Slavery submits that the provisions would be clearer through:

- the addition of 'the' in (a), i.e. '...that has apparently occurred in the course of *the* commission of an offence..' – this would be consistent with the definition of 'act of violence' currently contained in section 19 of the Act, and
- the removal of (b) as this significantly narrows the definition of 'act of modern slavery' and duplicates the provisions outlined in (a) – the amended provision would read:
 - (1) In this Act, act of modern slavery means an act or series of related acts, whether committed by one or more persons:
 - (a) that has apparently occurred in the course of the commission of an offence or other conduct constituting modern slavery within the meaning of the *Modern Slavery Act 2018*, and
 - (b) that has resulted in injury or death to one of those persons.

5.2.3. Victim Support

Anti-Slavery Australia notes that schedule 5.7[4]-[5] of the Bill inserts the phrase 'or act of modern slavery' after 'violence' wherever occurring in sections 20 and 23 of the Victims Rights and Support Act 2013. However, it is unclear how the proposed amendments would operate given that there are no corresponding amendments proposed to the 'composition of support' outlined in sections 26-29 of that Act.

Recognising that slavery and slavery-like practices are amongst the most 'egregious abuses of human rights,'⁹ a scourge against innocent people,¹⁰ serious criminal offences and can result in serious harm to victims and survivors, Anti-Slavery Australia recommends that the Victims Rights and Support Act 2013 be amended give effect to the objectives of the Modern Slavery Bill, by providing that victims of an 'act of modern slavery' are entitled to 'category A recognition payments'.¹¹

¹¹ *Victims Rights and Support Act 2013 (NSW)* s 35.

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