



The Salvation Army

Responses to Questions taken on Notice, Sydney 4 November 2019

NSW STANDING COMMITTEE ON SOCIAL ISSUES INQUIRY INTO THE MODERN SLAVERY ACT
2018 AND ASSOCIATED MATTERS

Ms MOORE: [...] *Although I am sure some people would disagree, I think history tells us that we do need some kind of mechanism now to make it official, but then that training undoubtedly will uncover more victims. As you said, what do you do when you start to identify people? It is unclear to me what considerations have been made around victims' support. I am not sure if there is just an assumption that victims will be referred onto the Support for Trafficked People program, but I think there are some questions around how that is actually going to happen. Some specific recommendations I can make to you around what the State can do would include—we did not comment on this because it is actually quite large; we are open to providing a supplemental submission, if that is required—extending eligibility of victims of trafficking to a range of support services that are funded primarily by the State.*

The Hon. Shayne Mallard (Chair): *Thank you. If you want to supplement that answer on notice with more detail, you are welcome to.*

Answer

As discussed during our evidence to the Committee, the purpose of the Act is not just to identify modern slavery, but also to free and assist enslaved people in NSW. It, therefore, cannot be effective if it does not ultimately protect all human beings impacted by modern slavery in the state.

While it is true the Act incorporates the broadest range of anti-slavery strategies of any Australian legislation to address this problem, there are many unanswered questions about various inclusions and exclusions in the law.

For instance, it is unclear why only certain offences were adopted from the Commonwealth Criminal Code (1995) (Cth) ('the Criminal Code') and why definitions determining eligibility for victim support for survivors of modern slavery have been further narrowed. It is also unclear why Part I of the Act includes a two-part definition of modern slavery, including specifying the 'place' of occurrence being a supply chain in Section 5(1)(b). This is particularly puzzling given the Act does not endeavour to define what a 'supply chain' is—a step that could serve to provide clarity where the Modern Slavery Act (2018) (Cth) ('the Cth Act') does not.

Without clarity, we can only assume these provisions have been included to limit who is covered under the Act; but as this submission will explain, these provisions create unjustifiable inequities between victims that undermine the intent of the Act. They also produce significant problems for implementation.



As indicated by other submitters, the explanatory note of the Act provides little insight into these decisions. Once the Act is finalised, we recommend to the Committee that the explanatory note be expanded to provide greater detail on the rationale underpinning various components of the Act. We refer the Committee to the Cth Act's Explanatory Memorandum, which goes to great lengths to explain the rationale behind the terms of the modern slavery reporting requirement.

The Salvation Army strongly submits that a carefully considered, evidence-based framework be put in place to ensure victims identified in NSW receive timely, unconditional and informed support from governmental and non-governmental responders. Given it is the ultimate aim of the activities to identify victims and risk of modern slavery legislated in the Act, this is not a matter that can be deferred to the Commissioner's strategic plan.

Three ways the NSW Government can do this include:

- a. To extend eligibility to suspected victims of trafficking for state-funded services, particularly housing and case management support, family/domestic violence support, and legal services. While access to victims' compensation is certainly an important area of need, the above services are essential to enable victims-survivors to arrive at a point where they are able to apply;
- b. To appropriate state funding and tender for services to victims-survivors in NSW, similar to what the state of California has done. This would ensure a safety net is in place for victims-survivors who are unable to access the federal framework and allow them time to pursue potential immigration remedies that might be available to them;
- c. Increase funding for the state family violence system, which is currently filling gaps to provide services to victims of slavery, trafficking and forced marriage, largely without resources, capacity or specialist knowledge. We refer the Committee to the submission made by Good Shepherd Australia/New Zealand and Monash University for recommendations regarding forced marriage as well as Good Shepherd's issues paper, published earlier this year.¹

We also refer to the Good Shepherd-Monash submission for additional recommendations and considerations to be made in the course of setting out a state victims-survivors support framework. We note that submission provides detail into state-based anti-slavery frameworks in the United States, referred to above. The Salvation Army fully endorses that submission.

We also refer the Committee to the *State Model Law on Protection for Victims of Human Trafficking*², developed by members of the Freedom Network USA—a coalition of more than 24

¹ Vidal, L. (2019) Opportunities to respond to forced marriage within Australia's domestic and family violence framework, Good Shepherd Australia New Zealand, Melbourne, Australia. Available from: https://goodshep.org.au/media/2423/g sanz-issues-paper_opportunities-to-respond-to-forced-marriage-within-australias-domestic-and-family-violence-framework.pdf/.

² Available from: <https://www.legislationline.org/download/id/1264/file/5b6fb5af473eb70407d29b957330.pdf>.



anti-trafficking organisations with decades of experience. Division D discusses particular considerations for Benefits and Services for Trafficked Persons.

Finally, the Committee may wish to refer generally to the website of the National Council of State Legislatures,³ which provides numerous examples and resources for state approaches to service delivery for trafficked people. Whilst some of the advice is very specific to the United States, there are many recommendations that would be relevant to the NSW context.

Mr DAVID SHOEBRIDGE: [...] *In its submission the Women's Legal Service put forward 10 recommendations to the Victims Rights and Support Act that it says are necessary to make sure that the Act can support victims of slavery. If you are taking questions on notice, could you review each of those 10 recommendations from that submission and see whether or not you endorse them?*

Answer

The Salvation Army endorses the submission made by WLS NSW.

In particular, we agree with WLS NSW's Recommendation 2 to amend the definition of "victim of crime" and "act of modern slavery" *Victims Rights and Support Act 2013 (NSW)* ('the VRSA') to include all forms of modern slavery, with the exception of forced marriage, which is appropriately dealt with via the amendment to the *Crimes (Domestic and Personal Violence) Act (2007)* (NSW).

In our experience assisting people—mostly young women—at risk of or experiencing forced marriage, the approach of the family violence system is more responsive to their needs than the counter-trafficking framework.

While there are many reasons for this, which we laid out in our evidence to the Legislative Council's Select Committee on Human Trafficking in 2017, two primary reasons are:

- a. Vulnerable people are not entering or are prematurely exiting support because they do not wish to speak to or cooperate with the Australian Federal Police ('AFP')—a condition of the program. The AFP's common defence of this requirement on the basis of safety does not address the very real possibility that these young people are returning to be forcibly married; and
- b. The majority of reports of forced marriage are made before the marriage has occurred, demonstrating the need for a robust preventative response. State government departments, including education, child and youth protection, community services and health are better equipped to do this, both through expertise and positioning within cross-agency networks and operational protocols.

³ <http://www.ncsl.org/research/civil-and-criminal-justice/human-trafficking-an-overview-of-services-and-funding-for-survivors.aspx#state>.



We also strongly agree with WLS NSW's recommendation 3 to amend the VRSA to ensure all victims-survivors of all forms of an act of modern slavery are able to access all forms of victims support, including recognition payments and recommendation 9 to remove conditions attached to victims support that require assisting in the investigation of the "act of modern slavery" or "act of violence".

To this latter point, we provide text below from our original submission to the Select Committee⁴, which contested the rationale underpinning the 'cooperation requirement' (p28) and provided suggestions for how to incentivise cooperation with authorities (p35):

"The Salvation Army and other NGOs have long advocated for the removal of the requirement for victims to cooperate with the criminal justice process in order to access the services and visa framework available for victims of trafficking.

A proposal was made to [the Commonwealth] Government in 2014 to pilot a new stream for victims of forced marriage (although it [was and] is The Salvation Army's recommendation that all child victims or people at risk should be exempt from the cooperation requirement). The proposal suggested a separate stream for forced marriage victims where eligibility would be assessed by a non-law enforcement "certifying body". A few options were suggested for who this certifying body could be, including Red Cross and the Department of Human Services. As a compromise, the Government agreed to provide an automatic assessment period of 90 days, rather than the standard 45 days. [This has been extended to 280 days under the current pilot, but access is still contingent on referral by the AFP.] While attitudes regarding the suitability of the current framework for people at risk of or experiencing forced marriages appear to be shifting, no substantive changes have been made yet.

The assumption appears to be that the requirement to cooperate is necessary to secure prosecutions and that, unless required, victims would not work with the criminal justice system. Neither of these is true; to date, there have only been 18 individuals convicted [this figure is now approximately 24] under the slavery offences and in The Salvation Army's experience, many victims want to participate to see their offenders held accountable. Indeed, it is common for victims to feel confused and frustrated when authorities are not able or willing to proceed with an investigation."

Further to this point, we refer the Committee to a potentially useful document—the Resource Guide for State Legislators: Model Provisions for State Anti-Trafficking Laws⁵, which states:

4

<https://www.parliament.nsw.gov.au/lcdocs/submissions/57221/0016%20The%20Salvation%20Army.pdf>

⁵ National Institute on State Policy on Trafficking of Women and Girls. Resource Guide for State Legislators: Model Provisions for State Anti-Trafficking Laws, July 2005. This document is no longer available online, but can be provided to the Committee in hard copy on request.



“...law enforcement relies upon trafficking victims to assist in the prosecutions of traffickers and even to provide evidence against their traffickers. Prosecutors often feel that the best evidence against a trafficker is the testimony of a victim. But victims still are traumatized and fearful; it is emotionally challenging, if not impossible, therefore, for a victim to cooperate with law enforcement to help investigate and prosecute a trafficker.

Before we can expect victims to assist law enforcement, it is essential that states provide for their most basic needs for safety and services. These must include safe and secure housing, all forms of physical and mental health care services delivered by providers who have been trained to work with traumatized women and girls, and education and training for economic recovery and future self-sufficiency. Women and girls who are on the way to recovery are more likely to be willing and able to assist law enforcement.”

The Salvation Army strongly supports Recommendation 10, which promotes the provision for victims of an act of modern slavery of funded legal assistance during the course of their claims. A government-funded scheme should provide compensation for the physical or psychological injuries sustained as a result the crime. This is particularly important in those cases in which compensation from the perpetrator is not possible — e.g. because the perpetrator cannot be identified, has fled the country, or has no assets. For many victims of trafficking and modern slavery, this is the only prospect of obtaining compensation for the abuses committed against them.

Additional ways the NSW Government could incentivise cooperation without coercing victims-survivors to be witnesses, include:

- a) Work with the Commonwealth to expedite family reunification, which has been shown to assist in stabilising victims-survivors’ mental health and allaying fears of retribution— both of which are common reasons why people decide not to speak with police;
- b) Work with the Commonwealth to reduce periods of temporary status, which also negatively impacts on a person’s ability to be an effective witness;
- c) Ensure transparency and right of appeal for police decisions about cases;
- d) Ensure access to independent legal services so victims-survivors are supported and able to make informed decisions about remaining in Australia or repatriating; and
- e) Work with the Commonwealth, unions and service providers, and communities to stamp out worker exploitation, which is the breeding grounds for criminal forms of exploitation. Remediation of exploitation is the key to effective prevention because only remediation and perpetrator accountability, breaks the cycle of abuse in which modern slavery thrives.

Finally, further to WLS NSW’s point raised in paragraph 33 of their submission around which agencies would be able to provide documentary evidence in relation to modern slavery, we note that The Salvation Army receives no Commonwealth funding for our anti-slavery work.



Thus, even though we have assisted a comparable number of victims as the Red Cross, we would not be able to support one of our client's applications.

This limitation also raises questions for the Red Cross and their funder, the Department of Social Service, including whether the Red Cross would support all victims-survivors' applications, or only those of clients on the Support for Trafficked People Program.

We agree with WLS NSW that the amendment to expand agencies to include non-governmental organisations is a very positive change; however, we suggest the Committee consider other terms for approving agencies, such as a demonstrable track record in case management and/or counselling to victims-survivors of modern slavery.

The Hon. Shayne Mallard (Chair): Full harmonisation of that area of the Crimes Act? I do not think you have elaborated on that in your submission. Could you take that on notice and come back to us with an expanded explanation of that?

Answer

In our evidence, we raised a concern about potential implications of partial harmonisation for first responders, particularly state police. We have sought additional legal advice and submit the following points:

Adopting only certain modern slavery offences from the Criminal Code into the Crimes Act 1900 (NSW) ('the Crimes Act') creates unnecessary barriers for timely victim response because it binds this action to a determination about whether an emerging case meets the evidentiary requirements to constitute a particular offence rather than on the likelihood a person is a victim of one or more slavery crimes.

This imposes unrealistic and unmanageable decisions about the obligation to respond on state agency staff, particularly police, where there is insufficient information to make a determination about whether a case amounts to slavery or servitude as opposed to a related offence, such as forced labour or debt bondage (the most common form of modern slavery in the world today).

This determination takes months and is often based on what can be proven rather than what may have actually happened. In other words, someone may have been subjected to servitude, but there may not be enough evidence to meet the burden of proof, in which case, a different offence may be used to increase the likelihood of a successful prosecution.

These matters should be kept separate from victim response, crisis support and protection, which should be determined on the basis of sufficient indicators a slavery crime occurred



against a person rather than what offence will be brought against their perpetrator. There are validated instruments to assist in making this determination.⁶

That said, we still recommend full harmonisation (with the exception of forced marriage, as mentioned in the previous answer) to eliminate unnecessary confusion about when state authorities should respond to potential slavery cases and to uphold continuity for police investigations where they begin at the state level.

In reviewing WLS NSW's submission, we discovered another potential argument for full harmonisation, which is to ensure all victims of modern slavery in NSW are eligible for victim support by creating a correlating offence within the Crimes Act.

As we understand it, to be eligible for victims support, a person must be victim of an offence that is a state crime. Indeed, The Salvation Army Trafficking and Slavery Safe House has assisted numerous clients to receive victims support in NSW; however, none received it on the grounds of being a victim of a form of modern slavery and in some cases, were not able to access it at all.

Assuming this is the rationale behind the amendments, it remains unclear why the Act goes to such lengths to exclude a large number of victims, including those exploited outside supply chains (which we note again is not defined). Under the current version of the Act, it appears that a person trafficked into suburban Sydney for domestic servitude and subjected to years of emotional and psychological abuse would not be eligible for victim support as a victim of modern slavery. Salvation Army respectfully submits the question of whether it was intentional to connect paragraphs (a) and (b) under amendments to the VRSA Section 19A(1) with the word 'and'; or whether the word 'or' should have been used.

If this was intentional, we agree with WLS NSW that this is an inappropriate exclusion where the Section 3 of the Act clearly intends to address modern slavery more broadly in the state. To rectify this, we recommend:

- a. Removing the amendment to Section 5(1) of the VRSA; and
- b. Broadening the definition of an 'act of modern slavery' in Section 19A. We submit that the simplest and most straightforward way to do this would be to remove paragraph (a) from Section 19A(1) and expand the list of offences under paragraph (b) after full harmonisation with the Commonwealth slavery offences in Division 270 of the Criminal Code.

⁶ See International Labour Organisation, *Operational Indicators of Trafficking in Human Beings* (Geneva: ILO, 2009). Available from http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_105023.pdf and VERA Institute of Justice, *Screening for Human Trafficking Guidelines for Administering the Trafficking Victim Identification Tool* (New York: Vera Institute, 2014). Available from <https://www.vera.org/downloads/publications/human-trafficking-identification-tool-and-user-guidelines.pdf>.