



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: HRC:CBsb241123

24 November 2023

The Hon. Dr Joe McGirr, MP
Committee Chair
Modern Slavery Committee
Legislative Council
Parliament House, Macquarie Street
Sydney NSW 2000

By email: Modern.Slavery@parliament.nsw.gov.au

Dear Dr McGirr,

Review of the Modern Slavery Act 2018 – Question on notice

Thank you for the opportunity to provide answers to the question taken on notice by the Law Society of New South Wales during the hearing on 30 October 2023 as part of the Modern Slavery Committee's Review of the *Modern Slavery Act 2018* (NSW).

The Chair of the Law Society's Human Rights Committee, Mr Ali Mojtahedi, appeared on behalf of the Law Society before the Modern Slavery Committee.

The Law Society's response to the question taken on notice during that appearance is provided below.

Question:

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

ALI MOJTAHEDI: How it might be incorporated into the Act, I might have to take that on notice...

Answer:

Both policy and legislative responses could assist in ensuring the confidentiality of disclosures made by victim-survivors to the Office of the Anti-Slavery Commissioner.

One example of a policy measure, that (1) ensures access to support services and visas; (2) is not dependent on engagement with the criminal justice system; are the support streams of the Commonwealth Support for Trafficked People Program. These explicitly remove the need for trafficked people (in the Intensive Support Stream) or those in or at risk of a forced marriage (in the Forced Marriage Support Stream) to contribute to a criminal investigation or prosecution against alleged perpetrators in order to receive such support. These are policy measures based on the Australian Government's National Action Plan to Combat Modern Slavery.

The Law Society considers any policy response in NSW should also be supplemented by a statutory protection that, subject to exceptional circumstances or informed consent, the Commissioner should be prevented from sharing with other State and Commonwealth agencies information obtained from victim-survivors through the hotline or otherwise under s 12. The addition of this type of provision would ensure that disclosure to the Commissioner does not amount to waiver of any privilege or as consent to share or use the information for other purposes. As noted in our evidence at the hearing, the same kind of protection could apply to information obtained under s 14 of the Act.

In addition to the legislative changes outlined above, it would be of assistance if those victim-survivors who contact the hotline are referred to services where they can obtain free, independent legal advice. This would assist them to assess their options moving forward and make informed decisions in relation to any pathways through the criminal justice framework. At the current time, it is not clear what process follows a disclosure on the hotline. In aid of victim-survivors making informed decisions, we suggest that public information should be made available as to how the NSW Anti-Slavery Commission handles calls, and what referrals are being made to which support services.

Thank you again for the opportunity to contribute to this inquiry. Should you require any further information, please contact Sophie Bathurst, policy lawyer on _____ or email _____

Yours sincerely,

Cassandra Banks
President