

**INQUIRY INTO MODERN SLAVERY ACT 2018 AND
ASSOCIATED MATTERS**

Organisation: The Salvation Army Australia

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Inquiry into the Modern Slavery Act (2018) (NSW), the Modern Slavery Amendment Bill and the Draft Regulation

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Statement of Recognition

The Salvation Army acknowledges the Traditional Custodians of the lands and waters throughout Australia. We pay our respect to Elders, past, present and emerging, acknowledging their continuing relationship to this land and the ongoing living cultures of Aboriginal and Torres Strait Islander peoples across Australia.

Introduction

The Salvation Army welcomes the opportunity to make a submission to this inquiry into the Modern Slavery Act 2018 (NSW) – hereafter referred to as the NSW Act.

Modern slavery is a serious violation of an individual's dignity and human rights and one of humanity's greatest evils. The perpetrators of crimes involving human trafficking, forced labour, domestic servitude and sexual exploitation, take advantage of the most vulnerable people in our society. Over 40 million people around the world live in conditions of modern slavery. Women and girls make up 71 percent of these people, while children account for a quarter of them. Around 25 million people are in situations of forced labour, and half of these enslaved workers are in debt bondage (International Labour Organization & Walk Free Foundation, 2017).

In Asia and the Pacific Region, as outlined in the Global Slavery Index (Walk Free Foundation 2018) North Korea, Afghanistan, and Pakistan were the countries with the highest prevalence of modern slavery. India, China, and Pakistan had the highest absolute number of people living in modern slavery and accounted for 60 percent of the victims in the region. While Australia is not immune to modern slavery, some of these countries are among its top import origins (Trading Economics 2019). This means that Australian companies are “significantly exposed” to modern slavery in their supply chains (Ore 2019). In 2018, it was estimated that Australia imported nearly US\$12bn worth of goods “at risk” of being made using slavery each year (e.g. electronics from China and Malaysia; garments from China, India and Vietnam; fish from Thailand and Indonesia; Doherty 2018).

Australia is one of the few jurisdictions around the world to have modern slavery legislation. The Modern Slavery Act 2018 (Cth) – hereafter referred to as the Commonwealth Act - took effect in Australia on 1 January 2019, and the NSW Act was adopted in June 2018. Both acts have a reporting scheme and the schemes are complementary. Australia is now at the forefront of global efforts to eradicate modern slavery.

The Commonwealth and NSW Acts have some key differences. As the NSW Anti-Slavery Interim Commissioner, Professor Jennifer Burn, noted, the NSW Act has “much broader focus” and centers on prevention and victim support. Both Acts require businesses to identify and report on the risk of modern slavery - including forced labour and servitude - in their supply chains in Australia and overseas (Fitzsimmons & Patty 2019). The NSW Act goes further, applying to businesses with \$50 million in annual turnover (though only if they have employees or offices in NSW), establishing an Anti-Slavery Commissioner, and containing penalties for non-compliance.

The Salvation Army provides a wide range of services and support to people across Australia as part of realising our vision and living our values. In this submission The Salvation Army will share our experience and the stories of the people with whom we work with the NSW Legislative Council Standing Committee on Social Issues.

The Salvation Army recognises that a clear focus of this inquiry is in ensuring that the NSW Act is properly operable and does not create an undue burden on businesses. A key focus for The Salvation Army is how the NSW Act can support victims of modern slavery achieve better outcomes and help businesses meet community expectations around human rights.

The Salvation Army's Safe House

Fundamental to the ethos of The Salvation Army is the idea that every single human being has inherent worth and every person should be able to live with dignity.

The Salvation Army is deeply committed to fighting modern slavery and human trafficking. We seek to exercise care in restoring the freedom and dignity of those affected. The Salvation Army operates the Trafficking and Slavery Safe House, which remains the only supported accommodation service in Australia specifically for individuals experiencing human trafficking, slavery and slavery-like practices.

Since its opening in 2008, support has been provided to over 300 victims of modern slavery and their dependents from 51 different countries, to build free and independent lives. Clients (and their families) are assisted to overcome extreme disadvantage through a trauma-informed supported accommodation service, comprehensive case management and assistance to navigate complex systems and social structures.

Located in NSW, the Safe House accepts nation-wide referrals from a range of sources including law enforcement, legal services, community-based organisations and schools. Typically, the Safe House client group is made up of approximately one-third who have experienced servitude, one-third who were victims or at risk of a forced marriage, and one third who have experienced other forms of slavery such as sex trafficking or forced labour in other industries, including but not limited to: agriculture, construction, personal/aged care, hospitality and tourism.

Over time, we have also met many other people who were not subjected to slavery but who experienced underpayment/non-payment of wages, verbal abuse, excessive work hours, living at their place of work and being unable to demonstrate an employment relationship despite working in a business for years.

The vast majority of the people the Safe House assists are migrants, with the cohort including temporary visa holders, asylum seekers and those on criminal justice pathways. Linking with other services, the Safe House supports survivors to meet their immediate and long-term needs, in order for them to become independent and seek justice.

Interoperability and impact on business

The Salvation Army recognises that any legislation must be coherent, able to be implemented and weighs the compliance cost with the social good delivered. Necessarily NSW laws need to be considered in the context of Commonwealth laws on the same subject.

Interactions with the Commonwealth Act

It is the view of The Salvation Army that the NSW Act complements the Commonwealth Act by targeting an additional group of businesses: those with employees in NSW whose annual turnover is not less than \$50 million, and up to \$100 million. The Commonwealth Act, on the other hand, covers reporting entities with an annual consolidated revenue of not less than \$100 million.

The Salvation Army does not see the NSW Act as being rendered unnecessary by the Commonwealth Act, recognising that it provides a more holistic, person-centred approach to addressing Modern Slavery with crucial components such as:

- A Commissioner for advocacy and victim support and regular review of the NSW Act;
- Education and awareness raising for the community and business;
- Support, compensation and protection systems for those who have experienced slavery;
- Government procurement being covered by the NSW Act;
- Modern Slavery risk reporting with penalties for non-compliance.

We agree with the amendments that tidy and harmonise the NSW Act with the Commonwealth (Cth) Act.

Impact on business

The Salvation Army is subject to the Commonwealth Act and not the NSW Act. We therefore do not have direct experience of the impact on businesses involved in complying with the NSW Act.

Having taken the steps to ensure compliance with all applicable legislation, we can confirm that there is an impact, however the impact is not unreasonable. The steps we have taken include conducting an assessment of our supplier database, formed internal working groups to ensure all areas of the business are included, redrafted procurement contracts to include modern slavery specific clauses and worked with peer organisations to build knowledge and best practice. Nothing required by either the Commonwealth nor NSW Acts is onerous in the context of the very real need to protect human rights.

The NSW Government could assist businesses in complying with the NSW Act by providing greater resources in guidance and training on how to map supply chains and to report under the NSW Act. The Commonwealth Government's efforts in providing guidance and opportunities for advice have been very useful in our own process.

Opportunities for improving outcomes

The Salvation Army is unapologetically focussed on the way in which the NSW Act can help people who are enslaved and to prevent further enslavement of people. To be effective in this goal there are a range of actions that are needed to support the NSW Act. We contend that these actions need to be considered by the Committee when considering how the NSW Act can be best implemented.

The Anti-Slavery Commissioner

The Anti-Slavery Commissioner's office must be sufficiently resourced to support, monitor and enforce reporting. This resourcing and support is essential to ensuring that the other elements discussed below can be implemented.

Victim-centred approach to combatting modern slavery

NSW's approach to combatting modern slavery should be victim-centred, where support services are not contingent on participating in criminal prosecutions or a person's visa status. How we ensure victims of modern slavery are afforded the support and guidance they need (being considered on a case-by-case basis) to rebuild their lives should be the main goal of any legislation which aims to tackle modern slavery. The provision of a holistic and victim-centred support to trafficked people is one of four key priorities under the *National Action Plan to Combat Trafficking and Slavery 2015-19* (Commonwealth of Australia 2014). This support must extend to all survivors of trafficking and slavery, irrespective of their visa status.

Modern slavery helpline

We support the NSW Modern Slavery Act's commitment to establishing a helpline to provide advice and support to victims of trafficking and modern slavery. Key considerations for the successful implementation of a helpline include:

- 24-hour helpline response to assist victims who may not have the means to contact services in business hours, and 24-hour access to interpreters will also be essential;
- Access to state emergency accommodation services and physical and mental health services. Legal and financial support must be available through the helpline, including for non-citizens who may not normally meet eligibility requirements for such services, e.g. temporary visa holders, international students, people with no income;
- Assurance for victims and support people that reporting illegal work situations where migrants have been exploited or victimised will not have negative impacts for the victim;
- Privacy and reporting obligations must be balanced to reassure victims to seek help without penalty;
- Support for survivors who may be unwilling or unable to engage with the state or federal police;
- Targeted promotion of the helpline in a range of languages in order to ensure effectiveness.

State-wide NSW police training

Training for the NSW state police on indicators of trafficking and modern slavery, including forced marriage, will assist with an increase of victim identification and support and prevention of crime. Although investigation of modern slavery offences falls under the federal police's jurisdiction, state police are well placed to provide initial victim identification when responding to domestic or workplace disputes, and when survivors attend police stations to seek help. Police training should incorporate indicators of trafficking, slavery and severe exploitation, referral pathways for support, and information about the use of power and control over victims which may lead to mistrust of police and hesitance to report. Incorporating further information on forced marriage into current family violence police training may also assist state police to better support young people at risk of forced marriage.

Case study – need for appropriate frontline response by state police

Before coming to Australia, Fatima¹ spent many hours on the phone with her fiancé, who promised her a happy life in Australia where she could learn English, study and get a job. After arrival, his tone changed and Fatima was subjected to domestic servitude in the home he shared with extended family. Fatima did not have access to her documents, was closely monitored, not allowed to leave the house and was subjected to physical and verbal abuse on a daily basis.

After months in this situation, and after being locked in the house and disallowed meals for several days, Fatima fled when the front door was left unlocked by a visitor. Unable to speak any English, Fatima convinced a community member to take her to the police station, where she presented as distressed and unable to communicate.

The community member had ties to Fatima's family, and told the police that Fatima had mental health issues, and should be returned to her husband's family for support. The local police did not get an interpreter to speak with Fatima separately. Fatima was eventually able to get a family member overseas to interpret for her, and explained her story to the police. The police took out an Apprehended Domestic Violence Order (ADVO) against Fatima's husband and connected her with the Domestic Violence Line, who linked her to the Safe House for accommodation and case management.

"When I came to Australia, my husband promised me a good life. But then he took the life I used to have and I had nothing. Only now after help from services and being able to study and get a job, being encouraged, now I have worked hard to achieve my goal and make a good life. When I came to Australia I had no idea about my rights...If I hadn't told my cousin and gotten help from her to speak to the police, I wouldn't be here now."

The Salvation Army also raises some concerns regarding the absence of a victim support framework to protect people identified by NSW police. The NSW Act represents an opportunity to test a different path that may yield better outcomes than the current, federalised model where victims are required to cooperate with the police in order to get support.

¹ All names and identifying details have been changed to protect the privacy of individuals.

Joint research into local antislavery networks/partnerships

An extensive body of literature has demonstrated the value of formalised and strategic frameworks for a localised anti-slavery/trafficking response. For instance, a study from the United States indicated multidisciplinary anti-trafficking working groups, or task forces, are more likely to discover human trafficking and achieve successful prosecution of perpetrators. More recent research conducted by Brewster (2019) promotes the importance of multi-agency antislavery partnerships as a means to ensure not only a more consistent and effective response to modern slavery, but also victim identification and support.

In some cases multi-agency partnerships have suffered endemic issues such as a lack of information sharing; fragmented and duplicated needs assessment processes, poor levels of coordination and service integration, absences in responsibility among participating agencies, and unclear channels of accountability. In order to avoid negative outcomes, multi-agency partnerships should seek to combine the skills, responsibilities and expertise of practitioners from a number of different agencies to share aims, information, tasks and responsibilities to tackle problems.

While the Commonwealth should conduct further research to inform a new national strategy under the next National Action Plan on Trafficking and Slavery 2020, the NSW Government should commission research and analysis to develop risk profiles to inform priorities and strategies relevant to NSW. This strategy should be developed in close collaboration with other states/territories and focus on developing a nationally-consistent, but flexible framework to structure and drive community-based work between local stakeholders, and to facilitate collaboration and information sharing across states and with the Commonwealth.

Victim's compensation scheme

As we await the development of a comprehensive national compensation scheme for survivors of modern slavery in Australia, we recommend the NSW Modern Slavery Act's extension of support under the *Victims Rights and Support Act 2013 (NSW)* to survivors of acts of slavery occurring in NSW. Eligibility for victim support, including access to counselling, compensation and recognition payments, must be broad and accessible to survivors given the complexity of experiencing this crime. Access to the extended victim's compensation scheme should accommodate survivors of trafficking and slavery, including forced marriage, who may not have engaged with police, who may be from a CALD background, who may make a claim a significant period of time after their experience and who may not be able to reside in Australia ongoing due to their visa status. Evidence of victims' experiences should be accepted from a range of community and non-government services, as well as any legal or police documents.

Case study – need for increased access to victim’s compensation

Living in a rural village overseas and the eldest daughter in her family, Josephine² did not complete primary school, and at age 14 began her life as a servant for a more affluent family in a nearby town. When this family of 6 migrated to Sydney, the two adults adopted 16-year old Josephine as their legal daughter in order to bring her with them.

In Australia, Josephine was required to attend high school, however she still had to wake at 5am to start work preparing meals for the family and ready the children for school. On return home her duties of cleaning, cooking and providing childcare lasted until 11pm. Josephine was not allowed to make friends or have contact with her birth family, she lost her first language and was forced to change her religion. Josephine was often verbally abused and denied adequate meals as punishment. Josephine was never paid for any work she completed, and was made to feel she should be grateful to the family for bringing her to Australia. When Josephine was 18 and the couple spoke about her starting work in a supermarket, with wages to be paid into their bank account, Josephine realised she had to leave.

Safe House staff engaged with Josephine through her school counsellor, and supported her to make a plan to leave safely and come to the Safe House. Josephine decided not to engage with police to pursue a criminal case against the couple, due to her attachment to the children she had cared for. If Josephine were able to access an appropriate level of victim’s compensation, she would use this grant to assist with counselling expenses and savings to travel to visit her birth family overseas, who she has not seen for almost a decade.

As highlighted by a report released by Anti-Slavery Australia in 2018, current “victims” compensation schemes provided by each of the eight States and Territories are an inadequate remedy for victims of human trafficking and slavery as they are not designed to provide a remedy to victims of Commonwealth offences against the person. State and Territory schemes vary with regards to categories of harm, time limits and amounts of compensation available; this had led to varied outcomes for victims” (p. 2). We support the recommendation of the Legislative Council Select Committee on human trafficking in New South Wales, that the NSW Government should “encourage the Australian Government, through the Council of Australian Governments, to establish a national compensation scheme for victims of human trafficking; and if this is not successful, advocate for the harmonisation of schemes across all states and territories in Australia” (Parliament of New South Wales 2017, p. xii).

Domestic servitude

With support from the Mercy Foundation, in 2018 The Salvation Army conducted research which sought to advance understanding of migrant domestic servitude in Australia (Moore 2019). The final report compiles existing information from a range of national and international sources and introduces new data drawn from The Salvation Army Australia’s Trafficking and Slavery Safe House. Domestic servitude is recognised as a key sector for forced labour.

Australia lacks sufficient data on both private domestic work and the extent and nature of domestic servitude. The lack of data begins with a narrow occupational definition that is likely to exclude many private domestic workers, including migrant domestic workers, from national data collection and workforce information. Australian systems appear to be failing to provide sufficient pathways out of domestic

² All names and identifying details have been changed to protect the privacy of individuals.

servitude and in granting access to a remedy leading to a culture of impunity. The analysis also confirmed lack of awareness by the public and by other government agencies who may be in a position to identify and assist a victim of domestic servitude.

The NSW Government should urge the Australian Government to ratify the *Convention Concerning Decent Work for Domestic Workers (2011)* which would create a framework through which to progress other reforms. A publicly accessible complaints mechanism for domestic workers should also be created and implemented. In addition to this, the NSW government should educate first responders, particularly police, worksafe and health professionals, on the indicators of human trafficking and also on the rights of employees working for diplomatic and consular offices. NSW should also commit to data collection to devise a state-based risk profile, including for domestic servitude, to inform strategic operational responses and where/how to target awareness raising campaigns.

Forced marriage

As forced marriage was only criminalised in 2013, it is a relatively new area of public policy and research in Australia. The reasons, beliefs and norms leading to the facilitation of a forced marriage by a parent or family member varies greatly among cases, however some common themes emerge. These include initiating a forced marriage for financial or migration purposes to sponsor a spouse, control over young people's behaviours (especially of young women, and LGBTIQ young people), protecting family honour, and broader community pressures placed on parents (The Salvation Army & RMIT University 2018; Good Shepherd Australia New Zealand 2019). From the Salvation Army Safe House's experience working with people affected by this crime, victims are generally young women aged 16-21 and include both Australian residents who are forced to marry overseas, and asylum seekers or other temporary visa holders fleeing a forced marriage overseas.

In order to escape entering a forced marriage, young people at risk are often required to make a difficult decision of either choosing to prioritise their own safety and personal goals, or prioritising the needs and honour of their family and community. There is a scarcity of appropriate supported accommodation options for young people under 18 who are at risk of or have experienced a forced marriage. Both child and adult victims of forced marriage can only receive support from the government-funded program for a period of less than 12 months, unless they choose to engage with federal police to investigate their matter. The Salvation Army recommends resources to be allocated to further research into forced marriage, and an extension of suitable services for victims, both over and under 18 years old, to access consistent and comprehensive ongoing support from civil society.

The Salvation Army commends the NSW Modern Slavery Act for extending protections to people at risk of forced marriage under the existing provisions for victims of family violence. Orders aimed at protecting people at risk of forced marriage should include a lower threshold for applying than typical ADVOs, as a threat of forced marriage should be sufficient rather than there being evidence of a violent event having already occurred. Orders aimed to reduce risk of forced marriage could also incorporate protective factors, such as orders for the person at risk to continue to attend school or tertiary education, or to be engaged with services for case management.

Case study – need for protection orders for those at risk of forced marriage

When Sara³ finished her HSC, her parents told her that she wasn't allowed to continue her studies or look for a job, as she'd soon be getting married to a man that they knew through family connections. After Sara started to resist this idea, her phone was taken from her and she was not allowed out of the house without a family member at all times. Using her younger brother's school iPad, Sara connected over email to the Safe House service and explained she wanted to leave home as she didn't want to get married.

The Safe House assisted Sara to leave home safely. Sara missed her family and was deeply concerned about the impact of community shame on them, and heard from her brother that her parents were distressed. Sara spoke with her parents over the phone, and told them that she would come home if she didn't have to get married, could have control over her phone and could study or work. Sara's parents agreed.

Sara returned home and it seemed at first that the agreement would be kept; Sara had her phone back, there was no talk of marriage and she was allowed to apply for jobs. However over time excuses were made about why Sara could not enrol in study or start a job, and she remained at home each day with her mother. Sara remained connected by phone with the Safe House, and also connected by email with the federal police, but refused assistance to leave home. Sara became convinced that she needed to go ahead with the marriage to avoid breaking apart her family. Sara wanted to enrol in study and not get married, but did not feel that she could cut off connection with her family and community in order to do so.

State-based Labour Hire Licencing scheme

Migrant workers are recognised the world over to face more increased risk of exploitation for a variety of reasons, including limited language skills, limited understanding of rights, and limited social networks that could empower them to advocate for themselves. Exploitation of migrant workers occurs in the same context where modern slavery occurs. As stated in the 2019 report of the Migrant Workers' Taskforce (Commonwealth of Australia 2019), to assess labour hire practices for companies that employ migrant workers, the Australian Government should work with states and territories to strengthen oversight of employers and employment arrangements by introducing a national registration or licencing regime for labour hire companies in high-risk sectors for labour exploitation. However, in the absence of progress towards a National Labour Hire Licencing scheme, we encourage the committee to consider and recommend a NSW state-based licencing scheme of labour hire agents as has been done in Victoria, South Australia and Queensland.

³ All names and identifying details have been changed to protect the privacy of individuals.

Practical Actions

The Salvation Army asks that the Committee consider the following recommendations to government.

The operability of the proposed anti-slavery scheme

1. The NSW Government to work closely with the Commonwealth in order to resolve intersecting issues and harmonise the approaches taken in the NSW and Commonwealth Acts.
2. The NSW Anti-Slavery Commissioner's office should be sufficiently resourced to support, monitor and enforce reporting.

The effect of the anti-slavery scheme on business

3. The NSW MSA Amendment Bill to retain the threshold of \$50 million and penalties for non-compliance in reporting (recognising that voluntary schemes have had little success in addressing modern slavery).
4. The NSW Government to invest more resources in guidance and training to reporting entities on how to map supply chains and to report.
5. Strengthen the NSW Modern Slavery legislation by introducing strong, full human rights compliance beyond slavery.
6. Support strong public procurement measures being covered by the NSW Act.

The interoperability of the NSW and Commonwealth laws

7. Retain the NSW Act to complement the Commonwealth Act by targeting an additional group of businesses.

Victim-centred approach to combatting modern slavery

8. The NSW's approach to combatting modern slavery to be victim-centred, where support services are not contingent on participating in criminal prosecutions or a person's visa status.

Victim's compensation scheme

9. The NSW Government to encourage the Australian Government, through the Council of Australian Governments, to establish a national compensation scheme for victims of human trafficking.
10. In the absence of a comprehensive national compensation scheme for survivors of modern slavery in Australia, The Salvation Army recommends that the NSW Modern Slavery Act extends support, including access to counselling, compensation and recognition payments, under the Victims Rights and Support Act 2013 (NSW) to survivors of acts of slavery occurring in NSW.

Improve measures to identify victims and survivors of human trafficking and slavery

11. The NSW Government to commit adequate financial resources, guidance and tools to enable law enforcement to hold offenders accountable under the law.
12. The NSW state police to receive training on indicators of trafficking and modern slavery (including forced marriage), referral pathways for support, and information about the use of power and control over victims.
13. The Salvation Army supports the NSW Modern Slavery Act's commitment to establishing a helpline to provide advice and support to victims of trafficking and modern slavery.

Local antislavery networks/partnerships

14. The Salvation Army encourages the NSW Government to establish multi-agency partnerships combining the skills, responsibilities and expertise, of practitioners from a number of different agencies to share aims, information, tasks and responsibilities to tackle problems.
15. The NSW Government to commission research and analysis to develop risk profiles to inform priorities and strategies relevant to NSW.

Domestic servitude

16. The NSW Government to urge the Australian Government to ratify the *Convention Concerning Decent Work for Domestic Workers (2011)*.
17. Ensure state-wide stakeholder engagement and education activities, particularly police worksafe and health professionals, on the indicators of human trafficking and also on the rights of employees working for diplomatic and consular offices.

Forced marriage

18. The Salvation Army recommends resources to be allocated to further research into forced marriage, and an extension of suitable services for victims, both over and under 18 years old, to access consistent and comprehensive ongoing support from civil society.
19. The Salvation Army commends the NSW Modern Slavery Act for extending protections to people at risk of forced marriage under the existing provisions for victims of family violence.

State-based Labour Hire Licencing scheme

20. In the absence of progress towards a National Labour Hire Licencing scheme, The Salvation Army encourages the NSW Government to develop a state-based licencing scheme of labour hire agents as has been done in Victoria, South Australia and Queensland.

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About The Salvation Army

Background information

The Salvation Army is an international Christian movement with a presence in 130+ countries. Operating in Australia since 1880, The Salvation Army is one of the largest providers of social services and programs for people experiencing hardship, injustice and social exclusion.

The Salvation Army Australia has a national operating budget of over \$700 million and provides more than 1,000 social programs and activities through networks of social support services, community centres and churches across the country. Programs include:

- Financial inclusion, including emergency relief
- Homelessness services
- Youth services
- Family and domestic violence services
- Alcohol, drugs and other addictions
- Chaplaincy
- Emergency and disaster response
- Aged care
- Employment services

As a mission driven organisation, The Salvation Army seeks to reduce social disadvantage and create a fair and harmonious society through holistic and person-centred approaches that reflect our mission to share the love of Jesus by:

- Caring for people
- Creating faith pathways
- Building health communities
- Working for justice

We commit ourselves in prayer and practice to this land of Australia and its people, seeking reconciliation, unity and equity.

Further information

The Salvation Army would welcome the opportunity to discuss the content of this submission should any further information be of assistance.

Further information can be sought from Major Brad Halse, National Head of Government Relations, at
or on .