

**Submission
No 80**

INQUIRY INTO MODERN SLAVERY ACT 2018 AND ASSOCIATED MATTERS

Organisation: Anti-Slavery Australia

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Submission to the Legislative Council Standing Committee on Social Issues

Inquiry into the *Modern Slavery Act 2018* (NSW) and
associated matters

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Anti-Slavery Australia is a specialist legal research and policy centre at the University of Technology Sydney working to end 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.

Endorsements

Anti-Slavery Australia commends and endorses the submissions of Domestic Violence NSW to this Inquiry.

Acknowledgments

Carolyn Liaw and Grace Wong, Anti-Slavery Australia.

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Executive Summary

Anti-Slavery Australia welcomes the opportunity to provide comments to the Legislative Council Standing Committee on Social Issues on the Inquiry into the *Modern Slavery Act 2018* (NSW) and associated matters. This submission draws upon Anti-Slavery Australia's research and advocacy work as well as our extensive experience in providing legal advice and assistance to survivors of modern slavery in Australia since 2003.

This submission will address the following terms of reference:

- (a) the operability of the proposed anti-slavery scheme
- (b) the effect of the anti-slavery scheme on business, including the supply chain reporting obligations under section 24 of the NSW Act
- (c) the intended application of the anti-slavery scheme with respect to charities and not-for-profit organisations, State Owned Corporations and local councils
- ...
- (f) the risk of a possible constitutional challenge to current provisions in the NSW Act due to inconsistencies with the *Criminal Code Act 1995* (Cth)
- (g) whether the passage of the *Modern Slavery Act 2018* (Cth) renders parts or all of the NSW Act unnecessary, or requiring of amendment to address inconsistencies or gaps
- (h) the preferred course of action to address the matters identified
- (i) any other related matter.

In response to the terms of reference, Anti-Slavery Australia makes the following recommendations:

1. Overall, the *Modern Slavery Act 2018* (NSW) provides a robust and more comprehensive response to the issues of modern slavery than the Commonwealth *Modern Slavery Act 2018* and should therefore be retained.
2. NSW should retain the supply chain transparency measures for organisations operating in NSW that have an annual turnover over \$50 million or more as they have the capacity and resources to prepare a modern slavery statement.

3. NSW should retain penalties contained in section 24 of the *Modern Slavery Act 2018* (NSW) for failing to prepare a modern slavery statement, failing to prepare a modern slavery statement in accordance with the regulations and for producing false or misleading statements.
4. We oppose the exemptions for charities, not-for-profits and small organisations (that otherwise meet the financial threshold of \$50 million) in the proposed Modern Slavery Regulation 2019 (NSW).
5. We support the strong public procurement measures in the *Modern Slavery Act 2018* (NSW) because addressing modern slavery within the significant supply chains of the NSW government has the potential to impact the lives of thousands of people in modern slavery in supply chains in NSW, across Australia and around the world.
6. State Owned Corporations should be required to assess and address modern slavery within its supply chains.
7. The Modern Slavery Amendment Bill 2019 should be amended to include a requirement that local government / councils assess and address modern slavery risks in their procurement.
8. We welcome and strongly support the position of an Anti-Slavery Commissioner in NSW.
9. We support the introduction and amendment of section 93AC of the *Crimes Act 1900* (NSW) regarding child forced marriage and recommend that further amendments be made to define all marriages involving one or more children under the age of 16 years as a child forced marriage.
10. We support all the amendments to the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) proposed by the *Modern Slavery Act 2018* (NSW) and Modern Slavery Amendment Bill 2019. Further amendments should be made to allow interested parties to commence applications on behalf of people fearing forced marriage and explicitly allow courts to prohibit perpetrators from taking a person out of NSW against their will.
11. We support all the amendments to the *Victims Rights and Support Act 2013* (NSW) and recommend that it be further amended to give primary victims of an act of modern slavery access to recognition payments.
12. NSW should retain the proposed amendments to the *Children and Young Persons (Care and Protection) Act 1998* (NSW) and include further amendments to allow authorised persons to seize passports preventing travel where there is a suspicion that a child forced marriage will take place.

1. Modern Slavery Act 2018 (NSW)

Anti-Slavery Australia welcomes and supports the *Modern Slavery Act 2018* (NSW) (**NSW Act**). Anti-Slavery Australia commends the NSW Government on being the 'first jurisdiction in Australia to legislate against modern slavery and the second jurisdiction in the world to provide for an Anti-Slavery Commissioner'.¹

Anti-Slavery Australia submits that the NSW Act is necessary despite the passage of the *Modern Slavery Act 2018* (Cth) (**Cth Act**). The NSW Act provides a more comprehensive response to modern slavery than the Cth Act. The NSW Act contains provisions that are not found in the Cth Act including transparency in supply chain measures with respect to public procurement, an Anti-Slavery Commissioner and a raft of victim support measures.

Modern slavery in NSW

Modern slavery is generally used as an umbrella term to refer to a list of offences in the *Criminal Code Act 1995* (Cth). This includes: trafficking in persons, slavery, servitude, forced labour, forced marriage, debt bondage and deceptive recruiting for labour or services.

Due to the clandestine nature of modern slavery, data is difficult to obtain. However, the Australian Institute of Criminology estimates that there were approximately 1,567 people in modern slavery in Australia between 2015-16 and 2016-17, and that only one in five victims is ever detected in Australia.²

Modern slavery occurs throughout Australia. Anti-Slavery Australia is currently working with over 130 clients, from over 30 different countries, across all States and Territories, who have experienced modern slavery. Anti-Slavery Australia notes that the majority of our clients who have experienced modern slavery reside in NSW. Similarly, the majority of modern slavery referrals relating to modern slavery matters to the Australian Federal Police originate from NSW.

¹ 'Modern Slavery', *NSW Government* (Web Page) <<https://www.nsw.gov.au/improving-nsw/projects-and-initiatives/modern-slavery>>

² Samantha Lyneham, Christopher Dowling and Samantha Bricknell, 'Estimating the dark figure of human trafficking and slavery victimisation in Australia' (Statistical Bulletin 16, Australian Institute of Criminology, February 2019) 6.

Jurisdiction	2013-14	2014-15	2015-16	2016-17
New South Wales	29	39	79	74
Victoria	14	39	57	29
Queensland	6	17	17	11
Western Australia	9	15	4	9
South Australia	4	2	6	12
Tasmania	0	0	0	1
Australian Capital Territory	7	7	1	1
Northern Territory	1	0	0	1

Figure 1: Referrals of human trafficking and slavery offences to the Australian Federal Police 2013-14 to 2016-17, by jurisdiction.³

2. Supply chain reporting

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 welcomes the supply chain transparency measures in section 24 of the NSW Act.

Anti-Slavery Australia supports supply chain transparency measures for organisations operating in NSW that have an annual turnover over \$50 million or more. This was the threshold recommended by the Joint Standing Committee on Foreign Affairs, Defence and Trade in *Hidden in Plain Sight: An inquiry into establishing a Modern Slavery Act in Australia*.⁴ It is also similar to the £36 million threshold (approximately AU \$66 million) contained in the *Modern Slavery Act 2015 (UK) (UK Act)*. Anti-Slavery Australia submits that organisations with an annual turnover over \$50 million or more have the capacity and resources to prepare a modern slavery statement. Anti-Slavery Australia notes that the UN Guiding Principles on Business and Human Rights specify that all businesses have a responsibility to respect human rights, regardless of their size, sector, operational context, ownership or structure.⁵

³ Joint Standing Committee on Foreign Affairs, Defence and Trade, Parliament of Australia, *Hidden in Plain Sight: An inquiry into establishing a Modern Slavery Act in Australia ('Hidden in Plain Sight')* (2017) 60.

⁴ *Ibid* 103-104.

⁵ Human Rights Council, *Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie*, UN GAOR, 70th sess, Agenda Item 3, UN Doc A/HRC/17/31 (21 March 2011) annex ('*Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*') ('*UN Guiding Principles*') Principle 14.

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Anti-Slavery Australia strongly supports the penalties contained in section 24 of the NSW Action for failing to prepare a modern slavery statement, failing to prepare a modern slavery statement in accordance with the regulations and for producing false or misleading statements. The evidence from the UK suggests that a lack of penalties for failing to submit a 'slavery and human trafficking statement'⁶ has resulted in low levels of compliance. Four years since the UK Act's enactment, only 23% of the statements submitted comply with all the minimum requirements of the UK Act i.e. published on the organisation's website, signed by a director and approved by the board.⁷ Anti-Slavery Australia notes that the Final Report published as part of the Independent Review of the Modern Slavery Act in the UK recommended that the UK Government 'make the necessary legislative provisions to strengthen its approach to tackling non-compliance' by introducing sanctions including 'warnings, fines (as a percentage of turnover), court summons and directors' disqualification.'⁸

Maria Grazia Giammarinaro, the United Nations Special Rapporteur on trafficking in persons, especially women and children, recommends that states adopting transparency in supply chains legislation '[e]stablish sanction mechanisms for companies that fail to fulfil their obligations, and equip law enforcement agencies with the resources necessary to follow up on reports of lack of compliance'.⁹

Proposed exemptions

As outlined in our earlier submission to the NSW Department of Premier and Cabinet on the draft Modern Slavery Regulation 2019, Anti-Slavery Australia does not support the exemptions in the proposed Modern Slavery Regulation 2019 (NSW) (**draft Regulation**) for charities, not-for-profits and small organisations (that otherwise meet the financial threshold of \$50 million).¹⁰

Anti-Slavery Australia submits that if a charity or not-for-profit organisation otherwise meets the definition of 'commercial organisation' under the Act (i.e. they supply goods and services for profit or gain, and have a total turnover of \$50 million or more)¹¹ they have the capacity and resources to prepare a modern slavery statement.

⁶ *Modern Slavery Act 2015* (UK) c 30, s 54

⁷ Ibid; Business & Human Rights Resource Centre, *Modern Slavery Registry* <<https://www.modernslaveryregistry.org/>>.

⁸ *Independent Review of the Modern Slavery Act 2015* (Final Report, May 2019) 43.

⁹ Maria Grazia Giammarinaro, *Report of the Special Rapporteur on trafficking in persons, especially women and children*, UN Doc A/HRC/35/37 (28 March 2017) 19.

¹⁰ Draft Modern Slavery Regulation 2019 r 10(4)-(5).

¹¹ *Modern Slavery Act NSW* (2018) s 24(1).

The draft Regulation defines ‘small organisations’ as those with ‘less than 20 employees’ during the financial year of the organisation and exempts these organisations from preparing a modern slavery statement, even if the organisation has a total turnover of \$50 million.¹² Anti-Slavery Australia does not support this exemption in the draft Regulation for ‘small organisations’.

The exemption is impractical and poses difficult questions around how one determines if they are a small organisations; for example, how and at what point in time during the organisation’s financial year does the organisation assess how many employees it has and how can this be monitored or verified by the Anti-Slavery Commissioner.

Organisations that have turnover of \$50 million or more, despite the number of employees, are not small organisations. The *Corporations Act 2001* (Cth) defines a ‘large proprietary company’ as one with consolidated revenue of \$25 million or more.¹³ In *Hidden in Plain Sight*, the Joint Standing Committee on Foreign Affairs, Defence and Trade recommended that supply chain reporting be mandated for organisations with a revenue threshold of \$50 million or more as this would ‘capture most large entities operating in Australia’.¹⁴ Anti-Slavery Australia also notes that the UK Act requires organisations with a total turnover of £36 million or more (approximately AU \$66 million) to prepare a modern slavery statement with no exemption based on the number of employees.¹⁵

3. Public procurement

Anti-Slavery Australia supports strong public procurement measures in the NSW Act. In its Final Report, the Select Committee on Human Trafficking in New South Wales indicated that it was:

strongly in favour of the NSW Government carrying the torch and taking steps to secure its procurement supply chains to ensure the government is not purchasing products tainted by modern slavery. This would send a powerful message to corporate Australia that this is a serious problem that must be tackled. This measure, coupled with the introduction of federal laws regarding the supply chains of large businesses, has the potential to make a real difference to the lives of so many.¹⁶

¹² Draft Modern Slavery Regulation 2019 r 10(5).

¹³ *Corporations Act 2001* (Cth) s 45A(3).

¹⁴ *Hidden in Plain Sight*, 103.

¹⁵ *Modern Slavery Act 2015* (UK) c 30, s 54(2); *Modern Slavery Act 2015 (Transparency in Supply Chains) Regulations 2015* (UK) SI 2015/1833 reg 2.

¹⁶ Select Committee on Human Trafficking in New South Wales, *Human trafficking in New South Wales* (October 2017) 33.

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The NSW Government has a significant procurement spend 'of around \$30 billion' per annum.¹⁷ Addressing modern slavery within the supply chains of the NSW Government has the potential to impact the lives of thousands of people in modern slavery in supply chains in NSW, across Australia and around the world.

State Owned Corporations

Anti-Slavery Australia submits that State Owned Corporations should be required to assess and address modern slavery within its supply chains. This would be consistent with the previous recommendation of the Select Committee on Human Trafficking in New South Wales.¹⁸

The NSW Government's submission to this Inquiry stated that currently all State Owned Corporations have annual turnover in excess of \$100 million and thus are 'likely' covered by the Cth Act.¹⁹ Anti-Slavery Australia recommends that this position be clarified and that the NSW Act or Regulations specify that State Owned Corporations must report to the Cth Act if they meet the financial threshold and to the NSW Act if they do not.

Local Government

Anti-Slavery Australia recommends that the Modern Slavery Amendment Bill 2019 (**Bill**) be amended to include a requirement that local government assess and address modern slavery risks in their procurement. Local councils had a collective expenditure of \$11.4 billion in 2017-18.²⁰ Some of this spending occurs in sectors that are considered high risk industries for modern slavery globally such as 'mining, manufacturing and construction'.²¹

Anti-Slavery Australia understands from the submission by the NSW Government to this Inquiry that non-legislative approaches for local councils is being explored.²² However, Anti-Slavery Australia draws this Committee's attention to the comments by the Select Committee on Human Trafficking in New South Wales in its Final Report that:

¹⁷ 'NSW government looks to Microsoft AI to cut \$10m costs', *Australian Financial Review* (11 June 2018) <<https://www.afr.com/technology/nsw-government-looks-to-microsoft-artificial-intelligence-to-cut-10m-costs-20180607-h112nu>>

¹⁸ *UN Guiding Principles*, Recommendation 10, 33.

¹⁹ NSW Government, Submission No 1 to Standing Committee on Social Issues, Parliament of New South Wales, *Inquiry into the Modern Slavery Act 2018 and associated matters* (June 2019) 6.

²⁰ Audit Office of New South Wales, *Report on Local Government 2018* (28 February 2018) 7.

²¹ *Ibid* 6.

²² NSW Government (n 17) 7.

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'soft laws' such as codes of conduct cannot solely be relied upon to ensure that businesses take steps to consider and report on ethical practices in their supply chains.²³

Anti-Slavery Australia submits that such concerns could apply equally with respect to local councils.

4. Anti-Slavery Commissioner

Anti-Slavery Australia welcomes and strongly supports the position of an Anti-Slavery Commissioner in NSW. The Anti-Slavery Commissioner has important advocacy, educative, and awareness raising functions, amongst others. It is Anti-Slavery Australia's experience that there is limited awareness of modern slavery amongst the general public, front-line workers as well as community groups working with vulnerable and at-risk groups. Anti-Slavery would like to draw this Committee and the Anti-Slavery Commissioner's attention to Recommendation 13 the Select Committee on Human Trafficking in New South Wales in its Final Report:

That the NSW Government, in consultation with the Australian Government, establish a framework to deliver ongoing training and awareness campaigns regarding human trafficking to front-line government and non-government workers and the general public.²⁴

As Anti-Slavery Australia provides legal services, Anti-Slavery Australia would like to highlight our responsibilities to our clients, legal privilege and our duty of confidentiality with regards to section 14 of the NSW Act and as proposed to be amended by the Bill in Schedule 1 [7]:

Government agencies of the State and non-government agencies that provide services to, or advocate for, victims of modern slavery in the State must work in co-operation with the Commissioner in the exercise of the Commissioner's functions.

5. Introduction of the NSW offence of Child Forced Marriage

Anti-Slavery Australia supports the introduction and amendment of section 93AC of the *Crimes Act 1900* (NSW) regarding the crime of child forced marriage. The amendments proposed in the Bill align NSW's provisions with the Commonwealth's. In particular, the amendment to s 93AC(4) (item 32 in the Bill) which ensures that where *both* parties to a marriage are victims, because of their age, lack of capacity or because they were coerced, threatened or deceived, *neither party* will be found to be guilty of a forced marriage.

²³ Select Committee on Human Trafficking in New South Wales (n 14) 30.

²⁴ *Ibid* 38.

However, recent changes in the *Criminal Code Act 1995* (Cth) (**Criminal Code**) to the definition of forced marriage should be reflected in the NSW provisions to ensure its consistency with forced marriage offences in s 270.7A and 7B of the Criminal Code.

On 21 September 2019, the definition of forced marriage in the Criminal Code was amended to ensure that marriages involving children under the age of 16 years automatically fall within the definition of a forced marriage.²⁵ This means that a marriage involving one or more children will be considered a forced marriage, without the need to prove that a child did not understand the nature and effect of a ceremony or for there to be the presence of coercion, threat or deception leading a child to enter the marriage. The amended Commonwealth provision is included below (emphasis added):

270.7A(1)

(1) A marriage is a **forced marriage** if:

- (a) either party to the marriage (the **victim**) entered into the marriage without freely and fully consenting:
 - (b) because of the use of coercion, threat or deception; or
 - (ii) because the victim was incapable of understanding the nature and effect of the marriage ceremony; or
- (b) *when the marriage was entered into, either party to the marriage (the **victim**) was under 16.*

Currently the NSW provisions reflect the *previous* Commonwealth definition, which only *presumed* that a child under the age of 16 years is incapable of understanding the nature or effect of a marriage ceremony. The Commonwealth Government sought to amend this definition based on the difficulties prosecutors had in applying this rebuttable presumption, particularly in cases where children who had been married insisted that they had consented to the marriage and were capable of understanding what was happening at the time a marriage ceremony was performed.

Anti-Slavery Australia recommends that the NSW Act definition of forced marriage be amended in the following way to remain consistent with the Criminal Code (amendment proposed in underline):

93AC Child forced marriage

...

²⁵ *Combatting Child Sexual Exploitation Legislation Amendment Act 2019* (Cth).

(2) For the purposes of this section, a child enters into a "**forced marriage**" if the child enters into the marriage without freely and fully consenting:

(a) because of the use of coercion, threat or deception (whether by another party to the marriage or by another person), or

(b) because the child was incapable of understanding the nature and effect of the marriage ceremony, or

(c) because when the marriage was entered into, either party to the marriage was under 16.

While it is arguable that it is unnecessary to have laws at both a state and Federal level criminalising forced marriages involving children, the NSW criminal provisions will give the NSW Police and the Department of Communities and Justice (**DOCJ**) part of the responsibility and ambit for dealing with a complex crime. It also paves the way for people affected by forced marriage the opportunity to be recognised in related legislation, such as the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) and *Victims Rights and Support Act 2013* (NSW), which are based around a NSW criminal framework and refer exclusively to offences under the *Crimes Act 1900* to define grounds for obtaining orders or receiving support.

6. Amendments to the *Crimes (Domestic and Personal Violence) Act 2007* (NSW)

Anti-Slavery Australia supports all the amendments to the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) (**CDPV Act**) proposed by the NSW Act and Bill, in particular the:

- a) inclusion of child forced marriage and forced marriage in definition of personal violence offence (see section 4(b2))
- b) extending of meaning of 'intimidation' under the CDPV Act for conduct amounting to coercion, deception or threat to a child or adult to enter into a forced marriage (see section 7(1)(d) and (e))
- c) mandatory application for an interim apprehended violence order to protect a victim when a person is charged with child forced marriage or forced marriage (see section 40(5)(c1)).

These amendments recognise that the coercion, threats or deception used to force someone into marriage can be defined as acts of domestic and family violence or intimidation as well.

These amendments allow both children (covered by the NSW criminal offence of child forced marriage) and adults (covered by the forced marriage offence under the Criminal Code) to protect themselves from behaviours which may lead to forced marriages, through apprehended violence orders.

Expansion of parties able to apply for an Apprehended Violence Order

In cases of forced marriage involving children or young people, the perpetrators are often parents or guardians who have parental responsibility for the child or young person. Currently, the categories of people who can apply for an order to protect a child or young person do not allow protective family members or parties who have an interest in the safety, welfare or well-being of the child or young person, to apply on their behalf. Children or young people are often reluctant to seek help because they fear confronting their parents and the involvement of DOCJ in such cases can vary, especially for young people aged 16-17 years. Allowing other suitable parties, such as carers or other protective family members, organisations or friends, to apply on behalf of a person in need of protection with leave of the court, may increase access to apprehended violence orders (**AVOs**).

Currently, AVOs only be applied for the person in need of protection, a guardian of the person in need of protection, a police officer or the Secretary of the DOCJ and anyone authorised to make applications on his/her behalf or any other person prescribed by the regulations.

Anti-Slavery Australia recommends that section 48 be amended to include a discretionary, broad 'catch all' category of applicants for an AVO in forced marriage cases (indicated below with underlining):

48 Making of application for an order

- (1) An application for an order is to be made in accordance with this Part, despite any provision of any other Act or law (whether or not enacted or made before or after the commencement of this section).
- (2) An application for an order may be made only by:
 - (a) a person for whose protection the order would be made, or
 - (a1) the guardian of the person for whose protection the order would be made, in the case of a person in respect of whom a guardianship order within the meaning of the *Guardianship Act 1987* is in force, or
 - (b) a police officer., or
 - (c) in the case of a child being subjected to coercion to enter into a forced marriage (within the meaning of section 93AC of the *Crimes Act 1900* or section 270.7A (Definition of forced marriage) of the Commonwealth Criminal Code) for whose protection an order would be made—the Secretary of the Department of Family and Community Services or a person authorised by the Secretary to make applications under this section on the Secretary's behalf or any other person prescribed by the regulations.
 - (d) in the case of a person being subjected to coercion to enter into a forced marriage (within the meaning of section 93AC of the Crimes Act 1900 or section 270.7A (Definition of forced

marriage) of the Commonwealth Criminal Code) for whose protection an order would be made—a suitable representative of such a person or any other person to whom leave to apply is granted by a Court.

Given the lack of comprehensive data on child forced marriage, Anti-Slavery Australia recommends that the Bureau of Crime Statistics and Research within the Department of Justice be tasked to gather separate data on AVOs sought in circumstances of forced marriage, highlighting who made the application, the grounds for the application, what conditions were sought and whether the AVOs were finalised and any breaches reported. This will enable the NSW Government to review and evaluate the effectiveness of AVOs in the context of forced marriages.

Expansion of prohibitions or conditions for AVOs

Anti-Slavery Australia recommends that section 35 of CDPV Act be further amended to explicitly list specific prohibitions or restrictions which would prevent the behaviour or harm specific to child forced marriages or forced marriages.

In particular, Anti-Slavery Australia recommends that section 35 be further amended to include:

- a) conditions prohibiting the defendant from facilitating travel of the victim within or outside of Australia, and
- b) conditions prohibiting the defendant from applying, or using third parties, to help them apply for another passport or travel document for the victim, without their consent.

Courts should be empowered to include prohibitions or restrictions in AVOs which addresses the threat and danger victims of child forced marriage or forced marriage fear.

Section 35 currently contains a non-exhaustive list of prohibitions/restrictions (or conditions) that a court can place on a defendant named in an AVO. Together, the NSW Act and the Bill allow the making of an order by the Court to prohibit behaviour from the defendant that might coerce, deceive or threaten the protected person into a child forced marriage or forced marriage. While this may address the preliminary acts that lead to forced marriages, courts should be given the power to prevent more serious conduct which leads to forced marriages such as the taking of a victim's passport and the facilitation of their travel overseas.

Courts should also be explicitly given the power to prohibit behaviour by the defendant to use other family members to take actions which the defendant themselves is prohibited from doing. Forced marriages often involve several perpetrators within the family who reinforce the coercion, threat or deception from one or more primary members of the family.

Anti-Slavery Australia recommends inserting the following provision into section 35(2) of the CDPV Act (suggested amendment underlined):

35 Prohibitions and restrictions imposed by apprehended violence orders

- (1) When making an apprehended violence order, a court may impose such prohibitions or restrictions on the behaviour of the defendant as appear necessary or desirable to the court and, in particular, to ensure the safety and protection of the person in need of protection and any children from domestic or personal violence.
- (2A) Without limiting the generality of subsection (2) (f), an order may prohibit any behaviour of the defendant or third parties directed by the defendant:
- (a) that might coerce, deceive or threaten the protected person into a forced marriage within the meaning of section 93AC of the *Crimes Act 1900* or section 270.7A (Definition of forced marriage) of the Commonwealth Criminal Code.
- (b) to take the protected person outside of NSW or apply for a passport for the protected person who is at risk of a forced marriage within the meaning of section 93AC of the Crimes Act 1900 or section 270.7A (Definition of forced marriage) of the Commonwealth Criminal Code.

7. Amendments to the *Victims Rights and Support Act 2013* (NSW)

Anti-Slavery Australia supports all the amendments proposed by the NSW Act and Bill to the *Victims Rights and Support Act 2013* (NSW) which demonstrates the NSW Government's commitment to recognising the tremendous harm and trauma done to victims of modern slavery and the need to enhance their access to support and recognition.

Giving victims of modern slavery access to a state wide compensation scheme reflects Australia's obligations under international law, including:

- article 6(6) of the *Trafficking Protocol*, which requires each state party to ensure that its domestic legal system provides victims of human trafficking with the possibility of obtaining compensation for damages suffered;²⁶
- article 25(2) of the *United Nations Convention Against Transnational Organized Crime*, which requires each state to 'establish appropriate procedures to provide access to compensation and restitution for victims of offences' covered by the Convention;²⁷

²⁶ *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, opened for signature 15 November 2000, 2237 UNTS 319 (entered into force 25 December 2003).

²⁷ *United Nations Convention against Transnational Organised Crime*, opened for signature 15 November 2000, 2225 UNTS 209 (entered into force 29 September 2003).

- article 12 of the *United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, which states that '[w]hen compensation is not fully available from the offender or other sources, States should endeavour to provide financial compensation to: Victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes; The family, in particular dependents of persons who have died or become physically or mentally incapacitated as a result of such victimization';²⁸ and
- part II article 2(3)(a) of the *International Covenant on Civil and Political Rights* which requires each state party to 'ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.'²⁹

Include “act of modern slavery” as a Category B recognition payment under section 35

To enhance the effectiveness of support offered to primary victims under the VRS Act, the VRS Act should be amended to allow primary victims of an act of modern slavery to access recognition payments. In particular, an “act of modern slavery” should be included in Category B of the categories of recognition payments.

In Anti-Slavery Australia’s experience of working directly with victims, people who have experienced modern slavery are, as a result of the harm done against them, isolated from family and support networks, financially disseminated (for example, from unpaid wages), disconnected from schooling and/or career opportunities. They can require much support in re-entering schooling or employment, stabilising their accommodation, accessing legal or migration assistance and recovering from trauma. The recognition payments we help our clients access are an essential component to helping them gain recognition for the harm that was done against them and helps them rebuild their lives in practical ways.

Currently under the NSW Act, section 26(1) of the VRS Act allows support to be provided to primary victims of an act of modern slavery including approved counselling services, financial assistance for immediate needs or economic loss and apparently, recognition payments (see 26(1)(d)). However, section 35 which sets out the categories of recognition payments payable contains no reference to an act of modern slavery. The four categories of

²⁸ *United Nations Declaration on the Basic Principles of Justice for Victims of Crime and Abuse of Power*, GA Res 40/34, UN GAOR, 3rd Comm, 40th sess, 96th plen mtg, agenda item 98, Supp No 53, UN Doc A/RES/40/34 (entered into force 29 November 1985).

²⁹ *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976).

recognition payments (A, B, C and D) refer to other offences and the resulting harm which allow a primary or family victim to access different amounts of recognition payments ranging from \$1,500 to \$10,000 per act of violence.

Given the gravity, severity and often prolonged nature of modern slavery, we submit that it is appropriate that an act of modern slavery involving violence should be considered a Category B recognition payment. While some acts of modern slavery may include assaults, indecent assaults, actual or attempted sexual assaults (currently offences listed in the categories of recognition payments), not every case will result in serious bodily harm or grievous bodily harm. Often the coercion, threats or deception used to keep people in modern slavery will be subtle and involve a combination of both physical and psychological violence, including threats to harm the victim, other family members or threats to deport them or report them to authorities.

These complex forms of violence and harm should not have to be separated out via the current categories of acts of violence, and should be recognised as a separate act, or series of related acts of violence which gives rise to a recognition payment under Category B.

Since the NSW Act purports to group the acts of violence leading to and experienced by victims of modern slavery into one definition “an act of modern slavery”, we submit that Category B is an appropriate category to reflect the level of violence and harm done during these acts.

8. Amendments to the Children and Young Persons (Care and Protection) Act 1998 (NSW)

Anti-Slavery Australia supports the proposed amendments to the *Children and Young Persons (Care and Protection) Act 1998* (NSW) (**CYPCP Act**) in the NSW Act and Bill, as it allows the Commissioner the ability to further protect children or young people by making appropriate reports to the Department of Communities and Justice (**DOCJ**) or the NSW Police if a victim is at risk of harm or if the information may materially assist an investigation.

We recommend that the legislation be further amended to give greater powers to persons authorised under the CYPCP Act to seize passports preventing travel when there is a suspicion that a child forced marriage will take place, even if that child has not been taken into the care of the Secretary. This would reflect similar powers recently given to child protection workers under South Australian legislation and would allow travel to be prevented in cases where children or young people generally have little control over their own travel

documents, may not be willing to or access Family Law Watch List orders or have not reached the threshold for intervention by DOCJ.

In the majority of forced marriage cases which Anti-Slavery Australia has worked on, the engagement or marriage of a child or young person (**minor**) has taken place overseas. While a minor under the age of 18 or a parent can apply to the Family Court for an order preventing that minor from travelling overseas via interim or final orders (otherwise known as Family Law Watch List orders), this court application requires a minor, parent or other supportive party to be willing to provide evidence against a family member arranging or pressuring the marriage. We have generally found clients to be reluctant to provide evidence in support of an application because it may endanger their long term relationship with that family member or subject the broader family to shame within the community for airing what is often considered private, family matters in a public forum like a court.

South Australia recently amended its *Children and Young People (Safety) Act 2017* (SA) to include the following powers for child protection officers, which include South Australian Police:

149—Powers of child protection officers

(1) Subject to this Act, a child protection officer may, as may reasonably be required in the administration, operation or enforcement of this Act, do 1 or more of the following:

...

(d) if the officer believes on reasonable grounds that a child or young person is at risk of removal from the State for female genital mutilation or marriage—seize and retain any passport issued in the name of the child or young person;

Anti-Slavery Australia submits that similar powers should be introduced in NSW. Currently, persons authorised under the CYPCP Act, its regulations or a search warrant can, amongst other actions:

- a) enter and inspect the premises and do a number of acts including making copies of records, requiring a person to answer questions or furnish information,³⁰ and
- b) seize any document or thing inspected if they consider it necessary to do so for the purpose of obtaining evidence for the commission of an offence.³¹

³⁰ *Children and Young Persons (Care and Protection) Act 1998* (NSW), s 241(1)(h).

³¹ *Children and Young Persons (Care and Protection) Act 1998* (NSW), s 241(1)(j).

It is arguable that the power to seize ‘any document or thing’ may include the power to seize passports, however the power can only be exercised for evidential purposes, that is, to prove the commission of an offence. These powers do not explicitly provide for the seizing of a passport or other travel documents in a preventative measure, for example, to stop the commission of an offence such as child forced marriage or kidnapping.

Anti-Slavery Australia recommends that section 241 of the CYPCP Act be amended in the following way to give powers to a person authorised (such as a caseworker or police officer) to (suggested amendment underlined):

241 Powers exercisable on entry and inspection

(1) A person who is authorised under this Act or the regulations, or under a search warrant issued under this Act, to enter and inspect any premises, may do any one or more of the following:

...

(j) if the person making the entry and inspection considers it necessary to do so for the purpose of obtaining evidence of the commission of an offence, seize any document or other thing inspected.

(k) if the person making the entry and inspection considers it necessary to do so for the purpose of preventing a child forced marriage, seize and retain any passport or travel document issued in the name of the child or young person.

There are dangers that this power will be misapplied, without reasonable grounds for suspecting that a child forced marriage is to occur. To mitigate this, Anti-Slavery Australia recommends that there should be a mechanism built into the CYPCP Act or its regulations to allow for timely review of the grounds for seizing a passport (when the risk has been minimised or is no longer present) and the return of the child or young person’s passport. This is particularly relevant in cases where there is a protective mother or father or family member who may wish to legitimately travel with the child or young person overseas.

Furthermore, there does not appear to be an inconsistency with introducing such a provision though an Australian passport or travel document is the property of the Commonwealth.³² While it is an offence under the *Australian Passports Act 2005* (Cth) for a person who has possession or control of an Australian travel document when that person knows that the document was not issued to the person,³³ there is an exception to this offence if the alleged offender has a ‘reasonable excuse’ for possessing or controlling the Australian travel document.³⁴ It is arguable that the possession or control of an Australian travel document

³² *Australian Passports Act 2005* (Cth) s 54.

³³ *Ibid* s 32(4).

³⁴ *Ibid* s 34(5).

(such as a passport) by a child protection caseworker or police officer would constitute a 'reasonable excuse.'

Appendix 1: Anti-Slavery Australia

Established in 2003, Anti-Slavery Australia is the only specialist legal, policy and research centre working to end human trafficking, slavery and slavery-like practices in Australia including forced labour and forced marriage (modern slavery). Anti-Slavery Australia provides free legal and migration assistance to men, women and children who have experienced modern slavery in Australia.

Anti-Slavery Australia addresses modern slavery through three core practice and service areas:

- A holistic legal practice that provides free legal and migration advice to people experiencing or at risk of modern slavery in Australia
- Delivering education and training to government, community organisations, schools and business
- Conducting research and advocacy informed by the lived experiences of our clients.

Legal practice

Anti-Slavery Australia's legal practice provides advice to people who have experienced modern slavery through Australia. We are currently assisting over 130 clients who have experienced modern slavery in Australia. A significant majority of our clients reside or experienced modern slavery in NSW.

Through our holistic, person-centred approach, we help survivors navigate the legal process including providing advice and assistance on immigration, citizenship, employment law, family law, criminal law and victims' compensation.

We have seen 76% increase in the number of clients over the last 3 years.

Our clients contact us directly through our advice hotline or dedicated forced marriage website, [My Blue Sky](#), or they are referred to us by the Australian Federal Police, Australian Red Cross, and other community support organisations.

My Blue Sky

My Blue Sky is Australia's first website dedicated to forced marriage prevention, information and legal advice. Available in 15 languages with specialised pages for young children, teenagers, educators and medical practitioners, the website offers vulnerable people access to information about marriage in Australia, and, direct access to legal advice and support

Anti-Slavery Australia

through SMS, email or a secure online locker room. The website receives a steady stream of requests for both information and legal support from people facing forced marriage, from people worried about a friend and from service providers, journalists and researchers.

My Blue Sky has attracted 94,754 page views and 25,667 users since its launch in November 2015. There has been a 15% increase in new users on My Blue Sky in the last year.

Education and training

Anti-Slavery Australia delivers education and training programs to help increase awareness and expand knowledge of modern slavery across Australia. We deliver training to government officials, lawyers, health care and social workers, students, educators and business.

In 2014, Anti-Slavery Australia launched Australia's first free, specialist online course on human trafficking, slavery, forced labour and forced marriage. Over 60,000 lessons have been completed since launch. Feedback from users has been consistently positive, with over 90% of surveyed users saying they would recommend the course to a colleague or friend. The online course has seen a 20% increase in users in the last year.