

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

**Organisation:** Office of the Director of Public Prosecutions NSW

**Date Received:** 4 October 2019

---



YOUR REFERENCE

DATE

4 October, 2019

The Hon Shayne Mallard MLC  
Chairperson  
Legislative Council Standing Committee on Social Issues  
Parliament House  
Macquarie Street  
Sydney NSW 2000

Dear Mr Mallard

**Inquiry into the *Modern Slavery Act 2018* and associated matters**

Thank you for the opportunity to comment on the proposed amendments to the *Modern Slavery Act 2018*. I will limit my comments to changes that impact on the ODPP's operations.

**Modern Slavery Risk Orders**

As currently framed Modern Slavery Risks Orders (MSRO) under s.29 have several issues that would require clarification before the Act came into operation.

It is not clear if a MSRO is a civil order or a criminal sanction. Characterisation of an order as either civil or criminal is fundamental in terms of interpreting and applying the provision, it is also essential from a procedural perspective. Consequential issues would also arise in relation to the technology used by the courts to process and enforce the orders.

The avenues for appeal against the imposition of an MSRO would require consideration and legislative clarification.

Applications may be made by the court on its own volition, the Attorney General or the Director of Public Prosecutions. As the Police conduct prosecutions of offences in the Local Court that may qualify for a MSRO, it is not obvious who would apply for the order in those cases on behalf of the Police.

In terms of bringing an application, it is not clear to me how the ODPP would obtain additional evidence as to the risk factors, nor how a MSRO is intended to sit with the other sentencing options and post sentencing orders available to the court.

Finally, it is not clear who is responsible for the monitoring and enforcement of MSROs.

I have considered the Government's submission to this Inquiry and I agree with arguments the Government has raised in support of the repeal of s.29. In short, there is more than adequate scope in the established post-conviction monitoring schemes, such as the High Risk Offenders scheme, Serious Crime Prevention Orders and the Child Protection Register to impose orders prohibiting the types of conduct envisaged by s.29. Aligning modern slavery offences to these schemes appears to me to be the most practical and efficient way to achieve the desired result.

### **New Offences**

I note that the Commonwealth has subsequently passed its own *Modern Slavery Act 2018* (Cth).

The NSW Act creates several new offences that I believe need to be reconsidered to ensure that the law in this area is consistent and clear.

Section 91HAA creates a new offence of *Administering a digital platform used to deal with child abuse material*. It is proposed to delete this offence because of an insurmountable s.109 problem.

Given that the Commonwealth has general responsibility for telecommunication offences and has legislated extensively in this area, I am of the view that consideration should be given to deleting the two other NSW telecommunication offences:

- s.91HAB *Encouraging use of a digital platform to deal with child abuse material* and
- s.91HAC *Providing information about avoiding detection*

These activities are already covered by the existing Commonwealth offences and the law of incitement, aiding and abetting and accessorial liability.

Similarly, the new offence under s.93AB *Slavery, servitude and child forced labour* covers the same field as Commonwealth slavery and servitude offences located in Division 270 of the *Criminal Code 1995* (Cth).

It is preferable that there be one consistent set of laws applicable to this type of offending throughout Australia and consideration should be given to whether the NSW offences are still required given the national laws now in place.

The Commonwealth offences are still available to NSW Police and the NSW ODPP has an agreement with the Commonwealth DPP where it is possible for each Office to prosecute both NSW and Commonwealth offences (where appropriate).

Yours faithfully

**Lloyd Babb SC**  
**Director of Public Prosecutions**