

Submission
No 88

INQUIRY INTO MODERN SLAVERY ACT 2018 AND ASSOCIATED MATTERS

Organisation: Women's Legal Service NSW

Date Received: 9 October 2019

9 October 2019

The Hon. Shayne Mallard, MLC
Chair
Standing Committee on Social Issues

By email: socialissues@parliament.nsw.gov.au

Dear the Hon Shayne Mallard

Inquiry into the Modern Slavery Act 2018 and associated matters

1. Women's Legal Service NSW (WLS NSW) thanks the Standing Committee on Social Issues for the opportunity to comment on the Modern Slavery Act 2019 and associated matters.
2. WLS NSW is a community legal centre that aims to achieve access to justice and a just legal system for women in NSW. We seek to promote women's human rights, redress inequalities experienced by women and to foster legal and social change through strategic legal services, community development, community legal education and law and policy reform work. We prioritise women who are disadvantaged by their cultural, social and economic circumstances. We provide specialist legal services relating to domestic and family violence, sexual assault, family law, discrimination, victims support, care and protection, human rights and access to justice.
3. Our submission focuses on those aspects of the *Modern Slavery Act 2018* ('**MSA**') and Modern Slavery Amendment Bill 2019 ('**the Bill**') that impact on the *Victims Rights and Support Act 2013 (NSW)* ('**the VRSA**'). This is relevant to Terms of Reference 1(a): the operability of the anti-slavery scheme and Terms of Reference 1(i): any other relevant matter.



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4. We commend the amendments to the *VRSA* to include acts of modern slavery. It is important that victims of modern slavery can access the victims support scheme. However, some of the drafting is unnecessarily complex. We therefore make recommendations that the legislation be more clearly drafted and adopt a beneficial approach in line with the intention to extend the benefits of the *VRSA* to victims-survivors of modern slavery.
5. We will first summarise the proposed changes to the *VRSA* as a result of the *Modern Slavery Act* and associated legislation and then highlight issues with the drafting of some of these provisions.
6. In summary we recommend:
 - 6.1 Review proposed amendments to *VRSA* as they are based on an historical version of the *VRSA*.
 - 6.2 Amend the definition of “victim of crime” and “act of modern slavery” in the *VRSA* to include all forms of modern slavery.
 - 6.3 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.
 - 6.4 Amend the *VRSA* so that generally a person is able to establish an “act of violence” and injury occurred to the standard of proof of “reasonable likelihood”. The form of evidence should not be prescribed. Similarly, form of evidence to prove an “act of modern slavery” should not be prescribed.
 - 6.5 Amend the *VRSA* so that documentary evidence requirements for proof of economic loss are not prescribed.
 - 6.6 Amend the *VRSA* to remove the requirement to prove injury in cases of an act of modern slavery. The requirement to prove injury should also be removed in cases of an act of violence involving sexual assault, child sexual abuse, domestic violence and child abuse, except when necessary to establish aggravating circumstances for a higher recognition payment.
 - 6.7 Amend the *VRSA* to remove all time limits for financial assistance and recognition payments for an act of modern slavery as well as time limits for financial

assistance and recognition payments relating to an act of violence involving sexual assault, child sexual abuse, domestic violence or child abuse.

- 6.8 In the alternative, but less preferred, the same time limits that currently apply to victims of domestic violence, sexual assault and child abuse should apply to victims of modern slavery.
- 6.9 Remove conditions attached to victims support that require assisting in the investigation of the "act of modern slavery" or "act of violence".
- 6.10 Provide victims of an act of modern slavery with access to funded legal assistance for their victims support claims. Similarly, provide victims of domestic violence, sexual assault, child sexual abuse and child abuse with access to funded legal assistance for their victims support claims.
- 6.11 Review and amend the *Victims Rights and Support Regulation 2013 (NSW)*.

The MSA's amendments to the VRSA

7. Schedule 5.7 of the *MSA* amends the *VRSA* as follows:
 - 7.1 amends the meaning of "victim of crime" to include victims of specific types of modern slavery under section 5 of the *VRSA*¹;
 - 7.2 extends the object of the victims support scheme to provide support to victims of an act of modern slavery under section 17 of the *VRSA*²;
 - 7.3 inserts a new definition of "act of modern slavery" as new section 19A of the *VRSA*³;
 - 7.4 expands the meaning of "primary victim" to include a victim of an act of modern slavery throughout section 20 of the *VRSA*⁴;

¹ Schedule 5.7[1].

² Schedule 5.7[2].

³ Schedule 5.7[3].

⁴ Schedule 5.7[4].

- 7.5 extends the eligibility for support provisions for a primary victim of an act of modern slavery under section 23(1) of the *VRSA* so that a primary victim can access specified support under section 26 of the *VRSA*⁵;
- 7.6 extends the eligibility for support provisions for a parent, step-parent or guardian caring for a child primary victim of an act of modern slavery under section 23(2) of the *VRSA* so that a parent, step-parent or guardian can access specified support under section 27 of the *VRSA*⁶;
- 7.7 amends eligibility provisions so financial assistance is not payable where payment for loss arises under any other insurance or agreement or arrangement under another Act or law under section 30(2) of the *VRSA*⁷;
- 7.8 allows the Commissioner to give approval for a victim of an act of modern slavery to select a professional counsellor where the victim resides outside Australia under section 31(1)(b) of the *VRSA*⁸;
- 7.9 enables the *Victims Rights and Support Regulation 2013 (NSW)* (**'VRS Regulation'**) to make provision for authorising payments to approved counsellors for a victim of an act of modern slavery under section 32(1) of the *VRSA*⁹ and relatives of those victims who have died under section 32(2) of the *VRSA*¹⁰;
- 7.10 allows a victim of an act of modern slavery to make an application for victims support under section 38(1)(a) of the *VRSA*¹¹;
- 7.11 makes the documentary evidence requirements for a victim of an act of modern slavery the same as for a victim of an act of violence under section 39(2) of the *VRSA*¹²;

⁵ Schedule 5.7[5].

⁶ Schedule 5.7[5].

⁷ Schedule 5.7[6].

⁸ Schedule 5.7[7].

⁹ Schedule 5.7[8].

¹⁰ Schedule 5.7[9].

¹¹ Schedule 5.7[10].

¹² Schedule 5.7[11].

- 7.12 makes the timing for making applications the same for a victim of an act of modern slavery (within 2 years after the relevant act or within 2 years after turning 18) under section 40(2) of the *VRSA*¹³;
- 7.13 allows claims to continue to be made under an application for 5 years or until the maximum financial support is reached, whichever occurs first, under section 40(6) of the *VRSA*¹⁴;
- 7.14 extends the determination of applications provisions to an act of modern slavery under section 43 of the *VRSA*¹⁵;
- 7.15 extends the reasons for not approving the giving of victim support or for reducing the amount of financial support to a victim of an act of modern slavery under section 44 of the *VRSA*¹⁶;
- 7.16 inserts a new section mandating that the Commissioner have regard to the nature of the relationship between an alleged perpetrator of an act of modern slavery and the victim in determining whether or not to approve or reduce victims support in new section 44(3A) of the *VRSA*¹⁷;
- 7.17 places the same conditions on approving support for an act of modern slavery as an act of violence under section 48(2)(d) of the *VRSA*¹⁸;
- 7.18 in regard to recovery of victims support from offenders, extends the meaning of "relevant offence" to include an offence in respect of which an act of modern slavery is found to have been committed under section 58(a) of the *VRSA*¹⁹;
- 7.19 in regard to recovery of victims support from offenders, extends the meaning of "relevant offence" to include an offence involving one or more acts of a series of related acts of modern slavery under section 58(c) of the *VRSA*²⁰;

¹³ Schedule 5.7[12].

¹⁴ Schedule 5.7[12].

¹⁵ Schedule 5.7[13].

¹⁶ Schedule 5.7[14].

¹⁷ Schedule 5.7[15].

¹⁸ Schedule 5.7[16].

¹⁹ Schedule 5.7[17].

²⁰ Schedule 5.7[18].

7.20 applies the division about restraining orders and orders relating to the disposition of property by offenders in regard to recovery of victims support from offenders to offenders charged with an act of modern slavery under section 79 and section 83(1)(a) of the *VRSA*²¹.

The MSA's amendments to other Acts that intersect with the *VRSA*

8. The MSA also makes amendments to other legislation in NSW that intersects with the *VRSA*.
9. Under Schedule 4 of the *MSA*, new offences are introduced into the *Crimes Act 1900* (NSW)(the ***Crimes Act***). Such offences include the new:
 - a. aggravated offence of using children for the production of child abuse material²²;
 - b. the new offence of slavery, servitude and child forced labour²³; and
 - c. the new offence of child forced marriage²⁴.
10. These new criminal offences in NSW are then included as part of the new "modern slavery offences" under Schedule 2 of the *MSA*.
11. The new offence of child forced marriage in section 93AC of the *Crimes Act* also becomes a "personal violence offence" under the *Crimes (Domestic and Personal Violence) Act 2007* (NSW)(the ***C(DPV)A***), by virtue of Schedule 5.3[1]-[2] of the *MSA*. As a result, child forced marriage forms part of the definition of an "act of violence" which is considered "sexual assault and domestic violence" under section 19(8)(f) of the *VRSA*. The significance of this is that a victim of a child forced marriage may then be considered a victim of "an act of violence" under the *VRSA* (rather than a victim of modern slavery) and eligible to access the support offered to such victims, which includes recognition payments.
12. Similarly, any conduct coercing a child into a forced marriage becomes part of the definition of "intimidation" under section 7 of the *C(DPV)A* by virtue of Schedule 5.3[3] of the *MSA*. This conduct then becomes part of the stalking or intimidation offence

²¹ Schedule 5.7[19]-[20].

²² new sections 91G(3)-(3C).

²³ new section 93AB.

²⁴ new section 93AC.

under section 13 of the *C(DPV)A*, which may arguably make such a victim eligible as a victim of an act of violence under s 19(8)(f) of the *VRSA*.

The Bill's amendments to the *MSA* and *VRSA*

13. The Bill has been drafted to make miscellaneous amendments to the *MSA*.
14. Some sections of the Bill make amendment to the new offences introduced into the *Crimes Act* and the *C(DPV)A*. For example:
 - a. The new offence of slavery, servitude and child forced labour under section 93AB of the *Crimes Act* is amended to clarify that the prohibited actions must occur in NSW.²⁵
 - b. The new offence of child forced marriage under section 93AC of the *Crimes Act* is amended to clarify that a person does not commit the offence if the person is a victim.²⁶
 - c. The *C(DPV)A* is amended to include the offence of forced marriage under the *Commonwealth Criminal Code* into the *C(DPV)A*'s definition of "personal violence offence" to ensure that adults as well as children have access to the protections of a domestic violence order or personal violence order²⁷. It also means that adult victims of a forced marriage may become eligible to access supports such as recognition payments as victims of an "act of violence" under the *VRSA*.
15. The Bill makes the following amendments to the *VRSA*:
 - 15.1 ensures the new meaning of an "act of modern slavery" is included in the *VRSA*'s definitions under section 18 of the *VRSA*²⁸;
 - 15.2 corrects the meaning of an "act of modern slavery" to clarify that a series of related acts constitutes a single act of modern slavery under new section 19A(6) of the *VRSA*²⁹;

²⁵ Schedule 1[31] in the Bill.

²⁶ Schedule 1[32] of the Bill.

²⁷ Schedule 1[33]-[37].

²⁸ Schedule 1[40].

²⁹ Schedule 1[41].

15.3 ensures the provisions listing those persons not eligible for support under the *VRSA*, such as motor vehicle accident victims and convicted inmates, extend to support in respect of acts of modern slavery under section 25 of the *VRSA*³⁰; and

15.4 ensures that an "act of modern slavery" is included wherever "act of violence" appears in sections 26 and 27 of the *VRSA*, which are the provisions that outline the composition of support available to primary victims, and the parents, step-parents and guardians of child primary victims³¹.

Potential issues with amendments to the *MSA* and *VRSA*

MSA drafted in reliance on an historical version of the VRSA

16. The first issue that arises in relation to the *MSA* and its impact on the *VRSA*, is that the *MSA* makes amendments to an older version of the *VRSA* that appears not to have been taken into account when drafting the amendment Bill.
17. For example, schedule 5.7[17]-[18] of the *MSA* attempts to include an offence of act of modern slavery as a "relevant offence" for the purpose of recovering victims support from offenders, under sections 58(a) and 58(c) of the *VRSA*. However, section 58 has been amended since the *MSA* was passed, and the proposed amendment to section 58 of the *VRSA* by the *MSA* no longer makes sense.
18. There may be other provisions of the *MSA* and *VRSA* affected by this issue of the updated *VRSA* but this is the only section we have identified.

Recommendation 1

Review proposed amendments to *VRSA* as they are based on an historical version of the *VRSA*.

Definition of "victim of crime" under the VRSA

19. The amendment of the definition of "victim of crime" under the *VRSA* means that:
 - a. only some forms of modern slavery are captured;

³⁰ Schedule 1[42].

³¹ Schedule 1[42].

- b. only those subject to slavery, servitude and forced labour occurring *in a supply chain* may access the victims of crime provisions under the *VRSA*.

20. Specifically,:

- a. A *"victim of crime"* under amended section 5(1) of the *VRSA* (once the *MSA* is proclaimed) will include *"a person who suffers harm as a direct result of an act committed, or apparently committed, by another person in the course of a criminal offence or in the course of conduct of a kind referred to in paragraph (b) of the definition of the definition of modern slavery in section 5(1) of the [MSA]"* (embolden text is how the section will be changed).
- b. The conduct referred to in section 5(1)(b) of the *MSA* is *"any conduct involving the use of any form of slavery, servitude or forced labour to exploit children or other persons taking place in the supply chains of government agencies or non-government agencies"*.
- c. This victim of crime definition is relevant for the following reasons.
 - i. It defines the type of victim to whom the Charter of Victims Rights attaches under Part 2 of the *VRSA*. This includes how a victim is treated; victim access to services and information about crime investigation, prosecution, trial processes; protection from contact with perpetrators; identity protection; assistance to make Victim Impact Statements; opportunity to make parole submissions; complaint rights and more. The Commissioner of Victims Rights also has functions and responsibilities to "victims of crime"³².
 - ii. It has the potential to affect who may access their own personal information as a victim of crime from a victims rights agency under section 112A of the *VRSA*. Such agencies include the amalgamated Department of Communities and Justice; the Department of Premier and Cabinet; the NSW Police Force; the Mental Health Review Tribunal; the Office of the Director of Public Prosecutions; and some local health district or statutory health corporations.

³² See section 10 of the *VRSA*.

- iii. It may affect the types of agencies whose reports the Commissioner of Victims Rights will accept as "documentary evidence", under section 39 of the *VRSA*.
- d. This new definition of "victim of crime" explicitly includes:
 - i. slavery³³;
 - ii. servitude³⁴; or
 - iii. forced labour³⁵.
- e. Excluded from this list are other forms of modern slavery captured by section 5(1)(a) of the *MSA*'s definition of modern slavery, namely the offences contained in Schedule 2 of the *MSA*.

These include other forms of slavery and slavery-like offences such as deceptive recruiting, debt bondage, forced marriage and trafficking.

Each of these types of conduct are defined distinctly and separately under the *Commonwealth Criminal Code*, so it does not necessarily follow that they fall within a broader notion of "slavery", "servitude" or "forced labour" (or, if they do, this is not clear from the drafting).

The limiting of the meaning of "an act of modern slavery" under the new s19A of the *VRSA* (as explored further below) further suggests an intentional restriction of the definition of "victim of crime".

- f. This "victim of crime" definition also requires the modern slavery conduct take place in the supply chain of a government or non-government agency which potentially excludes modern slavery conduct that cannot be identified as having occurred in a supply chain. This again may limit the people who may be considered a "victim of crime". The fact that there is no definition of "supply chain" under the *MSA* or the *VRSA* is problematic as it creates further uncertainty as to who is entitled to seek assistance under the victims support scheme.

³³ which has the same meaning as in section 270.1 of the Commonwealth Criminal Code.

³⁴ which has the same meaning as in section 270.4 of the Commonwealth Criminal Code.

³⁵ which has the same meaning as in section 270.6 of the Commonwealth Criminal Code

Meaning of "act of modern slavery"

21. The amended definition of "act of modern slavery" in the *VRSA* has the effect of limiting support to persons subjected to a form of slavery, servitude or child forced labour as defined in section 93AB of the *Crimes Act*. It does not include other forms of modern slavery conduct such as adult forced labour, deceptive recruiting, debt bondage, forced marriage and trafficking.

22. The *MSA* inserts new section 19A into the *VRSA*, as follows:

19A Meaning of "act of modern slavery"

(1) In this Act, ***act of modern slavery*** means an act or series of related acts, whether committed by one or more persons:

(a) that has apparently occurred in the course of commission of an offence or other conduct constituting modern slavery within the [*MSA*], and

(b) that has involved subjecting one or more persons to any form of slavery, servitude or forced labour of a child within the meaning of section 93AB of the [*Crimes Act*], and

(c) that has resulted in injury or death to one of those persons.

23. Section 93AB of the *Crimes Act* specifies that "slavery" and "servitude" have the same meaning as sections 270.1 and 270.4 respectively of the *Commonwealth Criminal Code*. It does not include other slavery definitions and offences such as deceptive recruiting, debt bondage, forced marriage and trafficking.

24. Accordingly, it is likely only those people subjected to slavery, servitude and child forced labour under section 93AB of the *Crimes Act* will be able to access victims support under the *VRSA*, effectively excluding any victim of an act of modern slavery falling outside this narrow definition.

Recommendation 2

Amend the definition of "victim of crime" and "act of modern slavery" in the *VRSA* to include all forms of modern slavery.

Victims of modern slavery ineligible for recognition payments

25. Amendments to the *VRSA* made by the *MSA*, extend some benefits of the victims support scheme to victims of modern slavery, namely approved counselling, financial

assistance for immediate needs and financial assistance for economic loss. However, those benefits do not include recognition payments.

26. Schedule 5.7[5] of the *MSA* extends the eligibility for support provisions for a primary victim of an act of modern slavery under section 23(1) of the *VRSA* so that "*a primary victim of an act of violence or an act of modern slavery is eligible for the support under the Scheme described in section 26*".
27. Schedule 1[42] of the Bill directs that an "*act of modern slavery*" should be inserted throughout section 26 wherever "*act of violence*" occurs. The amended provision is now to read (italics added):

26 Composition of support - primary victims

(1) The support under the Scheme for which a primary victim of an act of violence is eligible comprises the following:

- (a) approved counselling services with respect to that act of violence *or an act of modern slavery*,
- (b) financial assistance for immediate needs up to a maximum amount in total prescribed by the regulations to cover expenses for treatment or other measures that need to be taken urgently, as a direct result of that act of violence *or act of modern slavery*, to secure the victim's safety, health or well-being,
- (c) financial assistance of up to a maximum amount in total prescribed by the regulations for the economic loss suffered by the primary victim as a direct result of that act of violence *or act of modern slavery* of a kind described in the regulations,
- (d) if a recognition payment is payable under this Part³⁶ in respect of the act of violence *or act of modern slavery* - that recognition payment.

28. Therefore, under the new scheme, a victim of an "act of modern slavery"³⁷ is eligible for approved counselling, financial assistance for immediate needs and financial assistance for economic loss³⁸.

³⁶ See sections 34 to 37 of the *VSRA* for when recognition payments are payable.

³⁷ as defined in section 19A.

³⁸ noting that a parent, step-parent or guardian of a child primary victim of an act of modern slavery are also eligible for economic loss assistance under amended section 27.

29. A recognition payment is not payable under Part 4 of the *VRSA* because sections 34 - 37 of the *VRSA* have not been amended to allow recognition payments to be made to a victim of an act of modern slavery.

Recommendation 3

Amend the *VRSA* to ensure all victims-survivors of all forms of an act of modern slavery be able to access all forms of victims support, including recognition payments.

Issues with documentary evidence

30. There are different documentary evidence requirements for different aspects of victims support.
31. When making an application under the *VRSA* for immediate needs assistance, documentary evidence requirements include a medical report or report to police or report to agency (government or otherwise) that provides support to "victims of crime"³⁹.
32. When making an application under the *VRSA* for economic loss, documentary evidence requirements include a police report or report to agency (government or otherwise) that provides support to "victims of crime" as well as medical, counselling or dental report verifying injury as a result of the act of violence⁴⁰.
33. While we welcomed the amendment to the *VRSA* to expand the documentary evidence requirements from government agency to also include non-government agencies which took effect in 2019, it is still restrictive as "agency" is defined as: *"includes a non-government agency funded by the Commonwealth to provide support services to victims of crime"*⁴¹.
34. Further, given the narrow definition of "victim of crime" in relation to modern slavery (discussed above), the issue is whether such evidence can only be provided by agencies

³⁹ Section 39(2)(a) *Victims Rights and Support Act 2013 (NSW)*

⁴⁰ Section 39(2)(b) *Victims Rights and Support Act 2013 (NSW)*

⁴¹ Section 39(5) *Victims Rights and Support Act 2013 (NSW)*

that deal with slavery, servitude or forced labour that takes place in supply chains. The drafting is unclear and could have unintended consequences.⁴²

35. If the provision of evidence is restricted to such agencies, supporting evidence cannot be provided by other agencies (such as refuges, housing or homelessness services) who provide support services to victims but who are not established specifically to deal with conduct that occurs in supply chains or conduct relating to slavery, servitude or forced labour.
36. We recommend it generally be sufficient to establish an "act of violence" and injury occurring to the standard of proof of "reasonable likelihood".
37. We further recommend that the form of evidence not be prescribed. An amendment to s39 will address this.

Issues with documentary evidence - loss of earnings

38. Section 39(3) of the *VRSA* requires primary victims⁴³ of an act of modern slavery who make a claim for economic loss to provide full particulars of that loss.
39. In the case of actual loss of earnings (which is a likely claim for a victim of modern slavery making an application for slavery or servitude or forced labour), section 39(4) states that the application must include "*the name and address of the employer, the period of absence from work and a statement from the employer substantiating those particulars*".
40. In an application where the perpetrator of the slavery, servitude or forced labour was the victim's employer, a legislative requirement for providing this documentary evidence is likely to be problematic.

Recommendation 4

Amend the *VRSA* so that generally a person is able to establish an "act of violence" and injury occurred to the standard of proof of "reasonable likelihood". The form of evidence should not be prescribed. Similarly, form of evidence to prove act of modern

⁴² See Schedule 5.7[11] of the *MSA* which makes the documentary evidence requirements in regards to financial assistance the same for a victim of an act of modern slavery as for a victim of an act of violence under s39(2) of the *VRSA*.

⁴³ or a parent, step-parent or guardian of a child primary victim.

slavery should not be prescribed.

Recommendation 5

Amend the *VRSA* so that documentary evidence requirements for proof of economic loss are not prescribed.

Proving injury

41. There are 3 elements to the definition of an “act of modern slavery”. Section 19A(1) refers to the act or related acts:
 - a. *apparently occurred in the course of commission of an offence or other conduct constituting modern slavery within the [MSA], and*
 - b. *has involved subjecting one or more persons to any form of slavery, servitude or forced labour of a child within the meaning of section 93AB of the [Crimes Act], and*
 - c. *has resulted in injury or death to one of those persons.*
42. We submit that an act of modern slavery by its very nature results in an injury.
43. Similarly, we submit that sexual assault, including child sexual abuse, domestic violence and child abuse, by their very nature result in an injury.
44. We therefore recommend amending proposed s19A the *VSRA* to remove the requirement that victims of an “act of modern slavery” prove injury.
45. We further recommend amending s19 of the *VSRA* to remove the requirement that victims of an “act of violence” prove injury in cases of sexual assault, including child sexual abuse, domestic violence and child abuse, except when necessary to establish aggravating circumstances for a higher category of recognition payment, that is “serious bodily injury”, “offensive weapon”, “carried out by 2 or more persons”, “one of a series of related acts” or “grievous bodily harm”.

Recommendation 6

Amend the *VRSA* to remove the requirement to prove injury in cases of an “act of modern slavery”. The requirement to prove injury should also be removed in cases of an “act of violence” involving of sexual assault, child sexual abuse, domestic violence and

child abuse, except when necessary to establish aggravating circumstances for a higher recognition payment.

Timing for making an application

46. Section 40 of the *VRSA* prescribes the time periods in which victims of modern slavery are required to make applications for victims support.
47. We recommend victims of modern slavery should not be excluded from being able to apply for recognition payments.
48. We further recommend that there be no time limits for victims of modern slavery making an application for victims support, a position that we also advocate for victims of domestic violence, sexual assault and child abuse.⁴⁴
49. In the alternative, the same time limits that currently apply to victims of domestic violence, sexual assault and child abuse should apply to victims of modern slavery, noting that similar barriers to reporting such violence within a short period of time also apply to victims of modern slavery.
50. The proposed amendments to the *VRSA* provide that:
 - d. Modern slavery victims must make an application within 2 years after the act of modern slavery occurred;⁴⁵
 - e. Child victims are required to apply within 2 years after turning 18 years;⁴⁶
 - f. For victims of childhood sexual assault, there is no time limit to make an application for a recognition payment⁴⁷
 - g. For victims of domestic violence, child abuse or sexual assault, an application for a recognition payment must be made within 10 years⁴⁸.

⁴⁴ See Community Legal Centres NSW, *Submission to NSW Department of Justice Review of the Victims Rights and Support Act*, 29 July 2016, Recommendations 6 & 7.

⁴⁵ *VRSA*, s 40(1).

⁴⁶ *VRSA*, s 40(1).

⁴⁷ *VRSA*, s 40(7).

⁴⁸ *VRSA*, s 40(5).

Recommendation 7

Amend the VRSA to remove all time limits for financial assistance and recognition payments for an act of modern slavery as well as time limits for financial assistance and recognition payments relating to an act of violence involving sexual assault, child sexual abuse, domestic violence or child abuse.

Recommendation 8

In the alternative, but less preferred, the same time limits that currently apply to victims of domestic violence, sexual assault and child abuse should apply to victims of modern slavery.

Reasons for not approving or reducing victims support

51. As is the current situation with victims of crime, victims of modern slavery may be deterred from seeking benefits under the victims support scheme, because victims support may be subject to conditions such as assisting authorities with investigations, arrests or prosecutions.⁴⁹

Recommendation 9

Remove conditions attached to victims support that require assisting in the investigation of an act of modern slavery or act of violence.

Better off as victim of violence than victim of modern slavery?

52. In view of the limited definition of “victims of crime” and “acts of modern slavery”, and the fact that primary victims of modern slavery are ineligible for recognition payments, it may be that a victim is better off applying for victims support as a victim of an act of violence, where possible. This situation seems inconsistent with the purpose of the amendments.
53. It has already been described how forced marriage will become a personal violence offence and render a victim eligible as an act of violence. It may be of benefit to a victim of other forms of modern slavery to argue that the offending conduct they experienced somehow falls within a personal violence offence (such as assault), where

⁴⁹ Section 48(2)(d) of the VRSA has been extended to apply to victims of modern slavery.

possible, in order to access the full composition of support available, including recognition payments.

54. These are complex arguments and would be unnecessary in the event the legislation is drafted clearly and adopts a beneficial approach in line with the intention of the amendments which is to extend the benefits of the *VRSA* to all victims-survivors of modern slavery. This is particularly important given the victims support scheme is designed to operate without the assistance of lawyers.
55. These concerns also highlight lawyers can play an important role in assisting particularly vulnerable people to access support.

Recommendation 10

Provide victims of an act of modern slavery with access to funded legal assistance for their victims support claims. Similarly, provide victims of domestic violence, sexual assault, child sexual abuse and child abuse with access to funded legal assistance for their victims support claims.

No amendment to the VRS Regulation

56. The *VRS Regulation* appears untouched by the *MSA* or the *Bill*. It may be that the *VRS Regulation* needs reviewing to ensure the changes being made to the *VRSA* are given their full and intended effect.
57. For example:
 - a. the amounts of financial assistance payable to a victim under the *VRSA* are set out under Part 3 of the *VRS Regulation*, however, references remain throughout the *VRS Regulation* to victims of "an act of violence" but there is no inclusion yet of victims of "an act of modern slavery".
 - b. the *MSA* has amended the *VRSA* so that payments may be authorised for approved counselling services for victims of an act of modern slavery or relatives of such victims who have died (section 32) and yet no amendment has been made in the *VRS Regulation*.
 - c. under regulation 10(3)(b) of the *VSR Regulation*, where a victim cannot demonstrate loss of actual earnings the victim may be entitled to \$5,000 out of

pocket expenses. It is unclear whether this will apply to a victim of an act of modern slavery as there have been no amendments made to the *VRS Regulation*.

Recommendation 11

Review and amend the *Victims Rights and Support Regulation 2013 (NSW)*.

If you would like to discuss any aspect of this submission, please contact me or Liz Snell, Law Reform and Policy Coordinator on 02 8745 6900.

Yours faithfully,

Women's Legal Service NSW

Janet Loughman

Principal Solicitor