

**Submission
No 96**

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

Organisation: Domestic Violence NSW

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

Prepared by
Domestic Violence NSW

About Domestic Violence NSW

Domestic Violence NSW Inc (DVNSW) is the peak body for specialist domestic and family violence services in NSW. DVNSW provides a representative and advocacy function for specialist services and the women, families and communities they support.

DVNSW's mission is to eliminate domestic and family violence through leadership in policy, advocacy, partnerships and the promotion of best practice. We work with our members, state and federal government and communities to create a safer NSW for all.

DVNSW member services represent the diversity of specialist services working in NSW to support women, families and communities impacted by domestic and family violence including:

- Crisis and refuge services
- Transitional accommodation and community housing providers
- Family support services
- Neighbourhood centres and drop in centres
- Specialist homelessness service providers
- Men's behaviour change programs and networks
- Community organisations working with high risk communities
- Specialist women's legal support services
- Women and children's support services
- Safe at Home programs

DVNSW members are all non-government organisations, some entirely government funded, others supported through philanthropic donations or partnerships with industry or the corporate sector. Many of our members have multiple government and non-government funding streams.

DVNSW advocates for best practice, continuous system improvements and innovative policy responses to domestic and family violence including building workforce capacity and representation at all levels of government. We provide policy advice to multiple departments in the NSW Government on prevention and response. We work with communities and the media to increase awareness and represent the sector on a number of state and federal advisory bodies. We co-convene and provide a secretariat function for the NSW Women's Alliance with Rape and Domestic Violence Services Australia.

We acknowledge the work and practice wisdom of specialist women's services and domestic and family violence practitioners in the sector that underpin the recommendations in this submission. DVNSW thanks the specialist services that have developed best practice over decades of working with women and children and shared their expertise with us. We also pay tribute to those who have experienced domestic or family violence and to our advocates, colleagues and partners in government and non-government agencies.

For inquiries relating to this submission, please contact DVNSW on admin@dvnsw.org.au.

Joanne Yates
CEO, DVNSW
(02) 9698 9777, ceo@dvnsw.org.au,
PO Box 3311 Redfern NSW 2016, www.dvnsw.org.au

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Endorsement of submissions

DVNSW endorses the submission of **Anti-Slavery Australia**.

Domestic Violence NSW submission approach

DVNSW's area of expertise is in preventing and ending sexual, family and domestic violence. A core part of the work we do is campaigning and advocacy to improve laws and policies to prevent and end sexual, domestic and family violence. This submission outlines relevant issues related to the *Modern Slavery Act* (2018) with particular regard to the newly established offence of forced marriage and its intersection with sexual, domestic and family violence.

Recommendations

1. DVNSW broadly supports the NSW Modern Slavery Act 2018 and the Modern Slavery Amendment Bill 2019.
2. DVNSW recommends that more research and data is collected by Government agencies whose work relates to the modern slavery and forced marriage offences to monitor how the legislation is operating, and develop best practice and evidence informed policy in order to best support victim survivors.
3. DVNSW recommends that the Department of Communities and Justice (DOCJ), the NSW Police, and other Government agencies working with people experiencing modern slavery undertake training to understand the nuances and complexities of modern slavery and to develop cultural competency, and that there are properly funded systems in place to support victim survivors and the organisations who support them.
4. DVNSW commends and supports the position of an Anti-Slavery Commissioner in NSW.
5. DVNSW supports the amendment to include a provision on child forced marriage and recommends that the provision be consistent with Commonwealth provisions on child forced marriage.
6. DVNSW supports the amendments to the *Crimes (Domestic and Personal Violence) Act 2007* (NSW), and recommends expanding the parties that may apply for an Apprehended Violence Order (AVO), and the addition of potential AVO conditions to prohibit the defendant from facilitating travel of the victim and from applying, or using third parties to assist them to apply for another passport or travel document for the victim, without their consent.
7. DVNSW supports the proposed amendments to the *Victims Rights and Support Act 2013* and recommends that 'an act of modern slavery' is specifically included as an offence eligible for a recognition payment under the *Victims Rights and Support Act 2013*.

Sexual, domestic and family violence is gendered. In Australia, women are eight times more likely to experience sexual violence by a partner than men and nearly three times more likely to have experienced domestic and family violence than men.¹ Modern Slavery is used to describe a variety of offences such as human trafficking, slavery, servitude, forced labour, forced marriage, debt bondage and deceptive recruiting for labour or services, and these laws have existed at the Commonwealth level for a number of years.²

¹ The Australian Bureau of Statistics (2017), '4906.0- Key findings Personal Safety Survey, Australian Bureau of Statistics 2016 Personal Safety Survey. <http://www.abs.gov.au/ausstats/abs@.nsf/mf/4906.0>

² *Criminal Code Act 1995* (Cth)

Sexual, domestic and family violence will often form part of such offences, and intersects and compounds the experience of the victim survivor. In Australia these offences are conceptualised separately to sexual, domestic and family violence. DVNSW submits that the certain modern slavery offences, for example forced marriage, cannot logically be considered without reference to sexual, domestic or family violence and that modern slavery offences are in fact a form of gender based sexual, domestic and family violence. In the practical application of this legislation, we recommend that this intersection and interrelationship be recognised.

Data on slavery like offences including forced marriage is limited.³ Anti-Slavery Australia, the only specialist legal, policy and research centre which works to end human trafficking, slavery and slavery-like practices in Australia are currently assisting over 130 clients, and most of the cases referred to them by the Australian Federal Police originate in NSW. DVNSW recommends the NSW Government collect relevant data on modern slavery, and further research be conducted to better understand how to support victim survivors.

DVNSW recommends that marginalised groups such as Aboriginal and Torres Strait Islander communities, culturally and linguistically diverse people, sex workers, and LGBTIQ+ communities, in particular transgender people, who are disproportionately affected by sexual, domestic and family violence are supported. It is important to recognise that people experiencing violence may also experience other forms of oppression and discrimination. This should be taken into account as part of training, awareness raising and education strategies. This is particularly important for law enforcement and Government agencies working with these communities, which is why training on cultural competency and access to interpreting services for victim survivors is essential.

DVNSW strongly supports the position of an Anti-Slavery Commissioner in NSW. Their role to advocate, raise awareness and educate the wider community about slavery-like practices is critical and should lead to improved outcomes for victim survivors, and better support law enforcement and other organisations working to end this practice. Given the intersections between forced marriage and sexual, domestic and family violence, this role is extremely important in capacity building and raising awareness within the sexual, domestic and family violence sector to ensure that workers can recognise the indicators of slavery and support clients in a culturally safe way.

DVNSW supports the introduction of a NSW offence and amendment to s93AC of the *Crimes Act 1900* (NSW) to provide for an offence of child forced marriage. These amendments should ensure the NSW

³ Samantha Lyneham, Samantha Bricknell, 'When saying no is not an option: Forced marriage in Australia and New Zealand' (AIC Research Report 11, Australian Institute of Criminology, 2018)

offence aligns with the Commonwealth legislation. However, DVNSW supports the submission of Anti-Slavery Australia which calls for the newly amended legislation in the *Criminal Code Act 1995* (Cth) to ensure that marriage involving children under the age of 16 automatically becomes a forced marriage so that factors such as a coercion, threat or deception do not need to be proven.⁴ DVNSW recommends that the NSW definition for child forced marriage includes a similar provision.

DVNSW supports proposed amendments to the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) to recognise modern slavery. DVNSW particularly supports including forced marriage and child forced marriage in the definition of a personal violence offence, recognising that coercion, threats or deception used to force a family member into marriage are acts of domestic and family violence or intimidation. DVNSW also supports the mandatory application for an interim AVO when a person is charged with child forced marriage. DVNSW endorses the recommendation of Anti-Slavery Australia in its submission to expand the parties eligible to apply for an AVO in the case of forced marriage, as often the perpetrator may be the parent or guardian, and currently a child can only apply for an AVO through their guardian, through the police or through the Secretary of the DOCJ. Allowing other suitable parties such as carers or other family members, organisations or friends, to apply on the child's behalf, with appropriate leave from the court, could increase accessibility of AVOs for children at risk of forced marriage. DVNSW recommends the NSW Government collect data on child forced marriage, in order to ensure the relevant laws and policies work as intended and support victim survivors.

DVNSW also supports Anti-Slavery Australia's recommendation that section 35 of the *Crimes (Domestic and Personal Violence) Act 2007* be further amended to include a condition prohibiting the defendant from facilitating travel of the victim within or outside of Australia and from applying, or using third parties to assist them to apply for another passport or travel document for the victim, without their consent. The nature and dynamics of forced marriage mean that often the perpetrator is not one person but several people, sometimes family or family friends.

DVNSW recommends that modern slavery is recognised under the *Victims Rights Support Act (NSW) 2013*. Currently people who have experienced violence can generally access Victims Services' approved counselling services, financial assistance for immediate needs or economic loss and a recognition payment.⁵ However, 'modern slavery' is not yet referenced in the legislation. People who experience modern slavery may experience multiple acts of assault and different types of violence on a continuum. As such, it may be difficult to quantify a recognition payment that sufficiently addresses the gravity, severity and complex nature

⁴ *Combating Child Sexual Exploitation Legislation Amendment Act 2019* (Cth).

⁵ *Victims Rights Support Act 2013*, s 26 (1)(d)

of modern slavery. Despite this, DVNSW recommends that modern slavery be recognised as a Category B offence for the purpose of the recognition payment, as it often consists of a series of related acts.⁶ The compounded physical, psychological, emotional violence, and the coercive and clandestine nature of the abuse, as well as the extreme power dynamics of modern slavery would support modern slavery being categorised as such.

⁶ See here for the Category Payments

https://www.victimsservices.justice.nsw.gov.au/Pages/vss/vs_financial_support/vs_recognitionpayment.aspx