

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

**Organisation:** Australian Red Cross

**Date Received:** 4 October 2019

---

## Submission to the New South Wales Legislative Council's Standing Committee on Social Issues - Inquiry into the *Modern Slavery Act 2018* and associated matters

Australian Red Cross (Red Cross) refers to the Inquiry by the Legislative Council's Standing Committee on Social Issues, Parliament of New South Wales, into the Modern Slavery Act 2018 (*NSW Act*) and associated matters. We note that submissions are invited to respond to the Terms of Reference (ToR) for this inquiry. Australian Red Cross (Red Cross) welcomes the opportunity to comment on the Inquiry, and considers this Inquiry an important contribution to the ongoing dialogue on the context, policy settings and supports around modern slavery in New South Wales (NSW) and Australia.

In responding to the issues raised in the ToR, we have provided information and insights on the matters that relate directly to Red Cross experience and expertise, namely those related to efforts to identify and respond appropriately to individuals impacted by modern slavery. As such, our submission addresses ToR 1 (a), (c), (g) and (i).

### 1. INTRODUCTION AND RED CROSS ROLE

As a humanitarian organisation and part of the broader International Red Cross and Red Crescent Movement, Red Cross fulfils an important auxiliary role to the public authorities in the humanitarian field. In accordance with the Fundamental Principles of the Movement including humanity, and impartiality, a key priority of Red Cross is to assist people made vulnerable through the process of migration, including people who have been trafficked, or who are, or may be, forced into marriage.

Red Cross is active in the human trafficking and forced marriage sphere globally with different National Societies involved in a range of work that includes: primary prevention and awareness raising activities, facilitating regional dialogues and networks, delivering support programs and assisting people who have experienced trafficking and forced marriage, and undertaking advocacy through the principle of humanitarian diplomacy.

In Australia, Red Cross works to address broader systemic issues identified directly through our work in relation to modern slavery in our role as Auxiliary to Government and our membership of the National Roundtable on Human Trafficking and Slavery. Our submission is therefore based on Red Cross experience working to address the needs of the most vulnerable in Australia and globally, including our direct experience and knowledge addressing the impact of modern slavery in Australia on individuals – through the Australian Government's Support for Trafficked People Program (Support Program).

Red Cross, with its nationwide capacity to work with those made vulnerable by migration, has been delivering the Support Program in Australia since March 2009. Under the Support Program, Red Cross provides individual casework support to people referred by the Australian Federal Police (AFP), and works collaboratively with AFP along with other partner agencies, including program funder Department of Social Services (DSS), specialist support services and the community service sector. Red Cross delivers a service that is responsive and flexible to client needs, is guided by clients' voices, and

is based on a strength-based casework approach. Red Cross also uses this direct experience to contribute to and develop community service provider knowledge, skills and competence to work safely and ethically with trafficked people. This role provides us with unique insights into the experiences, needs and supports for those impacted by modern slavery.

## 2. PRELIMINARY COMMENTS

Modern slavery is a serious humanitarian issue, which impacts those living in Australia and requires a multi-pronged response. The *National Action Plan to Combat Human Trafficking and Slavery 2015–19* sets the current strategic framework for Australia’s whole-of-community response to human trafficking and forced marriage.<sup>1</sup> The framework recognises that “States and Territories have a range of responsibilities that intersect with the strategy to combat human trafficking and slavery”<sup>2</sup>, including, for example, child protection, victims of crime assistance schemes, workers’ compensation, and occupational health and safety.

In order to ensure the needs of people subjected to trafficking, slavery and slavery-like practices are met, Red Cross supports a holistic integrated response. As such Red Cross supports a focus on strengthening the connectedness of the Australian Government response with the states and territories and agrees that “[s]trengthening cooperation between State and Territory and the Australian governments, and between State and Territory and Australian government agencies, will ensure a joined up and holistic response to human trafficking and slavery.”<sup>3</sup>

Red Cross commends the NSW Government for their significant efforts to address modern slavery to-date. Indeed, with the introduction of the *NSW Act*, Red Cross recognises that NSW was the first jurisdiction in Australia to legislate against modern slavery and the second jurisdiction in the world to provide for an Anti-Slavery Commissioner. We consider the NSW scheme will play a significant role in addressing modern slavery in NSW, and also make an important contribution to addressing modern slavery in Australia and internationally.

It is Red Cross’s view that, due to a number of reasons, the *NSW Act* is an important complement to the Commonwealth Modern Slavery Act (2018) (*Cth Act*) which was passed by Federal Government at the end of 2018 and came into effect on 1 January 2019. There are a number of important provisions that feature only in the *NSW Act*, including support for victims of modern slavery and the role of an Anti-Slavery Commissioner.

**Red Cross recommends that the *NSW Act*, the *Draft Modern Slavery Regulations 2019 (MSA Regulations)* and *Modern Slavery Act Amendment Bill (MSA Amendment Bill)* are brought into effect following the outcome of this Inquiry.**

## 3. COMMENTS ON SPECIFIC ITEMS WITHIN THE TERMS OF REFERENCE

### ToR 1 (a) The operability of the proposed anti-slavery scheme

Red Cross commends the Government on the consultation draft of the *MSA Amendment Bill* with the relevant changes intended to better align *NSW Act* with both its original policy intent, its constitutionality and the ability of the *NSW Act* to operate and function effectively. We note the effect of the *MSA Regulations* is also to align the *NSW Act* mandatory reporting criteria with those in the *Cth Act* and we see this as being helpful for reporting entities.

<sup>1</sup> The National Action Plan was released by the Australian Government in 2014.

<sup>2</sup> National Action Plan (p. 2).

<sup>3</sup> National Action Plan (p. 2).

Having reviewed and considered each of the proposed amendments to the *NSW Act*, we concur with the effect of each and believe they address any potential concerns with respect to the operability of the anti-slavery scheme. It is our position that the *MSA Amendment Bill* ensures the operability of the proposed anti-slavery scheme by:

- Clarifying the role of the NSW Anti-Slavery Commissioner and allowing greater flexibility in the role and overseeing flexibility in reporting by businesses.
- Ensuring goods and services procured by government agencies are not the product of modern slavery.

We believe it would be further strengthened by:

- Allowing for voluntary Modern Slavery Risk statements for entities which fall outside the definitions and thresholds.

It is also important that the *MSA Amendment Bill*:

- Maintains the role of the NSW Anti-Slavery Commissioner to raise community awareness of modern slavery, with a clear advocacy and educative function.
- Maintains provisions for support for victims of acts of modern slavery.

### **ToR 1 (c) the intended application of the anti-slavery scheme with respect to charities and not-for-profit organisations, State Owned Corporations and local councils**

Red Cross appreciates that through consultation with industry groups, peak bodies and civil society organisations, the NSW Government has recognised a need to examine the regulatory impact and compliance costs of the reporting scheme on smaller businesses, charities and not-for-profits<sup>4</sup>. Red Cross participated in these consultations and in this submission shares our perspective as both a not-for-profit organisation with expertise in modern slavery and also a reporting entity under the *Cth Act*.

In May 2019, Red Cross provided feedback on the Commonwealth Government's [Modern Slavery Act 2018 Draft Guidance for Reporting Entities](#) which included comment in relation to the applicability of the *Cth Act* to charitable and not-for-profit organisations. Our feedback highlighted that, although Red Cross believes that all organisations should be responsible for meeting the obligations of the *Cth Act*, the guidance's reference to the capacity of reporting entities to invest in actions to drive change throughout their supply chains did not consider that the financial capacity of not-for-profit entities is more limited than for-profit entities. However not-for-profits entities may have both the expertise and the willingness to drive this change and to support other organisations, entities and institutions to do the same, and together work towards ending modern slavery. Indeed, often not-for-profit entities may also have more 'knowledge capacity' to drive this change than other corporate entities.

Therefore Red Cross recommended that consideration was given to implementing a system of financial support to assist not-for-profit organisations with limited financial capacity to meet the obligations placed on them through the reporting requirements. In addition, Red Cross recommended that a system of support for not-for-profit organisations with expertise in modern slavery is introduced to better allow them to work with entities without such expertise to understand modern slavery and/or share good practice and expertise through the development of tools and other mechanisms.

**Red Cross recommends that if indeed charities and not-for-profit organisations are required to adhere to the reporting requirements under the *NSW Act*, the NSW Government consider what**

<sup>4</sup> Draft Modern Slavery Regulation 2019, Explanatory Paper: Supply Chain Reporting Requirement for Business, NSW Government, Department of Premier and Cabinet ([accessed here](#) on 22 September)

additional support they could provide to help them meet these requirements successfully, whilst also support for-profit entities to do the same, where appropriate.

***ToR 1 (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***

Red Cross welcomed the recent introduction of the passing of Commonwealth legislation to address modern slavery and the introduction into federal law of the *Cth Act* on 1 January, 2019. As mentioned in our preliminary comments, Red Cross sees that the *NSW Act* is an important compliment to the *Cth Act*, as it extends the scope of legislative modern slavery and includes important provisions which are not present in the *Cth Act* in relation to support for victims of modern slavery and the appointment of a NSW Anti-Slavery Commissioner. Therefore Red Cross does not see that the passage of the *Cth Act* renders any of the *NSW Act* unnecessary. Red Cross sees that the *NSW Act* takes a holistic, person-centred approach to addressing modern slavery which engages civil society, business, government and the community and that the following provisions in the *NSW Act* are essential parts of this approach:

**Support for victims of acts of modern slavery**

In Red Cross's experience, we believe that additional efforts are required to protect, identify and support people impacted by modern slavery. In particular, more effort is required to raise awareness of the indicators of modern slavery, to support community stakeholders and front-line workers understand how individuals impacted may present, and to know how to respond appropriately when someone is identified. A key component of the *NSW Act* is the establishment of a helpline in NSW as a resource to support people who have experienced modern slavery, and also provide information, guidance and advice to community members. Red Cross sees that this would have a measurable positive impact on efforts to address modern slavery as well as increase the ability to identify those impacted by it and help them access support. Indeed, recent research<sup>5</sup> has found that currently, despite considerable effort by the Commonwealth Government and civil society organisation, only 1 in 5 people impacted by modern slavery in Australia are actually identified and therefore able to access support, evidencing a need to increase efforts in this space.

**NSW Anti-Slavery Commissioner**

Red Cross sees that the role of an appointed NSW Independent Anti-Slavery Commissioner, as allowed for in the *NSW Act*, is a vital function in a holistic legislative response to modern slavery. Of primary importance to Red Cross is the Commissioner's role in helping to identify and provide assistance and support for victims of modern slavery, advocate for and promote action to combat modern slavery including helping to raise community awareness of modern slavery.

Red Cross notes that a particular function of the Commission in the *NSW Act* is to "co-operate with or work jointly with government and non-government agencies and other bodies and persons to combat modern slavery and provide assistance and support to victims of modern slavery"<sup>6</sup>. An intention of the *MSA Amendment Bill* is also to clarify that government and non-government agencies that provide services to, or advocate for, victims of modern slavery in NSW must work in co-operation with the Anti-Slavery Commissioner in the exercise of their functions<sup>7</sup>. As a humanitarian organisation

<sup>5</sup> Estimating the dark figure of human trafficking and slavery victimisation in Australia', Australian Institute of Criminology (2019).

<sup>6</sup> New South Wales Modern Slavery Act (2018)

<sup>7</sup> Modern Slavery Amendment Bill (2019), page 2 – Schedule 1[7]

delivering services to people impacted by modern slavery in NSW and undertaking awareness raising activities through our broader work in response to modern slavery, Red Cross looks forward to working with the NSW Anti-Slavery Commissioner in the exercise of their function.

### ***ToR 1 (i) Any other related matters***

Red Cross notes the focus of the ToR for this Inquiry was primarily in relation to the impact of the *NSW Act* on business and its operability. However Red Cross encourages the Inquiry committee to also consider the capacity of the *NSW Act* has to support efforts to increase the identification of people impacted by modern slavery, referral to appropriate supports and to prevent further enslavement of people through coordinated efforts to increase the capacity of first responders and raise awareness of modern slavery in communities. Therefore Red Cross encourages the Inquiry to also consider the following matters:

#### **1) A COORDINATED MULTI-AGENCY RESPONSE**

Red Cross believes that more people who are impacted by modern slavery will be identified and able to receive support and protection if there is a coordinated, multi-agency NSW government response in implementing the *NSW Act*, which also works closely with civil society actors. Such a response would contribute to existing prevention efforts, and importantly, to improving outcomes for trafficked people.

A holistic, coordinated and integrated approach should be based on common principles and objectives and a strong protection framework that:

- is informed by meeting the humanitarian needs of trafficked people;
- is cross-jurisdictional and cross-sectoral – with protocols that clearly articulate roles and responsibilities, communication and referral pathways;
- ensures trained and skilled first responders and frontline services – this requires building the capacity of government and non-government agencies and service providers to recognise indicators of coercion and exploitation and provide potential victims with information on their options and entitlements and appropriate referrals (see point 2 below);
- includes a community awareness campaign – given the vital role the public plays in connecting trafficked people with services, and safety and prevention (see point 3 below);
- supports further research that enhances knowledge of the nature and extent of modern slavery in NSW and how to effectively meet the needs of trafficked people.

These principles are important in ensuring support services that are appropriate for the individual and whose staff understand how to work safely and ethically with trafficked people. Red Cross's experience is that trafficked people seek help and are identified through a range of referral pathways. For example, they may present to or be identified by state or federal police; child protection authorities; immigration officials, family violence services; culturally and linguistically diverse (CALD), migrant and asylum seeker support services; health practitioners; community legal centres; migration agents; family and friends; or if overseas, consulates and the Department of Foreign Affairs (DFAT). People who have been identified may then be supported with their immediate and ongoing needs and recovery by a range of government and non-government agencies and support services.

The numerous avenues through which trafficked people seek help and are identified and supported necessitates a cross-jurisdictional and state-wide multiagency approach that engages and involves all of these actors. This requires support services to be resourced and equipped to identify, respond and provide services to affected individuals, and an informed community.

**Red Cross recommends that, in implementing the *NSW Act*, the NSW Government develops and implements a strategy that provides a framework for inter-agency coordination with clear agency accountabilities and directs a State response in accordance with the Commonwealth response, and in conjunction with civil society actors.**

## **2) TRAINED AND SKILLED FIRST RESPONDERS**

First responders, in particular frontline services, play a critical role in identifying people who have been trafficked, ensuring their protection from further harm, providing them with information on their options and linking them with appropriate services. The first responder may be the first person to tell someone that they are a victim of a crime and are entitled to assistance (regardless of their immigration or other status). First responders must therefore have the training and skills to identify potential victims and articulate appropriate support services. It is also imperative first responders understand victim perspectives and why someone might not report or disclose their situation to authorities.

Red Cross acknowledges and supports the steps that have so far been taken by Federal and NSW agencies to train and build the capacity of relevant government and non-government agencies and service providers to recognise indicators of coercion and exploitation, and provide a safe and ethical first response, including specific efforts with the NSW Police. However Red Cross's experience consistently highlights that frontline workers often lack confidence in identification, initial assessment and immediate needs assessment. Ongoing investment in training and capacity building of first responders has a clear impact on identification of cases and ensuring people's needs are met.

There are a number of reasons why a person may not be willing or able to come forward or report their situation, such as: fear of reprisals from exploiters against themselves and their family members; fear of not being able to continue to work; fear of immigration consequences, including being deported; mistrust of authorities based on experience in their home countries or perceptions or experiences during their time in Australia; physical or sexual harassment or abuse by their employer; and the opportunity and environment to report.

To improve identification rates in NSW and ensure increased protection and support for people who have been affected by modern slavery, training should target government and non-government agencies and frontline services, in urban and regional areas, that may come into contact with trafficked people. Based on Red Cross and sector experience, this includes: NSW Police; Child Protection authorities (FACS); family violence services; NSW Health, hospital staff, including social workers; asylum seeker and migrant resource centres; Community Legal Centres and migration agents.

**Red Cross recommends the NSW government, through the implementation of the *NSW Act*, continues efforts to train and build the capacity of first responders.**

## **3) TARGETED COMMUNITY AWARENESS CAMPAIGN**

Red Cross's experience has seen the vital role the public plays in preventing exploitation from occurring and connecting trafficked people with services. People who are in situations of serious exploitation and who are inhibited or unable to approach anyone in a position of authority often seek help from friends, neighbours, employees or customers at their workplace, or specifically in relation to forced marriage, school counsellors or teachers, prior to seeking help from support services or government agencies. These friends and neighbours have then supported them to reach out to the police, immigration officials or specialist support services and NGOs.

A number of these help-seeking strategies are consistent with research undertaken by the Australian Institute of Criminology (AIC)<sup>8</sup>. They found that women survivors often seek help in the first instance from the people with whom they are closest, including family, friends, neighbours and colleagues, who then supported these individuals to contact domestic violence services, NGOs, police and government agencies.

Therefore Red Cross sees that with the implementation of the *NSW Act*, the NSW Government is well placed to implement targeted communication campaigns aimed at raising awareness of modern slavery. To be effective, the information must be accessible and appropriate for the target audience. For example, information needs to be in plain English and disseminated through media or networks that are readily accessed by the relevant cohort or local community. Such programs and campaigns need to be adequately resourced and have the capacity to conduct comprehensive promotion or dissemination through community engagement. Some of the key stakeholders Red Cross has identified that need to be more specifically targeted in NSW include:

- employers and migrant workers in the following high-risk sectors: building and trades; hospitality, cleaning and retail; agriculture, horticulture, food production, nurseries and fresh food supply chain; textiles and garment sector; domestic work;
- migrant resource centres and migrant employment services;
- newly arrived migrant and refugee workers and their communities, international students, and newly arrived migrants entering on spouse and partner visas and their communities;
- schools and youth organisations.

**Red Cross recommends that the NSW Government allocates resources within their implementation plan for the *NSW Act* for a community awareness campaign to be rolled out across the State targeting community members to help them identify exploitation and know where to go for help.**

#### 4. CONCLUDING COMMENTS AND CONTACT DETAILS

At a time when other Parliaments around the world are looking at strengthening their modern slavery legislation or introducing strong, full human rights compliance beyond slavery, Red Cross sees that the Inquiry committee has an opportunity to continue progress made in NSW to take meaningful action on this important humanitarian issue which impacts some of the world's most vulnerable people.

For further information, please contact:

**Kyla Raby**

**Australian Red Cross – Migration Support Programs**

**Lead – Trafficking, Forced Labour and Forced Marriage**

**Tel:** | **Email:** |

<sup>8</sup> See: Richards, K & Lyneham, S 2014, 'Help-seeking strategies of victim/survivors of human trafficking involving partner migration', *Trends & Issues in Crime and Criminal Justice*, no. 468.