

**Submission  
No 2**

## **INQUIRY INTO REVIEW OF THE MODERN SLAVERY ACT 2018**

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**PROJECT  
PARADIGM**  
WORKING TO END CHILD EXPLOITATION

**Project Paradigm welcomes the opportunity to provide a submission reviewing the New South Wales *Modern Slavery Act 2018* (NSW)**

**Terms of reference:**

- (a) is to review and determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing the objectives.

Modern slavery is an umbrella term that refers to a range of serious exploitative practices (**National Action Plan**) for all forms of slavery, human trafficking and exploitation and takes many forms. It is a hidden crime with victims often unable to come forward due to fear or shame, or because they are unable to leave their situation due to the power and control methods utilised by the perpetrator. The prevalence of the different types of modern slavery across Australia varies by region and may change over time. Reporting is partial and quantifying the number of victims is challenging.

At present the *Modern Slavery Act 2018* (NSW) encompasses any offence described in Schedule 2 or an offence of attempting, or of incitement, to commit an offence described in Schedule 2. Currently there is no offence of child sexual exploitation listed under Schedule 2. *The Crimes Act 1900* outlines the production of child abuse material (91G) and the using children to produce child abuse material (91G) (3). *The Commonwealth Criminal Code* only describes the offence of trafficking and domestic trafficking in children. Under the modern slavery offence (C) conduct engaged in elsewhere

Project Paradigm are concerned about the omission of child sexual exploitation (CSE) as a specific type of modern slavery within its definition/s, noting that it is imperative that to be effective, the Act must recognise that child sexual exploitation falls within a wider continuum of exploitation, violence, and abuse concurrent with how the UN views modern slavery.

One of the stated key objectives of the *Modern Slavery Act 2018* (NSW) is to provide for detection and exposure of modern slavery that may have occurred or be occurring or that is likely to occur. Over the course of the past 2 years, Project Paradigm has been working closely with agencies across New South Wales, both government and non-government, providing training, practice guidance and support. Project Paradigm are acutely aware of many incidents of face to face, child sexual exploitation offences occurring across various community settings.

As evidenced by a recent ABC News media report outlining a serious incident of child sexual exploitation (inappropriately described as child prostitution) occurring recently within New South Wales.

### *MEDIA REPORT*

*ABC, SEPTEMBER 22, 2023*

*The Supreme Court has given New South Wales Police extraordinary powers to recover and relocate an at-risk teenager by flying her to a safe house in Sydney.*

*The 16-year-old, who has been in state care from a young age, became caught in a world of drug addiction and child prostitution, sparking court proceedings aimed at removing her from the "extreme" risk of harm.*

*In August, the department commenced recovery proceedings in the Supreme Court in an urgent bid to find the 16-year-old and fly her on a chartered plane to Sydney, away from being at risk of harm*

(Wakatama, 2023)

Our concern is that whilst child sexual exploitation remains uncharacterised under Schedule 2, statutory agencies, support services and invested authorities will fail to prevent, disrupt, and respond to children and young people effectively, minimising the existence of CSE or framing incidents as 'extreme cases' and outside of the expected norm.

In the USA, child sexual exploitation is recognised under human trafficking legislation as "sex trafficking of children," (U.S Advisory Council on Human Trafficking, 2022).

The US Department of Justice defines Human Trafficking as:

"Human Trafficking, also known as trafficking in persons, is a crime that involves compelling or coercing a person to provide labor or services, or to engage in commercial sex acts. The coercion can be subtle or overt, physical or psychological. Exploitation of a minor for commercial sex is human trafficking, regardless of whether any forms of force, fraud or coercion was used," (US Department of Justice, 2022).

The US Department of Justice notes that anyone can be trafficked, but in the case of children, those in the welfare system, juvenile justice system, who have run away or are homeless, who are unaccompanied or do not have lawful immigration status in the United States are more likely to be targeted as are members of marginalized communities (2022).

Originally prohibited under the 13<sup>th</sup> Amendment to the U.S Constitution which barred slavery and involuntary servitude in 1865, since 2000, Congress has passed 9 associated bills (US Department of Justice, 2022a). Prior to this, attempts to respond to human trafficking fell under several federal statutes related to involuntary servitude and slavery but these were "narrow and patchwork," (US Department of Justice, 2022a).

The United Kingdom's Modern Slavery legislation clearly articulates that modern slavery includes sexual exploitation, criminal exploitation, and forced labour and domestic servitude and furthermore, children (those aged under 18 years) are considered victims of trafficking whether or not they have been coerced, deceived, or paid to secure their compliance. This echoes the USA definition.

**Article 4(a) of the Council of Europe Convention on Action against Trafficking in Human Beings (the Convention) defines 'human trafficking' as:**

"The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery, or practices similar to slavery, servitude, or the removal of organs." Exploitation includes prostitution or other forms of sexual exploitation.

The Global Slavery Index provided by Walk Free, which provides a global understanding of the scale modern slavery across the globe. This data set is often utilised by various agencies across Australia to promote their respective work particularly in response to addressing supply chains. The report connected to the Index clearly identifies human trafficking and sexual exploitation of children and young people despite its omission across all pieces of Australian Modern Slavery legislation.

### **What is Child Sexual Exploitation?**

#### **The United Nations says...**

*Child sexual exploitation is the abuse of a child where some form of remuneration is involved whereby the perpetrators benefit – monetarily, socially, politically, etc. Exploitation constitutes a form of coercion and violence, detrimental to the child's physical and mental health, development, and education.*

Offenders are deceptive and manipulative, targeting children and young people in furtive ways, ensnaring, isolating, and controlling away from families and support networks, without people to look out for them or recognise the signs that they are being exploited. It is common for young victims to be entrapped in circumstances that if viewed within an adult context would be considered sexual servitude or debt bondage. Both of which fit within the Modern Slavery Act (Cth).

The Act (Cth) outlines modern slavery as conduct which would constitute:

- (a) an offence under Division 270 or 271 of the *Criminal Code*; or
- (b) an offence under either of those Divisions if the conduct took place in Australia; or
- (c) trafficking in persons, as defined in Article 3 of the Protocol to Prevent, Suppress and punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, done at New York on 15 November 2000 ([2005] ATS 27);
- (d) or the worst forms of child labour, as defined in Article 3 of the ILO Convention (No. 182) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, done at Geneva on 17 June 1999 ([2007] ATS 38).

Extrapolating on the United Nations Human Rights Instruments, the preamble states that Parties to this Protocol declare effective action against trafficking. Exploitation is clearly captured within the definitions listed under subsection c, Article 3 terms which states.

(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in subparagraph (a) of this article.

(d) "Child" shall mean any person under eighteen years of age.

Within **Australia's international engagement strategy on human trafficking and modern slavery: delivering in partnership** report, it clearly articulates that the crimes of trafficking and slavery are not only viewed as criminal offences but as human rights violations and highlights the crucial role that Governments play in combatting modern slavery in their own jurisdictions, as lawmakers, regulators and through law enforcement.

### Recommendations:

Australia does not currently have a consistent national definition of CSE making it difficult for practitioners and agencies to identify, monitor and respond effectively (Royal Commission into Institutional Responses to Child Sexual Abuse, 2017). Much of the discourse and language relating to CSE within a social policy and law enforcement context, focuses on online grooming or child exploitation material (CEM) (CDPP, 2019), both of which, while important issues, distract from CSE that takes place in a face-to-face context in the community (Townson, 2019).

Whilst Project Paradigm wishes to see a nationally consistent definition of CSE as it pertains to community contexts, it would be progressive in a national context, and congruent with intention if the *Modern Slavery Act 2018* (NSW) amended its Schedule 2 to reflect child sexual exploitation under the definition and descriptions of child trafficking and a clear reference made to CSE.

A lack of consistent definition also allows for victim blaming, labelling discourses around child sexual exploitation and vulnerable young people to perpetuate. Adopting a clear definition ensures that moving forwards, public discourses around this issue is shaped in a trauma informed way, adopting a children’s rights approach, and encourages a collective, community response. This aligns to the “Working together for real freedom”, NSW Anti-slavery Commissioner’s Strategic Plan (2023), Changing the narrative priority.

Furthermore, disruption should be considered as critical, meaningful action on modern slavery, and underneath the “building prevention capacity” priority. Disruption tools equip frontline workers with effective methods to prevent victimisation and aligns with the recent released findings from the Attorney General’s Department Targeted Review of Modern Slavery Offences in Divisions 270 and 271 of the Criminal Code Act 1995 (Cth). The review identified areas for possible legislative change to strengthen offences in line with international good practice and emerging forms of modern slavery.

Such updates would be timely, noting Australia’s laws have not been significantly amended since 2013, during which time domestic and international understanding of modern slavery has evolved, as have the practices adopted to address this. The review highlights the importance of a victim and survivor-centred, trauma-informed and harm minimisation approach, that prioritises protection of victims and survivors and focuses on their recovery through referral to appropriate support services, a position echoed in the NSW Anti-slavery Commissioner’s Strategic Plan (2023-2026). Convictions are considered just one of several possible successful outcomes from an investigation, and law enforcement may instead seek to prevent or disrupt offending in the interests of the victim and survivor. It’s important to note that this document provides no clear protocol or guidance as to what this disruption may in fact look like.

Within Australia, only one state has explicit guidelines identifying the appropriate assessment, prevention, and response for child sexual exploitation, namely Victoria. The manual identifies the five elements of effective practice in response to child sexual exploitation, listing prevention, detection, disruption, intervention and recovery and reconnection.

Project Paradigm would like to see New South Wales establish legislated mechanisms that enable law enforcement and allied frontline staff to disrupt the sexual and criminal exploitation of children and young people, break the cycle of abuse and send a signal to perpetrators about the consequences of their actions.

The concept of a ‘best practice’ approach to disruption within the context of CSE, posits that people who exploit children sexually may also be committing other crimes, such as drug trafficking, and may also be involved in harbouring children who have gone missing. By establishing legislative opportunities to target specific risks ranging from warning notices to offence charges to persons of interest, police and statutory agencies can disrupt patterns of behaviour associated directly or indirectly with sexual exploitation. However, police rightly rely on statutory child protection entities and individuals - CSOs, ACCOs and others to provide relevant,

accurate and timely information (Department of Health and Human Services, 2017, p.19).

Project Paradigm does not consider that it is always appropriate to leave the protection of vulnerable children and young people to the criminal justice process alone, a sentiment echoed by the Victorian Child Protection manual which states reliance on criminal prosecutions for alleged offenders is often insufficient in the fight against child sexual exploitation. Disruption should be considered as a whole of community approach to eradicating child sexual exploitation and legislating disruption ensures that statutory agencies utilise every available resource. Across Victoria, police have alternative avenues to remove persons of interest from a child's circle of influence, disrupting exploitation. To undertake this effectively, police and law enforcement agencies need accurate and timely information from a range of sources including Child Protection services, schools, carers, family members. There are established SOCIT (Sex offences child investigation team) investigators placed as primary police contacts regarding offences of child exploitation. Their role is to vet information before a child is asked to attend the police station for a formal interview.

In the Victorian child protection program, the sexual exploitation information template (SEIT) is the mechanism for SOCIT investigators to receive information about child protection clients at risk of sexual exploitation. A tiered systems exists with regards to identify the severity of risk of exploitation and strategies to protect the child.

Victorian Police also undertake active monitoring of children assessed at high risk of sexual exploitation and use sexual exploitation link charts to provide a visual overview of networks between children and person/s of interest.

Legal options for Child Protection and police to consider mitigating the risk of sexual exploitation include:

- Serving the person of interest with a ss. 495 and 497 CYFA 2005 'harbouring notice' or 'loitering letter'. The harbouring notice is served on persons of interest who are 'harbouring' or concealing a child or counselling or inducing a child to be absent from placement. The loitering letter is for persons of interest entering, lurking, or loitering where a child is placed.
- Applying for a family violence or personal safety IVO on behalf of the child against the person of interest. The Family Violence (Protection) Act 2008 has a broad definition of family members that can be considered when applying that legislation.

Victorian police acknowledge that people who exploit children sexually may also be committing other crimes such as drug trafficking and harbouring children who have gone missing. By applying 'lower order' offences to persons of interest, police can disrupt patterns of behaviour associated directly or indirectly with sexual exploitation. This can include breaches of an intervention order (IVO), drug possession or dangerous driving offences (Department of Health and Human Services, 2017).

The guidelines provide a list of additional disruption activities which include:

- Police visiting persons of interest at their homes to search (via a warrant) for the missing child.
- police reminding persons of interest of the age of consent or other laws (an active IVO has been obtained against them)
- actively pursuing known drug trafficking or other illegal activity by the person of interest
- generally ensuring the person of interest knows they are being watched closely.

The lack of discourse around CSE within Australia means there is a sole focus on judiciary processes to deter, prevent and disrupt efforts. The United Kingdom has an exhaustive list of disruption techniques aside from those listed above, identifying potential alternative legal channels and options that work to disrupt CSE with a focus on the specific needs of the young person. These could form part of a suite of establish legislated mechanisms embodied within the Act (NSW) to disrupt CSE.

A problem profile is a police intelligence product that provides a greater understanding of established and emerging crime or incident series, priority locations, or other identified high-risk issues. Problem profiling is not a new mechanism, with criminal profiling and intelligence gathering key to many Australian criminal investigations. With the onset of artificial intelligence, high risk offenders can be mapped with more ease and problem area mapping can identify community hotspots and assist in resource deployment.

A problem profile should be reflective of the particular types of child exploitation that are taking place in a local area. Where these are overlapping – for example if the same venues are being used for sexual exploitation and criminal exploitation, or the same victims are being exposed to multiple harm types – a problem profile can help professionals to identify these links. Problem profiles specific to particular harms can ensure that the most appropriate disruption tactics are put in place and victims are supported appropriately.

The following key information will be useful in all problem profiles:

- Numbers of children and young people that have been exploited.
- The adults, children and young people who are suspected to be involved in the exploitation of children and young people – including those who might be exploited themselves.
- The profile of suspected offenders, such as their ethnicity, age etc.
- information on locations of concern, such as businesses, public parks, hotels, house parties and schools
- Information on local organised crime groups, networks, other groups, and individuals who present a risk to children and young people.
- Recommendations to mitigate risks, safeguard the vulnerable and drive the operational response.

Including disruption within the Modern Slavery Act (NSW) ensures that New South Wales are responding to child sexual exploitation in the context of modern slavery



with a suite of innovative pieces of legislation, aligned with international standards, guidelines, and good practice.

In Australia, there is a broad lack of understanding across jurisdictions regarding domestic trafficking offences. At present the Australian Federal Police are undertaking an educational campaign to bring State and Territory Police up to speed on identifying and reporting incidences of human trafficking. It is imperative when discussing CSE there is broad acknowledgement that the recruitment, movement or harbouring of a child or young person from a place of safety to a place for the purposes of being exploited constitutes an offence of human trafficking.

As previously stated, the lack of characterisation of CSE under the Modern Slavery Act (Cth and NSW) contributes to this issue.

Lastly, Project Paradigm supports the formation of locally informed multiagency stakeholder group and regional/district review boards. Legislated multi-agency collaborations will ensure accountability, and collective, unified responses, offering a unique opportunity for effectively tackling the escalating complex problem of CSE across New South Wales. Innovative approaches are necessary to navigate the inherent barriers faced when aligning agency and departmental agendas, policies, and procedures, to find commonality and forge true partnerships based on reciprocity. It should be noted that what is proposed is the assurance of a system level mechanism for sector collaboration and reporting but not so prescriptive as to impede place-based responses and integrated partnerships to naturally occur.

The United Kingdom (Sharp-Jeffs et al, 2017) has been proactively addressing CSE identification, prevention and disruption utilising multi-agency frameworks of practice for several years. Research and peer reviewed literature (Pajon & Walsh, 2022) demonstrates its benefits.

Multi-agency arrangements are responsible for responding to all forms of child exploitation at the point of identification, assessment, planning and decision-making in response to notifications and referrals. Such arrangements focus on protecting, supporting, and caring for children and young people at risk or harmed by exploitation, as well as preventing exploitation through awareness-raising and disruption. This approach enables stakeholders to contribute through their specific role whilst incorporating local strategic and operational responses.

A recent study from the UK examined the effectiveness of multi-agency collaboration and human trafficking investigations. The study reviewed police collaborations in England and Wales, noting various upsides to these approaches, including (Sharp-Jeffs et al, 2017):

- Opportunities for intelligence sharing, thereby increasing the quality and usefulness of data.
- Better mapping of the problem.
- Improved decision-making.
- Joint problem-solving approaches.
- Each agency bringing different forms of expertise.
- The ability to access young people in different contexts.

- Development of a protective community network.

Formalised agreements are necessary for effective, cross disciplinary information sharing and law enforcement plays a central figure in ensuring that coordinated, specialist services receive and share appropriate information to tailor approaches to meet the needs of the child or young person at risk. Like domestic and family violence, information shared between specialist support services helps to develop shared perspectives and approaches to protecting children and young people.

When considering the efficacy of multiagency collaboration, accessibility to police services and key personnel is a significant issue that requires a formal resolution. Whilst national '1300' numbers offer the general public quick connection to emergency services for non-life-threatening, non-urgent scenarios, and from a policing context, the ability to vet and monitor phone calls and emails, access to key specialist groups has become increasingly impossible without a pre-existing relationship or personal contact. Legislated working groups with mandated protocols relating to designated law enforcement and statutory child protection agency attendance would ensure that relevant agencies and key personnel have direct access to specialist staff in a timely manner.

With this in mind, on a small scale, several agencies from government and not for profit domains working across the Queensland Sunshine Coast region established a working group in 2017 focused on the issue of CSE. Since its formation the working group has successfully supported many young people at risk of or impacted by CSE (see case study below). The fundamental role of the group is two-fold:

- to support a coordinated collaborative approach to intervention and disruption of CSE perpetrator behaviour identified on the Sunshine Coast; and
- to help support and protect vulnerable young people at risk of harm due to CSE.

In the absence of a formally mandated protocol, the group, operates according to an agreed term of reference, which outlines referral processes, agreed upon meeting content and information sharing parameters. It is very much intended to be a collaborative forum for interagency assessment, safety planning and intervention.

When responding to trafficking crimes, multi-agency cooperation can also help protect victims. Research has found that multi-agency teams help to better assess the psychological, social, emotional, and economic needs of victims and tailor responses accordingly (Pajon and Walsh, 2022). Police services involved in multi-agency collaborations are also more likely to provide support to victims during an investigation (Farrell, et al, 2013).

In closing, this review presents a unique opportunity for New South Wales to position itself at the forefront of human rights efforts, ensuring the protection and promotion of the rights of the child, by guaranteeing a comprehensive and robust legislative

framework that eliminates all forms of child sexual exploitation, abuse, and violence, both online and offline.

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