

**Submission  
No 13**

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

**Organisation:** Anti-Slavery Australia

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# Submission to the Parliament of NSW Review of the Modern Slavery Act 2018

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MODERN SLAVERY COMMITTEE INQUIRY

12 October 2023

## Anti-Slavery Australia

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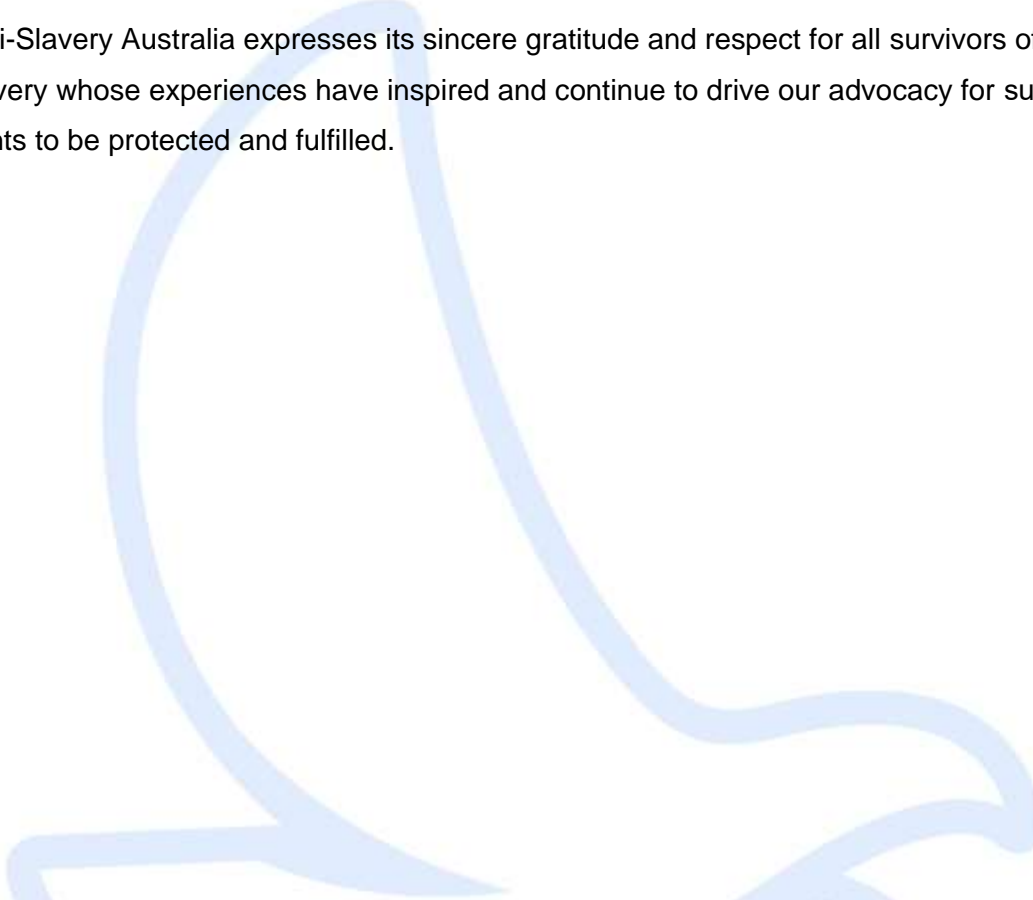
## Table of Contents

<b>TABLE OF CONTENTS .....</b>	<b>1</b>
<b>ACKNOWLEDGMENTS .....</b>	<b>2</b>
<b>1. EXECUTIVE SUMMARY .....</b>	<b>3</b>
<b>2. ABOUT ANTI-SLAVERY AUSTRALIA .....</b>	<b>3</b>
<b>3. ACCESS TO JUSTICE AND THE IMPORTANCE OF INDEPENDENT LEGAL ADVICE .....</b>	<b>5</b>
<b>4. THE NEED FOR BETTER ACCESS TO COMPREHENSIVE SOCIAL AND PSYCHO-SOCIAL SUPPORTS INCLUDING IMPROVED MENTAL HEALTH SERVICES TO SURVIVORS.....</b>	<b>6</b>
<b>5. THE NSW VICTIMS SUPPORT ACT – RECOMMENDATIONS .....</b>	<b>7</b>
<b>6. OTHER BARRIERS TO JUSTICE FOR SURVIVORS OF MODERN SLAVERY .....</b>	<b>8</b>
<b>JURISDICTION .....</b>	<b>8</b>
<b>POWERS OF INQUIRY .....</b>	<b>8</b>
<b>EVIDENTIARY REQUIREMENTS.....</b>	<b>8</b>
<b>TIME LIMITS .....</b>	<b>8</b>
<b>PROCEDURAL FAIRNESS.....</b>	<b>9</b>
<b>CONCLUSION .....</b>	<b>9</b>

## Acknowledgments

Anti-Slavery Australia acknowledges the traditional Owners of Country and the Holders of Knowledge for this place, the Gadigal people of the Eora Nation, upon whose lands and waters we work, and extend our respect to their Elders both past, present and emerging.

Anti-Slavery Australia expresses its sincere gratitude and respect for all survivors of modern slavery whose experiences have inspired and continue to drive our advocacy for survivors' rights to be protected and fulfilled.



This submission draws upon Anti-Slavery Australia's research and advocacy as well as our extensive experience in working with and providing legal advice and assistance to victims and survivors of modern slavery in Australia since 2003.

## 1. Executive Summary

Anti-Slavery Australia, at the University of Technology Sydney, welcomes the opportunity to make a submission to the NSW Parliament statutory Review of the Modern Slavery Act 2018.

This submission draws upon Anti-Slavery Australia's research and advocacy as well as our extensive experience in working with and providing access to legal advice and assistance to victims and survivors of modern slavery in Australia since 2003.

This submission will address:

The importance of access to justice, including services and supports for survivors or those at risk of modern slavery in NSW and particularly noting:

- The Terms of Reference for the Review of the *Modern Slavery Act 2018*
- Access to justice and the importance of independent legal advice
- The need for better access to comprehensive social and psycho-social supports including mental health services to survivors
- The NSW *Victims Rights and Support Act 2013* No 37

## 2. About Anti-Slavery Australia

Anti-Slavery Australia is the only specialist legal, research and policy university centre in Australia working to end modern slavery. For 20 years, our team has been providing access to pro bono legal and migration services to people who have experienced or are at-risk of modern slavery; engaging in research and advocacy grounded in the firsthand experience of survivors; and delivering training on modern slavery to frontline service providers, government, community, law enforcement, business, students and educators.

Anti-Slavery Australia runs Australian's national forced marriage portal, and the [My Blue Sky](#) website and service that provides specialist support for people in or at risk of forced marriage through access to confidential legal advice. [Speak Now](#) is our forced marriage prevention project, which has delivered a leading program of awareness raising, training and research over the past three years.

Anti-Slavery Australia convenes the National Partnership Against Modern Slavery and co-convenes with the Australian Red Cross the Forced Marriage Network and the NSW Trafficking Response Network.

Current research priorities include research into survivor engagement:

[Beyond Storytelling: Towards survivor-informed responses to modern slavery](#)

[Justice for All: Establishing a National Compensation Scheme for Survivors of Modern Slavery](#) and

[Seeking Freedom](#): a project with the objective of better protecting, respecting and fulfilling the rights of children in the context of modern slavery.

### **3. The Terms of Reference for the Review of the Modern Slavery Act 2018 (the Act)**

Anti-Slavery Australia has a long involvement in advocating for and supporting the *Modern Slavery Act 2018*, and continues to strongly support the objects of the Act (section 3).

The Act provides for the appointment of an Anti-Slavery Commissioner (the Commissioner) and the establishment of a Parliamentary Modern Slavery Committee (Part 2).

The Act requires the Commissioner to consult with the Auditor-General and the NSW Procurement Board to monitor due diligence measures ‘to ensure that goods and services procured by government agencies are not the product of modern slavery’ (Section 25).

The Act further mandates that State owned corporations must comply with the Commonwealth *Modern Slavery Act 2018* and lodge modern slavery statements with the Commonwealth. The Act introduces specific offences related to child forced marriage and online exploitation of children into the NSW *Crimes Act 1900* and incorporates offences from the Commonwealth *Criminal Code Act 1995* into the NSW *Modern Slavery Act 2018*.

In relation to the terms of reference to this inquiry, Anti-Slavery Australia considers the terms of the Act are largely appropriate for meeting the objectives. We also note that the Act has been in effect for a relatively short time, coming into effect on 1 January 2022. Dr James Cockayne was appointed to the role of Commissioner on 1 August 2022 and is early in the term of his appointment. The Commissioner has recently published his strategic plan (section 11) and established an expert Advisory Panel as well as undertaking other initiatives.

## Access to justice and the importance of independent legal advice

Anti-Slavery Australia provides access to independent and confidential legal advice to victim survivors of modern slavery, on a pro bono basis. Through our research and practice we know that survivors of trafficking and slavery face multiple layers of disadvantage and marginalisation, which often intersect. They may have experienced violence, degrading and inhumane treatment, gender-based violence and exploitation in multiple sectors including agriculture, hospitality, cleaning and in the home, and they often experience barriers to accessing justice. Additionally, they may be fearful of authority and fear retribution from the perpetrators of harm. Linguistic, cultural and geographic isolation can amplify the vulnerability of people who have already often been victimised. The immigration framework has also been a barrier for some survivors in seeking justice, particularly for those on temporary visas.

Meaningful access to free legal representation ensures that survivors have the opportunity to describe their experiences in way that is confidential and protected by law, and receive independent legal advice to allow them to regain their personal autonomy and control of their lives. Access to justice is an essential component of a fair and effective criminal justice system. It also ensures that survivors' rights are protected and fulfilled, and that their needs are centred.

When entering into a lawyer-client relationship, information provided by clients is protected from disclosure by legal professional privilege unless they consent to the disclosure. This is recognised in both statute and the common law as a fundamental principle of legal practice. It is particularly important for survivors of forms of abuse, and in our engagement with clients, Anti-Slavery Australia makes clear from the first conversation we have with survivors that their privacy and their instructions are central to the way that we provide services. This is critical as it allows us to build a lawyer-client relationship based on trust and rapport, and is also key in ensuring that we take a trauma-informed approach to working with our clients. We know that in many of the crime types contemplated by modern slavery legislation, a person's autonomy and privacy may have been breached in the most egregious ways. Ensuring that our legal advice is underpinned by a respect for confidentiality and driven by our client's instructions recognises the importance of restoring a sense of control and autonomy to survivors. It also allows us to provide frank legal advice, independent of government and law enforcement.



In light of this, and noting that section 14 the Act does not empower the Anti-Slavery Commissioner to require the production by lawyers of confidential solicitor-client information or matters which are subject to legal professional privilege, we recommend the repeal of this section. We note further that the anti-slavery sector is characterised by collaboration and partnership as evidenced by the model of collaboration that has developed between the Australian government and key stakeholders across multiple sectors.

### **The need for better access to comprehensive social and psycho-social supports including improved mental health services to survivors**

A key objective of the *Modern Slavery Act* is to provide assistance and support for victims of modern slavery. Anti-Slavery Australia is currently assisting over 400 survivors, many of whom are in NSW. While some survivors of modern slavery have the benefit of the Australian Government Support for Trafficked People Program (STPP), others do not qualify for the STPP and the supports and services provided through the program. Many survivors struggle to access services that would enable them to address the consequences of experiencing a modern slavery offence. Adverse impacts are in areas including health, particularly mental health, economic disadvantage, loss of education and the possibility of decent work. When these consequences intersect with gender-based violence or discrimination the level of disadvantage is heightened.

Anti-Slavery Australia recommends that assistance and support for survivors could be leveraged from existing services to provide assistance to survivors of modern slavery who are currently ineligible to access services.

Services that are urgently needed include:

- access to free, confidential, and culturally sensitive psychological services for survivors regardless of their visa status or eligibility for Medicare
- access to public transport in NSW. Survivors have told us that they find it difficult to access services because of the high cost of transport. Travel fares for survivors of modern slavery and trafficking could be reduced by allowing access to the Transport Concession Entitlement Card and Gold Opal card in a similar way that people seeking asylum are able to access this concession (<https://transportnsw.info/tickets-opal/ticket-eligibility-concessions/asylum-seeker>)



- Access to hospital treatment for those without Medicare. Survivors on temporary visas not on the STPP could be provided with increased eligibility for health treatment in a similar way that survivors of domestic violence are able to access emergency care (see <https://dcj.nsw.gov.au/news-and-media/media-releases-archive/easier-hospital-access-for-domestic-violence-victims.html>)

## The NSW Victims Support Act 2013 – recommendations

The *Modern Slavery Act 2018* makes provision for the payment of “recognition payments” under the *Victims Rights and Support Act 2013 (NSW)* to some victims of acts of modern slavery.

In 2022, Anti-Slavery Australia participated in the statutory review of the *Victims Rights and Support Act 2013 (NSW)* by making a submission to the review. In that submission we focused on amendments to that Act made by the *Modern Slavery Act 2018 (NSW)* and made recommendations aimed at improving victim-survivors' access to support in NSW. We restate those recommendations here.

In our submission we highlighted the need to clarify and amend the then-current definition of 'act of modern slavery' in the legislation. The existing requirement that the 'act of modern slavery' must involve subjecting one or more persons to any form of slavery, servitude, or forced labour of a child, as defined in section 93AB of the *Crimes Act 1900 (NSW)*, presented a significant limitation on eligibility. Notably, this requirement excludes several critical forms of modern slavery, such as forced marriage, trafficking in persons, domestic trafficking in persons, trafficking in children, deceptive recruiting for labour or services, debt bondage, organ trafficking and domestic organ trafficking. Anti-Slavery Australia recommends amending section 19A of the *Victims Rights and Support Act 2013 (NSW)* to replace "and" with "or" between sections 19A(1)(a) and 19A(1)(b).

Furthermore, Anti-Slavery Australia recommends that the definition of "victim of crime" in section 5(1) of the *Victims Rights and Support Act 2013 (NSW)* explicitly reference sections 5(1)(a) and 5(1)(b) of the *Modern Slavery Act 2018 (NSW)*.

## Other barriers to justice for survivors of modern slavery

### Jurisdiction

The cross-jurisdictional nature of many modern slavery and human trafficking offences presents a potential barrier to victim-survivors accessing support under the NSW scheme. Anti-Slavery Australia recommended that the scheme specify that ‘acts of modern slavery’, in situations where the act commenced in NSW or occurred in part in NSW, be included in the scheme. This could be facilitated by amending section 19A(1) to read “act of modern slavery means an act, *part of an act* or series of related acts including planning of an act or series of related acts committed in, *or partly within*, New South Wales”.

### Powers of Inquiry

Section 12 of the *Victims Rights and Support Act 2013* (NSW) sets out the powers of the Commissioner of Victims Rights to compel or request information relevant to the exercise of functions under that Act. Ensuring that the Commissioner of Victims Rights is able to directly seek information held by the Commonwealth to support applications in relation to acts of modern slavery or acts of violence in NSW removes an additional barrier from victim-survivors. Anti-Slavery Australia recommends the specific inclusion of Commonwealth departments, agencies and law enforcement (including the Australian Federal Police and the Commonwealth Director of Public Prosecutions) in section 3 as government agencies or authorities from whom the Commissioner of Victims Rights may seek information.

### Evidentiary Requirements

In our submission to the Inquiry, Anti-Slavery Australia acknowledged the advocacy of Women’s Legal Service NSW (WLS) concerning the additional evidentiary burden faced by victim-survivors to demonstrate injury. Anti-Slavery Australia drew on the WLS submission and submitted that the requirement to demonstrate harm from the relevant act constituted an unnecessary barrier to seeking justice for victim-survivors, and we support their recommendation to remove this requirement.

### Time Limits

Section 40(1) of the Act established that applications for financial support or recognition payments must be made within two years following the relevant act of modern slavery. Section 40(5) required applications for financial support or recognition payments related to acts involving domestic violence, child abuse, or sexual assault to be made within ten years of the relevant act. Anti-Slavery Australia emphasised that there were numerous reasons

victim-survivors of modern slavery might have been unable to seek assistance within these timeframes, including trauma, health conditions, isolation, language or cultural barriers, lack of knowledge of available remedies, and mistrust of authorities. To address this, Anti-Slavery Australia recommends introducing an exception to the limitation period for claims by victim-survivors of modern slavery and acts of violence.

### **Procedural Fairness**

Anti-Slavery Australia further recommended strengthening procedural fairness safeguards within the Act to facilitate better access to justice for victim-survivors. Anti-Slavery Australia endorsed the proposal by Women's Legal Service NSW to presume an extension of time for survivors to provide further evidence. Additionally, Anti-Slavery Australia proposed amending section 42 of the *Victims Rights and Support Act 2013* (NSW) to include a procedural fairness mechanism whereby applicants were formally invited to provide further evidence or comments when the Victims Services Commissioner considered dismissing an application.

### **Conclusion**

The *Modern Slavery Act 2018* (NSW) is a leading statute. Anti-Slavery Australia was a key proponent for the making of the Act, and continues to value the objects of the Act and support its implementation.



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