

# The Modern Slavery Act & Victims Support

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## Factsheet



This fact sheet summarises the Ask LOIS webinar on this topic presented on 19 September 2019 by Rebecca Dominguez, Lawyer, Baker McKenzie  
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### This factsheet will cover the following:

- [What is the Modern Slavery Act \(NSW\)?](#)
- [Current status of Act: Committee Inquiry](#)
- [Amendment Bill](#)
- [Potential impact on victims support legislation](#)

### Modern Slavery Act (NSW)

Uncommenced NSW legislation which, amongst other provisions:

- establishes an Anti-Slavery Commissioner, a joint parliamentary modern slavery committee and modern slavery hotline;
- requires mandatory reporting and statements about modern slavery risks occurring in the operations and supply chains of government agencies and large organisations, and actions to address those risks;
- introduces a ‘modern slavery risk order’ prohibiting a person convicted of a modern slavery offence to engage in certain conduct;
- introduces new NSW offences of slavery, servitude and child forced labour, child forced marriage and child abuse materials (into the Crimes Act 1900 (NSW));
- amends the AVO framework to ensure the orders are available for forced marriage (under the Crimes (Domestic and Personal Violence) Act 2007 (NSW));
- extends the victims support scheme to victims of modern slavery (under the Victims Rights and Support Act 2013 (NSW)).

### Definition of modern slavery

Section 5(1)(a) of the Act defines “modern slavery” as: any conduct constituting a modern slavery offence (Schedule 2), including:

- sexual servitude offences (NSW Crimes Act)
- child abuse material offences (NSW Crimes Act)
- slavery and slavery-like offences (NSW Crimes Act and Cth Crim Code)

- trading in human tissue (Human Tissue Act) forced labour and deceptive recruiting offences (Cth Crim Code)
- forced marriage offences (NSW Crimes Act and Cth Crim Code)
- debt bondage offences (Cth Crim Code)
- human trafficking offences (Cth Crim Code)

Section 5(1)(b) extends the definition to *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.*

### Modern Slavery Act (Cth)

There is also a Commonwealth level *Modern Slavery Act*. The *Modern Slavery Act 2018* (Cth) commenced on 1 January 2019, and is primarily concerned with reporting requirements of certain entities and actions to address risks

	NSW Act	Cth Act
<b>Reporting threshold</b>	> \$50M total annual turnover	>\$100M total annual consolidated revenue
<b>Penalties</b>	\$1.1M for false, misleading, failure to report	X
<b>Application</b>	All operations and supply chains anywhere	All operations and supply chains anywhere
<b>Commissioner</b>	√	X

### Current Status of the NSW Act

The timeline of the NSW Act is as follows:

8 March 2018	Private Members Bill introduced
June 2018	Bill passed without a proclamation date
December 2018	NSW Interim Anti-Slavery Commissioner appointed
6 August 2019	Referred to Legislative Council Standing Committee
4 October 2018	Submissions to Inquiry close
14 February 2020	Inquiry's final report due

The Legislative Council Standing Committee on Social Issues will inquire into and report on:

- The NSW Act
- The amendment Bill
- The draft Regulation

It will have regard to the submission of the Department of Premier and Cabinet.

The terms of reference of the Inquiry include

- the operability of the anti-slavery scheme and its effect on business, including supply chain reporting;
- the application of the scheme to charities and NFPs and others;
- the appropriateness and enforceability of Modern Slavery Risk Orders;
- risk of a possible constitutional challenge due to inconsistencies with federal laws;
- whether a NSW Act is necessary in light of the passing of Cth legislation;
- unintended consequences of drafting issues;
- any other related matter.

## The Amendment Bill: key amendments relevant to assisting victims

### Modern slavery risk orders

Proposed to be repealed – existing risk management regimes to be used rather than creating unique new regime (e.g. serious crime prevention orders, high risk offender orders, child protection offenders registration, apprehended violence orders).

### NGO Cooperation

Drafting of MSA amended so that rather than being required to cooperate with *each other*, government and non-government agencies will be obliged to cooperate with *the Commissioner* in providing services to, or advocating for, victims of modern slavery

### Charity and NFP impact

Clarification that charities and NFPs only required to provide statement where they supply goods or services for profit, have employees in NSW and meet the turnover threshold (over \$50m) [profit derived from supplying goods or services, i.e. not income derived from charitable donations]

### Commissioner a mandatory reporter

Clarifies that the Commissioner must report to Dept of Communities and Justice or NSW Police where information obtained by the Commissioner in the course of their functions gives them reasonable grounds to suspect a child or young person is at risk of significant harm.

### Victim access to AVOs

- expands provisions to ensure that adult victims of a forced marriage can access AVOs if there is coercion or threat to enter a forced marriage (previously only applicable to child victims under the MSA as drafted), and
- mandates interim AVOs where a perpetrator is charged with a forced marriage offence (child or adult) under the Cth Act (previously only applicable to a charge of the new child forced marriage offence introduced to the NSW Crimes Act by the MSA)
- allows the Secretary for the Department of Communities and Justice to apply for an AVO on behalf of a child being subjected to coercion to enter into a forced marriage

### Child forced marriage

Clarifies that where both partners to a forced marriage are victims (e.g. both are children who have been coerced into marriage), neither is guilty of an offence

### Victims Support legislation

Ensures all relevant provisions of the NSW victims support legislation are extended to victims of acts of modern slavery

### High Risk Offender Orders

Ensures these orders can be made where a High Risk Offender is in custody in relation to an offence of a sexual nature relating to sexual servitude.

## Potential Impact on Victims Support Legislation

The NSW Act (MSA) extends the financial support and counselling currently available to victims of “an act of violence” under the *Victims Rights and Support Act 2013* (NSW) (VRSA) to victims of “an act of modern slavery”

Object of the Victims Support Scheme under amended section 17: “*provision of support for victims of an act of violence and acts of modern slavery*”

The Amendment Bill makes further additions to the proposed victims support provisions, ensuring “act of modern slavery” is correctly referenced throughout the VRSA.

The draft Regulations make provision for the preparation and publication of modern slavery statements and include no amendments to the VRSA.

There may still be outstanding matters regarding the VRSA that can be clarified through the submission process.

## Relevant provisions of the VRSA

### Definitions

A “**victim of crime**” (s 5(1) of VRSA) will now 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 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 or non-government agencies.**

Note, the above definition explicitly includes slavery, servitude or forced labour to exploit children or other persons (potentially excludes other forms of modern slavery as captured by virtue of section 5(1)(a) of the MSA’s definition of modern slavery, such as forced marriage and human trafficking).

Note, it appears that the conduct must be taking place in a supply chain of government or non-government agencies

(potentially excludes other modern slavery conduct that cannot be identified as having occurred in a supply chain).

A person **suffers harm** [s 5(2) of VRSA] if, as a result of such an act:

- the person suffers actual physical bodily harm or psychological or psychiatric harm, or
- the person’s property is deliberately taken, damaged or destroyed.

Adds new definition of “**act of modern slavery**” into section 19A of the VRSA:

- (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 of other conduct constituting modern slavery within the meaning of the *Modern Slavery Act 2018*, 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 1900*, and
  - c) That has resulted in injury or death to one of those persons.

Note: limits an act of modern slavery to one that occurred in the course of an offence or conduct constituting modern slavery under either s 5(1)(a) or s 5(1)(b) *that involves subjecting one or more persons to any form of slavery, servitude or child forced labour within new section 93AB of the NSW Crimes Act*. So again, potentially excludes other forms of modern slavery not captured by s 93AB, such as child forced marriage and human trafficking.

**Injury** means actual bodily harm, grievous bodily harm or psychological or psychiatric harm (but does not include injury arising from loss or damage to property) (s 18 of VRSA).

Same definition of “**related acts**” [s 19(4) of VRSA] and that a series of related acts constitutes a single act of modern slavery, where committed:

- against the same person; and
- at approximately the same time; or
- over a period of time by the same person or group of persons; or
- for any other reason the VR Commissioner opines they are related to each other.

Extends meaning of “**primary victim**” to primary victim of an act of modern slavery [s 20 of VRSA].

Primary victims of modern slavery are ineligible for recognition payments and may access the following support only (ss 26 and 27 of VRSA):

- approved counselling;
- financial assistance for immediate needs (up to \$5,000);
- financial assistance for economic loss (up to \$30,000) (parents, step-parents or guarans of a child primary victim are also eligible for economic loss assistance, up to \$30,000).

The same exclusions apply to primary victim support [s 25 of VRSA], where:

- already paid compensation;
- if the act of modern slavery occurred while imprisoned as a convicted inmate (unless special circumstances);
- payment arises for loss from any insurance or agreement or arrangement under any other Act or law;
- regulations make provision [none relevant at this stage].

Applications, in the current approved form, [s 38 of VRSA] may be made by:

- the victim; or
- a parent, step-parent or guardian of a child primary victim; or
- any other person, on behalf of a victim, who has a genuine interest in the welfare of that victim.

#### Documentary evidence: [s 39 of VRSA]

**Immediate needs:** documentary evidence (e.g. medical or police report, or report by an agency that provides support to victims of crime [now including modern slavery]) sufficient to support claim on the balance of probability.

#### Economic loss:

- police report or report by a government agency or any other agency that provides support services to victims of crime [now including modern slavery] sufficient to support claim on the balance of probability,
- a medical, dental or counselling report verifying the injury; and

- full particulars of economic loss.
- “Agency” includes non-government agency funded by the Commonwealth to provide support services to victims of crime [now including modern slavery]

#### Timing: [s 40 of VRSA]

- within 2 years after the relevant act of modern slavery occurred;
- where the victim was a child when the act of modern slavery occurred, within 2 years after the day the child turns 18;
- claims can continue to be made under an application up to 5 years after the application is lodged, or the maximum amount of financial assistance is reached, whichever occurs first.

#### Determinations: [s 43 of VRSA]

- determined by Victims Rights Commissioner;
- can approve, dismiss, or defer (to carry out inquiries and investigations);
- written notice and reasons to be given.

#### Reasons for not approving or reducing assistance, [s 44 of VRSA] include:

- contributing behaviour,
- offence participation,
- not providing reasonable assistance to investigation, arrest or prosecution,
- not taking reasonable steps to mitigate injury,
- such matters as the VR Commissioner considers relevant.

Note, new section 44(3A) of VRSA: in determining the above reasons for not approving or reducing assistance, “*in the case of an act of modern slavery, the Commissioner must have regard to the nature of the relationship between the victim and the person/s by whom the act of modern slavery is alleged to have been committed.*”

However, also note applicability of section 48(2)(d) of VRSA, where approval of victims support is subject to the victim of an act of modern slavery providing “*reasonable assistance to any person or body engaged in the official investigation of the act of modern slavery.*”

**Presumably the same review process [Division 7 of VRSA] as for victims of an act of violence:**

- apply to Commissioner for internal review within 90 days after applicant given notice of the decision;
- in writing, fully stating grounds of the application;
- application to be notified in writing of outcome of review and reasons within 42 days after application for internal review is lodged.

**Same recovery provisions [Part 5 of VRSA] as for victims of an act of violence:**

- enables financial support paid to be recovered from persons found guilty of the crimes giving rise to the payments.
- enables orders to be made restraining persons from disposing of property to avoid paying restitution.

**How to best help clients?**

1. **Know** what modern slavery is
2. **Be Aware** of support they can access
3. **Consider** what supporting material may help