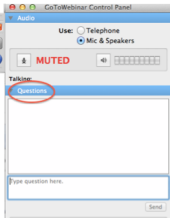


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# Welcome

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The screenshot shows the GoToWebinar Control Panel. At the top, it says 'Audio' and 'Use: Telephone (selected) or Mic & Speakers'. Below that, a status bar indicates 'MUTED' with a speaker icon and a volume slider. A red arrow points from the text 'Use your control panel to ask questions by typing in the question box.' to the 'Questions' tab, which is highlighted with a red circle. The 'Questions' tab is currently selected, and the main area is empty. At the bottom, there is a text input field labeled 'Type question here.' and a 'Send' button.

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## Content

- 1 What is the Modern Slavery Act (NSW)?
- 2 Current status of Act: Committee Inquiry
- 3 Amendment Bill: key amendments relevant to assisting victims
- 4 Potential impact on victims support legislation
- 5 Submissions to the Inquiry

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## 1

### What is the Modern Slavery Act (NSW)?

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## Modern Slavery Act (NSW)

### What is it?

- (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)).

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## Modern Slavery Act (NSW)

### Definition of modern slavery under the Act

- [s 5(1)(a)] 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)
- [s 5(1)(b)] 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 (NSW)

### NSW and Commonwealth legislation

- *Modern Slavery Act 2018* (Cth) commenced on 1 January 2019, primarily concerned with reporting requirements of certain entities and actions to address risks

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

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Current status of Act: Committee Inquiry

### Current status of Act: Committee Inquiry




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### Current status of Act

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



- 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.

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**Amendment Bill: key amendments relevant to assisting victims**

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**Amendment Bill: key amendments relevant to assisting victims**

<b>Modern slavery risk orders</b>	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)
<b>NGO cooperation</b>	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 <i>Commissioner</i> in providing services to, or advocating for, victims of modern slavery
<b>Charity and NFP impact</b>	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, ie. not income derived from charitable donations]]
<b>Commissioner a mandatory reporter</b>	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

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**Amendment Bill: key amendments relevant to assisting victims**

Continued....	
<b>Victim access to AVOs</b>	<ul style="list-style-type: none"> <li>- 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</li> <li>- mandates interim AVOs where a perpetrator is charged with a forced marriage offence (child or adult) under the CHA (previously only applicable to a charge of the new child forced marriage offence introduced to the NSW Crimes Act by the MSA)</li> <li>- 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</li> </ul>
<b>Child forced marriage</b>	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
<b>Victims Support legislation</b>	ensures all relevant provisions of the NSW victims support legislation are extended to victims of acts of modern slavery
<b>High Risk Offender Orders</b>	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

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Potential impact on victims support legislation

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### 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.



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

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### Potential impact on victims support legislation

- 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.

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### Potential impact on victims support legislation

- Adds **new definition** of "act of modern slavery" in to section 19A of the VRSA:

#### 19A Meaning of "act of modern slavery"

(1) In this Act, *act of modern slavery* means an act or series of related acts, whether committed by one or more persons:

- that has apparently occurred in the course of commission of an offence or other conduct constituting modern slavery within the meaning of the *Modern Slavery Act 2018*, and
- 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
- 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]

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### Potential impact on victims support legislation

- **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 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).

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### Potential impact on victims support legislation

- Same **exclusions** on 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.

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### Potential impact on victims support legislation

- **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]

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### Potential impact on victims support legislation

- **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.

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### Potential impact on victims support legislation

- **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, 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"*

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### Potential impact on victims support legislation

- 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.

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### Potential impact on victims support legislation

- How to assist clients affected by modern slavery to access victims support?



know what modern slavery is



be aware of support they can access



consider what supporting material may help

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### Submissions to the Inquiry

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### Submissions to the Inquiry



seeking submissions – individual or organisation



consider Terms of Reference: includes "any other related matter"



<https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=2546>



submissions due by 4 Oct 2019



report due back from Committee by 14 Feb 2020

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## Submissions to the Inquiry

- Department of Premier and Cabinet (in which the NSW Interim Anti-Slavery Commissioner sits), has made a submission to the Inquiry, which the Committee will be considering
- The DPC submission provides background to the history of the Act and context for the proposed amendments
- Lodging a submission requires:
  - identifying yourself as an individual or organisation and providing contact details;
  - selecting an option:
    - a. making your submission and name public;
    - b. making the submission public but withholding your name;
    - c. keeping part of the submission confidential;
    - d. keeping the entire submission confidential.
  - either attaching your submission and attachments, or composing your submission in the text box provided online.

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## Submissions to the Inquiry

- Further information on making submissions to a Committee Inquiry available:
  - <https://www.parliament.nsw.gov.au/committees/pages/engaging-with-committees.aspx>
  - <https://www.parliament.nsw.gov.au/committees/Documents/Making%20a%20submission%20to%20a%20parliamentary%20committee%20inquiry%20-%20PDF%20File.pdf>
  - <https://www.parliament.nsw.gov.au/committees/Documents/Factsheet%20-%20Making%20a%20submission.pdf>

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## Questions

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## Our next Ask LOIS webinar...

Broadcast on 17 October 2019.

To register, go to our website at [www.asklois.org.au](http://www.asklois.org.au)



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## Training for community workers

Sexual, Domestic and Family Violence and the Law – 25  
September 2019

Women and Family Law – 26 September 2019



Go to our website for more information  
[www.wlsw.org.au/training-for-community-workers/](http://www.wlsw.org.au/training-for-community-workers/)



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