



BE SLAVERY FREE

SUBMITTED JOINTLY BY THE FOLLOWING ORGANISATIONS



Anti-Slavery Commissioner Joint Submission

The signatories of this submission into the Modern Slavery Amendment (Australian Anti-Slavery Commissioner) Bill 2023 (Cth) (Amendment Bill) are a collective of civil society, labour unions and academics from across the spectrum of Australian civic life. As a group we have deep roots in advocating for urgent, informed and targeted action on modern slavery. We appreciate the opportunity to provide input into the scope of the proposed Anti-Slavery Commissioner's position and role description.

In the process of preparing this submission, there was significant consultation undertaken. This included a survey of civil society entities to identify the key issues to be addressed in this submission, conversations with key stakeholders and a briefing webinar. This process resourced people to develop their own submissions as well as significantly shaping this submission.¹

An Anti-Slavery Commissioner (Commissioner) is important in improving the efficacy of the Modern Slavery Act 2018 (Cth) and the protection of victim-survivors. It has been recommended by four previous Inquiries and by the Modern Slavery Act Review (Cth 2023) (the Review)². An empowered and adequately resourced Commissioner will play a key role in positioning Australia as a global leader, helping to fulfil Australia's international human rights obligations including the United Nations Guiding Principles (UNGPs): the government's duty to **protect** human rights in the context of business operations, corporate Australia's responsibility to **respect** human rights through due diligence processes and provide **remedy** for victim-survivors.

The role of the Commissioner will be essential to the delivery of key elements of the Review. The Review captured both the momentum and energy behind the Modern Slavery Act 2018(Cth) (the Act) and outlined key challenges. The implementation of 30 recommendations presented in the Review could position the Act as a globally leading piece of legislation in the fight against modern slavery within the supply chains of reporting entities.

¹ While the recommendations in this submission are limited to the Amendment Bill, we commit to working with the Government to inform the full implementation of the recommendations of the Modern Slavery ACT Review (CTH 2023). We look forward to working with the Minister on the outstanding commitments including a publication of an annual list of countries, regions, industries and products at high risk of modern slavery, penalties for non-compliance with the Act and banning the importation into Australia of goods or services produced with forced labour, child labour or prison labour.

² Parliament of the Commonwealth of Australia (December 2017) *Hidden in Plain Sight: An inquiry into establishing a Modern Slavery Act in Australia. Recommendations 1 and 6.*

https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Foreign_Affairs_Defence_and_Trade/ModernSlavery/Final_report Parliament of Australia (18 July 2017) *An inquiry into human trafficking, slavery and slavery-like practices. Recommendation 9.*

https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Law_Enforcement/Humantrafficking45/~/_media/Committees/le_ctte/Humantrafficking45/report.pdf

Parliament of Australia (2018) *Modern Slavery Bill 2018 (Provisions) Recommendation 3.*

https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/ModernSlavery

Parliament of Australia (2020) *Customs Amendment (Banning Goods Produced by Uyghur Forced Labour Bill 2020. Recommendation 12.*

https://www.aph.gov.au/Parliamentary_Business/Bills_LEgislation/Bills_Search_Results/Result?bld=s1284

Review of Australia's Modern Slavery Act 2018. <https://consultations.ag.gov.au/crime/modern-slavery-act-review/>

The respective relationships with the Australian Federal Police (AFP) and the Modern Slavery Business Engagement Unit (MSBEU), will be key to the Commissioner's ability to successfully implement the recommendations of the Review and the operation of the Act. The 'establishment of an independent, high-profile specialist Commissioner'³ will play an important role in driving public interest and engagement with the Act. Once established, people will instinctively look to the Anti-Slavery Commissioner and the Office of the Anti-Slavery Commissioner for guidance in business leadership and compliance as well as victim-survivor identification and referrals. The role of the Commissioner will likely result in an increase in complaints and referral of victim-survivors⁴. The potential application of penalties, the lowering of the threshold and the shift to due diligence reporting will significantly increase engagement with the MSBEU.

This submission makes recommendations to clarify roles and responsibilities of all stakeholders to ensure that the Commissioner maintains independence while fostering constructive collaboration with the MSBEU and law enforcement to promote compliance with this Act.⁵

The establishment of the Commissioner occurs in a context which includes:

- The 75th Anniversary of the Universal Declaration of Human Rights where Section 4 states 'No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.'⁶
- Evidence showing that modern slavery is increasing⁷ and in response significant changes and improvements in global responses to modern slavery through legislative frameworks are occurring.⁸
- Continuing the work of the Coalition who initially introduced the Act and produced the globally recognised report 'Hidden in Plain Sight'.⁹
- The first step in fulfilling the Government's commitments outlined in the Labor Party Platform.¹⁰

³ Modern Slavery Amendment (Australian Anti-Slavery Commissioner) Bill 2023, Explanatory Memorandum, https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislation%2Fems%2Fr7122_ems_3ebc74c7-0ea5-4d0a-a4f4-951bcfdcbf09%22

⁴ Following the establishment of the United Kingdom's (UK) Anti-Slavery Commissioner in 2014, modern slavery referrals increased by 443.8% from 2,340 to 12,727 by 2021. In the 2015-16 financial year, UK police recorded 884 modern slavery-related offences. With the attention of the UK Commissioner, that number increased to 9,158 modern slavery-related offences recorded by UK police in the 2021-22 financial year. UK Independent Anti-Slavery Commissioner, "Independent Anti-Slavery Commissioner Annual Report 2021 – 2022", April 2022, 12.

⁵ 20C 1(a) Modern Slavery Amendment (Australian Anti-Slavery Commissioner) Bill 2023 (Cth) https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;db=LEGISLATION;id=legislation%2Fbills%2Fr7122_first-reps%2F0001;query=Id%3A%22legislation%2Fbills%2Fr7122_first-reps%2F0000%22;rec=0

⁶ <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

⁷ <https://www.walkfree.org/global-slavery-index/>

⁸ For example European Union frameworks for the Corporate Sustainability Due Diligence Directive <https://www.consilium.europa.eu/en/press/press-releases/2023/12/14/corporate-sustainability-due-diligence-council-and-parliament-strike-deal-to-protect-environment-and-human-rights/> a the USA Uyghur Forced Labor Prevention Act <https://www.cbp.gov/trade/forced-labor/UFLPA>

⁹ 'In Plain Sight' section 4 discusses the introduction of an Anti-Slavery Commissioner and recommendations 6 and 7 support the establishment of such an office. https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Foreign_Affairs_Defence_and_Trade/ModernSlavery/Final_report

¹⁰ Full commitments: Australian Labor Party

1. Fielding Complaints and Identifying Victim-Survivors

In their role promoting education, awareness and compliance with the Act, the Commissioner will increasingly become a focal point for community engagement including victim-survivors, victim services and advocates and industry stakeholders. Identifying victim-survivors and providing appropriate options is a clear opportunity and need that the Commissioner can support. The NSW Modern Slavery Act Review notes that under the NSW Modern Slavery Act ‘only a small number of modern slavery victim-survivors are detected by law enforcement, with the NSW Anti-Slavery Commissioner estimating that between 80 and 98 per cent of victims in New South Wales remain unidentified’.¹¹ While it is appropriate that the Commissioner is not involved in leading criminal investigations (as outlined in Sch 1, item 20C(2)), the Commissioner has an important role to facilitate identification of victim-survivors and ensure that they are supported appropriately.

Key benefits

Support identification of modern slavery and victim-survivors: The recent NSW Modern Slavery Act Review (NSW Review) details the gap between the Act's objective of detecting and exposing modern slavery and the commissioner's experience of having ‘‘little practical ability’ in part due to the role's lack of investigative powers, to directly take action that addresses the gap in reporting of modern slavery cases.’¹²

The Commissioner will be approached to support individuals and organisations in recognising instances of modern slavery and identifying victim-survivors. Modern slavery is usually ‘hidden in plain sight’, requiring expert support to determine if and how laws are being violated and by whom. To be clear, this is a different role to that of law enforcement who remain responsible for criminal investigation.

Facilitate appropriate referral of potential cases: The criminal justice system is not necessarily the appropriate first response for many victim-survivors and the Commissioner can play an important role in directing appropriate referrals based on the needs and desires of stakeholders.

Generate evidence for recommendations: Assist with the necessary evidence to make recommendations to relevant organisations regarding key trends in compliance, including the

-
- Consultation with stakeholders, including business and advocacy groups, to introduce penalties for non-compliance and require mandatory reporting on exposure to specified issues of pressing concern (including Uyghur forced labour),
 - An audit on the federal government’s procurement procedures and supply chains and disclose this publicly,
 - Enforcing supply chain reporting requirements, including mandatory reporting requirements, penalties for non-compliance,
 - Implementing ethical government procurement requirements and practices for all government spending and contracting and for all companies receiving Commonwealth financing and financial assistance, and
 - Outlawing importation into Australia of goods or services produced with forced labour, child labour or prison labour.

Australian Labor Party National Platform, (Aug 2023) 108-109 <https://www.alp.org.au/media/3569/2023-alp-national-platform.pdf>

¹¹ Review of the Modern Slavery Act 2018, (Dec 2023), 13

<https://www.parliament.nsw.gov.au/lcdocs/inquiries/2990/Report%20No%201%20-%20MSC%20-%20Review%20of%20the%20Modern%20Slavery%20Act%202018.pdf>

¹² Review of the Modern Slavery Act 2018, (Dec 2023), 12 ,13

<https://www.parliament.nsw.gov.au/lcdocs/inquiries/2990/Report%20No%201%20-%20MSC%20-%20Review%20of%20the%20Modern%20Slavery%20Act%202018.pdf>

publication of an annual list of countries, regions, industries and products at a high risk of modern slavery.¹³

Triage complaints and inquiries: Manage complaints and inquiries as a clearing house, to assist law enforcement and the MSBEU in efficient resource allocation, particularly with the introduction of the proposed lower reporting threshold which will necessarily increase the number of reporting entities.

There are multiple examples of Australian commissions and institutions, akin to the proposed role of the Commissioner, which successfully navigate the dual responsibilities of educating the public and whilst engaging with complaints.

- The OECD National Contact Point provides an example of a platform that marries education and managing complaints.
- The Human Rights Commission plays dual roles of providing education and simultaneously investigating and reporting on suspected human rights violations. This may involve conducting inquiries, handling complaints, and examining matters related to discrimination and human rights abuses.
- E-safety Commissioner provides a helpful model for the Anti-Slavery Commissioner, effectively managing a balance between ‘prevention’ through research and education, ‘protection’ through regulatory schemes, complaints and investigations and ‘proactive and systemic change’¹⁴ by supporting industry to improve user safety standards and strengthening our impact across borders.

Recommendations

1.1 Add 20C(1)(p): Commissioner can receive complaints and provide background support to coordinate referrals for their resolution.

1.2 Alter 20C(1)(d): to support victims of modern slavery by; helping to identify victims, providing information in relation to government and non-government resources, programs and services; referring cases of modern slavery to relevant organisations.

1.3 To avoid confusion, clarify that 20C (2) is about criminal investigation, and not any form of investigative inquiry.

Alter 20C (2): To avoid doubt, the Commissioner may not interfere with criminal investigations, or resolve complaints concerning, individual instances or suspected instances of modern slavery.

¹³ The NSW Modern Slavery Review notes the following precedence for investigative powers in Commissioners:

- ‘the Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020, which gives the Building Commissioner the ability to inspect premises and gather information relating to building defects,
- the Children's Guardian Act 2019 gives the Children's Guardian powers to review an organisation's records and require the head of an organisation to answer questions,
- the Small Business Commissioner Act 2013 gives the Small Business Commissioner some power to require information and records, require attendance and investigate, review, monitor and conciliate complaints,
- the Community Services (Complaints, Reviews and Monitoring) Act 1993 and
- Ombudsman Act 1974 give the Ombudsman powers to require information and records, record evidence, enter a premises with a warrant, search and inspect premises, among other powers.’

¹⁴ eSafety Regulatory Posture and Regulatory Priorities November 2021-22 (2021)

<https://www.esafety.gov.au/sites/default/files/2022-03/Regulatory%20Posture%20and%20Regulatory%20Priorities.pdf> (accessed 16 Jan 2024)

2. Power to investigate

The Amendment Bill should expressly grant the Commissioner the authority to conduct investigations on general issues that fall outside the jurisdiction of Australian law enforcement agencies but are relevant to the mandate of the position.

Within these terms, investigation is integral to many of the functions assigned to the Commission in the Amendment Bill, in the recommendations both in the Review and in this document. These include providing expert advice to government¹⁶ and business, publishing an annual list of countries, regions, industries and products at a high risk of modern slavery (as recommended in the Review and the Labor Party Platform). The Commissioner can also undertake investigation into general issues to support and help identify victim-survivors.

The Commissioner will also be able to investigate instances of modern slavery that occur in the overseas supply chains of Australian entities and entities carrying on business in Australia that will not be addressed by Australian law enforcement agencies. This falls outside the current jurisdiction / operations of the Australian Federal Police and other Commonwealth Agencies.

To ensure compliance with the Act, the government should include in the amendment a statutory duty to cooperate covering all reporting entities.

Recommendations

- 2.1 Alter 20C(1)(h): to investigate, analyse, interpret and disseminate information relating to modern slavery;
- 2.2 Add 20C(3): Reporting entities have a statutory duty to cooperate, to assist the Commissioner in the execution of their duties;

3. Reflect shift from 'Risk Reporting' to 'Due Diligence'

Support for a stronger due diligence framework in the Modern Slavery Act 'shone through' in the consultations in the Review.¹⁵ This is more than a mere shift in language, it requires a transformation of the Commissioner's function. Supporting the introduction and execution of Due Diligence process requires a different level of support and a commitment to innovative collaboration. This Bill should underscore this shift and emphasise the creative energy required.

Recommendations

- 3.1 Alter 20C(1)(b) to support Australian entities and entities carrying on business in Australia to undertake *Due Diligence* processes to address modern slavery practices in their operations and supply chains, and in the operations and supply chains of entities they own or control; *supporting innovative practices towards ending modern slavery.*

4. Strengthen the Anti-Slavery Commissioner's Independence

A significant challenge for the role will be securing the cooperation of government statutory agencies to collaborate with the Commissioner. We appreciate the independence safeguarded under Sch 1, item 20J of the Amendment Bill, which stipulates that the Commissioner has complete discretion in performing or exercising the Commissioner's functions or powers and is not subject to direction from anyone when doing so. However, the UK Modern Slavery Act (MSA) Review provides

¹⁵ Professor John McMillan, AO, Report of the statutory review of the Modern Slavery Act 2018 (Cth), (24 May 2023), 67

valuable direction and warnings for the Australian Commissioner in maintaining independence while working with various government departments.

The Independent Review of the UK Modern Slavery Act 2015: Final Report 'states that 'The Commissioner should be able to work collaboratively with all sectors while retaining sufficient distance to objectively evaluate their performance. He/she should have sufficient access to Government data to carry out the duty of scrutiny.'¹⁶ The 2019 review of the UK Anti-Slavery Commissioner highlights the importance of the Commissioner's independence and outlines the operational challenges associated with maintaining this independence.

*2.2.1 The Commissioner's independence is a key issue for the credibility and transparency of the post. It is, therefore, essential that the next Commissioner is independent from the influence of Government, a point that most of our Expert Advisers agreed with. For us, independence means that the Commissioner has maximum freedom from Government influence and direction in undertaking his/her existing statutory functions. He/she must have the freedom to scrutinise and advise on the efforts of Government departments and agencies, the police, the Crown Prosecution Service and others in the areas of prevention, prosecution and protection. **The Government must respect the requirement for the Commissioner to carry out his/her statutory functions independent of Government.***

Recommendations

- 4.1 Formation of a Joint Parliamentary Standing Committee on Modern Slavery
- 4.2 Amend 20C (l) (delete at the request of the Minister) 'to provide advice to the Minister on matters relating to modern slavery'
- 4.3 Amend 20X 'In preparing or revising a strategic plan, the Commissioner must consult:
 - a) the Minister; and
 - b) the Secretary of the Department.
 - c) *other government agencies, civil society groups (including (victim-survivors) and business'*
- 4.4 Add under 20Y (1) amend this clause to indicate the appropriate place for the annual report to be given is in Parliament. This emphasises the separation of powers, allows members of parliament commission to review or request additional reports.
- 4.5 When developing the statutory guidance for the reformed Modern Slavery Act, include reference to the fact that the Commissioner must act without fear or favour in their role. This will reinforce the expectation that the Commissioner will likely drive 'difficult' conversations with government, business and other stakeholders.

5. Review the Anti-Slavery Commissioner's Budget

We appreciate the funding of \$8 million over four years, that has been committed to the Commissioner. However, this funding is inadequate for the scope of the Commissioner's mandate as listed in the Amendment Bill, not including the potential increased scope of work included in this and other submissions.

¹⁶ Independent Review of the Modern Slavery Act 2015: Final Report, (May 2019).
<https://www.gov.uk/government/publications/independent-review-of-the-modern-slavery-act-final-report/independent-review-of-the-modern-slavery-act-final-report-accessible-version>

Disrupting the complex, global and profitable markets like modern slavery, human trafficking and the exploitation of people online requires a commitment to significant investment. The Government does not need to look far for examples:

- In the 2023 budget United States committed \$89,756,000 USD to funding the Uyghur Forced Labor Prevention Act for supporting enforcement of the prohibition on the importation of goods into the United States manufactured wholly or in part with forced labour in the People's Republic of China, especially from the Xinjiang Uyghur Autonomous Region, or Xinjiang.¹⁷
- In 2024 the ESafety Commissioner's base funding was raised by the government from \$10.3 million to \$42.5 million each year.¹⁸
- In 2023 the Australian Government spent over \$1.67 billion on Border Enforcement and Border Management, and a similar budget of \$1.665 billion has been allocated for the current year.¹⁹
- In the 2023-24 budget the Australian Government has committed an additional \$17.9 million to support the Airline Liaison Officer Program for 'detecting and intervening with improperly documented travellers before they reach the border; deterring irregular migration and visa/migration fraud and supporting and facilitating legitimate travel to Australia.'²⁰

The Commissioner is a significant investment into strengthening the Modern Slavery ACT 2018 (Cth) as a global benchmark for effective action on modern slavery. The government must take the opportunity now to ensure the budget for the Commissioner matches the scope of the proposed role and the scale of the challenge.

Recommendations

- 5.1 Budget needs to be responsive to the mandate of the Commissioner. We recommend the budget be revised in accordance with the recommendations on the scope of the Commissioner's mandate. Such a review should include capacity to adjust budget following the implementation of the Review recommendations.
- 5.2 Consider whether a Commission rather than just a Commissioner should be funded in response to the scope of the role.
- 5.3 Introduction of an agreed mechanism to assist the Commissioner to meet unexpected or additional financial requirements which may arise over the year, this is in line with the review recommendations of the UK Modern Slavery Act.
- 5.4 Legislate a review of the budget after three years.

¹⁷ Department of Homeland Security Appropriations Bill, 2023, (July 1, 2022) <https://www.congress.gov/congressional-report/117th-congress/house-report/396/1> (Accessed 17 Jan 2024)

¹⁸ The Hon Michelle Rowland MP, Record investment to improve the safety of Australians online, (16 May 2023) <https://minister.infrastructure.gov.au/rowland/media-release/record-investment-improve-safety-australians-online> (Accessed 17 Jan 2024)

¹⁹ 2023-2024 Budget, Budget Measure, Budget Paper No 2, (May 2023) https://budget.gov.au/content/bp2/download/bp2_2023-24.pdf

²⁰ Australian Border Force: Incoming Government Brief, <https://www.homeaffairs.gov.au/foi/files/2022/fa-220600105-document-released-part-5.PDF>

Recommendations

1. Fielding Complaints and Identifying Victim-Survivors

- 1.1 Add 20C(1)(p): Commissioner can receive complaints and provide background support to coordinate referrals for their resolution.
- 1.2 Alter 20C(1)(d): to support victims of modern slavery by; helping to identify victims, providing information in relation to government and non-government resources, programs and services; referring cases of modern slavery to relevant organisations.
- 1.3 To avoid confusion, clarify that 20C (2) is about criminal investigation, and not any form of investigative inquiry.
Alter 20C (2): To avoid doubt, the Commissioner may not interfere with criminal investigations, or resolve complaints concerning, individual instances or suspected instances of modern slavery.

2. Power to investigate

- 2.1 Alter 20C(1)(h): to investigate, analyse, interpret and disseminate information relating to modern slavery;
- 2.2 Add 20C(3): Reporting entities have a statutory duty to cooperate, to assist the Commissioner in the execution of their duties;

3. Reflect shift from 'Risk Reporting' to 'Due Diligence'

- 3.1 Alter 20C(1)(b) to support Australian entities and entities carrying on business in Australia to undertake Due Diligence processes to address modern slavery practices in their operations and supply chains, and in the operations and supply chains of entities they own or control; *supporting innovative practices towards ending modern slavery.*

4. Strengthen the Anti-Slavery Commissioner's Independence

- 4.1 Formation of a Joint Parliamentary Standing Committee on Modern Slavery
- 4.2 Amend 20C (l) (delete at the request of the Minister) 'to provide advice to the Minister on matters relating to modern slavery'
- 4.3 Amend 20X 'In preparing or revising a strategic plan, the Commissioner must consult:
 - a) the Minister; and
 - b) the Secretary of the Department.
 - c) *other government agencies, civil society groups (including (victim-survivors) and business'*
- 4.4 Add under 20Y (1) amend this clause to indicate the appropriate place for the annual report to be given is in Parliament. This emphasises the separation of powers, allows members of parliament commission to review or request additional reports.
- 4.5 When developing the statutory guidance for the reformed Modern Slavery Act, include reference to the fact that the Commissioner must act without fear or favour in their role. This will reinforce the expectation that the Commissioner will likely drive 'difficult' conversations with government, business and other stakeholders.

5. Review the Anti-Slavery Commissioner's Budget

- 5.1 Budget needs to be responsive to the mandate of the Commissioner. We recommend the budget be revised in accordance with the recommendations on the scope of the Commissioner's mandate. Such a review should include capacity to adjust budget following the implementation of the Review recommendations.
- 5.2 Consider whether a Commission rather than just a Commissioner should be funded in response to the scope of the role.
- 5.3 Introduction of an agreed mechanism to assist the Commissioner to meet unexpected or additional financial requirements which may arise over the year, this is in line with the review recommendations of the UK Modern Slavery Act.
- 5.4 Legislate a review of the budget after three years.

Signatories

ACRATH – Australian Catholic Religious Against Trafficking in Humans

Amnesty International

Anglican Church Diocese of Canberra and Goulburn

Anti-Slavery Australia

Australian Human Rights Institute

Australian Uyghur Tangritagh Women's Association

Baptist World Aid

Be Slavery Free

Associate Professor Martijn Boersma – Director of the Modern Slavery and Human Trafficking Program – University of Notre Dame Australia

Business and Human Rights Resource Center

Catholic Religious Australia

The Clean Chain

Dr Johannes (John) Dumay – Professor of Accounting & Finance – Macquarie University

The International Coalition to End Transplant Abuse

Entrust Foundation

Ethical Partners

Etiko

Everyday Slavery

Good on You

International Justice Mission

Josephite Counter Trafficking Project

Mercy Foundation

Associate Professor Erin O'Brien – School of Justice – Queensland University of Technology

Offspring Project

Oxfam Australia

Project Didi Australia

Project Respect

Regenesys Inc

Spirited Consulting

Taldumande Youth Services

The Freedom Project

Uniting Church in Australia, Synod of Victoria and Tasmania

War on Slavery

Zairul Nurshazana Zainuddin – PhD Candidate – Department of Accounting and Corporate Governance – Macquarie University