



Australian Government
Attorney-General's Department

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Senate Legal and Constitutional Affairs Legislation Committee

Inquiry into the Modern Slavery Amendment (Australian Anti-Slavery Commissioner) Bill 2023

Attorney-General's Department Submission

Introduction

1. The Attorney-General's Department (the department) welcomes the opportunity to make a submission to the Senate Legal and Constitutional Affairs Legislation Committee (the Committee) on the Modern Slavery Amendment (Australian Anti-Slavery Commissioner) Bill 2023 (the Bill) in response to the Committee's invitation. This submission provides further detail to assist the Committee's consideration of the Bill, and should be read alongside the Bill and its explanatory materials.

The need for an independent Australian Anti-Slavery Commissioner

The scale of a growing problem

2. Modern slavery encompasses a range of serious exploitative crimes including trafficking in persons, slavery, and slavery-like practices such as deceptive recruiting, debt bondage, forced labour and forced marriage.
3. Tackling modern slavery has become harder and the scale of the problem has increased globally in recent years, in size and complexity. There is international recognition that drivers including poverty, barriers to safe migration, gender inequality, and displacement due to conflict or natural disaster, as well as recent global events such as the COVID-19 pandemic have exacerbated modern slavery risks. Modern slavery is complex and not easily detected. It taints the multinational supply chains of goods and services Australians use every day, and can manifest insidiously in the Australian community as crimes hidden in plain sight.

A new national advocate for action

4. Modern slavery is a challenge that cannot be addressed in isolation or by Government alone – ongoing coordinated and aligned action is required from governments, businesses, and civil society. The establishment of an Anti-Slavery Commissioner would further strengthen Australia's response to modern slavery by providing a new advocate at the national level. This would involve harnessing innovation and insights across government and non-government sectors and forging connections amongst diverse stakeholders to achieve meaningful action
5. It is necessary to establish the Commissioner at the federal level to independently monitor, work alongside and encourage good practice across a range of stakeholders, including all levels of government, and to provide dedicated outreach and awareness raising in the broader community. This is a role that would most effectively be delivered by a federal Commissioner.

An independent pillar

6. The introduction of an Anti-Slavery Commissioner would further strengthen Australia's response to modern slavery by providing a new independent pillar to its comprehensive response.
7. The Commissioner's independence from Government would provide a separate but complementary mechanism for stakeholders to engage on modern slavery issues, including for victims and survivors who may not wish to engage directly with Government agencies.

8. An independent Commissioner is also critical to advocate to Government on modern slavery issues including continuous improvement in policy and practice.

Critical core functions

9. The Government seeks to establish the Commissioner with critical core functions to enable the vital role of a Commissioner to be established without delay. A Commissioner is needed now to undertake advocacy, stakeholder engagement, and awareness-raising, to further strengthen Australia's modern slavery response. The Commissioner's establishment is also important to informing further steps in Australia's broader response to modern slavery.
10. As Australia's modern slavery framework continues to evolve and develop, including the Government's current consideration of the review of the Modern Slavery Act, it is possible the Commissioner's role could also evolve over time. The Government expects the Commissioner would be established with a view to considering further functions as necessary to support Australia's efforts to end modern slavery.

Complementary role to Government

11. The Commissioner's role would complement the roles and responsibilities of the Australian Government, which leads Australia's response to combatting modern slavery. This includes:
 - specialist teams within the Australian Federal Police to investigate human trafficking and slavery matters,
 - legislation to criminalise human trafficking, slavery and slavery-like practices,
 - a victim support program which provides individualised case management support,
 - implementation of the National Action Plan to Combat Modern Slavery 2020-25,
 - regional engagement in the Asia-Pacific on human trafficking issues through the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime, and bilateral engagements,
 - an Ambassador to Counter Modern Slavery, People Smuggling and Human Trafficking who drives Australia's regional and international efforts to counter people smuggling, human trafficking and modern slavery,
 - community grants funding to prevent and address modern slavery,
 - modern slavery research and a human trafficking research network, and
 - transparency legislation, through the Modern Slavery Act, which requires large entities conducting business in Australia to report annually on the risks of modern slavery in their operations and supply chains, and actions taken to address those risks.
12. It is expected that if the Bill passes, and once appointed, the Commissioner would liaise closely with Australian Government officials to work together to further enhance and progress Australia's response to modern slavery.

Parliamentary inquiries and stakeholder support

13. There has been significant stakeholder support for the establishment of the Commissioner over many years, highlighted by parliamentary inquiries and stakeholder submissions to consultations.

14. Notably, two previous parliamentary inquiries recommended the establishment of an independent Commissioner:
 - the 2017 inquiry into human trafficking, slavery and slavery-like practices by the Parliamentary Joint Committee on Law Enforcement, and
 - the 2017 Hidden in Plain Sight inquiry conducted by the Joint Standing Committee on Foreign Affairs, Defence and Trade.
15. The development of the Bill has therefore considered the findings of these previous parliamentary inquiries and the associated Government responses.
16. More recently, the 2023 statutory review of the Modern Slavery Act (the Act), led by Professor John McMillan AO, noted the strong support for the establishment of an Anti-Slavery Commissioner and made a number of observations and recommendations in relation to the functions and powers of an independent Commissioner in relation to the Act. This review was informed by a public consultation process involving 65 engagements. This included 38 targeted online and in-person consultations with 285 organisations during the three-month public consultation period, as well as 136 submissions and 30 responses to an online questionnaire from an issues paper.
17. Submissions to the review observed that the Commissioner should be an independent statutory office and that a key function of the Commissioner would be to facilitate collaboration between business, government and civil society to drive better practices to mitigate modern slavery in Australian operations and supply chains. Submitters also placed a strong focus on the importance of a victim-survivor centric approach whereby the Commissioner could provide guidance developed through the lens of lived experience. Stakeholders also recognised the important awareness-raising role of the Commissioner, to improve knowledge and understanding of modern slavery issues in Australia through research and data collection. The feedback provided to the review has informed the development of the Commissioner's functions included in the proposed legislation.

Modern Slavery Amendment (Australian Anti-Slavery Commissioner) Bill 2023

Overview of the Bill

18. The Bill amends the Modern Slavery Act to establish the Commissioner as an independent statutory office holder. The Bill sets out a range of functions for the Commissioner. The Bill also sets out the governance arrangements necessary to establish the Commissioner.

Role and functions of the Commissioner

19. The Bill proposes a number of critical functions for the Commissioner, including to:
 - promote compliance with the Modern Slavery Act,
 - support businesses to address modern slavery practices in their operations and supply chains,
 - support collaboration and engagement within and across sectors in relation to addressing modern slavery,
 - support and engage with victims and survivors of modern slavery,

- support, encourage, and conduct education and community awareness initiatives relating to modern slavery,
 - harness and support research about modern slavery, and
 - work collaboratively with and advocate for Government's continuous improvement in policy and practice.
20. The Commissioner would not investigate or deal directly with individual matters of modern slavery. However, they may make observations regarding systemic issues based on their engagement with victims and survivors and the broader community.
21. The Commissioner's role and functions would complement the work undertaken across Government, business, civil society and academia to prevent and respond to modern slavery. In particular, the Commissioner is uniquely placed to independently raise the profile of modern slavery issues more broadly in the community, and to play an influential role in the promotion of evidence-based policy and practice.
22. A key aspect of the Commissioner's role would be to empower victims and survivors of modern slavery. The Commissioner would support victims of modern slavery through the provision of information about government and non-government resources, programs and services. Importantly, the Commissioner would promote engagement with victims and survivors of modern slavery, including building on the work by the Government and civil society to ensure the views and voices of victims and survivors inform measures to address modern slavery.
23. The Commissioner would collaborate with Government, business, civil society, and other key stakeholders to support compliance with the Modern Slavery Act. For example, the Commissioner could produce targeted products to help prevent or address modern slavery in particular sectors.
24. The Commissioner may also play a role in sharing international expertise about modern slavery responses to cultivate an understanding of international best practice in Australia.
25. Another important function of the Commissioner would be to advocate to the Commonwealth Government on matters relating to modern slavery, including for continuous improvement in policy and practice. This function has been proposed for the Commissioner to enable them to share insights with Government gained through engagement with victims and survivors, civil society stakeholders, business and international partners. The provision of expert advice to Government would inform a best practice approach to tackling modern slavery in Australia and abroad. At the request of the Minister, the Commissioner could also provide independent advice on matters relating to modern slavery. The Commissioner would provide advice in so far as it is reasonably practicable to do so.
26. The Commissioner would also be able to request information from Commonwealth agencies that is relevant to the performance of their functions. For example, the Commissioner may wish to request information from Commonwealth agencies about the types of government resources, programs and initiatives underway, or services currently available to victims and survivors of modern slavery in Australia and pathways to seeking support. Agencies would be required to comply with the request as far as is reasonably practicable. The Commissioner and agencies providing information to the Commissioner would also be required to comply with their obligations under the *Privacy Act 1988* (Cth).

27. The Bill also provides that the Commissioner must have regard to Australia's international obligations when performing their functions, such as those that relate to modern slavery and trade. This includes commitments Australia has made under international human rights treaties and international trade agreements.

Establishment of the Commissioner

Independence

28. The Commissioner would be established as an independent statutory office-holder, as independence will be key to their effectiveness in the role. The Bill provides that the Commissioner would have discretion in performing or exercising their functions, and would not be subject to direction from anyone when doing so.
29. Once appointed, the Commissioner would be able to consider their preferred mechanisms for engaging with Government officials and stakeholders more broadly in the delivery of their functions.

Appointment and remuneration

30. The Bill provides that the Commissioner would be appointed through a merit-based process that includes public advertising of the position. This would ensure that the appointment process is transparent and that the selected candidate for this important role has the relevant knowledge, qualifications or experience to carry out the Commissioner's functions to a high-standard. The Commissioner's appointment would be for a maximum of five years. The Commissioner could be reappointed once. It is expected that the Commissioner will be a leader in their field of expertise, have appropriate standing, demonstrate strong leadership, integrity and sound judgement, and be able to positively collaborate with a diverse range of stakeholders.
31. The remuneration for the Commissioner would be determined by the Remuneration Tribunal.

Reporting

32. The Bill includes accountability and transparency mechanisms, such as publication of a strategic plan and the tabling of annual reports in Parliament.
33. This is to ensure the Commissioner is accountable to Parliament in the exercise of their functions, and that their activities and outcomes are transparent to the public.
34. The strategic plan and annual reports would not contain sensitive information. The Bill defines sensitive information as information that would or might: prejudice the security, defence or international relations of Australia; prejudice the investigation of, or the prosecution of a person for, an offence; or endanger the life or safety of any person. If the Commissioner considers that their annual report contains sensitive information, the Commissioner would also prepare and give to the Minister at the same time as the annual report a version of the report which does not contain that information. The report must be tabled.
35. This safeguard has been included to ensure that if any sensitive information is provided to the Commissioner in the course of carrying out their functions, that information is not released

publicly to the detriment of individuals and Australia's interests. For example, it is conceivable that the Commissioner may be exposed to information concerning individual instances of modern slavery, despite not having a function to investigate or resolve individual instances of, or allegations about modern slavery. This information, if released, may have the potential to jeopardise criminal investigations and prosecutions, or put the safety of victims and survivors of modern slavery, or others, at risk.

Conclusion

36. The department welcomes the Committee's inquiry into the Bill, and trusts that this submission will assist the Committee in understanding the purpose and intent of the proposed measures in the Bill.