

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

Project Respect Consultation Submission

22 January 2024

Introductory Comments

Project Respect is a Victorian based specialist support and referral service for women and gender diverse people with experience in the sex industry and for women and gender diverse people with experiences of sexual exploitation, including trafficking. We have worked with our community since 1998, providing trauma informed, goal led and person-centred case coordination, community engagement activities including brothel outreach and community connection events, research, and capacity building training to support sector and community organisations' ability to effectively provide support to women in the sex industry without stigma or discrimination.

While we are primarily based in Victoria, we provide support to women and gender diverse people throughout Australia, and work in collaboration with other organisations across sectors such as family violence, housing, and legal services to provide multifaceted care to service users. We hold a seat on the National Roundtable on Human Trafficking and Slavery.

Project Respect's primary purposes are to:

- Provide support to women and gender diverse people with experience in the sex industry to achieve self-directed goals, including equitable access to services;
- Provide support to women and gender diverse people who have experienced trafficking for sexual exploitation, whether current, historic, international or domestic;
- Advocate for structural change to end sexual exploitation.

We provide a platform to elevate and amplify the voices of, while also being informed and guided by, those with past and present lived experience - including through our Lived Experience Advisory Group (LEAG).

We appreciate the opportunity to provide a written submission concerning the Modern Slavery Amendment (Australian Anti-Slavery Commissioner) Bill 2023.

Project Respect's Response to the Modern Slavery Amendment (Australian Anti-Slavery Commissioner) Bill 2023 ("the Bill")

1. Relationship of the Bill to the 2022-23 review of Australia's Modern Slavery Act 2018 ("the Act")

In our previous submission to the review of Australia's Modern Slavery Act 2018 ("the Act") dated 22 November 2022, we expressed our concern that the limited scope of the present Act (in focusing on supply chains) results in:

- An unbalanced response to modern slavery that diverts attention and resources away from addressing and responding to other ("non corporate") forms of modern slavery;
- The impact of further disadvantaging the prevention, early intervention, response and recovery effort concerning modern slavery crimes that disproportionately impact women and girls; and
- An Act that is not victim centred, and does not mention the impacts of modern slavery on people, or include any objectives about support for victim survivors. This has an unintended impact of de-humanising the impacts of modern slavery and moving the response into a compliance model, with corporate entities appearing to have the primary responsibility to

combat modern slavery in Australia, rather than a human rights focussed model with a whole of community response.

We will not repeat the arguments we made in that paper herein, but refer the reader to our prior paper for further detail, available on our website at:

https://assets.nationbuilder.com/projectrespect/pages/2069/attachments/original/1669349404/Project_Respect_Consultation_Submission_-_Review_of_Australia's_Modern_Slavery_Act_2018.pdf?1669349404.

2. Project Respect's Support for the Bill – and Further Improvements Suggested for the Act

We are pleased to see that the Bill considers aspects of the proposed role of the Anti-Slavery Commissioner that go beyond the limited scope of the other parts of the Act. This is helpful and welcomed.

Consideration may need to be made as to other amendments to the Modern Slavery Act that in turn supports the wider roles considered for the Commissioner. There are opportunities to broaden the scope of the Modern Slavery Act. The Modern Slavery Act 2018 (NSW) provides an example of an Act that centres the experience of victim-survivors of modern slavery and those at risk of experiencing modern slavery. For example, the objects section of this Act (section 3) includes (amongst others) the objectives:

- “(b) to provide assistance and support for victims of modern slavery, ...*
- (d) to provide for detection and exposure of modern slavery that may have occurred or be occurring or is likely to occur,*
- (e) to raise community awareness of, and provide for education and training about, modern slavery,*
- (f) to encourage collaborative action to combat modern slavery”*

The current Commonwealth legislation does not centre victim survivors in this way nor provides a legislative context for these activities. We acknowledge that there are aligning goals in the National Action Plan to Combat Modern Slavery.

We recommend that Commonwealth legislation be extended to include such objectives, that then provide a consistent platform for the appointment of an Anti-Slavery Commissioner. The Modern Slavery Act could be extended to include such provisions.

3. Proposed Responsibilities of the Australian Anti-Slavery Commissioner

We support the proposal that the role of the Commissioner should be broad, in a similar way that the NSW Anti-Slavery Commissioner's role is broad. The role should incorporate the goal of collaborative support for an all-of-government and community approach to addressing modern slavery.

Project Respect largely supports the current inclusions regarding functions of the Federal Anti-Slavery Commissioner in section 20C of the Bill tabled on 30 November 2023. We do however see some responsibilities missing from the current Bill.

We recommend the inclusions as described below.

3a. Consultation with Organisations Providing Support to Victim Survivors of Modern Slavery

Section 20C(e) contains the important function to “engage with, and promote engagement with, victims of modern slavery to inform measures for addressing modern slavery.” We support the inclusion of this function.

To enhance this function, there should be a further inclusion in Section 20C to specifically engage with organisations providing support and other services to victim survivors of modern slavery. Non-government, not for profit organisations provide many functions, including direct services to victim survivors, through professional social work, counselling and legal services. Organisations are active in prevention, early intervention, response and recovery – performing work that is not undertaken directly by government – but is vital to the success of the National Action Plan to Combat Human Trafficking. Most of these organisations provide services to a specifically identified cohort or cohorts of people who do not receive equivalent services through mainstream organisations. In the case of Project Respect, our service provision is at an intersection between family violence and human trafficking that is unique, and centres the specific needs of women and gender diverse people with experience in the sex industry, or who have experienced sexual exploitation (including trafficking).

The value in engaging with such organisations should not be underestimated. These services working directly with victim survivors provide insight into emerging risks and experiences, including with service users who do not want to be advocates directly, or, who work directly with the organisation in an advisory capacity. Professional staff have a unique insight into how the broader services systems work to support (or otherwise) the needs of victim survivors, and are also well positioned to advise on current trends.

This engagement should be named and not subsumed into, or assumed as being part of, the other functions mentioned in Section 20C.

3b. Involvement in the National Roundtable on Human Trafficking and Slavery

To further support the recommendation above, engagement with organisations providing support to victim survivors would be further enhanced by the inclusion of engagement of the Australian Anti-Slavery Commissioner with the National Roundtable on Human Trafficking and Slavery. This Roundtable serves as the consultative mechanism between the government and NGOs on trafficking issues.¹ To undertake maximum benefit from the mechanism, the Australian Anti-Slavery Commissioner should undertake a key role with this Roundtable.

This role should include formal recognition that the Commissioner should have a seat at the Roundtable at a minimum. There are further functions that could be included for the Commissioner – such as advocating for the Government to find innovative ways to hear the voices of non-government organisations and the people they work with through the Roundtable, as well as the voices of victim survivors. The Commissioner could also oversee the implementation of recommendations made by members and working groups established through the Roundtable and hold the Government accountable for timelines on implementation.

¹ Australian Attorney General’s Department website, information on Human Trafficking: [Human trafficking | Attorney-General's Department \(ag.gov.au\)](https://www.ag.gov.au/human-trafficking)

3c. Advocacy for Intentionally Designed and Implemented Systems of Support

Section 20C (k) of the Bill includes the function to “advocate to the Commonwealth Government on matters relating to modern slavery, including for continuous improvement in policy and practice.”

There is no mention in any of the functions regarding advocacy for improved *systems* of support. Policy and practice are limited in their effectiveness if whole of systems design and implementation is not examined.

In our view, Australia lacks an overall intentionally designed and implemented system of support for the victims of modern slavery. Systems are limited through narrowly defined entry criteria, siloing between supporting sectors, lack of understanding of the experience of modern slavery, lack of funding for a spectrum of support needs, lack of funding for longer term needs of individuals, and lack of consistent approaches across States.

The Anti-Slavery Commissioner’s functions should include overview of the effectiveness of systems. Section 20C(k) could be expanded to include advocacy to the Commonwealth Government regarding the design and implementation of effective and safe systems of support.

3d. Oversight and Evaluation of the National Action Plan to Combat Human Trafficking and Slavery

As an independent Commissioner, there is a great opportunity to include oversight and evaluation of the National Action Plan to Combat Human Trafficking and Slavery. There is also opportunity to incorporate a risk assessment approach to this evaluation. For example, there is a lack of evaluative procedures concerning the result of ‘not’ taking an action. Where support work is undertaken by NGO’s with little or no government funding support, and yet these services are relied upon to form part of the systems of support, evaluation should consider the impact of the inevitable closure and loss of these services, and what measures would be needed by the government to ensure the government’s delivery of the NAP goals without these supporting services. Advocacy to the Government regarding understanding such risks would be greatly enhanced by a knowledgeable, independent party such as the Australian Anti-Slavery Commissioner.

There is precedent in such responsibilities, with the current Australian Domestic, Family and Sexual Violence Commissioner having a function of measuring the success of the Federal Government’s progress against the *National Plan to End Violence against Women and Children 2022–2032*². While this function is not written into legislation, there is opportunity to formalise this approach with the Australian Anti-Slavery Commissioner’s function.

3e. The Collection, Analysis, Interpretation and Dissemination of Impartial Data and Statistics

Section 20C (h) includes the function to “collect, analyse, interpret and disseminate *information* relating to modern slavery.” Unfortunately, not all information is created equally (or accurately). It would be helpful to expand this function to “collect, analyse and interpret information, data and statistics relating

² Australian Domestic, Family and Sexual Violence Commission website, “Meet the Commissioner”. [Meet the Commissioner | Domestic, Family and Sexual Violence Commission \(dfsvc.gov.au\)](https://dfsvc.gov.au)

to modern slavery, and disseminate reliable and accurate information, data, and statistics relating to modern slavery”.

The inclusion of the term ‘data’ and ‘statistics’ are also important, as they indicate a higher standard of impartiality than ‘information’.

We have observed a lack of impartiality within the sector at times in regards to the reporting of statistics, including the editorialising of data. The opportunity to have an independent Anti-Slavery Commissioner maintain a reliable repository of data would be welcomed.

Further, the ability to identify areas where data is needed and advise on this would also be an enhancement. Section 20C(g) includes the function to “support, encourage, conduct and evaluate **research** about modern slavery”. ‘Research’ is a limited term. This responsibility would be enhanced by the inclusion of “... and to request and report on data concerning modern slavery”. Data does not necessarily require formal research. It can be made available by organisations and bodies who hold this data. Where useful data is not available, the Commissioner could provide recommendations on data capture and reporting that would enhance overall systems of prevention and response.

4. Involvement in Complaint Investigation

An important role of an Australian Anti-Slavery Commissioner would be in investigation of complaints regarding the *handling* of modern slavery reports by a victim survivor, in particular as handled by policing and justice. Without this function, there is very little available recourse for victim survivors where their experience has been poorly handled. The Bill specifically excludes this function, in section 20C (2):

“To avoid doubt, the Commissioner may not investigate, or resolve complaints concerning, individual instances or suspected instances of modern slavery.”

It would be useful to add within the requirements of 20C(1) that the Commissioner can receive and handle complaints regarding the handling of modern slavery reports made by a victim survivor, prepare documentation, and coordinate with statutory bodies and law enforcement.

The current wording of 20C(2) could be amended to:

“To avoid doubt, the Commissioner may not undertake criminal investigations concerning individual instances or suspected instances of modern slavery.”

5. Section 20H – Engagement of Consultants

Section 20H of the Bill provides that: “The Commissioner may, on behalf of the Commonwealth, engage consultants to advise in relation to the performance of the Commissioner’s functions.” This will no doubt be a useful resource particularly in the early stages of the Commissioner’s establishment. Within this power we would recommend that the clause include the wording that: “This engagement will include evidence of the skill, experience and/or qualifications of the consultants for the purposes engaged. This may include individuals and organisations with practical experience and/or lived expertise of the prevention, disruption, and response to modern slavery in Australia”.

This recommendation is made to ensure that a nuanced understanding of modern slavery risks is part of the skill base of any consultants engaged where the work relates to the practicality of the Commissioner's work. This addition recognises the expertise of lived experience and of NGO's experience in the sector that is often accessed and rarely compensated, while 'consulting firms' are often engaged by government and others, where they have little experience of modern slavery risks and yet are compensated at very high rates. This also encourages money to remain within a sector that is providing direct support and prevention work with very little resourcing, allowing this work to continue.

6. 20W Commissioner may request information from Commonwealth Agencies

Section 20W of the Bill indicates that the Commissioner may not only request information from Commonwealth Agencies, but under 20W(3) can actually compel those agencies to provide it:

"The agency must, so far as is reasonably practicable, comply with the request."

This section does not include State and Territory agencies, and these agencies are excluded from being compelled to provide the information. This is confirmed by Clause 60 of the Explanatory memorandum, which states:

"This section does not extend to State and Territory agencies, however does not prevent the Commissioner from requesting or receiving information from State and Territory agencies. The Commissioner would not be able to compel State and Territory agencies to provide information in response to a request. "

The concern we have with this process is that the responsibilities of agencies between the Commonwealth and States and Territories results in siloing of support and justice to victim survivors of modern slavery, and inconsistencies in approaches. An opportunity exists with the Commissioners role to encourage consistency. This will be made more complex where State and Territory agencies choose not to provide information. As only one State currently has an Anti-Slavery Commissioner (and legislation concerning Modern Slavery) this leaves a gap in independent oversight. This will be particularly notable if the Commissioner has a role in complaint resolution, or advisory regarding complaint resolution. We have seen many instances, for example, of State based policing who do not understand modern slavery and the Commonwealth based legislation, causing a barrier to support and justice of victim survivors. In order to advise about improvements to systems, policy and practice, it would be critical for the Australian Anti-Slavery Commissioner to compel information from such agencies.

We recommend that this section be extended to Commonwealth, State and Territory agencies.

Summary

We support an overall approach to combatting modern slavery that centres the experience of victim survivors, prioritises prevention and response over corporate reporting, maintains the central responsibility with government but includes an independent oversight mechanism, and supports sustainable funding for non-government entities providing key services not provided by government in prevention, early intervention, response and recovery across all identified cohorts of people requiring these services.

As such, we support the Bill to amend the Modern Slavery Act to include the appointment and responsibilities of an Australian Anti-Slavery Commissioner. These responsibilities should include engagement with non-government service providers and the express ability to engage them as consultants with expertise; should be able to advocate for intentionally designed systems of support; should have a role in the National Roundtable on Human Trafficking and Slavery and in data analysis and dissemination; and should have powers to compel information from State and Territory based government entities. The Commissioner's responsibilities should include independent oversight of the National Action Plan to Combat Modern Slavery and the performance of the Government against this plan, incorporating a risk assessment perspective; and in complaint investigation as regards to the handling of modern slavery reports by a victim survivor.