

MODERN SLAVERY AMENDMENT (AUSTRALIAN ANTI-SLAVERY COMMISSIONER) BILL 2023 [PROVISIONS]

Senate Legal and Constitutional Affairs Legislation Committee

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22 January 2024

INTRODUCTION

Baptist World Aid Australia (BWAA) welcomes the opportunity to provide this submission on the proposed amendment of the *Modern Slavery Act 2018* (the Act) to establish the Australian Anti-Slavery Commissioner as an independent statutory office holder in the Attorney-General's portfolio.

We make this submission as an Australian, international aid and development organisation with a vision to see a world where poverty and injustice have ended, and all people enjoy fullness of life. In our work, we partner with local organisations in 20 countries in the Pacific, Middle East, Southeast Asia, South Asia and Africa, in the areas of community development, child and youth empowerment, disaster management and advocacy.

For over a decade, we have made an active, focused contribution to addressing modern slavery and labor exploitation in the fashion industry through the annual publication of our Ethical Fashion Report and Guide. The 9th edition of this report was published in 2022, and 120 companies with operations in Australia were assessed regarding their efforts to mitigate and address modern slavery and worker exploitation throughout their supply chains. In 2023, we partnered with Be Slavery Free and McCrindle to produce the 2nd edition of the Australian Ethical Consumer Report, with a focus on Australians' understanding of modern slavery. These reports are referenced in this submission and available at baptistworldaid.org.au.

COMMENTARY AND RECOMMENDATIONS

The commentary and recommendations that follow are based on BWAA's experience in:

- engaging closely with fashion companies,
- educating and raising awareness amongst consumers,
- submitting to past modern slavery policy creation and reviews,
- and our collaboration with multi-stakeholder initiatives, including [Be Slavery Free](#) and the consortium of civil society and academic partners who published the '[Paper Promises](#)' and '[Broken Promises](#)' reports and '[Good Practice Toolkit](#)'.

Support for the establishment of the Australian Anti-Slavery Commissioner

BWAA welcomes the establishment of an Australian Anti-Slavery Commissioner, as proposed in the Modern Slavery Amendment Bill. We are pleased that the importance of this independent role within the Attorney-General's office has been recognised as critical to ensuring a world-leading modern slavery framework with the intent to advocate and educate, and strengthening modern slavery policy, practice and due diligence. The precedence for an Anti-Slavery Commissioner is well set in the state of NSW, and

internationally, and we thank the Government for the prompt action taken in alignment to the recent statutory review of the *Modern Slavery Act 2018* by Professor McMillan.¹

Independence

BWAA supports the independence given to the Anti-Slavery Commissioner in performing their functions and urges that Australia implement learnings outlined in the submission into the statutory review of the *Modern Slavery Act 2018*, authored by S Marshall and B Pinnington.² This review, featuring comment from former UK Independent Anti-Slavery Commissioner, Dame Sara Thornton, emphasised that the Commissioner and their staff’s genuine independence is a critical factor for success of this role; with sufficient autonomy to enforce compliance with the Act, conduct investigations, deliver reporting and strengthen due diligence, we have confidence that the Anti-Slavery Commissioner will drive systemic change with key stakeholders including but not limited to, business, consumers, and importantly, government.

Education and Awareness

We endorse the role the Anti-Slavery Commissioner will play in raising awareness, and educating the Australian public about modern slavery, and encourage the Government for their pursuit of global excellence and leadership in this space.

In 2023, BWAA published the Australian Ethical Consumer Report, featuring insights into Australians’ understanding of the issue of modern slavery.

Promisingly, the research found that:

- 80% of Australians have heard of situations of forced labour or modern slavery,
- 63% disagree that slavery was eradicated hundreds of years ago,
- 55% disagree that no one experiences modern slavery in Australia.



While Australians’ broad awareness of modern slavery is encouraging, their knowledge of the impact of their consumer behaviour is not as widely understood, as shown in the diagram above.

Furthermore, we recommend that the Anti-Slavery Commissioner drives education and policy change in the business and finance sector, to ensure change in supply and value chains. Our engagement with fashion companies, and in reviewing Modern Slavery Statements across the sector has revealed that there are significant knowledge gaps and inconsistency in understanding of the modern slavery and forced labour risks in producing countries. We also encourage the Commissioner to publish reports detailing specific risks by country or region, industry, and product in compliance with World Trade Organization Agreements.

Budget Sufficiency

According to the recently published Global Slavery Index from Walk Free, there are 49.6 million people living in conditions of modern slavery and approximately 27 million in forced labour. A humanitarian crisis of this magnitude calls for a proportionate response from the Government. The introduction of an Anti-Slavery Commissioner, with the proposed budget of \$8 million over four years is a welcome start, however we believe this is inadequate for the task.

¹<https://www.ag.gov.au/crime/publications/report-statutory-review-modern-slavery-act-2018-cth>

²https://consultations.ag.gov.au/crime/modern-slavery-act-review/consultation/view_respondent?uuld=67844886

Comparatively, the Australian Human Rights Commission received a budget of \$29.9 million in 2022/2023, and the eSafety Commissioner's office funding has been boosted to \$42.5 million annually. We believe that these budgets provide a strong reference point for a sufficient budget. As has been modelled by the office of the NSW Anti-Slavery Commissioner, we strongly recommend that the office of the Australian Anti-Slavery Commissioner be appropriately funded to include people with lived experience of modern slavery who can serve in an advisory capacity. The strength of this approach was modelled at the 2023 Modern Slavery Conference and found to be of benefit to all participants and to the progression of dialogue and solution creation.

Further to the matter of budget, we note that up to the present time, the creation of the Modern Slavery Act, and its legislative progression, has been largely due to contributions from members of civil society and academia, and often on pro bono basis. For example, the production of the Paper Promises Report³ took 18 months with a group of 20 researchers conducting over 330 statement reviews over an estimated 700 hours, excluding validation and analysis. This level of rigor is essential, yet not sustainable nor feasible with the current level of proposed funding.

Due Diligence

Modern slavery reporting alone will not deliver the systemic change needed to combat modern slavery and forced labour. Due diligence must include a duty for entities to identify, prevent, mitigate and remediate modern slavery. This should be implemented consistently, in line with the standard of the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises. Again, this supports the need for the Commissioner to be given appropriate independence and authority for oversight, investigation and enforcement.

BWAA has applied a research and evidence-based approach to our engagement with businesses over the last decade. Our Ethical Fashion Report, published in 2022, found that the majority of companies do not have suitable measures in place to exercise effective due diligence. For example, only 23% of companies could demonstrate that they have comprehensive policies and processes in place to respond to and remediate known cases of child and forced labour; and only 16% of companies could evidence an effective grievance mechanism through the entire final stage of their supply chain, with this percentage being even lower further down the supply chain at inputs (e.g. fabric mills) and raw materials (e.g. cotton farms).

Our research shows no evidence of significant, industry-wide improvements in these or other indicators of modern slavery eradication practices that we could attribute to the current Act. As such, we encourage the Commissioner to engage with civil society, business, academia and state Governments to leverage the experience and expertise already demonstrated and reported, in the interests of establishing a best practice approach that has the capacity to significantly increase the efficacy and efficiency of the Act.

Penalties for Non-Compliance

The Modern Slavery Act 2018 is intended to be a 'race to the top,' however, this will only be seen in practice when effective reporting is coupled with due diligence. The introduction and execution of an effective due diligence approach requires the function to be embedded in the office of the Commissioner, and bolstered with sufficient power to administer and enforce the Modern Slavery Act and other relevant legislation, including penalising entities for non-compliance.

We believe that the introduction of penalties is required due to the current lack of reporting compliance as evidenced in the Broken Promises report; for example, 56% of commitments made by companies in their first-round statements to improve their modern slavery responses remained unfulfilled in the second round of reporting. Additionally, 66% of companies did not address all the mandatory reporting criteria prescribed by the Act. For the Act to be effective in combating modern slavery, at a minimum, it must be ensured that companies submit complete and accurate statements. Companies that fail to do so must face consequences such as financial penalties, a non-compliant public listing on the register, or

³https://static1.squarespace.com/static/580025f66b8f5b2dabbe4291/t/6200d3d9db51c63088d0e8e1/1644221419125/Paper+Promises_Australia+Modern+_Slavery+Act_7_FEB.pdf

being prohibited from public tenders. This recommendation is echoed in the statutory review of the Act, by Professor McMillan.

CONCLUSION

BWAA is grateful for the opportunity to contribute a submission to the Committee and commends the Australian Government for progressing towards the appointment of an Anti-Slavery Commissioner. We believe that the Commissioner can influence systemic change with independence, adequate funding, and sufficient power.