



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

Legal and Constitutional Affairs  
Legislation Committee  
22 January 2024





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## Introduction

On 30 November 2023 the Senate referred the provisions of the *Modern Slavery Amendment (Australian Anti-Slavery Commissioner) Bill 2023* (Bill) to the Legal and Constitutional Affairs Legislation Committee for report by 21 February 2024.

HIA provides this submission in response to the Bill.

HIA does not oppose the purpose of the Bill, that is to establish a *‘new independent Anti-Slavery Commissioner that will complement Australia’s response to modern slavery by working with others to raise the national profile of the issue of modern slavery.’*

There are builders, suppliers and manufactures operating in the residential building industry that have been required to report under the Modern Slavery Act. HIA maintains its initial concern that given the nature of the supply chains in the residential building industry the industry is at risk of being disproportionately burdened by the obligations in the Modern Slavery Act 2018 (the Act).

Supply chains in the industry are longer and more complex than many other industries.

The heavy reliance on the use of independent contractors in conjunction with the inordinate number of participants involved in the production of a building product from the raw material to its ultimate inclusion in a house necessitates a robust but not overly complex or burdensome response to the risk of modern slavery being part of the supply chain.

As such, the HIA sees that the establishment of a Commission can play a key role in educating and raising awareness of modern slavery in Australia.

The participants of the residential building industry are as varied as they are complex and HIA has previously been concerned as to non-reporting entities being asked to investigate their supply chains when they may be far less capable of doing so based on resources and size of entity. While businesses that meet the monetary threshold can develop and deploy the necessary resources to comply with the Act, non-reporting entities in the supply chains of reporting entities may be asked to investigate their supply chains and are far less capable of doing so.

To that end, HIA agrees that one of the key functions of the Commissioner should be to *‘work to support business to address risks of modern slavery practices in their operation and supply chains.’*

The residential building industry builds, on average, 113,000 detached houses per year and in the last few years has constructed a record number of both high rise and low rise dwellings, reaching a peak of 233,000 dwellings in 2016. The industry employs nearly 1 million people and contributes approximately \$100 billion towards the nation’s total GDP.

It is imperative that the Commissioner assist in the development of industry specific guidance. HIA submits that these guidelines include materials specifically for the housing sector, to assist in responding to modern slavery risks in supply chains. It is not unreasonable to concede that a sector that contributes so much to the economy and society should be dealt with distinctly from the broader construction industry.



## **The Subcontract System and Supply Chain**

It is well known that the residential building industry, in particular the detached housing and renovation markets, rely on the use of subcontractors.

In commercial construction, whilst there is a large number of subcontracting firms, the overwhelming majority of those working are actually employed by these subcontracting firms. Further subcontracting occurs only in specialist areas. Most commercial construction employees are union members and casual labour is rarely used, for industrial reasons.

By contrast, in the housing industry, subcontracting predominates down to the lowest levels, so that there are relatively few employees on a low or medium density housing site.

The flexibility of the subcontract system and the highly competitive nature of the residential building industry have interacted to secure a high degree of efficiency and productivity.

There are around 25 different trades involved on-site in the building of a house.

The familiar ones are of course concreters, bricklayers, framing carpenters, plumbers, electricians, roof tilers and painters. Others include the contractor who pegs out the site, backhoe operators, drainers, termite system installers, plasterboard fixers, plasterers, floor tilers, glaziers, kitchen installers, the fitting out carpenter, the floor sander, the brick cleaner and finally the garage door fixer.

Within the current Act, the contractor may be the last in a long line of supply chain participants from those processing the raw materials, to the component manufacturers who make the raw materials into building materials, to the material suppliers, then in some cases retailers. There is also the handling and transport processes to and from each stage.

Each supply chain, for each product and for each contractor will differ.

Central to the notion of subcontracting arrangements and the use of independent contractors is that that contractor supplies their own material. This means that the supply chain for materials is equally diverse.

As such, a reporting entity carrying on residential building work, will need to, or will need to require that each one of these 25 or more trades carry out an investigation of their own supply chains.

The Act has added complexity to the businesses of our members and there remains confusion as to the concept, applicability, impact and effect of modern slavery on residential construction businesses and their supply chains.

## **The Bill**

### **Purpose**

The EM states that the purpose of the Bill is to amend the Act to establish the Australian Anti-Slavery Commissioner. As stated above, HIA see opportunities with the establishment of an Anti-Slavery Commission. The EM further states 'the Commissioner would provide 'an independent mechanism for victims and survivors, business and civil society to engage on issues and strategies to address modern slavery.'



HIA agrees that one of the key roles for the Commissioner should be to engage with business on strategies to address modern slavery. Modern slavery is often difficult to detect, difficult to investigate and the reporting requirements have created a further level of bureaucracy on businesses. While in no way diminishing the importance and significance of identifying modern slavery, compliance with the Act has required resources and upskilling within member businesses.

The current challenges faced by the residential building industry are well reported and include labour shortages and material supply issues, even four years after the COVID pandemic. Within the myriad of issues that residential building businesses must currently deal with, reporting on modern slavery is arguably not the highest priority. As such, we see education and well-developed easy to follow guidelines as a meaningful way for the Commissioner to assist industry and greatly improve compliance.

### **Engagement with Business**

As stated above, the residential building industry is unique by virtue of its complex supply chains and use of subcontractors that supply their own material.

HIA would welcome engagement by the Commissioner with the residential building industry on the issue of modern slavery and how to adequately and efficiently investigate supply chain efficacy.

We note the outcomes of the statutory review into the Act undertaken in 2022 and that the three takeaways from this review were to:

- Improve the standard of modern slavery reporting;
- Enforce the reporting obligations of entities; and
- Address the large percentage of incompatible Modern Slavery statements.

It was noted by Professor John McMillan AO throughout this review that inadequate understanding by business [of modern slavery]..‘highlighted the importance of further guidance being published to make it easier for businesses to understand exactly what the legislation requires, and to assist them in instigating meaningful change within their systems and supply chains’<sup>1</sup>.

HIA agrees with this view and sees one of the key roles of the an Anti-Slavery Commissioner being the development of guidelines and templates that will assist business (particularly small to medium business that do not have the resources of the larger companies) to adequately investigate and address modern slavery in a meaningful way.

Given the complexity of the residential building industry and its matrix of supply chains, we see the development of material and guidelines that assist business with their compliance, as a positive step forward in this important area. The development of guidelines and supporting material by the Commissioner will assist in:

- Improved understanding of terms and consistency in terminology;
- Compliance activities; and
- Requirements for reporting.

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<sup>1</sup> ‘What businesses need to know about the Modern Slavery Review’. Published by the Australian Human Rights Commission. 25 July 2023. Available at <https://humanrights.gov.au/about/news/what-businesses-need-know-about-modern-slavery-review>