

# **Modern Slavery Amendment (Australian Anti-Slavery Commissioner) Bill 2023 [Provisions]**

Senate Legal and Constitutional Affairs Legislation Committee

## **Submission by**

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and

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We are grateful for the opportunity to submit our input on the Modern Slavery Amendment (Australian Anti-Slavery Commissioner) Bill 2023 [Provisions] to the Senate Legal and Constitutional Affairs Legislation Committee. We have included our brief biographies below, and by way of introduction, we are both full-time university academics and active researchers in Modern slavery disclosure and compliance, with substantive academic appointments at leading business schools (QUT and Monash Malaysia).

The enactment of the *Modern Slavery Act 2018* (Cth) was a significant moment, providing a framework for addressing modern slavery practices in business operations and supply chains in Australia. Despite its aspirations, in the five years since its commencement, international data points to a concerning increase in modern slavery victims, rising from 40.3 million to 50 million in 2022.<sup>1</sup> This alarming trend underscores the need for a more robust legislative response.

Our submission to the 2022 inquiry for the review of the *Modern Slavery Act 2018* (Cth) strongly advocated for the establishment of an Independent Anti-Slavery Commissioner with appropriate delegation of power and authorities.<sup>2</sup> These measures aim to enhance transparency and drive substantive action among reporting entities. The recommendation for an Anti-Slavery Commissioner aligns with the findings of Professor John McMillan's statutory review of the *Modern Slavery Act 2018* (Cth), which proposed 30 recommendations to enhance transparency and drive substantive action among reporting entities.<sup>3</sup> Notably, at least seven of these recommendations (Recommendation 1, 5, 19, 25, 27, 29, and 30) support the establishment of an Independent Anti-Slavery Commissioner, a move that has received strong support from various submissions to the *Modern Slavery Act 2018* (Cth) review.<sup>4</sup>

Dr James Cockayne is the first full-time Anti-Slavery commissioner appointed for a five-year term that commenced on 1 August 2022, under the auspices of the NSW legislation.<sup>5</sup> The activities performed according to that role so far demonstrate how an “independent broker” in that role facilitates advocacy, industry guidance with a victim-centric priority.<sup>6</sup>

The proposed Modern Slavery Amendment (Australian Anti-Slavery Commissioner) Bill 2023 seeks to amend the existing Act to create the role of the Australian Anti-Slavery Commissioner. This independent statutory office within the Attorney-General's portfolio is designed to collaborate with government, business, and civil society to foster compliance with the Act, enhancing efforts to prevent and address modern slavery.

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<sup>1</sup> *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage*, ('*Global Estimates of Modern Slavery: Forced Labour and Forced Marriage*').

<sup>2</sup> *Submission to the Review of Australia's Modern Slavery Act 2018*, ('*Submission to the Review of Australia's Modern Slavery Act 2018*').

<sup>3</sup> *Report of the statutory review of the Modern Slavery Act 2018 (Cth)*, Department of Home Affairs (entered into force 140) ('*Report of the statutory review of the Modern Slavery Act 2018 (Cth)*').

<sup>4</sup> Submissions that give a representative sample of issues relating to the Commissioner are #21, #24, #26, #28, #38, #39, #41, #43, #55, #57, #69, #75, #84, #89, #95, #98, #103, #106, #109, #112, #116, #126, #127, #132, #134.

<sup>5</sup> *Modern Slavery Act 2018* (NSW).

<sup>6</sup> <<https://dcj.nsw.gov.au/legal-and-justice/our-commissioners/anti-slavery-commissioner.html>>.

This submission refers to the primary functions of the proposed office of the Commissioner under the Modern Slavery Amendment (Australian Anti-Slavery Commissioner) Bill 2023 is to oversee the reporting practices of entities obligated under the Act. The role of the Independent Anti-Slavery Commissioner, as outlined in various modern slavery legislations, encompasses a comprehensive range of responsibilities. These include overseeing activities related to the detection, deterrence, disruption, and mitigation of modern slavery risks within business operations and supply chain networks.<sup>7</sup> We have found that the Commissioner plays a pivotal role in other modern slavery legislation; the Commissioner act as both an advocate<sup>8</sup> for and a promoter<sup>9</sup> of best practices<sup>10</sup> in the identification, prevention, investigation and prosecution of offences involving modern slavery (s9, *Modern Slavery Act 2018* (NSW) and s41, *Modern Slavery Act 2015* (UK)). The establishment of such an office of the Commissioner in Australia would be a significant step forward in the fight against modern slavery. It would ensure not only the compliance of entities with the reporting requirements but also promote a proactive approach towards eradicating modern slavery practices in business and supply chains network. Our submission includes key recommendations to effectively establish and empower the office of the Anti-Slavery Commissioner. These recommendations are outlined below:

### **Recommendations:**

#### **Providing an appropriate budget:**

- The Commissioner's office requires an adequate budget that allows for autonomous functioning, free from political influence.<sup>11</sup> This budgetary independence is essential for making informed decisions on preventing and mitigating modern slavery.
- The budgeting process should be clearly defined in a memorandum of understanding with the sponsoring department, ensuring adherence to the agreed terms.<sup>12</sup>
- The Commissioner's budget should be established on a multi-year basis, aligned with each Spending Review period. This long-term financial planning will facilitate the development of a strategic, multi-year work plan.<sup>13</sup>
- The allocated budget must be substantial enough to ensure that the Commissioner has the necessary resources to effectively fulfil all functions and responsibilities.<sup>14</sup>

#### **Industry specific guidance:**

Recognizing that the impact of modern slavery varies across different industry sectors, influenced by unique national legislations, government involvement, and socio-economic factors, it is imperative for the Commissioner's office to delve into these industry-specific

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<sup>7</sup> *Modern Slavery Act 2015* (UK), *Parliamentary Debates, Modern Slavery Act 2015* (UK); *Modern Slavery Act 2018* No 30, *Parliamentary Debates, Modern Slavery Act 2018* (NSW).

<sup>8</sup> *Modern Slavery Act 2018* No 30, "Modern Slavery Act 2018 (NSW).

<sup>9</sup> *Modern Slavery Act 2018* No 30, "Modern Slavery Act 2018 (NSW).

<sup>10</sup> *Modern Slavery Act 2015* (UK), "Modern Slavery Act 2015 (UK).

<sup>11</sup> Interview with Kevin Hyland OBE (Home Affairs Committee Oral evidence: Modern Slavery, Tuesday 23 October 2018; *Independent Review of the Modern Slavery Act 2015: Final Report*, ('*Independent Review of the Modern Slavery Act 2015: Final Report*').

<sup>12</sup> UK Government, 'Independent Review of the Modern Slavery Act 2015: Final Report'

<<https://www.gov.uk/government/publications/independent-review-of-the-modern-slavery-act-final-report>>.

<sup>13</sup> Ibid.

<sup>14</sup> Ibid.

nuances. This approach will enhance the understanding of modern slavery's impacts in various sectors.<sup>15</sup>

Our research showed that many Australian entities struggled with their inaugural modern slavery reports. For example, even when The Australian Border Force recommended that entities assess and disclose any changed modern slavery risks related to the COVID-19 crisis,<sup>16</sup> we found that more than half of the modern slavery statements did not disclose COVID-19 induced risks.<sup>17</sup> The office should leverage the Global Industry Classification Standard Categories to assess Modern Slavery Risk. Industries like Energy, Materials, Industrials, Consumer Discretionary, Consumer Staples, and Real Estate are typically at higher risk, while Health Care, Financials, Information Technology, Communication Services, and Utilities generally pose lower risks. Tailored strategies and guidance for each category will enable a more effective response to modern slavery challenges.<sup>18</sup>

### **Survivor centric approach:**

The Commissioner's office should adopt a survivor-centric approach, focusing on those adversely affected by modern slavery practices within reporting entities. Key initiatives should include providing support and assistance to victims of modern slavery. This includes overseeing support and referral assistance mechanisms, administering a national victim compensation scheme, and establishing a confidential reporting hotline. In line with the United Nations Human Rights Council's (UNHR) 2011 guidelines on business-related human rights violations, the Commissioner's office should facilitate both state and non-state, judicial and non-judicial grievance and remediation mechanisms.<sup>19</sup> This includes offering platforms for stakeholders and rights holders to raise complaints and seek resolution, particularly in scenarios where the nature of the enterprise's impact or the extent of remediation required is contested.<sup>20</sup>

### **Enforcement and compliance mechanism:**

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<sup>15</sup> Shakoor Ahmed et al, 'Modern Slavery Risk Disclosures in Business Operations and Supply Chains' in Vanancio Taurigana and Olayinka Moses (eds), *Advances in Environmental Accounting & Management Environmental Sustainability and Agenda 2030: Efforts, Progress and Prospects* (Emerald Publishing, 2022) vol 10, 67-104.

<sup>16</sup> 'Modern Slavery Act: Information for Reporting Entities about the Impacts of Coronavirus', Australian Government: Department of Home Affairs (2020) <<https://www.homeaffairs.gov.au/about-us/our-portfolios/criminal-justice/people-smuggling-humantrafficking/modern-slavery-act-coronavirus>>

<sup>17</sup> Shakoor Ahmed and Larelle Chapple, 'Corporate response to modern slavery risks induced by COVID-19: Business as usual?' (2022) 37 *Australian Journal of Corporate Law* 203-229.

<sup>18</sup> Rajiv Maher, Moritz Neumann and Mette Slot Lykke, 'Extracting Legitimacy: An Analysis of Corporate Responses to Accusations of Human Rights Abuses' (2021) 176 *Journal of Business Ethics* 609-628; Fayez A. Elayan et al, 'The Market Response to Mandatory Conflict Mineral Disclosures' (2019) *Journal of Business Ethics*; Justine Nolan and Nana Frishling, 'Australia's Modern Slavery Act: Towards Meaningful Compliance' (2019) 37(2) *Company and Securities Law Journal* 104-126.

<sup>19</sup> *Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework* Geneva — GE.11-46529 — January 2012 — 4 951 — HR/PUB/11/4, Geneva (Publishing Service, United Nations, ('*Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework*').

<sup>20</sup> *OECD Due Diligence Guidance for Responsible Business Conduct*, ('*OECD Due Diligence Guidance for Responsible Business Conduct*').

The primary purpose of the Bill is to establish the office of the Anti-slavery commissioner. Part of the role involves consulting and liaising “with Commonwealth, State and Territory governments, agencies, bodies and office holders on matters relating to modern slavery “ (cl 20C(10(i)). Although the Bill does not provide any direct enforcement or penalty mechanisms or powers, the matter of penalties is a matter that will continue to arise. At this stage, cooperation between and among entities will provide a mechanism for information sharing. For instance, financial services entities, the Anti-Slavery Commissioner’s office should work closely with the Australian Prudential Regulation Authority (APRA) and the Australian Securities and Investments Commission (ASIC) to ensure effective and substantive compliance with the *Modern Slavery Act 2018* (Cth).

For government and public sector procurement, it is essential to reinforce procurement processes to exclude non-compliant companies from public contracts. Observing the initiatives in states like NSW and Western Australia, which have integrated modern slavery prevention clauses in their public procurement, this practice should also be adopted at the federal level. The Anti-Slavery Commissioner's office will play a pivotal role in ongoing integration of new policies and enforcement mechanisms.

#### **Research and development:**

The office should actively commission research on modern slavery, business, and human rights, collaborating with universities, NGOs, and other organizations. This includes organising and supporting disseminating events and initiatives related to modern slavery research. The Commissioner's role is crucial in encouraging research at both conceptual and evidence-based levels. Conceptual research is vital for developing frameworks to address all facets of modern slavery, particularly changes needed in institutional structures and behaviours to eradicate it. Evidence-based research is essential for organizations to understand the actual extent of modern slavery practices and to develop metrics to bridge the gap between estimated and actual instances of modern slavery.

#### **Ensuring the independence of the Commissioner's office:**

It is crucial that the Commissioner has sufficient access to government data, enabling comprehensive scrutiny and effective performance of duties.

These recommendations aim to ensure that the Anti-Slavery Commissioner’s office is equipped with the necessary tools and strategies to effectively combat modern slavery, with a focus on industry-specific risks and a survivor-centric approach to remediation and ensuring its independence and effectiveness in tackling modern slavery issues.

## **Contributors**

### **Professor Larelle (Ellie) Chapple**

Ellie is a Professor at the QUT Business School and she is a solicitor admitted to legal practice in the Supreme Court of Queensland and a graduate member of the Australian Institute of

Company Directors. Ellie has over 30 years' experience as a teaching and research academic in Australian business and law schools, primarily focusing on corporate regulation as it applies to accounting students and commercial transactions. She has taught and researched in the areas of insolvency, commercial law, corporate law, corporate governance, CSR, diversity, forensic accounting and auditing and has supervised over 30 research students in these areas. She has published the results of her research in journal articles in top ranked regional journals in accounting, auditing, finance and commercial law. Her research approach favours "cross disciplinary" research, that is, combining skills and methodologies from the accounting and commercial law disciplines to inform corporate disclosure, reporting regulation and policy, and fraud control. Ellie is active in several academic professional associations including the American Accounting Association, the Society of Corporate Law Academics, the Financial Research Network and the Accounting and Finance Association of Australia and New Zealand. She is deputy-editor in chief of *Accounting and Finance* and assessor for the Australian Research Council's various Research Grant programmes.

### **Dr Shakoor Ahmed**

Shakoor Ahmed is Lecturer in Accounting at the Monash University Malaysia. He received his PhD at QUT School of Accountancy, Queensland University of Technology, Australia. The title of his PhD thesis is "A Textual and Visual Analysis of Reporting Practices of Modern Slavery Risks in Business Operations and Supply Chains". His research on modern slavery risks was published in ranked journals and presented at a number of national and international conferences. Shakoor has developed an extensive network of researchers and policymakers involved in combatting modern slavery practices, particularly through using the power of social media to encourage debate and discussion. The University of Bath has listed him on #ThinklistNext21, and he is the Social Media Editor for Business and Human Rights Journal, published by Cambridge University Press. Before joining QUT, he worked as an assistant professor of Accounting at the Ministry of Education, Bangladesh. He holds a Master of Business Research from the University of Southern Queensland, Australia and a Master of Accounting and Information Systems from the University of Dhaka, Bangladesh. He is a member of the Accounting and Finance Association of Australia and New Zealand and European Accounting Association.