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

Submission to the Senate Legal and Constitutional
Affairs Legislation Committee

from

SlaveCheck

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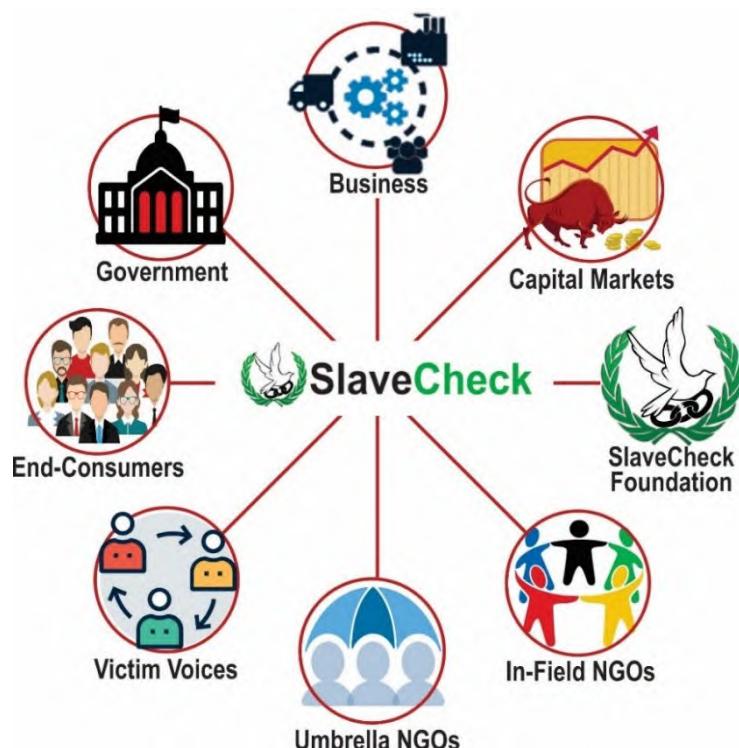
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1. About SlaveCheck

SlaveCheck Pty Ltd and The SlaveCheck Foundation Ltd ('SlaveCheck') provide a global, survivor-centric modern slavery due diligence system, powered by SlaveCheck's 'collective intelligence' clearinghouse and self-funded via a 'profit-for-purpose' business model.



2. About the Submission Author

The author is the former and first UK Independent Anti-Slavery Commissioner, a role created in the UK's Modern Slavery Act 2015 and provided the office holder with a statutory position overseeing the statutory agencies' responses to human trafficking and modern slavery.¹ Before being Commissioner, the author headed the UK's Scotland Yard Human Trafficking Unit and was Ireland's representative to the Council of Europe Groups of Experts on Human Trafficking (GRETA) between 2018 and 2022. He is also the former chair of the Leadership Group of the Institute of Human Rights and Business² and the co-founder and global strategy director of the Santa Marta Group, an international network of criminal justice actors, civil society, faith groups, and governments launched in 2014 at the Vatican, endorsed by Pope Francis.³ This experience and knowledge has provided first-hand strategic and tactical expertise. He is also the Global Strategy Advisor for SlaveCheck.

¹ Independent Anti-Slavery Commissioner <https://www.antislaverycommissioner.co.uk/>

² IHRB: <https://www.ihrb.org/>

³ International network of law enforcement & civil society: <https://santamartagroup.org/>

3. Modern Slavery – The Role of an Anti-Slavery Commissioner

Human trafficking, modern slavery and forced labour, its root causes, its presence today and the measures needed to counter this crime and human rights violation can be better understood and advanced by the appointment of an Anti-Slavery Commissioner. It is crucial this role holder understands and examined opportunities for domestic and international suppression of this crime.

The world's relationship with human trafficking as a global crime has existed for many centuries. Contemporary forms of human trafficking crimes continue to increase, despite being an inalienable human right (Article 4 UDHR)⁴ and a crime against humanity (Rome Statute of the International Criminal Court Art. 7).⁵ It is also evident that socioeconomic norms permit or even encourage human trafficking to flourish.⁶ When making decisions and shaping responses policymakers should consider the measures needed locally, regionally, nationally and internationally to prevent this phenomenon by addressing the circumstances and environments that attract and permit perpetrators to exploit others.⁷ The historic demand for slavery during the trans-Atlantic slave trade, and its eradication, demonstrates how individuals, businesses and governments have profited from human trafficking, slavery and exploitative labour over the centuries and have been too often immune from any sanction. The reality and severe nature of contemporary forms of human trafficking and modern slavery globally, and its nexus to the economy,⁸ transnational crime, the commodification of human beings and the demand for cheap labour are crucial elements that need to be suppressed and prevented by effective policy.

The Council of Europe Evaluations and the US Trafficking in Persons Reports provide public evaluations of how effective countries are doing in implementation of anti-trafficking and victim support measures.⁹ When examining human trafficking and modern slavery, decision-makers must be skilled and enabled to create legislation and policies that effectively prevent human trafficking and deliver justice for the victims and assist in achieving the UN Sustainable Development Goals (SDG's) that were authored in 2015 and agreed by all UN member states.¹⁰

UNODC has reported socioeconomic structures of our modern world, and the demand-driven society make this a lucrative crime with almost certain impunity.¹¹ Pope Francis expressed the disposable culture and demand placed on the poor and marginalised in his 2013 'Evangelii Gaudium' where he

⁴ Article 4 of the Universal Declaration of Human Rights

⁵ <https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf> pg 7

⁶ Cameron S and Newman E, *Trafficking in humans: Social, cultural and political dimensions* (United Nations University 2008)

⁷ Barner JR, Okech D and Camp MA, *Socio-economic inequality, human trafficking, and the Global Slave Trade* (MDPI 2014)

⁸ Modern slavery: <https://www.antislavery.org/slavery-today/modern-slavery/>

⁹ Council of Europe Group of Experts, Human Trafficking for Forced Labour (Strasbourg 2017)

¹⁰ The SDG's: <https://sdgs.un.org/goals>

¹¹ UNODC, Romena (New York 26 November 2014)

states that the modern world "feeds upon the powerless" and too many people are treated as "consumer goods to be used and then discarded."¹² These comments resonate with the beliefs of many who work to end human trafficking, including the UN Secretary-General Antonio Guterres, who said of this crime, "Human traffickers are taking advantage of these vulnerabilities, using sophisticated technology to identify, track, control and exploit victims."¹³

Over the years, examples of extraordinary leadership provide insight into the historic fight against slavery and human trafficking. In the early 1800s, Belfast businesswoman Mary Anne McCracken played a pivotal role in ending the trade of sugar sourced from trans-Atlantic slavery by leading a boycott of its import and educating her community and city leaders on the suffering caused by this business.¹⁴ In *The Life and Times of Mary Ann McCracken, 1770–1866, A Belfast Panorama*,¹⁵ it tells how McCracken, when speaking of the presence of slavery in the United States, said, "considered the land of the great, the brave" suggesting the alternative "more properly be styled the land of the tyrant and the slave". She further stated that her city of Belfast, "once so celebrated for its love of liberty", was "sunk in the love of filthy lucre." Her stance encouraged the British Parliament, led by fellow abolitionist Kingston Upon Hull Member of Parliament, William Wilberforce, to outlaw slavery.¹⁶ She and many others exposed slavery for what it was, leading to the enactment of the Slave Trade Act of 1807, banning the purchase and trading of human slaves in the British Empire, followed by emancipation some 31 years later in 1838.¹⁷ It seems remarkable that in 2022 sugar from the Caribbean is again at the heart of human trafficking and forced labour, with the US Government imposing an import ban on Central Romana Corporation in the Dominican Republic due to allegations of forced labour.¹⁸

While the trans-Atlantic slave trade ended over 200 years ago, its relevance and the socioeconomic norms that fuelled its existence remain an essential reference point today. However, one of the main differences between the trans-Atlantic slave trade and contemporary human trafficking and modern slavery is that during the 17th to 19th century, this phenomenon was legal and considered essential for a successful business.¹⁹ In the 21st century, human trafficking and modern slavery are crimes in most

¹² Pope Francis, *Evangelii Gaudium - The Proclamation of the Gospel in Today's World* (Vatican 2013)

¹³ Guterres A, SG UN, Human trafficking: All-out assault on rights, safety and dignity (UN News 29 July 2022)

¹⁴ <https://www.irishnews.com/lifestyle/2021/02/08/news/anne-hailes-we-need-women-mary-ann-mccracken-as-much-as-ever-today-2210541/>

¹⁵ McNeill M, *The Life and Times of Mary Ann McCracken, 1770-1866: A Belfast Panorama* (Merrion Press 2023)

¹⁶ <https://www.mylearning.org/stories/william-wilberforce/105>

¹⁷ UK Parliament (1807 *The Abolition of the Slave Trade*, 2015) <https://www.parliament.uk/about/living-heritage/evolutionofparliament/2015-parliament-in-the-making/get-involved1/2015-banners-exhibition/maria-amidu/1807-abolition-of-the-slave-trade/#:~:text=It%20was%20only%20after%20many,the%20slaves%20themselves%2C%20>

¹⁸ Dánica Coto, Associated Press [2022] U.S. to detain Dominican sugar import amid accusations of forced labor

¹⁹ Eltis D and Engerman SL, *The Importance of Slavery and the Slave Trade to Industrializing Britain* (2000) 60 The Journal of Economic History 123

countries, yet today prevalence is more significant than ever before, with current estimates at almost 50 million people suffering. According to the UN, in the three centuries of the trans-Atlantic slave trade, an estimated 15 million people were enslaved.²⁰ By August 2020, 93 per cent of the world's nations had introduced anti-human trafficking legislation, an increase from 18 per cent in 2003.²¹ However, the prevalence of this crime continues to grow, according to the ILO, now reaching historic levels.²²

4. Recommendations for the Role of an Australian Anti-Slavery Commissioner

The role of the Commissioner as contained in the Modern Slavery Amendment (Australian Anti-Slavery Commissioner) Bill 2023 is very positive as it is wide reaching and contains many important functions. The prohibition on the Commissioner from investigating cases is well founded and will prevent the role holder from being drawn into individual cases or engulfed in prosecutions or legal actions. The protection from civil action if acting in good faith, is evidence that the Commissioner will be able to report without fear or favour and can demonstrate the independence well promoted in the Bill.

However, it is suggested the terminology in section 20(C)(1)(b) should be revisited as the current wording should better reflect the purpose of the Commissioner.

It currently reads:

'Support Australian entities and entities carrying out business in Australia to address risks of modern slavery.'

This places the Commissioner in a subsidiary role, almost acting as a service to the entities. Whilst the role will not have a position as an ombudsman or adjudicator, it is important the legislation is framed in a manner that better reflects the Commissioner's role. A suggested wording might be:

'Encourages and provides guidance to Australian entities and entities carrying out business in Australia to address risks of modern slavery.'

An activity that might place the Commissioner and the Government in a more effective position to bring change would be for the Commissioner to produce a 'Code of Practice' for entities. This code should be submitted to the Minister for approval and can be amended with the approval of the Minister. The code should contain guidance of areas an entity should address to meet the Commissioner's and the

²⁰ Slave Trade (United Nations) <https://www.un.org/en/observances/decade-people-african-descent/slave-trade>

²¹ Countries with full, partial or no trafficking legislation 2003 to 2020
<https://www.statista.com/statistics/300899/percentage-of-countries-by-legislation-on-trafficking-in-persons-by-region/#:~:text=As%20of%20August%202020%2C%2093,of%20countries%20offered%20such%20legislation.>

²² ILO, 50 Million People Worldwide in Modern Slavery (12 September 2022) https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_855019/lang--en/index.htm

Government's expectations. This code would provide consistency and then could act as the framework of evaluation when an entity is applying for public procurement or for business-to-business trade decision making.

Another area that could be specifically contained for the Commissioner to provide leadership could be for consumers and unions. It should be carefully framed but the suggested wording in the 'Role of the Commissioner' could be:

'Will provide guidance to consumers and encourage entities to publicly promote anti-slavery actions on their products and in their services.'

Over a period, this may evolve to a time where consumers will only purchase products and services marked as free of modern slavery, child labour or forced labour.

5. Protocols, Conventions, and International Frameworks

Recognising and understanding the legal instruments to address human trafficking and the many forms it takes is complex. The United Kingdom and Australia championed modern slavery as an umbrella term that the public would better understand and differentiate from the crime of smuggling.²³ International instruments and definitions advise or influence domestic legislation. The first contemporary international instruments came from the United Nations (UN) in December 2000, the 'Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children,' better known as the Palermo Protocol.²⁴ Australia ratified the Palermo Protocol on the 14th of September 2005. The UN assigned responsibility for implementing the Palermo Protocol to the United Nations Office for Drugs and Crime (UNODC). This convention is advisory upon UN members but does have scrutiny imposed by the US Department of State Trafficking in Persons Office (TIP Office), which publishes an annual Trafficking in Persons (TIP) Report authorised by the US Victims of Trafficking and Violence Protection Act 2000 (TVPA 2000).²⁵

TIP Reports grade countries against the Palermo Protocol and has an evaluation grading process.

The 2023 TIP Report disclosed global data as:

²³ UK Anti-Slavery Commissioner (*A typology of modern slavery*)

<https://www.antislaverycommissioner.co.uk/media/1190/a-typology-of-modern-slavery-offences.pdf>

²⁴ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime (OHCHR)

<https://www.ohchr.org/en/instruments-mechanisms/instruments/protocol-prevent-suppress-and-punish-trafficking-persons>

²⁵ Victims of Trafficking and Violence Protection Act 2000 - <https://www.govinfo.gov/content/pkg/PLAW-106publ386/pdf/PLAW-106publ386.pdf>

2023 TIP Report Disclosed Global Data

Year	Prosecutions (Number in brackets for forced labour)	Convictions	Victims Identified	Amended or New Legislation
2016	14,393 (1,038)	9,072 (717)	68,453 (17,465)	25
2017	17,471 (869)	7,135 (332)	96,960 (23,906)	5
2018	11,096 (457)	7,481 (259)	85,613 (11,009)	5
2019	11,841 (1,024)	9,548 (498)	118,932 (13,875)	7
2020	9,876 (1,115)	5,011 (337)	109,216 (14,448)	16
2021	10,572 (1,379)	5,260 (374)	90,354 (21,219)	15
2022	15,159 (2,670)	5,577 (528)	115,324 (24,340)	27

Despite increased number of nations with human trafficking legislation, the progress globally is poor and in the case of convictions has declined. The appointment of a Commissioner in Australia can influence change, particularly with a focus on supply chains and businesses in addition to victim support and criminal justice intervention.

The Government of Australia should be commended for making significant progress in the establishing of an Anti-Slavery Commissioner and for the proposed legislation.

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