



Australian
Human Rights
Commission

Call for Input on Country visit to Australia

Australian Human Rights Commission

Submission to the Special Rapporteur on Contemporary Forms of
Slavery, Tomoya Obokata

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1 Introduction

1. The Australian Human Rights Commission (Commission) welcomes the opportunity to make this submission for the [country visit to Australia](#) by the Special Rapporteur on contemporary forms of slavery, Tomoya Obokata (Special Rapporteur) (Call for Input).
2. The role of the Commission is to work towards a world in which human rights are respected, protected and fulfilled. The Commission welcomes further opportunities to engage with the Special Rapporteur in respect of the upcoming country visit to Australia.

2 Modern slavery

3. Australia is not immune from modern slavery. The 2023 Global Slavery Index estimates that on any given day in 2021, there were 41,000 individuals living in modern slavery in Australia.¹ The Australian government, through its National Action Plan to Combat Modern Slavery, has recognised the disproportionate impact of modern slavery on women and children.²
4. The Modern Slavery Act 2018 (Cth) (MS Act) is Australia's principal legislation addressing modern slavery in corporate supply chains (although a separate state-based regime exists in NSW).³ The MS Act requires large businesses and other entities in Australia to submit an annual modern slavery statement that reports on how they are addressing modern slavery risks in their operations and supply chains. In 2021, the Australian Government announced a statutory review of the MS Act led by Professor John McMillan, AO. The Commission provided a [submission](#) to that review, making 18 recommendations to strengthen the MS Act.
5. Key recommendations made by the Commission included:
 - introducing civil penalties for non-compliance
 - introducing specific due diligence obligations
 - lowering the threshold for reporting entities
 - providing alternative support pathways for victims
 - introducing a national compensation scheme for victims
 - introducing an independent Anti-Slavery Commissioner.⁴

6. Professor McMillan's [Report of the Statutory Review of the Modern Slavery Act 2018 \(Cth\): The First Three Years](#) (McMillan Report), was tabled in Parliament on 25 May 2023, and made 30 recommendations.
7. Since then, the Australian Parliament has passed the *Modern Slavery Amendment (Australian Anti-Slavery Commissioner) Act 2024* to establish Australia's first federal Anti-Slavery Commissioner, with the Federal Government committing \$8 million over four years to support the Commissioner's establishment and operation.⁵ The Commission provided a [submission](#) to the parliamentary inquiry considering this legislation, and recognises this as a positive development to strengthen Australia's anti-slavery framework.
8. The Commission notes, however, that the Federal Government's response to the McMillan Report is still pending, and many of the McMillan Report's recommendations are yet to be progressed. Legislative reform to the MS Act is overdue and should be moved forward as a matter of urgency.
9. Combatting modern slavery is a broader and more complex task than the legislative framework established by the MS Act. It requires a whole-of-government effort (and collaboration with business) to ensure that modern slavery in all of its forms is addressed in a comprehensive way. While it has been pleasing to see broad support in Australia for addressing modern slavery via the MS Act, it is important to recognise that this legislation does not address all aspects of modern slavery. More needs to be done to ensure a comprehensive response in areas such as forced marriages, human trafficking and labour exploitation.

3 Forced marriage

10. Conservative estimates suggest there are 22 million people living in forced marriages,⁶ of which two-thirds are in the Asia-Pacific region.⁷
11. It is difficult to obtain accurate statistics about the true extent of forced marriage in Australia. However, the Australian Federal Police (AFP) received 92 reports of forced marriage in 2019–20, with 51% of forced marriage reports concerning victims under 18 years of age.⁸ This compares to 11 reports in 2013–14 when the offence of forced marriage was first introduced.⁹
12. Forced marriage has been linked as a form of modern slavery, with both the International Labour Organisation and Walk Free including it in their Global Estimates of Modern Slavery.¹⁰

13. The Australian Government's response to modern slavery includes addressing forced marriage.¹¹ The federal *Criminal Code Act 1995* (Cth) (Criminal Code) contains offences regarding forced marriage.¹² Notably, Divisions 270 and 271 of the Criminal Code were reviewed in 2022 with a [Findings Report](#) being published in 2023. The Commission provided a [submission](#) to this inquiry, as well as recently providing a [submission](#) to the NSW Department of Communities and Justice's [Discussion Paper](#) on the Review of NSW legal protections for victim-survivors of forced marriage.

4 Coercive control

14. The right to be free from slavery is an absolute right, enshrined in Article 8 of the International Covenant on Civil and Political Rights.

15. The United Nations estimates that 83% of victim/survivors of modern slavery between 2015–2017 were women and girls.¹³

16. While not every example of coercive control will necessarily be considered a form of modern slavery, the intersections and commonalities between these two concepts are important to understand. Some forms of modern slavery will involve situations where offenders use coercion, threats or deception to exploit victims and undermine their freedom.¹⁴

17. Coercive control is a pattern of controlling behaviour, used by a perpetrator to establish and maintain control over another person, and is often an underlying dynamic of family and domestic violence and intimate partner violence.¹⁵ Coercive control is used to deprive another of their liberty and autonomy, and is almost exclusively perpetrated by men against women.¹⁶

18. Violence against women, in all its forms, remains endemic in Australia. Between 2021–2022, 1 in 4 women experienced cohabiting partner emotional abuse, and 1 in 6 women experienced cohabiting partner economic abuse.¹⁷

19. The intersection of gender with other forms of inequality results in women with disability and from LGBTIQ+, First Nations and culturally and racially marginalised backgrounds experiencing higher rates of violence, and additional barriers to support.¹⁸

20. General Recommendation 35 by the Committee on the Elimination of Discrimination against Women recognised States' obligation to protect

women and girls from violence and to ensure access to remedies for victim/survivors.¹⁹

21. From 1 July 2024, coercive control is a criminal offence in New South Wales,²⁰ with similar legislation expected to come into force in Queensland next year.²¹
22. Concerns raised regarding the criminalisation of coercive control include the need for a consistent definition, an evidence base on the effectiveness of criminalisation (including unintended consequences) and reforming the culture of response to domestic and family violence nationally.²²
23. The Commission agrees with the recommendations of Women's Legal Service NSW and calls for significant cultural and systems reforms to the criminal justice system before any criminalisation of coercive control is implemented.²³ In particular, the Commission notes that any reform must ensure the accurate identification of the person most in need of protection and to address the over-representation of First Nations women in custody and risk that they will be mis-identified and criminalised.²⁴

5 Forced Labour

24. Subsection 270.6(1) of the *Criminal Code Act 1995* (Cth) defines forced labour as the condition of a person who provides labour or services and who, because of the use of coercion, threat or deception, would not consider themselves to be free to:
 - cease providing the labour or services or
 - leave the place where they provide the labour or services.²⁵
25. In Australia, forced labour occurs in similar sectors to those identified worldwide, such as domestic work, the sex industry, agriculture and construction.²⁶ Many of these industries rely on migrant workers, many of whom enter Australia on temporary visas and are at particular risk of exploitation.²⁷
26. The Australian Federal Police have reported that since 2018–19, there has been an almost 50% increase in forced labour crimes.²⁸
27. While there have been recent positive steps, such as Australia's ratification of the *Protocol of 2014 to the Forced Labour Convention, 1930* (No. 29), further reforms are needed. For example, the Commission recommends appropriate funding for accessible education to those who are arriving on temporary visas of the existing labour protections and conditions, the

illegality of forced labour, and available free support services. There have also been recent government and parliamentary reports that have recommended broader reforms in Australia to strengthen our responses to forced labour both in Australia and globally, such as the Senate Select Committee on Job Security and the Report of the Migrant Workers' Taskforce.

6 Application of productivity-based wages to people with disability

28. In Australia, legal mechanisms exist allowing employers, under certain conditions, to pay people with disability a wage that is below the national minimum wage.
29. An employee with disability deemed unable to work at full productive capacity, compared to other employees, can be assessed using a process called the Supported Wage System (SWS) and paid a percentage of the relevant award wage based on their assessed productivity and competencies.²⁹
30. The *Disability Discrimination Act 1992* (Cth) excludes productivity-based wages determined in accordance with an order or award of a relevant court or tribunal, such as the SWS, from being considered unlawful discrimination.³⁰
31. This practice can occur in any Australian workplace if the SWS is included in the relevant award or enterprise agreement. However, the SWS is mainly applied in Australian Disability Enterprises (ADEs), or 'supported employment' settings.³¹
32. ADEs are organisations that provide employment for 'people with moderate to severe disability who need significant support to work',³² generally people with cognitive disability, particularly intellectual disability.³³
33. The *Supported Employment Service Award 2020* (SES Award) is the industrial instrument that sets minimum pay and conditions for employees in ADEs.³⁴ Following a review in 2023,³⁵ the minimum rate of pay under the SES Award is \$3.01 per hour³⁶ compared to the national minimum wage of \$24.10 per hour.³⁷
34. The Convention on the Rights of Persons with Disabilities (CRPD) requires Australia to protect the rights of people with disability to work on an equal

basis with others, including equal pay for work of equal value.³⁸ This is supported by the International Covenant on Economic, Social and Cultural Rights (ICESCR).³⁹

35. In General Comment 8, the Committee on the Rights of Persons with Disabilities (CRPD Committee) states that 'payment below the minimum wage on the basis of disability' is not justifiable under any circumstance.⁴⁰
36. Concluding Observations from Australia's 2019 review under the CRPD raised concern about people with disability receiving a 'subminimum wage'⁴¹ and recommended a comprehensive review of ADEs.⁴² This has not yet occurred.
37. Inadequate wages under the SWS contravene the rights of people with disability to earn a decent living, inhibiting their ability to fully and effectively participate in society.⁴³ Lower socio-economic status and reduced financial capital has been shown to increase the risk of people with disability experiencing abuse and exploitation.⁴⁴
38. The Commission considers that Australia's ongoing use of productivity-based wages for people with disability is inconsistent with CRPD Article 27.
39. The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Disability Royal Commission) concluded that people with disability working in ADEs experience unfair treatment due to 'the very low wages' they receive,⁴⁵ and that this practice is 'inconsistent with the principles of inherent dignity and respect for difference and human diversity that fundamentally underpin the CRPD.'⁴⁶
40. The Disability Royal Commission recommended raising wages to 50% of the minimum wage as an interim measure, with the longer-term goal of full minimum wages by 2034 for all people with disability currently receiving subminimum wages.⁴⁷
41. The Australian Government is due to formally respond to the recommendations of the Disability Royal Commission in late 2024.

Endnotes

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- ² Australian Government, *National Action Plan to Combat Modern Slavery 2020-25*, 2020 <<https://www.homeaffairs.gov.au/criminal-justice/files/nap-combat-modern-slavery-2020-25.pdf>>.
- ³ See *Modern Slavery Act 2018* (NSW).
- ⁴ See e.g. Australian Human Rights Commission, Submission No. 112 to the *Review of Australia's Modern Slavery Act 2018* (Submission, November 2022).
- ⁵ The Hon Mark Dreyfus KC MP, *Albanese Government establishes Anti-Slavery Commissioner* (Media Statement) <<https://ministers.ag.gov.au/media-centre/albanese-government-establishes-anti-slavery-commissioner-28-05-2024>>.
- ⁶ International Labour Organisation, Walk Free & International Organisation for Migration, *Global Estimates of Modern Slavery Forced Labour and Forced Marriage* (Report, September 2022) 5.
- ⁷ International Labour Organisation, Walk Free & International Organisation for Migration, *Global Estimates of Modern Slavery Forced Labour and Forced Marriage* (Report, September 2022) 5.
- ⁸ Australian Federal Police, *Stop human trafficking happening in plain sight* (30 July 2020).
- ⁹ Australian Federal Police, *Forced marriage awareness campaign launched at Australia's busiest airport* (15 October 2019); Carla Hildebrandt, 'Federal police fear hike in child forced marriage cases as overseas travel restrictions lift', *ABC News* (4 September 2022).
- ¹⁰ See generally International Labour Organisation, Walk Free & International Organisation for Migration, *Global Estimates of Modern Slavery Forced Labour and Forced Marriage* (Report, September 2022).
- ¹¹ Attorney-general's Department, *'Forced Marriage'* (webpage) <<https://www.ag.gov.au/crime/people-smuggling-and-human-trafficking/forced-marriage>>.
- ¹² *Criminal Code Act 1995* (Cth) divs 270 & 271.
- ¹³ Australian Government, *National Action Plan to Combat Modern Slavery 2020-25*, 2020 <<https://www.homeaffairs.gov.au/criminal-justice/files/nap-combat-modern-slavery-2020-25.pdf>>.
- ¹⁴ Attorney-General's Department, *Modern Slavery*, <<https://www.ag.gov.au/crime/people-smuggling-and-human-trafficking/modern-slavery>>.
- ¹⁵ Australian Institute of Health and Welfare, *Family, domestic and sexual violence: coercive control*, <<https://www.aihw.gov.au/family-domestic-and-sexual-violence/understanding-fdsv/coercive-control#coercive-control>>.
- ¹⁶ ANROWS, *Defining and responding to coercive control*, 2021 <<https://anrows-2019.s3.ap-southeast-2.amazonaws.com/wp-content/uploads/2021/07/30132421/Coercive-Control-Policy-Brief-ANROWS-Insights-1.1.pdf>>.
- ¹⁷ Australian Bureau of Statistics, *Personal Safety, Australia*, 2023 <<https://www.abs.gov.au/statistics/people/crime-and-justice/personal-safety-australia/latest-release>>.
- ¹⁸ For example, three in five First Nations women have experienced physical or sexual violence (see Australian Human Rights Commission, *Wiyi Yani U Thangani (Women's Voices)*, pg. 44 <<https://wiyiyaniuthangani.humanrights.gov.au/sites/default/files/2023->

[03/ahrc_wiyi_yani_u_thangani_report_2020.pdf](#)), women with disability in Australia are twice as likely to have experienced sexual violence since the age of 15 than women without disability (see Centre of Research Excellence in Disability and Health, 2021, *Nature and extent of violence, abuse, neglect and exploitation against people with disability in Australia: Research report*. Centre of Research Excellence in Disability and Health, *Violence against young people with disability in Australia Fact Sheet 2*. Australian Institute of Health and Welfare, 2020 *People with Disability in Australia*.) and lesbian, bisexual and queer women experience higher rates of sexual violence than heterosexual women in Australia (see: Australian Bureau of Statistics 2021–2022, *Sexual violence* < <https://www.abs.gov.au/statistics/people/crime-and-justice/sexual-violence/latest-release>>.).

¹⁹ UN Committee on the Elimination of Discrimination Against Women, *CEDAW General Recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19*, CEDAW/C/GC/35, 27 July 2017.

²⁰ In accordance with the *Crimes Legislation Amendment (Coercive Control) Act 2022* (NSW).

²¹ See the *Criminal Law (Coercive Control and Affirmative Consent) and Other Legislation Amendment Act 2024* (QLD).

²² ANROWS, *Defining and responding to coercive control*, 2021 <<https://anrows-2019.s3.ap-southeast-2.amazonaws.com/wp-content/uploads/2021/07/30132421/Coercive-Control-Policy-Brief-ANROWS-Insights-1.1.pdf>>.

²³ Women's Legal Services NSW, *Response to the public consultation on the Crimes Legislation Amendment (Coercive Control) Bill 2022* (NSW), 2022 <<https://www.clcnsw.org.au/sites/default/files/2022-08/WLS-NSW-sub-Coercive-Control-Bill-combined-fa.pdf>>. See in particular Recommendation 9.

²⁴ Women's Legal Services NSW, *Response to the public consultation on the Crimes Legislation Amendment (Coercive Control) Bill 2022* (NSW), 2022 <<https://www.clcnsw.org.au/sites/default/files/2022-08/WLS-NSW-sub-Coercive-Control-Bill-combined-fa.pdf>>.

²⁵ *Criminal Code Act 1995* (Cth), ss 270.6(1).

²⁶ Australian Institute of Health and Welfare, *Family, domestic and sexual violence: modern slavery*, <<https://www.aihw.gov.au/family-domestic-and-sexual-violence/types-of-violence/modern-slavery>>.

²⁷ Australian Institute of Health and Welfare, *Family, domestic and sexual violence: modern slavery*, <<https://www.aihw.gov.au/family-domestic-and-sexual-violence/types-of-violence/modern-slavery>>.

²⁸ Australian Federal Police, *AFP warns domestic and overseas workers of forced labour indicators amid rising reports*, 2024 <<https://www.afp.gov.au/news-centre/media-release/afp-warns-domestic-and-overseas-workers-forced-labour-indicators-amid>>.

²⁹ Employees covered by a modern award or industrial instrument that provides for the SWS will be paid a proportion of the applicable minimum wage under that instrument. Employees with disability can also be paid a proportion of the national minimum wage through provisions for a 'special national minimum wage' set out in *Fair Work Act 2009* (Cth) s 294(4). Australian Human Rights Commission, *Willing to Work: National Inquiry into Employment Discrimination Against Older Australians and Australians with Disability* (Report, 2016) 212 <https://humanrights.gov.au/sites/default/files/document/publication/WTW_2016_Full_Report_A_HRC_ac.pdf>.

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- ³⁰ *Disability Discrimination Act 1992* (Cth) s 47.
- ³¹ Australian Government, Department of Social Services, 'Supported Employment' (Web Page, 23 April 2024) <<https://www.dss.gov.au/disability-and-carers-programs-services-for-people-with-disability/supported-employment>>
- ³² National Disability Insurance Agency, *Employment outcomes for NDIS participants*, (Report, 2020) 5, quoted in Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Final Report - Volume 7: Inclusive education, employment and housing* (2023) 555.
- ³³ Australian Government, Department of Social Services, *Ensuring a strong future for supported employment* (Discussion paper, 2017), 11–12; National Disability Insurance Agency, *Employment outcomes for NDIS participants as at 31 December 2020* (2021) 45–46.
- ³⁴ Australian Government, Job Access, *Supported Wage System in Open Employment Handbook* (1 July 2018) 5 <<https://www.jobaccess.gov.au/downloads/supported-wage-system-handbook>>; *Four yearly review of modern awards – Supported Employment Services Award 2010* (AM2014/286) [2019] FWCFB 8179 (3 December 2019), [355].
- ³⁵ *4 yearly review of modern awards – Supported Employment Services Award 2020* [2022] FWCFB 245.
- ³⁶ Australian Government, Fair Work Ombudsman, *Supported Employment Services Award pay rates* (Web Page) <<https://www.fairwork.gov.au/pay-and-wages/minimum-wages/supported-employment-services-award-pay-rates>>
- ³⁷ Australian Government, Fair Work Ombudsman, *2022 - 2023 Annual Wage Review* (Web Page, 18 August 2023) <<https://www.fairwork.gov.au/about-us/workplace-laws/award-changes/annual-wage-review/2022-2023-annual-wage-review>>
- ³⁸ *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008), art 27(1) (b).
- ³⁹ *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976) art 7(a).
- ⁴⁰ Committee on the Rights of Persons with Disabilities, *General comment no. 8 (2022) on the right of persons with disabilities to work and employment*, advance unedited version, UN Doc CRPD/C/GC/8 (9 September 2022), [26].
- ⁴¹ Committee on the Rights of Persons with Disabilities, *Concluding Observations on the combined second and third periodic reports of Australia*, UN Doc CRPD/C/AUS/CO/2-3 (15 October 2019) at [49(b)].
- ⁴² Committee on the Rights of Persons with Disabilities, *Concluding observations on the combined second and third periodic reports of Australia*, 22nd sess, UN Doc CRPD/C/AUS/CO/2–3, (15 October 2019), [50(b)].
- ⁴³ As set out in *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008), art 3.
- ⁴⁴ Joel Koh, Gayatri Kemhavi-Tam, Vanessa Rose, Centre for Evidence and Implementation, Rebecca Featherson & Aron Shlonsky, Monash University, *Rapid Evidence Review – Violence, abuse, neglect and exploitation of people with disability*, (Report prepared for the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, August 2021), 18.
- ⁴⁵ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Final Report - Volume 7: Inclusive education, employment and housing* (2023) 588.
- ⁴⁶ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Final Report - Volume 7: Inclusive education, employment and housing* (2023) 581.
- ⁴⁷ Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *Final Report - Volume 7: Inclusive education, employment and housing* (2023) 604.