



Australian
Human Rights
Commission

Inquiry into the Modern Slavery Amendment (Australian Anti- Slavery Commissioner) Bill 2023 (Cth)

Australian Human Rights Commission

Senate Legal and Constitutional Affairs Legislation Committee

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1 Introduction

1. The Australian Human Rights Commission (Commission) welcomes the opportunity to make this submission to the Senate Legal and Constitutional Affairs Legislation Committee (Committee) in response to the [Modern Slavery Amendment \(Australian Anti-Slavery Commissioner\) Bill 2023 \(Cth\)](#) (Bill) inquiry.
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 Committee in respect of this inquiry.
3. The Commission has previously called for the strengthening of the *Modern Slavery Act 2018 (Cth)* (Modern Slavery Act) by [establishing an Anti-Slavery Commissioner](#) (amongst other reforms).¹ The establishment of an Anti-Slavery Commissioner has also been recommended by previous inquiries and reviews, with the recent [Report of the Statutory Review of the Modern Slavery Act 2018 \(Cth\): The First Three Years](#) (McMillan Report) highlighting the strong support expressed for the creation of this office.²
4. The Commonwealth Government's decision to legislate an Anti-Slavery Commissioner is a welcome step towards further strengthening Australia's response to modern slavery. With an effective mandate, institutional independence and appropriate resourcing, the Anti-Slavery Commissioner will make an important contribution towards both combatting modern slavery and protecting human rights.

2 Appointments

5. The Bill outlines the appointment process for the Anti-Slavery Commissioner. Section 20M of the Bill states that:

As soon as practicable after the office of the Commissioner becomes vacant, a Commissioner or acting Commissioner must be appointed under section 20L or 20P
6. Ambiguity in the appointment process is introduced by employing the term 'as soon as practicable' regarding the obligation to fill a vacant position. The term 'as soon as practicable' is not defined in the Bill nor discussed in either the Explanatory Memorandum³ or the Second Reading Speeches.⁴

7. The inclusion of this term appears to be a deliberate choice providing necessary flexibility to find and appoint an appropriate replacement Anti-Slavery Commissioner. However, such ambiguous language may result in improper delays in appointing Anti-Slavery Commissioners.
8. The *Modern Slavery Act 2015* in the United Kingdom also contains an uncertain timeframe for the appointment of their Anti-Slavery Commissioner (although the language in s 20M of the Bill is notably stronger).⁵
9. As a consequence of such ambiguity, the UK Anti-Slavery Commissioner position was left vacant for a period over 10 months.⁶ The position was initially advertised in December 2021 and two candidates were shortlisted. However, between April 2022 and February 2023, the UK government simply maintained that a final decision was under consideration.⁷ The position was eventually readvertised in February 2023 and a new recruitment process was commenced, further delaying the critical appointment.⁸
10. For such an important position, this represents an unacceptable delay in the appointment process. The delay in appointment resulted in a reduction in the operational capacity of the office and created a 'vacuum of independent oversight at a time when it was crucially needed'.⁹
11. The effectiveness of the Anti-Slavery Commissioner's office would be significantly impeded if it was left without leadership for an extended period. The risk of potential delays in appointments may be mitigated by the development (and publication) of guidelines to set out the process for the appointment of the Anti-Slavery Commissioner. These guidelines should provide for a merit-based, transparent and timely process, including setting out a clear timeline for the appointment process and for an acting appointment to be made whenever there is a vacancy in the office.
12. The policy and guidelines that have been published by the Attorney-General's Department (Department) relating to appointments to the Australian Human Rights Commission may provide useful guidance for this purpose.¹⁰

Recommendation 1: The Department should develop and publish guidelines for the appointment of the Anti-Slavery Commissioner. These guidelines should provide for a merit-based, transparent and timely process, including setting out a clear timeline for the

appointment process and for an acting appointment to be made whenever there is a vacancy in the office.

3 Extended remit

13. The Commission has previously called for the Anti-Slavery Commissioner to have a broad remit, analogous to the UK Anti-Slavery Commissioner.¹¹
14. It is clear from the Bill that the Anti-Slavery Commissioner will not investigate or resolve complaints concerning individual instances (or suspected instances) of modern slavery.¹² However, like the UK Anti-Slavery Commissioner, it may be useful for the Bill to expressly allow the Australian Anti-Slavery Commissioner to also 'encourage good practice in the prevention, detection, investigation and prosecution of slavery and human trafficking offences, as well as the identification of victims'.¹³ This broader remit would allow the Anti-Slavery Commissioner to better address the unique challenges raised by modern slavery and strengthen responses.
15. The specific functions highlighted in the McMillan Report with respect to the role of the Anti-Slavery Commissioner should also be more fully incorporated into the Bill.¹⁴ In particular, the Bill should expressly provide that the Anti-Slavery Commissioner is given specialist functions that include conducting own motion investigations into modern slavery risks in industry sectors in Australia. The Anti-Slavery Commissioner should also be given the function of independently reviewing and evaluating the National Action Plan to Combat Modern Slavery 2020–25 (and any subsequent national anti-slavery frameworks).

Recommendation 2: The Anti-Slavery Commissioner have a broader remit to address modern slavery in Australia, including specifically the function 'to encourage good practice in the prevention, detection, investigation and prosecution of slavery and human trafficking offences, as well as the identification of victims'.

Recommendation 3: The Bill should expressly provide that the functions of the Anti-Slavery Commissioner include conducting own motion investigations into modern slavery risks in industry sectors in Australia.

Recommendation 4: The Bill should expressly provide that the functions of the Anti-Slavery Commissioner include independently reviewing and evaluating the National Action Plan to Combat Modern Slavery 2020-25 (and any subsequent national frameworks).

4 Whole-of-Government Response

16. To combat the novel challenges of modern slavery a whole-of-government approach is required. All agencies and bodies must work in unison to prevent and respond to modern slavery.
17. It is unclear from the Bill and Second Reading Speech whether consideration was given to any jurisdictional duplication between the Anti-Slavery Commissioner and existing bodies or agencies. It is hoped that any duplication or jurisdictional oversight between existing bodies or agencies and the Anti-Slavery Commissioner will be noted in submissions to this inquiry and that the Committee give them careful consideration.
18. It is also critical that the role of the Anti-Slavery Commissioner is developed with regard to existing offices and bodies that have a formal role to play in respect of Australia's efforts to combat modern slavery, both at the federal level and those established by the states and territories.
19. Examples include the Ambassador to Counter Modern Slavery, People Smuggling and Human Trafficking, the NSW Anti-Slavery Commissioner, and the National Roundtable on Human Trafficking and Slavery. This should be an express requirement for this to be included in the strategic plan developed under s 20X of the Bill, with the aim of ensuring effective coordination, reinforcing the existing whole-of-government response to modern slavery, and avoiding unnecessary duplication.

Recommendation 5: There should be an express requirement for the strategic plan prepared by the Commissioner to include consideration of existing offices and bodies engaged in Australia's modern slavery response.

5 McMillan Report

20. The McMillan Report included a section on the role of a future Anti-Slavery Commissioner. There are certain envisaged functions of the Anti-Slavery Commissioner which remain ambiguous under the Bill. This is, in part, due the government having yet to provide a formal response to the McMillan Report.
21. In particular, there are a number of recommendations made by the McMillan Report that, if adopted, will also need to be reflected in the role and functions of the Anti-Slavery Commissioner. For example, if the recommendation introducing penalties for non-compliance is introduced,¹⁵ it will be necessary to clarify whether the Anti-Slavery Commissioner will have any regulatory responsibility in this area.
22. Two other examples of reforms discussed in the McMillan Report that, if adopted, would need to be reflected in the role and functions of the Anti-Slavery Commissioner relate to the introduction of due diligence obligations and the declaration of high-risk matters.

5.1 Due diligence obligations

23. The McMillan Report recommended that an obligation be imposed on reporting entities to have a due diligence system in place.¹⁶ It was noted that the Anti-Slavery Commissioner would have a critical role in monitoring entities' compliance with this obligation.¹⁷
24. Section 20 of the Bill makes no direct reference to this important role, although it is stated that the Anti-Slavery Commissioner has the functions of promoting compliance with the Bill¹⁸ and doing anything incidental or conducive to the performance of any of the listed functions.¹⁹
25. This monitoring function is critical to not only ensuring that entities are meeting their obligations, but also in combatting modern slavery in Australia.

5.2 High risk areas

26. Australian agencies and bodies often publish annual priorities which highlight high-risk areas for their work. For example, the Fair Work Ombudsman (FWO) publishes an annual [Regulatory Priorities](#) document which often identifies areas of concern. For FY23-24 agriculture, building

and construction, care, fast food, restaurants and cafes and large corporates and universities were flagged as focuses for underpayments and workplace protections.

27. The FWO plays an important role in combatting different forms of modern slavery that relate to breaches of the *Fair Work Act 2009* (Cth). The publishing of their Regulatory Priorities casts a spotlight on high-risk areas, with the aim of encouraging improvements in working conditions.
28. The McMillan Report similarly recommended that either the Minister or Anti-Slavery Commissioner be authorised to publish an ‘annual list of regions, locations, industries, products or supply chains that carry a high risk of modern slavery’.²⁰
29. It is unclear from the current Bill whether this function falls within the intended remit of the Anti-Slavery Commissioner. It may be that this function could fall within the existing functions outlined under s 20C(1), such as, for example, the function ‘to collect, analyse, interpret and disseminate information relating to modern slavery’. If this is the intention, then it would be preferable for such a function to be specifically conferred in order to avoid any doubt.

Recommendation 6: If amendments are proposed to the Modern Slavery Act in response to the recommendations made by the McMillan Report, consideration should be given simultaneously to any amendments required to ensure that the role and functions of the Anti-Slavery Commissioner remain aligned with the framework established under the Modern Slavery Act.

6 Recommendations

30. The Commission makes the following recommendations.

Recommendation 1

The Department should develop and publish guidelines for the appointment of the Anti-Slavery Commissioner. These guidelines should provide for a merit-based, transparent and timely process, including

setting out a clear timeline for the appointment process and for an acting appointment to be made whenever there is a vacancy in the office.

Recommendation 2

The Anti-Slavery Commissioner have a broader remit to address modern slavery in Australia, including specifically the function ‘to encourage good practice in the prevention, detection, investigation and prosecution of slavery and human trafficking offences, as well as the identification of victims’.

Recommendation 3

The Bill should expressly provide that the functions of the Anti-Slavery Commissioner include conducting own motion investigations into modern slavery risks in industry sectors in Australia.

Recommendation 4

The Bill should expressly provide that the functions of the Anti-Slavery Commissioner include independently reviewing and evaluating the National Action Plan to Combat Modern Slavery 2020-25 (and any subsequent national frameworks).

Recommendation 5

There should be an express requirement for the strategic plan prepared by the Commissioner to include consideration of existing offices and bodies engaged in Australia’s modern slavery response.

Recommendation 6

If amendments are proposed to the Modern Slavery Act in response to the recommendations made by the McMillan Report, consideration should be given simultaneously to any amendments required to ensure that the role and functions of the Anti-Slavery Commissioner remain aligned with the framework established under the Modern Slavery Act.

Endnotes

- ¹ Australian Human Rights Commission Submission to the *Review of the Modern Slavery Act 2018 (Cth)* (November 2022) 23 [81].
- ² John McMillan, 'Report of the Statutory Review of the Modern Slavery Act 2018 (Cth): The First Three Years' (Attorney-General's Department, Report, 25 May 2023), 104.
- ³ Explanatory Memorandum, *Modern Slavery Amendment (Australian Anti-Slavery Commissioner) Bill 2003* (Cth).
- ⁴ Commonwealth, *Parliamentary Debates*, House of Representatives, 30 November 2023 (Mark Dreyfus MP).
- ⁵ *Modern Slavery Act 2015* (UK) s 40(1).
- ⁶ Daniel Boffey, 'UK Anti-Slavery Post Left Unfilled by Home Office since April 2022' *The Guardian* (online, 09 March 2023) < <https://www.theguardian.com/world/2023/mar/08/uk-anti-slavery-post-left-unfilled-by-home-office-since-april-2022>>.
- ⁷ Lorraine Finlay & Kristie Evans, 'The UK Risks Losing its Status as a Leader in the Fight Against Slavery' *The Strategist* (online, 05 February 2023) < <https://www.aspistrategist.org.au/the-uk-risks-losing-its-status-as-a-leader-in-the-fight-against-slavery/>>.
- ⁸ Lorraine Finlay & Kristie Evans, 'The UK Risks Losing its Status as a Leader in the Fight Against Slavery' *The Strategist* (online, 05 February 2023) < <https://www.aspistrategist.org.au/the-uk-risks-losing-its-status-as-a-leader-in-the-fight-against-slavery/>>.
- ⁹ Lorraine Finlay & Kristie Evans, 'The UK Risks Losing its Status as a Leader in the Fight Against Slavery' *The Strategist* (online, 05 February 2023) < <https://www.aspistrategist.org.au/the-uk-risks-losing-its-status-as-a-leader-in-the-fight-against-slavery/>>.
- ¹⁰ Attorney-General's Department, *Policy and Guidelines: Appointments to the Australian Human Rights Commission* (2023). <https://consultations.ag.gov.au/rights-and-protections/guidelines-appointments-to-ahrc/user_uploads/policy-and-guidelines-appointments-to-the-australian-human-rights-commission.pdf>.
- ¹¹ Australian Human Rights Commission Submission to the *Review of the Modern Slavery Act 2018 (Cth)* (November 2022) 22 [82].
- ¹² *Modern Slavery Amendment (Australian Anti-Slavery Commissioner) Bill 2023* (Cth) s 20C(2).
- ¹³ Australian Human Rights Commission Submission to the *Review of the Modern Slavery Act 2018 (Cth)* (November 2022) 22 [82].
- ¹⁴ John McMillan, 'Report of the Statutory Review of the Modern Slavery Act 2018 (Cth): The First Three Years' (Attorney-General's Department, Report, 25 May 2023) 106-109.
- ¹⁵ John McMillan, 'Report of the Statutory Review of the Modern Slavery Act 2018 (Cth): The First Three Years' (Attorney-General's Department, Report, 25 May 2023), Recommendation 20.
- ¹⁶ John McMillan, 'Report of the Statutory Review of the Modern Slavery Act 2018 (Cth): The First Three Years' (Attorney-General's Department, Report, 25 May 2023) 108.
- ¹⁷ John McMillan, 'Report of the Statutory Review of the Modern Slavery Act 2018 (Cth): The First Three Years' (Attorney-General's Department, Report, 25 May 2023) 108.
- ¹⁸ *Modern Slavery Amendment (Australian Anti-Slavery Commissioner) Bill 2023* (Cth) s 20C(1)(a).
- ¹⁹ *Modern Slavery Amendment (Australian Anti-Slavery Commissioner) Bill 2023* (Cth) s 20C(1)(n).
- ²⁰ John McMillan, 'Report of the Statutory Review of the Modern Slavery Act 2018 (Cth): The First Three Years' (Attorney-General's Department, Report, 25 May 2023) 107.