

The Senate

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Legal and Constitutional Affairs  
Legislation Committee

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

February 2024

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# Members

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## Acronyms and abbreviations

ACAN	Australian Catholic Anti-Slavery Network
ACCI	Australian Chamber of Commerce and Industry
ACTU	the Australian Council of Trade Unions
AGD	Attorney-General's Department
AHRC	Australian Human Rights Commission
AICD	Australian Institute of Company Directors
ARA	Australian Retailers Association
the bill	the Modern Slavery Amendment (Australian Anti-Slavery Commissioner) Bill 2023
BWAA	Baptist World Aid Australia
the Commissioner	Australian Anti-Slavery Commissioner
the committee	the Legal and Constitutional Affairs Committee
DFAT	Department of Foreign Affairs and Trade
EM	Explanatory Memorandum
HIA	Housing Industry Association
HRLC	Human Rights Law Centre
IJM	International Justice Mission Australia
JSCFADT	the Joint Standing Committee on Foreign Affairs Defence and Trade
Law Council	Law Council of Australia
McMillan report	<i>Report of the statutory review of the Modern Slavery Act 2018 (Cth)</i>
Modern Slavery Act	<i>Modern Slavery Act 2018</i>
MSBEU	Modern Slavery Business Engagement Unit

MUA	Maritime Union of Australia
NSW Anti-Slavery Commissioner	the New South Wales Anti-Slavery Commissioner
OHCHR	the Office of the UN High Commissioner for Human Rights
PJCHR	the Parliamentary Joint Committee on Human Rights
PJCLE	the Parliamentary Joint Committee on Law Enforcement
the Scrutiny Committee	the Senate Standing Committee for the Scrutiny of Bills
The SlaveCheck Foundation	SlaveCheck
the UK Act	<i>Modern Slavery Act 2015 (UK)</i>
UK Commissioner	Independent Anti-Slavery Commissioner



# List of recommendations

## Recommendation 1

2.106 The committee recommends that the term 'sensitive information', particularly regarding information related to the international relations of Australia, be clarified in either the bill or the explanatory memorandum.

## Recommendation 2

2.108 The committee recommends that the bill be amended to include a requirement that the Anti-Slavery Commissioner develops specific guidelines in their strategic plan to support victim-survivors of modern slavery.

## Recommendation 3

2.109 The committee recommends that the bill be amended to include a requirement that the Anti-Slavery Commissioner engages with victim-survivors of modern slavery in carrying out the functions of their role.

## Recommendation 4

2.110 The committee recommends that while the Anti-Slavery Commissioner should not have the power to investigate individual cases of modern slavery, once established, the office of the Commissioner should make appropriate arrangements, for example a memorandum of understanding, with relevant law enforcement agencies to facilitate the referral of cases for investigation as requested.

## Recommendation 5

2.111 Subject to the preceding recommendations, the committee recommends that the Senate pass the bill.



# Chapter 1

## Introduction

- 1.1 On 7 December 2023, the Senate referred the provisions of the Modern Slavery Amendment (Australian Anti-Slavery Commissioner) Bill 2023 (the bill) to the Legal and Constitutional Affairs Legislation Committee (the committee) for inquiry and report by 21 February 2024.<sup>1</sup>
- 1.2 On 6 February 2024, the Senate extended the reporting date to 28 February 2024.<sup>2</sup>
- 1.3 The referral of the bill followed a recommendation of the Senate Standing Committee for the Selection of Bills.<sup>3</sup> Appendix 2 to that report listed the following reasons for referral:
  - Consideration of matters raised by the bill; and
  - Adequacy of the powers and resources available to the Commissioner under the bill including:
    - Adequacy of penalties and enforcement mechanisms; and
    - Need for an anti-slavery commission.<sup>4</sup>

### Conduct of the inquiry and acknowledgement

- 1.4 In accordance with its usual practice, the committee advertised the inquiry on its website and wrote to organisations and individuals, inviting them to make a submission by 22 January 2024. The committee received 42 submissions, which are listed at Appendix 1.
- 1.5 The committee held a public hearing in Brisbane on 19 February 2024. A list of the witnesses who appeared at the hearing is at Appendix 2.
- 1.6 The committee thanks those individuals and organisations who made submissions and who gave evidence at the public hearing. It particularly thanks those victim-survivors who gave evidence at the public hearing.

### Structure and scope of the report

- 1.7 This report comprises two chapters:

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<sup>1</sup> *Journals of the Senate*, No. 90, 30 November 2023, pp. 2774–2775.

<sup>2</sup> *Journals of the Senate*, No. 95, 6 February 2024, p. 2799.

<sup>3</sup> Senate Standing Committee for the Selection of Bills (selection of bills committee), *Report No. 16 of 2023*, 7 December 2023, p. 1

<sup>4</sup> Selection of bills committee, *Report No. 16 of 2023*, 7 December 2023, pp. 4–6.

- Chapter 1 provides background information relating to the bill, identifies its key provisions, and notes consideration of the bill undertaken by other parliamentary committees; and
- Chapter 2 examines some key concerns raised in relation to the bill before setting out the committee’s findings and recommendations.

## **Background to the bill**

- 1.8 Modern slavery encompasses a range of exploitative crimes including trafficking in persons, slavery, and slavery-like practices such as deceptive recruiting, debt bondage, forced labour, and forced marriage.<sup>5</sup>
- 1.9 The Explanatory Memorandum (EM) to the bill states:
- Modern slavery practices are major violations of human rights, are serious crimes and can affect any country. Modern slavery has become more prevalent globally and is complex, ever evolving and hidden.<sup>6</sup>
- 1.10 Globally, it is estimated that 50 million people are subject to human trafficking or modern slavery.<sup>7</sup> To put that figure in context, an estimated 15 million people were enslaved during the three centuries that the trans-Atlantic slave trade operated.<sup>8</sup>
- 1.11 The Australian Institute of Criminology attested to the hidden nature of modern slavery in Australia. It estimated that between 2015–16 and 2016–17 there were between 1300 and 1900 victims of human trafficking and slavery in Australia and that, for every victim detected, there are approximately four undetected victims.<sup>9</sup>
- 1.12 According to the Office of the New South Wales Anti-slavery Commissioner there are about 300 cases of modern slavery reported in Australia each year.<sup>10</sup> That office estimated ‘between 80 and 98 per cent of cases go unreported’ in NSW.<sup>11</sup>

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<sup>5</sup> Attorney-General’s Department (AGD), *Submission 17*, p. 2. Note: Division 270 of the *Criminal Code Act 1995* (Criminal Code) provides definitions of offences that constitute slavery. Division 271 of the Criminal Code provides definitions of offences that constitute human trafficking.

<sup>6</sup> Explanatory Memorandum to the Modern Slavery Amendment (Australian Anti-Slavery Commissioner) Bill 2023 (EM), p. 2.

<sup>7</sup> SlaveCheck, *Submission 5*, p. 6.

<sup>8</sup> SlaveCheck, *Submission 5*, p. 6.

<sup>9</sup> Australian Institute of Criminology, [Estimating the dark figure of human trafficking and slavery victimisation in Australia](#), February 2019, p. 5.

<sup>10</sup> Office of the NSW Anti-slavery Commissioner, *Submission 26*, p. 3.

<sup>11</sup> Dr James Cockayne, New South Wales Anti-slavery Commissioner, Office of the New South Wales Anti-slavery Commissioner, *Committee Hansard*, 19 February 2024, p. 44.

1.13 According to Walk Free, the number of people living in modern slavery is considerably higher. It estimated in 2021 that ‘there were 41,000 individuals living in modern slavery in Australia’.<sup>12</sup> Forced marriage, including cases that involve children, is the most common form of modern slavery reported to Australian authorities.<sup>13</sup> According to Walk Free:

Forced labour in Australia predominantly occurs in high-risk industries such as agriculture, construction, domestic work, meat processing, cleaning, hospitality, and food services. Many of these industries rely on migrant workers who enter Australia on temporary visas.<sup>14</sup>

1.14 Forced labour is also present in Australia’s international supply chains, as Walk Free reported:

Australia annually imports US\$17.4 billion worth of products at-risk of being made using forced labour. The top five most valuable at-risk products imported by Australia are electronics, garments, solar panels, textiles, and fish.<sup>15</sup>

### **Consultations on modern slavery**

1.15 The EM lists two parliamentary committee inquiries related to modern slavery and an independent statutory review of the *Modern Slavery Act 2018* (Modern Slavery Act) that supported the appointment of an Australian Anti-Slavery Commissioner.<sup>16</sup>

### **Parliamentary Joint Committee on Law Enforcement**

1.16 On 2 December 2015, the Parliamentary Joint Committee on Law Enforcement (PJCLE) initiated an inquiry into human trafficking.<sup>17</sup> That inquiry lapsed at the end of the 44<sup>th</sup> Parliament.<sup>18</sup> On 12 October 2016, the PJCLE reinitiated an inquiry into human trafficking.<sup>19</sup>

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<sup>12</sup> Walk Free, *Submission 23*, p. 1.

<sup>13</sup> Walk Free, *Submission 23*, p. 1.

<sup>14</sup> Walk Free, *Submission 23*, p. 1.

<sup>15</sup> Walk Free, *Submission 23*, p. 1.

<sup>16</sup> EM, p. 3.

<sup>17</sup> Parliamentary Joint Committee on Law Enforcement (PJCLE), [An inquiry into human trafficking, slavery and slavery-like practices](#), July 2017, p. 1.

<sup>18</sup> PJCLE, [An inquiry into human trafficking, slavery and slavery-like practices](#), July 2017, p. 1.

<sup>19</sup> PJCLE, [An inquiry into human trafficking, slavery and slavery-like practices](#), July 2017, p. 1.

### 1.17 That inquiry:

...examine[d] Commonwealth law enforcement responses to human trafficking, including slavery, slavery-like practices (such as servitude, forced marriage and forced labour) and people trafficking, to and from Australia...the inquiry involved the examination and consideration of the role of an Anti-Slavery and Trafficking Commissioner in Australia.<sup>20</sup>

### 1.18 In July 2017, the PJCLE tabled its report.<sup>21</sup> In that report, the committee stated that it:

...considers there may be merits in establishing an anti-slavery and trafficking commissioner, independent from government. The committee notes that such an office could be responsible for collecting data, currently lacking, on the prevalence of human trafficking, slavery and slavery-like practices in Australia.<sup>22</sup>

### 1.19 To that end, the PJCLE recommended:

...that the Commonwealth government considers appointing an Anti-Slavery and Trafficking Commissioner, to:

- monitor the implementation of the *National Action Plan to Combat Human Trafficking and Slavery 2015–19*;
- provide recommendations, advice and guidance to government agencies on the exercise of their functions;
- oversee the effectiveness of Commonwealth legislation and policies intended to reduce the prevalence of human trafficking, slavery and slavery-like practices and respond to corresponding offences; and
- collect and request data and information on these practices.<sup>23</sup>

## **Joint Standing Committee on Foreign Affairs, Defence and Trade**

### 1.20 On 15 February 2017, an inquiry into establishing a Modern Slavery Act in Australia was referred to the Joint Standing Committee on Foreign Affairs Defence and Trade (JSCFADT).<sup>24</sup> On the same day, the JSCFADT referred the inquiry to the Foreign Affairs and Aid Sub-Committee.<sup>25</sup>

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<sup>20</sup> Kirralee Allison, Modern Slavery Amendment (Australian Anti-Slavery Commissioner) Bill 2023, *Bills Digest No. 39, 2023-24*, Parliamentary Library, Canberra, 23 January 2024, p. 4.

<sup>21</sup> PJCLE, [An inquiry into human trafficking, slavery and slavery-like practices](#), July 2017.

<sup>22</sup> PJCLE, [An inquiry into human trafficking, slavery and slavery-like practices](#), July 2017, p. 41.

<sup>23</sup> PJCLE, [An inquiry into human trafficking, slavery and slavery-like practices](#), July 2017, p. 42.

<sup>24</sup> Joint Standing Committee on Foreign Affairs, Defence and Trade (JSCFADT), [Hidden in Plain Sight: An inquiry into establishing a Modern Slavery Act in Australia](#), December 2017, p. 4.

<sup>25</sup> JSCFADT, [Hidden in Plain Sight: An inquiry into establishing a Modern Slavery Act in Australia](#), December 2017, p. 4.

1.21 In December 2017, the JSCFADT tabled its final report for that inquiry.<sup>26</sup> In that report, the JSCFADT assessed ‘the effectiveness of the United Kingdom’s *Modern Slavery Act 2015* (UK) and whether similar or improved measures could be introduced in Australia’.<sup>27</sup> The JSCFADT ‘note[d] the strong support for the establishment of an Independent Anti-Slavery Commissioner in Australia, similar to the role established under the UK Act’.<sup>28</sup>

1.22 Recommendation 1 of JSCFADT report stated:

The Committee recommends that the Australian Government introduce a Modern Slavery Act in Australia. The Modern Slavery Act should include...provisions for an Independent Anti-Slavery Commissioner.<sup>29</sup>

1.23 It also ‘recommend[ed] that the Commissioner be given powers and resources to undertake a range of functions similar to the UK Commissioner, including undertaking a legislated review of the proposed Modern Slavery Act’.<sup>30</sup> Based on the concerns raised by the UK Independent Anti-Slavery Commissioner in evidence to the JSCFADT, it further recommended:

...that the Commissioner role should be established separately from any existing independent statutory bodies, such as the Commonwealth Ombudsman or the Australian Human Rights Commission, and report directly to the Parliament. This separation does not imply that the work of these bodies is any less important than the issues addressed by the proposed Commissioner, but to ensure their ability to function independently.<sup>31</sup>

### **The Modern Slavery Act 2018**

1.24 On 1 January 2019, the Modern Slavery Act commenced operation. Under that Act, reporting entities must prepare modern slavery statements.<sup>32</sup> A reporting entity has consolidated revenue of more than \$100 million and is an Australian entity, or conducts business in Australia.<sup>33</sup>

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<sup>26</sup> JSCFADT, [\*Hidden in Plain Sight: An inquiry into establishing a Modern Slavery Act in Australia\*](#), December 2017.

<sup>27</sup> Kirralee Allison, Modern Slavery Amendment (Australian Anti-Slavery Commissioner) Bill 2023, *Bills Digest No. 39*, 2023-24, Parliamentary Library, Canberra, 23 January 2024, pp. 3–4.

<sup>28</sup> JSCFADT, [\*Hidden in Plain Sight: An inquiry into establishing a Modern Slavery Act in Australia\*](#), December 2017, p. 87.

<sup>29</sup> JSCFADT, [\*Hidden in Plain Sight: An inquiry into establishing a Modern Slavery Act in Australia\*](#), December 2017, p. 27.

<sup>30</sup> JSCFADT, [\*Hidden in Plain Sight: An inquiry into establishing a Modern Slavery Act in Australia\*](#), December 2017, p. 88.

<sup>31</sup> JSCFADT, [\*Hidden in Plain Sight: An inquiry into establishing a Modern Slavery Act in Australia\*](#), December 2017, p. 88.

<sup>32</sup> *Modern Slavery Act 2018* (Modern Slavery Act), ss. 13(1).

<sup>33</sup> Modern Slavery Act, para. 5(1)(a).

1.25 The minister is also required to prepare modern slavery statements for all non-corporate Commonwealth entities.<sup>34</sup>

1.26 As the EM explains:

...certain large businesses and other entities in Australia [are required] to make annual public reports on their actions to assess and address modern slavery risks in their operations and supply chains.<sup>35</sup>

1.27 Since its commencement, 'over 9,000 entities have had modern slavery statements published on the Government's Modern Slavery Statements Register'.<sup>36</sup> Those statements outline the risks of modern slavery present in business operations and supply chains, measures that entities are taking to address those risks, and the effectiveness of those measures.<sup>37</sup>

1.28 The Modern Slavery Act required a review to be undertaken into the first three years of its operation.<sup>38</sup> That review was also required to make recommendations about how the operation of the Modern Slavery Act could be improved.<sup>39</sup>

### **Report of the statutory review of the Modern Slavery Act**

1.29 On 31 March 2022, the statutory review of the Modern Slavery Act commenced.<sup>40</sup> On 25 May 2023, the *Report of the statutory review of the Modern Slavery Act 2018 (Cth)* (McMillan report) was published by the Attorney-General's Department (AGD).<sup>41</sup>

1.30 The McMillan report commented on the strong support from submitters to the review for the establishment of an Anti-Slavery Commissioner:

With only a few exceptions, all submissions expressed strong support for creating the office of Commissioner to play a leadership and regulatory role in overseeing the operation of the Modern Slavery Act. The observation made in nearly all submissions was that the Commissioner should be an

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<sup>34</sup> Modern Slavery Act, ss. 15(1).

<sup>35</sup> EM, p. 2.

<sup>36</sup> EM, p. 2.

<sup>37</sup> EM, p. 2.

<sup>38</sup> Modern Slavery Act, ss. 24(1).

<sup>39</sup> Modern Slavery Act, ss. 24(1).

<sup>40</sup> AGD, McMillan report, 25 May 2023, p. 7.

<sup>41</sup> AGD, *Report of the statutory review of the Modern Slavery Act 2018 (Cth)*, 25 May 2023, [www.ag.gov.au/crime/publications/report-statutory-review-modern-slavery-act-2018-cth](http://www.ag.gov.au/crime/publications/report-statutory-review-modern-slavery-act-2018-cth) (accessed 22 February 2024).



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independent statutory office that was properly resourced to play an effective role in combating modern slavery.<sup>42</sup>

1.31 Many submissions to the review supported the Anti-Slavery Commissioner:

...play[ing] a national coordinating role across all sectors—government, industry, unions, professional associations, civil society, not-for-profit bodies, research institutions and the community. A central role of the office will be to forge agreement and united action on common goals—chiefly the elimination of slavery risks, the protection of vulnerable people, and remediation and victim support.<sup>43</sup>

1.32 The McMillan report found that there were three main approaches to ‘the preferred style and priorities of the Commissioner’.<sup>44</sup> Those approaches are summarised as a:

- ‘soft power’ role in which the Anti-Slavery Commissioner would be primarily involved in public engagement and education, issuing guidance on modern slavery risks, giving sound-out advice, and promoting and facilitating collaboration to improve performance standards.<sup>45</sup>
- ‘strong regulator’ role in which the Anti-Slavery Commissioner would target non-compliance with reporting standards, hold businesses to account for due diligence and reporting failures, and utilise regulatory sanctions.<sup>46</sup>
- ‘victim protection and support’ role in which the Anti-Slavery Commissioner ‘could make a profound and humane difference’.<sup>47</sup>

1.33 The McMillan report noted that the different ‘approaches are not mutually exclusive’ and that the role of the Anti-Slavery Commissioner is likely to evolve over time in line with ‘the thinking and preferences of the particular occupant of the office’.<sup>48</sup>

1.34 The McMillan report recognised that, based on the submissions received during the review process:

There are high expectations that the Anti-Slavery Commissioner will play a pivotal role in lifting both recognition within Australia of modern slavery risks and the standard of business performance in addressing those risks—to ‘move the dial’, as it were. Business, equally, has expressed strong

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<sup>42</sup> AGD, McMillan report, 25 May 2023, p. 104.

<sup>43</sup> AGD, McMillan report, 25 May 2023, p. 105.

<sup>44</sup> AGD, McMillan report, 25 May 2023, p. 105.

<sup>45</sup> AGD, McMillan report, 25 May 2023, p. 105.

<sup>46</sup> AGD, McMillan report, 25 May 2023, p. 106.

<sup>47</sup> AGD, McMillan report, 25 May 2023, p. 106.

<sup>48</sup> AGD, McMillan report, 25 May 2023, p. 106.

support for the new office and a desire to work closely with it in identifying special risks and devising strategies for responding.<sup>49</sup>

- 1.35 As at 22 February 2024, the government has not yet provided its response to the McMillan report.

### **Introduction of the bill**

- 1.36 In introducing the bill, the Attorney-General, the Hon Mark Dreyfus KC MP, described it as ‘a landmark reform in Australia’s response to modern slavery’.<sup>50</sup> He stated that it ‘delivers on the Albanese government’s election commitment to establish the first Commonwealth Anti-Slavery Commissioner to tackle modern slavery in Australia and abroad’.<sup>51</sup>

- 1.37 The Attorney-General explained ‘[t]here are several pillars to Australia’s response to combat modern slavery underpinned by Australia’s National Action Plan to Combat Modern Slavery 2020–25’.<sup>52</sup> According to the Attorney-General, the Australian response to combatting modern slavery encompasses:

...comprehensive criminal offences, specialist Australian Federal Police investigative teams, and a dedicated support program for victims and survivors. We have a dedicated human-trafficking visa framework and a human-trafficking and modern slavery research program and associated network. The Modern Slavery Act established a transparency regime to shine a light on modern slavery risks in the supply chains and operations of certain entities carrying out business in Australia.<sup>53</sup>

- 1.38 The establishment of an Anti-Slavery Commissioner would be ‘a pioneering reform and a new, independent pillar in Australia’s comprehensive response to countering modern slavery’.<sup>54</sup>

- 1.39 The Attorney-General indicated that the Anti-Slavery Commissioner would ‘complement Australia’s response to modern slavery by working with others to

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<sup>49</sup> AGD, McMillan report, 25 May 2023, p. 109.

<sup>50</sup> The Hon Mark Dreyfus KC MP, Attorney-General and Cabinet Secretary, *House of Representatives Hansard*, 30 November 2023, p. 8924.

<sup>51</sup> The Hon Mark Dreyfus KC MP, Attorney-General and Cabinet Secretary, *House of Representatives Hansard*, 30 November 2023, p. 8924.

<sup>52</sup> The Hon Mark Dreyfus KC MP, Attorney-General and Cabinet Secretary, *House of Representatives Hansard*, 30 November 2023, p. 8924.

<sup>53</sup> The Hon Mark Dreyfus KC MP, Attorney-General and Cabinet Secretary, *House of Representatives Hansard*, 30 November 2023, p. 8924.

<sup>54</sup> The Hon Mark Dreyfus KC MP, Attorney-General and Cabinet Secretary, *House of Representatives Hansard*, 30 November 2023, p. 8926.

raise the national profile of the issue of modern slavery'.<sup>55</sup> In addition to that function, the Anti-Slavery Commissioner would:

...work across government, business and civil society to support compliance with the Modern Slavery Act, improve transparency in supply chains, and combat modern slavery in Australia and abroad. Importantly, the establishment of the commissioner provides an independent mechanism for victims and survivors, business and civil society to engage on issues and design strategies to address modern slavery.<sup>56</sup>

1.40 The Attorney-General stressed the importance of the Anti-Slavery Commissioner's independence:

To be effective in their role, it is vital that the commissioner be independent. The bill provides that the commissioner will have discretion in performing or exercising their functions, and will not be subject to direction.<sup>57</sup>

1.41 To further support that independence and promote 'transparency, accountability and the effectiveness of the independent commissioner's functions', the Anti-Slavery Commissioner would:

...be required to develop a strategic plan as soon as possible after their commencement that sets out what and how they intend to deliver and monitor the effectiveness of their functions. They will be required to develop an annual report, to be tabled in parliament, outlining their key progress and milestones.<sup>58</sup>

1.42 The Attorney-General acknowledged:

The government is committed to strengthening the Modern Slavery Act and is carefully considering the recommendations of the review of the Modern Slavery Act finalised earlier this year. Once appointed, the commissioner will play a key role in shaping implementation of future reforms.<sup>59</sup>

1.43 He stated that the bill 'marks a necessary and critical next step in our fight against modern slavery'.<sup>60</sup> It 'follows the extraordinary efforts and tireless work

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<sup>55</sup> The Hon Mark Dreyfus KC MP, Attorney-General and Cabinet Secretary, *House of Representatives Hansard*, 30 November 2023, p. 8925.

<sup>56</sup> The Hon Mark Dreyfus KC MP, Attorney-General and Cabinet Secretary, *House of Representatives Hansard*, 30 November 2023, p. 8925.

<sup>57</sup> The Hon Mark Dreyfus KC MP, Attorney-General and Cabinet Secretary, *House of Representatives Hansard*, 30 November 2023, p. 8925.

<sup>58</sup> The Hon Mark Dreyfus KC MP, Attorney-General and Cabinet Secretary, *House of Representatives Hansard*, 30 November 2023, p. 8925.

<sup>59</sup> The Hon Mark Dreyfus KC MP, Attorney-General and Cabinet Secretary, *House of Representatives Hansard*, 30 November 2023, p. 8925.

<sup>60</sup> The Hon Mark Dreyfus KC MP, Attorney-General and Cabinet Secretary, *House of Representatives Hansard*, 30 November 2023, p. 8926.

of victims and survivors, civil society and industry stakeholders who campaigned for this important milestone'.<sup>61</sup>

1.44 The Attorney-General concluded '[t]he commissioner will make a tangible, positive impact'.<sup>62</sup>

### **Key provisions of the bill**

1.45 The bill comprises one schedule of amendments: Schedule 1 would insert Part 3A—Australian Anti-Slavery Commissioner into the Modern Slavery Act to establish and set out the functions of an Australian Anti-Slavery Commissioner.

1.46 Schedule 1 of the bill comprises five Divisions, as follows:

- Division 1 – Preliminary;
- Division 2 – Establishment, functions and powers of Australian Anti-Slavery Commissioner;
- Division 3 – Appointment;
- Division 4 – Terms and conditions etc; and
- Division 5 – Other matters.

1.47 This report focuses on proposed Divisions 2, 3, and 5 of Part 3A of the bill, which contain the provisions addressed by those who provided evidence (see Chapter 2).

### **Establishment, functions and powers of the Anti-Slavery Commissioner**

1.48 Division 2 of Part 3A of the bill would establish the role of an Australian Anti-Slavery Commissioner and outline the functions and powers available to them.

1.49 The functions of the proposed Anti-Slavery Commissioner would include:

- to promote compliance with the Modern Slavery Act;
- to support Australian entities and entities carrying on business in Australia to address risks of modern slavery practices in their operations and supply chains, and in the operations and supply chains of entities they own or control;
- to support collaboration and engagement within and across sectors in relation to addressing modern slavery;
- to support victims of modern slavery by providing information in relation to government and non-government resources, programs and services;

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<sup>61</sup> The Hon Mark Dreyfus KC MP, Attorney-General and Cabinet Secretary, *House of Representatives Hansard*, 30 November 2023, p. 8926.

<sup>62</sup> The Hon Mark Dreyfus KC MP, Attorney-General and Cabinet Secretary, *House of Representatives Hansard*, 30 November 2023, p. 8926.

- to engage with, and promote engagement with, victims of modern slavery to inform measures for addressing modern slavery;
- to support, encourage and conduct education and community awareness initiatives relating to modern slavery;
- to support, encourage, conduct and evaluate research about modern slavery;
- to collect, analyse, interpret and disseminate information relating to modern slavery;
- to consult and liaise with Commonwealth, State and Territory governments, agencies, bodies and office holders on matters relating to modern slavery;
- to consult and liaise with other persons and organisations on matters relating to modern slavery;
- to advocate to the Commonwealth Government on matters relating to modern slavery, including for continuous improvement in policy and practice;
- at the request of the Minister, to provide advice to the Minister on matters relating to modern slavery;
- such other functions as are conferred on the Commissioner by this Act or any other law of the Commonwealth;
- to do anything incidental or conducive to the performance of any of the above functions.<sup>63</sup>

1.50 The Anti-Slavery Commissioner would ‘not investigate, or resolve complaints concerning, individual instances or suspected instances of modern slavery’.<sup>64</sup> The EM explains that this limitation on the proposed powers of the Anti-Slavery Commissioner would exist as:

The Commissioner would not have investigative or coercive powers that would enable them to compel others to provide information needed to investigate complaints or allegations. The investigation of individual cases, or suspected cases, is performed by Australia’s law enforcement agencies.<sup>65</sup>

1.51 The Anti-Slavery Commissioner would be able to perform and exercise their functions and powers independently and without ‘direction from anyone when doing so’.<sup>66</sup>

1.52 The Anti-Slavery Commissioner’s powers would enable them to work collaboratively with key stakeholders to prevent, identify, and address modern slavery. Their powers would primarily comprise of consultation and liaison activities that ‘drive continuous improvement in strategies’ to address modern

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<sup>63</sup> Proposed subsection 20C(1) of the bill.

<sup>64</sup> Proposed subsection 20C(2) of the bill.

<sup>65</sup> EM, p. 3.

<sup>66</sup> Proposed section 20J of the bill.

slavery and promote compliance with the Modern Slavery Act within government, business, and civil society.<sup>67</sup>

### **Appointment of the Anti-Slavery Commissioner**

1.53 Division 3 of Part 3A of the bill would set out the conditions around the appointment of a person to the role of the Anti-Slavery Commissioner.

1.54 The Anti-Slavery Commissioner would be selected through a merit-based application process that takes into consideration the applicant's:

...qualifications, knowledge or experience in one or more of the following fields:

- human rights issues relating to business practices;
- regulation;
- public policy relating to modern slavery or related forms of human exploitation.<sup>68</sup>

1.55 The Anti-Slavery Commissioner would be appointed for a fixed term of no more than five years.<sup>69</sup> A person may be appointed as the Anti-Slavery Commissioner for another period of no more than five years but is not eligible to hold the office more than twice.<sup>70</sup> A Commissioner may be reappointed 'for consecutive terms or non-consecutive terms'.<sup>71</sup>

1.56 The EM clarifies that the appointment period of no more than five years 'would enable the Commissioner to develop their strategic plan and have sufficient time to achieve goals articulated in the plan, evaluate activities, and report on outcomes'.<sup>72</sup>

### **Information sharing, strategic plan, and annual reporting requirements**

1.57 Division 5 of Part 3A of the bill would enable the Anti-Slavery Commissioner to request information from Commonwealth agencies. It also articulates the requirements of the office's strategic plan and annual report.

1.58 The Anti-Slavery Commissioner may request information from Commonwealth agencies if they have reason to believe that those agencies have information relevant to the performance of their functions.<sup>73</sup> The Anti-Slavery Commissioner may impose a reasonable time period for the agency to respond to their request

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<sup>67</sup> EM, p. 12

<sup>68</sup> Proposed subsection 20L(2) of the bill.

<sup>69</sup> Proposed subsection 20N(1) of the bill.

<sup>70</sup> Proposed section 20N of the bill.

<sup>71</sup> EM, p. 14.

<sup>72</sup> EM, p. 14.

<sup>73</sup> Proposed subsection 20W(1) of the bill.

for information.<sup>74</sup> The agency would be required to ‘so far as is reasonably practicable, comply with the request’.<sup>75</sup> There may be occasions when:

...it is not reasonably practicable to comply with the request. For example, where the request would substantially and unreasonably divert agency resources from its other operations, relates to an ongoing investigation, relates to information obtained in confidence, or the information requested does not exist.<sup>76</sup>

1.59 While the Anti-Slavery Commissioner would not be able to compel the provision of information from state and territory agencies, they may request information from them.<sup>77</sup>

1.60 The bill would limit the publication of sensitive information in the Anti-Slavery Commissioner’s strategic plans and annual reports.<sup>78</sup> Sensitive information includes:

...information that would or might prejudice the security, defence or international relations of Australia; prejudice the investigation of, or prosecution of a person for, an offence; or endanger the life or safety of any person. It may include classified or unclassified information.<sup>79</sup>

1.61 The Anti-Slavery Commissioner and the agencies providing information to their office would be required to comply with the *Privacy Act 1988*.<sup>80</sup>

1.62 The Anti-Slavery Commissioner would be required to prepare a strategic plan in relation to their functions.<sup>81</sup> The strategic plan would outline the Anti-Slavery Commissioner’s ‘priorities and principal objectives’ for a period of up to three years.<sup>82</sup> In preparing or revising their strategic plan, the Anti-Slavery Commissioner would be required to consult the minister and the secretary of the department.<sup>83</sup> The purpose of that consultation is to align:

...the Commissioner’s activities, as an additional independent pillar in Australia’s response to modern slavery, with the efforts of the Australian

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<sup>74</sup> Proposed subsection 20W(2) of the bill.

<sup>75</sup> Proposed subsection 20W(3) of the bill.

<sup>76</sup> EM, p. 17.

<sup>77</sup> EM, p. 17.

<sup>78</sup> Proposed subsections 20X(3) and 20Y(3) of the bill.

<sup>79</sup> EM, p. 18.

<sup>80</sup> EM, p. 17.

<sup>81</sup> Proposed paragraph 20X(1)(a) of the bill.

<sup>82</sup> Proposed section 20X(2) of the bill.

<sup>83</sup> Proposed section 20X(6) of the bill.

Government, where practicable. Facilitating alignment also enables the efficient use of public resources.<sup>84</sup>

- 1.63 The first strategic plan would be required to come ‘into force as soon as practicable after the commencement of [the bill]’.<sup>85</sup> The Anti-Slavery Commissioner would be required to have a strategic plan ‘in force at all times after the first strategic plan comes into force’.<sup>86</sup>
- 1.64 The Anti-Slavery Commissioner would be required to prepare and provide the minister with an annual report that outlines their activities during the financial year.<sup>87</sup> That annual report would need to contain:
- (a) the Commissioner’s activities during the financial year in relation to the Commissioner’s functions;
  - (b) the progress made towards any objectives set out in the strategic plan or plans that were in force during all or part of the financial year;
  - (c) a description of any milestones in relation to the Commissioner’s activities that were reached during the financial year; and
  - (d) any emerging issues relating to the Commissioner’s functions.<sup>88</sup>
- 1.65 If the annual report contains sensitive information, the Anti-Slavery Commissioner would be required to ‘prepare and give to the Minister, at the same time as the annual report, a version of the report which does not contain that information’.<sup>89</sup> The Anti-Slavery Commissioner may decide whether the annual report contains sensitive information through their own consideration of the report or through consultation with the minister.<sup>90</sup>
- 1.66 The minister would be required to table the annual report, or the version of it without sensitive information, in both houses of Parliament.<sup>91</sup> The Anti-Slavery Commissioner would be required to publish the annual report, or the version of it without sensitive information, on their office’s website after it is tabled in the House of Representatives.<sup>92</sup>

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<sup>84</sup> EM, p. 18.

<sup>85</sup> Proposed subparagraph 20X(1)(b)(i) of the bill.

<sup>86</sup> Proposed subparagraph 20X(1)(b)(ii) of the bill.

<sup>87</sup> Proposed subsection 20Y(1) of the bill.

<sup>88</sup> Proposed subsection 20Y(2) of the bill.

<sup>89</sup> Proposed subsection 20Y(3) of the bill.

<sup>90</sup> Proposed subsections 20Y(3) and 20Y(4) of the bill.

<sup>91</sup> Proposed section 20Y(5) of the bill.

<sup>92</sup> Proposed section 20Y(6) of the bill.



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### Examination by other parliamentary committees

- 1.67 When examining a bill or bills, the committee takes into account any relevant comments published by the Senate Standing Committee for the Scrutiny of Bills (the Scrutiny Committee) and the Parliamentary Joint Committee on Human Rights (PJCHR).
- 1.68 The Scrutiny Committee and the PJCHR reported that they have no comments on the bill.<sup>93</sup>
- 1.69 The committee notes that the EM recognises that the '[b]ill is compatible with human rights because it promotes human rights and, to the extent that measures in the [b]ill may limit human rights, each of these limitations is necessary, reasonable and proportionate' to achieving the intended outcomes in the bill.<sup>94</sup>

### Note on references

- 1.70 In this report, references to the *Committee Hansard* are to the proof (that is, uncorrected) transcript. Page numbers may vary between the proof and the official transcript.

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<sup>93</sup> Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 1/24*, 18 January 2024, p. 30; Parliamentary Joint Committee on Human Rights, *Human rights scrutiny report 14 of 2023*, 19 December 2023, p. 6.

<sup>94</sup> EM, p. 8.



# Chapter 2

## Key issues

- 2.1 Most submitters supported the establishment of an Australian Anti-Slavery Commissioner.<sup>1</sup>
- 2.2 Some submitters suggested that the Modern Slavery Amendment (Australian Anti-Slavery Commissioner) Bill 2023 (the bill) could be amended to:
- clarify the independence of the Anti-Slavery Commissioner;
  - modify and add to the functions of the Anti-Slavery Commissioner to strengthen their role in addressing modern slavery; and
  - ensure that the guidance provided by the Anti-Slavery Commissioner is tailored to specific industries.

### Independence of the Anti-Slavery Commissioner

- 2.3 The University of Sydney questioned how the amendments could reflect on the independence or perceived independence of the Anti-Slavery Commissioner.<sup>2</sup>
- 2.4 The NSW Anti-Slavery Commissioner stated:

In a Westminster system it's almost inevitable that independent statutory officers will rely on the executive for funding. That creates an inevitable dependence. To counteract this it's important that these officers can engage directly with parliament. For example, by presenting reports under their own motion, as I can in New South Wales. The bill currently doesn't give the commissioner at the federal level this power, nor does it give the federal commissioner the ability that I enjoy in New South Wales to engage a standing committee in parliament dedicated to these issues. My submission suggests the bill be amended to create such a standing committee to

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<sup>1</sup> See, for example: Dr Katherine Christ and Professor Roger Burritt, *Submission 1*, p. 2; Destiny Rescue, *Submission 2*, p. 3; Better Sydney, *Submission 3*, p. 2; SlaveCheck, *Submission 5*, p. 4; International Centre for Missing and Exploited Children Australia, *Submission 7*, pp. 2–3; Property Council of Australia (Property Council), *Submission 9*, p. 2; Australian Institute of Company Directors (AICD), *Submission 10*, p. 1; Housing Industry Association (HIA), *Submission 11*, p. 1; Australian Catholic Anti-Slavery Network (ACAN), *Submission 13*, p. 4; Baptist World Aid Australia (BWAA), *Submission 15*, p. 1; Australian Retailers Association (ARA), *Submission 16*, p. 1; Human Rights Law Centre (HRLC), *Submission 19*, p. 3; International Organization for Migration, *Submission 21*, p. 2; Regenesys BPO LLC, *Submission 22*, p. 4; International Justice Mission Australia (IJM), *Submission 24*, p. 1; Office of the NSW Anti-slavery Commissioner, *Submission 26*, p. 1; Australian Catholic Religious Against Trafficking in Humans, *Submission 27*, p. 2; Pillar Two, *Submission 31*, p. 5; Australian Red Cross, *Submission 33*, p. 1; Ms Fiona McLeod AO SC, *Submission 34*, p. 1; Australian Human Rights Commission (AHRC), *Submission 35*, p. 4; Australian Chamber of Commerce and Industry (ACCI), *Submission 36*, p. 2; Uniting Church in Australia, Synod of Victoria and Tasmania, *Submission 38*, p. 1; Law Council of Australia (Law Council), *Submission 42*, p. 5.

<sup>2</sup> University of Sydney, *Submission 30*, pp.4–5.

demonstrate the parliament's ongoing commitment to these issues and, critically, to give the Australian Anti-Slavery Commissioner a public policy partner in parliament to innovate and drive these matters forward over time.<sup>3</sup>

2.5 The University of Sydney 'emphasise[d] that it is vital that the Commissioner is independent and that the role function to freely criticise the Government'.<sup>4</sup> It also suggested that an independent Anti-Slavery Commissioner should be able 'to provide advice to the Minister or Government' on their own motion.<sup>5</sup>

2.6 Professor Paul Redmond AM shared this view:

I certainly would want to create an own-power initiative in the commissioner to advise the minister, and I'd go further and require that the government give a public response to the commissioner's reports. I'd go further also in following the New South Wales act's section 19(4) and having a provision empowering the commissioner, on its own initiative, to issue reports to parliament.<sup>6</sup>

2.7 The SlaveCheck Foundation (SlaveCheck) similarly argued that the Anti-Slavery Commissioner:

...cannot be handcuffed or subservient to a minister or a department out of fear or favour. You need someone in this role who's going to be gutsy and call a spade a spade and who's going to save the victims and do what's necessary to do it. Anyone that can be intimidated, under the leadership of the government or a minister, is never going to let the truth come out because what they come out with will always be shaped by them.<sup>7</sup>

2.8 The Law Council indicated there are concerns that the 'requirement to consult on the strategic plan has the potential to curtail or limit the independence of the Commissioner'.<sup>8</sup> It recommended the bill 'be amended to state plainly that the Commissioner ultimately retains discretion over the content of the strategic plan'.<sup>9</sup>

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<sup>3</sup> Dr James Cockayne, New South Wales Anti-slavery Commissioner, Office of the New South Wales Anti-slavery Commissioner, *Committee Hansard*, 19 February 2024, p. 45.

<sup>4</sup> University of Sydney, *Submission 30*, p. 5.

<sup>5</sup> University of Sydney, *Submission 30*, p. 5.

<sup>6</sup> Professor Redmond, Private capacity, *Committee Hansard*, 19 February 2024, p. 21. Note: Subsection 19(4) of the *Modern Slavery Act 2018* (NSW) states 'The Commissioner may, at any time, make a report on any particular issue or general matter relating to the Commissioner's functions and furnish the report to the Minister who is to furnish the report to the Presiding Officer of each House of Parliament'.

<sup>7</sup> Mr Paul Green, Chair, The SlaveCheck Foundation, *Committee Hansard*, 19 February 2024, p. 41.

<sup>8</sup> Law Council, *Submission 42*, p. 14. Note: The requirement to consult with the minister and the secretary of the department is contained in proposed subsection 20X(6) of the bill.

<sup>9</sup> Law Council, *Submission 42*, p. 14.

2.9 Similarly, the University of Sydney was concerned that the consultation requirement ‘may affect the Commissioner’s ability to operate independently’.<sup>10</sup> It recommended the bill be amended to remove any requirement on the Anti-Slavery Commissioner ‘to consult with the Minister and Secretary of the Department on the Commissioner’s strategic plan’.<sup>11</sup> The University of Sydney clarified this would:

...not preclude the commissioner from consulting with government, period, and sharing its strategic plan. It’s really to address the issue of perception of interference...and ensure that the matters that are included in the strategic plan, which the bill allocates clear requirements for, including priorities, are purely defined by the commissioner and their office and their function.<sup>12</sup>

2.10 Professor Redmond proposed a third option:

I think it’s valuable and reasonable for the commissioner to consult with the secretary and the minister, but I think it would be useful to add a note for more abundant precaution...to make clear that the requirement to consult on the strategic plan doesn’t require the approval of either to the plan. That, to me, seems to be an appropriate way of protecting independence as well as securing the comity and information exchange between involved parties.<sup>13</sup>

2.11 The AGD submitted that the Anti-Slavery Commissioner’s independence is ‘critical to advocate to Government on modern slavery issues including continuous improvement in policy and practice’.<sup>14</sup>

2.12 It noted that:

At the request of the Minister, the Commissioner could also provide independent advice on matter relating to modern slavery. The Commissioner would provide advice in so far as it is reasonably practicable to do so.<sup>15</sup>

2.13 The AGD pointed out that the Anti-Slavery Commissioner would be able to independently contribute to future reforms of the Modern Slavery Act:

Other reforms relevant to modern slavery are currently being considered by government. In particular, the government is currently considering the recommendations of the review of the Modern Slavery Act for response this

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<sup>10</sup> University of Sydney, *Submission 30*, p. 5.

<sup>11</sup> University of Sydney, *Submission 30*, p. 5.

<sup>12</sup> Ms Esty Marcu, Director, Modern Slavery Unit, University of Sydney, *Committee Hansard*, 19 February 2024, p. 19.

<sup>13</sup> Professor Redmond, Private capacity, *Committee Hansard*, 19 February 2024, p. 20.

<sup>14</sup> AGD, *Submission 17*, p. 3.

<sup>15</sup> AGD, *Submission 17*, p. 5.

year. Once appointed, the commissioner will play a key role in shaping the implementation of those future reforms.<sup>16</sup>

2.14 The AGD stated:

The Commissioner would be established as an independent statutory office-holder, as independence will be key to their effectiveness in the role. The Bill provides that the Commissioner would have discretion in performing or exercising their functions, and would not be subject to direction from anyone when doing so.<sup>17</sup>

**The divulgence of sensitive information that could prejudice international relations**

2.15 The bill contains provisions that would prevent the Anti-Slavery Commissioner from publicly divulging 'sensitive information' in their strategic plans and annual reports (see paragraph 1.60). For the purposes of the bill, sensitive information includes information that 'would or might prejudice the...international relations of Australia'.<sup>18</sup>

2.16 The Law Council saw the Anti-Slavery 'Commissioner's strategic plan to be key to the office's independence'.<sup>19</sup> It reported that practitioners raised concerns about the 'requirement to consult on the strategic plan has the potential to curtail or limit the independence of the Commissioner'.<sup>20</sup>

2.17 The New South Wales Anti-slavery Commissioner (NSW Anti-slavery Commissioner) noted that the inclusion of the possibility of prejudicing the international relations of Australia through the disclosure of information:

...actually raises the question of whose prerogative it is to determine whether something is sensitive information. Under the bill as drafted, it's actually the prerogative of the commissioner. It lies with the commissioner to determine whether this is sensitive information. The question is, what if they get that wrong or what if the government doesn't like their decision on that? Then you go to the various powers that the government has to control the behaviour of the commissioner. They could recommend to the Governor-General that she or he be terminated for misbehaviour or for the other reasons provided in the bill. I find that a stretch, depending on what the nature of the incident were. Or they could control their funding. I think

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<sup>16</sup> Ms Anne Sheehan, First Assistant Secretary, International Law and Human Rights Division, Integrity and International Group, AGD, *Committee Hansard*, 19 February 2024, pp. 51–52.

<sup>17</sup> AGD, *Submission 17*, p. 6.

<sup>18</sup> Item 3 in Schedule 1 of the Modern Slavery Amendment (Australian Anti-Slavery Commissioner) Bill 2023.

<sup>19</sup> Law Council, *Submission 42*, p. 14.

<sup>20</sup> Law Council, *Submission 42*, p. 14.

that brings you to the real question of independence: the funding relationship.<sup>21</sup>

2.18 The NSW Anti-slavery Commissioner pointed out:

...the bill only speaks to the inclusion of sensitive information in the strategic plan and the annual report. It doesn't speak to any other speech by the Anti-Slavery Commissioner. There is nothing in the bill as I read it that constrains the Anti-Slavery Commissioner from saying what they want to in other contexts.<sup>22</sup>

2.19 The Law Council argued 'there's every reason for independence to be supported and strengthened'.<sup>23</sup> It suggested that the provision around the inclusion of sensitive information in the Anti-Slavery Commissioner's strategic plan could be clarified.<sup>24</sup> That provision:

...says, 'A strategic plan must not include sensitive information.' It becomes a matter then of 'sensitive to who' – sensitive to the government or sensitive to the commissioner? Again, there probably needs to be more clarity around that so the commissioner knows exactly what the commissioner is able to report on, and maybe there needs to be some expansion of what is sensitive information for the purpose of [the provision].<sup>25</sup>

2.20 The Law Council recommended the bill 'be amended to state plainly that the Commissioner ultimately retains discretion over the content of the strategic plan'.<sup>26</sup>

2.21 The AGD provided additional context around the rationale for controlling the divulgence of sensitive information that may prejudice the international relations of Australia.<sup>27</sup> It explained that in the course of their work, the Anti-Slavery Commissioner may be privy to information sourced from Australian or international government agencies.<sup>28</sup> The AGD indicated that

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<sup>21</sup> Dr Cockayne, Office of the New South Wales Anti-slavery Commissioner, *Committee Hansard*, 19 February 2024, p. 47.

<sup>22</sup> Dr Cockayne, Office of the New South Wales Anti-slavery Commissioner, *Committee Hansard*, 19 February 2024, p. 47.

<sup>23</sup> Mr Greg Vickery AO, Chair, Business and Human Rights Committee, Law Council, *Committee Hansard*, 19 February 2024, p. 3.

<sup>24</sup> Mr Vickery, Law Council, *Committee Hansard*, 19 February 2024, p. 3.

<sup>25</sup> Mr Vickery, Law Council, *Committee Hansard*, 19 February 2024, p. 3.

<sup>26</sup> Law Council, *Submission 42*, p. 14.

<sup>27</sup> Ms Frances Finney, Assistant Secretary, Modern Slavery and Human Trafficking Branch, International Law and Human Rights Division, Integrity and International Group, AGD, *Committee Hansard*, 19 February 2024, pp. 52–53.

<sup>28</sup> Ms Finney, AGD, *Committee Hansard*, 19 February 2024, p. 52.

provisions related to the divulgence of sensitive information are intended to give the Anti-Slavery Commissioner:

...a role to identify what information would fall into 'sensitive information' and then how that would not be specifically included in their strategic plan or in that public version of the annual report. So, it was more around the information that governments may share with the commissioner to execute their functions rather than anything broader.<sup>29</sup>

## Functions of the Anti-Slavery Commissioner

2.22 Some submitters raised concerns that the proposed functions of the Anti-Slavery Commissioner are inadequate to effectively address modern slavery and should be strengthened.<sup>30</sup>

2.23 Baptist World Aid Australia opined that reporting entities should be required to do more than just report instances of modern slavery:

Modern slavery reporting alone will not deliver the systemic change needed to combat modern slavery and forced labour. Due diligence must include a duty for entities to identify, prevent, mitigate and remediate modern slavery...this supports the need for the Commissioner to be given appropriate independence and authority for oversight, investigation and enforcement.<sup>31</sup>

2.24 The Australian Council of Trade Unions (ACTU) criticised the bill for:

...fall[ing] far short of what is required to ensure an effective response to modern slavery. It proposes a piecemeal response with the creation of a figurehead primarily exercising education, promotion and awareness-raising functions, with a very small budget to carry out this role. This is completely inadequate to deal with the scope and severity of the problem of modern slavery.<sup>32</sup>

2.25 The Maritime Union of Australia (MUA) similarly argued that the bill should engage more with the recommendations of the *Report of the statutory review of the Modern Slavery Act 2018 (Cth)* (McMillan report):

...the Bill is inadequate in its present form...[and] that the Bill's passage in its present form be rejected, that it be returned to the Minister requesting it be re-drafted and re-presented to the Parliament in ways that fully address the recommendations in the Review of the *Modern Slavery Act 2018* and the findings in the Targeted review of Divisions 270 and 271 of the Criminal Code.<sup>33</sup>

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<sup>29</sup> Ms Finney, AGD, *Committee Hansard*, 19 February 2024, pp. 52–53.

<sup>30</sup> See, for example: Maritime Union of Australia (MUA), *Submission 8*, p. 2; Professor Redmond, *Submission 12*, p. 7; Australian Council of Trade Unions (ACTU), *Submission 18*, p. 1.

<sup>31</sup> BWAA, *Submission 15*, p. 3.

<sup>32</sup> ACTU, *Submission 18*, p. 1.

<sup>33</sup> MUA, *Submission 8*, p. 2.



2.26 The ACTU agreed that the recommendations of the McMillan report should be taken into consideration when designing the functions of the Anti-Slavery Commissioner:

...there are some key reforms required for the act and that it needs to be considered holistically with the role of the Anti-Slavery Commissioner. We'd like to see a response to the review recommendations, particularly to those regarding due diligence and penalties, because they will necessarily change the commissioner's role.<sup>34</sup>

2.27 In a similar vein, Professor Paul Redmond AM opined the future development of the role appears to be 'left to future political negotiation rather than legal specification'.<sup>35</sup>

2.28 He proposed that that the Anti-Slavery Commissioner would need to be alert to developments in the modern slavery field not just in Australia, but internationally. Professor Redmond argued that as a precondition for all its other functions:

...the commission needs to develop a reservoir of deep knowledge of modern slavery, including from victims in Australia but especially in offshore supply chains, where external visibility is least in the distant factories and the agriculture and extractive industries of low labour cost, low social protection countries to which we are all linked by consumption and investment.<sup>36</sup>

2.29 Based on interviews it conducted with 'six survivors of modern slavery in Australia',<sup>37</sup> Fair Futures observed:

...the bill does not address several issues raised by survivors as vital to the effectiveness of an Anti-Slavery Commissioner. Given their views are informed by lived experience of this crime in the Australian context and responses to it, their views offer valuable insights into how the Commissioner role could be strengthened.<sup>38</sup>

2.30 Professor Larelle Chapple conceived of the bill as part of a 'journey' that began with the Modern Slavery Act:

...Australia is on a journey here with this legislation. Of course, we were profoundly pleased to see the Modern Slavery Act 2018. That was the start. Now we have an amendment with a commissioner, and now we encourage a journey. The commissioner has these very proactive functions at the moment...but we also see a trajectory here where the commissioner's role can mature into something that is much more about compliance, because

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<sup>34</sup> Ms Clare Middlemas, Senior International Officer, ACTU, *Committee Hansard*, p. 27.

<sup>35</sup> Professor Redmond, *Submission 12*, p. 2.

<sup>36</sup> Professor Redmond, Private capacity, *Committee Hansard*, 19 February 2024, p. 16.

<sup>37</sup> Fair Futures, *Submission 25*, p. 1.

<sup>38</sup> Fair Futures, *Submission 25*, p. 5.

business says that too. It may seem strange that business wants to be regulated, but that's what business says too.<sup>39</sup>

2.31 In relation to the functions of the Anti-Slavery Commissioner, the AGD indicated the role could 'evolve over time...[and the office] would be established with a view to considering further functions as necessary to support Australia's efforts to end modern slavery'.<sup>40</sup> The bill would:

...establish the Commissioner with critical core functions to enable the vital role of a Commissioner to be established without delay. A Commissioner is needed now to undertake advocacy, stakeholder engagement, and awareness-raising, to further strengthen Australia's modern slavery response. The Commissioner's establishment is also important to informing further steps in Australia's broader response to modern slavery.<sup>41</sup>

2.32 It also explained that the government's response to the McMillan report could inform the future functions of the Anti-Slavery Commissioner:

...seven out of the 30 recommendations included references to the functions that an antislavery commissioner could take on. I wouldn't say it's the case that the functions in the bill at the moment would implement all the recommendations in the Modern Slavery Act report. Depending on how the government wanted to take forward those recommendations, the role of the commissioner would evolve over time.<sup>42</sup>

### **Monitoring and enforcing compliance with the Modern Slavery Act**

2.33 According to the Human Rights Law Centre (HRLC) the lack of an enforcement mechanism is one of the main criticisms of the Modern Slavery Act.<sup>43</sup> It noted that the reviews into the *Modern Slavery Act 2018* (NSW) (NSW Modern Slavery Act) and the *Modern Slavery Act 2015* (UK) recommended that enforcement mechanisms be introduced to encourage compliance with modern slavery legislation.<sup>44</sup>

2.34 The ACTU argued:

The [Modern Slavery] act is based on the flawed assumption that reporting alone will improve business practices and create a race to the top, and that businesses failing to take action will be penalised by the market and consumers. This approach effectively outsources the enforcement to unions, civil society, consumers and shareholders to pressure companies to do the

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<sup>39</sup> Professor Larelle Chapple, Private capacity, *Committee Hansard*, 19 February 2024, p. 23.

<sup>40</sup> AGD, *Submission 17*, p. 3.

<sup>41</sup> AGD, *Submission 17*, p. 3.

<sup>42</sup> Ms Sheehan, AGD, *Committee Hansard*, 19 February 2024, p. 52.

<sup>43</sup> HRLC, *Submission 19*, p. 4.

<sup>44</sup> HRLC, *Submission 19*, p. 5.

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right thing, instead of the Australian government enforcing compliance through penalties and strict oversight.<sup>45</sup>

2.35 The HRLC similarly observed that the Modern Slavery Act is not focussed ‘on criminal investigations and enforcement but rather on driving changes in corporate behaviour in order to prevent modern slavery from happening in the first place’.<sup>46</sup> In its view, the Anti-Slavery Commissioner should have the power to issue penalties and infringement notices.<sup>47</sup>

2.36 Ms Fiona McLeod AO SC submitted the Anti-Slavery Commissioner should have the power to:

- monitor compliance with the Modern Slavery Act;
- audit or undertake assurance checks and publish the results of those checks;
- share relevant information with law enforcement agencies and the National Anti-Corruption Commission and refer matters to them; and
- identify shortcomings and poor practices and develop and promote best practices.<sup>48</sup>

2.37 The HRLC opined the current monitoring system has the Attorney-General’s Department checking:

...whether companies are submitting statements and whether they’re filling in the appropriate fields. But in order to get behind whether the statements are providing accurate information about what companies are actually doing, which is really the more important point in our view—compliance in substance rather than just technical compliance—we think that it’s more appropriate that that sit with the commissioner.<sup>49</sup>

2.38 Dr Shakoor Ahmed stated that an examination of some modern slavery statements shows that ‘in some instances, they are mostly ceremonial rather than substantive’.<sup>50</sup> In his view, an Anti-Slavery Commissioner would have ‘some kind of real power to make companies accountable’.<sup>51</sup>

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<sup>45</sup> Ms Middlemas, ACTU, *Committee Hansard*, 19 February 2024, p. 26.

<sup>46</sup> Ms Keren Adams, Legal Director, HRLC, *Committee Hansard*, 19 February 2024, p. 3.

<sup>47</sup> HRLC, *Submission 19*, p. 3.

<sup>48</sup> Ms McLeod, *Submission 34*, p. 2.

<sup>49</sup> Ms Adams, HRLC, *Committee Hansard*, 19 February 2024, p. 6.

<sup>50</sup> Dr Shakoor Ahmed, Private capacity, *Committee Hansard*, 19 February 2024, p. 15.

<sup>51</sup> Dr Ahmed, Private capacity, *Committee Hansard*, 19 February 2024, p. 15.

2.39 Providing the Anti-Slavery Commissioner with substantive compliance monitoring powers is important as:

That's when we will start to get the actual heart of whether companies are actually doing what they are saying they're doing in these statements, which is very difficult to tell on the basis of the provision of information alone.<sup>52</sup>

2.40 According to the HRLC, the Modern Slavery Business Engagement Unit (MSBEU) in the AGD is better placed to carry out the technical compliance monitoring because it is 'not going to be necessarily the best use of the commissioner's time to be reviewing hundreds of statements, or thousands of statements potentially, for technical compliance'.<sup>53</sup>

2.41 Submissions from unions pointed out that regulators in some foreign jurisdictions have stronger enforcement powers than those proposed in the bill.<sup>54</sup> For example, under the *Act on Corporate Due Diligence Obligations for the Prevention of Human Rights Violations in Supply Chains* (Ger), officers working for the German Federal Office for Economic Affairs and Export Control:

...can receive and assess company reports, adopt necessary measures to detect, end and prevent violations of the law and may summon people, request information and enter business premises. They may do so *ex officio* or upon request by persons with a substantiated claim that their rights have been, or are at imminent risk of being, violated by a company as a result of not fulfilling its obligations under the law.<sup>55</sup>

2.42 Similarly, the Norwegian *Act Relating to Enterprises' Transparency and Work on Fundamental Human Rights and Decent Working Conditions* (Nor) grants the National Consumer Authority the power to impose penalties for non-compliance with the act.<sup>56</sup> Those '[p]enalties include fines, prohibitions, injunctions, and enforcement or infringement penalties'.<sup>57</sup>

2.43 The Law Council supported an amendment to the Modern Slavery Act to introduce 'civil penalties for non-compliance with reporting requirements in certain circumstances, as well as additional regulatory tools to aid compliance'.<sup>58</sup> It suggested that while the Anti-Slavery Commissioner may be 'the appropriate

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<sup>52</sup> Ms Adams, HRLC, *Committee Hansard*, 19 February 2024, p. 7.

<sup>53</sup> Ms Adams, HRLC, *Committee Hansard*, 19 February 2024, p. 7.

<sup>54</sup> MUA, *Submission 8*, p. 3; ACTU, *Submission 18*, p. 8.

<sup>55</sup> Associate Professor Boersma, Professor Marshall, Associate Professor McGaughey, and Professor Nolan, *Submission 29*, pp. 4–5.

<sup>56</sup> Associate Professor Boersma, Professor Marshall, Associate Professor McGaughey, and Professor Nolan, *Submission 29*, p. 5.

<sup>57</sup> Associate Professor Boersma, Professor Marshall, Associate Professor McGaughey, and Professor Nolan, *Submission 29*, p. 5.

<sup>58</sup> Law Council, *Submission 42*, p. 10.

entity' to wield those compliance powers, 'there can be difficulties with the same person having both advisory and enforcement functions'.<sup>59</sup> The Law Council 'note[d] that the Australian Information Commissioner is an example of a statutory office-holder with guidance, monitoring and advice functions, as well as regulatory powers'.<sup>60</sup>

2.44 In a similar vein, the Australian Catholic Anti-Slavery Network (ACAN) recommended the bill be amended 'to enable the Anti-Slavery Commissioner to drive best practice in public procurement'.<sup>61</sup> To that end, the NSW Anti-slavery Commissioner could provide a useful model.<sup>62</sup> Under the NSW Modern Slavery Act, the NSW Anti-slavery Commissioner is required to:

...regularly consult with the Auditor-General and the NSW Procurement Board to monitor the effectiveness of due diligence procedures in place to ensure that goods and services procured by government agencies are not the product of modern slavery.<sup>63</sup>

2.45 Professor Ellie Chapple and Dr Shakoor Ahmed pointed out that New South Wales and Western Australia 'have integrated modern slavery prevention clauses in their public procurement'.<sup>64</sup> They suggested 'this practice should also be adopted at the federal level'.<sup>65</sup>

2.46 The ACAN agreed that the Anti-Slavery Commissioner should be empowered to 'keep the public sector accountable for its operations and supply chains'.<sup>66</sup> It reminded the committee 'the purchasing power of the largest procurer of goods and services, the Australian public sector, has yet to be harnessed in this area'.<sup>67</sup>

2.47 The Business Council of Australia opposed the introduction of civil penalties and sanctions on businesses:

The current mechanisms, including the Minister's capacity to publicly identify non-compliant companies, have proven effective in incentivising appropriate conduct. The BCA advocates for maintaining a non-punitive, educative approach, emphasising the need for clear communication of

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<sup>59</sup> Law Council, *Submission 42*, p. 10.

<sup>60</sup> Law Council, *Submission 42*, p. 10.

<sup>61</sup> ACAN, *Submission 13*, p. 9.

<sup>62</sup> ACAN, *Submission 13*, p. 9.

<sup>63</sup> ACAN, *Submission 13*, p. 9.

<sup>64</sup> Professor Ellie Chapple and Dr Shakoor Ahmed, *Submission 14*, p. 5.

<sup>65</sup> Professor Chapple and Dr Ahmed, *Submission 14*, p. 5.

<sup>66</sup> Mr Luke Geary, Advisor, ACAN, *Committee Hansard*, 19 February 2024, p. 32.

<sup>67</sup> Mr Geary, ACAN, *Committee Hansard*, 19 February 2024, p. 32.

reporting obligations and support for businesses in fulfilling these requirements.<sup>68</sup>

2.48 The Property Council of Australia similarly argued the Anti-Slavery Commissioner should not be ‘regulating business compliance with the reporting requirement’.<sup>69</sup> Instead, the Anti-Slavery Commissioner should ‘focus on providing advice and support to business, in the role of ‘critical friend’, as organisations progress in implementing policy responses’.<sup>70</sup>

2.49 Pillar Two noted that if the Anti-Slavery Commissioner were to have an enforcement role, it ‘may limit businesses’ willingness to engage openly with the Commissioner and would likely require significant resourcing’.<sup>71</sup>

2.50 DFAT pointed out that currently:

...it is the responsibility of companies to do due diligence to ensure they are compliant with the Modern Slavery Act, but the department does do outreach to companies to ensure that they are alert to risks in their supply chains and to talk about the risks of forced labour in those supply chains. While it’s their responsibility to comply, we do try to raise awareness.<sup>72</sup>

### **Investigatory powers**

2.51 The HRLC argued that without investigative powers, the office the Anti-Slavery Commissioner would be unlikely to ‘be able to properly perform its functions of supporting victims or promoting compliance with the [Modern Slavery] Act’.<sup>73</sup> In its view, the Commissioner should:

...be able to investigate companies that they believe to be providing misleading statements under the act. The office may also need to investigate particular high-risk sectors with a view to exposing bad systemic practices in order to better inform efforts to address modern slavery.<sup>74</sup>

2.52 Proponents of a stronger investigatory function for the Anti-Slavery Commissioner argued that they should have similar powers to the Australian Human Rights Commission, the eSafety Commissioner, the

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<sup>68</sup> BCA, *Submission 4*, p. 3.

<sup>69</sup> Property Council, *Submission 9*, p. 2.

<sup>70</sup> Property Council, *Submission 9*, p. 2.

<sup>71</sup> Pillar Two, *Submission 31*, pp. 14–15.

<sup>72</sup> Ms Elly Lawson, Deputy Secretary, Strategic Planning and Coordination Group, Department of Foreign Affairs and Trade, *Senate Foreign Affairs, Defence and Trade Legislation Committee Hansard*, 15 February 2024, p. 48.

<sup>73</sup> HRLC, *Submission 19*, p. 5.

<sup>74</sup> Ms Adams, HRLC, *Committee Hansard*, 19 February 2024, p. 3.

Information Commissioner, the Fair Work Ombudsman and the Federal Safety Commissioner.<sup>75</sup> The eSafety Commissioner, in particular, was described as:

...a comparative model with the power to investigate, enforce, handle complaints, and provide guidance. The eSafety office effectively manages a balance between 'prevention' through research and education, 'protection' through regulatory schemes, complaints and investigations and 'proactive and systemic change' by supporting industry to improve user safety standards and strengthening our impact across borders.<sup>76</sup>

2.53 International Justice Mission Australia recommended that the Anti-Slavery Commissioner be equipped with similar powers to those of the eSafety Commissioner:

Australia's eSafety Commissioner has powers to request transparency reporting from technology companies as to their implementation of the Basic Online Safety Expectations Determination...The level of detail and granularity afforded by the exercise of these powers helps to hold companies accountable for their actions, with the aim of lifting business performance in addressing the issue of online safety and child protection. Similar powers for the Australian Anti-Slavery Commissioner would enable a greater level of detail about modern slavery risks, helping to hold companies accountable for addressing those risks.<sup>77</sup>

2.54 The ACTU suggested the provision that would prevent the Anti-Slavery Commissioner from investigating individual cases must be removed from the bill.<sup>78</sup> An amended bill should provide the office of an Anti-Slavery Commissioner with investigative powers that would allow it to:

- produce an annual list of countries, regions, industries and products at high-risk of modern slavery;
- investigate complaints relating to non-compliance with the [Modern Slavery Act];
- investigate the veracity of modern slavery statements and the due diligence process;
- conduct investigations on its own initiative, including instigating public inquiries and issuing public reports (for example, investigations into high-risk sectors or business practices); and

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<sup>75</sup> Associate Professor Boersma, Professor Marshall, Associate Professor McGaughey, and Professor Nolan, *Submission 29*, p. 9.

<sup>76</sup> Associate Professor Boersma, Professor Marshall, Associate Professor McGaughey, and Professor Nolan, *Submission 29*, p. 9.

<sup>77</sup> IJM, *Submission 24*, p. 3.

<sup>78</sup> ACTU, *Submission 18*, p. 12.

- refer matters to law enforcement where there is prima facie evidence of criminal conduct and report that referral to the [AGD] and to Parliament.<sup>79</sup>

2.55 If the Anti-Slavery Commissioner could conduct self-initiated investigations, the office would then be able to determine whether there are grounds to refer the matter ‘to law enforcement or to other bodies or organisations such as the Fair Work Ombudsman or Fair Work Commission’.<sup>80</sup>

2.56 The HRLC opined ‘that while law enforcement authorities obviously have an important role to play in the detection and prevention of modern slavery, they do not have a strong record of successfully doing so’.<sup>81</sup> Individuals experiencing modern slavery may be deterred from reporting to law enforcement agencies due to ‘mistrust of authorities, geographical or language barriers, fears of retaliation by their employer or visa cancellation’.<sup>82</sup> For those reasons, the immediate involvement of law enforcement agencies in modern slavery investigations ‘may be counter-productive in many cases’.<sup>83</sup>

2.57 The Australian Chamber of Commerce and Industry supported the Anti-Slavery Commissioner ‘play[ing] a purely educative role in its duty to promote compliance with the [Modern Slavery] Act’.<sup>84</sup> It submitted it ‘would be concerned if the Commissioner were to perform an investigative or complaints-handling function’.<sup>85</sup> The investigation function should exclusively remain with law enforcement agencies.<sup>86</sup>

2.58 The AGD maintained:

The [Anti-Slavery] Commissioner would not investigate or deal directly with individual matters of modern slavery. However, they may make observations regarding systemic issues based on their engagement with victims and survivors and the broader community.<sup>87</sup>

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<sup>79</sup> ACTU, *Submission 18*, p. 12.

<sup>80</sup> HRLC, *Submission 19*, p. 5.

<sup>81</sup> HRLC, *Submission 19*, p. 6.

<sup>82</sup> HRLC, *Submission 19*, p. 6.

<sup>83</sup> HRLC, *Submission 19*, p. 6.

<sup>84</sup> ACCI, *Submission 36*, p. 2.

<sup>85</sup> ACCI, *Submission 36*, p. 2.

<sup>86</sup> ACCI, *Submission 36*, p. 2.

<sup>87</sup> AGD, *Submission 17*, p. 5.



### Support for victim-survivors of modern slavery

2.59 Be Slavery Free argued that the Anti-Slavery Commissioner should be able to provide guidance to victim-survivors of modern slavery to find help in addressing their situation. It suggested that currently:

...when people ask for help they don't know where to go...[the Anti-Slavery Commissioner] will become an immediate magnet for victims and survivors and needs to be a clearing house and get rid of the confusion, and they need to be able to act or to do what needs to be done.<sup>88</sup>

2.60 A person with lived experience of modern slavery remarked upon the difficulties they faced in finding where they could report their experience:

When things go wrong in the modern slavery sector currently there is...nowhere to go as a survivor – you basically just fall through all the cracks. It's very difficult to address things when you don't get help or there's a problem in the process and I would really love...the federal anti-slavery commissioner to be able to close some of those gaps.<sup>89</sup>

2.61 A survivor of modern slavery described how difficult it is to get access to support services:

A lot of my journey in recovery has just been fighting...on my own. No one was able to really assist me...when things went wrong. I never really had an understanding of why they went wrong and how to resolve those things...it would be great if we had someone somewhere that could actually help resolve some of those things.<sup>90</sup>

2.62 Mr Moe Turaga, a person with lived experience of modern slavery in Australia, explained that the bill would do little to support victim-survivors:

My main concern is with the victim support function outlined for the commissioner. The only support referenced in the bill is to provide information to victims. Sorry to say that just won't cut it. We are talking about the most vulnerable people here, people who by nature of their situation are hard to reach to provide anything. When I found out that I hadn't been paid for two years of farm work, I didn't tell my story for years, as I only spoke up when I felt safe and secure and supported by the people around me. My strongest advice is for an explicit commitment in the bill to put survivors and our concerns at the centre of the commissioner's work.<sup>91</sup>

2.63 Fair Futures suggested that in situations such as those recounted by individuals with experience of modern slavery, the Anti-Slavery Commissioner should be

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<sup>88</sup> Ms Carolyn Kitto, Director, Be Slavery Free, *Committee Hansard*, 19 February 2024, p. 35.

<sup>89</sup> Fair Futures, *Submission 25*, p. 1.

<sup>90</sup> Fair Futures, *Submission 25*, p. 6.

<sup>91</sup> Mr Moe Turaga, Survivor Consultant, Australian Catholic Anti-Slavery Network, *Committee Hansard*, 19 February 2024, p. 31.

able to intervene in individual cases to ensure victim-survivors have assistance in ‘find[ing] a way forward’.<sup>92</sup>

2.64 The NSW Anti-slavery Commissioner is able ‘to identify and provide assistance and support for victims of modern slavery’.<sup>93</sup> In doing so, they may ‘co-operate with or work jointly with persons and organisations to combat modern slavery and provide assistance and support to victims of modern slavery’.<sup>94</sup>

2.65 Be Slavery Free explained that the review of the NSW Modern Slavery Act found that the NSW Anti-slavery Commissioner has ‘little practical ability, in part due to the role’s lack of investigative powers, to directly take action that addresses the gap in reporting of modern slavery cases’.<sup>95</sup>

2.66 The NSW Anti-slavery Commissioner stated:

It’s clear from their advocacy that survivors are looking for a commissioner with stronger powers to assist and support victims, not simply by providing them with information—as the language of the bill currently envisages—but also by inquiring into their circumstances and their treatment and by accompanying them on the journey to obtain the support and assistance they need.<sup>96</sup>

2.67 The HRLC recommended the bill be amended to enable the Anti-Slavery Commissioner:

...to receive and investigate complaints about suspected instances of modern slavery, provide support and assistance to victims to access remedy and, where appropriate, refer cases to law enforcement or other authorities.<sup>97</sup>

2.68 Be Slavery Free added that while law enforcement agencies should remain responsible for criminal investigations, modern slavery may be difficult for those agencies to detect as it may require ‘expert support to determine if and how laws are being violated and by whom’.<sup>98</sup>

2.69 Conversely, SlaveCheck outlined that there are reasonable grounds to prevent the Anti-Slavery Commissioner from becoming involved in individual cases:

The prohibition on the [Anti-Slavery] Commissioner from investigating cases is well founded and will prevent the role holder from being drawn

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<sup>92</sup> Fair Futures, *Submission 25*, p. 6.

<sup>93</sup> ACAN, *Submission 13*, p. 10.

<sup>94</sup> ACAN, *Submission 13*, p. 10.

<sup>95</sup> Be Slavery Free, *Submission 20*, p. 3.

<sup>96</sup> Dr Cockayne, Office of the New South Wales Anti-slavery Commissioner, *Committee Hansard*, 19 February 2024, p. 44.

<sup>97</sup> HRLC, *Submission 19*, p. 7.

<sup>98</sup> Be Slavery Free, *Submission 20*, p. 3.

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.<sup>99</sup>

2.70 The Australian Human Rights Commission recommended that the Anti-Slavery Commissioner should have additional roles to:

- ‘encourage good practice in the prevention, detection, investigation and prosecution of slavery and human trafficking offences, as well as the identification of victims’.<sup>100</sup>
- undertake ‘own motion investigations into modern slavery risks in industry sectors in Australia’.<sup>101</sup>
- independently review and evaluate ‘the National Action Plan to Combat Modern Slavery 2020-25 (and any subsequent national frameworks)’.<sup>102</sup>

2.71 The AGD explained that the Anti-Slavery Commissioner would be able to support victim-survivors of modern slavery without investigating individual cases ‘through the provision of information about government and non-government resources, programs and services’.<sup>103</sup>

2.72 It wanted to ensure that the Anti-Slavery Commissioner did not duplicate ‘functions that are performed elsewhere in government’.<sup>104</sup> To that end, the bill would enable the Commissioner ‘to provide an avenue to assist victims-survivors in knowing where they can go’.<sup>105</sup>

### **Consultation of people with lived experience of modern slavery**

2.73 The Office of the NSW Anti-slavery Commissioner was concerned that the development of the bill did not appear to include consultation of people with lived experience of modern slavery:

In this day and age, we would not develop complex legislation on victims of child sexual abuse, domestic and family violence, or disability services without direct engagement with people with lived experience. Why should such a landmark reform of Australia’s modern slavery response proceed without hearing directly from survivors of modern slavery?<sup>106</sup>

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<sup>99</sup> SlaveCheck, *Submission 5*, p. 6.

<sup>100</sup> AHRC, *Submission 35*, p. 6.

<sup>101</sup> AHRC, *Submission 35*, p. 6.

<sup>102</sup> AHRC, *Submission 35*, p. 7.

<sup>103</sup> AGD, *Submission 17*, p. 5.

<sup>104</sup> Ms Sheehan, AGD, *Committee Hansard*, 19 February 2024, p. 54.

<sup>105</sup> Ms Sheehan, AGD, *Committee Hansard*, 19 February 2024, p. 55.

<sup>106</sup> Office of the NSW Anti-slavery Commissioner, *Submission 26*, p. 2.

2.74 Being subjected to modern slavery ‘involves the theft of people’s agency, the denial of their self-determination’. For that reason, the NSW Anti-slavery Commissioner argued:

Our responses to modern slavery should not repeat, even by accident, that denial of voice, agency and self-determination. Instead, our responses should themselves enhance survivor voice, agency and self-determination, for example by providing dedicated, appropriately designed and safe-guarded opportunities for people with lived experience to interact directly with policymakers and legislators.<sup>107</sup>

2.75 Similarly, the Uniting Church in Australia, Synod of Victoria and Tasmania stated ‘the Commissioner should have the role of facilitating victims of modern slavery to exercise their own agency whenever possible and appropriate, rather than speaking on behalf of them after consulting with them’.<sup>108</sup>

2.76 Fair Futures suggested that consulting people with lived experience of modern slavery, perhaps through a lived experience advisory panel or through their employment with the Office of the Anti-Slavery Commissioner, is required to:

...challenge the assumption that the existing system is working. For the people we spoke to, their experience is it’s fractured, it’s competitive over funding, it’s not designed around their needs and there are gaps and barriers to the services they’re getting. The response was described as lacking transparency and lacking accountability. People described having nowhere to turn when the system that is set up to help them fails them. That’s a pretty dire indictment of a system that’s now been in place for some 20 years.<sup>109</sup>

2.77 Mr Turaga stated:

I want to see footprints of lived experience people throughout the whole process from selection and appointment to work on the ground and the administration of the role. Why couldn’t we have a panel of survivor advocates to support the commissioner’s work? Survivor-led trauma informed is the best practice for remedy. So why shouldn’t we be working with the commission to develop the pathways and remedies for people escaping modern slavery?<sup>110</sup>

2.78 Walk Free advocated for the establishment of a ‘Lived Experience Advisory Panel to ensure the [Anti-Slavery] Commissioner’s actions are based on the advice of those with lived experience’.<sup>111</sup> That panel could be modelled on the

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<sup>107</sup> Office of the NSW Anti-slavery Commissioner, *Submission 26*, p. 2.

<sup>108</sup> Uniting Church in Australia, Synod of Victoria and Tasmania, *Submission 38*, p. 2.

<sup>109</sup> Ms Fiona David, Chief Executive Officer and Founder, Fair Futures, *Committee Hansard*, 19 February 2024, p. 32.

<sup>110</sup> Mr Turaga, ACAN, *Committee Hansard*, 19 February 2024, p. 31.

<sup>111</sup> Walk Free, *Submission 23*, p. 2.

‘practice of the New South Wales [Anti-slavery] Commissioner and Australia’s first Domestic Violence Commissioner’.<sup>112</sup>

2.79 The NSW Anti-slavery Commissioner outlined the structure of the advisory panel:

We have an advisory panel that is not limited to people with lived experience. It’s 29 people currently, and 20 per cent of them have declared lived experience. There may or may not be others without declared lived experience. We’ve deliberately not had a segregated lived experience advisory panel, in part because, in the early days of the shift in the antislavery sector to bring survivor voices into the discussion, we didn’t want to overburden a small cohort in New South Wales.<sup>113</sup>

2.80 He argued that the advisory panel has played a positive role in his work:

I think it really is transformative. It shifts this from being an abstract discussion and a question of charity to one where we really focus every day on: How does the way I’m approaching this issue actually not only help this particular individual but restore agency for those who come behind? How are we building their capabilities so that a future antislavery commissioner is a person with lived experience and so that that that can be done safely, for example? I think that’s really the transformation we’re going through in this sector currently.<sup>114</sup>

2.81 Mr Turaga, who sits on the NSW Anti-slavery Commissioner’s advisory panel remarked:

It’s quite educative, working with him and identifying the issues. Most of the issues are in regard to the pathways for victims who identify themselves—how we put them into some sort of protection and what the services available to them are. Those are some of the issues that we would make comment on and give opinions on.<sup>115</sup>

2.82 Professor Ellie Chapple and Dr Shakoor Ahmed advocated for:

...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.<sup>116</sup>

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<sup>112</sup> Walk Free, *Submission 23*, p. 2.

<sup>113</sup> Dr Cockayne, Office of the New South Wales Anti-slavery Commissioner, *Committee Hansard*, 19 February 2024, pp. 49–50.

<sup>114</sup> Dr Cockayne, Office of the New South Wales Anti-slavery Commissioner, *Committee Hansard*, 19 February 2024, p. 50.

<sup>115</sup> Mr Turaga, ACAN, *Committee Hansard*, 19 February 2024, p. 36.

<sup>116</sup> Professor Chapple and Dr Ahmed, *Submission 14*, p. 4.

2.83 According to Slavery Links, a focus on survivors alone would ‘not address the slave-making systems that expose people to risk’.<sup>117</sup> To effectively combat modern slavery, an understanding of the reasons and benefits that motivate perpetrators is also required.<sup>118</sup> Slavery Links submitted ‘[a]n effective anti-slavery Commissioner will comprehend the mind of a perpetrator; will be a strategic thinker who is conversant with models for criminal enterprises that compromise legitimate business’.<sup>119</sup>

2.84 The AGD stated that during the development of the bill it:

...considered the diversity of views canvased by the review and inquiries and how the commissioner would complement other existing critical pillars of Australia’s response to modern slavery. This includes the diverse range of work undertaken by government, business and civil society to work collaboratively to prevent and respond to modern slavery, and the opportunity to recognise and build survivor voices into the commissioner’s core functions.<sup>120</sup>

2.85 It pointed out that victim-survivors of modern slavery had opportunities to contribute to the proposed functions of the Anti-Slavery Commissioner:

There wasn’t an exposure draft process of the bill, but there has been a range of consultation on the proposal for an Anti-Slavery Commissioner, most recently through the review of the Modern Slavery Act, and victims-survivors were part of a consultation through that process, including on the establishment of a commissioner. We also have engagement with victims-survivors through a range of mechanisms, including the national roundtable on modern slavery and direct meetings.<sup>121</sup>

2.86 The AGD agreed that the input of multiple stakeholders is required to address modern slavery in Australia:

Modern slavery is a challenge that cannot be addressed in isolation or by Government alone—ongoing coordinated and aligned action is required from governments, businesses, and civil society. The establishment of an Anti-Slavery Commissioner would further strengthen Australia’s response to modern slavery by providing a new advocate at the national level. This would involve harnessing innovation and insights across government and non-government sectors and forging connections amongst diverse stakeholders to achieve meaningful action.<sup>122</sup>

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<sup>117</sup> Slavery Links, *Submission 40*, p. 4.

<sup>118</sup> Slavery Links, *Submission 40*, p. 4.

<sup>119</sup> Slavery Links, *Submission 40*, p. 4.

<sup>120</sup> Ms Sheehan, AGD, *Committee Hansard*, 19 February 2024, p. 51.

<sup>121</sup> Ms Sheehan, AGD, *Committee Hansard*, 19 February 2024, p. 53.

<sup>122</sup> AGD, *Submission 17*, p. 2.

2.87 It stated it has ‘not been prescriptive in the bill as to the form that engagement by the commissioner would or could take’.<sup>123</sup> It outlined some of the options the Anti-Slavery Commissioner might choose make:

The commissioner could have a staff member—a lived experience staffing position—or it could have an advisory panel. There’s discretion for the commissioner as to how they might want to go about that, but we very much support the suggestion that engagement with victims-survivors is a critical issue in influencing how policies and programs are developed and implemented.<sup>124</sup>

2.88 The AGD further explained that government and civil society are still collaborating on the best way to engage with victim-survivors:

It’s an area that’s emerging for government...but we have a lot of civil society partners who’ve been engaging with victims and survivors for many years. We are trying to leave the door open in terms of ensuring engagement and the empowerment of victims and survivors to speak for themselves is part of the Anti-Slavery Commissioner’s functions. Given a lot of this work is still in the piloting and new part of our public policy work, we didn’t go as far as describing how the commissioner should do that because that’s very much under their control once they are appointed.<sup>125</sup>

### **Approach to specific industries**

2.89 One of the main functions of the Anti-Slavery ‘Commissioner is to support business engagement and collaboration’.<sup>126</sup> To that end:

The Office [of the Anti-Slavery Commissioner] could provide tools and resources for businesses to identify and mitigate the risk of modern slavery in their supply chains. The Office [of the Anti-Slavery Commissioner] could develop guidelines and best practices for organisations to follow, ensuring they comply with the [Modern Slavery Act].<sup>127</sup>

2.90 Through the development of those tools and resources, the Anti-Slavery Commissioner could ‘facilitate the sharing of best practices and promote joint initiatives’.<sup>128</sup>

2.91 The Housing Industry Association (HIA) and the Australian Retailers Association argued that the Anti-Slavery Commissioner should be aware of the

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<sup>123</sup> Ms Sheehan, AGD, *Committee Hansard*, 19 February 2024, p. 54.

<sup>124</sup> Ms Sheehan, AGD, *Committee Hansard*, 19 February 2024, p. 54.

<sup>125</sup> Ms Finney, AGD, *Committee Hansard*, 19 February 2024, p. 54.

<sup>126</sup> Associate Professor Boersma, Professor Marshall, Associate Professor McGaughey, and Professor Nolan, *Submission 29*, p. 6.

<sup>127</sup> Associate Professor Boersma, Professor Marshall, Associate Professor McGaughey, and Professor Nolan, *Submission 29*, p. 6.

<sup>128</sup> Associate Professor Boersma, Professor Marshall, Associate Professor McGaughey, and Professor Nolan, *Submission 29*, p. 6.

differences between sectors and accordingly develop resources that are tailored to the specific circumstances of those sectors.<sup>129</sup>

2.92 The HIA requested that the resources be ‘a collation of information and a collation of education—not necessarily template documents, because...that’s quite superficial’.<sup>130</sup>

2.93 Dr Shakoor Ahmed reported that his research indicated ‘disclosing entities seek out industry-specific guidance, preferably from a source that is credible and independent from the product market’.<sup>131</sup> His research also found:

...some industries have a greater prevalence of modern slavery. This means that the same legislation or the same minimum requirement is not fit for all. We have to focus on industry-specific guidance.<sup>132</sup>

2.94 The Australian Institute of Company Directors supported the Anti-Slavery Commissioner playing an educative and awareness raising role.<sup>133</sup> In its view, that would include streamlining the due diligence and verification processes that reporting entities implement by:

- ‘developing codes of practice and certification measures for suppliers’;<sup>134</sup>
- ‘publishing an annual list of high risk regions, locations, industries, products, suppliers or supply chains’;<sup>135</sup>
- ‘developing practical guidance for high-risk sectors, [not-for-profits], Aboriginal and Torres Strait Island organisations and small and medium enterprises’;<sup>136</sup>
- undertaking ‘assessments of modern slavery statements to provide real-world insights into current practices and highlight areas of due diligence and reporting that require improvement’;<sup>137</sup> and

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<sup>129</sup> HIA, *Submission 11*, p. 1; Australian Retailers Association, *Submission 16*, p. 2.

<sup>130</sup> Mrs Angela Olsen, Director, Legal and Industrial Relations, HIA, *Committee Hansard*, 19 February 2024, p. 12.

<sup>131</sup> Dr Ahmed, Private capacity, *Committee Hansard*, 19 February 2024, p. 15.

<sup>132</sup> Dr Ahmed, Private capacity, *Committee Hansard*, 19 February 2024, p. 15.

<sup>133</sup> AICD, *Submission 10*, p. 1.

<sup>134</sup> AICD, *Submission 10*, p. 2.

<sup>135</sup> AICD, *Submission 10*, p. 2. Note: Professor Redmond suggested that the production of ‘industry specific codes of practice and guidance on high-risk geographic areas...[are] perhaps the most valuable contribution the commissioner could make to assist businesses’. See: Professor Redmond, Private capacity, *Committee Hansard*, 19 February 2024, p. 17.

<sup>136</sup> AICD, *Submission 10*, p. 2.

<sup>137</sup> AICD, *Submission 10*, p. 2.



- ‘facilitating collaboration across industry, Government and civil society’.<sup>138</sup>

2.95 Dr Katherine Christ advised there:

...is an increasing burden being placed on small and medium sized enterprises. Many are being asked to provide different types of information in different forms by supply chain partners. This is obviously very burdensome, and these organisations often don’t understand what modern slavery is. They don’t know what they need to do, and they don’t know how to do it. So there is a space there for the Anti-Slavery Commissioner to try and navigate that chasm between large reporting entities and small business.<sup>139</sup>

2.96 In reflecting upon its experience as a reporting entity, the University of Sydney highlighted that the current arrangements impose considerable financial costs on reporting entities:

The current lack of sector specific guidance, centralised source of risk information and lack of good practice benchmarking, means compliance with the [Modern Slavery] Act requires a significant resource investment from reporting entities, which for many smaller entities is not financially viable.<sup>140</sup>

2.97 The University of Sydney recommended the bill be amended to require the Anti-Slavery Commissioner ‘to develop and provide a central, consistent, evidence-based source of risk information and sector specific guidance which enables reporting entities to take risk-based and targeted due diligence actions’.<sup>141</sup> The inclusion of that requirement ‘would better enable academics, civil society, consumers, and investors to assess modern slavery statements and provide recommendations on the effectiveness of the [Modern Slavery] Act’.<sup>142</sup>

2.98 Reflecting upon its experience as a reporting entity and based on insights from its academic staff, the University of Sydney stated:

...meaningful action on modern slavery requires an approach that is evidence based and context-specific. We recommend that the commissioner’s functions include the requirement to develop and provide essential, consistent evidence based source-of-information risk information and sector-specific guidance which enables reporting entities to take risk based and targeted due diligence actions.<sup>143</sup>

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<sup>138</sup> AICD, *Submission 10*, p. 2.

<sup>139</sup> Dr Katherine Christ, Private capacity, *Committee Hansard*, 19 February 2024, p. 14.

<sup>140</sup> University of Sydney, *Submission 30*, p. 2.

<sup>141</sup> University of Sydney, *Submission 30*, p. 3.

<sup>142</sup> University of Sydney, *Submission 30*, p. 3.

<sup>143</sup> Ms Marcu, University of Sydney, *Committee Hansard*, 19 February 2024, pp. 15–16.

- 2.99 The AGD submitted that ‘the [Anti-Slavery] Commissioner could produce targeted products to help prevent or address modern slavery in particular sectors’.<sup>144</sup>
- 2.100 According to DFAT, the Modern Slavery Expert Advisory Group includes representatives of the ACCI and ACTU. That group ‘provides practical advice on the operation of the Modern Slavery Act. So, in tandem with ethical business companies, others in the private sector and civil society and academics, who are doing a significant amount of work on this too, there are resources to help and support business in addressing what is a very complex and challenging area of exploring these supply chains’.<sup>145</sup>

### **Committee view**

- 2.101 The Modern Slavery Amendment (Australian Anti-Slavery Commissioner) Bill 2023 would establish an independent Australian Anti-Slavery Commissioner to support compliance with the *Modern Slavery Act 2018* and address modern slavery in Australia and internationally.
- 2.102 The committee recognises that two parliamentary committee inquiries and the *Report of the statutory review of the Modern Slavery Act 2018 (Cth)* recommended that the government establish an Australian Anti-Slavery Commissioner.
- 2.103 The evidence received by the committee during this inquiry, including from people with lived experience of modern slavery in Australia, further demonstrates that there is widespread support for the establishment of an independent Australian Anti-Slavery Commissioner to address modern slavery.
- 2.104 The committee is aware that the government is carefully considering the 30 recommendations made in the *Statutory review of the Modern Slavery Act 2018 (Cth)*. It understands that the government’s response may outline further functions and powers for the Anti-Slavery Commissioner and that the role will continue to evolve.
- 2.105 It is not clear to the committee that the term ‘sensitive information’ is sufficiently defined in the bill or its explanatory memorandum, particularly in relation to information that would or may prejudice the international relations of Australia. In the committee’s view, this term should be clearly defined to ensure that the independence of the Anti-Slavery Commissioner is not called into question.

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<sup>144</sup> AGD, *Submission 17*, p. 5.

<sup>145</sup> Ms Lynn Bell, Ambassador to Counter Modern Slavery, People Smuggling and Human Trafficking, International Security, Legal and Consular Group, Department of Foreign Affairs and Trade, *Senate Foreign Affairs, Defence and Trade Legislation Committee Hansard*, 15 February 2024, p. 48.

### **Recommendation 1**

**2.106 The committee recommends that the term ‘sensitive information’, particularly regarding information related to the international relations of Australia, be clarified in either the bill or the explanatory memorandum.**

2.107 The committee received evidence from people with lived experience of modern slavery that highlighted the importance of consulting them in the development of the Anti-Slavery Commissioner’s role. Victim-survivors also emphatically explained to the committee that they often do not know where to go to get advice or support. Many of them are reluctant to approach law enforcement agencies. The Anti-Slavery Commissioner has a role to play in advising and supporting victim-survivors of modern slavery in Australia.

### **Recommendation 2**

**2.108 The committee recommends that the bill be amended to include a requirement that the Anti-Slavery Commissioner develops specific guidelines in their strategic plan to support victim-survivors of modern slavery.**

### **Recommendation 3**

**2.109 The committee recommends that the bill be amended to include a requirement that the Anti-Slavery Commissioner engages with victim-survivors of modern slavery in carrying out the functions of their role.**

### **Recommendation 4**

**2.110 The committee recommends that while the Anti-Slavery Commissioner should not have the power to investigate individual cases of modern slavery, once established, the office of the Commissioner should make appropriate arrangements, for example a memorandum of understanding, with relevant law enforcement agencies to facilitate the referral of cases for investigation as requested.**

### **Recommendation 5**

**2.111 Subject to the preceding recommendations, the committee recommends that the Senate pass the bill.**

**Senator Nita Green  
Chair**



# Additional Comments by Senator Paul Scarr

## Introduction

1.1 I support the establishment of an Australian Anti-Slavery Commissioner ('the Commissioner'). Hence, I support the recommendation in the Majority Report that the Senate pass the Bill with the amendments which are recommended in these additional comments. I support the recommendations made in the Majority Report subject to one important qualification in relation to Recommendation 1 (the definition of 'sensitive information'). I explain my qualification below. Further, I make a number of additional recommendations.

## Recommendation 1 in the Majority Report – 'Sensitive Information'

### Introduction

1.2 The Majority Report recognises that there is an issue with the definition of 'sensitive information' in the context of 'international relations'. In particular, the Majority Report states at paragraph 2.105:

It is not clear to the committee that term 'sensitive information' is sufficiently defined in the bill or its explanatory memorandum, particularly in relation to information that would or may (sic) prejudice the international relations of Australia.<sup>1</sup> In the committee's view, this term should be clearly defined to ensure that the independence of the Anti-Slavery Commissioner is not called into question.

1.3 Based on the evidence provided to the committee (and as will be seen from my subsequent comments), I agree.

1.4 The Majority Report, then makes the following recommendation:

Recommendation 1: The committee recommends that the term 'sensitive information', particularly regarding information related to the international relations of Australia, be clarified in either the bill or the explanatory memorandum.

1.5 I agree that the matter needs to be clarified by amendment to the Bill. I do not agree that it can be clarified through amendment to the explanatory memorandum. This is my point of difference with this recommendation. It is an important one. Its importance is reflected by the extent of the Additional Comments I provide in good faith on this issue.

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<sup>1</sup> I note the phrase used in the proposed definition of 'sensitive information' in clause 3, Schedule 1 of the Bill is 'would or might', rather than 'would or may' (albeit there is probably no material difference between the two formulations).

**Issue needs to be resolved by amendment to the Bill**

1.6 I am strongly of the view that the issue is of such importance that it must be resolved by amendment to the Bill. This is because the current wording (on its plain meaning) encompasses such a wide category of information as ‘sensitive information’; namely information which would or might prejudice the international relations of Australia. On its plain meaning, this would include information in the public domain. It includes public information which would reasonably require businesses to implement risk management processes to address the risk of modern slavery in their supply chains. In the context of this Bill, for the reasons I expand upon below, I am firmly of the view that this section needs to be amended to ensure that: (a) the independence of the Commissioner is maintained; and (b) the Bill is effective in countering modern slavery, particularly outside of Australia.

**Independence of the Australian Anti-Slavery Commissioner**

1.7 A key theme in the evidence received by the Committee was the importance of the Australian Anti-Slavery Commissioner being independent from Government. The Attorney-General in his Second Reading Speech stated:

To be effective in their role, it is vital that the Commissioner be independent. [Therefore, t]he bill provides that the commissioner will have discretion in performing or exercising their functions, and will not be subject to direction.<sup>2</sup>

1.8 However, the Bill does contain provisions which would have the effect of undermining the independence of the Commissioner, albeit that they might not make the Commissioner: ‘subject to direction’ (to use the phrase used by the Attorney-General in the Second Reading speech quoted above). It is in this context, that I now consider the definition of ‘sensitive information’.

**Definition of ‘Sensitive Information’**

1.9 Clause 3 of the Bill proposes a new definition: ‘Sensitive Information’ which would read:

Sensitive information means information the disclosure of which would or might:

- (a) prejudice the security, defence or international relations of Australia; or
- (b) prejudice the investigation of, or the prosecution of a person for, an offence; or
- (c) endanger the life or safety of any person.

1.10 Where information falls within the definition of ‘sensitive information’, there is a constraint imposed upon the Commissioner with respect to the use of that

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<sup>2</sup> The Hon Mark Dreyfus KC MP, Attorney-General and Cabinet Secretary, *House of Representatives Hansard*, 30 November 2023, p. 8925

information. This constraint is specifically imposed in relation to the adoption of strategic plans and the preparation and publication of annual reports.

1.11 In the context of the strategic plan to be prepared by the Commissioner, section 20X(3) provides:

(1) A strategic plan must not include sensitive information.

1.12 Hence, the Bill proposes a blanket prohibition upon the Commissioner including any reference to 'sensitive information' in the strategic plan. Whilst this is not a 'direction' from Government (again, to use the phrase adopted by the Attorney-General in his second reading speech), it is a restriction imposed upon the Commissioner through the operation of the Bill.

1.13 In the context of the annual report to be prepared by the Commissioner and provided to the Minister, and through the Minister to the Parliament, there are additional restrictions imposed by the Bill.

1.14 Under section 20Y:

(1) If the Commissioner considers that the annual report contains sensitive information, the Commissioner must also prepare and give to the Minister, at the same time as the annual report, a version of the report which does not contain that information.

(2) In determining whether the annual report contains sensitive information, the Commissioner may consult the Minister.

(3) The Minister must cause a copy of:

(a) the annual report; or

(b) if the annual report contains sensitive information – the corresponding version of the report which does not contain that information;

to be tabled in each House of the Parliament within 15 sitting days of that House (sic)<sup>3</sup> after the report is given to the Minister.

(4) The Commissioner must cause a copy of:

(a) the annual report; or

(b) if the annual report contains sensitive information – the corresponding version of the report which does not contain that information;

to be published on the Commissioner's website as soon as practicable after the report is tabled in the House of Representatives.

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<sup>3</sup> 'of that House' appears redundant and may be a drafting error.

- 1.15 Hence, 'sensitive information' cannot be included in the report which is provided to Parliament nor in the report which is published for the information of the public.
- 1.16 It is useful to compare the approach in the Bill to that which is adopted under the equivalent UK legislation; namely the *Modern Slavery Act 2015 (UK)* (the 'UK Act'). Under Part 4 of the Act, the position of Independent Anti-Slavery Commissioner ('UK Commissioner') is established. Similar to the proposed position of Commissioner under the Bill, the UK Act provides that the UK Commissioner is to prepare a strategic plan and annual reports. The UK Commissioner also has power to make reports to public authorities, including making recommendations.
- 1.17 In the context of the report function (both annual and *ad hoc*), there is recognition that there may be some information which should not be included in the report. For example, section 42(14) of the UK Bill states:
- (1) The Secretary of State may remove from an annual report any material whose publication the Secretary of State thinks:
- (a) would be against the interests of national security,
  - (b) might jeopardise the safety of any person in England or Wales, or
  - (c) might prejudice the investigation or prosecution of an offence under the law of England and Wales.
- 1.18 A comparison of the Bill to the UK Act reveals the following differences:
- (a) the UK Act does not include information 'which would or might prejudice...international relations' as being information which would be excluded from a report (including an annual report) or strategic plan prepared by the UK Commissioner; and
  - (b) the standard for the threshold to be met to trigger the power of the Secretary to omit information or material from a report (or annual report) with respect to a matter of national security is 'would be against the interests of national security', as opposed to 'which would or might prejudice security, defence or international relations' (i.e. the 'or might' does not apply as a qualifier in the UK legislation in this context, although it does apply in the context of personal safety or prejudice to an investigation or prosecution).

### **Including 'international relations' under the umbrella of Sensitive Information**

- 1.19 With respect to the inclusion in the definition of sensitive information of: 'information which would or might prejudice...international relations', it is important to note that under the Bill, the Commissioner will play a key role in complementing the Government's strategy to combat modern slavery both in Australia and abroad. As the Attorney General said in his second reading speech:



The Bill delivers on the Albanese Government's election commitment to establish the first Commonwealth Anti-Slavery Commissioner to tackle modern slavery in Australia and abroad.<sup>4</sup> [my emphasis]

The commissioner will work across government, business and civil society to support compliance with the Modern Slavery Act, improve transparency in supply chains, and combat modern slavery in Australia and abroad. [my emphasis] Importantly, the establishment of the commissioner provides an independent mechanism for victims and survivors, business and civil society to engage on issues and design strategies to address modern slavery.<sup>5</sup>

- 1.20 The concern is that the extension of the definition of sensitive information to information: 'which would or might prejudice...international relations' will constrain the activities of the Commissioner, including with respect to the formulation of the strategic plan and the content of the annual report. How is the Commissioner meant to deal with the issue of modern slavery (or alleged modern slavery) in countries which provide supply networks for businesses in Australia, unless the Commissioner is able to form their own independent judgement as to how these issues are dealt with in the Commissioner's strategy? Is it intended that the Commissioner not be able to refer to 'emerging issues' in relation to such countries in the annual report (or at least in the unredacted annual report which is provided to Parliament and published for the benefit of the public)?<sup>6</sup> To continue the theme, how can the Commissioner provide meaningful guidance to business with respect to risk management relating to modern slavery in international supply networks unless the Commissioner can be open and transparent with respect to that risk?

### **Experience of the UK Commissioner**

- 1.21 A review of the activities of the UK Commissioner indicates that it will be necessary for the Commissioner to deal with issues which might otherwise fall within the wide definition of sensitive information under the Bill.
- 1.22 A review of the annual report of the UK Commissioner for 2021–2022 provides a number of examples of the UK Commissioner referring to information which under the Bill may fall within the definition of 'sensitive information'. Refer to the following:

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<sup>4</sup> The Hon Mark Dreyfus KC MP, Attorney-General and Cabinet Secretary, *House of Representatives Hansard*, 30 November 2023, p. 8924.

<sup>5</sup> The Hon Mark Dreyfus KC MP, Attorney-General and Cabinet Secretary, *House of Representatives Hansard*, 30 November 2023, p. 8925.

<sup>6</sup> The Bill proposes that section 20Y(2) requires the annual report of the Commissioner to contain 'any emerging issues relating to the Commissioner's functions'. This is canvassed in the Majority Report at paragraph 1.64. There will no doubt be emerging issues which develop in foreign jurisdictions in the future. The Commissioner may determine that such issues warrant comment even though such comment 'would or might' jeopardise international relations.

Over the past year there has rightly been much media focus on state sponsored forced labour of Xinjiang Uyghur Autonomous Region in China, as well as exploitation of workers in Malaysia's rubber glove factories.<sup>7</sup>

Nevertheless, the risk of goods made with forced labour entering the public sector is significant. In October 2021, US Agency Customs and Border Protection (CBP) issued an import ban, or withhold release order (WRO) against Malaysian glove producer Supermax. Responding to this event, Lord Alton of Liverpool asked the UK government what assessment it had made of alleged labour abuses by the company; how many of the company's products it had purchased and the cost of those purchases.<sup>8</sup>

I have also continued to closely monitor developments in relation to human rights abuses in the Xinjiang Uyghur Autonomous Region. The government has implemented measures to help ensure British organisations are not complicit, nor profiting from, human rights violations in Xinjiang. The overseas Business Risk Guidance makes businesses aware that conducting due diligence in Xinjiang is challenging and that traditional methods may not be effective in identifying human rights violations.<sup>9</sup>

- 1.23 In response to my question on notice, the Human Rights Law Centre provided the following evidence to the Committee in relation to the definition of 'sensitive information':

In our view, references to modern slavery in overseas jurisdictions (including issues of state sponsored forced labour) should not be excluded from the scope of the annual report or the strategic plan. As noted above, the UKIASC 2021-2022 annual report commented on work monitoring human rights abuses in Xinjiang, and also mentions issues in the Malaysian glove manufacturing sector.

In addition, we note the evidence of the Assistant Secretary of the Modern Slavery and Human Trafficking Branch in the Attorney-General's Department during the hearing that the reference to information that may 'prejudice the security, defence or international relations of Australia' within the definition of 'sensitive information', was intended to focus on sensitive information relating to defence, security and international relations that may have been shared with the [Commissioner] by Government.

We would expect much (if not all) of the information about modern slavery in overseas jurisdictions that would be included in an annual report or strategic plan would already be in the public sphere. Therefore, we recommend that the definition of 'sensitive information' is amended to remove 'international relations' as there does not appear to be a clear

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<sup>7</sup> Independent Anti-Slavery Commissioner, [Independent Anti-Slavery Commissioner Annual Report 2021-2022](#), April 2022, p. 33.

<sup>8</sup> Independent Anti-Slavery Commissioner, [Independent Anti-Slavery Commissioner Annual Report 2021-2022](#), April 2022, p. 41.

<sup>9</sup> Independent Anti-Slavery Commissioner, [Independent Anti-Slavery Commissioner Annual Report 2021-2022](#), April 2022, p. 57.

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justification for its inclusion in the meaning of sensitive information.<sup>10</sup> [my emphasis]

### **Evidence received from the first UK Commissioner**

- 1.24 A submission to this inquiry was received from SlaveCheck. This global organisation simplifies and automates modern slavery compliance for business while supporting the Modern Slavery Stakeholder Community with technologies, data, AI and training to address identified shortcomings in global efforts to eliminate modern slavery.<sup>11</sup>
- 1.25 SlaveCheck's submission was written by Mr Kevin Hyland OBE, Global Strategy Advisor. Mr Hyland served as the first UK Commissioner. In relation to this issue, the Committee had the benefit of receiving his evidence through an answer to a question taken on notice. Mr Hyland has material concerns with the definition of 'sensitive information', in particular with respect to the reference to 'international relations'.
- 1.26 Given Mr Hyland's standing in these matters, I quote the question on notice and Mr Hyland's response at length:

Question from Senator Scarr:

One of the issues that's been discussed during the course of this inquiry is this definition of 'sensitive information'. It has a number of impacts in the context of this [Bill]: first, in relation to the strategic plan that's not to include any sensitive information, and secondly in relation to annual reports. There's a public annual report that's not to contain any sensitive information. The particular component of the definition which I'm exploring is, 'sensitive information means information, the disclosure of which would or might prejudice international relations'

In the context of the UK legislation and the relevant section, that phrase 'international relations' is not included in section 42(14). It refers to national security, and then the other elements of the definition. I'm keen to understand what Mr Hyland's view might be in relation to the inclusion of that phrase in the context of the legislation.

Response from Mr Hyland [the first UK Commissioner]:

The UK Modern Slavery Act 2015 provides for occasions where the Secretary of State (Home Secretary) may direct that the Anti-Slavery Commissioner remove material from their reports. There are three circumstances where this can occur. The Lord Advocate in Scotland and the Minister in Northern Ireland can also exercise this power.

The Secretary of State may direct the Commissioner to omit from any report before publication any material whose publication the Secretary of State thinks—

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<sup>10</sup> The Human Rights Law Centre, Answers to spoken questions on notice, 19 February 2024 (received 23 February 2024).

<sup>11</sup> SlaveCheck, *SlaveCheck*, [www.slavecheck.com/](http://www.slavecheck.com/) (accessed 28 February 2024).

- (a) would be against the interests of national security,
- (b) might jeopardise the safety of any person in England and Wales, or
- (c) might prejudice the investigation or prosecution of an offence under the law of England and Wales.

In the UK Parliament, there were many debates on the Modern Slavery Act 2015 on the independence of the Commissioner and the role the Government should play in publishing the Commissioner's reports.

As modern slavery is a serious crime, it was agreed that the Anti-Slavery Commissioner would be expected to access sensitive information and data. Being granted access to intelligence held by State agencies was crucial to understanding threat levels and preparing recommendations. [my emphasis]

As Anti-Slavery Commissioner, I would meet with the Prime Minister, ministers, heads of police, the national intelligence agencies and military chiefs. At meetings hosted by the Prime Minister in Downing Street or with the Home Secretary or police chiefs, items discussed could not and should not be in the public domain for operational or security reasons. Being given this level of access required high-level vetting and signing of the Officials Secrets Act. [my emphasis]

The UK Anti-Slavery Commissioner is in an unusual position in that the role requires public reporting to Parliament, and it was accepted that this may include criticism of the government or statutory agencies. The Commissioner would develop a strategy agreed upon with the Home Secretary to address any deficits and promulgate successes.

Whilst the anti-slavery commissioners in the UK and Australia must be independent, there does need to be a system to ensure that the public reports do not in any way detract from efforts in fighting modern slavery when it comes to security, safety or being prejudicial to a prosecution. Therefore, some Government body needed to have the role of commenting on the reports before they were published.

If it were believed that there was a risk of breaching national security, placing a person at risk, or being prejudicial to an investigation or prosecution, these areas could be redacted from the report in consultation between the Commissioner and the Home Secretary.

In the UK, I never had part of my annual report redacted by the Home Secretary. If the Home Secretary had redacted my report, this has to be reported to Parliament. The conditions attached to the publishing of reports and the limited circumstances for removing material were both necessary and proportionate. However, I believe there should have been an added section stating,

‘If the Commissioner believes the removal of material from an annual report is not justified, the Commissioner should refer the matter to the Cabinet Secretary for a decision by the Prime Minister. The Commissioners report will record this and the Prime Minister's decision.’

It should also include a time frame for reports to be published from the time of their submission to the Government. I would suggest six weeks.

As proposed in Australia adding ‘might prejudice international relations’ is very vague. Might is a very subjective term, and what might be applicable today might not be applicable tomorrow; that’s how vague it is. Also, international relations can quickly move into international trade or many other elements of foreign and trade affairs or justice matters. Turning a blind eye to get a deal between governments is not an option. Eradicating modern slavery needs everyone, in particular governments, to be open to all the risks at an international level and how to prevent them. [my emphasis]

Where prejudicing international relations amounts to a security risk, then it would be covered by the three terms used in the UK Act. If it were that the Commissioner identified business practices in a particular country that involved modern slavery, providing this was based on evidence, this must be publicly reported. If the term ‘might prejudice international relations’ were included, the media would have better reporting abilities than the Commissioner. If any government were to place restrictions on disclosing slavery and exploitation for fear of offending another nation who were engaged in modern slavery, this would amount to ‘wilful blindness.’ [my emphasis]

Currently, Australia is leading in creating transparency of modern slavery in supply chains. It would seem somewhat perverse and retrograde if legislation designed to increase transparency actually placed unnecessary and disproportionate restrictions on the very person, they appoint to identify the risks. [my emphasis]

What this does highlight is the importance of selecting the right person for the role, someone who has experience in all the areas an anti-slavery commissioner is expected to examine. An important part of the role will be diplomacy, communications and being evidence-based.<sup>12</sup>

## **Views of other stakeholders in relation to the issue**

1.27 Other stakeholders raised similar concerns in relation to the issue.

1.28 In its response to my question on notice, the ACTU responded:

It is important that the Australian Anti-Slavery Commissioner is able to provide guidance, make comment on, report on, and conduct inquiries and research into issues and risks of modern slavery in all industries, sectors, and geographical locations around the world. As we put forward in our submission, this guidance should inform the due diligence processes of reporting entities and inform the publication of an annual list of countries, regions, industries and products with a high risk of forced labour that should be subject to an import ban, where companies seeking to import products would be required to prove that goods are not made with forced labour.

The ACTU has long called for an independent Anti-Slavery Commissioner, and an important element of this independence is the ability to carry out these duties without fear or favour.

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<sup>12</sup> SlaveCheck, Answers to question on notice, 19 February 2024 (received 23 February 2024).

We are concerned that the definition of sensitive information as including ‘information the disclosure of which would or might prejudice the international relations of Australia in relation to the Commissioner’s strategic plan and annual report, may constrain the ability of the Anti-Slavery Commissioner to carry out its duties. The committee should consider, for the avoidance of doubt, recommending the words ‘or international relations of Australia’ be deleted from the definition of sensitive information in the bill.<sup>13</sup> [my emphasis]

- 1.29 The Law Council of Australia also expressed concerns (albeit that in the limited time which was available to answer questions on notice, the Law Council of Australia was not able to consult widely on the issue). Their response is provided in full below:

The Law Council has not, in the limited time available, had an opportunity to consult widely on the definition of ‘sensitive information’ in the Bill. In principle, the Law Council supports limiting the Commissioner’s independence and functions only to the extent strictly necessary in the circumstances, which is reflected in the recommendation in our original submission to strengthen the proposed section 20X.<sup>14</sup>

We note that the restriction on sensitive information only applies to the Commissioner’s strategic plans and published Annual Reports, rather than all publications by the office. The Law Council is also mindful that the formulation in the proposed definition of ‘sensitive information’ (in clause 3 of the Bill) has been used in numerous other pieces of Commonwealth legislation, including the *Migration Act 1958* (Cth); the *Privacy Act 1988* (Cth); the *Evidence Act 1995* (Cth) and the *Biosecurity Act 2015* (Cth).

The Law Council has commented on the potential overextension of the ambit of what may be considered national security concerns in relation to the concept of ‘international relations’ in recent submissions on the National Security Information (Criminal and Civil Proceedings) Act 2004 (Cth). The Law Council (citing the Australian Law Reform Commission) noted that there is potential for such a provision to be used to restrain disclosures that merely cause embarrassment, rather than those that could actually have a damaging effect on national security. The prejudice to the international relations aspect of this common provision does not appear to have been considered separately in any detail by the High Court.

There is, however, obiter to the effect that Australia’s international relations ‘raises directly a matter more naturally reserved to the executive branch of government’ and goes to the public interest.

In the context of the present Bill, it appears that the concern is about potential damage to Australia’s political and/or trade relations from reports or allegations of slavery or slavery-like practices within the jurisdiction of political or trading partners. Paragraph 66 of the Explanatory Memorandum

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<sup>13</sup> Australian Council of Trade Unions, Answers to spoken questions on notice, 19 February 2024 (received 23 February 2024).

<sup>14</sup> I say more on this below in my additional recommendations.

sheds no light on whether a departure from the ‘standard’ provision was considered in the context of this Bill.

In particular, it is unclear whether the public interest in ensuring human rights are respected in the value chains of Australian business was weighed against the public interest in maintaining good trade and political relations. In the time available, the Law Council can only recommend that proper consideration be given to weighing these imperatives, so that the Commissioner’s independence and functions are not unduly restricted by the definition of ‘sensitive information’ in the Bill.<sup>15</sup> [my emphasis]

### **Other observations in relation to the issue**

- 1.30 There was no meaningful discussion of the meaning of ‘sensitive information’ in the Attorney-General’s second reading speech. Whilst the speech referred to the strategic plan and the annual report as a means to support: ‘transparency, accountability and the effectiveness of the independent commissioner’s functions’,<sup>16</sup> there was no mention that the strategic plan would not be permitted to contain sensitive information. Nor does the speech deal with the proposal that there would be two annual reports – one with sensitive information and another (to be tabled in Parliament and available to public) which expunged sensitive information, including information ‘which would or might prejudice international relations’.
- 1.31 The Explanatory Memorandum did contain some commentary. In the context of the definition of ‘sensitive information’, paragraph 9 of the Explanatory Memorandum states:
9. Sensitive information may include classified or unclassified information.
- 1.32 Hence, on the basis of the current drafting, it is clear that information (or allegations) in the public domain may be caught by the definition of ‘sensitive information’.
- 1.33 The commentary provided in relation to the strategic plan simply restates the definition as ‘sensitive information’.<sup>17</sup> The same applies in relation to the discussion of annual plans except there is a reminder that sensitive information may be classified or unclassified.<sup>18</sup> There is no explanation as to why ‘international relations’ is included in the definition, let alone any explanation

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<sup>15</sup> The Law Council of Australia, Answers to spoken questions on notice, 19 February 2024 (received 23 February 2024).

<sup>16</sup> The Hon Mark Dreyfus KC MP, Attorney-General and Cabinet Secretary, *House of Representatives Hansard*, 30 November 2023, p. 8925.

<sup>17</sup> Explanatory Memorandum to the Modern Slavery Amendment (Australian Anti-Slavery Commissioner) Bill 2023, p. 18.

<sup>18</sup> Explanatory Memorandum to the Modern Slavery Amendment (Australian Anti-Slavery Commissioner) Bill 2023, p. 19.

as to why the definition of information extends to unclassified information or indeed information in the public domain.

1.34 The approach taken under the Bill also begs the question as to how the Government will treat a number of recommendations made by Professor John McMillan AO in his: *Report on the statutory review of the Modern Slavery Act 2018 (Cth) – the first three years*.<sup>19</sup> In particular, the recommendations made by Professor McMillan in relation to the declaration of regions or locations which may be regarded as carrying a high modern slavery risk.

1.35 Recommendation 27 of Professor McMillan’s review states:

The Modern Slavery Act be amended to provide that:

- the Minister or the Anti-Slavery Commissioner may make a written declaration of a region, location, industry product, supplier or supply chain that is regarded as carrying a high modern slavery risk, and
- the declaration may prescribe the extent to which reporting entities must have regard to that declaration in preparing a modern slavery statement under the Act.<sup>20</sup>

1.36 Any such declarations could be reasonably expected to trigger a response from the relevant country which ‘would or might prejudice...international relations...’. How does the Government propose to deal with this issue in the context of that recommendation? We do not know.

### **Example of the issue in practice – UN report in relation to forced labor in Xinjiang in China and the response of the People’s Republic of China**

1.37 This issue is placed in stark relief by the current issues relating to state sponsored forced labour in Xinjiang Uyghur Autonomous Region (‘XUAR’) in the People’s Republic of China. This issue was discussed in the UK Commissioner’s report for 2021–2022 referred to above.<sup>21</sup>

1.38 On 31 August 2022, the Office of the UN High Commissioner for Human Rights (‘OHCHR’) issued: *OHCHR assessment of human rights concerns in the Xinjiang Uyghur Autonomous Region, People’s Republic of China*.<sup>22</sup>

1.39 Relevantly, the OHCHR found:

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<sup>19</sup> Attorney-General’s Department, [www.ag.gov.au/crime/publications/report-statutory-review-modern-slavery-act-2018-cth](http://www.ag.gov.au/crime/publications/report-statutory-review-modern-slavery-act-2018-cth), 25 May 2023 (accessed 28 February 2024).

<sup>20</sup> Attorney-General’s Department, [Report of the statutory review of the Modern Slavery Act 2018 \(Cth\): The first three years](#), 25 May 2023, p. 103.

<sup>21</sup> Independent Anti-Slavery Commissioner, [Independent Anti-Slavery Commissioner Annual Report 2021–2022](#), April 2022.

<sup>22</sup> United Nations Human Rights, Office of the High Commissioner, [OHCHR Assessment of human rights concerns in the Xinjiang Uyghur Autonomous Region, People’s Republic of China](#), 31 August 2022.



128. In summary, there are indications that labour and employment schemes, including those linked to the [Vocational Educational and Training Centres], appear to be discriminatory in nature or effect and to involve elements of coercion, requiring transparent clarification by Government.<sup>23</sup>

143. Serious human rights violations have been committed in XUAR in the context of the Government's application of counter-terrorism and counter-extremism strategies. The implementation of these strategies, and associated policies in XUAR has led to interlocking patterns of severe and undue restrictions on a wide range of human rights. These patterns of restrictions are characterised by a discriminatory component, as the underlying acts often directly or indirectly affect Uyghur and other predominantly Muslim communities.<sup>24</sup>

146...Similarly, there are indications that labour and employment schemes for purported purposes of poverty alleviation and prevention of 'extremism', including those linked to the [Vocational Educational and Training Centres] system, may involve elements of coercion and discrimination on religious and ethnic grounds.<sup>25</sup>

1.40 These findings led to the following recommendation:

152. OHCHR recommends to the business community that it:

- (i) Takes all possible measures to meet the responsibility to respect human rights across activities and business relationships as set out in the UN Guiding Principles on Business and Human Rights, including through enhanced human rights due diligence, and report on this transparently;...<sup>26</sup>

1.41 In response to the OHCHR assessment, the Chinese Government was scathing:

China firmly opposes the release of the so-called 'assessment of the human rights situation in the Xinjiang Uyghur Autonomous Region, China' by the OHCHR. This so-called 'assessment' runs counter to the mandate of the OHCHR, and ignores the human rights achievements made together by people of all ethnic groups in Xinjiang...Based on the disinformation and lies fabricated by anti-China forces and out of presumption of guilt, the so-

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<sup>23</sup> United Nations Human Rights, Office of the High Commissioner, [OHCHR Assessment of human rights concerns in the Xinjiang Uyghur Autonomous Region, People's Republic of China](#), 31 August 2022, p. 40

<sup>24</sup> United Nations Human Rights, Office of the High Commissioner, [OHCHR Assessment of human rights concerns in the Xinjiang Uyghur Autonomous Region, People's Republic of China](#), 31 August 2022, p. 43.

<sup>25</sup> United Nations Human Rights, Office of the High Commissioner, [OHCHR Assessment of human rights concerns in the Xinjiang Uyghur Autonomous Region, People's Republic of China](#), 31 August 2022, p. 43.

<sup>26</sup> United Nations Human Rights, Office of the High Commissioner, [OHCHR Assessment of human rights concerns in the Xinjiang Uyghur Autonomous Region, People's Republic of China](#), 31 August 2022, p. 45.

called ‘assessment’ distorts China’s laws and policies, wantonly smears and slanders China, and interferes in China’s internal affairs...<sup>27</sup>

1.42 The NSW Anti-slavery Commissioner summarised the response of China to western efforts to call out human rights abuses in Xinjiang (which include the application of Magnitsky Sanctions upon individuals and import controls)<sup>28</sup> as follows:

195. Western efforts to call out human rights abuses in Xinjiang, and to regulate supply-chains passing through Xinjiang, have been met by a furious backlash from Beijing, with many components:

195.1 a full-court media and diplomatic push, describing the allegation as the ‘lie of the century’;

195.2 the adoption of an Anti-Sanctions Law that criminalizes cooperation with foreign supply chain due diligence efforts;

195.3 harassment and intimidation of auditors and raids on auditing firms;

195.4 government stoked online vitriol against campaigners, including several leading Australian researchers; [and]

195.5 organised government boycotts and administrative harassment of Western retail brands operating in China, including major players such as H&M, Walmart and Intel.<sup>29</sup>

1.43 Consider the above in the context of the relevant part of the proposed definition of ‘sensitive information’; namely: ‘information the disclosure of which would or might prejudice the...international relations of Australia’. How would the Commissioner be able to refer to the issues relating to Xinjiang in the strategic plan or the annual report given that any reference is likely to lead to a strong reaction from China? The current wording of the definition is problematic.

## Recommendations

1.44 There are a number of options available to rectify the issue.

<sup>27</sup> Response from the People’s Republic of China, Permanent Mission to the United Nations Office, Geneva, 2022, [https://www.ohchr.org/sites/default/files/documents/countries/2022-08-31/ANNEX\\_A.pdf](https://www.ohchr.org/sites/default/files/documents/countries/2022-08-31/ANNEX_A.pdf) (accessed 28 February 2024), p. 1.

<sup>28</sup> Government of the United Kingdom, *UK sanctions perpetrators of gross human rights violations in Xinjiang, alongside EU, Canada and US*, 22 March 2021, <https://www.gov.uk/government/news/uk-sanctions-perpetrators-of-gross-human-rights-violations-in-xinjiang-alongside-eu-canada-and-us> (accessed 28 February 2024).

<sup>29</sup> The Office of the NSW Anti-slavery Commissioner, *Answers to spoken questions on notice*, 19 February 2024 (received 23 February 2024), p. 17.

- 1.45 First, the reference to international relations could be removed altogether. This is the suggestion of Mr Hyland, the former UK Commissioner, the ACTU, the Human Rights Law Centre and a number of other stakeholders. It was not considered necessary in the UK legislation given the reference to national security.
- 1.46 Second, it could be made clear that the definition does not apply to information in the public domain. However, what if the Australian Government and the Commissioner are aware of information which is relevant in this context, but is not in the public domain? The information may be classified or unclassified. The information may or may not have been conveyed to the Commissioner by the Australian Government. In that regard, perhaps a public interest test could be added for the disclosure of information which is not in the public domain and then the decision would be left to the Commissioner to form a view with respect to the public interest.
- 1.47 Third, there may be another way to amend the Bill to more precisely deal with the issue of concern but which protects the independence of the Commissioner and recognises the importance of issues being dealt with in the strategic plan and the annual report; especially in circumstances where business will be expected to manage the relevant risk under the provisions of the Modern Slavery Act 2018 (Cth).
- 1.48 In any event, it is not acceptable for the Bill to contain a definition which has the effect (albeit probably unintended) to establish a system where there is ‘wilful blindness’ (to use the words of Mr Hyland, the previous UK Commissioner) to activities in an overseas location due to sensitivities around international relations.

### **Recommendation 1 – Sensitive Information**

**1.49 It is recommended that the Bill be amended by either:**

**(a) removing the reference to international relations in the definition of ‘sensitive information’; or**

**(b) in the context of prejudice to international relations, provide that information is only sensitive information if:**

**(i) it is not in the public domain; and**

**(ii) the Commissioner forms the view (after consultation with Government) that it is not in the public interest for such information to be disclosed; or**

**(c) amending the Bill in another way to address the issue.**

### **Additional recommendations made by the Law Council of Australia**

- 1.50 The Law Council of Australia made additional recommendations which have substantial merit. Many of these recommendations augment the independence of the Commissioner. Some of these recommendations were supported by a number of stakeholders in addition to the Law Council of Australia. (In the time available, I have not been able to refer to all stakeholders supporting each recommendation.)
- 1.51 I adopt each of the following recommendations made by the Law Council of Australia:

#### **Recommendation 2 – Reviewing Modern Slavery Statements**

- 1.52 **In support of the function of the Commissioner promoting compliance in proposed section 20C(1)(a), and in anticipation of a possibly strengthened role in compliance with the Modern Slavery Act 2018 (Cth), a function of reviewing Modern Slavery Statements should be included in the proposed section 20C.**
- 1.53 In my view, there is clear benefit in the Commissioner undertaking this process in order to assess the quality of disclosure that is being made, any systemic issues arising from the statements being lodged, and to assist in the making of recommendations or providing guidance to government or business.<sup>30</sup> Whilst I appreciate that the Attorney-General's Department has a role in this regard, I see no reason why the Commissioner should not undertake this function.

#### **Recommendation 3 – Additional function in relation to modern slavery risks**

- 1.54 **Proposed section 20C(1)(b) should be amended to add a function of identifying and assessing modern slavery risks and processes for their elimination, minimisation and avoidance.**
- 1.55 This is a sensible recommendation which better tracks the wording of Guiding Principle 17 of the United Nations Guiding Principles on Business and Human Rights.<sup>31</sup>

#### **Recommendation 4 – Provision of advice on Commissioner's own motion**

- 1.56 **Proposed section 20C(1)(l) should be amended to allow the Commissioner to provide advice to the Minister on an 'own motion' basis.**
- 1.57 This recommendation goes to the heart of the independence of the Commissioner. If the Commissioner forms an independent view that advice

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<sup>30</sup> Law Council of Australia, *Submission 42*, pp. 10–11.

<sup>31</sup> Law Council of Australia, *Submission 42*, pp. 11–12.

needs to be provided to Government/the Minister, then the Commissioner should not have to wait for the Minister to ask for the advice.<sup>32</sup>

### **Recommendation 5 – Clarification of international obligations**

**1.58 Proposed section 20D should be amended to refer to section 7(2) of the *Modern Slavery Act 2018 (Cth)*, to clarify the scope of international obligations that the Commissioner must consider.**

1.59 It would of course be helpful to refer to the particular international treaties in this regard.<sup>33</sup>

### **Recommendation 6 – Independence regarding content of strategic plans**

**1.60 Proposed section 20X(6) should be amended to ensure that the Commissioner retains discretion over the content of the strategic plans for their office.**

1.61 Whilst some stakeholders suggested removing the obligation to consult with the Minister and the Secretary entirely, in my view, the recommendation of the Law Council of Australia strikes the right balance.<sup>34</sup>

### **Recommendation 7 – Qualifications of Commissioner**

**1.62 (a) The Commissioner should be required to have qualification, knowledge, and experience in at least two of the three fields specified under proposed section 20L(2);**

**(b) Proposed section 20L(2) should also be amended to enable additional regard to be had to experience in engaging with vulnerable people, to ensure the Commissioner is equipped to discharge functions under proposed section 20C(1)(d) and (e).**

1.63 In relation to paragraph (a), under the current formulation of the section, it would be possible for the Commissioner to simply have experience with respect to ‘regulation’ and qualify. This is inadequate.<sup>35</sup>

1.64 In relation to paragraph (b), the evidence of the NSW Anti-slavery Commissioner and Mr Moe Turaga who sits on the NSW Anti-slavery Commissioner’s advisory panel was particularly compelling.<sup>36</sup>

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<sup>32</sup> Law Council of Australia, *Submission 42*, pp. 11–12.

<sup>33</sup> Law Council of Australia, *Submission 42*, p. 13.

<sup>34</sup> Law Council of Australia, *Submission 42*, p. 14.

<sup>35</sup> Law Council of Australia, *Submission 42*, p. 15.

<sup>36</sup> See paragraphs 1.31 and 2.62 of the majority report.

## **Recommendation 8 – Reporting non-compliance of agencies with information requests**

**1.65 The proposed section 20Y should enable the Commissioner to include in the annual report any non-compliance by agencies with requests made under proposed section 20W(1).**

1.66 This is a very important check and balance. There should be transparency around which agencies fail to provide information when requested by the Commissioner.<sup>37</sup>

## **Conclusion**

1.67 I appreciate the submissions made by all stakeholders. I particularly pay tribute to victim-survivor and anti-slavery advocate, Mr Moe Turaga (referred to in paragraph 2.62 of the majority report), who provided evidence to the committee. His testimony was very moving. It is inspiring that he is now an advocate for vulnerable people who are the victims of modern slavery. It is worth repeating again his message imparted to members of this committee (and reflected in Recommendations 2, 3 and 4 of the Majority Report which I whole-heartedly support):

My strongest advice is for an explicit commitment in the bill to put survivors and our concerns at the centre of the commissioner's work.<sup>38</sup>

1.68 I would like to sincerely thank those organisations who have advocated against modern slavery and who support victims of modern slavery, both in Australia and overseas. Your advocacy has made a profound difference.

## **Recommendation 9**

**1.69 Subject to the preceding recommendations, I recommend that the Senate pass the Bill.**

**Senator Paul Scarr**  
**Deputy Chair**  
**Liberal Senator for Queensland**

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<sup>37</sup> Law Council of Australia, *Submission 42*, p. 16.

<sup>38</sup> Mr Moe Turaga, Survivor Consultant, Australian Catholic Anti-Slavery Network, *Committee Hansard*, 19 February 2024, p. 31.

## Additional Comments from the Australian Greens

- 1.1 The question that this bill and the inquiry into it are meant to be answering is: What would it take to make the laws actually stop Australia participating in modern slavery?
- 1.2 This report addresses many of the significant issues that stakeholders have said need to be fixed to make the scheme work properly.
- 1.3 While the commentary and direction of this report are positive, I note that numerous important observations from stakeholders about how to improve the system that were discussed in the report were not included as recommendations in the final report. These recommendations included:
  - Providing the Anti-Slavery Commissioner with genuine independence, by permitting them to provide advice and reporting direct advice to the Minister and to Parliament and with oversight by a multi-partisan joint committee.
  - Ensuring the Anti-Slavery Commissioner's work is informed by, and led by, the experience of victim survivors with a statutory reference and support panel.
  - Providing the Anti-Slavery Commissioner with far stronger compliance powers to monitor and enforce compliance by corporate Australia with modern slavery statements and the power to force government agencies to provide evidence and materials as required.
  - To meet the expectations from victims and survivors, the Anti-Slavery Commissioner must have Investigation powers to inquire into matters. This is not to replicate the functions of police but to allow it to adequately respond to complaints of modern slavery and refer matters where needed to other agencies for further action.
- 1.4 Stakeholders also made it clear that the Anti-Slavery Commissioner's existing functions, even without the proposed expansion set out above, could not be adequately exercised with the proposed \$2 million annual budget. By way of perspective, the evidence before the committee was that this is a budget that is significantly less than that provided to the NSW Anti-slavery Commissioner and the Federal office will have a far greater remit than this important state equivalent.
- 1.5 As noted above, while some of these issues are touched upon in the report, they have not been included as recommendations for amendments to the Bill. The Greens believe that they should have been included as specific recommendations. Accordingly, we will be moving amendments to the Bill when it comes to the Senate to insert these important additional provisions in the Bill.

- 1.6 I do note the inclusion of useful recommendations designed to make the Commissioner respond to those with lived experience and the possible narrowing of the definition of 'sensitive information' that will be withheld from public reports issued by the Commissioner. These are useful steps forward.
- 1.7 For the Anti-Slavery Commissioner to deliver on the public mandate that travels with the position, it needs to be able to take an active role in the identification and penalisation of modern slavery. Having a body that provides victim survivors with brochures on where they can go to seek justice or assistance and otherwise reviewing and commenting on government and corporate modern slavery statements does not deliver on this promise.
- 1.8 In light of the above there are a number of headline matters that must be addressed for the Bill to meet these expectations. They include.

### **An Anti-Slavery Commission not just a Commissioner**

- 1.9 The Anti-Slavery Commissioner needs the backing of a Commission to be able to undertake the full scope of expected work. There is no question that a standalone Commissioner with a budget of around \$2 million each year will be unable to discharge the duties required under the scheme. A Commission is clearly required to support the Commissioner to discharge the important duties required.
- 1.10 As the ACTU made clear in the public inquiry:
- We're also concerned about the small budget that the commissioner is being provided with—just \$8 million over four years and \$2 million a year ongoing. We're proposing that it be increased to enable it to effectively carry out its standard functions and be sufficient to deal with the scale and severity of the scourge of modern slavery.<sup>1</sup>
- 1.11 The work of this office will include examination of the reports of some of the largest corporations in the country and without significant resourcing it will simply not be possible to do this job.
- 1.12 As Dr Cockayne, the NSW Anti-slavery Commissioner, told the committee:
- On the second question of whether there is a role for the New South Wales parliament's Modern Slavery Committee to discuss resourcing, yes, there is, and I do speak with them about that. I've raised on the record with them several times that my own budgetary allocation, which is currently out of the Department of Communities and Justice's own resources and which I note is larger than \$2 million, which raises its own questions of why a federal commissioner would have a smaller allocation than an individual state. I

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<sup>1</sup> Ms Clare Middlemas, Senior International Officer, Australian Council of Trade Unions, *Committee Hansard*, 19 February 2024, p. 26.



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believe that the allocation I receive is inadequate to allow me effectively to discharge my statutory functions at the New South Wales level.<sup>2</sup>

- 1.13 This was compelling evidence that leads to only one conclusion: the proposed budget for the Federal Anti-Slavery Commissioner is manifestly inadequate.
- 1.14 An independent budget process is also needed to ensure the Commission receives funding that enables it to fulfil its mandate. This would best be overseen by a joint parliamentary committee that reflects the makeup of the whole parliament and is not dominated by the government.

### **Enforcement powers and penalties**

- 1.15 The Commissioner needs enforcement powers and penalties to be able to deliver on the public mandate.
- 1.16 There are real concerns that if the Commissioner does not have sufficient powers to directly levy penalties, then it will essentially be toothless. At a minimum there must be penalties available for the failure of government agencies or corporate Australia to meet the requirements of reporting on modern slavery. The Anti-Slavery Commissioner must also have the necessary power to compel the production of documents, records and other evidence where the Anti-Slavery Commissioner has reasonable grounds to suspect there has been such a failure.
- 1.17 It would be a mistake for this position to be one that is limited to referring victims and survivors of modern slavery to other agencies and otherwise writing letters and reports identifying modern slavery. Such a model fails to deliver on the mandate for this Commissioner.

### **Investigation Powers**

- 1.18 The Commissioner needs to be able to take an active role in the identification and investigation of slavery. Those experiencing or suspecting slavery should be able to directly approach the Anti-Slavery Commissioner. While it may be appropriate for some matters to be handled by other agencies there is a strong public policy argument for the Anti-Slavery Commissioner to have the basic function of investigating matters to assess if slavery is occurring.
- 1.19 As the Human Rights Law Centre told the committee:

But, in our view, the commissioner should not merely be a first point of contact; they should also be able to initiate their own investigations and inquiries. In order to promote compliance with the act, for example, the commissioner will need to be able to investigate companies that they believe to be providing misleading statements under the act. The office may also need to investigate particular high-risk sectors with a view to exposing bad systemic practices in order to better inform efforts to address modern

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<sup>2</sup> Dr James Cockayne, New South Wales Anti-slavery Commissioner, Office of the New South Wales Anti-slavery Commissioner, *Committee Hansard*, 19 February 2024, p. 49.

slavery. These functions would not be intended to duplicate or interfere with investigations into individual suspected cases of modern slavery that may be more appropriately undertaken by law enforcement. The focus of the Modern Slavery Act is not on criminal investigations and enforcement but rather on driving changes in corporate behaviour in order to prevent modern slavery from happening in the first place.<sup>3</sup>

1.20 Such investigative powers would be an essential precursor to then referring a matter to the police or other authorities as per the agreements recommended in Recommendation 4 of the report. It's hard to know how the Commissioner will know how or when to refer matters without this basic investigative function.

1.21 These proposals should have been given form in the report by alternate recommendations to recommendation 4 as follows:

Recommendation 4.1 The committee recommends that the Anti-Slavery Commissioner not have the power to undertake a full investigation of individual cases of modern slavery, but that once established, the office of the Commissioner should make appropriate arrangements, for example a memorandum of understanding, with relevant law enforcement agencies to facilitate the referral of cases for investigation as requested.

Recommendation 4.2 The committee recommends that the Anti-Slavery Commissioner have sufficient powers to undertake a preliminary investigation of allegations of modern slavery to ensure that individual cases of modern slavery are appropriately referred to law enforcement or other regulators including the Australian Competition and Consumer Commission or the National Anti-Corruption Commission.

## Conclusion

1.22 Finally, this Bill is a chance for Australia to regain the mantle as being a world-leading jurisdiction in the fight against modern slavery. As Carolyn Kitto from Be Slavery Free advised the Committee about the need for a fully resourced and empowered Anti-Slavery Commissioner:

So why do we need one? In 2018 we boasted that we were leading the world in our actions on modern slavery, and we were. We can no longer make that claim. It is one thing to have good legislation; it is another thing to actually decide that you're going to put in place the things that make that legislation actionable and enforceable, and that's what an anti slavery commissioner would do. We need one to provide business, government, civil society and victims-survivors opportunities to work together.<sup>4</sup>

1.23 To understand the scale of this challenge, and why Australia must move faster, it is appropriate to end with the words of Walk Free who advised the Committee:

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<sup>3</sup> Ms Keren Adams, Legal Director, Human Rights Law Centre, *Committee Hansard*, 19 February 2024, pp. 2–3.

<sup>4</sup> Ms Carolyn Kitto, Director, Be Slavery Free, *Committee Hansard*, 19 February 2024, p. 35.

The Global Slavery Index estimates the prevalence of modern slavery at the country level around the world. The 2023 index said the global number was 50 million, which is an increase of 10 million since we did the last estimate five years ago, and in Australia that number is 41,000 for people living in modern slavery. That includes people living in forced labour and people living in forced marriage. That number has gone up from 15,000 five years ago, I believe, which I think was 2016.<sup>5</sup>

1.24 Let's work together to fix this.

**Senator David Shoebridge**  
**Greens Senator and Justice Spokesperson**

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<sup>5</sup> Ms Serena Grant, Head of Business Engagement, Walk Free, *Committee Hansard*, 19 February 2024, p. 41.



# Appendix 1

## Submissions and Additional Information

- 1 Dr Katherine Christ and Professor Roger Burritt
- 2 Destiny Rescue
- 3 Better Sydney
- 4 Business Council of Australia
- 5 SlaveCheck
- 6 Project Respect
- 7 International Centre for Missing and Exploited Children Australia
- 8 Maritime Union of Australia (MUA)
- 9 Property Council of Australia
- 10 Australian Institute of Company Directors
- 11 Housing Industry Association
- 12 Professor Paul Redmond AM
- 13 Australian Catholic Anti-slavery Network (ACAN)
- 14 Professor Ellie Chapple and Dr Shakoor Ahmed
- 15 Baptist World Aid Australia
- 16 Australian Retailers Association
- 17 Attorney-General's Department
- 18 Australian Council of Trade Unions (ACTU)
- 19 Human Rights Law Centre
- 20 Be Slavery Free
- 21 International Organization for Migration
- 22 Regenesys BPO LLC
- 23 Walk Free
- 24 International Justice Mission Australia
- 25 Fair Futures
- 26 Office of the NSW Anti-slavery Commissioner
- 27 Australian Catholic Religious Against Trafficking in Humans
- 28 UK Modern Slavery and Human Rights Policy and Evidence Centre
- 29 Associate Professor Boersma, Professor Marshall, Associate Professor McGaughey, and Professor Nolan
- 30 University of Sydney
- 31 Pillar Two
- 32 Department of Foreign Affairs and Trade
- 33 Australian Red Cross
- 34 Ms Fiona McLeod AO SC
- 35 Australian Human Rights Commission
- 36 Australian Chamber of Commerce and Industry
- 37 Name Withheld
- 38 Uniting Church in Australia, Synod of Victoria and Tasmania

- 39 Confidential
- 40 Slavery Links
- 41 Dr Elizabeth Coombs
- 42 Law Council of Australia
- 43 Anti-Slavery Australia

### **Additional Information**

- 1 Modern slavery statement provided by Cancer Care Associates PTY Ltd (received 22 January 2024)

### **Answer to Question on Notice**

- 1 Housing Industry Association, Answers to question on notice, 19 February 2024 (received 22 February 2024)
- 2 SlaveCheck, Answers to question on notice, 19 February 2024 (received 23 February 2024)
- 3 The University of Sydney, Answers to spoken questions on notice, 19 February 2024 (received 23 February 2024)
- 4 Australian Council of Trade Unions, Answers to spoken questions on notice, 19 February 2024 (received 23 February 2024)
- 5 The Law Council of Australia, Answers to spoken questions on notice, 19 February 2024 (received 23 February 2024)
- 6 The Human Rights Law Centre, Answers to spoke questions on notice, 19 February 2024 (received 23 February 2024)
- 7 The Office of the Anti-Slavery Commissioner, Answers to spoken question on notice, 19 February 2024 (received 23 February 2024)
- 8 Professor Boersma, Professor Marshall, Associate Professor McGaughey, and Professor Nola, Answers to spoken questions on notice, 19 February 2024 (received 27 February 2024)

### **Correspondence**

- 1 Correspondence from the Motor Trade Association of Australia, in support of the Australian Chamber of Commerce and Industry's submission (received 16 January 2024)

### **Tabled Documents**

- 1 SlaveCheck opening statement, tabled at a public hearing on 19 February 2024
- 2 SlaveCheck, Recommendations for Helpline Design and Operation from People with Lived Experience of Modern Slavery, tabled at a public hearing on 19 February 2024
- 3 SlaveCheck information sheet, tabled at a public hearing on 19 February 2024
- 4 SlaveCheck public submission, tabled at a public hearing on 19 February 2024
- 5 Media article, The Conversation, 'More forced marriages and worker exploitation - why Australia needs an anti-slavery commissioner' (23 January 2024), tabled at a public hearing on 19 February 2024

# Appendix 2

## Public Hearings

*Monday, 19 February 2024*

Hyatt Regency Brisbane  
72 Queen Street  
Brisbane

*Human Rights Law Centre (via teleconference)*

- Ms Keren Adams, Legal Director
- Mr Peter Turner, Seconded Lawyer

*Law Council of Australia*

- Mr Greg Vickery AO, LCA Business and Human Rights Committee Chair
- Mr Sunil Rao, LCA Business and Human Rights Committee Member (via teleconference)

*Housing Industry Association*

- Ms Melissa Adler, Senior Executive Director
- Mrs Angela Olsen, Director Legal and Industrial Relations

*Professor Roger Burritt (via teleconference) and Dr Katherine Christ*

*Professor Paul Redmond (via teleconference), Private capacity*

*Professor Ellie Chapple and Dr Shakoora Ahmed*

*Associate Professor Fiona McGaughey (via teleconference) and Associate Professor Martijn Boersma*

*University of Sydney*

- Ms Esty Marcu, Director, Modern Slavery Unit

*Maritime Union of Australia (MUA) (via teleconference)*

- Mr Rod Pickette, Policy Adviser

*Australian Council of Trade Unions (ACTU) (via teleconference)*

- Ms Clare Middlemas, International Officer

*SlaveCheck*

- Mr Paul Green, Chair
- Ms Leanne Rhodes, Director, In-Field Solutions Design and Funding

*Australian Catholic Anti-slavery Network (ACAN)*

- Mr Luke Geary, Adviser
- Mr Moe Turaga, Survivor Consultant

*Be Slavery Free*

- Ms Carolyn Kitto, Director

*Walk Free (via teleconference)*

- Ms Serena Grant, Head of Business Engagement

*Fair Futures*

- Ms Fiona David, CEO and Founder

*Office of the NSW Anti-slavery Commissioner*

- Dr James Cockayne, NSW Anti-slavery Commissioner

*Attorney-General's Department (via teleconference)*

- Ms Anne Sheehan, First Assistant Secretary, Integrity and International Group
- Ms Frances Finney, Assistant Secretary, Modern Slavery and Human Trafficking Branch
- Ms Nina Wu, Director, Commissioner and Reform Team, Modern Slavery and Human Trafficking Branch

*Department of Foreign Affairs and Trade (via teleconference)*

- Ms Lynn Bell, Ambassador to Modern Slavery, People Smuggling & Human Trafficking