



THE UNIVERSITY OF
SYDNEY

Professor Annamarie Jagose
Provost & Deputy Vice-Chancellor

23 January 2024

Senator Nita Green
Chair,
Senate Standing Committee on Legal and Constitutional Affairs, Legislation Committee
Parliament House
Canberra House ACT 2600
By email: legcon.sen@aph.gov.au

Dear Chair,

Modern Slavery Amendment (Australian Anti-Slavery Commissioner) Bill 2023 inquiry

The University of Sydney welcomes the Senate's inquiry on the [Modern Slavery Amendment \(Australian Anti-Slavery Commissioner\) Bill 2023 \(Cth\)](#) (the Bill) and appreciates the opportunity to make a submission to the inquiry.

Our **attached** submission has been prepared drawing on the University's experience as a committed reporting entity under the *Modern Slavery Act 2018 (Cth)*. We have also drawn on the expertise of some of our academic staff, to convey their insights about modern slavery, human rights and regarding the effectiveness of regulatory responses in Australian and abroad.

The University of Sydney supports the establishment of an independent Anti-Slavery Commissioner and welcomes the proposed amendment of the *Modern Slavery Act 2018*.

Our submission makes eight recommendations for consideration by the Committee - designed to strengthen the Bill and ensure the Australian Anti-Slavery Commissioner can drive meaningful action on modern slavery.

We hope that our input assists the Committee with its inquiry. If further information is required, please do not hesitate to contact us at anti.slavery@sydney.edu.au in the first instance.

We would also welcome the opportunity to provide further information, either through a face-to-face or online meeting, should that be helpful to the committee.

Yours sincerely,

(signature removed)

Professor Annamarie Jagose

Attachment

The University of Sydney, Submission to the Senate inquiry into the Modern Slavery Amendment (Australian Anti-Slavery Commissioner) Bill 2023, January 2024.

The University of Sydney, Submission to the Senate Standing Committee on Legal and Constitutional Affairs, Legislation Committee's inquiry into the Modern Slavery Amendment (Australian Anti-Slavery Commissioner) Bill 2023, January 2024

Eight recommendations for consideration by the Committee

The University of Sydney welcomes the Senate's inquiry into the [Modern Slavery Amendment \(Australian Anti-Slavery Commissioner\) Bill 2023 \(Cth\)](#) (the Bill) and appreciates the opportunity to make a submission.

As a reporting entity under the *Modern Slavery Act 2018 (Cth)*, the University's submissions is in two parts. Part 1 covers the proposed functions and powers of the Anti-Slavery Commissioner (Commissioner) while Part 2 addresses issues relating to the position's independence. Our submission draws on our experience as a committed reporting entity as well as the expertise of some of our academic staff with research expertise in the fields of modern slavery, human rights and regulation. It includes the following eight recommendations for consideration by the Committee, which are together designed to strengthen the role of the Commissioner and their independence, as critical to ensuring that the Commissioner and their office will have a tangible, positive impact.

The functions and powers of the Commissioner

Issue 1, Supporting reporting entities to identify and address risks

Recommendation 1

That the Commissioner's functions include the requirement 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. This could include empowering the Commissioner to provide the central source of risk data and information to better enable academics, civil society, consumers, and investors to assess modern slavery statements and provide recommendations on the effectiveness of the Act.

Issue 2, Promoting compliance with the Modern Slavery Act 2018

Recommendation 2

Review and change the proposed function of the Commissioner to provide them with powers to act in relation to compliance monitoring and implementing consequences for non-compliance, such as publishing a list of entities that are non-compliant with the Act and compelling reporting entities to engage in mediation over non-compliant reporting.

Recommendation 3

Consistent with the collaboration intent set out in Section 20C, the Commissioner should engage with the academic community to ensure that further enforcement provisions of the Act are informed by an evidence-based review of the effectiveness of measures, including civil penalties, in improving compliance and triggering meaningful action to address modern slavery.

Issue 3, Fostering international engagement

Recommendation 4

Expand the function of the Commissioner to include engagement with international and regional governments, agencies, bodies, and officer holders on matters relating to modern slavery. This could include:

- Collaborating and working with the UK's Independent Anti-Slavery Commissioner and representatives, learning from other jurisdictions' approaches to modern slavery and best practice, and sharing Australia's experiences and lessons learnt.
- Advocating for the harmonisation of the Modern Slavery Act with legislation and due diligence expectations in other jurisdictions that would both strengthen compliance and reduce the regulatory burden on Australian-based entities.

- Issuing guidance on the intersection between the *Modern Slavery Act 2018 (Cth)* with other jurisdictional requirements both in Australia (e.g. state-based modern slavery legislation) and overseas.
- These functions should be carried out in coordination with the Australian Ambassador for Countering Human Trafficking and Modern Slavery.

Issue 4. Giving the Commissioner powers to investigate incidents of modern slavery

Recommendation 5

Revise the functions set out in the Bill and empower the Commissioner to investigate, identify victims and receive complaints of modern slavery incidents.

The Independence of the Commissioner and their office

Recommendation 6

Review the Bill and remove language that may limit or affect the independence, or perception of independence, of the Commissioner (Section 20 C 1 (k), Section 20 1 (l) and Section 20 C 2), and strengthen language to reinforce the independence of the position and protect it from interference. This should include ensuring the Commissioner has the function to advocate, criticise and advise the Government on matters relating to modern slavery, when the Commissioner deems appropriate and necessary.

Recommendation 7

Review Section 20 X of the Bill and remove the language requiring the Commissioner to consult with the Minister and Secretary of the Department on the Commissioner's strategic plan (Section 20 X 6 (a)(b)).

Recommendation 8

Review Section 20 Y of the Bill and remove the requirement for the Commissioner to submit their annual report to the Minister, and instead incorporate language into the proposed amendment requiring that the Commission's annual report is tabled in Parliament (Section 20 Y 1).

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SUBMISSION PART 1 - Functions of the Commissioner (proposed Section 20C)

Section 20C of the Bill provides a detailed overview of the Commissioner's remit, which broadly speaking aims to "promote compliance with the Act...and 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 (paragraph (1)(b))".

Issue 1. Supporting reporting entities to identify and address risks

Overall, our experience as a reporting entity, combined with insights from academics across the University, strongly indicates meaningful action on modern slavery requires an approach that is evidence-based and context-specific. The current lack of sector specific guidance, centralised source of risk information and lack of good practice benchmarking, means compliance with the Act requires a significant resource investment from reporting entities, which for many smaller entities is not financially viable.

What the academic research shows

- Risk identification and disclosure by reporting entities is typically poor, as demonstrated by analysis of modern slavery statements by Australia's largest companies and in high-risk sectors.¹ Professor David Kinley and Dr Kym Sheehan's 2020 Financial Services Human Rights Benchmark report found that of 22 Australian Stock Exchange (ASX) listed financial services entities, none identified human rights as a material risk.²

¹ Amy Sinclair and Freya Dinshaw, [Paper Promises? Evaluating the early impact of Australia's Modern Slavery Act](#), Human Rights Law Centre, Uniting Church Australia, Australian Human Rights Institute, University of Melbourne, University of Notre Dame, Baptist World Aid, RMT Business and Human Rights Centre, 6 February 2022: 2

² Kym Sheehan and David Kinley, [The 2020 Financial Services Human Rights Benchmark Report](#), The University of Sydney, 2020: 9

- Supply chain mapping, critical to an entity identifying and understanding their relationship to risks, is in its infancy in corporate Australia. More than 400 modern slavery statements, including by the ASX 100, show limited disclosure of critical details about reporting entities' supply chain, such as the number of suppliers or their distribution by country.³
- Risk identification is further limited beyond Tier 1 of the supply chain, as demonstrated by research from the University of Sydney's Law School and Business School. Swagota Kotoky's research shows⁴ that only one of the ASX 100 specifically reported that they had commenced mapping some of their Tier 2 suppliers while initial analysis⁵ of the second reporting cycle indicates most reporting entities do not disclose actions to address risks beyond the first tier.

Recommendation 1

That the Commissioner's functions include the requirement 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. This could include empowering the Commissioner to provide the central source of risk data and information to better enable academics, civil society, consumers, and investors to assess modern slavery statements and provide recommendations on the effectiveness of the Act.

Issue 2, Promoting compliance with the Modern Slavery Act 2018

The Bill includes a function to promote compliance with the *Modern Slavery Act 2018 (Cth)*, but there is no enforcement function included in Section 20C. In the absence of enforcement mechanisms, the Act relies on the academic community, civil society, consumers, and investors to drive improvements in modern slavery reporting, through monitoring and acting on non-compliance.

What the academic research shows

- There is a strong call from academics with extensive experience in reviewing modern slavery reporting, including from the University of Sydney for the government to take a more active role in compliance monitoring and implementing consequences for non-compliance.⁶
- A review six years on from the implementation of the UK's Modern Slavery Act shows persistent non-compliance, with 40 per cent of 16,000 statements not meeting the minimum criteria of the legislation. The review also found only around three in five of in-scope companies are reporting under the law.⁷
- In the absence of enforcement mechanisms, the Act relies on the academic community, civil society, consumers, and investors to drive improvements in modern slavery reporting, through monitoring and acting on non-compliance.

Recommendation 2

Review and change the proposed function of the Commissioner to provide them with powers to act in relation to compliance monitoring and implementing consequences for non-compliance, such as publishing a list of entities that are non-compliant with the Act and compelling reporting entities to engage in mediation over non-compliant reporting.

Recommendation 3

Consistent with the collaboration intent set out in Section 20C, the Commissioner should engage with the academic community to ensure that further enforcement provisions of the Act are informed by an

³ International Justice Mission, [Spot Fires in Supply Chains: An analysis of Australian corporate modern slavery statements and recommendations for extinguishing risk through protecting workers in South Asia](#), 2022: 22; Nga Pham, Bei Cui and Ummul Ruthbah, [Modern Slavery Disclosure Quality Ratings](#), Monash Centre for Financial Studies, 2022: 17

⁴ Swagota Kotoky, [An evaluation of the implementation of Australia's anti-modern slavery laws by the ASX 100 companies](#), 2022: 128-129, 134-137

⁵ Forthcoming, Jyotirmoyee Bhattacharjya, *An investigation of modern slavery risk mitigation in supply chains: A natural language processing approach*, The University of Sydney - Sydney Business School/Business School Pilot Research Grant

⁶ Amy Sinclair and Freya Dinshaw, [Paper Promises? Evaluating the early impact of Australia's Modern Slavery Act](#), Human Rights Law Centre, Uniting Church Australia, Australian Human Rights Institute, University of Melbourne, University of Notre Dame, Baptist World Aid, RMT Business and Human Rights Centre, 6 February 2022: 2

⁷ Patricia Carrier, [Modern Slavery Act: Five years of reporting](#), Business & Human Rights Resource Centre and Modern Slavery Registry, February 2021: 2

evidence-based review of the effectiveness of measures, including civil penalties, in improving compliance and triggering meaningful action to address modern slavery.

Issue 3, Fostering international engagement

The Commissioner has a proposed function “to consult and liaise with Commonwealth, State and Territory governments, agencies, bodies and office holders on matters relating to modern slavery” and that the role “will complement Australia’s response to modern slavery by working with others to raise the national profile of the issue of modern slavery”. Modern slavery is a global issue requiring global coordination and collaboration. Limiting the Commissioner’s function to Australia is likely to hinder the effectiveness of this role.

Recommendation 4

Expand the function of the Commissioner to include engagement with international and regional governments, agencies, bodies, and officer holders on matters relating to modern slavery. This could include:

- Collaborating and working with the UK’s Independent Anti-Slavery Commissioner and representatives, learning from other jurisdictions’ approaches to modern slavery and best practice, and sharing Australia’s experiences and lessons learnt.
- Advocating for the harmonisation of the Modern Slavery Act with legislation and due diligence expectations in other jurisdictions that would both strengthen compliance and reduce the regulatory burden on Australian-based entities.
- Issuing guidance on the intersection between the *Modern Slavery Act 2018 (Cth)* with other jurisdictional requirements both in Australia (e.g. state-based modern slavery legislation) and overseas.
- These functions should be carried out in coordination with the Australian Ambassador for Countering Human Trafficking and Modern Slavery.

Issue 4, Giving the Commissioner powers to investigate incidents of modern slavery

The proposed bill states that “the Commissioner may not investigate, or resolve complaints concerning, individual instances or suspected instances of modern slavery”. Within a criminal justice setting, we support the proposition that other government agencies are better placed to investigate and take appropriate action to resolve incidents of modern slavery, however, outside of this setting the Commissioner should be empowered to identify and support victims and receive complaints of modern slavery incidents. As the proposed Bill stands, it prevents the Commissioner from doing this. We believe this is a missed opportunity and will limit the Commissioner’s effectiveness and hinder their ability to make a “tangible, positive impact”.⁸

Recommendation 5

Revise the functions set out in the Bill and empower the Commissioner to investigate, identify victims and receive complaints of modern slavery incidents.

SUBMISSION PART 2 - The independence of the Commissioner and their office (proposed Section 20J, 20L and related provisions)

We welcome the Australian Government’s intention to appoint an independent Australian Anti-Slavery Commissioner, noting that the Bill includes language stating that “the Commissioner: (a) has complete discretion in performing or exercising the Commissioner’s functions or powers; and (b) is not subject to direction from anyone when doing so”.

We acknowledge and welcome the inclusion of information on how the Commissioner will be appointed, following a publicly advertised, merits-based selection process in the proposed Bill. Previous Australian Governments have been criticised internationally for the direct appointment of Commissioners, including the Human Rights Commissioner, and this has been perceived as a potential threat to the independence and legitimacy of the Australian Human Rights Commission.⁹

⁸ The Hon. Mark Dreyfus KC, MP, [Minister’s Second Reading Speech on the Bill](#), 30 November 2023

⁹ Australian Human Rights Institute, Human Rights Law Centre and Amnesty International, [Independence of the Australian Human Rights Commission is vital: proposed law welcomed](#), 6 September 2022

We take this opportunity to emphasise that it is vital that the Commissioner is independent and that the role includes the function to freely criticise the Government if the Commissioner deems this an appropriate course of action. The proposed functions of the Commissioner include to *“advocate to the Commonwealth Government on matters relating to modern slavery, including for continuous improvement in policy and practice”*. This current description, to advocate, may prevent or limit the Commissioner from criticising the Government when appropriate.

The proposed function of the Commissioner include: *“at the request of the Minister, to provide advice to the Minister on matters relating to modern slavery”*. How this function is currently described - as at the request of the Minister - could bring the independence of the Commissioner, or the perception of independence, into question. If the Commissioner is to be independent, its function to provide advice to the Minister or Government should not be limited to when requested.

We note that the *“staff assisting the Commissioner are APS employees in the Department whose services are made available to the Commissioner by the Secretary of the Department, in connection with the performance of any of the Commissioner’s functions or the exercise of any of the Commissioner’s power”*. While the proposed amendment to the Act states *“When performing services for the Commissioner under this section, a person is subject to the directions of the Commissioner”* this may not be enough to ensure independence or the perception of independence. Moreover, the government department that the staff come from could affect the perception of independence, for example, if they were from an enforcement agency.

The Bill 2023 states that the Commissioner must: *“prepare a strategic plan in relation to the Commissioner’s functions”* (Section 20 X 1 (a)). In this plan the Commissioner must state their priorities and principal objectives in relation to the Commissioner’s functions for a period of up to 3 years. The proposed amendment also states: *“In preparing or revising a strategic plan, the Commissioner must consult: the Minister; and the Secretary of the Department”* (Section 20 X 6 (a and b)). Consultation can have a broad meaning and could result in the Minister or Secretary of the Department influencing the priorities and principal objectives of the strategic plan. The requirement of the Commissioner to consult with the Minister and Secretary of the Department on the strategic plan may affect the Commissioner’s ability to operate independently.

The Bill requires the Commissioner to submit an annual report on their activities during the financial year relating to the Commissioner’s functions, progress made towards the strategic plan, milestones achieved and emerging issues relating to the Commissioner’s functions. The proposed amendment requires the Commissioner to submit their report to the Minister. Given the importance of the Commissioner being independent of government, we question whether it is appropriate for the Commissioner to submit their report to the Minister. We propose that the Commissioner’s annual report should be tabled in Parliament to remove any possible or perceived lack of independence.

Recommendation 6

Review the Bill and remove language that may limit or affect the independence, or perception of independence, of the Commissioner (Section 20 C 1 (k), Section 20 1 (l) and Section 20 C 2), and strengthen language to reinforce the independence of the position and protect it from interference. This should include ensuring the Commissioner has the function to advocate, criticise and advise the Government on matters relating to modern slavery, when the Commissioner deems appropriate and necessary.

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Ends/