



International Justice Mission (IJM) commends the Australian Government for its commitment to establishing the office of the Australian Anti-Slavery Commissioner (Commissioner) and welcomes this opportunity to provide comments and recommendations to the *Modern Slavery Amendment (Australian Anti-Slavery Commissioner) Bill 2023* (Amendment Bill).

For over 20 years, IJM has been working to combat forced labour, debt bondage, sex trafficking and other forms of modern slavery in communities around the world by partnering with local authorities to rescue victims, restore survivors to safety and strength, bring criminals to justice, and help strengthen justice systems. As the largest global anti-slavery organisation, IJM brings a unique voice to the modern slavery discussion in Australia.

A. Support for the establishment of the Australian Anti-Slavery Commissioner

IJM fully supports the establishment of an independent Commissioner in Australia at the national level to provide greater transparency over Commonwealth Government and corporate responses to modern slavery.

While we congratulate the Government on its efforts to stand up this important office, this inquiry into this proposed legislation is hampered without an understanding of potential upcoming amendments to the *Modern Slavery Act 2018* (Cth) (**Modern Slavery Act**), as part of the Government's forthcoming response to the statutory review of the Modern Slavery Act (**McMillan Review**). When amendments are made to that legislative scheme, the role and scope of the commissioner's functions should be amended to keep in step with the reporting requirements under the Modern Slavery Act.

Our recommendations primarily relate to the functions (section 20C) and independence of the Commissioner (section 20P).

B. Functions of the Commissioner

Compliance functions

IJM recommends that the Amendment Bill invest the Australian Anti-Slavery Commissioner with powers to enforce the Modern Slavery Act. There is an opportunity for the commissioner to play a pivotal role in raising the standard of business performance in addressing modern slavery, including having the ability to ensure compliance with the reporting requirements.

Under the Modern Slavery Act, existing compliance powers are vested in the Minister. The Minister may request an entity to explain within 28 days why it has not complied adequately

or at all with the reporting requirements, or request an entity take specified remedial action to ensure their compliance (s. 16A). The Minister may publish the identity of an entity that does not comply with the request. To date, the Commonwealth has not made adequate use of these compliance powers.

Moving these existing compliance powers to the Commissioner would enable the office to act with independence without fear of political retribution from non-compliant entities. The Modern Slavery Business Engagement Unit of the Attorney-General's Department could provide support to the compliance-related functions of the commissioner's office, while continuing to support the Commonwealth government by providing guidance and support to businesses, and continuing to administer the Modern Slavery Act.

We note the introduction into the Modern Slavery Act of penalties for non-compliance is still an issue under consideration, and we support the McMillan Review's recommendation for the introduction of penalties, as "it is incongruous that the Modern Slavery Act imposes a reporting duty as regards a matter of fundamental global human rights importance but contains no robust procedure to ensure that duty is performed."¹

Recommendation 1

The Commissioner should be given the compliance powers currently vested in the minister under section 16A of the Modern Slavery Act.

Should the Modern Slavery Act be amended to include civil penalties for non-compliance, the commissioner should be given authority:

- to impose financial penalties for failure to meet obligations of reporting (by the power to apply to the Federal Court for a civil penalty order), due diligence, and addressing harmful impacts; and
- to impose administrative penalties.

Investigation and declaration powers

To enable the Commissioner to scrutinise and hold corporations and the Australian Government to account for their performance in addressing modern slavery in their supply chains, the Commissioner's role must include more than the ability to educate and raise awareness about modern slavery among the public. A Commissioner who is empowered to take regulatory functions, such as the ability to investigate and compel information, and publish guidance or declarations on high-risk locations, industries, products or suppliers, would provide much needed 'teeth' to the Modern Slavery Act. This failure to properly equip similar supply chain transparency reporting schemes, such as the UK, has in part contributed to entities producing poor quality statements or failing to adequately engage or comply with the requirements.²

¹ [Report of the statutory review of the Modern Slavery Act 2018 \(Cth\)](#), pg 88.

² [Independent review of the Modern Slavery Act: final report \(accessible version\) - GOV.UK \(www.gov.uk\)](#) at par 1.4 (Volume II: Transparency in supply chains).

Recommendation 2

In addition to enforcement and compliance powers, the Commissioner's role should hold complementary declaration, investigation and sanction powers, such as the ability:

- to investigate accuracy and completeness and compel reporting entities to correct or supplement their disclosure in modern slavery statements;
- to compel evidence, documents and testimony;
- to refer matters to law enforcement and prosecution authorities;
- to compile and maintain a list of regions, locations, industries, products, suppliers or supply chains that carry a high risk of modern slavery, to assist entities in their assessment of modern slavery risks within their operations and supply chains, procurement decisions and in preparing modern slavery statements;¹ and
- to be make written declarations that a region, location, industry, product, supplier or supply chain is regarded as having a high modern slavery risk.

Providing the Commissioner with powers to investigate issues within modern slavery statements and compel further disclosure will shed further light on modern slavery within Australian supply chains and ways to combat it. This function for a Commissioner is not without precedent.

Australia's eSafety Commissioner has powers to request transparency reporting from technology companies as to their implementation of the Basic Online Safety Expectations Determination by asking specific questions about the steps they are taking to address child sexual exploitation and abuse. Two rounds of reporting back by specific tech companies has served to allow the eSafety Commissioner to pinpoint exactly what technology companies are doing, or not doing, to protect children from online sexual exploitation and abuse. 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.³ 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.

Powers to access data to support other functions

The Commissioner should play a key role in the collection and analysis of data on modern slavery matters in Australia. This information, analysis and specialist knowledge should then inform advice to the Government on legislation, policies and programs. For the Commissioner to effectively do this would require the ability to gather information and data from diverse sources, including the Government. This would include personal data of victims, with the use of that information processed in such a way as to not identify individuals. The importance of this access to data was noted in the UK's independent review of their Modern Slavery Act, which recommended:

“The Commissioner should have sufficient access to Government data to be able to carry out the duty of scrutiny.”⁴

Similar authority to require information from government and other bodies is found within the roles of the Dutch and the Finnish national rapporteurs on trafficking in human beings. For example, the Dutch national rapporteur has the right to information on pending cases

³ See [Basic-Online-Safety-Expectations-non-periodic-notice-issued-February-2023-key-findings.pdf \(esafety.gov.au\)](#), [BOSE transparency report Dec 2022.pdf \(esafety.gov.au\)](#)

⁴ [Independent review of the Modern Slavery Act: final report \(accessible version\) - GOV.UK \(www.gov.uk\)](#) at Paragraph 3 (Summary or Recommendations on Independent Anti-Slavery Commissioner).

and criminal files held by police and judicial authorities. This information is used to inform thematic inquiries – the national rapporteur does not comment or have involvement in specific cases, but this access to information allows the rapporteur to function “as a true centre of knowledge and expertise.”⁵

Recommendation 3

We recommend that section 20W (the Commissioner may request information from Commonwealth agencies) be expanded to authorise the Commissioner to approach all institutions and entities that may have relevant information, and to impose a duty on those institutions to cooperate and provide the information requested (unless otherwise prohibited by law).

C. Independence of the Commissioner

We are pleased to see the draft amendments making provision for an Independent Commissioner, with specialist skills, appointed on the basis of merit.

As a key aspect of the role will be advising government on measures to tackle modern slavery, and scrutinising and holding government departments and agencies, the police and the Commonwealth Director of Public Prosecutions to account for the effectiveness of those measures, the commissioner must be truly independent – free from the direction and influence of government in undertaking their statutory functions. The independence of the Commissioner and their ability to carry out their functions free from government interference has been an issue that has been raised in the context of the UK experience with its Anti-Slavery Commissioner:⁶

“According to his own testimony, working relations with Ministers were often productive, [footnote 19] and he produced a number of confidential reports and recommendations directly commissioned by the then Home Secretary, upon which action was taken quickly. He told us that the relationship was less constructive with Home Office officials [footnote 20]. We are concerned by the statements of several stakeholders that the Commissioner was not free to scrutinise and criticise Government policy and performance in addressing modern slavery.”

D. Limiting the appointment of an acting Commissioner

We recommend that the independence of the office be further strengthened by adding to section 20P (Acting Appointments) a limitation to the length of time during which the commissioner role can be filled by an acting appointment. This would ensure that the role is not filled on an ongoing basis by an acting Commissioner, who in being appointed by and able to be removed by the Minister, would not be truly independent of Government.

⁵ <https://committees.parliament.uk/writtenevidence/48436/html/>; Marjan Wijers, *Comparative study on National Rapporteurs on Trafficking in Human Beings and Equivalent Mechanisms* (November 2018) [comparative_research.pdf \(gag-al.org\)](https://www.gag-al.org/comparative_research.pdf).

⁶ [Independent review of the Modern Slavery Act: final report \(accessible version\) - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/684441/Independent_review_of_the_Modern_Slavery_Act_-_final_report_accessible_version.pdf) at See par 1.5, Volume 1: The Independent Anti-Slavery Commissioner.

For example, the provision in the NSW Modern Slavery Act relating to the NSW Anti-Slavery Commissioner sets out that a “person must not be appointed to act as the Commissioner for a period that exceeds 6 months or that in total exceeds 6 months in any 12-month period.”⁷

Recommendation 4

We recommend adding to section 20P a limit to the length of time the role of commissioner can be filled on an acting basis.

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⁷ Section 6D(5), Modern Slavery Act 2018 No 30 [Modern Slavery Act 2018 No 30 - NSW Legislation](#)