



Law Council
OF AUSTRALIA

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

Senate Legal and Constitutional Affairs Legislation Committee

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About the Law Council of Australia

The Law Council of Australia represents the legal profession at the national level; speaks on behalf of its Constituent Bodies on federal, national, and international issues; promotes and defends the rule of law; and promotes the administration of justice, access to justice and general improvement of the law.

The Law Council advises governments, courts, and federal agencies on ways in which the law and the justice system can be improved for the benefit of the community. The Law Council also represents the Australian legal profession overseas and maintains close relationships with legal professional bodies throughout the world. The Law Council was established in 1933 and represents its Constituent Bodies: 16 Australian State and Territory law societies and bar associations, and Law Firms Australia. The Law Council's Constituent Bodies are:

- Australian Capital Territory Bar Association
- Law Society of the Australian Capital Territory
- New South Wales Bar Association
- Law Society of New South Wales
- Northern Territory Bar Association
- Law Society Northern Territory
- Bar Association of Queensland
- Queensland Law Society
- South Australian Bar Association
- Law Society of South Australia
- Tasmanian Bar
- Law Society of Tasmania
- The Victorian Bar Incorporated
- Law Institute of Victoria
- Western Australian Bar Association
- Law Society of Western Australia
- Law Firms Australia

Through this representation, the Law Council acts on behalf of more than 90,000 Australian lawyers.

The Law Council is governed by a Board of 23 Directors: one from each of the Constituent Bodies, and six elected Executive members. The Directors meet quarterly to set objectives, policy, and priorities for the Law Council. Between Directors' meetings, responsibility for the policies and governance of the Law Council is exercised by the Executive members, led by the President who normally serves a one-year term. The Board of Directors elects the Executive members.

The members of the Law Council Executive for 2024 are:

- Mr Greg McIntyre SC, President
- Ms Juliana Warner, President-elect
- Ms Tania Wolff, Treasurer
- Ms Elizabeth Carroll, Executive Member
- Ms Elizabeth Shearer, Executive Member
- Mr Lachlan Molesworth, Executive Member

The Chief Executive Officer of the Law Council is Dr James Pople. The Secretariat serves the Law Council nationally and is based in Canberra.

The Law Council's website is www.lawcouncil.au.

Acknowledgements

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Introduction

1. The Law Council of Australia appreciates the opportunity to make a submission to the Senate Legal and Constitutional Affairs Legislation Committee (the **Committee**) about its inquiry into the Modern Slavery Amendment (Australian Anti-Slavery Commissioner) Bill 2023 (the **Bill**).
2. Subject to some recommended improvements, the Law Council supports the Bill which seeks to amend the *Modern Slavery Act 2018* (Cth) (the **MSA**) to establish an independent statutory office for an Anti-Slavery Commissioner (**Commissioner**). The Law Council has expressed strong support for the establishment of a Commissioner since 2016,¹ recognising it as a pivotal development in addressing and effectively countering modern slavery across the country.
3. The Slavery Convention of 1926² is one of the oldest human rights treaties still in active use, having been adopted before the formation of the United Nations. The Convention outlawed the exercise of ‘any or all of the powers attaching to the right of ownership’ in relation to human beings, and also the sale, exchange, or transport of slaves.³ Moreover, it specified that forced labour could only be ‘exacted for public purposes’ (for example, criminal punishment), and must not be allowed to develop ‘into conditions analogous to slavery.’⁴
4. Nearly 100 years later, and despite sustained global efforts towards abolition,⁵ slavery has not been eliminated, and no country is immune from the phenomenon. Modern forms of slavery involve the illegal and oppressive exercise of control over people’s lives and exploitation of their labour, rather than legal ownership.⁶
5. Australia is said to have the strongest government response to modern slavery in the Asia-Pacific region, and in fact the equal second strongest response globally.⁷ There are slavery-related offences in the Commonwealth Criminal Code,⁸ as well as in most of the states and territories.⁹ In addition to exploitation of labour, they cover acts such as trafficking,¹⁰ debt bondage¹¹ and forced marriage.¹²
6. There are now also specific laws aiming to address modern slavery in business supply/value chains, including the Commonwealth MSA.¹³ The passage of such laws has prompted a national discussion about the scale of the issue of modern slavery in Australia. Estimates vary, but according to research by the Australian Institute of

¹ Law Council of Australia, [Inquiry into Human Trafficking](#) (15 February 2016) [10] – [13]; Law Council of Australia, [Establishing a Modern Slavery Act in Australia](#) (28 April 2017) [85]—[94]; Law Council of Australia, [Modern Slavery Bill 2018](#) (24 July 2018) [19] – [20]; Law Council of Australia, [Review of the Modern Slavery Act 2018](#), (13 December 2022) [211]—[219].

² Slavery, Servitude, Forced Labour and Similar Institutions and Practices Convention of 1926, League of Nations Treaty Series, Volume 60, p 253; entry into force 9 March 1927.

³ *Ibid*, article 1.

⁴ *Ibid*, article 5.

⁵ See e.g. Weissbrodt and Anti-Slavery International, *Abolishing Slavery and its Contemporary Forms*, UN Doc HR/PUB/02/4, UN OHCHR, 2002:

<<https://www.ohchr.org/sites/default/files/Documents/Publications/slaveryen.pdf>>.

⁶ See *R v Tang* (2008) 237 CLR 1.

⁷ Walk Free, *Global Slavery Index 2023: Modern slavery in Australia*, 1.

⁸ *Criminal Code Act 1995* (Cth), Schedule 1, Divisions 270-271.

⁹ See overview of the various provisions in *Modern slavery: Guidance for Australian courts*, Judicial College of Victoria, 2021: <<https://www.judicialcollege.vic.edu.au/index.php/resources/modern-slavery-guidance-australian-courts>>, 71-73.

¹⁰ *Ibid*, s 271.2.

¹¹ *Ibid*, s 270.7C.

¹² *Ibid*, s 270.7B.

¹³ See also *Modern Slavery Act 2018* (NSW).

Criminology, the number of human trafficking and slavery victims in Australia in 2015/16–2016/17 was between 1300 and 1900.¹⁴ At the 2023 National Modern Slavery Conference, this estimate was challenged, with NGOs and academics specialising in modern slavery citing much higher figures in the tens of thousands.¹⁵

7. In recognition of the magnitude and gravity of this pressing human rights issue, measures beyond law enforcement and reporting are necessary. Drawing on the experience of the United Kingdom (**UK**)¹⁶ and New South Wales (**NSW**),¹⁷ the Bill proposes to establish an Australian Anti-Slavery Commissioner.
8. The Law Council appreciates that the Bill would implement an election commitment made as part of the *Tackling Modern Slavery* policy package,¹⁸ and responds to calls from civil society, academia, and the business sector.¹⁹ The Law Council further appreciates the Government's commitment to adopting the recommendations of Professor John McMillan AO relating to the establishment of an independent Commissioner in his 2023 review of the MSA (**McMillan Review**).²⁰
9. From the Law Council's perspective, the Bill represents an important proposal due to the potential impact that the Commissioner can have in raising awareness of, and helping to shape a national strategy against, modern slavery in Australia. Given this, it is vital to examine whether the Bill adequately establishes an independent statutory authority capable of assisting in Australia's efforts to combat modern slavery.
10. The Law Council makes the following recommendations about the Bill and its supporting explanatory materials:
 - (a) in support of the function of the Commissioner promoting compliance in proposed 20C(1)(a), and in anticipation of a possibly strengthened role in compliance with the MSA, a function of reviewing Modern Slavery Statements should be included in the proposed section 20C;
 - (b) 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;
 - (c) proposed section 20C(1)(l) should be amended to allow the Commissioner to provide advice to the Minister on an 'own motion' basis;
 - (d) proposed section 20D should be amended to refer to section 7(2) of the MSA, to clarify the scope of international obligations that the Commissioner must consider;

¹⁴ Australian Institute of Criminology, *Estimating the dark figure of human trafficking and slavery victimisation in Australia*, 15 February 2019: <<https://www.aic.gov.au/publications/sb/sb16>>.

¹⁵ See Walk Free, *Global Slavery Index 2023: Modern slavery in Australia*: <<https://cdn.walkfree.org/content/uploads/2023/11/14130723/gsi-country-study-australia.pdf>>. Walk Free estimates that there may be up to 41,000 victims of modern slavery in Australia today. This figure has been cited by leading academics in the field – see e.g. Boersma, McGaughey, Nolan and Marshall, 'More forced marriages and worker exploitation – why Australia needs an anti-slavery commissioner', 23 January 2024: <<https://theconversation.com/more-forced-marriages-and-worker-exploitation-why-australia-needs-an-anti-slavery-commissioner-221318>>.

¹⁶ The Independent Anti-Slavery Commissioner's Office: <<https://www.antislaverycommissioner.co.uk>>.

¹⁷ NSW Government Communities and Justice, *Anti-Slavery Commissioner*: <<https://dcj.nsw.gov.au/legal-and-justice/our-commissioners/anti-slavery-commissioner.html>>.

¹⁸ Explanatory Memorandum, 2.

¹⁹ *Ibid.*, 3.

²⁰ John McMillan AO, *Report of the statutory review of the Modern Slavery Act 2018* (Cth): <<https://www.ag.gov.au/crime/publications/report-statutory-review-modern-slavery-act-2018-cth>>.

- (e) proposed section 20X(6) should be amended to ensure that the Commissioner retains discretion over the content of the strategic plans for their office;
- (f) 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);
- (g) proposed section 20L(2) should be amended to enable additional regard to be had to experience in engaging with vulnerable people, to ensure that the Commissioner is equipped to discharge functions under proposed section 20C(1)(d) and (e); and
- (h) 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).

11. Further, the Law Council makes the following recommendations on matters related to the Bill:

- (a) noting Guiding Principle 17 of the United Nations Guiding Principles on Business and Human Rights, consideration should be given to amending section 16(1)(c) of the MSA to incorporate a greater focus on identifying risks;
- (b) the Australian government should expand appropriate legal assistance services for victims of modern slavery and trafficking, including in Rural, Regional and Remote locations and accompanied by skilled, professional interpreter services where needed; and
- (c) in acquitting the functions envisaged in proposed section 20C(1)(d) of the Bill, the Commissioner should ensure that information and links are made clearly available regarding services beyond the criminal justice system such as Legal Aid offices, Community Legal Centres, and other appropriate organisations.

12. This submission is divided into two main parts: the first examines key provisions in the Bill, and the second sets out related matters for the Committee's consideration.

Examination of the key provisions in the Bill

Proposed Section 20C—Functions of the Commissioner

13. The Law Council welcomes proposed section 20C of the Bill, which sets out the Commissioner's functions. These are intended to enable the Commissioner to work with Government, business, and civil society to support compliance with the MSA, improve transparency of supply chains and thereby combat modern slavery in Australia and internationally.

14. For reference, the proposed functions of the Commissioner are set out below:

20C Functions of Commissioner

(1) The Commissioner has the following functions:

- (a) to promote compliance with this Act;
- (b) 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;
- (c) to support collaboration and engagement within and across sectors in relation to addressing modern slavery;
- (d) to support victims of modern slavery by providing information in relation to government and non-government resources, programs and services;
- (e) to engage with, and promote engagement with, victims of modern slavery to inform measures for addressing modern slavery;
- (f) to support, encourage and conduct education and community awareness initiatives relating to modern slavery;
- (g) to support, encourage, conduct and evaluate research about modern slavery;
- (h) to collect, analyse, interpret and disseminate information relating to modern slavery;
- (i) to consult and liaise with Commonwealth, State and Territory governments, agencies, bodies and office holders on matters relating to modern slavery;
- (j) to consult and liaise with other persons and organisations on matters relating to modern slavery;
- (k) to advocate to the Commonwealth Government on matters relating to modern slavery, including for continuous improvement in policy and practice;
- (l) at the request of the Minister, to provide advice to the Minister on matters relating to modern slavery;
- (m) such other functions as are conferred on the Commissioner by this Act or any other law of the Commonwealth; and
- (n) to do anything incidental or conducive to the performance of any of the above functions.

15. In previous submissions, the Law Council has recommended that the Commissioner have the following functions:

- (a) to provide guidance and education to the private sector on how to comply with reporting requirements, both for companies eligible for mandatory reporting and non-eligible companies seeking to make voluntary disclosures,²¹ and operating a database of modern slavery statements and preparation and publication of a list of entities required to report;²²
- (b) to produce, review and update the *Guidance for Reporting Entities*, and create regulatory standards relating to an entity's reporting requirements, potentially, assisted by a specialist committee;²³
- (c) to advocate for and promote action to combat modern slavery through wider-ranging policy initiatives;²⁴
- (d) to highlight models of compliant or best practice reporting statements;²⁵ and
- (e) to advise the Minister on compliance with the MSA and the opportunities for further reform.²⁶

16. Comparing the Law Council's recommended functions of the Commissioner with those specified in proposed section 20C of the Bill reveals points of alignment, but also some differences, which are discussed below.

Role in improving compliance

17. The respective responsibilities of the Commissioner, the Modern Slavery Business Engagement Unit (**MSBEU**), the Ambassador to Counter Modern Slavery, People Smuggling and Human Trafficking, and Commonwealth law enforcement agencies are set out in the Explanatory Memorandum as follows:

- (a) The Commissioner will 'complement the work undertaken across the Australian Government to prevent and combat all forms of modern slavery. This includes complementing the roles performed by the Attorney General's Department and other government agencies, and the Ambassador to Counter Modern Slavery, People Smuggling and Human Trafficking.'²⁷
- (b) The Commissioner 'will *not* undertake the functions of the Ambassador or represent the Australian Government at international meetings or events'.²⁸
- (c) The Commissioner 'will *not* as a general practice, provide tailored advice or financial support to entities to complete their modern slavery statements' but may support businesses by developing targeted resources which promote best practice in addressing modern slavery risks'.²⁹

²¹ Law Council of Australia, [Establishing a Modern Slavery Act in Australia](#) (28 April 2017) [92].

²² Law Council of Australia, [Modern Slavery Bill 2018](#) (24 July 2018) [19].

²³ Law Council of Australia, [Review of the Modern Slavery Act 2018](#), (13 December 2022) [219].

²⁴ *Ibid* [218].

²⁵ *Ibid* [219].

²⁶ *Ibid*.

²⁷ The Parliament of the Commonwealth of Australia, House of Representatives, 'Modern Slavery Amendment (Australian Anti-Slavery Commissioner) Bill 2023 [Explanatory Memorandum](#), *Outline of the Bill*, [12] (**Explanatory Memorandum**)

²⁸ *Ibid*, *Notes on Clauses*, [22] (Emphasis added).

²⁹ *Ibid* [20] (Emphasis added)

18. However, experts consulted by the Law Council have expressed concern that lack of compliance with reporting obligations under the MSA is perhaps the most pressing issue concerning the law's effectiveness, and one which the existing modern slavery regulatory framework has struggled to address. It is therefore important that this new addition to the regulatory framework addresses this issue.
19. Research on the impact of the MSA has demonstrated that the promotion of compliance and assistance for businesses—particularly in bringing them together to promote best practice—is urgently needed and will be expected of a national Anti-Slavery Commissioner.³⁰ The first three functions listed in proposed sections 20C(1)(a)–(c) address these objectives. However, experts advise that, in order to exercise these functions effectively, adequate assessment of compliance is a necessary precondition for promotion of compliance, and that it would be appropriate for an independent Commissioner to conduct those assessments. The Law Council notes in this context that a statement review program, led by the Commissioner, was proposed to Professor McMillan as part of his 2023 review³¹. In response, Professor McMillan noted that the creation of a statement review program 'is a matter that can appropriately be taken up by the Anti-Slavery Commissioner'.³² Given that promoting compliance is one of the Commissioner's primary functions, the Commissioner's office might be better placed than the MSBEU to do this work once established.³³
20. Another aspect of the framework for improving compliance with the MSA is the question of civil penalties for breaches. As noted by Professor McMillan, '[t]he topic of penalties will not go away'.³⁴ Enforcement of slavery-related offences is properly the role of law enforcement agencies. However, the gap with respect to civil penalties, and the corresponding potential role of the Commissioner in relation to enforcement of reporting requirements in the MSA remain in question.
21. The Law Council retains its view that the Modern Slavery Act should be amended to introduce civil penalties for non-compliance with reporting requirements in certain circumstances, as well as additional regulatory tools to aid compliance.³⁵
22. The Law Council has indicated that it retains an open mind as to the appropriate entity, potentially including an Anti-Slavery Commissioner, that may possess any compliance powers, although there can be difficulties with the same person having both advisory and enforcement functions. The Law Council notes that the Australian Information Commissioner is an example of a statutory office-holder with guidance, monitoring and advice functions, as well as regulatory powers.³⁶
23. The Law Council continues to believe that a civil penalty regime is a vital piece of the compliance puzzle. The Law Council understands that such a regime (along with other recommendations of the McMillan review) is still under consideration by Government. With that in mind, the Law Council simply notes at this stage that the Commissioner's

³⁰ See *Australia's Modern Slavery Act: is it fit for purpose?* Business & Human Rights Resource Centre, 3 April 2023: <<https://www.business-humanrights.org/en/from-us/briefings/australias-modern-slavery-act-is-it-fit-for-purpose>>, 9. See further McMillan Review, 109.

³¹ McMillan Review, 107.

³² Ibid 101.

³³ Assessment of statements is listed among the functions of the MSBEU in the Explanatory Memorandum, *Notes on Clauses*, [20].

³⁴ Ibid, 88.

³⁵ It has further underlined that such a non-compliance scheme: should apply to modern slavery statements found to contain false and misleading information; and should at least be capable of being imposed as a last resort for entities that continue to flout their obligations after guidance and warning: See Law Council of Australia, [Review of the Modern Slavery Act 2018](#), (13 December 2022), 39.

³⁶ Ibid.

role in reporting compliance may be expected to expand once such a regime is in place. It further suggests that the function of reviewing Modern Slavery Statements be included in section 20C for the reasons set out above, and in anticipation of a possibly strengthened compliance role.

Recommendation

- **The Law Council recommends that, in support of the function of the Commissioner in promoting compliance in proposed 20C(1)(a), and in anticipation of a possibly strengthened role in compliance with the MSA, a function of reviewing Modern Slavery Statements be included in proposed section 20C.**

Strengthening the wording of proposed section 20C

24. The Law Council suggests that proposed section 20C(1)(b) should be amended as follows:

- (b) to support Australian entities and entities carrying on a business in Australia to **identify and assess** ~~address~~ the risks of modern slavery practices **and identify steps necessary to eliminate, minimise and avoid such risks** in their operations and supply chains, and in the operations and supply chains of entities they own or control.

25. This change is recommended because the MSA should require reporting entities to do more than just describe the risks of modern slavery—they should also be required to identify and assess the risks and identify steps to eliminate, minimise and avoid them as well. The Law Council made a related suggestion about section 16(1)(c) of the MSA in its submission to the Review of the *Modern Slavery Act 2018* (Cth) in 2022:³⁷ it suggested that the obligation to ‘describe the risks’ under section 16(1)(c) might make explicit an obligation to ‘identify’ modern slavery risks. The Law Council notes that section 16(1)(c) is complemented by section 16(1)(d), which obliges reporting entities to ‘assess and address those risks’.

26. The Law Council’s suggestion about risk identification and assessment (prioritisation) derives from Guiding Principle 17 of the United Nations Guiding Principles on Business and Human Rights (**UNGPs**).³⁸ Guiding Principle 17 of the UNGPs defines the ‘parameters of human rights due diligence’.³⁹ The commentary on Guiding Principle 17 notes that:

“where business enterprises have large numbers of entities in their value chains it may be unreasonably difficult to conduct due diligence for adverse human rights impacts across them all. If so, business enterprises should identify general areas where the risk of adverse human rights impacts is most significant”.⁴⁰

27. The Law Council also raises for attention proposed section 20C(1)(l), which provides that the Commissioner, ‘at the request of the Minister, is to provide advice to the Minister on matters relating to modern slavery’. This function should not only be activated at the

³⁷ Law Council of Australia, [Review of the Modern Slavery Act](#), (13 December 2022) [144].

³⁸ United Nations Human Rights, Office of the High Commissioner, [‘Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework’](#) (June 2011) 17.

³⁹ *Ibid.*

⁴⁰ *Ibid.*

request of the Minister, rather it should also be possible for the Commissioner to provide advice on an 'own motion' basis. Accordingly, the Law Council recommends the following amendment to proposed section 20C(1)(l):

(l) ~~at the request of the Minister,~~ to provide advice to the Minister on matters relating to modern slavery **on their own motion or at the request of the Minister;**

28. Proposed section 20C(2) would clarify that the Commissioner may not investigate, or resolve complaints concerning, individual instances or suspected instances of modern slavery. The Law Council observes that the absence of enforcement and investigative powers sets the Commissioner (and its NSW equivalent) apart from the UK's Independent Anti-Slavery Commissioner. This absence has produced mixed views among legal practitioners. Having regard to its previous positions, as set out above, the Law Council merely observes that a role involving investigation and complaints handling would require significant funding and specialist personnel. It would also require careful consideration of how best to implement educative and enforcement functions within the same office.

Recommendations

- **The Law Council recommends the following amendments:**
 - **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;**
 - **noting Guiding Principle 17 of the UNGPs, consideration should be given to amending section 16(1)(c) so as to incorporate a greater focus on identifying risks; and**
 - **section 20C(1)(l) should be amended to allow the Commissioner to provide advice to the Minister on an 'own motion' basis.**

Proposed Section 20D—International Obligations

29. Section 20D of the Bill provides that, in performing their functions, the Commissioner must have regard to Australia’s international obligations. Some members of the profession have queried whether the term ‘international obligations’ requires further definition, or limitation to a particular subject matter. As per the Explanatory Memorandum, the Law Council notes that the reference to international obligations includes a ‘range of international treaties relevant to modern slavery practices and possible responses which the Commissioner will need to have regard to’,⁴¹ but does not specify the relevant international treaties.
30. The Law Council notes that section 7(2) of the MSA, concerning its constitutional basis, notes that the MSA is intended to give effect to a list of international agreements, as amended and in force for Australia from time to time. The Law Council suggests that proposed section 20D be amended as follows (and that this change be reflected in the Explanatory Memorandum):

Section 20D Commissioner must have regard to international obligations

In performing the Commissioner’s functions, the Commissioner must have regard to Australia’s international obligations **as set out in section 7(2) of the *Modern Slavery Act 2018 (Cth)***

31. In addition, the Law Council notes that it is important for Australia to showcase a commitment to the fundamental principles enshrined in international treaties, rather than just abiding by the specific provisions articulated in the international instruments themselves. This entails a broader consideration of the overarching principles that guide and influence the international legal framework, ensuring a thorough and principled approach to compliance.

Recommendation

- **The Law Council recommends that proposed section 20D be amended to refer to section 7(2) of the MSA, to clarify the scope of international obligations that the Commissioner must consider.**

⁴¹ Explanatory Memorandum, [23].

Independence of the Commissioner—Strategic Plan

32. Independence is crucial to the effective functioning of an office like that of the proposed Commissioner. Section 20J of the Bill notes that, subject to the Bill and any other Act, the Commissioner has complete discretion in performing or exercising their functions and powers, and is not subject to direction from anyone when doing so. The Law Council welcomes this proposed provision.
33. However, the Law Council received feedback querying section 20X(6) of the Bill, which provides that the Commissioner must, in preparing or revising a strategic plan, consult the Minister and the Secretary of the Department. The Explanatory Memorandum indicates additionally that the ‘Minister or Secretary of Department may consult other portfolios as necessary’⁴² before the strategic plan is published. Practitioners have raised concerns that this requirement to consult on the strategic plan has the potential to curtail or limit the independence of the Commissioner. The Law Council queries how this sits alongside the intent of proposed section 20J.
34. The Law Council recognises that section 20X(6) contains an obligation to consult the Minister and Secretary, rather than to obtain their approval of the strategic plan. It further understands that the rationale for the mandatory requirement under section 20X(6) of the Bill is to ensure that the Commissioner’s actions are coordinated and aligned with those of the Australian Government in the anti-slavery arena,⁴³ and to ensure transparency and accountability of the Commissioner. However, the Commissioner’s independence could be strengthened.
35. The Law Council considers the Commissioner’s strategic plan to be key to the office’s independence. Based on feedback from expert practitioners and experience from the UK,⁴⁴ the Law Council recommends that, to ensure that the Commissioner’s independence is maintained, proposed section 20X(6) should be amended to state plainly that the Commissioner ultimately retains discretion over the content of the strategic plan.

Recommendation

- **The Law Council recommends that section 20X(6) be amended to ensure the Commissioner retains discretion over the content of the strategic plans for their office.**

⁴² Explanatory Memorandum, [70].

⁴³ Ibid [70].

⁴⁴ See Secretary of State for the Home Department, ‘[Independent Review of the Modern Slavery Act 2015: Final Report](#)’ (May 2019). The review heard concerns about the UK Commissioner’s role being ‘constrained by...Government influence, potentially compromising the credibility and transparency of the post’ (at 13).

Proposed sections 20L and 20N—Appointment of Commissioner and period of appointment

36. The Law Council welcomes the merit-based appointment of the Commissioner as set out in proposed section 20L of the Bill. However, the Law Council queries whether it is appropriate for the Commissioner to have appropriate qualifications, knowledge, or experience in ‘one or more’ of the following fields:

- (a) human rights issues relating to business practices (proposed section 20L(2)(a)(i));
- (b) regulation (proposed section 20L(2)(a)(ii)); and
- (c) public policy relating to modern slavery or related forms of human exploitation (proposed section 20L(2)(a)(iii)).

37. The Law Council notes that the Commissioner may not be suitably qualified if they only exhibit the requisite knowledge in one of the above fields. It would be more appropriate for the Commissioner to have experience in more than one of the above fields. If the Commissioner only possesses expertise in one of the three areas identified (in particular, regulation, with respect to entirely different subject matter), it will make it difficult for the Commissioner to take a leadership role on matters relating to modern slavery. Additionally, the Commissioner should have experience in engaging with vulnerable people noting the proposed functions under proposed section 20C(1)(d) and (e) of the Bill.

Recommendation

- **The Law Council recommends that the Commissioner be required to have the qualifications, knowledge, and experience in at least two of the three fields specified in proposed section 20L(2).**
- **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).**

Proposed Section 20W—Commissioner may request information from Commonwealth Agencies

38. Proposed section 20W(1) of the Bill provides the Commissioner with the power to request information from Commonwealth agencies for the purpose of fulfilling their functions under section 20C of the Bill.
39. Under proposed section 20W(2), the request may specify a reasonable period within which the information is to be given.
40. Under proposed section 20W(3), the agency must, so far as is reasonably practicable, comply with the request.
41. The Explanatory Memorandum states⁴⁵ that proposed section 20W(3):
- ... provides that the agency receiving the request must, as far is reasonably practicable, comply with the request. This subsection envisages there may be a range of circumstances in which 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.*
42. However, this does not appear to provide an adequate assurance that, where the Commissioner reasonably requests information, the agency will respond in a manner that enables the Commissioner to acquit their functions effectively. The Law Council has received feedback that there should be consequences for non-compliance with proposed section 20W.
43. The Law Council recommends that the Bill be amended to require the Commissioner to report any non-compliance on the part of Commonwealth agencies. For example, proposed section 20Y, regarding the Commissioner’s annual report, enables the Commissioner to report ‘any emerging issues relating to the Commissioner’s functions’.⁴⁶ This could be strengthened, for example, by an explicit reference to reporting on agencies’ lack of compliance with requests made under proposed section 20W.

Recommendation

- **The Law Council recommends that 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).**

⁴⁵ Explanatory Memorandum, [62].

⁴⁶ Bill, s 20Y(2)(d).

Related Matters

Budget

44. In line with its relevant recommendation to the Review of the MSA,⁴⁷ the Law Council welcomes the Budget allocation of \$8 million over four years, plus \$2 million per year thereafter, for the establishment of a Commissioner.⁴⁸ However, the Law Council has received input that this funding envelope may prove inadequate for the Commissioner to adequately address the breadth of work that is likely to arise under the Bill after it passes.
45. The experience of the NSW Commissioner, as outlined in his submission to the 2023/24 Parliamentary Review of the NSW MSA,⁴⁹ has been that his office requires 18–30 FTE personnel to adequately fulfil its functions under the Act.⁵⁰ The Commonwealth Anti-Slavery Commissioner may not have identical functions, but will have broader federal responsibilities. As such, the Commissioner’s office is likely to require similar staffing levels at a minimum. Taking the associated overheads into account, \$2 million per annum may be insufficient to provide such levels.

Relationships with other Commissioners

46. Members of the legal profession have raised the importance of the Commissioner working alongside the current NSW Commissioner and other future state/territory commissioners. To this end, the Law Council welcomes proposed section 20C(1)(i), which states that the Commissioner can consult and liaise with Commonwealth, State and Territory governments, agencies, bodies, and office-holders on matters relating to modern slavery.
47. Practitioners have further noted that the current NSW Commissioner holds consultations with frontline workers in criminal justice, healthcare, homelessness, disability, women’s safety, family violence and child protection. These consultations have underlined the need for additional resources and training to improve their ability to recognise and assess vulnerability to modern slavery and prevent victimisation.⁵¹ Cooperation and coordination with the NSW Commissioner will be important to avoid duplication and avoid the burden of multiple consultations upon victims and frontline workers alike.
48. Further, the NSW MSA provides for the establishment of a complaints hotline.⁵² However, it has not yet been established. Nevertheless, the NSW Commissioner noted in his submission to the Parliamentary Review of the NSW MSA that ‘it is likely calls to the hotline will come from other states and territories in Australia, making cooperation with the federal Anti-Slavery Commissioner particularly important’.⁵³ As such, the NSW

⁴⁷ Law Council of Australian, Submission to Attorney-General’s Department, [Review of Australia’s Modern Slavery Act 2018](#) (13 December 2022) [211]-[219].

⁴⁸ Attorney-General media release, [Establishing Australia’s First Anti-Slavery Commissioner](#), 30 November 2023.

⁴⁹ Office of the NSW Anti-slavery Commissioner, Submission No 8 to Modern Slavery Committee, Legislative Council, Parliament of New South Wales, [Inquiry into Review of the Modern Slavery Act 2018](#) (5 October 2023) [106]-[116].

⁵⁰ *Ibid* [109].

⁵¹ Parliament of New South Wales Modern Slavery Committee, [Review of the Modern Slavery Act 2018](#) (December 2023) [2.52].

⁵² *Modern Slavery Act 2018* (NSW) s 12(d).

⁵³ Office of the NSW Anti-slavery Commissioner, Submission No 8 to Modern Slavery Committee, Legislative Council, Parliament of New South Wales, [Inquiry into Review of the Modern Slavery Act 2018](#) (5 October 2023) [73].

Commissioner has suggested amending section 9 of the NSW MSA to 'make collaboration with other Australian and overseas actors ... a specified function of the Commissioner'.⁵⁴

49. Given the above, the Law Council underlines that liaison with the NSW role and future state/territory Commissioners will be important.

Supporting victims

50. Modern slavery gives rise to a number of legal issues for victims. Victims may require assistance, including on how to escape from their situation, how they might seek restitution, and whether they want to render assistance to authorities. There is currently a series of enmeshed and complex legal issues for persons affected by modern slavery beyond the criminal justice response, including in relation to employment, migration, and family law.
51. It is imperative in these types of situations that persons affected by modern slavery are able to access legal assistance to obtain the help that they need and to avoid re-victimisation. The Law Council has previously recommended an increase in legal assistance funding for expert services to ensure that legal assistance and education can be provided to groups who are vulnerable to human trafficking, including slavery, slavery-like practices and people trafficking offences. It is particularly important that these services are culturally appropriate; accompanied by skilled, professional interpreter services where needed; and exist in Rural, Regional and Remote as well as urban locations.
52. In addition to appropriate support funding for victims of modern slavery, it is also important that they are provided with information concerning available resources, programs and services. To this end, the Law Council welcomes proposed section 20C(1)(d) of the Bill.
53. However, the Law Council has received concerns that, as a matter of practice, 'victim survivors are still being directed into the criminal justice system as an initial response'.⁵⁵ It is important that referrals to broader legal services and information are provided as an initial port of call, to enable victim survivors to make decisions about their most appropriate pathway forward. To this end, the Law Council recommends that, in giving effect to proposed section 20C(1)(d), the Commissioner should place a particular emphasis on ensuring information (including website links) beyond the criminal justice system is made clearly available regarding other services including Legal Aid offices around the country, Community Legal Centres, and other appropriate organisations.

⁵⁴ Parliament of New South Wales Modern Slavery Committee, [Review of the Modern Slavery Act 2018](#) (December 2023) [2.145].

⁵⁵ Law Society of New South Wales, [Review of the Modern Slavery Act 2018 \(NSW\)](#) (29 September 2023) 3.

Recommendation

- **The Law Council recommends that:**
 - **the Australian Government expands appropriate legal assistance services for victims of modern slavery and trafficking, including in Rural, Regional and Remote locations and accompanied by skilled, professional interpreter services where needed; and**
 - **in acquitting the functions envisaged in proposed section 20C(1)(d), the Commissioner should ensure that information and links are made clearly available regarding services beyond the criminal justice system such as Legal Aid offices, Community Legal Centres, and other appropriate organisations.**