



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

Submission by the Australian Council of Trade Unions to the
Senate Legal and Constitutional Affairs Committee

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Contents

Introduction	1
Recommendations.....	2
Reforms needed to Australia’s <i>Modern Slavery Act</i>	2
The problem of modern slavery	2
The <i>Modern Slavery Act</i> is not working	3
Recommendations for reforming the MSA.....	6
The role of an Anti-Slavery Commissioner.....	7
Monitoring compliance, including due diligence requirements.....	7
Enforcement.....	10
Investigation.....	12
Complaint handling.....	12
Producing guidance	13
Monitoring effectiveness of Australia’s response to modern slavery.....	13

Introduction

The Australian Council of Trade Unions (ACTU) is the peak trade union body in Australia, with 43 affiliated unions and states and regional trades and labour councils, representing nearly 1.8 million workers across the country.

The ACTU welcomes the opportunity to make a submission to the inquiry into the bill to establish an Australian Anti-Slavery Commissioner. The ACTU has long called for the establishment of an independent, well-resourced Anti-Slavery Commissioner as a key element of Australia's response to modern slavery.

In our submission to the three year statutory review of the *Modern Slavery Act 2018 (Cth)* – hereafter MSA - we outlined the key reforms needed to make the MSA an effective tool to combat modern slavery in the operations and supply chains of Australian companies. We recommended that there should be appropriate oversight and enforcement of the MSA through a well-resourced, independent Anti-Slavery Commissioner with the powers to investigate and handle complaints from workers and their representatives in the operations and supply chains of reporting entities; provide remedy where complaints are upheld; and issue penalties for corporate non-compliance.

The independent *Report of the statutory review of the first 3 years of the Modern Slavery Act 2018: the first three years*¹ by Professor John McMillan was tabled in Parliament on 25 May 2023 and made a number of recommendations to improve the functioning of the MSA. The Government has yet to formally respond to the recommendations in the McMillan review. McMillan noted that a majority of submissions expressed strong support for an Office of Commissioner to play a leadership and regulatory role in overseeing the MSA, which should be an independent statutory office that was appropriately resourced to play an effective role in combatting modern slavery.

Unfortunately, this Bill falls 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.

¹ Professor John McMillan AO, 'Report of the statutory review of the *Modern Slavery Act 2018: the first three years*', 2023 <https://www.ag.gov.au/sites/default/files/2023-05/Report%20-%20Statutory%20Review%20of%20the%20Modern%20Slavery%20Act%202018.PDF>

We recommend that the Bill be withdrawn in its current form and substantially amended. The Government should consider its response to the three year review of the MSA and the review of the modern slavery provisions in the criminal code (sections 270 and 271)² holistically. The role of the Anti-Slavery Commissioner must be considered in that context, as the Government's response to the MSA review recommendations will determine what powers and resources the Commissioner requires in order to support the Act. As our affiliate the Maritime Union of Australia illustrate in their submission, many of the recommendations made in these reviews would be supported by the Commissioner having the appropriate functions.

Recommendations

Recommendation 1: That the Bill be withdrawn in its current form and substantially amended.

Recommendation 2: That the Bill be substantially amended to provide the Anti-Slavery Commissioner with the following powers and functions to support a reformed MSA:

- Monitoring compliance, including due diligence requirements
- Enforcement
- Investigation
- Complaint handling
- Producing guidance
- Monitoring the effectiveness of Australia's response to modern slavery

Recommendation 3: That the Anti-Slavery Commissioner be appropriately resourced to carry out its expanded functions.

Reforms needed to Australia's Modern Slavery Act

The problem of modern slavery

Modern slavery is a broad term used to refer to a wide spectrum of crimes that includes forced labour, but the common thread is any situation of exploitation where a person cannot refuse or

² Attorney-General's Department, 'Targeted Review of Modern Slavery Offences in Divisions 270 and 271 of the Criminal Code Act 1995 (Cth)', https://consultations.ag.gov.au/crime/modern-slavery-offences/user_uploads/targeted-review-of-modern-slavery-offences-in-divisions-270-and-271-of-the-criminal-code-act-1995.pdf

leave work or service due to threats, violence, coercion, abuse or deception. Modern slavery – in particular, forced labour - is a central issue of concern for the Australian Union movement, both for workers in Australia and around the world.

The definition of forced or compulsory labour³, according to the ILO *Forced Labour Convention*, is ‘all work or service which is exacted from any person under the threat of a penalty and for which the person has not offered himself or herself voluntarily.’ As the Parliamentary Joint Standing Committee on Foreign Affairs, Defence and Trade noted in its report into establishing a Modern Slavery Act in Australia:

While there is an important distinction between labour exploitation and the more serious crimes of forced labour and slavery, the Committee recognises that these crimes exist on the same spectrum of exploitation.⁴

We can conceive of this spectrum of exploitation as one between decent work⁵ on the one hand, and extreme exploitation such as forced labour and slavery-like practices that can include violations of labour and/or criminal law, on the other. Exploitative practices along this spectrum can include wage theft, unlawful deductions, and physical and sexual violence. As such, the ACTU believes that the issue of forced labour, on the extreme end of the spectrum, cannot be addressed without addressing the root causes of labour exploitation. The problem is not just a few ‘bad apple’ employers – the problem of worker exploitation is entrenched and endemic. Drivers of exploitation include insecurity due to temporary visa status and visa arrangements that tie workers to their employers; insecure work arrangements including arms-length employment arrangements such as labour hire; and lack of respect for fundamental workers’ rights including freedom of association. This understanding of forced labour means that responses should include measures to empower workers and respect fundamental workers’ rights including freedom of association and protection of the right to organise and collective bargaining so that workers are empowered to join a union, bargain collectively, and speak out about exploitation without fear of reprisal.

The Modern Slavery Act is not working

³ ‘Forced or compulsory labour’ is the term used in the *Forced Labour Convention*, however for the sake of brevity this submission will hereafter use the term ‘forced labour’.

⁴ Parliament of the Commonwealth of Australia, Joint Standing Committee on Foreign Affairs, Defence and Trade, ‘Hidden in Plain Sight: an inquiry into establishing a Modern Slavery Act in Australia’, 2017, https://parlinfo.aph.gov.au/parlInfo/download/committees/reportjnt/024102/toc_pdf/HiddeninPlainSight.pdf;fileType=application%2Fpdf, p. 279

⁵ Decent work’ according to the ILO “involves opportunities for work that is productive and delivers a fair income, security in the workplace and social protection for families, better prospects for personal development and social integration, freedom for people to express their concerns, organise and participate in the decisions that affect their lives, and equality of opportunity and treatment for all men and women.” <https://www.ilo.org/global/topics/decent-work/lang-en/index.htm>

Given the scale and severity of forced labour and modern slavery more broadly, strong action is needed by governments to regulate corporate supply chains. Unfortunately, Australia's modern slavery framework – the core of which is the MSA – is not up to the task.

In the ACTU's submission to the statutory review of the MSA, we noted that the primary measure of the impact of the MSA must be whether it is working to eliminate modern slavery and improve the situation for workers in the operations and supply chains of Australian companies. On this measure, it is clear the MSA is not succeeding.

The 'transparency framework' approach of the MSA is not an effective strategy for addressing modern slavery. It is based on the flawed assumption that reporting alone will improve business practices and create a 'race to the top' as reporting entities compete for funding and consumer support, and conversely 'businesses that fail to take action will be penalised by the market and consumers and severely tarnish their reputations'.⁶ This approach effectively outsources the enforcement to unions, civil society, consumers and shareholders to pressure companies to do the right thing, instead of the Australian Government enforcing compliance through penalties and strict oversight. Three years into the Act, we are yet to see the transparency framework approach making any meaningful impact to address modern slavery. Indeed, the international evidence shows that similar approaches to modern slavery have failed: compliance with the UK's *Modern Slavery Act (2015)* has been inadequate, leading to the UK Government to propose the introduction of penalties for companies that fail to meet their obligations under the Act.

Reporting alone is not enough – without a requirement for companies to take action on modern slavery it is just a superficial 'tick box' exercise. Even if the transparency framework approach was sufficient to create the kind of change in corporate behaviour required to tackle modern slavery, it is clear that companies are failing to disclose the level of detail required to be effective. A number of civil society organisations and academics have undertaken studies assessing the effectiveness of the MSA, and found that a significant proportion of statements fail to even address the basic mandatory reporting criteria. One report, 'Paper promises? Evaluating the early impact of Australia's Modern Slavery Act'⁷ reviewed the first modern slavery statements of 102 companies

⁶ Alex Hawke MP, Assistant Minister for Home Affairs, *Modern Slavery Bill 2018* second reading speech 28/9/2018 https://www.aph.gov.au/Parliamentary_Business/Hansard/Hansard_Display?bid=chamber/hansardr/429b4c41-4a6c-465d-a259-05e8252b994d/&sid=0034

⁷ Human Rights Law Centre, the Business and Human Rights Resource Centre, Baptist World Aid, Australian Human Rights Institute (UNSW), Business and Human Rights Centre (RMIT), University of Melbourne, University of Notre Dame, University of Western Australia, 'Paper Promises? Evaluating the early impact of Australia's Modern Slavery Act', 2022

in the high-risk sectors of garments sourced from China, rubber gloves sourced from Malaysia, horticulture sourced in Australia, and seafood sourced from Thailand, and found that more than half of companies failed to identify and disclose salient sectoral risks in their operations and supply chains. Three in four companies sourcing garments from China failed to mention the risks of Uyghur forced labour in their supply chains, for example, and less than a third of the companies reviewed could demonstrate that they are taking some form of action against modern slavery risks that lifts working conditions or tackles root causes. The researchers concluded: "...it seems that many company statements remain mere 'paper promises', with little evidence of effective action in the areas most likely to improve conditions for workers."⁸ A follow up report⁹ evaluated 92 second statements by these same companies (some entities had not published second statements) to assess whether entities had improved their performance over time – but unfortunately, they have drawn the same conclusions. They found that “over half of the company statements assessed still do not meet basic mandatory reporting requirements, with just a third evidencing some form of effective action to tackle modern slavery risks.”¹⁰

The ACTU's examination of the modern slavery statements of labour hire providers is a striking example of the glaring inconsistencies in how companies report modern slavery risks. Labour hire providers routinely do not describe their industry or their business model as being high risk (despite some of their clients doing so in their modern slavery statements). For example, Hudson Global Resources (Aust) Pty Ltd in its 2022 statement claims that risks of deceptive recruitment practices and underpayments in its operations are low. This is despite the company being subject to enforceable undertaking following a successful prosecution for underpayment of wages by the Fair Work Ombudsman in 2021. Major providers such as Chandler Macleod Group (a subsidiary of Recruit Holdings via RGF Staffing APEJ) obscure or omit to mention they on-hire workers and/or place individual contractors instead use euphemisms such as 'providers of human resources and talent solutions' to describe their business model. The focus of their report is on risks in their supply chain. RGF Staffing APEJ's report does not disclose Japanese MNC Recruit Holdings Co, one of the world's largest labour hire providers, is its ultimate parent.

It is clear that in order to drive compliance with the MSA and for companies to take concrete action to tackle modern slavery, significant reform is required.

<https://static1.squarespace.com/static/580025f66b8f5b2dabbe4291/t/6200d3d9db51c63088d0e8e1/1644221419125/Paper+Promises+Australia+Modern+Slavery+Act+7+FEB.pdf>

⁸ *Ibid.*, p. 3.

⁹ Human Rights Law Centre et. al., 'Broken Promises: Two years of corporate reporting under Australia's Modern Slavery Act', 2022.

¹⁰ *Ibid.*, p. 2.

Recommendations for reforming the MSA

The ACTU made a comprehensive submission to the McMillan review outlining the key reforms needed to the MSA.¹¹ In summary:

1. Introduce the requirement for human rights due diligence in order to drive concrete actions that will change corporate behaviour, rather than just reporting on risks. Mandatory human rights due diligence would require reporting entities to identify, prevent and mitigate modern slavery practices, and address harms where these arise. As part of undertaking the due diligence process, companies must report on risks of modern slavery.
2. Due diligence cannot be a tick-box approach that companies outsource to third party auditors. Worker voice must be embedded in the due diligence process: the MSA should mandate that the due diligence process requires genuine engagement with trade unions in company operations and supply chains.
3. The MSA should be broadened from the focus on the elimination of forced labour and child labour to define exploitation in relation to violations of International Labour Standards covered by all the ILO Fundamental Principles and Rights at Work, including freedom of association and the effective recognition of the right to collective bargaining. Accordingly, the Act should be renamed to be the Modern Slavery and Labour Exploitation Act (MSLEA).
4. There should be penalties for non-compliance with the MSLEA, including a failure to prevent modern slavery or labour exploitation, a failure to conduct proper human rights due diligence, a failure to submit reports, or submitting incomplete or inaccurate reports, in order to drive compliance and ensure companies are not profiting from exploitation. Those penalties should include prohibiting those companies from being considered for Government procurement, grants or concessional financing.
5. There should be appropriate oversight and enforcement of the MSLEA through a well-resourced, independent Anti-Slavery Commissioner with the power to investigate the veracity of statements and receive complaints from workers in entity operations and supply chains and provide remedy where such complaints are upheld.
6. The MSLEA should also provide access to justice for exploited workers, including the establishment of specific cause of action for exploited workers in operations or supply

¹¹ Australian Council of Trade Unions, 'Review of Australia's Modern Slavery Act 2018', https://consultations.ag.gov.au/crime/modern-slavery-act-review/consultation/view_respondent? b_index=60&uuld=734783870

chains to bring legal proceedings against a company for failing to prevent modern slavery or labour exploitation, a national compensation scheme for survivors of modern slavery.

The role of an Anti-Slavery Commissioner

The Anti-Slavery Commissioner's role as contemplated by this Bill is not an adequate response to the scale and severity of the problem of modern slavery. Although, as the Explanatory Memorandum notes, the recommendation to establish an Anti-Slavery Commissioner received widespread support from civil society, the role and functions of the Commissioner matter. McMillan noted in his report that:

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 independent statutory office that was properly resourced to play an effective role in combating modern slavery.¹²

Despite this, the bill proposes a Commissioner with primarily an educative and awareness raising function, rather than a regulatory role. As we have noted, the key problem is the lack of *action* from Australian companies on modern slavery – not a lack of awareness.

We also note the Commissioner has been provided with minimal resources – just \$8 million over four years in the 2023/24 budget. This allocation seems inadequate to carry out even the limited functions in proposed in this Bill, let alone providing sufficient resources to investigate and enforce compliance with the Act. The budget must be revised in accordance with the role and functions of the Commissioner called for in this submission, and must be adequate to deal with the scale and severity of modern slavery.

We propose the Bill must be reformed to ensure the Anti-Slavery Commissioner has the following powers and functions:

Monitoring compliance, including due diligence requirements

While the MSA does require businesses to report on 'actions to address risks of modern slavery, including due diligence', it does not require businesses to undertake due diligence. The ACTU

¹² Professor John McMillan AO, 'Report of the statutory review of the *Modern Slavery Act 2018*: the first three years', p. 104.

proposes that in order to drive meaningful action on modern slavery, the MSA must be reformed to place a duty on businesses to prevent modern slavery and establish due diligence as a standard of conduct through which this is to be achieved.

The concept of human rights due diligence comes from the 2011 United Nations Guiding Principles on Business and Human Rights (hereafter, UNGPs). Principle 17 outlines the responsibility of business to undertake due diligence¹³:

In order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, business enterprises should carry out human rights due diligence. The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed. Human rights due diligence:

- (a) Should cover adverse human rights impacts that the business enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships;
- (b) Will vary in complexity with the size of the business enterprise, the risk of severe human rights impacts, and the nature and context of its operations;
- (c) Should be ongoing, recognising that the human rights risks may change over time as the business enterprise's operations and operating context evolve.

The concept of due diligence has been incorporated into the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy (the ILO MNE Declaration) and the OECD Guidelines for Multinational Enterprises. These three instruments – the UNGPs, the OECD Guidelines and the ILO MNE Declaration - are the three key international reference points for responsible business conduct. They align and complement each other, setting the expectation that all businesses avoid and address adverse impacts.

Globally, Australia is lagging behind a number of other jurisdictions which have adopted more robust legislation to address adverse human rights impacts through mandatory human rights due diligence, including the French Corporate Duty of Vigilance Law adopted in 2017, the Dutch Child Labour Due Diligence Law in 2019, the German Supply Chain Due Diligence Act which came into effect in 2023, and the Corporate Sustainability Due Diligence Directive (CSDDD) adopted by the European Union in December 2023.

¹³ UN Guiding Principles on Business and Human Rights (2011), Principle 17, https://www.ohchr.org/sites/default/files/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf, pp. 17-18

The MSA should impose a duty on reporting entities (and its office bearers, related entities and associates, beneficial owners) to prevent modern slavery practices in their operations and supply chains. There are several examples of Australian laws that place duties to prevent harm and due diligence obligations on businesses, for example occupational health and safety laws, which require employers or businesses to exercise due diligence to ensure that they comply with work health and safety continually and comprehensively ensure that their business keeps workers, volunteers and visitors safe while they are at work. The latest example was recently introduced into the *Sex Discrimination Act 1984* by the 'Respect@Work' Bill which establishes a positive duty on employers to take all reasonable and proportionate measures to eliminate sexual harassment and discrimination in the workplace. Other examples of Australian laws requiring due diligence include the *Illegal Logging Prohibition Act 2012 (Cth)* which makes it a criminal offence to import illegally logged timber into Australia; and the *Autonomous Sanctions Act 2011* which requires body corporates to exercise due diligence to avoid contravening sanctions laws - if a body corporate contravenes the sanction law, it can avoid penalties by proving it took reasonable precautions and exercised due diligence to avoid the contravention.

The requirement for due diligence in the MSA would mean that companies must implement and report on their due diligence process: identifying modern slavery risks, put in place a system to prevent them, and provide an effective remedy when they occur. Companies must report on how they have consulted with workers and their representatives in operations and supply chains in the due diligence process. Where a failure to undertake due diligence results in modern slavery occurring, workers in operations and supply chains should have a direct civil cause of action to pursue companies for remedy.

The definition of 'risk' in the due diligence process should include the ILO indicators of forced labour¹⁴, which include practices such as withholding of wages, intimidation and threats, physical and sexual violence, abusive working and living conditions, and excessive overtime. By including the requirement for due diligence in the MSA, the statements will become evidence that an entity has conducted due diligence, and become a key part of the due diligence process itself by serving to publicly communicate how impacts are being assessed and addressed.

There should also be provision in the MSA for civil liability to allow workers in company operations and supply chains, including overseas, to seek remedy, including damages where the harm was

¹⁴ International Labour Office, 'ILO Indicators of Forced Labour', https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_203832.pdf

caused by the entity's failure to comply with its due diligence obligations. The company and/or corporate office bearers, related entities and associated natural persons would be liable for the harm unless it could establish that it took all reasonable steps to prevent modern slavery or worker exploitation from occurring. The MSA should be amended to include disgorgement provisions to remediate workers and prevent companies from profiting from modern slavery. Remediation should include both compensation for workers and agreements for further preventative action. The Australian Government should also establish a National Compensation Scheme for victims/survivors of modern slavery which is independent from the criminal justice system, where a decision about whether a person is a victim/survivor of modern slavery is made on the basis of evidence presented by the claimant, and not dependent on a criminal conviction. If a perpetrator is known, however, for example through a criminal conviction, and an application for compensation is made and an order for compensation is awarded, the scheme administrator must be able to recover compensation paid by the scheme from the perpetrator. In criminal cases, proceeds of crime provisions should be used to seize assets to fund restitution and compensation.

The Commissioner's role as proposed in this Bill should therefore be amended to reflect a shift in the focus of the MSA from reporting to due diligence. The Commissioner should be tasked with supporting businesses to implement due diligence processes to address modern slavery in their operations and supply chains, and businesses will be required to demonstrate their use of due diligence processes in their annual modern slavery statements.

In examining the modern slavery statements of reporting entities, the Commissioner must have the power to seek more information from the reporting entity, seek information to verify claims made in the statement, and require the re-submission of statements where they do not meet an established standard.

Enforcement

The Commissioner should have the power to enforce the MSA, including through the administration of penalties. We note the introduction of penalties for non-compliance with the supply chain reporting requirements of the Act is a commitment in the Labor Party platform 2023 – in our view this must be linked with enhancing the Commissioner's role regarding compliance and enforcement, and linking it to the administration of penalties.

The Australian Law Reform Commission's report on Corporate Criminal Responsibility recommends a 'smart regulatory mix' that includes both criminal and non-criminal regulatory mechanisms designed to work in a complementary way to regulate transnational business and differentiate

between conduct that involves varying levels of seriousness and culpability.¹⁵ The ALRC report states:

In Australia, as well as other comparable jurisdictions like the UK, conduct such as slavery and human trafficking is already criminalised under Commonwealth law, but prosecutions against corporations for these offences are extremely rare...the lack of prosecutions is at odds with the estimates of the incidence of these types of crimes both in Australia and globally. With limited data on investigations and prosecutions, however, it is difficult to ascertain whether the lack of prosecutions reflects limitations in the drafting of the criminal law, in corporate attribution methods under the criminal law, or in investigation and enforcement.¹⁶

A 'smart mix' of penalties must be introduced in order to encourage compliance with the Act. Companies that fail to report; provide false, misleading, or insufficiently detailed reports; fail to implement due diligence; breach their duty to prevent modern slavery; or fail to establish grievance mechanisms for workers in their operations and supply chains to seek remedy should face consequences, including:

- Civil penalties that are proportionate and calibrated such that the cost of non-compliance is higher than the cost of undertaking effective due diligence. The NSW Modern Slavery Act previously provided for penalties of up to \$1.1 million for non-compliance with reporting requirements.
- Exclusion from public procurement. This has already occurred in Western Australia, where a procurement debarment regime has been introduced as part of the *Procurement Act 2020 (WA)* and 'non-compliance with modern slavery reporting requirements' can lead to debarment for up to two years.¹⁷
- Being listed on the MSA register as a non-compliant entity.
- Criminal penalties, including for organised or wilful intent to mislead through knowingly providing false or misleading information in modern slavery statements, for example.

The MSA must be reformed to introduce penalties for companies (and its office bearers, related entities and associates, beneficial owners) who fail to report; provide false, misleading, or insufficiently detailed reports; breach their duty to prevent modern slavery; or fail to establish grievance mechanisms for workers in their operations and supply chains. In order to change behaviour, it is important that penalties apply not only to the corporate entity but also to the

¹⁵ ALRC report, <https://www.alrc.gov.au/wp-content/uploads/2020/05/ALRC-CCR-Final-Report-websml.pdf> p. 469

¹⁶ *Ibid.*

¹⁷ 'Procurement (Debarment of Suppliers) Regulations 2021, *Procurement Act 2020 (WA)*, [https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_44523.pdf/\\$FILE/Procurement%20\(Debarment%20of%20Suppliers\)%20Regulations%202021%20-%20%5B00-b0-00%5D.pdf?OpenElement](https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_44523.pdf/$FILE/Procurement%20(Debarment%20of%20Suppliers)%20Regulations%202021%20-%20%5B00-b0-00%5D.pdf?OpenElement)

individuals (eg. company office bearers and associates) where appropriate. These penalties should be administered by the Anti-Slavery Commissioner.

Investigation

The Bill explicitly states that the Commissioner would not have investigative or coercive powers that would enable them to compel others to provide information needed to investigate individual complaints or allegations. Investigative powers are essential in order to promote compliance and enforcement with the Act, however, so the bill must be amended to remove this provision and provide investigative powers and capacity in order for the Commissioner 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 MSA
- 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)
- Refer matters to law enforcement where there is prima facie evidence of criminal conduct and report that referral to the Attorney General's Department and to Parliament.

The MSA must also be amended to provide that reporting entities have a duty to cooperate with investigations and provide information requested by the Commissioner.

It would be important to establish a multi-agency taskforce model that includes agencies with broader investigatory powers such as the Australian Federal Police, and agencies at a state and Commonwealth level, to work with the Anti-Slavery Commissioner to pursue cases. We note the Phoenix Taskforce that was established to detect, deter and disrupt illegal phoenixing could be considered as a model, and that it would be important to include relevant state and Commonwealth agencies, and overseas authorities where appropriate.

Complaint handling

The Commissioner must have the ability to receive complaints regarding corporate compliance with the MSA, and refer individual cases to relevant authorities including the Fair Work Ombudsman and law enforcement where appropriate. There are several examples of other Australian commissions and institutions with the dual responsibilities of education and complaint handling, including the Fair Work Ombudsman, Australian Human Rights Commission, the E-Safety Commissioner, and the Australian National Contact Point for the OECD Guidelines.

Unions in the operations and supply chains of Australian companies, including unions overseas, should have the ability to lodge a complaint with the Commissioner that a company has not complied with their obligations under the MSA, which would trigger an investigation. The Commissioner would investigate the veracity of statements, and take enforcement action where necessary, including through the administration of penalties, and provide remedy to effected workers where complaints are upheld.

To be clear, we conceive of the Anti-Slavery Commissioner's powers in relation to investigation, enforcement and compliance as relating to supporting the reporting requirement and the due diligence element we advocate to be introduced into the Act. The Anti-Slavery Commissioner would handle complaints relating to the veracity of statements, the due diligence process etc; with cases referred to other agencies or handled by a multi-agency taskforce where appropriate.

Producing guidance

The functions of the Commissioner should include to provide guidance on high on high-risk sectors and practices, including publishing an annual list of high-risk countries, regions, industries and products for modern slavery. This will inform the due diligence processes of reporting entities, but should also form the basis of a list of products made using forced labour that should be subject to an import ban. The introduction of a ban on the importation of goods tainted with forced labour would play an important role in changing corporate behaviour to end forced labour in global supply chains and would complement the due diligence reforms that should be introduced in the MSA.

The Commissioner must also publish guidance on conducting due diligence, which makes it clear that due diligence must include consultation with trade unions in operations and supply chains. The Commissioner must also develop and publish guidance on establishing best practice grievance mechanisms.

Monitoring effectiveness of Australia's response to modern slavery

The Commissioner's role should include monitoring the effectiveness of Australia's response to modern slavery, including by scrutinising and advising on the Commonwealth's modern slavery statements, monitor the effectiveness of the Australian Government's response to modern slavery and advise the Attorney General on reforms required to improve the effectiveness of the MSA and other elements of Australia's response. The Commissioner must also be required to publicly report on their activities and complaints received, including what sectors, themes and locations the complaints relate to.

address

ACTU
Level 4 / 365 Queen Street
Melbourne VIC 3000

phone

1300 486 466

web

actu.org.au
australianunions.org.au