

22 January 2024

Committee Secretary  
Senate Legal and Constitutional Affairs Committee  
PO Box 6100  
Parliament House  
Canberra ACT 2600

Dear Committee,

### **Inquiry into the Modern Slavery Amendment (Australian Anti-Slavery Commissioner) Bill 2023**

What matters most to survivors of modern slavery in the design of the Federal Anti-Slavery Commissioner role? This is an important question that this submission aims to answer from the perspective of lived experience. In January 2024, we interviewed six survivors of modern slavery in Australia, to understand their views on the Bill before the Committee. This submission is based on those interviews.

#### **Summary of Submission**

The role of a Federal Anti-Slavery commissioner is welcomed by people with lived experience. For example, one participant noted:

*“The modern slavery responses and sector itself [are] quite fractured and I think that the role of the federal anti-slavery commissioner has the potential to ... unify our sector and be someone that ... has an oversight over the whole thing ... to bring people together”.*

*“I’m excited to see some of our anti-slavery responses [move] beyond policy and start to move into practical reality”.*

However, there are major gaps between what survivors say they think is important in the Commissioner role, and the role currently described in the Bill. For example:

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

As another example:

*“The commissioner should be able to offer .... visa pathways that can [help] survivors of modern slavery and human trafficking.”*

The following recommendations are offered to try to close the gaps between the Bill as presently framed, and the issues raised in interviews with survivors as being vitally important.

**Recommendation 1:** Add language to clarify that the purpose of the Commissioner is to provide leadership and oversight of the effectiveness of Australia’s anti-modern slavery response. Their role needs to be both domestic and internationally focused.

**Recommendation 2:** Give the Commissioner the powers to receive and inquire into complaints from individuals regarding the operations of Australia’s modern slavery responses in specific situations. Simultaneously, mandate the Commissioner to undertake reasonable measures to foster accountability, transparency, and address other obstacles hindering effective anti-slavery responses.

**Recommendation 3:** Give the Commissioner powers to inquire, either of their own motion, requests of survivors, or on request of the Attorney General, into the operation and effectiveness of Australia's anti-slavery responses. Reports from inquiries should be tabled in Parliament.

**Recommendation 4:** Give the Commissioner the power to require agencies to provide data and information relevant to understanding the effectiveness of Australia's anti-slavery responses.

**Recommendation 5:** Amend the Bill to include creation of a Lived Experience Advisory Panel to advise the Commissioner.

## BACKGROUND

### Lived experience, lived expertise and relevance to this Bill

People who have lived experience of modern slavery have unique insights both into how this crime type happens in the first place, but also how laws, policies and programs that are intended to support survivors operate in reality.

It is vital to seek the insights of people with lived experience of modern slavery in Australia on the proposed model for an Anti-Slavery Commissioner. While survivor-input to the Bill via the usual committee processes is possible, there are some practical challenges to overcome in making this a reality.

One participant noted that there can be a natural reluctance to engage with survivors, due to the fear of causing further harm:

*"For a long time, engagement with people with lived experience was very separate from the rest of the modern slavery sector... I think there's been a real fear from the sector about engaging directly with survivors in case they re-traumatize people or... get it wrong".*

This can contribute to a situation where survivors are consulted "through" other organisations, which introduces complications:

*"It's been quite rare in the modern slavery sector for survivors to be able to directly communicate with the entities they're trying to communicate with - whether that's federal anti-slavery commissioner [or not]. They cannot often ...speak in their own voice [and have to] speak via a third party....Often those third parties are responsible for their direct support and well-being and in some cases that can raise to me a conflict because people may be afraid to say their true thoughts, feelings or experiences if they feel that they might ...offend or upset the third party that they're actually using to speak ....as a sort of mediator.*

*The presence of a third party [can] potentially impact on how honest and transparent a survivor is able to be ...."*

The survivors we spoke to feel passionately that direct engagement with survivors offers important opportunities to positively build and improve responses:

*"Better collaboration would be first engaging people with lived experience, survivor participation, because we are the recipients of these services, we better understand what is failing"?*

While consideration does need to be given to ensuring safety, this is not as complex as it may seem:

*"One question that always gets asked is how can we ensure that survivors are safe and ready to engage.... The most important thing is self-determination."*

Direct engagement also offers survivors the opportunity to contribute their expertise on an issue they care deeply about, and for the anti-slavery response as a whole to learn and grow:

*"[We should] allow survivors to show their strength and ...what they're able and willing to contribute to the sector...rather than only labelling them as a survivor and ... limiting what they might be able to do".*

*"I think we just have to start somewhere...We can hold back forever and not do anything because we're afraid of doing it wrong. We will always learn how to do things better, but I think we just have to make a start and create opportunities for lived experience engagement"*

Accordingly, within the limits of what was possible in the short consultation period, we sought to collect and reflect views from people with lived experience on the Bill.

We conducted interviews with six people with lived experience of modern slavery in Australia (in this submission, they are referred to as "survivors" or "people with lived experience"). The cohort were background speakers of five (or more) languages and experienced exploitation in various industries. They came from European, Middle Eastern, African, Asian and South Pacific Islander backgrounds. With the consent of participants, interviews were recorded and transcribed. We used the transcripts as the basis of a thematic analysis, the results of which we summarise in Section One.

We compared the insights that emerged from the interviews with the content of the Bill as it stands. Where there are differences between what survivors said was important, and the Bill, we have included recommendations in Section Two.

## **SECTION 1: INSIGHTS FROM INTERVIEWS**

### **Why do we need an Anti-Slavery Commissioner?**

The survivors we interviewed gave the following reasons for why they think there is a need for a Federal Anti-Slavery Commissioner:

- The existing anti-slavery response is fractured. A Commissioner could unify the whole system with federal powers.
- There are gaps, barriers, and difficulties in accessing services and support in current anti-slavery responses. This means that survivors may not be receiving vital services and support. Survivors need an independent, neutral person to help resolve these issues. Resolving these issues also requires system-level change.
- There is a lack of accountability and transparency in the sector. A Commissioner could help remedy this by providing oversight.
- There are gaps between what exists "on paper" and survivors' experience of what happens in reality. A Commissioner could help ensure that policy is translated into practical action.

### **What should the Commissioner's remit include?**

The survivors we interviewed had clear views on what they think should be within the remit of the Anti-Slavery Commissioner. This included the following:

- Inquire into the operation and effect of the existing anti-slavery response. This needs to address issues at two levels: individually and at the systemic level. If the Commissioner is not the right person to help survivors to resolve the challenges, they may experience in accessing services or understanding decisions made that impact them, then where should survivors go for help and support?
- Drive solutions to migration/visa issues. For example, there are survivors who are not coming forward to seek support because of concerns about deportation and visa status. There are survivors on temporary visas who are ineligible for basic services and support.
- Promote accountability and transparency in the sector.

- Engage with survivors and connect their lived expertise to the evaluation and development of system responses.
- Promote collaboration within the sector, with adjacent sectors (health, housing, domestic violence, mental health), and within and across all levels of government (local, state and federal, international).
- Taking measures to prevent modern slavery by implementing educational and awareness raising strategies.

### **What sort of powers does the Commissioner need to be effective?**

Survivors suggested the following powers will ensure the effectiveness of the Federal Commissioner role:

- A power to offer Amnesty Visas. Without this, survivors will continue to not come forward due to fear.
- Powers to investigate or support survivors to resolve issues in their criminal justice process and also their remedy pathways.
- Powers to take reasonable steps to promote a uniform and effective standard of service provision in antislavery responses.
- Powers to promote accountability, prosecution, and preventing perpetrators from continuing to offend.

### **What makes it safe/not safe for people with lived experience to engage with a commissioner?**

Survivors provided insights into some of the individual and structural factors for effective and safe engagement with people with lived experience of modern slavery. Some of these relate to the personal qualities and experience of the Commissioner. For example:

- Caring and listening.
- Building trust.
- The skills, ability, and willingness to meet survivors where they are at even when things are messy/complicated.

These are likely factors to be taken into account in recruitment. But this also raises issues of process. As one participant asked:

*“..why don't survivors have a voice in appointing the commissioner?”*

Participants noted other factors relevant to safety that could be reflected in recruitment and legislation. The following were noted as important to shaping the role of the Anti-Slavery Commissioner:

- Having the ability to address fears (visas, reporting etc)
- Speaking directly to survivors rather than through third parties
- Be neutral (not conflicted by specific sector agendas or politics)
- Should be someone that brings action to their role not just a title.

### **What are the barriers to engaging or collaborating with the Australian modern slavery sector?**

Survivors gave examples of some of the barriers that they, as people with lived experience, have found to engaging or collaborating with the Australian modern-slavery sector. These included the following:

- The sector is fractured.
- There is competition for funding which means that cross collaboration across the sector is limited.
- There is limited collaboration between government sectors: local, state, federal.
- For Survivors: Difficulty in access to remedy.
- For Survivors: Fear of visa insecurity.

The following were given as examples of responses that would help build collaboration between people with lived experience of modern slavery and the anti-slavery sector:

- Visa Amnesty.
- Information and preventative strategies.
- More accessible support.
- Willingness of the sector to engage with people with lived experience in every aspect of antislavery efforts.

### **What help, support, information that is important for people with lived experience?**

In interviews, survivors noted the following as key needs:

- support with housing
- access to medical care
- access to mental health supports
- legal advice and support
- police assistance
- Information and education
- Basic needs, food.

In interviews, survivors noted the following as gaps: eligibility for services and remedy due to visa status, lack of information, and lack of support. Visa status, fear of authorities and the focus of existing responses on crisis or short-term responses only (and not mid- or long-term support) were all noted as challenges.

Survivors noted the following as useful pathways to getting information through to people in these situations, including social media; through frontline service providers (health, dental, housing, legal etc), and through immigration processes prior to arrival/at the border.

### **What are the best ways to engage with people with lived experience?**

Survivors noted the following as key principles for engaging with people with lived experience of modern slavery. These included the following:

- Every survivor is different.
- People need the opportunity to give informed consent.
- Self-determination should be the starting point.
- All engagement needs to be trauma informed.
- Engagement should be undertaken directly, and without the influence of third parties.
- Peer support is invaluable (connecting with other survivors)

## **SECTION 2: IMPLICATIONS FOR THE MODERN SLAVERY AMENDMENT (AUSTRALIAN ANTI-SLAVERY COMMISSIONER) BILL 2023**

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

To save the Committee time, we have not addressed every point that is included. Instead, we have focused our recommendations on filling the gaps.

**Recommendation 1: Add language to clarify that the purpose of the Commissioner is to provide leadership and oversight of the effectiveness of Australia’s anti-slavery response. Their role needs to be both domestic and internationally focused.**

This recommendation reflects views expressed in the interviews. It also strongly aligns with the following requirement in the Bill:

Section 20D: “In performing the Commissioner’s functions, the Commissioner must have regard to Australia’s international obligations.”

It makes sense to link the purpose of the Commissioner directly to the head of power on which this Bill is being made. Australia is a party to various international treaties relevant to modern slavery and these provide a useful frame of reference to help clarify the goals of Australia’s anti-modern slavery response, and “effectiveness” means in this context.

For example, Article 2 of the UN Trafficking Protocol (which Australia ratified in 2005) notes that the purpose of that Protocol is as follows:

“(a) To prevent and combat trafficking in persons, paying particular attention to women and children.  
(b) To protect and assist the victims of such trafficking, with full respect for their human rights; and  
(c) To promote cooperation among States Parties in order to meet those objectives.”

Similarly, the Protocol to the Forced Labour Convention (which Australia ratified in 2022) includes the following statement of purpose in Article 1(1):

“In giving effect to its obligations under the Convention to suppress forced or compulsory labour, each Member shall take effective measures to prevent and eliminate its use, to provide to victims protection and access to appropriate and effective remedies, such as compensation, and to sanction the perpetrators of forced or compulsory labour.”

As presently drafted, the Commissioner’s role does not clearly align or cover each of these purposes. We believe the Bill should be amended, so that it is clear that the work of the Commissioner should be directly aligned with meeting specific goals, which include prevention, protection, cooperation and sanctioning perpetrators.

**Recommendation 2: Give the Commissioner powers to take reasonable steps to promote accountability, transparency, and address barriers to effective Anti-Slavery responses.**

At present, the Bill expressly provides that the Commissioner “may not investigate or resolve complaints concerning individual instances or suspected instances of modern slavery” (s20C (2)). But where do survivors turn, if they are facing difficulties in accessing support or services, or if they do not understand the decisions that are being made about them? If the Commissioner cannot investigate or respond to complaints concerning individual instances or suspected instances of modern slavery, which agency or agencies can?

As one participant said:

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

Survivors identified a need for there to be a place or person who has the authority and mandate to help them find a way forward, if their “process” goes wrong. In this submission, we recommend the Commissioner is given this remit.

**Recommendation 3: Give the Commissioner powers to inquire, either of their own motion, requests of survivors, or on request of the Attorney General, into the operation and effectiveness of Australia’s anti-slavery responses. Reports from inquiries should be tabled in Parliament.**

As presently drafted, the functions of the Commissioner are focused on “consultation and liaison”. For example, the functions in section 20C include the following:

- “(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;”

The consultation suggests that there is a need for the Commissioner to be empowered beyond this, with more explicit powers to undertake enquiries.

**Recommendation 4: Give the Commissioner the power to require Federal agencies to provide data and information relevant to understanding the effectiveness of Australia’s anti-slavery responses.**

At present, the Bill provides that the Commissioner “may request” information from Commonwealth agencies, and agencies must, so far as is reasonably practicable, comply with the request (section 20W). Sharing of data and information is central to understanding the effectiveness of existing responses, and to building trust and understanding of the system. While “requests” to agencies should be the first level of approach, we believe there is a need to underscore the importance of information sharing, through giving the Commissioner powers to require provision of information when avenues for requests have been ineffective.

**Recommendation 5: Amend the Bill to include creation of a Lived Experience Advisory Panel to advise the Commissioner.**

At present, the functions of the Commissioner include: “To engage with, and promote engagement with, victims of modern slavery to inform measures for addressing modern slavery” (s20C(1)(e)).

The creation of an Anti-Slavery Commissioner is an opportunity to build new ways of working. In this regard, we believe the Bill should build on the experience of Australia’s first Domestic Violence Commissioner, who has established a Lived Experience Advisory Council. Equally, federally there is an opportunity to build on the efforts of Australia’s first State Modern Slavery Commissioner in NSW. In NSW, the Commissioner employed a Lived Experience Advisor and created an Advisory Panel comprising twenty percent of people with lived experience. Accordingly, we recommend the inclusion of a Lived Experience Advisory Panel in the establishment of the Federal Office of the Anti-Slavery Commission itself.

**Conclusion**

There is strong support amongst the survivors we interviewed for the creation of the Federal Anti-Slavery Commissioner. The participants in this submission have welcomed the opportunity to contribute their lived expertise to this important issue. The lives of the participants have been deeply impacted by their experiences of modern slavery, which is why they are passionate about improving antislavery efforts in Australia. We commend their views to the Committee.

We would be delighted to elaborate on any of our recommendations, or the consultations that sit behind it, through further discussions with the Committee.

Yours sincerely,  
Fiona David and Sherry Wanjiru

## About this submission

This submission was written by Fiona David and Sherry Wanjiru, based on research undertaken in January 2024, by Fair Futures Pty Ltd.

Fair Futures is a for-purpose consultancy that advises business, international organisations, and philanthropies on how to drive positive social impact. Fair Futures received no funding for this research.

The research was designed and led by Sherry Wanjiru, Lived Experience Adviser to Fair Futures. Ms Wanjiru has lived experience with modern slavery. Working in collaboration with Survivor Connections, she undertook consultations with six colleagues with lived experience of modern slavery, to understand their perspectives on what survivors' think is important to the Anti-Slavery Commissioner role to succeed.

The research process was supervised by Fiona David, CEO and Founder of Fair Futures. A lawyer and researcher with expertise in modern slavery, Fiona has undertaken research and advocacy on these issues for several decades. As the Executive Director of Global Research at Walk Free, Fiona created the *Global Slavery Index*, and built the collaboration between ILO, IOM and Walk Free that sits behind the *UN Global Estimates of Modern Slavery*. Some of her earlier research includes *Labour Trafficking* and *Trafficking of Women for Sexual Servitude* published by the Australian Institute of Criminology.

The research team undertook consultation interviews with six people, using the interview guide as the basis of discussions (see Attachment 1). The transcripts were analysed to identify prominent themes, and insights that would be relevant to designing an Anti-Slavery Commissioner role that would drive positive outcomes for survivors of modern slavery.

Sherry Wanjiru prepared the thematic analysis, from transcripts of interviews. Fiona David prepared the recommendations, based on the transcripts and interviews, and analysis of the content of the Bill before the Committee.



## **ATTACHMENT 1:**

### **Consultation Questions used for Research Interviews**

#### **Introductions**

To start, would you mind sharing a little about yourself and the work you have been doing in the modern slavery spaces?

#### **Functions of Commissioner**

(New section 20C sets out the Commissioner's functions. Subsection (1) outlines that the functions include to promote compliance with the Modern Slavery Act (paragraph (1)(a), 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), To support collaboration and engagement within and across sectors in relation to addressing modern slavery (paragraph (1)(c))

Q1. In your lived experience, what have been the barriers to effectively engage and collaborate with the Australian modern slavery sector?

Q2. In your experience what do you believe would foster better collaboration and engagement within and across sectors? (E.g. networking, cross communication?)

(To support victims of modern slavery by providing information in relation to government and non-government resources, programs, and services (paragraph (1)(d))

Q4. What help, support and information is important for people with lived experience to have in relation to government and non-government resources, programs, and services? Why are these things important?

Q5. What sort of ways could be most effective to communicate this information to people at risk of, in situations, or recovering from situations of modern slavery?

(To engage with, and promote engagement with, victims of modern slavery to inform measures for addressing modern slavery (paragraph (1)(e))

Q6. What is important to people with Lived experience in engaging with government? representatives (e.g. Federal Commissioner?) What fears might you have in engaging with a Commissioner?

Q7. Why is it important to talk to and work together with survivors? How can we ensure survivors are safe and ready to engage?

(To support, encourage and conduct education and community awareness initiatives relating to modern slavery (paragraph (1)(f))

Q9. In your experience what sort of education and community awareness raising initiatives would have been most effective in reaching you?

(To support, encourage, conduct, and evaluate research about modern slavery (paragraph (1)(g))

Q10. What sort of research/areas of research are important to you as a person with lived Experience?

Q11. How would you like people with lived experience to be involved/included in

conducting and evaluating research?

(To collect, analyse, interpret, and disseminate information relating to modern slavery (paragraph(1)(h))

Q12. How would survivors like information about them collected and analysed in a way that is safe to them while meeting the intended purpose? (how to reduce victim survivor trauma through confidential information sharing)

(To consult and liaise with Commonwealth, State and Territory governments, agencies, bodies and office holders on matters relating to modern slavery (paragraph (1)(i), to consult and liaise with other persons and organisations on matters relating to modern slavery (paragraph (1)(j), to advocate to the Commonwealth Government on matters relating to modern slavery, including for continuous improvement in policy and practice (paragraph (1)(k))

Q13. How can the commissioner get survivors involved in this work? For example: (through Anti-Slavery organisations? Through a consulting network? Or Something else)?

(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 (20)(j))

Q14. In your opinion are there other functions or powers you would like to see given to a commissioner? (e.g. powers to investigate specific allegation to bring information forward in collaboration with the Police)

Q15. At present, there is no single statement of purpose of the commissioner included in the bill. What do you think the purpose of the commissioner should be in national and international capacity?