



## **Review of Australia's Modern Slavery Act 2018**

A submission to:  
Attorney-General's Department,  
Australian Government

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**yourtown** is a trusted provider of services for young people, with a focus on mental health and wellbeing, long-term unemployment, prevention of youth suicide, child protection, as well as support for those experiencing domestic and family violence. **yourtown** has evolved to helping hundreds of thousands of young people each year by powering a range of service offerings that support them through difficult challenges.

## Our services

- Kids Helpline, providing professional counselling and support to 5–25-year-olds across Australia since 1991,
- Kids Helpline @ School and Kids Helpline @ High School, which delivers early intervention and prevention programs through primary and secondary schools
- My Circle, a confidential, private, online peer support network for 13–25-year-olds to share information and build coping skills
- Mental health service/s for children aged 0-11 years old and their families, with moderate mental health needs
- Domestic and family violence refuge, accommodation, and therapeutic supports for women and their children, including post-refuge support
- Accommodation and therapeutic supports for young parents and their children at high risk
- Parentline, a telephone and online counselling and support service for parents and carers in the Northern Territory and Queensland
- Expressive Therapy interventions for young children and infants who have experienced trauma and abuse, or been exposed to violence
- Young Parents Program providing parenting support to help with child development, life skills and health and wellbeing activities in safe, supportive environments, and
- Employment, education, and social enterprise programs to help long term unemployed young people re-engage with education and/or employment.

## Kids Helpline

Kids Helpline is Australia's only free and confidential 24/7 phone and online counselling service for young people aged 5 to 25. It offers children and young people a range of care options that are right for their needs and circumstances.

Our commitment to being there anytime, and for any reason, has meant that we have responded to more than 8.6 million contacts from children and young people nationally in the 31 years since our service was first established, whilst also providing tens of millions of self-help interactions via our website and social channels.

In 2021, children and young people across Australia attempted to contact Kids Helpline almost 460,000 times – approximately 1,260 contacts per day, one contact every 69 seconds. Our counsellors provided almost 100,00 counselling sessions. The top three issues children and young people contacted us about were mental health and emotional wellbeing (one in two), suicide-related concerns (one in six) and family relationships (one in six).

There was a 109% increase in children and young people requiring an immediate emergency response including the assistance of ambulance, police or child protection compared to 2020; 37% were related to child abuse, 33% to suicide attempts and 10% to sexual assault.

## Parentline

Parentline offers free confidential phone and webchat counselling and support for parents and carers of children in Queensland and the Northern Territory. Parentline offers a safety-net for families by providing support when it's most needed. This includes after hours, weekends, where families may feel isolated and where local services are unavailable. In 2021, parents and carers in Queensland and the Northern Territory attempted to contact Parentline over 12,000 times, with our Parentline website attracting almost 100,000 visitors.

**yourtown** welcomes the opportunity to respond to the Australian Government's review of *Modern Slavery Act 2018* (Cth) (the Act). For over 60 years **yourtown** has been working on the front line tackling critical issues impacting the lives of young people, including issues related to unemployment, and drivers that can exacerbate conditions leading to modern slavery practices.

**yourtown** strongly supports a whole of society approach to ending modern slavery, including the use of laws to combat contemporary forms of slavery, and forced labour. **yourtown** recommends the following under the review of the Act:

- the definition of modern slavery is not broadened and should remain unchanged
- any proposed due diligence process should be flexible and aligned to the nature of the business and nature of its operations
- lower the reporting threshold, to bring national consistency to modern slavery laws through one cohesive and national regulatory framework
- inclusion of stepped enforcement measures for non-compliance
- measurement of the effectiveness of the modern slavery measures through introduction of clear indicators of performance/success
- development of a complaints process, and investigations mechanism that is empowered, and able to prosecute allegations of modern slavery, and
- clarifying and empowering the role of an Anti-Slavery Commissioner.

## Review of the definition of 'modern slavery'

The current definition of 'modern slavery' under the Act references the definitions of modern slavery under sections 270 and 271 of the *Criminal Code Act 1995* (Cth), setting a standard for criminal prosecution, as well as descriptions of human trafficking and child labour in two United Nations conventions<sup>1</sup>. The issues paper queries whether a more generic phrasing should be used in the Act.

Generic phrasing would broaden the definition, and lead to greater confusion as to what is required to be reported by organisations such as **yourtown**. Lack of definitional clarity could in turn lead to over reporting (especially if the approach is taken to broaden the definition). Under reporting due to a lack of definitional clarity can also result in significant reputational damage.

Over reporting to meet unclear reporting requirements effectively increases the regulatory burden upon charitable organisations such as **yourtown**, without necessarily affecting any real change in stopping slavery. Charities such as **yourtown** will inevitably be forced to re-direct essential funding and resources away from helping children and young people facing disadvantage, towards unnecessary regulatory busy-work. Currently, while narrow, the definition and intent is clear, and no clear imperative for a definitional change.

### Recommendation 1:

**That the definition of modern slavery should not be broadened and should remain unchanged.**

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<sup>1</sup> See trafficking in persons under Article 3 of the supplementary Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, under the Convention against Transnational Organised Crime, (15 November 2000); and child labour under Article 3 of the International Labour Organisation Convention (No. 182) (17 June 1999).

## Possible inclusion of due diligence obligations

While the Act currently adopts a reporting-focused approach, the review questions whether the Act should be amended to incorporate due diligence requirements like regulatory trends in European modern slavery legislative models.

Adoption of a one-size fits all due diligence process under the Act may lead to disproportionate and unwieldy burdens being placed on organisations. For example, there is a vast difference between the supply chains engaged by charitable organisations such as **yourtown**, as compared to those engaged by a large investment, or a mining, company. Reporting and decisions in relation to due diligence should reflect: the nature of the business and operations; the nature of suppliers; the industry in which they operate; as well as the size and nature of resources. Without flexibility in the process that is aligned to the nature of the reporting entity, disproportionate regulatory burden will always be placed upon smaller or charitable organisations, and essential funding of charities (such as **yourtown**) re-directed towards regulatory compliance, rather than helping those in need.

### Recommendation 2:

That any proposed due diligence process should be:

- flexible and aligned to the nature of the business and its operations, and
- set out in administrative 'guidance' material, rather than legislation.

## Appropriateness of the current reporting requirements

Another proposal being explored under the review, is to whether to lower the reporting threshold below its current level of A\$100 million in annual consolidated revenue to A\$50 million.

The Global Slavery Index 2018 estimated that on any given day in 2016, there were 15,000 people living in conditions of modern slavery in Australia, a prevalence of 0.6 victims of modern slavery for every thousand people in the country.<sup>2</sup> An advantage of lowering the reporting threshold would be less states and territories would feel compelled to develop their own modern slavery legislation to address a perceived legislative gap. Having multiple modern slavery legislative regimes across Australia only serves to complicate compliance, particularly for organisations with cross border operations that do not currently meet the revenue threshold requirements for the Commonwealth Act. This review represents a significant opportunity to lower the reporting threshold, to bring national consistency to modern slavery laws through one cohesive and national regulatory framework.

However, broadening the scope of the legislation to capture more organisations should recognise that any increase in scope and therefore additional regulatory burden should be proportional to the earnings of the organisation. For example, the *Modern Slavery Act 2018* (NSW) captures organisations earning less than A\$100 million within its scheme and has less onerous reporting obligations than the Commonwealth Act and is less prescriptive in its requirements.

A holistic national approach could provide:

- national consistency in reporting thresholds, requirements, and criteria
- one oversight body or mechanism (including for example the independent Anti-Slavery Commissioner) to enforce, investigate, and prosecute non-compliance
- centralised guides and toolkits to assist organisations in implementing the Act and its compliance framework, aligned with international reforms

<sup>2</sup> The Minderoo Foundation Pty Ltd. (2018). Global Slavery Index Country Studies – Australia (<https://www.globalslaveryindex.org/2018/findings/country-studies/australia/>).

- critical resources are not tied-up in responding to and enforcing multiple legislative requirements where they operate across borders, and
- the development of a common understanding of modern slavery, its impact on Australia (especially children and young people) and how organisations can play their part to reduce the incidents and spread of modern slavery practices.

#### **Recommendation 3:**

**That the review of the Act consider the proposal to lower the threshold to support a nationalised approach to modern slavery regulation.**

**yourtown** strongly recommends re-examining the current approach to include a complaints process, and mechanisms that are fully empowered to investigate and prosecute allegations of modern slavery. Modern slavery reporting regimes are inherently limited, requiring companies to report, rather than to act, and attaching only indirect liability for modern slavery activities through failings in reporting.<sup>3</sup> Development of complaints, and investigation mechanisms would strengthen awareness of, and address modern slavery issues at all levels of a business. For example, it could provide a process for any person impacted by or observing modern slavery whether through a business' activities (including in the supply chain) to report an allegation of modern slavery, which could in turn lead to an investigation and potentially, prosecution of a modern slavery offence.

#### **Recommendation 4:**

**That the review of the Act include a complaints process, and investigations mechanism that is empowered, and able to prosecute allegations of modern slavery.**

## Proposed enforcement measures for non-compliance

The review seeks feedback on whether the Act should impose civil penalties or sanctions for failure to comply with the reporting requirements.

In its current form the Act promotes a transparency mechanism without fines or penalties for non-compliance. There are also mechanisms under the Act that enable the Minister to 'name and shame' reporting entities that fail to comply with their obligations under the Act.

It is well known that many of the statements published on the Modern Slavery Statements Register are non-compliant. The Australian Government's own assessment of compliance with the Act found that 41% of the statements published in the first reporting cycle were likely to be non-compliant due to inadequate addressing of all mandatory reporting criteria. Of the statements published in the second reporting cycle, 28% were assessed as non-compliant. The University of New South Wales's Australian Human Rights Institute also recently examined publicly available modern slavery statements of 102 companies across four sectors with known risks of modern slavery<sup>4</sup>. Their findings in relation to the businesses reviewed, include:

- 77% had failed to comply with the basic reporting requirements mandated by the Act
- 52% had failed to identify obvious modern slavery risks in their operations or supply chains, and

<sup>3</sup> Sinclair, A. & Nolan, J. (2022). 'Modern Slavery Laws in Australia: Steps in the Right Direction?' *Business and Human Rights Journal* (5:1). pp. 164-170. doi:10.1017/bhj.2019.7

<sup>4</sup> Risks included garments from China, rubber gloves from Malaysia, seafood from Thailand and fresh produce from Australia.

- only 27% of companies appeared to be taking some form of effective action to address modern slavery risks.<sup>5</sup>

While legislation can be strengthened by the addition of civil penalties and consequences for inadequate or incomplete disclosures, they should only be pursued once all other regulatory avenues have been completed. The end goal of modern slavery laws should not be to teach regulatory compliance, but to identify and end modern slavery practices.

There should be a stepped approach with: (a) administrative mechanisms for review to identify non-compliance and rectifying non-compliance; (b) show cause notices for failure to comply; (c) naming and shaming of organisations; and finally (d) prosecution/fines where non-compliance remains unresolved.

#### **Recommendation 5:**

**That the review of the Act consider inclusion of civil penalties or sanctions, as part of a stepped approach to regulatory compliance.**

## Measuring effectiveness

Given the 'naming and shaming' powers do not appear to have been utilised to date, there are significant questions as to the effectiveness of fines or sanctions, or whether they would be invoked without other processes having been explored. Just as due diligence should be undertaken by companies, due diligence should also be undertaken by the Government in following its own processes enshrined in legislation.

The effectiveness of measures (both compliance focussed and business mitigation strategies as per Modern Slavery Statements) should also be captured. The generation and collection of quality data, and robust evidence throughout an iterative review process of the Act could drive continuous improvement. Without clear indicators of performance and success and articulation of accompanying data sources, it will be difficult to measure, monitor and secure lasting change, or identify what has or has not, worked and the extent of any impact.

#### **Recommendation 6:**

**That the Australian Government will hold themselves accountable for the effectiveness of the modern slavery measures through introduction of clear indicators of performance/success.**

## Role, Function and Powers of a proposed Anti-Slavery Commissioner

A final consideration under review, is whether an Anti-Slavery Commissioner could play a role in overseeing and enforcing the Act's modern slavery reporting requirements.

While the Federal Government has already committed to establishing an Anti-Slavery Commissioner,<sup>6</sup> it is not yet clear whether this role will oversee the implementation or enforcement of the Act. It is also too early to gauge learnings from the role of the NSW

<sup>5</sup> Sinclair, A. & Dinshaw, F. (2022). Paper Promises: Evaluating the early impact of Australia's Modern Slavery Act. UNSW Australian Human Rights Institute (<https://www.humanrights.unsw.edu.au/research/testing-effectiveness-Australia-modern-slavery-act#:~:text=It%20found%20that%3A,their%20operations%20or%20supply%20chains.>)

<sup>6</sup> Commonwealth of Australia. (2022). Budget October 2022-23: Budget Measures – Budget Paper No. 2 ([https://budget.gov.au/2022-23-october/content/bp2/download/bp2\\_2022-23.pdf](https://budget.gov.au/2022-23-october/content/bp2/download/bp2_2022-23.pdf))

independent Anti-Slavery Commission who has limited jurisdiction and capacity to facilitate compliance with the *Modern Slavery Act 2018* (NSW).

The establishment of an Anti-Slavery Commissioner provides the opportunity to provide a facilitating function within the Commissioner's office to support compliance with the Act and encourage good practice in the identification, detection, and prevention of modern slavery practices. It also provides the opportunity to provide specialist expertise to prosecute slavery and human trafficking offences; and information, resources and support for victims of modern slavery identified within Australia. Importantly, the Office of the Anti-Slavery Commissioner could work with those who have lived experience of 'slavery' to inform the development of guides and resources to ensure they are built through the lens of lived experience.

It is recommended that the Commissioner's office be independent of Government, with the ability to report directly to Parliament, with their office supported by a team of experts and responsible for maintenance of compliance with the Act across Australia.

#### **Recommendation 7:**

##### **The new Anti-Slavery Commissioner should be:**

- **independent of Government**
- **empowered to implement and enforce the Act**
- **provided with an educative and support function to encourage good practice in identification, detection, and prevention of modern slavery**
- **empowered to receive and investigate complaints, and prosecute allegations of modern slavery**
- **facilitate information and support for victims of modern slavery**

## The national scheme should be properly resourced

One of the challenges with the current legislative approach is the lack of guidance material (including standardised set of indicators) to both inform completion of modern slavery statements and support effective action to combat practices that facilitate modern slavery practices.

While self-reporting statements are designed to drive continuous improvement and ensure that businesses examine their processes and their supply chains, clear guidelines, and steps as to how to do this are needed. Reporting entities need Government guidance as to what good practice should look like for their business or industry. Guidelines and toolkits (including screening tools) would help businesses to ask more questions about the risks of modern slavery and labour rights abuses in businesses and their supply chains.

A first step could be to establish a standardised set of indicators to report on, so that reporting is consistent across industries.<sup>7</sup> Without standardised reporting, it is difficult to adequately compare practices and effectiveness, or improvements over time as progress is made in addressing and combating modern slavery practices.

Further, best practice guidance and screening toolkits would enable smaller businesses with fewer available resources to complete more robust and thorough reviews of their processes and practices.

<sup>7</sup> Bloomfield, M. & LeBaron G. (2018). 'The UK Modern Slavery Act: Transparency through Disclosure in Global Governance'. E-International Relations (<https://www.e-ir.info/2018/09/21/the-uk-modern-slavery-act-transparency-through-disclosure-in-global-governance/>)

**Recommendation 8:**

**That Australian Government commit to developing a range of guidance material including screening tools and toolkits to support compliance with the *Modern Slavery Act 2018 (Cth)*.**

We would welcome the opportunity to explore these ideas with you in further detail. Should you require further information about any issues raised in the submission, please do not hesitate to contact Kathryn Mandla, Head of Advocacy and Research at **yourtown** via email at [kmandla@yourtown.com.au](mailto:kmandla@yourtown.com.au).