



Australian
Human Rights
Commission

Tackling technology-facilitated modern slavery at the international level

Australian Human Rights Commission

Submission to the Special Rapporteur on contemporary forms of
slavery, including its causes and consequences

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1 Introduction

1. The Australian Human Rights Commission (Commission) welcomes the opportunity to make this submission to the Special Rapporteur on contemporary forms of slavery, including its causes and consequences (Special Rapporteur).
2. In this submission the Commission addresses questions 2, 6 and 7, and welcomes further opportunities to provide submissions to the Special Rapporteur.

2 Question 2

Are there examples of positive measures (legislative, administrative, institutional and others) taken by your Government to prevent modern technology from being used to facilitate contemporary forms of slavery? If so, please provide details.

3. The Australian government has taken positive measures to prevent technology-facilitated slavery. However, the Commission considers that more can be done to directly counter the misuse of technology in respect of slavery.

2.1 Attorney-General's Department's Targeted Review of Divisions 270 and 271 of the Criminal Code

4. In 2022, the Australian Attorney-General's Department (AGD) launched a [targeted review of Divisions 270 and 271 of the Criminal Code Act 1995 \(Cth\)](#) (Targeted Review). Divisions 270 and 271 of the federal *Criminal Code Act 1995 (Cth)* (Code) cover the criminal law response to offences for human trafficking, slavery and slavery-like practices (among others).
5. Question 4 of the Targeted Review specifically asked stakeholders:

Are Divisions 270 and 271 appropriately future-proof and flexible enough to apply to the misuse of new and emerging forms of technology and online conduct? If not, why not, and are specific changes to Divisions 270 and 271 recommended?
6. The Commission responded to this question highlighting the need for criminal legislation, regulatory bodies and a criminal justice system which was better equipped to deal with the risks posed by technology. The Commission submission can be found [here](#), with its response to question 4 found at pages 5–9.

7. Proactive reviews of criminal legislation – and the supporting criminal justice system – in respect of technology, are a welcome and necessary step. Technology evolves at a rapid pace, often faster than legislators can keep up with. Accordingly, such reviews have a positive impact in combating technology-facilitated slavery.

2.2 e-Safety Commissioner

8. In 2015, the Australian government established the e-Safety Commissioner which, in addition to its regulatory functions, seeks to broadly empower ‘all Australians to have safer, more positive online experiences’.¹
9. The e-Safety Commission is Australia’s independent regulator for online safety and is the world’s first government agency dedicated to keeping people safer online.² The e-Safety Commission fosters online safety by exercising its powers under Australian government legislation, primarily the *Online Safety Act 2021 (Cth)*. The *Online Safety Act 2021 (Cth)* gives the e-Safety Commission substantial powers to protect all Australians across most online platforms and forums where people can experience abuse or be exposed to harmful content.³
10. The *Online Safety Act 2021 (Cth)* allows the e-Safety Commission to quickly protect victims of online abuse across reporting schemes.⁴ The e-Safety Commission also has the authority to compel online service providers to remove seriously harmful content within 24 hours of receiving a formal notice.⁵
11. The e-Safety Commission also works with the tech industry to develop codes to guide online service providers on how to comply with their obligations under the *Online Safety Act 2021 (Cth)*.
12. The e-Safety Commission does not have specific powers or responsibilities in preventing modern slavery, or policing how technology may be used to facilitate slavery. However, it does play a key role in raising awareness to risks online – including guidance to young people on topics such as ‘cat fishing’⁶ and unsafe or unwanted contact,⁷ both of which may be tactics used by criminal enterprises online to facilitate slavery.
13. The e-Safety Commission also works to support various law reforms such as the Restricted Access System, to reduce the sexual exploitation of women, and continues to promote legal avenues of mitigating the risk technology plays in this area.⁸
14. The creation and funding of such bodies is essential in informing of the risks of technology-facilitated slavery posed in online environments and in assisting to mitigate these risks by creating safe online environments.

2.3 National Action Plan to Combat Human Trafficking and Slavery

15. The Australian government launched a [National Action Plan to Combat Human Trafficking and Slavery 2020-25](#) (Plan) in 2015. The Plan includes a range of measures to prevent and combat slavery, including how to prevent technology-facilitated slavery.

16. The Plan notes that the rapid pace of technological advancement and social media interconnectedness have provided criminal enterprises with new avenues to target, recruit and exploit victims online:

Technology can increase the scale and speed with which modern slavery crimes are committed. Technology also reduces the risk to perpetrators, with less face-to-face contact with victims providing them anonymity and making investigation of crimes more difficult.⁹

17. The 2020–2025 Plan notes that the use of technology in this area is a key concern moving forward, and emphasises that further action must be taken to combat such technological misuse.¹⁰

18. However, the Plan does little to address the specific risks of technology-facilitated slavery, which plays a significant role in modern slavery.

2.4 Australia's International Engagement Strategy

19. [Australia's International Engagement Strategy on Human Trafficking and Modern Slavery: Delivering in Partnership](#) (Strategy) makes specific reference to technology and provides a number of commitments to prevent technology-facilitated slavery.

20. The Strategy provides a framework for the Australian government to work with foreign counterparts, businesses, and civil society to increase awareness of, and help end, the human rights abuses of human trafficking, forced labour and forced marriage.¹¹

21. Although there are numerous commitments made throughout the Strategy, of particular note are the commitments to:

- advocate for digital industry to endorse, proactively implement and transparently report against the Voluntary Principles to Counter Online Child Sexual Exploitation and Abuse¹²
- continue to engage businesses to exchange information on trends, risks, emerging technology and global best practice to eliminate forced labour.¹³

3 Question 6

What are remaining challenges in preventing modern technology from being used to facilitate contemporary forms of slavery?

22. While there are positive actions being taken to prevent technology from facilitating modern slavery, there are remaining challenges.

3.1 Inadequate legal frameworks

23. Laws must apply effectively to new and emerging forms of technology.

However, existing laws and regulations across jurisdictions inadequately regulate or apply to new and emerging technologies,¹⁴ for example where the laws or regulations are not 'technology neutral'. 'Technology neutral' drafting ensures that developments in technology cannot evade coverage merely by virtue of their novelty, and similarly reduces the need to consistently update legislation to cover technological advancements.

24. Technology evolves at a rapid pace, and early adopters of new and emerging technologies are often the beneficiaries of insufficient governmental scrutiny and policing. Criminal enterprise has capitalised on this 'opportunity' to commit crimes while avoiding detection.

25. For example, modern forms of slavery facilitated through the internet, are being conducted by criminal enterprises operating with a high level of sophistication. Technology is allowing criminal groups both to avoid detection and maximise profits. Smartphones, social media, encrypted communications and the dark web are all being used to buy, sell and exploit victims.¹⁵

26. While criminal enterprises adopt technology quickly, new laws and regulations are much slower to be introduced – often introduced retrospectively in a 'knee-jerk' response. Those responsible for both drafting laws, and enforcing them, need current knowledge of how technology is being used to facilitate slavery. This allows laws to be appropriately determined and drafted in future.

27. Given the fast-paced adoption of new and emerging technologies by criminal enterprises, the agencies responsible for policing, investigating and prosecuting such groups must have sufficient capabilities. Such capabilities must be matched with the technological advancements of the criminals they seek to bring to justice.¹⁶

3.2 Cross-border nature

28. While organised criminal groups engaging in slavery may operate at the local or national level, the activities of criminal groups can be transnational in scope.¹⁷
29. Technology has enabled greater cross-border exploitation as criminals may operate in multiple jurisdictions simultaneously, and while a single victim may be physically located in one place, their exploitation often extends far beyond that single location. For example this could include circumstances where a victim may be physically located, and exploited, in one country - but that exploitation is live streamed globally.
30. This significantly increases the difficulties in investigating and collecting evidence, as international efforts and cooperation are fundamental in tackling criminal enterprise which is borderless.
31. Where there is insufficient law or regulations in one jurisdiction, this may also create safe havens for criminal enterprise to conduct illicit activities – creating gaps in the legal and regulatory framework.

3.3 Tackling slavery without risking the right to privacy

32. To prevent technology-facilitated slavery, one effective method is to access and monitor user data. With greater monitoring of online data, comes a greater ability of regulatory bodies to investigate, police and bring to justice criminal enterprises.
33. However, accessing user data intrudes significantly on the human right to privacy. This fundamental human right is enshrined in art 12 of the *Universal Declaration of Human Rights*¹⁸ and art 17 of the *International Covenant on Civil and Political Rights*.¹⁹ It is also a cornerstone right which supports other rights such as freedom of association, thought and expression.
34. Any use of data and personal information to combat modern slavery must not exceed the ambit of investigations. Such investigations must be highly targeted and conducted in a proportionate manner which respects the right to privacy.
35. There are also additional issues in accessing user data from third parties. A significant amount of technology now runs through cloud and remote server-based web environments. This creates the need for investigators to gather evidence from third-party providers, which adds another level of complexity to the collection of evidence.
36. Investigatory bodies must ensure a robust relationship with private organisations to ensure that they can combat modern slavery online while

still having regard for the right to privacy and other fundamental human rights.

4 Question 7

What practical recommendations would you propose for Governments and technology companies to overcome these challenges?

37. The Commission makes the following recommendations.

Recommendation 1

Countries should regularly engage in consultative reviews of the legislation which regulates modern slavery. This will ensure countries can respond to how new and emerging technologies are used in facilitating slavery.

Recommendation 2

Countries should establish independent statutory bodies to advance online safety and advocate for safer digital environments. Such bodies must also be appropriately funded.

Recommendation 3

All countries should have a national action plan to combat modern slavery. Such action plans must contain concrete steps to combat technology-facilitated slavery.

Recommendation 4

Legislation and regulation aimed at targeting contemporary forms of slavery should be framed in a 'technology neutral' manner.

Recommendation 5

Sufficient training and information regarding the interplay between technological developments and how it might facilitate slavery should be provided to all those involved in legislating, investigating and prosecuting modern slavery offences.

Recommendation 6

Legislation targeting modern slavery should be consistent across jurisdictions in respect of policing and punishment.

Recommendation 7

The agencies involved in policing and prosecuting must develop a human rights framework to guide responses to technology-facilitated slavery to ensure that all human rights are appropriately recognised and protected.

Endnotes

- ¹ E-Safety Commissioner, 'About us' (Web Page) <<https://www.esafety.gov.au/about-us>>.
- ² E-Safety Commissioner, 'Who are we' (Web Page) <<https://www.esafety.gov.au/about-us/who-we-are>>.
- ³ E-Safety Commissioner, 'Our legislative function' (Web Page) <<https://www.esafety.gov.au/about-us/who-we-are/our-legislative-functions>>.
- ⁴ See e.g. *Online Safety Act 2021* (Cth) ss 27-28.
- ⁵ See generally *Online Safety Act 2021* (Cth) pt 6 div 3 & s 66.
- ⁶ E-Safety Commissioner, 'Catfishing' (Web Page) <<https://www.esafety.gov.au/young-people/catfishing>>.
- ⁷ E-Safety Commissioner, 'Unwanted Contact' (Web Page) <<https://www.esafety.gov.au/young-people/unwanted-contact-signs>>.
- ⁸ E-Safety Commissioner, 'Submission on the Draft Restricted Access Systems Declaration 2021' (November 2021, Submission) <<https://www.esafety.gov.au/sites/default/files/2022-03/Collective%20Shout%20RAS%20Submission%20%28November%202021%29.pdf>> 13.
- ⁹ Australian Government, 'National Action Plan to Combat Modern Slavery 2020-25' (Commonwealth Government of Australia, 2020) <<https://www.homeaffairs.gov.au/criminal-justice/files/nap-combat-modern-slavery-2020-25.pdf>> 12.
- ¹⁰ Australian Government, 'National Action Plan to Combat Modern Slavery 2020-25' (Commonwealth Government of Australia, 2020) <<https://www.homeaffairs.gov.au/criminal-justice/files/nap-combat-modern-slavery-2020-25.pdf>> 12.
- ¹¹ Australian Government, 'Australia's international engagement strategy on human trafficking and modern slavery: Delivering in partnership' (Commonwealth Government of Australia, 2022) <<https://www.dfat.gov.au/sites/default/files/dfat-international-strategy-human-trafficking-modern-slavery-2022.pdf>>.
- ¹² Australian Government, 'Australia's international engagement strategy on human trafficking and modern slavery: Delivering in partnership' (Commonwealth Government of Australia, 2022) <<https://www.dfat.gov.au/sites/default/files/dfat-international-strategy-human-trafficking-modern-slavery-2022.pdf>> 51.
- ¹³ Australian Government, 'Australia's international engagement strategy on human trafficking and modern slavery: Delivering in partnership' (Commonwealth Government of Australia, 2022) <<https://www.dfat.gov.au/sites/default/files/dfat-international-strategy-human-trafficking-modern-slavery-2022.pdf>> 52.
- ¹⁴ Steven Malby, Tejal Jesrani, Tania Bañuelos, Anika Holterhof, Magdalena Hahn, *Study on the Effects of New Information Technologies on the Abuse and Exploitation of Children* (United Nations Office on Drugs and Crime, 2015) 55.
- ¹⁵ United Nations General Assembly, 'A/76/170: Role of Organized Criminal Groups with Regard to Contemporary Forms of Slavery' (Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, United Nations Office on Drugs and Crime ('UNODC'), 24 January 2022) 6.
- ¹⁶ UNODC, 'Global Report on Trafficking in Persons' (Report, 15 January 2020) 18.
- ¹⁷ United Nations General Assembly, 'A/76/170: Role of Organized Criminal Groups with Regard to Contemporary Forms of Slavery' (Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, UNODC, 24 January 2022) 4.
- ¹⁸ *Universal Declaration of Human Rights* art 12.
- ¹⁹ *International Covenant on Civil and Political Rights* art 17.