

2023

**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

MODERN SLAVERY LEGISLATION AMENDMENT BILL 2023

EXPLANATORY STATEMENT

**Presented by
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Modern Slavery Legislation Amendment Bill 2023

This explanatory statement relates to the Modern Slavery Legislation Amendment Bill 2023 (the Bill) as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly.

The Statement must be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill. What is said about a provision is not to be taken as an authoritative guide to the meaning of a provision, this being a task for the courts.

Overview of the Bill

The Bill helps bring ACT legislation closer in line with New South Wales legislation. It also incorporates the Commonwealth system of Modern Slavery Statements. It is drafted in such a way that it will harmonise with the Commonwealth system, which is currently under review and may change shortly. Using the tools we can access at the local level it addresses the global issue of Modern Slavery which is estimated to affect 50 million people worldwide.

There are three main areas of new regulation introduced by the Bill.

1) Territory entities to submit Commonwealth modern slavery statements

Territory entities will be required to submit their own voluntary Commonwealth modern slavery statements. This will ensure that Territory entities consider the risk of modern slavery in their own supply chains.

This is consistent with New South Wales legislation, which requires each government entity to submit their own modern slavery statement. It ensures that each agency consider and learn about modern slavery as it applies to their operations. It is better practice than Commonwealth legislation, which only requires a single whole-of-service joint statement that is so broad and general it does little to educate individual agencies about their risks. It is preferable to require Territory entities to opt-in to the existing Commonwealth system rather than duplicating it in the ACT, as this ensures the ACT will be automatically updated and harmonised with Commonwealth systems and practices.

2) Territory entities to consider modern slavery in procurement

Territory entities will need to consider modern slavery in their procurements. This will ensure that the risk of modern slavery in ACT Government procurements is considered for contracts over the \$25,000 threshold.

Tenderers will need to submit statements about how they will reduce the risks of modern slavery in their provision of goods or services to the Territory and explain specifically what steps they have taken to eliminate modern slavery in their supply chains. Tenderers will need to keep up-to-date with their mandatory Modern Slavery Statements if they are within the category of those who must report under the Commonwealth legislation. For tenderers who are not required to report under Commonwealth legislation, the Bill only requires them to submit a tender specific statement and not a Commonwealth Modern Slavery Statement.

3) Anti-Slavery Commissioner established

A new Anti-Slavery Commissioner will be established as an extension to the ACT Human Rights Commission. This Anti-Slavery Commissioner will monitor compliance by ACT Government entities and in ACT Government procurement, refer suspected modern slavery to relevant agencies and provide advice and education about how to combat modern slavery.

The Bill's Anti-Slavery Commissioner is similar to the New South Wales Anti-Slavery Commissioner. Independence in this role is essential, which is why this role is not located in the public service. However, given the ACT's smaller size, our need for efficiency and our established practice of co-locating regulatory roles, the Bill establishes the new Commissioner within our established Human Rights Commission rather than establishing a new independent regulator. It is anticipated that any new regulatory role will come with new resources and it is noted that the recently established role of Children and Young Person's Commissioner came with an allocation of 4 new FTE. However, as it this is a budget and administrative decision rather than a legislative one, it is not covered in the Bill.

Educative and iterative approach

The Bill raises community awareness of modern slavery, including awareness by government and business, particularly in supply chains.

The Bill takes an educative and iterative approach rather than an enforcement-led approach. This is designed to ensure that all businesses and entities have time to learn how to comply and to ensure there are no unintended disincentives for a business who may unwittingly discover modern slavery in their supply chain due to increased diligence. Penalties in the ACT Bill are lower than in the 2018 New South Wales Bill, with the Bill only introducing one new penalty around refusing requests by the Commissioner for information. This is an intentional choice, as this area of policy is new in the Australian context and our goal in the first few years will be education and collaborative improvement. The Anti-Slavery Commissioner will determine the efficacy of the laws and can make recommendations to scale up penalties in future should this be required.

Stakeholder consultation

The Bill was developed in consultation with academics, advocates, non-government organisations, religious groups, New South Wales Parliamentarians involved in the New South Wales Bill, individuals involved in the New South Wales interim commission, the ACT Auditor-General, the ACT Human Rights Commissioner, the ACT Discrimination Commissioner and the ACT Victims of Crime Commissioner.

The Bill has not had consultation with the general public. It is expected that this consultation will occur through the Legislative Assembly committee process. This will ensure that members of the public are not asked to input multiple times into multiple drafts, given that feedback on many Government consultations at the moment are indicating a level of community fatigue.

Consistency with Human Rights

During the development of the Bill, due regard was given to its interaction with human rights as set out in the *Human Rights Act 2004* (the HRA). The Bill engages and supports the right to freedom of movement and the right to freedom from forced work. The Bill does not limit any human rights.

CLAUSE NOTES

Clause 1 - Name of Act

This clause names the Act as the *Modern Slavery Legislation Amendment Act 2023*.

Clause 2 - Commencement

This clause provides that the Act will commence 12 months after its notification day.

Clause 3 - Legislation amended

This clause provides that the Bill amends:

- *Annual Reports (Government Agencies) Act 2004*
- *Auditor-General Act 1996*
- *Human Rights Act 2004*
- *Human Rights Commission Act 2005*
- *Government Procurement Act 2001*
- *Legislation Act 2001*.

Clause - 4 Public sector body annual report

This clause adds the Anti-Slavery Commissioner to the existing list of public sector bodies which must prepare an annual report. This would reasonably form part of the Human Rights Commission's existing Annual Report.

Clause 5 – Annual report direction new section 8 (3A)

This clause inserts a new section which expands on the requirements of the annual report direction by requiring ACT Government entities to publish information about the entity's work on modern slavery.

Clause 6 – New section 8 (6)

This clause inserts a new section which inserts a definition of Modern Slavery with reference to the *Modern Slavery Act 2018* (Cwlth), section 4 (Definitions).

Clauses 7 and 8 - Auditor-General Act 1996

This part of the Bill amends Part 3 of the *Auditor-General Act 1996*. Clause 7 retains the Auditor-General's existing ability to consider environmental issues when conducting performance audits and adds a new category to consider the risk of modern slavery in a performance audit. Clause 8 makes consequential amendments to the Dictionary.

Clauses 9, 10 and 11 - Government Procurement Act 2001

This part of the Bill amends Part 2 of the *Government Procurement Act 2001* by putting obligations upon the ACT Government and those wishing to tender to the ACT Government regarding Modern Slavery reporting.

Clause 9 ensures that Territory-owned corporations like Icon Water are included as well as ACT Government directorates.

Clause 10 adds modern slavery to the existing list of matters that must be considered in ACT Government Procurement, such as probity and ethical behaviour and the management of risk.

Clauses 11 and 12 makes consequential definitional amendments.

Clause 13 - part 2C

This clause inserts a new part 2C to section 22 detailing Modern Slavery Statements within the context of tendering to territory entities.

New section 22ZE excludes tenderers that are required to report under the Commonwealth Modern Slavery Act, but have failed to do so. This means that if someone wishes to tender to the ACT Government, they must comply and remain up-to-date with the Commonwealth reporting system if it applies to them. Those who want an ACT Government contract over the \$25,000 threshold must lodge a Modern Slavery report to the territory that sets out the risks of modern slavery in their supply chain and the steps they have taken to mitigate these risks.

The Bill sets out exemptions to this. The requirement does not apply to procurement by a territory entity with the Commonwealth or a State, or an entity of the Commonwealth or a State. The chief executive officer of a territory entity may also

issue a written exemption if satisfied that the only suitable tenderer is an excluded tenderer and must report to the Anti-Slavery Commissioner if they issue such an exemption.

The Bill does not apply to procurements under the \$25,000 procurement threshold for reasons of practicality.

Clauses 14 and 15 - Dictionary

These clauses insert consequential definitional amendments.

Clause 16 and 17 – New part 5B

Part 5 of the Bill amends Part 5 of the *Human Rights Act 2004* which establishes the requirement that Administrative units and territory entities must make modern slavery statements. It also makes consequential amendments to the Dictionary. They do so by requiring administrative units and entities to opt-in to the Commonwealth reporting system, publish their statement on a website and tell the Anti-Slavery Commissioner.

Clauses 18, 19, 20 and 21 - Part 6 *Human Rights Commission Act 2005*

These clauses amend Part 2, Part 3 and Part 4 of the *Human Rights Commission Act 2005* to establish the role of the Anti-Slavery Commissioner as a member of the Human Rights Commission. The new Anti-Slavery Commissioner's primary functions are set out as advocacy, community and government education, monitoring and reporting.

The Anti-Slavery Commissioner may publish advice and guidance about how to prevent and identify modern slavery and they may advise government entities. They may also report on the effectiveness of the legislation and procurement system in combatting modern slavery. Where they suspect on reasonable grounds that someone is at risk of modern slavery, they may refer this to a statutory officeholder.

The Anti-Slavery Commissioner must maintain a register of non-compliance and exemptions granted. They must also prepare an annual report summarising their activities which will form part of the Human Rights Commission Annual Report.

The Anti-Slavery Commissioner is given the power to ask for information and require documents or evidence. This is the only new infringement as part of this bill and is considered important for the ability of the Commissioner to reasonably undertake their role.

It is expected that the role of the Anti-Slavery Commissioner could either be a new person or a person who is already a member of the Human Rights Commission. It is also expected that this new role will require additional FTE resources. These are matters for the Administrative Arrangements and the Budget and so are not covered in the Bill.

Clause 22 – New section 122

These sections require the Minister to conduct a review within 3 years of commencement of the operation of the new regulatory system to assess its effectiveness in combating modern slavery.

Clauses 23 – 27

These sections make consequential and definitional amendments.

Clause 28

This section makes consequential and definitional amendments.