



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON PUBLIC ACCOUNTS

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Submission Cover Sheet

Inquiry into the Modern Slavery Legislation Amendment Bill 2023

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Member for Murrumbidgee

Mrs Elizabeth Kikkert MLA
Chair
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Dear Mrs Kikkert

Thank you for the opportunity to make a submission to the Committee's Inquiry into the Modern Slavery Legislation Amendment Bill 2023.

I write to provide the Committee with information on the current work being undertaken by the ACT Government to address and abate modern slavery as well as considerations associated with the proposed Modern Slavery Legislation Amendment Bill 2023.

The ACT Government is committed to ensuring ACT legislation can identify and effectively respond to modern day slavery in accordance with our commitment in the Parliamentary and Governing Agreement and supports the intent of the Bill.

Procurement Reform Program

Each year the ACT Government spends close to \$1.5 billion on procurements that support the delivery of quality public services, infrastructure, economic growth, and community wellbeing.

On 1 July 2022, the ACT Government commenced implementation of the Procurement Reform Program (the Program) which sets a pathway to deliver procurement outcomes with a strong focus on transparency, support and streamlining, and the program will provide clearer opportunities for industry and local businesses to work with the ACT Government. A high level overview of the procurement reform program can be found on the [Procurement ACT website](#). Undertaking this reform work is the ACT Government's priority for procurement policy.

As a part of the Program a review of the *Government Procurement Act 2001* and *Government Procurement Regulation 2007* has been undertaken to identify opportunities to streamline and

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enhance our legislative framework. Opportunities to streamline or improve our legislative framework are still under consideration and will be progressed in accordance with the identified milestones under the Program.

Existing procurement Initiatives

Whilst the procurement reform program is the ACT Government's focus, addressing the risks of modern slavery through procurement remained a key area of work for the ACT Government.

In 2021, the Territory undertook a procurement to establish a Territory Uniforms Supplier Panel to support uniforms purchases across six Territory entities. In recognition of the risks of modern slavery in the garments and textiles industry the procurement approach to market included requirements for sound ethical commercial practices and (where possible) third party certification for ethical Goods. Tenderers were required to demonstrate ethical sourcing; policies to respond to modern slavery; and visibility/review of their supply chain. The establishment of the Panel has also included the requirement for there to be quarterly Modern Slavery and ethical Goods practice reporting associated with each purchase from the Panel.

The Government Procurement (Charter of Procurement Values) Direction 2020 established the ACT Government's commitment to creating fair and safe conditions for workers and ensuring that all ACT Government Procurement is transparent and ethical. To support this, Procurement ACT in accordance with guidance from the Commonwealth has developed a Guide to Addressing Modern Slavery in Public Sector Procurement (the Guide). The Guide aims to increase transparency, provide important support and guidance as well as paving the way for continued improvement in addressing these risks.

In addition to supporting ACT Government buyers to understand and identify risks in their supply chains the Guide provides practical tools to mitigate risks of modern slavery during all phases of the procurement lifecycle. The Guide is undergoing user acceptance testing and is expected to be in effect from 1 July 2023.

Proposed legislative approach in the Bill

Whilst the current legislative framework and the development of the Guide support the ACT Government's efforts to abate modern slavery through procurement, any potential for legislative changes will need to be considered in the context of the existing reviews under the Procurement Reform Program, current legislative provisions and other relevant actions such as:

- the Secure Local Jobs Code (SLJC) which seeks to ensure that the ACT Government only engages with businesses that are meeting their workplace standards and obligations.
- the Ethical Treatment of Workers Evaluation (ETWE) which ensures that businesses working with the ACT Government align their behaviour and business practices with the Fair and Safe Conditions for Workers Procurement Value; and
- the work being led by the Better Regulation Taskforce to measure and understand the costs to business in engaging with the ACT Government through the procurement process.

The Government will need to further time to consider whether the mechanism of primary legislation to address modern slavery is preferred over subordinate legislation. For example, the ACT

Government could consider modern slavery as part of the Ethical Treatment of Workers Evaluation undertaken at the first stage of the ACT Government's two-stage procurement process.

The Ethical Treatment of Workers Evaluation is a requirement of the ACT Government that ensures suppliers align their behaviour and business practices with the Fair and Safe Conditions for Workers Procurement Value.

This evaluation is conducted through the Government Procurement (Ethical Treatment of Workers Evaluation) Direction 2021 which is subordinate legislation. Tenders are assessed based on the Fair and Safe Employment Criteria, which includes:

- compliance with the Secure Local Jobs Code,
- prescribed legislation, and
- potential negative effects on the Territory's reputation.

This mechanism already provides a gate and ensures that non-compliant potential tenderers can't proceed for consideration in the procurement process.

Further consideration will be given as to whether a threshold ETWE assessment for modern slavery practices could better achieve the objective of the Bill whilst supporting an efficient procurement process.

Human rights protections relating to modern slavery in the ACT

The *Human Rights Act 2004* protects a range of fundamental human rights drawn from the International Covenant on Civil and Political Rights and the International Covenant on Economic Social and Cultural Rights.

Section 26 of the Human Rights Act enshrines the right to freedom from forced work, including from being held in slavery and servitude. The right is absolute under international law which means that it can never be subject to permissible limitations.

In 2022, the ACT Government committed to establish a new, accessible pathway for community members to raise complaints about breaches of human rights by public authorities. The establishment of this new complaints pathway is part of the ACT Government's commitment to continuing to strengthen our culture of human rights across government and the broader community.

Once in place, the new complaints pathway will provide an accessible avenue for all ACT residents to raise concerns about breaches of human rights and enter into confidential conciliation with public authorities, facilitated by the Human Rights Commission which has relevant expertise in these matters.

In addition to enshrining fundamental human rights, the Human Rights Act sets out a framework for protecting and promoting human rights in the Territory. This is based on the dialogue-model of rights protection, creating a dialogue between the legislature, executive and judiciary. The Act also imposes obligations on all public authorities to act consistently with human rights.

While the proposed requirement for modern slavery statements in the Modern Slavery Legislation Amendment Bill aims to promote human rights, it is separate to the model for protections

established by the Human Rights Act. Given this, if such a requirement were to be introduced in the ACT, it may be more appropriately included elsewhere in the ACT statute book.

ACT Human Rights Commission

The Bill proposes the introduction of an Anti-Slavery Commissioner within the ACT Human Rights Commission. Introducing a new Commissioner will have resource implications for the Commission, as the new function would require an increase in staffing and resources required for community education. These resourcing implications would need to be very carefully considered in the context of a range of competing fiscal demands for the provision of government services and infrastructure.

The creation of a new Commissioner role to respond to the specific issue of modern slavery may also create some overlap and confusion regarding complaints handling processes within the Commission, which are currently considered by a single Commissioner (the Discrimination, Health Services, Disability and Community Services Commissioner), particularly once the human rights complaint jurisdiction comes into effect and will allow complaints to be made about the right to freedom from forced work, and the ACT Government will need to carefully consider these implications.

One of the questions that will need to be further considered is whether the role of a commissioner, or their functions, are better placed within an existing part of the government other than the Human Rights Commission. Placement of the role in an area, or co-appointed with a role, that has like functions may present opportunities to draw on existing resources and expertise to perform the anti-slavery function. One of these like roles which could be considered is the Secure Local Jobs Code Registrar. Similarly, the Secure Local Jobs Code Branch evaluates Secure Local Jobs Code compliance, which could be extended to modern slavery requirements and contribute to the ETWE process.

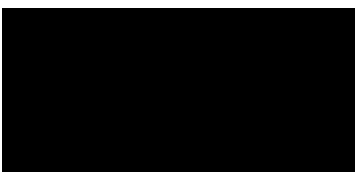
Annual Reporting

The ACT Government's current Annual Reporting requirements are collated and distributed by the Chief Minister via the Annual Report Directions, published annually.

Any requirement to collect information relating to responses to modern slavery would require additional resources and investment across the Territory and may require specialist capability to support each Territory entity to develop the requisite capability to inform reporting. These resource implications will continue to be considered further.

I trust this information will assist the Committee in its important work. I look forward to receiving the Committee's report and recommendations.

Yours sincerely



Chris Steel MLA
Special Minister of State