



**Legislative Assembly for the  
Australian Capital Territory**

Standing Committee on Public Accounts

# **Inquiry into Modern Slavery Legislation Amendment Bill 2023**

Legislative Assembly for the Australian Capital Territory  
Standing Committee on Public Accounts

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Approved for publication

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Report 18  
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# About the committee

## Establishing resolution

The Assembly established the Standing Committee on Public Accounts on 2 December 2020.

The Committee is responsible for the following areas:

- ACT Auditor-General
- Office of the Legislative Assembly
- Accounts of the receipts and expenditure of the ACT and its authorities
- All reports of the Auditor-General which have been presented to the Assembly
- Treasury including taxation and revenue

You can read the full establishing resolution [on our website](#).

## Committee members

Mrs Elizabeth Kikkert MLA, Chair

Mr Michael Pettersson MLA, Deputy Chair

Mr Andrew Braddock MLA

## Secretariat

Ms Kathleen de Kleuver, A/g Senior Director

Ms Miona Ikeda, A/g Committee Secretary

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## About this inquiry

The Modern Slavery Legislation Amendment Bill 2023 was presented in the Assembly on 28 March 2023. It was then referred to the Standing Committee on Public Accounts (the Committee) as required by clause 5 of the establishing resolution. This clause allows committees to inquire into and report on bills within two months of their presentation.

On 5 April 2023, the Committee decided to inquire into the Bill. On 9 May 2023, the Chair of the Committee moved a motion in the Assembly requesting an extension to the reporting date. The extension was granted until 25 June 2023.

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# Acronyms and abbreviations

Acronym	Long form
ACT	Australian Capital Territory
ACRATH	Australian Catholic Religious Against the Trafficking of Humans
ACTCOSS	ACT Council of Social Service
A-G Act	<i>Auditor-General Act 1996</i>
Annual Reports Act	<i>Annual Reports (Government Agencies) Act 2004</i>
the Bill	Modern Slavery Legislation Amendment Bill 2023
Commonwealth Act	<i>Modern Slavery Act 2018</i> (Cth)
Cth	Commonwealth
ETWE	Ethical Treatment of Workers Evaluation
the Guide	Guide to Addressing Modern Slavery
HRA	<i>Human Rights Act 2004</i>
ILO	International Labour Organisation
McMillan Review	Review of Australia's Modern Slavery Act 2018
MLA	Member of the Legislative Assembly
NSW	New South Wales
NSW Act	<i>Modern Slavery Act 2018</i> (NSW)
the Program	Procurement Reform Program
SC	Statutes of Canada
Scrutiny Committee	Standing Committee on Justice and Community Safety (Legislative Scrutiny)
SLJC	Secure Local Jobs Code
UK	United Kingdom of Great Britain and Northern Ireland
UNGPs	United Nations Guiding Principles on Business and Human Rights

## Legislation terminology

Bills contains 'clauses', 'subclauses', 'paragraphs' and 'subparagraphs'. In footnotes these are abbreviated to 'cl' (singular) or 'cls' (plural), 'subcl', 'para', and 'subpara'.

The Bill and this report also refer to Acts of the ACT Legislative Assembly (as well as Acts of the Parliaments of the Commonwealth and New South Wales). Acts contain 'sections' and subsections'. In footnotes these are referred to as 's' (singular) or 'ss' (plural) and 'sub' (singular) or 'subs' (plural).

# Recommendations

## Recommendation 1

The Committee recommends that the ACT Government consider the evidence provided to the Committee's inquiry as part of its review of the ACT procurement framework to ensure that the prevention of modern slavery is a factor in ACT Government procurement decisions.

## Recommendation 2

The Committee recommends that the ACT Government establish a collaborative oversight body formed with agencies such as WorkSafe ACT, ACT Policing, Child and Youth Protective Services, Legal Aid ACT and the ACT Government Procurement Board for prevention of modern slavery in the ACT.

## Recommendation 3

The Committee recommends that the ACT Government put in place a process to implement measures to prevent modern slavery in the ACT that are:

- Informed by the recommendations provided by the NSW Anti-Slavery Commissioner for modern slavery as outlined in his evidence;
- Informed by the Commonwealth Government's approach as outlined in its response to the Statutory Review of the Modern Slavery Act Report (issued 25 May 2023) when this becomes available with a view to seeking harmonisation where appropriate; and
- Supported by adequate funding.

## Recommendation 4

The Committee recommends the Assembly does not pass the Modern Slavery Legislation Amendment Bill 2023 in its current form.



# 1. Introduction

## Background to the Bill

- 1.1. Slavery in Australia has existed in various forms from colonisation in 1788 to the present day. The anti-slavery campaign started in the early 1860s to criminalise chattel slavery and other forms of slavery – such as forced labour, human trafficking, debt bondage, involuntary prostitution, and forced marriage.<sup>1</sup>
- 1.2. Modern slavery is a largely hidden crime as victims are often unwilling to come forward to law enforcement or public protection agencies, do not see themselves as victims, or they fear further reprisals from their abusers. The International Labour Organisation (ILO) estimates that worldwide, 49.6 million people are living in modern slavery.<sup>2</sup>
- 1.3. Two countries, the United Kingdom (UK) and Australia, have taken the path of enacting a law, called the Modern Slavery Act.
- 1.4. In May 2023, the Canadian Parliament passed the *Fighting Against Forced Labour and Child Labour in Supply Chains Act*.<sup>3</sup> This Act, which will commence on 1 January 2024, imposes reporting obligations on Canadian Government institutions producing, purchasing, or distributing goods in Canada or elsewhere, as well as particular business entities producing goods in Canada or elsewhere or importing goods produced outside Canada.<sup>4</sup>
- 1.5. To combat modern slavery in its country, the Parliament of the United Kingdom passed the *Modern Slavery Act 2015* (UK).<sup>5</sup> Section 40 of the Act requires establishment of an Independent Anti-Slavery Commissioner to encourage good practice on prevention of modern slavery offences and identification of victims.<sup>6</sup>
- 1.6. Australia's *Modern Slavery Act 2018* (Cth) ('Commonwealth Act') came into force on 1 January 2019. Modelled on key aspects of the UK Legislation, the Commonwealth Act requires certain entities to report on the risks of modern slavery in their operations and supply chains and actions to address those risks.<sup>7</sup>
- 1.7. The *Modern Slavery Act 2018* (NSW) ('NSW Act') came into effect in 2022 following amendments in 2021. The NSW Act creates a new, independent statutory office – the role

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<sup>1</sup> Commonwealth of Australia, *Review of Australia's Modern Slavery Act 2018 – Issues Paper*, [https://consultations.ag.gov.au/crime/modern-slavery-act-review/user\\_uploads/review-modern-slavery-act-issues-paper.pdf](https://consultations.ag.gov.au/crime/modern-slavery-act-review/user_uploads/review-modern-slavery-act-issues-paper.pdf) (accessed 2 June 2023), p 4.

<sup>2</sup> ACT Human Rights Commission, *Submission 11*, p 4.

<sup>3</sup> *Fighting Against Forced Labour and Child Labour in Supply Chains Act*, SC 2023, c 9.

<sup>4</sup> *Fighting Against Forced Labour and Child Labour in Supply Chains Act*, SC 2023, c 9, ss 5, 6, 9, 11, 28.

<sup>5</sup> *Modern Slavery Act 2015* (UK), c 30.

<sup>6</sup> *Modern Slavery Act 2015* (UK), c 30, s 40(1).

<sup>7</sup> Commonwealth of Australia, Report of the statutory review of the *Modern Slavery Act 2018* (Cth) – The first three years, <https://www.ag.gov.au/sites/default/files/2023-05/Report%20-%20Statutory%20Review%20of%20the%20Modern%20Slavery%20Act%202018.PDF> (accessed 2 June 2023), pp 8, 22, 23.

of Anti-Slavery Commissioner. The position of the NSW Anti-Slavery Commissioner is the first such role in Australia, and only the second in the world (after the UK).<sup>8</sup>

- 1.8. The Commonwealth Government has committed to establishing an independent office of the Anti-Slavery Commissioner.<sup>9</sup> To establish an independent Commonwealth Anti-Slavery Commissioner, a budget of \$2 million was announced in the Attorney-General's Portfolio Budget Statement 2023–2024.<sup>10</sup>
- 1.9. On 28 March 2023, Ms Jo Clay MLA introduced the Modern Slavery Legislation Amendment Bill 2023 ('the Bill') in the ACT Legislative Assembly. The Bill was introduced to bring ACT legislation closer in line with the NSW legislation and harmonise it with the Commonwealth system.<sup>11</sup>
- 1.10. Ms Jo Clay MLA outlined the purpose of the Bill in her submission:

This bill would ensure the ACT has an anti-Slavery Commissioner to combat modern slavery occurring within our borders. It would also ensure [sic] introduce steps to ensure ACT Government supply chains do not rely on modern slavery elsewhere. It is designed to work in easily with the existing Commonwealth legislation and to make use of existing administrative and operational structures at the Human Rights Commission.<sup>12</sup>

- 1.11. The purpose of the Bill includes that:
  - Territory entities would be required to submit their own voluntary Commonwealth modern slavery statements;
  - Territory entities would need to consider modern slavery in their procurements; and
  - A new Anti-Slavery Commissioner would be established as an extension to the ACT Human Rights Commission.

## Conduct of the inquiry

- 1.12. The Committee called for submissions on 6 April 2023, which closed on 22 May 2023. A total of 11 submissions were received by the Committee. A list of all the submissions received is provided at [Appendix A](#).
- 1.13. The Committee held a public hearing on 14 June 2023 and heard from 8 witnesses. A list of witnesses who appeared before the Committee is provided at [Appendix B](#).

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<sup>8</sup> Dr James Cockayne, NSW Anti-Slavery Commissioner, *Submission 9 (Executive Summary)*, p 1.

<sup>9</sup> Commonwealth of Australia, Report of the statutory review of the *Modern Slavery Act 2018* (Cth) – The first three years, <https://www.ag.gov.au/sites/default/files/2023-05/Report%20-%20Statutory%20Review%20of%20the%20Modern%20Slavery%20Act%202018.PDF> (accessed 2 June 2023), p 104.

<sup>10</sup> Attorney-General's Department, *Entity resources and planned performance*, [Portfolio Budget Statements 2023–24](#), p 15.

<sup>11</sup> Modern Slavery Legislation Amendment Bill 2023, *Explanatory Statement*, pp 2–3.

<sup>12</sup> Ms Jo Clay MLA, *Submission 6*, [p 2].

- 1.14. There were four Questions Taken on Notice (QTON) from the public hearing. The details of the QTONs is provided at [Appendix C](#).
- 1.15. The Committee met on 21 June 2023 to consider the Chair's draft report, which was adopted on the same day, for tabling on 21 June 2023.
- 1.16. In this report, references to Committee Hansard are to Uncorrected Proof Transcripts of evidence. Page numbers may vary between proof and official transcripts.

## 2. Amendments by the Bill and Legislative Scrutiny

- 2.1. This Chapter will discuss the amendments proposed by the Bill, as well as comments from the Standing Committee on Justice and Community Safety (Legislative Scrutiny) ('Scrutiny Committee').

### Amendments proposed by the Bill

- 2.2. The Bill makes amendments to following existing ACT legislation, summarised below:

- *Annual Reports (Government Agencies) Act 2004*;
- *Auditor-General Act 1996*;
- *Government Procurement Act 2001*;
- *Human Rights Act 2004*;
- *Human Rights Commission Act 2005*; and
- *Legislation Act 2001*.<sup>13</sup>

### Annual Reports (Government Agencies) Act 2004

- 2.3. The Bill amends the *Annual Reports (Government Agencies) Act 2004* ('Annual Reports Act'), by adding the new Anti-Slavery Commissioner to the existing list of public sector bodies which must prepare an annual report.<sup>14</sup> It also inserts in the Annual Reports Act a new Section (Section 8(3A)), which expands on the requirements of the annual reports direction by requiring ACT Government entities to publish information about the entities work on modern slavery, including:

- (a) the actions the entity has taken to identify and mitigate the risk of modern slavery happening in its supply chains;
- (b) the actions taken by the entity in response to any instance of modern slavery identified in its supply chains;
- (c) any advice or guidance given by the anti-slavery commissioner to the entity in relation to modern slavery.<sup>15</sup>

- 2.4. A definition of modern slavery is also inserted in the Act, which is the definition used in the federal *Modern Slavery Act 2018 (Cth)*.<sup>16</sup>

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<sup>13</sup> Modern Slavery Legislation Amendment Bill 2023, cl 3.

<sup>14</sup> Modern Slavery Legislation Amendment Bill 2023, cl 4.

<sup>15</sup> Modern Slavery Legislation Amendment Bill 2023, cl 5.

<sup>16</sup> Modern Slavery Legislation Amendment Bill 2023, cl 6.

## Auditor-General Act 1996

- 2.5. The Bill amends the *Auditor-General Act 1996* ('A-G Act') by including in sub-section 12(2), the ability for the Auditor-General to consider the risk of modern slavery when conducting a performance audit.<sup>17</sup> It also updates the Act's dictionary to include reference to the Commonwealth definition of modern slavery.<sup>18</sup>

## Government Procurement Act 2001

- 2.6. The Bill makes the following amendments to the *Government Procurement Act 2001*:
- Ensures Territory-owned corporations (for example, Icon Water) are included as well as ACT Government directorates (cls 9 & 11);
  - Adds modern slavery to the list of matters that must be considered in ACT Government procurement (cl 10);
  - Prevents Territory entities from procuring from entities that have failed to comply with the *Commonwealth's Modern Slavery Act 2018* (cl 13); and
  - Require entities wanting to be part of ACT procurement worth \$25,000 or more to give a statement to the procuring territory agency that sets out the risks of modern slavery in their supply chain and what actions they are taking to mitigate those risks (cl 13).<sup>19</sup>
- 2.7. In setting out these new procurement requirements, the Bill exempts procurement by a Territory entity with the Commonwealth or a State, or entity thereof. The Bill also enables the Chief Executive Officer of a Territory entity to exempt a tenderer if they are satisfied that the only suitable tenderer is an excluded tenderer. In doing so, the Chief Executive Officer is required to provide a copy of the exemption to the Anti-Slavery Commissioner within seven days.<sup>20</sup>

## Human Rights Act 2004

- 2.8. The Bill amends the *Human Rights Act 2004* ('HR Act') by requiring ACT administrative units/territory agency to make voluntary modern slavery statements in accordance with section 6(1) of the *Commonwealth's Modern Slavery Act 2018* (cl 16).<sup>21</sup>
- 2.9. After giving a modern slavery statement to the Commonwealth Minister under the *Commonwealth Act*, the Bill also amends the HR Act by requiring the unit or entity to publish the statement on its website and inform the Anti-Slavery Commissioner (cl 16).

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<sup>17</sup> Modern Slavery Legislation Amendment Bill 2023, cl 7.

<sup>18</sup> Modern Slavery Legislation Amendment Bill 2023, cl 8.

<sup>19</sup> See, for example: Fiona David, *Submission 4*, p 2; Modern Slavery Legislation Amendment Bill, cls 9, 10 & 13.

<sup>20</sup> Modern Slavery Legislation Amendment Bill 2023, cl 13.

<sup>21</sup> See, for example: Fiona David, *Submission 4*, p 2; Modern Slavery Legislation Amendment Bill, cl 16.

## Legislative Scrutiny comments

- 2.10. In its summary of the Bill, the Scrutiny Committee stated in Scrutiny Report No. 28<sup>22</sup> (the Scrutiny Report) that:

This Private Member's Bill will require government agencies to volunteer to submit modern slavery statements under the Commonwealth Modern Slavery Act 2018 (Cth) and prevent the Territory tendering with entities which have not complied with their requirements under that Act. To be considered for tenders over \$25,000, all tenderers, unless exempted, will have to provide a statement setting out 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. The Bill will also establish a new Anti-Slavery Commissioner to monitor, report on and promote requirements relating to modern slavery.<sup>23</sup>

## Rights to privacy

- 2.11. The Scrutiny Report firstly highlighted the Bill's potential to limit the protection of privacy and reputation as provided by Section 12 of the *Human Rights Act 2004*.<sup>24</sup>
- 2.12. The Scrutiny Committee noted in its report that the Bill includes provisions which increase the transparency of the risks of modern slavery in the provision of goods and services to and by the Territory, such as:
- A requirement that the Anti-Slavery Commissioner be notified of any exemption allowing an excluded tenderer to not comply with their requirements under the Commonwealth's *Modern Slavery Act 2018*, and the details of the exemption to be published on a public register;
  - The Anti-Slavery Commission may require any person to provide information the Commissioner believes on reasonable grounds that the person can provide and is relevant to any of the Commissioner's functions; and
  - Where the Anti-Slavery Commissioner suspects on reasonable grounds a person is subject to, or at risk of, modern slavery, the Commissioner may give any information relation to the allegation to an appropriate statutory office holder.<sup>25</sup>
- 2.13. The Scrutiny Committee was of the view that:

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<sup>22</sup> Standing Committee on Justice and Community Safety (Legislative Scrutiny), *Scrutiny Report No. 28*, May 2023.

<sup>23</sup> Standing Committee on Justice and Community Safety (Legislative Scrutiny), *Scrutiny Report No. 28*, May 2023, p 4.

<sup>24</sup> Standing Committee on Justice and Community Safety (Legislative Scrutiny), *Scrutiny Report No. 28*, May 2023, p 4.

<sup>25</sup> Standing Committee on Justice and Community Safety (Legislative Scrutiny), *Scrutiny Report No. 28*, May 2023, pp 4–5.

By providing for the collection and sharing of information which may include the personal information of individuals, including children, the Bill may potentially limit the protection of privacy and reputation provided by section 12 of the HRA.<sup>26</sup>

## Rights in criminal proceedings

- 2.14. The Scrutiny Committee expressed concern in its report that the Bill could limit rights in criminal proceedings as protected by Section 22 of the HRA.
- 2.15. The Scrutiny Committee noted that while the requirement in the Bill to provide and publish information does not explicitly abrogate the common law privileges against self-incrimination and exposure to the imposition of a civil penalty, it ‘may not be possible to interpret the Bill to avoid any abrogation’.<sup>27</sup>
- 2.16. In making this assessment, the Scrutiny Committee gave the following example:

For example, non-compliance with requirements under the Commonwealth Modern Slavery legislation may have to be disclosed when reporting on the grant of an exemption allowing the award of tenders to excluded tenderers. The Bill may therefore limit the privilege against self-incrimination protected as a right in criminal proceedings in section 22 of the HRA.<sup>28</sup>

## Other comments

- 2.17. The Scrutiny Report also noted that the Bill’s explanatory statement did not recognise any potential limits of human rights.<sup>29</sup>
- 2.18. The Scrutiny Committee requested information on ‘why the Bill should be considered to not limit the rights described above. Consideration should be given to amending the explanatory statement to include this information, using the framework set out in section 28 of the HRA’.<sup>30</sup>
- 2.19. The Scrutiny Report also requested the sponsoring Member of the Bill, Ms Jo Clay MLA, to respond to the above-mentioned concerns prior to the Bill being debated in the Assembly.<sup>31</sup>

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<sup>26</sup> Standing Committee on Justice and Community Safety (Legislative Scrutiny), *Scrutiny Report No. 28*, May 2023, p 5.

<sup>27</sup> Standing Committee on Justice and Community Safety (Legislative Scrutiny), *Scrutiny Report No. 28*, May 2023, p 5.

<sup>28</sup> Standing Committee on Justice and Community Safety (Legislative Scrutiny), *Scrutiny Report No. 28*, May 2023, p 5.

<sup>29</sup> Standing Committee on Justice and Community Safety (Legislative Scrutiny), *Scrutiny Report No. 28*, May 2023, p 5.

<sup>30</sup> Standing Committee on Justice and Community Safety (Legislative Scrutiny), *Scrutiny Report No. 28*, May 2023, p 5.

<sup>31</sup> Standing Committee on Justice and Community Safety (Legislative Scrutiny), *Scrutiny Report No. 28*, May 2023, p 5.

### 3. Issues raised in evidence

- 3.1. This Chapter summarises the evidence received by the Committee, through submissions and a public hearing.
- 3.2. The Chapter outlines support for the Bill from a range of stakeholders, and also discusses some of the concerns to the broader context of the Bill by stakeholders, along with the Committee's views and recommendations.

#### Support for the Bill

- 3.3. Evidence received by the Committee indicated support in principle for the Bill from a number of stakeholders.<sup>32</sup>
- 3.4. For example, non-for-profit organisation The Freedom Hub saw the Bill as a way of ensuring more responsible procurement and business practices:

We welcome the new Act and the territory's commitment to human rights and combating modern slavery. This bill is a strong foundation for territory entities to end embed human rights due diligence into the everyday.<sup>33</sup>

And while there is a Commonwealth Modern Slavery Act, playing a role in providing more transparency in business supply chains, there is a role for states and territories also, certainly the ACT with its progressive electorate that would surely back moves to increase responsible procurement and business practice consistent with international human rights and the Territory's own Human Rights Act.<sup>34</sup>

- 3.5. This was echoed by Fiona David, a lawyer and criminologist with a background in anti-slavery work:

The Bill seeks to prevent Territory entities from procuring from entities that have failed to comply with the Commonwealth Modern Slavery Act reporting requirements. This is commendable, as it both protects the integrity of Territory government procurement and encourages compliance with the Federal law through denial of access to government procurement in the ACT.<sup>35</sup>

- 3.6. This aspect of the Bill was also supported by the ACT Human Rights Commissioner in her oral evidence to the Committee:

We do support the proposal to include in Annual Reports actions to identify and mitigate the risks. And especially the obligation to establish due diligence systems.

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<sup>32</sup> See, for example: Fiona David, *Submission 4*, p 1; ACRATH, *Submission 8*, p 2; The Freedom Hub, *Submission 2*, p 2; ACTCOSS, *Submission 1*, p 1; The Salvation Army, *Submission 5*, p 1; ACT Government, *Submission 10*, [p 1].

<sup>33</sup> The Freedom Hub, *Submission 2*, p 2.

<sup>34</sup> The Freedom Hub, *Submission 2*, p 2.

<sup>35</sup> Fiona David, *Submission 4*, pp 5–6.



This is consistent with the UN Guidelines on Business and Human Rights, exercising corporate responsibility for businesses tendering for \$25,000 jobs with the ACT government.<sup>36</sup>

3.7. In discussing how the Bill parallels the NSW *Modern Slavery Act 2018*, The Freedom Hub was of the view that ‘This systematised response network can improve the consistency of reporting and data collection across Australia and allow businesses and advocates to identify emerging best practice principles’.<sup>37</sup>

3.8. ACT Council of Social Service (ACTCOSS) took the view that the Bill was a positive step towards eliminating worker exploitation:

A requirement for Territory entities to submit voluntarily Commonwealth modern slavery statements is a positive step towards protecting the rights of workers globally and locally through improving the quality of supply chain security and promoting the elimination of worker exploitation, which unfortunately still occurs in Australia. Brining the ACT into line with NSW through appointing an Anti-slavery Commissioner will assist in ensuring that compliance is taken seriously and that improvements in supply chain quality are not left by the wayside as an “out of sight, out of mind” practice.<sup>38</sup>

3.9. This view was also echoed by the Australian Catholic Religious Against the Trafficking of Humans (ACRATH):

Requiring ACT Government procurements to ensure tenderers are taking steps to identify and mitigate risks of modern day slavery when providing goods, services or works to the ACT Government or territory entities is a positive initiative and illustrates a commitment to protect the dignity and human rights of those working in the various supplier industries and to eliminate exploitation.<sup>39</sup>

3.10. ACTCOSS was also supportive of the Bill’s educational and iterative approach over an enforcement approach:

ACTCOSS is also supportive of the proposed educational and iterative approach to the legislative amendments if this approach is administered effectively. While enforcement-based approaches to reporting and compliance are generally ineffective, education must not be a simple and easily disregarded exercise. To progress the project of reducing complicity in worker exploitation, it is necessary to engage with government entities on a regular basis.<sup>40</sup>

3.11. The Salvation Army was also of a similar view:

Overall, The Salvation Army is supportive of the approach in the Bill. The adoption of an educative and iterative approach as opposed to enforcement will ensure

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<sup>36</sup> Dr Helen Watchirs, ACT Human Rights Commissioner, *Uncorrected Proof Hansard*, 14 June 2023, p 8.

<sup>37</sup> The Freedom Hub, *Submission 2*, p 2.

<sup>38</sup> ACTCOSS, *Submission 1*, p 1.

<sup>39</sup> ACRATH, *Submission 8*, p 2.

<sup>40</sup> ACTCOSS, *Submission 1*, p 1.

that businesses and entities have the time and support to learn about the modern slavery in supply chains and commence action to reduce risks. Harmonising with the Commonwealth Act creates consistency for business which is necessary to ensure good reporting which in turn helps the government make informed decisions about who they supply from or suppliers they do business with.<sup>41</sup>

- 3.12. Notably, the Bill was also supported by the current NSW Anti-Slavery Commissioner, Dr James Cockayne:

... I welcome the prospect of the creation of a role of independent anti slavery commissioner in the ACT presented by the Modern Slavery Legislation Amendment Bill 2023 of the ACT. I also welcome the legislative and policy intent signalled by the other measures proposed in the bill aimed at combating modern slavery, namely, the obligations on ACT procuring entities to identify and address modern slavery risks in their supply chains.

I believe there is an important opportunity for collaboration between our jurisdictions to address modern slavery risks in public procurement. Public entities in the two jurisdictions frequently use the same suppliers, and even where they do not, suppliers are likely to be purchasing from the same supply chains not only in our own country but overseas as well.<sup>42</sup>

## Concerns for the Bill

- 3.13. A number of concerns were raised against particular aspects of the Bill, as well as the broader context of the Bill, including:

- Overlap with existing procurement frameworks and reforms;
- Interaction with the *Human Rights Act*;
- Role of the Anti-Slavery Commissioner;
- Anti-Slavery Commissioner's powers and functions;
- Reporting provisions;
- Rights to privacy;
- Survivor engagement; and
- Parliamentary oversight.

## Overlap with existing procurement frameworks and reforms

- 3.14. The ACT Government and ACT Human Rights Commission both expressed concerns that the Bill may duplicate existing legislative and framework requirements, and that its objects

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<sup>41</sup> The Salvation Army, *Submission 5*, p 1.

<sup>42</sup> Dr James Cockayne, NSW Anti-Slavery Commissioner, *Uncorrected Proof Hansard*, 14 June 2023, p 12.

could be more effectively dealt with through the amendment of secondary legislation or through incorporating into existing frameworks.<sup>43</sup>

- 3.15. Both the ACT Government and the ACT Human Rights Commission acknowledged the existing requirements of the Government Procurement (Charter of Procurement Values) Direction 2020.<sup>44</sup> These obligations were summarised by the ACT Human Rights Commission in its submission:

All ACT Government procurements must, irrespective of value, take account of certain prescribed values, including ‘fair and safe conditions of work’ and ‘transparent and ethical engagement’. Together, these values intend that ACT Government not knowingly engage with suppliers that demonstrate objectionable, dishonest, unethical or unsafe business practices and that workers in those businesses have a fair and safe work environment. In managing their procurement activities, Territory entities are required to consider these values in addition to any applicable laws or policies, and report on how they have been applied in any procurement processes that produce a notifiable contract (ie a contract for goods or services valued at \$25,000 or more).<sup>45</sup>

- 3.16. The ACT Human Rights Commission also pointed out that these Directions, supported by the Government’s Procurement Values Guide, ‘expressly emphasise approaches to procurement that minimise risks of modern-day slavery and the leveraging of national and inter-jurisdictional initiatives to abate such practices. As an interim step, these instruments could potentially be amended to vary the extent to which Territory agencies must evidence that they have expressly considered risks of modern slavery in a procurement activities’.<sup>46</sup>
- 3.17. In its submission, the ACT Government highlighted to the Committee that since 1 July 2022, it has 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’.<sup>47</sup>
- 3.18. The submission outlined that a part of this work is a review of the *Government Procurement Act 2001* and the *Government Procurement Regulation 2007*, with the aim of streamlining and enhancing the legislative framework.<sup>48</sup>
- 3.19. These included the establishment of a Territory Uniforms Supplier Panel across six Territory entities:

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<sup>43</sup> See, for example: ACT Human Rights Commission, *Submission 11*, p 5; Mr Russ Campbell, Deputy Under Treasurer, Chief Minister, Treasury and Economic Development Directorate, *Uncorrected Proof Hansard*, 14 June 2023, p 37.

<sup>44</sup> See, for example: ACT Human Rights Commission, *Submission 11*, p 5; ACT Government, *Submission 10*, [p 2]; Mr Russ Campbell, Deputy Under Treasurer, Chief Minister, Treasury and Economic Development Directorate, *Uncorrected Proof Hansard*, 14 June 2023, p 29.

<sup>45</sup> ACT Human Rights Commission, *Submission 11*, p 5.

<sup>46</sup> ACT Human Rights Commission, *Submission 11*, pp 5–6.

<sup>47</sup> ACT Government, *Submission 10*, [p 1].

<sup>48</sup> ACT Government, *Submission 10*, [pp 1–2].

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.<sup>49</sup>

- 3.20. In support of the Government Procurement (Charter of Procurement Values) Direction 2020, Procurement ACT, with guidance from the Commonwealth, has developed a *Guide to Addressing Modern Slavery* ('the Guide') in public sector procurement.
- 3.21. According to the ACT Government, the Guide 'aims to increase transparency, provide important support and guidance as well as paving the way for continued improvement in addressing these risks'.<sup>50</sup>
- 3.22. The Guide, which is expected to be in effect from 1 July 2023, also includes practical tools to mitigate the risks of modern slavery throughout all phases of the procurement.<sup>51</sup>
- 3.23. The NSW Anti-Slavery Commissioner identified that his office was similarly developing guidance – expected to be published in July or August 2023 – for ensuring that entities in NSW can meet their obligations under the NSW scheme.<sup>52</sup> He also added that in addition to general guidance, it will also include codes of practice in specific supply chains.<sup>53</sup>
- 3.24. Other existing framework components include:
  - the Secure Local Jobs Code (SLJC), which aims to ensure that the ACT Government only engages with businesses that are meeting their workplace standards and obligations; and
  - 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.<sup>54</sup>
- 3.25. In its submission, the ACT Government considered that any legislative changes would need to be considered in the context of the existing reviews under the Program, existing legislation, and other actions.<sup>55</sup>

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<sup>49</sup> Mr Russ Campbell, Deputy Under Treasurer, Chief Minister, Treasury and Economic Development Directorate, *Uncorrected Proof Hansard*, 14 June 2023, p 29.

<sup>50</sup> ACT Government, *Submission 10*, [p 2].

<sup>51</sup> ACT Government, *Submission 10*, [p 2].

<sup>52</sup> Dr James Cockayne, NSW Anti-Slavery Commissioner, *Uncorrected Proof Hansard*, 14 June 2023, p 18.

<sup>53</sup> Dr James Cockayne, NSW Anti-Slavery Commissioner, *Uncorrected Proof Hansard*, 14 June 2023, p 18.

<sup>54</sup> See, for example: ACT Government, *Submission 10*, [p 2]; ACT Human Rights Commission, *Submission 11*, p 6.

<sup>55</sup> ACT Government, *Submission 10*, [p 2].

- 3.26. The ACT Human Rights Commission, in acknowledging the existing reform work, was of the view that it was preferable for any changes to consider the procurement framework as a whole, so that agencies and suppliers are able to meaningfully engage with any new obligations in a way that is consistent with their objects and practical intent.<sup>56</sup>
- 3.27. Ultimately, the ACT Government considered that, in the context of existing work, it would need time to consider whether primary legislation was the optimum path forward.<sup>57</sup>
- 3.28. It pointed to the possibility of modern slavery being considered as part of the ETWE, which is conducted through the Government Procurement (Ethical Treatment of Workers Evaluation) Direction 2021, and occurs at the first stage of the ACT Government's two-stage procurement process.<sup>58</sup>
- 3.29. Under this process, tenders are assessed based on the Fair and Safe Employment Criteria, which includes:
- Compliance with the SLJC;
  - Prescribed legislation; and
  - Potential negative effects on the Territory's reputation.<sup>59</sup>
- 3.30. The ACT Government was of the view that 'The 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 object of the Bill whilst supporting an efficient procurement process'.<sup>60</sup>
- 3.31. This was echoed during the ACT Government's appearance at the public hearing:
- So probably the most direct link would probably be the ethical treatment of workers direction. The benefit is that it is effectively already established framework, and there is sort of rules and regulations around that evaluation, about how people need to comply with it across the territory.
- So strengthening it by adding in modern slavery, if that is where the government chose to go would be quite—you would be effectively utilising existing frameworks and strengthening them, which obviously in a jurisdiction of our size we need to try and ensure that whatever we are doing is approaching the task in the most efficient way and not setting up new architecture if we have already got something that is pretty close and can be adjusted and modified as needed.<sup>61</sup>
- 3.32. Similarly, the ACT Human Rights Commission stated in its submission that the SLJC also provides an existing framework for ensuring that ethical and labour standards are

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<sup>56</sup> ACT Human Rights Commission, *Submission 11*, p 6.

<sup>57</sup> ACT Government, *Submission 10*, [p 2].

<sup>58</sup> ACT Government, *Submission 10*, [p 2].

<sup>59</sup> ACT Government, *Submission 10*, [p 3].

<sup>60</sup> ACT Government, *Submission 10*, [p 3].

<sup>61</sup> Mr Russ Campbell, Deputy Under Treasurer, Chief Minister, Treasury and Economic Development Directorate, *Uncorrected Proof Hansard*, 14 June 2023, p 30.

evidenced during high-risk procurements through its certification process for entities wishing to tender.<sup>62</sup> Certified tenderers must also ensure that any subcontractors for Territory-funded work are also certified. The SLJC is overseen by a statutorily appointed Securing Local Jobs Code Registrar, who has powers to investigate non-compliance and take action.<sup>63</sup>

3.33. In responding to the ACT Government's evidence on existing procurement work and frameworks at the public hearing, the Bill's sponsoring Member, Ms Jo Clay MLA, noted that while the government has progressed work on procurement, the government did not provide much evidence in the way of government entities reporting against risks.<sup>64</sup>

3.34. She ultimately thought it was beneficial if government entities had reporting obligations:

So I think having reporting obligations for directorates individually is a good idea. I think there would be a lot of easy and administratively efficient ways to incorporate that. I think those reporting obligations could be put into annual reports if that was a good and convenient way to do it. They could be stand alone reports that get handed up each year.

There would be many, many different ways of doing it but I think requiring each agency to take custody of their own risk and report against it each year, and then to require the ministers to have to answer questions about that. We understand from our committee system and from our parliamentary system already that that is actually a really important accountability measure, and it is really important in a new system to have that level of accountability because it is a new field.<sup>65</sup>

### Committee comment

3.35. The Committee is of the view that part of what the Bill proposes to do may already be covered through further reforms to the ACT Government's procurement process to embed the prevention of modern slavery in ACT Government procurement decisions. Notwithstanding this, the ACT Government should consider the evidence provided to this inquiry as part of its review of the ACT Government procurement framework.

#### Recommendation 1

The Committee recommends that the ACT Government consider the evidence provided to the Committee's inquiry as part of its review of the ACT procurement framework to ensure that the prevention of modern slavery is a factor in ACT Government procurement decisions.

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<sup>62</sup> ACT Human Rights Commission, *Submission 11*, p 6.

<sup>63</sup> ACT Human Rights Commission, *Submission 11*, p 6

<sup>64</sup> Ms Jo Clay MLA, *Uncorrected Proof Hansard*, 14 June 2023, p 41.

<sup>65</sup> Ms Jo Clay MLA, *Uncorrected Proof Hansard*, 14 June 2023, p 42.

## Interaction with the Human Rights Act

- 3.36. Both the ACT Government and ACT Human Rights Commission identified existing work by the ACT Government to legislate for an accessible pathway for individuals to complain about breaches of rights under the HR Act as another means of identifying and redressing allegations of slavery.<sup>66</sup>
- 3.37. The Act currently places obligations on all ACT public authorities to properly consider human rights when making a decision, and to act consistently with human rights.<sup>67</sup>
- 3.38. These changes and their implications were summarised by the ACT Human Rights Commission in its submission:

Once enacted, this new jurisdiction will enable free complaints to the Commission about actions or omissions by public authorities that unreasonably limit human rights, including rights to just and favourable conditions of work and freedom from forced labour. A person would, for example, be able to bring a complaint where they believe an ACT Government agency (or potentially a contractor) has failed to properly take account of their forced labour in the procurement of goods and services, or where they consider ACT Government frameworks provided them inadequate protection against exploitation or coercion in employment.<sup>68</sup>

- 3.39. Both the ACT Government and the ACT Human Rights Commission were not supportive of the Bill's proposed amendments to include Modern Slavery Statements in the HR Act, with both asserting that the HR Act was not the appropriate location for such an obligation.<sup>69</sup> This was on the basis that introducing such a requirement into the Act would be inconsistent with the model and structure of rights protection set out in the Act.<sup>70</sup>
- 3.40. The ACT Human Rights Commission was of the view that standalone legislation, following the NSW model, was more appropriate:

I think the framework of the New South Wales commissioner is quite good. So his duties are to combat modern slavery; promoting action; identifying and providing assistance and support to victims; giving advice; education and training to prevent, detect, investigate and prosecute; and monitoring, reporting and effectiveness; and, as I said earlier, raising community awareness. So that would be a new standalone act not dissimilar to the Discrimination Act that Commissioner Toohey administers.

So we do not think modern slavery should be kind of selected out of all that list of human rights and have operational provisions in there. You would have them in a

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<sup>66</sup> See, for example: ACT Human Rights Commission, *Submission 11*, p 6; ACT Government, *Submission 10*, [p 3].

<sup>67</sup> ACT Government, *Submission 10*, [p 3].

<sup>68</sup> ACT Human Rights Commission, *Submission 11*, p 7.

<sup>69</sup> See, for example: ACT Human Rights Commission, *Submission 11*, p 7; ACT Government, *Submission 10*, [pp 3–4].

<sup>70</sup> See, for example: ACT Human Rights Commission, *Submission 11*, p 7; ACT Government, *Submission 10*, [pp 3–4].

standalone act. You would probably need to amend the Human Rights Commission Act if you are commissioner located in the commission so that it fits within our existing framework.<sup>71</sup>

## Role of the Anti-Slavery Commissioner

- 3.41. Both the ACT Government and the ACT Human Rights Commission expressed concerns over the necessity and resourcing of the proposed Anti-Slavery Commissioner.
- 3.42. While acknowledging the potential benefits of having a dedicated Anti-Slavery Commissioner who would raise the profile and promote awareness of modern slavery, the ACT Human Rights Commission expressed doubt over the need for such a role in the ACT:

Despite these observations, it is unclear whether a dedicated Anti-Slavery Commissioner, modelled on the NSW Anti-Slavery Commissioner's role, is necessary given the ACT's geographic size and absence of local government areas. Should an Anti-Slavery Commissioner be established within the ACT Human Rights Commission this function would need to be robustly resourced and staffed to avoid any unintended impacts on the Commission's existing protection of rights services.<sup>72</sup>

- 3.43. The ACT Government questioned the resourcing implications for the Human Rights Commission in establishing such an office as part of the 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.<sup>73</sup>

- 3.44. This concern was echoed by the ACT Human Rights Commissioner in the public hearing:

We do not oppose the creation of a commissioner. But it would have to be handled carefully with the current balance of commissioners. And they would need to be properly resourced, which is not always the case with new commissioners being created. For example, the Children's Commissioner was resourced with one person. The Human Rights Commissioner was resourced with two people. The New South Wales Commissioner has 12.<sup>74</sup>

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<sup>71</sup> Dr Helen Watchirs, ACT Human Rights Commissioner, *Uncorrected Proof Transcript*, 14 June 2023, p 10.

<sup>72</sup> ACT Human Rights Commission, *Submission 11*, p 8.

<sup>73</sup> ACT Government, *Submission 10*, [p 4].

<sup>74</sup> Dr Helen Watchirs, ACT Human Rights Commissioner, *Uncorrected Proof Hansard*, 14 June 2023, pp 8–9.



It is very hard to say, but the Aboriginal Childrens Commissioner has five, I think, so that would be a starting point. I certainly would not recommend one or two, as you did with the Childrens Commissioner and the Human Rights Commissioner.<sup>75</sup>

- 3.45. The ACT Government posited in its submission that the resourcing issue may be overcome through embedding the Anti-Slavery Commissioner or their proposed functions in an existing part of the government that has like-functions, rather than the Human Rights Commission. Doing so may present opportunities to draw on existing resources and expertise to perform those functions.
- 3.46. As an example, the ACT Government submission cited the SLJC Branch, which evaluates SLJC compliance, which could be extended to modern slavery requirements and contribute to the ETWE process.<sup>76</sup>
- 3.47. The ACT Government also expressed resourcing concerns in relation to the Bill's proposed reporting requirements:

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.<sup>77</sup>

- 3.48. Due to the range of government entities and stakeholders that already deal with issues directly or indirectly touching upon modern slavery in their ordinary functions, the ACT Human Rights Commission, while supportive of the idea of an Anti-Slavery Commissioner in-principle, identified that resources may be better allocated through a collaborative oversight model:<sup>78</sup>

The Commission does not in-principle oppose the creation of an Anti-Slavery Commissioner role. Providing resources to the HRC or to another agency to establish a collaborative oversight model may, however, provide an initial means of raising awareness of, and identifying, modern slavery risks across ACT Government. In this regard, we would favour the formal establishment of a cooperative oversight body, comprising relevant internal and external stakeholders. Such an oversight model would, in our view, assist to ascertain risks and trends in modern slavery practices associated with the operations of territory entities, identify gaps in protections and recommend legislative reform or other safeguards. Collaborative oversight of adult and youth detention settings provides a comparable model that, in our experience, leverages diverse expertise and

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<sup>75</sup> Dr Helen Watchirs, ACT Human Rights Commissioner, *Uncorrected Proof Hansard*, 14 June 2023, p 11.

<sup>76</sup> ACT Government, *Submission 10*, [p 4].

<sup>77</sup> ACT Government, *Submission 10*, [p 4].

<sup>78</sup> Dr Helen Watchirs, ACT Human Rights Commissioner, *Uncorrected Proof Hansard*, 14 June 2023, p 8.

shares information efficiently to minimise duplication and triage effective responses.<sup>79</sup>

3.49. This view was also reiterated in its submission:

As a broad range of agencies may identify indicators and risks of modern slavery in performing their functions, our submission therefore favours the ACT Government formally establishing a collaborative oversight model as a means of triaging effective responses and informing any necessary or desirable legislative change.<sup>80</sup>

3.50. Dr Helen Watchirs, the ACT Human Rights Commissioner, suggested that such a model would be optimal to assess the current state of affairs in the Territory:

As we said, a collaborative oversight model to kind of ascertain the problem, who are the players, how we would work together. I think it is important to work that out before we jump to having a commissioner. We do not oppose it. We just think it might be a bit premature.<sup>81</sup>

3.51. The ACT Human Rights Commission recommended that the Committee consider whether the legislative approach presented in the Bill provides the most effective and risk-based means of identifying and responding to the various manifestations of modern slavery in the ACT.<sup>82</sup>

3.52. In responding to the above evidence from the ACT Human Rights Commission, Ms Jo Clay MLA questioned why it is necessary to implement an interim measure (such as the collaborative oversight model) and review it, when new schemes are regularly reviewed too:

I think I am uncertain as to what the benefit would be in an interim scheme per se, but I am very interested in seeing if the government has got some amendments to make as to what the difference is in starting as an interim piece of legislation, I suppose starting with a piece of legislation that gets reviewed. I would love to see it.<sup>83</sup>

3.53. In considering where an Anti-Slavery Commissioner might be best administered, the Committee notes that the NSW Anti-Slavery Commissioner is an independent statutory officer that is supported by the Office of the Anti-Slavery Commissioner, which is an administrative unit of the NSW Department of Communities and Justice.<sup>84</sup> There is no separate NSW Anti-Slavery 'Commission'.<sup>85</sup>

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<sup>79</sup> ACT Human Rights Commission, *Submission 11*, p 8.

<sup>80</sup> ACT Human Rights Commission, *Submission 11*, p 1.

<sup>81</sup> Dr Helen Watchirs, ACT Human Rights Commissioner, *Uncorrected Proof Hansard*, 14 June 2023, p 11.

<sup>82</sup> ACT Human Rights Commission, *Submission 11*, p 5.

<sup>83</sup> Ms Jo Clay MLA, *Uncorrected Proof Hansard*, 14 June 2023, p 40.

<sup>84</sup> Dr James Cockayne, NSW Anti-Slavery Commissioner, *Submission 9 (Executive Summary)*, p 5.

<sup>85</sup> Dr James Cockayne, NSW Anti-Slavery Commissioner, *Submission 9 (Executive Summary)*, p 5.

- 3.54. Resourcing complications in the form of overlap and confusion within the ACT Human Rights Commission was also identified as a potential complication arising from the Bill, according to the ACT Government:

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.<sup>86</sup>

- 3.55. Overlap was similarly identified as an issue by the ACT Human Rights Commission:

Insofar as the proposed Commissioner's functions would also involve advocating for the interests of victims of modern slavery, we note there may be some overlap with the Victims of Crime Commissioner's advocacy for the interests of victims of crime generally. To the extent that conduct disclosing modern slavery limits the right to freedom from forced labour, the Human Rights Commissioner section 41 of the HR Act also permits the President and Human Rights Commissioner to audit the effectiveness of legislation, policy and actions, including the ACT's procurement framework, in addressing modern slavery.<sup>87</sup>

- 3.56. In responding to the ACT Government's suggestions, Ms Jo Clay MLA thought it was important that the role of the Commissioner be independent of government:

I think any board or organisational role that is not genuinely independent from government and not seen to be independent from government will not get whistle blower calls. We will not know if one of our goals for this, and it is—we have got three elements to this bill—if one of our goals is to genuinely monitor and reduce and crack down on modern slavery happening within our borders, we are not going to know about it if that person is embedded within government, and I get those calls.

I think, too, we have probably learned from experience and good policy development here already why things like integrity commissions, integrity commissioners, human rights commissioners, victims of crime commissioners, we understand why all of these people need to be independent statutory officer holders. So I would need to hear a very convincing argument otherwise as to why you would embed this within government and not make it independent.<sup>88</sup>

- 3.57. The NSW Anti-Slavery Commissioner also identified risks of overlap and confusion arising out of clause 20 of the Bill, which requires the ACT Anti-Slavery Commissioner to keep a

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<sup>86</sup> ACT Government, *Submission 10*, [p 4].

<sup>87</sup> ACT Human Rights Commission, *Submission 11*, p 8.

<sup>88</sup> Ms Jo Clay MLA, *Uncorrected Proof Hansard*, 14 June 2023, p 40.

register which includes a list of Territory entities that are non-compliant with the Commonwealth Act.<sup>89</sup>

- 3.58. He argued in his submission that such an arrangement could have implications when it comes to the relationship between the ACT Anti-Slavery Commissioner, the Commonwealth Act and any new federal Anti-Slavery Commissioners.<sup>90</sup> Dr Cockayne also gave oral evidence that it is not common for a State or Territory government entity to assess compliance with federal legislation, adding:

The bill could risk creating a situation where the ACT commissioner on the one hand and federal commission or federal government on the other reach opposite conclusions about compliance with the commonwealth act.<sup>91</sup>

- 3.59. The NSW Anti-Slavery Commissioner identified that the NSW model differs from the proposed ACT model in that the NSW Act creates a separate state-level reporting system specifically for NSW public entities, separate from the Commonwealth reporting scheme, which does not address State and Territory public entities.<sup>92</sup> The only exception to this are state-owned corporations which are obligated by the NSW Act to report under the federal scheme.<sup>93</sup> The NSW model also assesses against state-level obligations and does not assess compliance with the Commonwealth Act.<sup>94</sup>

- 3.60. Dr Cockayne also noted that NSW has managed to avoid overlap with the federal scheme as both NSW and the Commonwealth do not yet have registers. However, NSW aims to create a register, and it is anticipated that there will be a development of a federal register in response to a federal review of the Commonwealth Act by Professor John McMillan AO ('the McMillan Review').<sup>95</sup>

- 3.61. Dr Cockayne further highlighted to the Committee that implications could arise from the findings of the McMillan Review, which has been completed recently but not yet been made public:

It is possible that the federal government may seek to change the nature and content of reporting obligations, or impose administrative, financial or other sanctions for poor, late or otherwise deficient reporting under the Cth Act. Amongst other implications, it is not yet clear how such sanctions would apply to

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<sup>89</sup> See, for example: Dr James Cockayne, NSW Anti-Slavery Commissioner, *Submission 9 (Executive Summary)*, p 2; Modern Slavery Legislation Amendment Bill 2023, cl 20.

<sup>90</sup> Dr James Cockayne, NSW Anti-Slavery Commissioner, *Submission 9 (Executive Summary)*, p 2.

<sup>91</sup> See, for example: Dr James Cockayne, NSW Anti-Slavery Commissioner, *Uncorrected Proof Hansard*, 14 June 2023, p 13; Dr James Cockayne, NSW Anti-Slavery Commissioner, *Submission 9 (Executive Summary)*, p 2.

<sup>92</sup> See, for example: Dr James Cockayne, NSW Anti-Slavery Commissioner, *Uncorrected Proof Hansard*, 14 June 2023, pp 13, 16; Dr James Cockayne, NSW Anti-Slavery Commissioner, *Submission 9 (Executive Summary)*, pp 2–3.

<sup>93</sup> Dr James Cockayne, NSW Anti-Slavery Commissioner, *Uncorrected Proof Hansard*, 14 June 2023, pp 25–26.

<sup>94</sup> Dr James Cockayne, NSW Anti-Slavery Commissioner, *Uncorrected Proof Hansard*, 14 June 2023, pp 13, 14.

<sup>95</sup> Dr James Cockayne, NSW Anti-Slavery Commissioner, *Uncorrected Proof Hansard*, 14 June 2023, pp 16, 17.

entities that are required by state or territory law to report under the Cth Act's voluntary reporting pathway, but not required to report by the Cth Act itself.<sup>96</sup>

- 3.62. For Dr Cockayne, it was ultimately important for Australia's state and federal governments to communicate and share information in managing these risks, noting that 'It is just a question about organising carefully how they speak to each other. We are in a federal system'.<sup>97</sup>

#### Committee comment

- 3.63. The Committee is of the view that the Bill risks creating resourcing complications for the ACT Human Rights Commission and across government more broadly, and the aims of the Bill would be better served through the ACT Government establishing a collaborative oversight body formed from the various government agencies which touch upon issues relating to modern slavery.

#### Recommendation 2

The Committee recommends that the ACT Government establish a collaborative oversight body formed with agencies such as WorkSafe ACT, ACT Policing, Child and Youth Protective Services, Legal Aid ACT and the ACT Government Procurement Board for prevention of modern slavery in the ACT.

### Anti-Slavery Commissioner's functions and powers

- 3.64. Several submissions expressed concerns that the breadth of the proposed Anti-Slavery Commissioner's powers were too limited.<sup>98</sup>
- 3.65. Areas of concern around the Anti-Slavery Commissioner's proposed powers was expanded upon by Fiona David:

As presently drafted, the ACT Anti-Slavery Commissioner will have fairly limited powers, being required to maintain a register of non-compliant agencies and exemptions, to refer slavery allegations to other statutory office-holders, and the power to ask for information. It is recommended that the ACT Legislature consider the merits of strengthening the remit of the ACT Anti-Slavery Commissioner, so that they might more effectively support the aims of the bill by contributing to oversight, risk assessment and capacity building.<sup>99</sup>

#### Referral powers

- 3.66. The ACT Law Society's submission noted that where the Bill empowers the Anti-Slavery Commissioner to refer incidents of suspected modern slavery to relevant authorities, the

<sup>96</sup> Dr James Cockayne, NSW Anti-Slavery Commissioner, *Submission 9 (Executive Summary)*, p 3.

<sup>97</sup> Dr James Cockayne, NSW Anti-Slavery Commissioner, *Uncorrected Proof Hansard*, 14 June 2023, p 17.

<sup>98</sup> See, for example: Fiona David, *Submission 4*, pp 6–7; ACT Law Society, *Submission 7*, pp 1–2; The Freedom Hub, *Submission 2*, pp 3–4; ACRATH, *Submission 8*, [pp 3–4];

<sup>99</sup> Fiona David, *Submission 4*, p 7.

Anti-Slavery Commissioner should also be explicitly empowered to refer the complainant or potential victim to receive appropriate legal support.<sup>100</sup>

- 3.67. The ACT Law Society also pointed out in its submission that incidents of slavery may include issues such as unpaid employment entitlements and wage theft, migration and visa matters, and child protection and family law, in which interaction with statutory bodies and officers may occur without appropriate legal representation, which carries the potential for negative consequences for the person affected by modern slavery.<sup>101</sup>
- 3.68. The ACT Law Society therefore proposed the Anti-Slavery Commissioner being empowered to refer complainants and persons affected by modern slavery to appropriate legal services that ‘can assist with protecting the person’s legal rights and taking appropriate legal actions’.<sup>102</sup>

### Greater oversight powers

- 3.69. The Freedom Hub was of the view that there should be greater resources for the Anti-Slavery Commissioner to be able to conduct oversight over Territory entity reporting:

In the anti-slavery commissioner role, there should be resources dedicated to ensure all territory entity submissions are compliant with the Commonwealth Modern Slavery Act 2018 reporting criteria. In addition, the actions determined by territory entities should be vetted by the commissioner to ensure that they are in alignment with international best practice standards, including the UN Guiding Principles on Business and Human Rights, to promote human rights due diligence in territory entities.

The anti-slavery commissioner role should also have capacity to assess modern slavery statements supplied to territory entities for key projects as part of tender due diligence. In order to progress through the tendering process, businesses should demonstrate a baseline understanding of their modern slavery risk, and actions they will be taking over the lifetime of the project.<sup>103</sup>

### Information-sharing

- 3.70. The ACT Law Society suggested that, where a person notifies the Anti-Slavery Commissioner that they have legal representation, the Anti-Slavery Commissioner should be able to share with the legal representative information and documents relating to the individual’s circumstances in a manner similar to section 18I(2).<sup>104</sup>
- 3.71. ACRATH similarly recommended that the Anti-Slavery Commissioner be given powers to give any information or document relating to a slavery allegation to a statutory office-holder, if the Anti-Slavery Commissioner suspects the person affected is a child.<sup>105</sup>

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<sup>100</sup> ACT Law Society, *Submission 7*, [p 1].

<sup>101</sup> ACT Law Society, *Submission 7*, [p 1].

<sup>102</sup> ACT Law Society, *Submission 7*, [pp 1–2].

<sup>103</sup> The Freedom Hub, *Submission 2*, p 3.

<sup>104</sup> ACT Law Society, *Submission 7*, [p 2].

<sup>105</sup> ACRATH, *Submission 8*, [p 3].

## Advocacy and engagement

- 3.72. ACRATH advocated in their submission that the role and responsibilities of the Anti-Slavery Commissioner should be expanded to include:
- advocating against modern slavery;
  - acknowledging, protecting, and promoting the rights of victims of modern slavery; and
  - monitoring and reporting on the risks of modern slavery in the ACT and ACT Government supply chains.<sup>106</sup>
- 3.73. ACRATH was of the view that ‘These responsibilities will ensure the legislation does more than seek to ensure that supply chains are slavery free’.<sup>107</sup>
- 3.74. Similarly, The Freedom Hub thought that it was important that the functions of the Anti-Slavery Commissioner include engaging with survivors:

Finally survivors are the key stakeholder of Australia’s modern slavery response, and their lived experience is vital for the evolution of effective policy. The anti-slavery commissioner should have an imperative to engage survivors.<sup>108</sup>

## Reporting provisions

- 3.75. Fiona David was of the view that the Bill’s proposed reporting requirements were narrow, and should be expanded to include operations:

However, as presently drafted, the reporting obligations in proposed 3A of the *Annual Reports (Government Agencies) Act 2004* are narrower in scope than the Commonwealth equivalent, which refers to risk "in the operations and supply chain of the reporting entity" (emphasis added, see further sections 15 and 16 of the *Modern Slavery Act 2018* (Cth)). The broader language found in the Commonwealth Act is consistent with the United Nations Guiding Principles on Business and Human Rights (UNGP), which refer to human rights due diligence being undertaken "not only to "supply chains" but also to "operations and business relationships throughout its value chain." The UNGPs provide the leading international standard on the expectations of businesses regarding respect for human rights.<sup>109</sup>

- 3.76. She proposes that the Bill be amended to be made consistent with both the Commonwealth Act and the United Nations Guiding Principles on Business and Human Rights (UNGP) by inserting throughout the Bill the word ‘operations’ alongside ‘supply chains’.<sup>110</sup>

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<sup>106</sup> ACRATH, *Submission 8*, [p 3].

<sup>107</sup> ACRATH, *Submission 8*, [p 3].

<sup>108</sup> The Freedom Hub, *Submission 2*, p 4.

<sup>109</sup> Fiona David, *Submission 4*, p 3.

<sup>110</sup> Fiona David, *Submission 4*, p 3.



- 3.77. The importance of including operations alongside supply chains was expanded upon by Fiona David at the public hearing:

An example of ACT government supply chain might be the purchase of wind turbines through its procurement process, and if the ACT had an energy provider that was wholly government owned, then the provision of the energy through that energy provider would be part of its operations. The operations would be providing a hospital, the supply chain would be buying things from external providers to bring into that hospital to meet its requirements. It is particularly relevant in the context of financial banking, banking and finance, anybody who has an investment portfolio where the operational decisions you are making are what you invest in. I think, perhaps, some further research could be undertaken to expand on how would this be directly relevant in the ACT context, how much would it need to go on supply chain versus operations.<sup>111</sup>

- 3.78. Fiona David also highlighted reporting issues around risk, arguing that the Bill failed to provide guidance to ACT Government should seek to assess risk:

The reporting obligations in the ACT bill are framed around "risk". While there is nothing inherently wrong with reporting on risk, as the NSW Anti-Slavery Commissioner has argued in relation to the Federal system, the purpose of reporting is not to produce a report, it is to produce an *outcome* - that is, action to reduce and respond to modern slavery. As such, the coherence and quality of the process or method that is used to identify and respond to risk is of the utmost importance.

As drafted, the ACT bill does not provide any guidance on how government agencies should seek to assess risk. While the Commonwealth Modern Slavery Act is itself fairly broadly, critically it does include reference to "due diligence and remediation" (see further, section 16(1)(d)). This provides a link between the Modern Slavery Act (Cth) and the UNGP, which set out the key elements and nature of a process for identifying risk through human rights due diligence (defined in Principle 17). This link is further elaborated in the Commonwealth Guidance for Reporting Entities on complying with the Act.<sup>112</sup>

- 3.79. Fiona David suggested that the Bill be amended to reference 'due diligence', in line with the UNGPs, as 'This will help link the ACT process to international human rights legal frameworks, and drive certainty and coherence across the different legislative regimes'.<sup>113</sup>
- 3.80. In its submission, ACRATH was concerned that entity thresholds in the Bill may overburden small businesses with 'red tape', as they may not have the expertise to report on risk. ACRATH also highlighted to the Committee that 'While many tendering businesses may be required to report under the Modern Slavery Act 2018 (Cth), it is also possible that an entity not required to report under the Commonwealth Act might submit a tender for

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<sup>111</sup> Fiona David, *Uncorrected Proof Hansard*, 14 June 2023, p 5.

<sup>112</sup> Fiona David, *Submission 4*, p 3.

<sup>113</sup> Fiona David, *Submission 4*, p 3.



\$25,000 or greater'. ACRATH therefore suggested that the threshold be determined by the income of the business tendering, instead of the value of the tender.<sup>114</sup>

3.81. Similar concerns were held by Fiona David:

While everyone certainly has a role to play on this topic, the benefits of mandating a requirement such as this needs to be balanced against the reality that small businesses may struggle to undertake any kind of meaningful risk assessment, given modern slavery is a hidden crime, typically requiring considerable investment of time and resources to uncover.<sup>115</sup>

3.82. Fiona David suggested that re-consideration be given to the costs and benefits involved in requiring small companies with a possibly low risk profile to report under the Bill. She instead proposed an alternative approach of considering the risk profile of the products and services being procured, and to attach reporting obligations to those with a higher risk profile.<sup>116</sup>

3.83. The NSW Anti-Slavery Commissioner also outlined similar concerns with the Bill's proposed threshold of procurements that are \$25,000 or greater. He noted that in NSW, the level of due diligence is not tied to the size of the procurement, but is instead tied to the risk of modern slavery in the procurement, and to the capability of the procuring entity.<sup>117</sup>

3.84. He argued that the NSW model is guided by the UNGPs, which tie an entity's obligations in addressing human rights risks to the risk itself, as well as pragmatic reasons:<sup>118</sup>

At the level of pragmatism, this is also an effective solution to tie due diligence to the size of the risk, because it has the effect of ensuring that organisations that have limited resources to put into this kind of work direct those resources to the riskiest procurements, not to the biggest procurements. There can be large procurements that are low modern slavery risk. There can be small procurements that are high modern slavery risk. By tying due diligence obligations to the level of risk, it achieves overall system efficiency, and it helps promote effectiveness in the overall scheme.<sup>119</sup>

3.85. For the NSW Anti-Slavery Commissioner, system efficiency and effectiveness are important, not the dollar-figure threshold:

The key thing is to think about how does the system that we would be putting in place encourage the entities that are subject to the reporting requirements to allocate their scarce resources to the riskiest contracts and riskiest procurements?

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<sup>114</sup> ACRATH, *Submission 8*, [p 3].

<sup>115</sup> Fiona David, *Submission 4*, p 6.

<sup>116</sup> See, for example: Fiona David, *Submission 4*, p 6; Fiona David, *Uncorrected Proof Hansard*, 14 June 2023, p 7.

<sup>117</sup> See, for example: Dr James Cockayne, NSW Anti-Slavery Commissioner, *Uncorrected Proof Hansard*, 14 June 2023, p 14; Dr James Cockayne, NSW Anti-Slavery Commissioner, *Submission 9 (Executive Summary)*, p 3.

<sup>118</sup> See, for example: Dr James Cockayne, NSW Anti-Slavery Commissioner, *Uncorrected Proof Hansard*, 14 June 2023, p 14; Dr James Cockayne, NSW Anti-Slavery Commissioner, *Submission 9 (Executive Summary)*, pp 3–4.

<sup>119</sup> Dr James Cockayne, NSW Anti-Slavery Commissioner, *Uncorrected Proof Hansard*, 14 June 2023, p 14.

And the threshold that you are operating with may not actually give them the signals that they need. So whether you have the threshold in place or not to my mind does not necessarily affect whether you have those other signals they need in order to direct their attention and scarce resources to the riskiest contracts.<sup>120</sup>

- 3.86. The NSW Anti-Slavery Commissioner also identified risks to small and medium businesses in meeting reporting requirements:

The prevailing international norms are quite commonsensical. They say that the complexity of due diligence you can expect from a very large entity cannot be the same as what you require from a very small entity. We think that is very important, and something we mention in our submission, actually. It is really critical in this area that we do not put such complexity in place that it becomes a de facto barrier to participation in procurement for small medium enterprises, or indeed for, for example, First Nations enterprises.

The risk is that if you make this too difficult—these due diligence and procurement obligations—too difficult for small enterprises, even if they are in no way connected to modern slavery risk, they will not be able to enter the procurement tender process because the red tape is too high; the transaction costs are too high.<sup>121</sup>

- 3.87. This risk was also identified in his submission:

It also seems germane to flag the potential barriers to participation in ACT procurement that could unintentionally be created by the supplier reporting requirements created by the Bill. The Bill frames reporting requirements as a condition of participation and does not calibrate these obligations to a supplier entity's size, capability or potential connection to modern slavery risks. All suppliers are treated alike. The risk in this approach is that it creates unintended barriers to for Small and Medium Enterprises (SMEs) or Aboriginal and Torres Strait Islander tenderers, whether or not they are connected to salient modern slavery risks.<sup>122</sup>

- 3.88. In highlighting this, Dr Cockayne noted that ultimately, the means through which a business meets its responsibilities is dependent on its size:

The UNGPs state that while the responsibility of business enterprises to respect human rights applies to all enterprises regardless of their size, sector, operational context, ownership and structure, the means through which a business enterprise meets its responsibility to respect human rights will be proportional to, among other factors, its size. 16 Small and medium-sized enterprises may have less capacity as well as more informal processes and management structures than

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<sup>120</sup> Dr James Cockayne, NSW Anti-Slavery Commissioner, *Uncorrected Proof Hansard*, 14 June 2023, pp 21–22.

<sup>121</sup> Dr James Cockayne, NSW Anti-Slavery Commissioner, *Uncorrected Proof Hansard*, 14 June 2023, pp 20–21.

<sup>122</sup> See, for example: Dr James Cockayne, NSW Anti-Slavery Commissioner, *Submission 9 (Main)*, p 10; Dr James Cockayne, NSW Anti-Slavery Commissioner, *Submission 9 (Executive Summary)*, p 4.

larger companies, so their respective policies and processes will take on different forms.<sup>123</sup>

- 3.89. In discussing the development of their Procurement Guidance at the public hearing, the ACT Government similarly acknowledged the importance of guidance and support for those undertaking procurements:

So as I say, it is an internal document at the moment going through some user testing. But I mean one of the key lessons, including from the review at the commonwealth level, is that you can have really good laws but for them to be effective they need to be understood well by the people that are undertaking the procurements, and capable of uplift to ensure there is actually a good understanding of what people are actually looking for when they say, “I need to ensure that suppliers aren’t either in an area where there’s modern slavery risks, or if they are, what actions they’ve taken to address any risks that might be there”.<sup>124</sup>

- 3.90. Toni Hassan suggested the creation of an envoy to business in the ACT in filling this gap:

For the ACT modern slavery Act to work, there must be resources for preparing business and the public service, resources for education and training and resources to monitor and evaluate the success of the legislation. I recommend an envoy to business in the ACT, led by other business people with experience in modern slavery awareness, corporate responsibility and prevention. Ultimately there has to be sustained leadership to steer the process - animated by partnerships across politics and with other jurisdictions, and complimentary measures that reduce poverty which sees vulnerable people enslaved in the first place.<sup>125</sup>

- 3.91. The Salvation Army also supported the provision of education and training, particularly for small and medium-sized business, so they can properly comply with reporting requirements:

It will be important to ensure all small to medium sized businesses have the skills needed to investigate their supply chains beyond the first tier. It is imperative that the legislation prevents the modern slavery equivalent of greenwashing. This could be achieved through appropriate training and implementation of investigative measures. The receiving entity also needs to have the expertise to assess the validity of the tendering business’s modern slavery report. Entities required to report should be required to provide employee training including how to verify supply chains and address and evaluate supply chains as well as training about slavery and human trafficking.<sup>126</sup>

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<sup>123</sup> Dr James Cockayne, NSW Anti-Slavery Commissioner, *Submission 9 (Main)*, pp 10–11.

<sup>124</sup> Mr Russ Campbell, Deputy Under Treasurer, Chief Minister, Treasury and Economic Development Directorate, *Uncorrected proof Hansard*, 14 June 2023, p 30.

<sup>125</sup> Toni Hassan, *Submission 3*, p 3.

<sup>126</sup> ACRATH, *Submission 8*, [pp 3–4].

- 3.92. In responding to the above evidence, Ms Jo Clay MLA was supportive of the NSW Anti-Slavery Commissioner's suggestion of looking at the levels of risk:

I very much liked the evidence that told us we should look at risk of harm to people as where we should expect more rigorous reports. It might be certain industries. There is a huge body of work out there, and there is a lot of people engaged to provide professional services to help with this. Individual agencies will not have to work this out; they can hire this out if they wish to.

They would be able to direct attention to say in certain types of industries or in certain manufacturing links, you need to be more rigorous in these areas, so you would have different levels of detail depending on what fields you operate in.<sup>127</sup>

- 3.93. She was also approving of evidence suggesting looking at capability:

I also quite liked the evidence we heard from the Anti-Slavery Commissioner about looking at capability. I think that is a good idea for procurement. It might also be a good idea for directorates. We might expect a different level of detail and rigor from an agency that is spending a billion dollars of public money on procurements versus an agency that is quite a small agency that does not have much money or many staff. They might be doing quite a simple report.<sup>128</sup>

- 3.94. Ms Jo Clay MLA also acknowledged the need to provide support and information to small and medium businesses, and First Nations businesses, noting 'We certainly would not want to inadvertently make life harder for people who are not actually working in a high risk field already'.<sup>129</sup>

- 3.95. However, in doing so, Ms Jo Clay MLA did not consider concerns around small and medium businesses meeting reporting obligations as a high enough bar to warrant not introducing the legislation, commenting 'I actually do not find it an acceptable excuse to say it is too hard for me to think about', and noting that by being good corporate citizens, companies can improve their market share as people become more ethically-minded.<sup>130</sup>

- 3.96. This view was echoed by Toni Hassan:

You will hear some in business say that new regulations will pile on red tape. But it's in every business' interest to have an effective reporting and compliance regime. What will be asked of business is minuscule compared with the reporting already required of them and can be leveraged to promote their business as ethical, responsible and sustainable. Governments, both at Commonwealth and state/territory level can and should support business to understand and report on supply chains with a view to preventing modern slavery and to learn from each other about best practice.<sup>131</sup>

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<sup>127</sup> Ms Jo Clay MLA, *Uncorrected Proof Hansard*, 14 June 2023, p 42.

<sup>128</sup> Ms Jo Clay MLA, *Uncorrected Proof Hansard*, 14 June 2023, p 42.

<sup>129</sup> Ms Jo Clay MLA, *Uncorrected Proof Hansard*, 14 June 2023, pp 42–43.

<sup>130</sup> Ms Jo Clay MLA, *Uncorrected Proof Hansard*, 14 June 2023, p 43.

<sup>131</sup> Toni Hassan, *Submission 3*, p 2.

## Rights to privacy

- 3.97. A number of submissions echoed concerns noted in the Scrutiny Report, regarding the right to privacy. In relation to section 18I, The Salvation Army stated:

Another area of the Bill that requires further consideration is section 18I which stipulates that the Commissioner must share information regarding potential slavery referrals with other statutory bodies, such as ACT Police. Whilst we appreciate the need to uphold community safety, this requirement may have unintended negative consequences undermining victim-survivors' right to privacy, confidentiality. In our experience as a service provider to survivors of modern slavery for 15 years, we know victim-survivors are often fearful of authorities and are not always appropriately identified as victims. As such, in situations where there is no immediate threat to a person's safety, it is vital that victim-survivors are able to seek out information and assistance without being compelled to report to police. Therefore, we urge to [sic] government to consider whether this provision may undermine victim-survivor's personal agency and make amendments as necessary.<sup>132</sup>

- 3.98. This concern was similarly reflected in ACRATH's submission:

In order to exercise the role of Anti-Slavery Commissioner, it is also necessary that the Commissioner has the "power to ask for information" (Section 18J). The draft legislation states that a "person commits an offence if— (a) the person is given a notice under this section; and (b) the person fails to comply with the notice. We know that some victim/survivors do not wish to speak with law enforcement for various reasons. It is important that their freedom and right to remain silent is respected and that victim/survivors are not prosecuted for failing to provide information to law enforcement officials."<sup>133</sup>

## Survivor engagement

- 3.99. The importance of engaging with survivors in the design and implementation of the ACT model was outlined by the NSW Anti-Slavery Commissioner:<sup>134</sup>

Dr Cockayne encourages centring survivor engagement and leadership in pursuing all proposed amendments to ACT legislation arising from the Bill and in the exercise of all of the ACT commissioner's functions under the Bill. Only through reference to lived experience can policy-makers ensure that the interventions they are designing are fit for purpose, and that taxpayers' resources are being efficiently used.

In NSW, we are incorporating lived experience into the design, delivery and governance of the work of the Office of the Anti-slavery Commissioner, starting by

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<sup>132</sup> The Salvation Army, *Submission 5*, [pp 1–2].

<sup>133</sup> ACRATH, *Submission 8*, [p 3].

<sup>134</sup> Dr James Cockayne, NSW Anti-Slavery Commissioner, *Submission 9 (Main)*, p 13.

employing a Lived Experience Advisor in the team to ensure meaningful and safe engagement with people with lived experience, and centre lived experience in new projects and programming.<sup>135</sup>

3.100. This was reiterated in more detail during his appearance at the public hearing:

The third point I will make very briefly relates to the critical role of survivors. In my view, it is critical that survivor engagement and leadership is at the centre of the development and implementation of anti-slavery work. Survivors are best positioned to explain their needs, and it is notable that the needs of survivors in the ACT may not be the same as those of survivors in New South Wales ...

An anti slavery framework in the ACT will be most fit for purpose for the specific needs of survivors in the ACT if it is developed and implemented in close consultation with survivors. In New South Wales, we are trying to do that, for example, by employing a survivor in my team. From the get go, we have had a survivor employed as a lived experience advisor to make sure we ground that user perspective, if I can put it that way. The beneficiary user of the regulatory scheme is ultimately the person with lived experience. We want to integrate that expertise into all of our work from the get go. We also have several people with lived experience in the advisory panel that I intend to announce next week.<sup>136</sup>

## Parliamentary oversight

3.101. In his submission, Dr Cockayne highlighted that the NSW Anti-Slavery Commissioner is required to report to the NSW Parliament annually, and may also report to the Parliament at any time on any issue falling within the functions of the Commissioner under the NSW Act.<sup>137</sup>

3.102. Dr Cockayne also noted in his submission that the NSW Anti-Slavery Commissioner's role intersects with the NSW Parliament's Modern Slavery Committee through the provision of financial penalties for entities failing to cooperate with the Committee.<sup>138</sup>

3.103. For Dr Cockayne, there was a benefit in having a dedicated Parliamentary Committee on the subject of modern slavery:

It has its own independent powers independent of me, obviously, including full parliamentary inquiry subpoena powers. I think it will be a critical public policy partner to the commissioner in the years ahead, because I can submit reports to the committee. The committee can also undertake their own inquiries.

What this means is that when I want to have a conversation with the legislature about modern slavery, I do not have to start, frankly, from scratch with the concept of modern slavery. I have at least eight dedicated members of parliament

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<sup>135</sup> Dr James Cockayne, NSW Anti-Slavery Commissioner, *Submission 9 (Executive Summary)*, pp 4–5.

<sup>136</sup> Dr James Cockayne, NSW Anti-Slavery Commissioner, *Uncorrected Proof Hansard*, 14 June 2023, p 15.

<sup>137</sup> Dr James Cockayne, NSW Anti-Slavery Commissioner, *Submission 9 (Main)*, p 4.

<sup>138</sup> Dr James Cockayne, NSW Anti-Slavery Commissioner, *Submission 9 (Main)*, p 14.

who will have been following these issues; who understand the complexity that we are getting into today; who have been tracking it; who have staff who have been educated and inquiring into the issues; who have formed their own diverse, independent assessments of the situation. So it is a really critical partner, I think, for nuanced public policy discussion on these issues going forward.<sup>139</sup>

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<sup>139</sup> Dr James Cockayne, NSW Anti-Slavery Commissioner, *Uncorrected Proof Hansard*, 14 June 2023, p 26.

## 4. Conclusion

- 4.1. The Committee considers that, in light of the evidence provided by the NSW Anti-Slavery Commissioner and the expected findings from the McMillan Review of the federal system, there is currently provision for changes that could be made in the interim to the existing arrangements to improve procurement practices relating to modern slavery. This could be through the creation of a collaborative oversight body from various ACT Government agencies in the first instance.

### Recommendation 3

The Committee recommends that the ACT Government put in place a process to implement measures to prevent modern slavery in the ACT that are:

- Informed by the recommendations provided by the NSW Anti-Slavery Commissioner for modern slavery as outlined in his evidence;
- Informed by the Commonwealth Government's approach as outlined in its response to the Statutory Review of the Modern Slavery Act Report (issued 25 May 2023) when this becomes available with a view to seeking harmonisation where appropriate; and
- Supported by adequate funding.

- 4.2. From the evidence received, the Committee recognises and supports the intent of the Bill and does not preclude legislation being required in this space. However, the Committee recommends that the ACT Legislative Assembly does not pass the Bill in its current form.

### Recommendation 4

The Committee recommends the Assembly does not pass the Modern Slavery Legislation Amendment Bill 2023 in its current form.

- 4.3. The Committee is grateful for the submissions received and for the contribution of witnesses during the public hearing.

Mrs Elizabeth Kikkert MLA  
Chair  
21 June 2023



## Appendix A: Submissions

No.	Submission by	Received	Published
1	ACTCOSS	21/04/2023	26/04/2023
2	The Freedom Hub	21/04/2023	26/04/2023
3	Toni Hassan	10/05/2023	17/05/2023
4	Fiona David	11/05/2023	17/05/2023
5	The Salvation Army	18/05/2023	19/05/2023
6	Ms Jo Clay MLA	19/05/2023	19/05/2023
7	ACT Law Society	19/05/2023	24/05/2023
8	ACRATH	22/05/2023	24/05/2023
9	NSW Anti-Slavery Commission	22/05/2023	24/05/2023
10	ACT Government	22/05/2023	25/05/2023
11	ACT Human Rights Commission	23/05/2023	25/05/2023

# Appendix B: Witnesses

Wednesday, 14 June 2023

## Individual

- **Ms Fiona David**

## ACT Human Rights Commission

- **Dr Helen Watchirs OAM**, President and ACT Human Rights Commissioner
- **Ms Karen Toohey**, Discrimination, Health Services, Disability and Community Services Commissioner

## NSW Anti-Slavery Commissioner

- **Dr James Cockayne**, NSW Anti-Slavery Commissioner

## Special Minister for State

- **Mr Russ Campbell**, Deputy Under Treasurer, Budget, Procurement and Finance, Treasury – CMTEDD
- **Ms Sanaz Mirzabegian**, Executive Group Manager, Procurement ACT, Budget, Procurement and Finance – CMTEDD

## Ms Jo Clay MLA, sponsoring Member of the Bill

## Appendix C: Questions Taken on Notice

No.	Date	Asked of	Subject	Response received
1	14/06/2023	NSW Anti-Slavery Commissioner	Powers of the NSW Parliamentary Committees regarding failure to cooperate	20/06/2023
2	14/06/2023	CMTEDD	Due diligence process for checking veracity of supplier information	
3	14/06/2023	CMTEDD	Provision of further information regarding procurement and how existing guidance and requirements address this issue	
4	14/06/2023	CMTEDD	Cost of different framework scenarios	