2023

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Jo Clay)

Modern Slavery Legislation Amendment Bill 2023

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THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

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Modern Slavery Legislation Amendment Bill 2023

A Bill for

An Act to establish an anti-slavery commissioner and impose obligations on certain entities to combat modern slavery, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Part 1 Preliminary

1 Name of Act

This Act is the *Modern Slavery Legislation Amendment Act 2023*.

2 Commencement

This Act commences 12 months after its notification day.

Note The naming and commencement provisions automatically commence on the notification day (see [Legislation Act](http://www.legislation.act.gov.au/a/2001-14), s 75 (1)).

3 Legislation amended

This Act amends the following legislation:

 [Annual Reports (Government Agencies) Act 2004](http://www.legislation.act.gov.au/a/2004-8)

 [Auditor-General Act 1996](http://www.legislation.act.gov.au/a/1996-23)

 [Government Procurement Act 2001](http://www.legislation.act.gov.au/a/2001-28)

 [Human Rights Act 2004](http://www.legislation.act.gov.au/a/2004-5)

 [Human Rights Commission Act 2005](http://www.legislation.act.gov.au/a/2005-40)

 [Legislation Act 2001](http://www.legislation.act.gov.au/a/2001-14).

Part 2 Annual Reports (Government Agencies) Act 2004

4 Public sector body annual report
Section 7 (2), note, new dot point

before 1st dot point, insert

 the anti-slavery commissioner (see [Human Rights Commission Act 2005](http://www.legislation.act.gov.au/a/2005-40), s 18K)

5 Annual report direction
New section 8 (3A)

insert

 (3A) The annual report direction must require an entity complying with the direction to include, in the entity’s annual report, a statement describing the following:

 (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.

6 New section 8 (6)

insert

 (6) In this section:

modern slavery—see the [Modern Slavery Act 2018](https://www.legislation.gov.au/Series/C2018A00153) (Cwlth), section 4.

Part 3 Auditor-General Act 1996

7 Performance audits—Territory
Section 12 (2)

substitute

 (2) In the conduct of a performance audit, the auditor-general may, where appropriate, consider—

 (a) environmental issues relative to the operations being reviewed or examined, taking into account the principles of ecologically sustainable development; and

 (b) the risk of modern slavery happening in the operations being reviewed or examined, and the action taken to mitigate the risk.

8 Section 12 (3), new definition of modern slavery

insert

modern slavery—see the [Modern Slavery Act 2018](https://www.legislation.gov.au/Series/C2018A00153) (Cwlth), section 4.

Part 4 Government Procurement Act 2001

9 Meaning of Territory entity
Section 3 (2), new note

insert

Note In s 22A, territory entity includes a Territory-owned corporation.

10 Procurement principle—value for money
Section 22A (3) (a) and (b)

substitute

 (a) probity and ethical behaviour, including modern slavery considerations;

 (b) management of risk, including the risk of modern slavery;

11 New section 22A (4)

insert

 (4) In this section:

territory entity includes a Territory-owned corporation.

12 Definitions—pt 2B
Section 22E, definition of tenderer

omit

13 New part 2C

insert

Part 2C Modern slavery statements

22ZE Application—pt 2C

This part does not apply to procurement by a territory entity with the Commonwealth or a State, or an entity of the Commonwealth or a State.

Example

procurement of interpreting services for the Territory from the Commonwealth Department of Home Affairs

Note State includes the Northern Territory (see [Legislation Act](http://www.legislation.act.gov.au/a/2001-14), dict, pt 1).

22ZF Meaning of excluded tenderer—pt 2C

 (1) In this part:

excluded tenderer means a reporting entity that has failed to comply with the [Modern Slavery Act 2018](https://www.legislation.gov.au/Series/C2018A00153) (Cwlth), section 13 or section 14.

 (2) In this section:

reporting entity—see the [Modern Slavery Act 2018](https://www.legislation.gov.au/Series/C2018A00153) (Cwlth), section 5.

22ZG Territory entities not to procure from excluded tenderers

A territory entity must not—

 (a) accept a quotation, tender or other response from an excluded tenderer in relation to the procurement of goods, services or works; or

 (b) enter into a contract for procurement of goods, services or works with an excluded tenderer.

22ZH Exemptions from prohibitions about excluded tenderers

 (1) The responsible chief executive officer for a territory entity may, in writing, exempt the entity from complying with section 22ZG for the procurement of stated goods, services or works.

 (2) The responsible chief executive officer may exempt the entity for the procurement only if satisfied on reasonable grounds that the only suitable tenderer is an excluded tenderer.

 (3) If the responsible chief executive officer exempts the entity under this section, they must give a copy of the exemption to the anti-slavery commissioner within 7 days after the day the exemption is made.

22ZI Statement on modern slavery risk etc for procurement of $25 000 or more

 (1) This section applies in relation to the procurement of goods, services or works that have an estimated value of $25 000 or more.

 (2) A territory entity must not accept a quotation, tender or other response in relation to the procurement from, or enter into a contract for the procurement with, a tenderer unless the tenderer has given the territory entity a statement containing the following information:

 (a) the risk of modern slavery happening in the supply chains for the goods, services or works being procured;

 (b) the nature of the risk mentioned in paragraph (a), including the circumstances giving rise to the risk;

 (c) the actions the tenderer is taking to—

 (i) mitigate the risk mentioned in paragraph (a); and

 (ii) address any changes to the risk mentioned in paragraph (a) while providing the goods or services, or carrying out the works;

 (d) how the actions mentioned in paragraph (c) could reasonably mitigate the risk mentioned in paragraph (a);

 (e) any other information prescribed by regulation.

14 Dictionary, new definitions of excluded tenderer and modern slavery

insert

excluded tenderer, for part 2C (Modern slavery statements)—see section 22ZF.

modern slavery—see the [Modern Slavery Act 2018](https://www.legislation.gov.au/Series/C2018A00153) (Cwlth), section 4.

15 Dictionary, definition of tenderer

substitute

tenderer, in relation to procurement, means an entity that submits a quote, tender or other response in relation to the procurement.

Part 5 Human Rights Act 2004

16 New part 5B

insert

Part 5B Modern slavery statements

40E Administrative unit and territory entity must make modern slavery statements

 (1) This section applies to an administrative unit or territory entity that—

 (a) is not a reporting entity within the meaning of the [Modern Slavery Act 2018](https://www.legislation.gov.au/Series/C2018A00153) (Cwlth); and

 (b) may volunteer to comply with that Act under that [Act](https://www.legislation.gov.au/Series/C2018A00153), section 6 (Voluntary modern slavery statements).

 (2) The administrative unit or territory entity must—

 (a) volunteer to comply with the [Modern Slavery Act 2018](https://www.legislation.gov.au/Series/C2018A00153) (Cwlth) in accordance with that [Act](https://www.legislation.gov.au/Series/C2018A00153), section 6 (1); and

 (b) not revoke the notice given under that [Act](https://www.legislation.gov.au/Series/C2018A00153), section 6 (1).

 (3) Also, the administrative unit or territory entity must, after giving a modern slavery statement to the Commonwealth Minister under the [Modern Slavery Act 2018](https://www.legislation.gov.au/Series/C2018A00153) (Cwlth)—

 (a) publish the statement on a website under its control, or include on the website a link to another website where the information is published; and

 (b) tell the anti-slavery commissioner that it has taken the step mentioned in paragraph (a).

 (4) In this section:

Commonwealth Minister means the Commonwealth Minister administering the [Modern Slavery Act 2018](https://www.legislation.gov.au/Series/C2018A00153) (Cwlth).

territory entity—see the [Auditor‑General Act 1996](http://www.legislation.act.gov.au/a/1996-23), dictionary.

17 Dictionary, note 2

insert

 administrative unit

 anti-slavery commissioner

Part 6 Human Rights Commission Act 2005

18 Main objects of Act
New section 6 (2) (fa)

insert

 (fa) combat modern slavery, and acknowledge, protect and promote the rights of victims of modern slavery; and

19 Members of commission
New section 12 (1) (aa)

insert

 (aa) the anti-slavery commissioner;

20 New division 3.2B

insert

Division 3.2B Anti-slavery commissioner

18G Anti-slavery commissioner’s functions

 (1) The anti-slavery commissioner has the following functions:

 (a) to advocate for, and promote actions to, combat modern slavery;

 (b) to acknowledge, protect and promote the rights of victims of modern slavery;

 (c) to monitor, and report on, the risks of modern slavery happening in the ACT and the supply chains of administrative units and territory entities;

 (d) to refer slavery allegations to other statutory officer-holders under section 18I;

 (e) to work with other entities to effectively exercise any function mentioned in paragraphs (a) to (d);

Examples—other entities

 ACT Government Procurement Board

 auditor-general

 director of public prosecutions

 police officer

 (f) to exercise any other function given to the commissioner under this Act or another territory law.

 (2) Without limiting subsection (1) (a), the commissioner may—

 (a) develop and publish advice, guidance or recommendations about the prevention, identification, investigation and prosecution of modern slavery; and

 (b) advise administrative units and territory entities on developing or applying procurement practices and methods that identify and mitigate the risk of modern slavery happening in their supply chains; and

 (c) monitor and report on the effectiveness of legislation, government policies and actions in combating modern slavery; and

 (d) provide the community with information about modern slavery.

18H Anti-slavery commissioner—register of noncompliance and exemptions

 (1) The anti-slavery commissioner must maintain a register stating the following information:

 (a) an administrative unit or territory entity that has failed to comply with—

 (i) the [Human Rights Act 2004](http://www.legislation.act.gov.au/a/2004-5), section 40E; or

 (ii) the [Modern Slavery Act 2018](https://www.legislation.gov.au/Series/C2018A00153) (Cwlth), section 13 or section 14;

 (b) the reason the administrative unit or territory entity is included on the register;

 (c) a copy of an exemption given to the anti-slavery commissioner under the [Government Procurement Act 2001](http://www.legislation.act.gov.au/a/2001-28), section 22ZH (Exemptions from prohibitions about excluded tenderers);

 (d) any other relevant information that the commissioner thinks appropriate.

 (2) Without limiting how the anti-slavery commissioner may maintain the register, the anti-slavery commissioner may do the following in relation to the register:

 (a) remove the details of an administrative unit or territory entity that no longer meets the description in subsection (1) (a);

 (b) correct information on the register that is not, or is no longer, accurate.

 (3) The commissioner must make the register publicly available on the commission’s website.

18I Anti-slavery commissioner—referral to other statutory office-holders

 (1) This section applies if the anti-slavery commissioner suspects on reasonable grounds that a person is subject to, or at risk of, modern slavery (a slavery allegation).

 (2) The commissioner may give any information, document or other thing relating to the slavery allegation to a statutory office-holder if—

 (a) the commissioner considers that the allegation could have been reported to the statutory office-holder; and

 (b) in the commissioner’s opinion, it would be appropriate to give the information, document or thing about the allegation to the statutory office-holder.

 (3) If the commissioner suspects that the person is a child or young person, the commissioner may give any information, document or other thing relating to the slavery allegation to the director-general of the administrative unit responsible for the [Children and Young People Act 2008](http://www.legislation.act.gov.au/a/2008-19), part 11.1 (Care and protection—reporting abuse and neglect).

 (4) If the commissioner gives the information, document or other thing to the director-general, the commissioner is taken to have made a voluntary report under the [Children and Young People Act 2008](http://www.legislation.act.gov.au/a/2008-19), section 354.

18J Anti-slavery commissioner—power to ask for information

 (1) This section applies if the anti-slavery commissioner believes on reasonable grounds that a person can provide information or produce a document or thing relevant to any of the commissioner’s functions.

 (2) The commissioner may, by written notice, require the person to provide the information or produce the document or thing.

 (3) The notice must state—

 (a) the information, document or thing to be provided or produced; and

 (b) how the person must provide or produce the information, document or thing; and

 (c) the period, not less than 7 days after the notice is given, in which the notice must be complied with.

 (4) 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.

Maximum penalty: 50 penalty units.

Note The [Legislation Act](http://www.legislation.act.gov.au/a/2001-14), s 170 deals with the application of the privilege against self-incrimination.

 (5) Subsection (4) does not apply if the person has a reasonable excuse.

Note The defendant has an evidential burden in relation to the matters mentioned in s (5) (see [Criminal Code](http://www.legislation.act.gov.au/a/2002-51), s 58).

18K Anti-slavery commissioner to prepare annual report

 (1) The anti-slavery commissioner must prepare an annual report under the [Annual Reports (Government Agencies) Act 2004](http://www.legislation.act.gov.au/a/2004-8).

 (2) The annual report must include a summary of the following information for a reporting year:

 (a) the activities carried out in exercising the commissioner’s functions;

 (b) advice, guidance or recommendations given by the commissioner to an administrative unit or territory entity;

 (c) any responses to the commissioner’s advice, guidance or recommendations;

 (d) the training on modern slavery carried out by administrative units and territory entities to its workers and the community;

 (e) any other information required under an annual report direction.

 (3) In this section:

annual report direction—see the [Annual Reports (Government Agencies) Act 2004](http://www.legislation.act.gov.au/a/2004-8), section 8.

21 Referral to appropriate statutory office-holder
Section 52A (3)

omit

22 New section 122

insert

122 Review of provisions about modern slavery

 (1) The Minister must review the operation of this Act and other Acts as amended by the Modern Slavery Legislation Amendment Act 2023 to assess their effectiveness in combating modern slavery.

 (2) The review must be started as soon as practicable 3 years after the day the Modern Slavery Legislation Amendment Act 2023, section 3 commences.

 (3) The Minister must present a report of the review to the Legislative Assembly not later than 12 months after the day the review starts.

 (4) This section expires 7 years after the day it commences.

23 Dictionary, note 2

insert

 administrative unit

 auditor-general

 police officer

24 Dictionary, note 2

omit

 DPP

substitute

 director of public prosecutions (or DPP)

25 Dictionary, new definition of anti-slavery commissioner

insert

anti-slavery commissioner means the commission member exercising the functions under section 18G.

26 Dictionary, definition of commissioner, new paragraph (h)

insert

 (h) the anti-slavery commissioner.

27 Dictionary, new definitions

insert

modern slavery—see the [Modern Slavery Act 2018](https://www.legislation.gov.au/Series/C2018A00153) (Cwlth), section 4.

slavery allegation—see section 18I (1).

statutory office-holder means an office established under a territory law (other than this Act), or a law of the Commonwealth or a State.

Note State includes the Northern Territory (see [Legislation Act](http://www.legislation.act.gov.au/a/2001-14), dict, pt 1).

territory entity—see the [Auditor‑General Act 1996](http://www.legislation.act.gov.au/a/1996-23), dictionary.

Part 7 Legislation Act 2001

28 Dictionary, part 1, new definition of anti-slavery commissioner

insert

anti-slavery commissioner means the Anti-Slavery Commissioner under the [Human Rights Commission Act 2005](http://www.legislation.act.gov.au/a/2005-40).

Endnotes

1 Presentation speech

 Presentation speech made in the Legislative Assembly on 28 March 2023.

2 Notification

 Notified under the [Legislation Act](http://www.legislation.act.gov.au/a/2001-14) on 2023.

3 Republications of amended laws

 For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au/).

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