

2023

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Jo Clay)

Modern Slavery Legislation Amendment Bill 2023

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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:

1 **Part 1 Preliminary**

2 **1 Name of Act**

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

4 **2 Commencement**

5 This Act commences 12 months after its notification day.

6 *Note* The naming and commencement provisions automatically commence on
7 the notification day (see [Legislation Act](#), s 75 (1)).

8 **3 Legislation amended**

9 This Act amends the following legislation:

- 10 • [Annual Reports \(Government Agencies\) Act 2004](#)
- 11 • [Auditor-General Act 1996](#)
- 12 • [Government Procurement Act 2001](#)
- 13 • [Human Rights Act 2004](#)
- 14 • [Human Rights Commission Act 2005](#)
- 15 • [Legislation Act 2001](#).

1 **Part 2** **Annual Reports (Government**
2 **Agencies) Act 2004**

3 **4 Public sector body annual report**
4 **Section 7 (2), note, new dot point**

5 *before 1st dot point, insert*

- 6 • the anti-slavery commissioner (see *Human Rights Commission*
7 *Act 2005*, s 18K)

8 **5 Annual report direction**
9 **New section 8 (3A)**

10 *insert*

11 (3A) The annual report direction must require an entity complying with the
12 direction to include, in the entity's annual report, a statement
13 describing the following:

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

20 **6 New section 8 (6)**

21 *insert*

22 (6) In this section:

23 *modern slavery*—see the *Modern Slavery Act 2018* (Cwlth),
24 section 4.

1 **Part 3** **Auditor-General Act 1996**

2 **7** **Performance audits—Territory**
3 **Section 12 (2)**

4 *substitute*

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

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

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

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

13 *insert*

14 *modern slavery*—see the *Modern Slavery Act 2018* (Cwlth),
15 section 4.

1 **Part 4** **Government Procurement**
2 **Act 2001**

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

5 *insert*

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

7 **10** **Procurement principle—value for money**
8 **Section 22A (3) (a) and (b)**

9 *substitute*

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

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

13 **11** **New section 22A (4)**

14 *insert*

15 (4) In this section:

16 *territory entity* includes a Territory-owned corporation.

17 **12** **Definitions—pt 2B**
18 **Section 22E, definition of *tenderer***

19 *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](#), 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](#) (Cwlth), section 13 or section 14.

(2) In this section:

reporting entity—see the [Modern Slavery Act 2018](#) (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.

- 1 **22ZH Exemptions from prohibitions about excluded tenderers**
- 2 (1) The responsible chief executive officer for a territory entity may, in
- 3 writing, exempt the entity from complying with section 22ZG for the
- 4 procurement of stated goods, services or works.
- 5 (2) The responsible chief executive officer may exempt the entity for the
- 6 procurement only if satisfied on reasonable grounds that the only
- 7 suitable tenderer is an excluded tenderer.
- 8 (3) If the responsible chief executive officer exempts the entity under this
- 9 section, they must give a copy of the exemption to the anti-slavery
- 10 commissioner within 7 days after the day the exemption is made.
- 11 **22ZI Statement on modern slavery risk etc for procurement of**
- 12 **\$25 000 or more**
- 13 (1) This section applies in relation to the procurement of goods, services
- 14 or works that have an estimated value of \$25 000 or more.
- 15 (2) A territory entity must not accept a quotation, tender or other response
- 16 in relation to the procurement from, or enter into a contract for the
- 17 procurement with, a tenderer unless the tenderer has given the
- 18 territory entity a statement containing the following information:
- 19 (a) the risk of modern slavery happening in the supply chains for
- 20 the goods, services or works being procured;
- 21 (b) the nature of the risk mentioned in paragraph (a), including the
- 22 circumstances giving rise to the risk;
- 23 (c) the actions the tenderer is taking to—
- 24 (i) mitigate the risk mentioned in paragraph (a); and
- 25 (ii) address any changes to the risk mentioned in paragraph (a)
- 26 while providing the goods or services, or carrying out the
- 27 works;

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

3 (e) any other information prescribed by regulation.

4 **14 Dictionary, new definitions of *excluded tenderer* and**
5 ***modern slavery***

6 *insert*

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

9 *modern slavery*—see the *Modern Slavery Act 2018* (Cwlth),
10 section 4.

11 **15 Dictionary, definition of *tenderer***

12 *substitute*

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

1 Part 5 Human Rights Act 2004

2 16 New part 5B

3 *insert*

4 Part 5B Modern slavery statements

5 40E Administrative unit and territory entity must make 6 modern slavery statements

- 7 (1) This section applies to an administrative unit or territory entity that—
- 8 (a) is not a reporting entity within the meaning of the *Modern*
9 *Slavery Act 2018* (Cwlth); and
- 10 (b) may volunteer to comply with that Act under that Act, section 6
11 (Voluntary modern slavery statements).
- 12 (2) The administrative unit or territory entity must—
- 13 (a) volunteer to comply with the *Modern Slavery Act 2018* (Cwlth)
14 in accordance with that Act, section 6 (1); and
- 15 (b) not revoke the notice given under that Act, section 6 (1).
- 16 (3) Also, the administrative unit or territory entity must, after giving a
17 modern slavery statement to the Commonwealth Minister under the
18 *Modern Slavery Act 2018* (Cwlth)—
- 19 (a) publish the statement on a website under its control, or include
20 on the website a link to another website where the information
21 is published; and
- 22 (b) tell the anti-slavery commissioner that it has taken the step
23 mentioned in paragraph (a).

1 (4) In this section:

2 **Commonwealth Minister** means the Commonwealth Minister
3 administering the *Modern Slavery Act 2018* (Cwlth).

4 **territory entity**—see the *Auditor-General Act 1996*, dictionary.

5 **17 Dictionary, note 2**

6 *insert*

- 7 • administrative unit
8 • anti-slavery commissioner

1 **Part 6** **Human Rights Commission**
2 **Act 2005**

3 **18 Main objects of Act**
4 **New section 6 (2) (fa)**

5 *insert*

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

8 **19 Members of commission**
9 **New section 12 (1) (aa)**

10 *insert*

11 (aa) the anti-slavery commissioner;

12 **20 New division 3.2B**

13 *insert*

14 **Division 3.2B Anti-slavery commissioner**

15 **18G Anti-slavery commissioner's functions**

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

- 17 (a) to advocate for, and promote actions to, combat modern slavery;
- 18 (b) to acknowledge, protect and promote the rights of victims of
19 modern slavery;
- 20 (c) to monitor, and report on, the risks of modern slavery happening
21 in the ACT and the supply chains of administrative units and
22 territory entities;
- 23 (d) to refer slavery allegations to other statutory officer-holders
24 under section 18I;

- 1 (e) to work with other entities to effectively exercise any function
2 mentioned in paragraphs (a) to (d);
- 3 **Examples—other entities**
- 4 • ACT Government Procurement Board
 - 5 • auditor-general
 - 6 • director of public prosecutions
 - 7 • police officer
- 8 (f) to exercise any other function given to the commissioner under
9 this Act or another territory law.
- 10 (2) Without limiting subsection (1) (a), the commissioner may—
- 11 (a) develop and publish advice, guidance or recommendations
12 about the prevention, identification, investigation and
13 prosecution of modern slavery; and
- 14 (b) advise administrative units and territory entities on developing
15 or applying procurement practices and methods that identify and
16 mitigate the risk of modern slavery happening in their supply
17 chains; and
- 18 (c) monitor and report on the effectiveness of legislation,
19 government policies and actions in combating modern slavery;
20 and
- 21 (d) provide the community with information about modern slavery.

- 1 **18H Anti-slavery commissioner—register of noncompliance**
2 **and exemptions**
- 3 (1) The anti-slavery commissioner must maintain a register stating the
4 following information:
- 5 (a) an administrative unit or territory entity that has failed to comply
6 with—
- 7 (i) the *Human Rights Act 2004*, section 40E; or
8 (ii) the *Modern Slavery Act 2018* (Cwlth), section 13 or
9 section 14;
- 10 (b) the reason the administrative unit or territory entity is included
11 on the register;
- 12 (c) a copy of an exemption given to the anti-slavery commissioner
13 under the *Government Procurement Act 2001*, section 22ZH
14 (Exemptions from prohibitions about excluded tenderers);
- 15 (d) any other relevant information that the commissioner thinks
16 appropriate.
- 17 (2) Without limiting how the anti-slavery commissioner may maintain
18 the register, the anti-slavery commissioner may do the following in
19 relation to the register:
- 20 (a) remove the details of an administrative unit or territory entity
21 that no longer meets the description in subsection (1) (a);
- 22 (b) correct information on the register that is not, or is no longer,
23 accurate.
- 24 (3) The commissioner must make the register publicly available on the
25 commission's website.

- 1 **18I Anti-slavery commissioner—referral to other statutory**
2 **office-holders**
- 3 (1) This section applies if the anti-slavery commissioner suspects on
4 reasonable grounds that a person is subject to, or at risk of, modern
5 slavery (a *slavery allegation*).
- 6 (2) The commissioner may give any information, document or other
7 thing relating to the slavery allegation to a statutory office-holder if—
- 8 (a) the commissioner considers that the allegation could have been
9 reported to the statutory office-holder; and
- 10 (b) in the commissioner’s opinion, it would be appropriate to give
11 the information, document or thing about the allegation to the
12 statutory office-holder.
- 13 (3) If the commissioner suspects that the person is a child or young
14 person, the commissioner may give any information, document or
15 other thing relating to the slavery allegation to the director-general of
16 the administrative unit responsible for the *Children and Young People*
17 *Act 2008*, part 11.1 (Care and protection—reporting abuse and
18 neglect).
- 19 (4) If the commissioner gives the information, document or other thing
20 to the director-general, the commissioner is taken to have made a
21 voluntary report under the *Children and Young People Act 2008*,
22 section 354.
- 23 **18J Anti-slavery commissioner—power to ask for information**
- 24 (1) This section applies if the anti-slavery commissioner believes on
25 reasonable grounds that a person can provide information or produce
26 a document or thing relevant to any of the commissioner’s functions.
- 27 (2) The commissioner may, by written notice, require the person to
28 provide the information or produce the document or thing.

- 1 (3) The notice must state—
- 2 (a) the information, document or thing to be provided or produced;
- 3 and
- 4 (b) how the person must provide or produce the information,
- 5 document or thing; and
- 6 (c) the period, not less than 7 days after the notice is given, in which
- 7 the notice must be complied with.

- 8 (4) A person commits an offence if—
- 9 (a) the person is given a notice under this section; and
- 10 (b) the person fails to comply with the notice.

11 Maximum penalty: 50 penalty units.

12 *Note* The [Legislation Act](#), s 170 deals with the application of the privilege

13 against self-incrimination.

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

15 *Note* The defendant has an evidential burden in relation to the matters

16 mentioned in s (5) (see [Criminal Code](#), s 58).

17 **18K Anti-slavery commissioner to prepare annual report**

- 18 (1) The anti-slavery commissioner must prepare an annual report under
- 19 the [Annual Reports \(Government Agencies\) Act 2004](#).

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

22 (a) the activities carried out in exercising the commissioner's

23 functions;

24 (b) advice, guidance or recommendations given by the

25 commissioner to an administrative unit or territory entity;

26 (c) any responses to the commissioner's advice, guidance or

27 recommendations;

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

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

4 (3) In this section:

5 *annual report direction*—see the *Annual Reports (Government*
6 *Agencies) Act 2004*, section 8.

7 **21 Referral to appropriate statutory office-holder**
8 **Section 52A (3)**

9 *omit*

10 **22 New section 122**

11 *insert*

12 **122 Review of provisions about modern slavery**

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

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

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

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

22 **23 Dictionary, note 2**

23 *insert*

- 24 • administrative unit
25 • auditor-general
26 • police officer

24 Dictionary, note 2

1
2 *omit*

- 3 • DPP

4 *substitute*

- 5 • director of public prosecutions (or DPP)

25 Dictionary, new definition of *anti-slavery commissioner*

6
7 *insert*

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

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

10
11 *insert*

12 (h) the anti-slavery commissioner.

27 Dictionary, new definitions

13
14 *insert*

15 *modern slavery*—see the *Modern Slavery Act 2018* (Cwlth),
16 section 4.

17 *slavery allegation*—see section 18I (1).

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

20 *Note* *State* includes the Northern Territory (see *Legislation Act*, dict, pt 1).

21 *territory entity*—see the *Auditor-General Act 1996*, dictionary.

1 **Part 7** **Legislation Act 2001**

2 **28** **Dictionary, part 1, new definition of *anti-slavery***
3 ***commissioner***

4 *insert*

5 *anti-slavery commissioner* means the Anti-Slavery Commissioner
6 under the *Human Rights Commission Act 2005*.

Endnotes**1 Presentation speech**

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

2 Notification

Notified under the [Legislation Act](#) on 2023.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.
