

Prepared Remarks of the NSW Anti-slavery Commissioner

For delivery on 14 June 2023 at the Inquiry of the ACT Legislative Assembly Standing Committee on Public Accounts into the Modern Slavery Legislation Amendment Bill 2023 (ACT)

As prepared

1. Thank you to the Committee for the opportunity to join you today.
2. I'd like to start by acknowledging that I'm privileged to be joining you today on Ngunnawal land, by paying my respects to elders past, present and emerging, and extending that respect to Aboriginal and Torres Strait Islander colleagues joining us today.
3. Within the modern slavery context, I think it's important when acknowledging elders present and future to understand that this means that there are First Nations Australians that are the survivors, and descendants of survivors, of practices that today we would call modern slavery.
4. I'm Dr James Cockayne, the New South Wales Anti-slavery Commissioner. This is an independent statutory role created by the New South Wales *Modern Slavery Act 2018*.
5. The Act came into force in 2022 and I took up this post as the first full-time Anti-slavery Commissioner on 1 August 2022.
6. It is important to note that as an independent statutory office holder, I do not speak for the New South Wales Government, nor any other government. I was appointed by the NSW Governor, and I report to NSW Parliament, not to the government.
7. The position of the New South Wales Commissioner is the first such role in Australia, and only the second in the world (after the United Kingdom). The New South Wales Act gives the Commissioner a range of functions, which together position the role to work to address the system failure that modern slavery represents.
8. My submission and evidence today are offered based on my experience in the role since I took office on 1 August 2022, as well as two decades' prior experience working to combat modern slavery and organised crime, promote human rights and responsible business practices around the world.

Office of the NSW Anti-slavery Commissioner

9. Chair, 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* (ACT).
10. I also welcome legislative and policy intent signalled by the other measures proposed in the Bill aimed at combatting modern slavery, namely the obligations on ACT procuring entities to identify and address modern slavery risks in their supply chains.
11. I believe there are opportunities 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.
12. I also believe there is an opportunity for the ACT to learn from the Commonwealth and New South Wales experiences regarding the importance of an independent oversight system. For example, an independent anti-slavery commissioner can play a key role in ensuring that the policies and programmes that taxpayer funds are spent on do not amount to mere virtue-signalling, but actually prove effective in practice.
13. In my written submission, I explored several aspects of the Bill in detail. In the short time that remains to me in this initial presentation, I would like to focus briefly on three key points where the approach proposed in the ACT Bill would differ from the New South Wales Act.
14. Those differences may potentially be useful for the Committee to consider. They relate to:
 1. The Commissioner's role in assessing compliance with federal legislation;
 2. The need to allocate limited due diligence resources based on risk to people, not the size of a particular procurement; and
 3. The critical role for survivors in developing and delivering effective anti-slavery policies and programming.
15. First: the role of the Commissioner in assessing compliance with federal legislation.
16. It seems unusual to have a State or Territory governmental actor, even one independent from the state or territory's executive government, assess compliance with federal legislation.

17. As I read the Bill, that would be its effect. The Bill mandates the ACT anti-slavery commissioner to keep a register that includes a list of administrative units or territory units *that are non-compliant with the Commonwealth Act*.
18. This raises important questions about the relationship between the ACT Commissioner, the Commonwealth Act and any new federal anti-slavery commissioner – a role which the federal government has signalled it will be creating this year.
19. The Bill could risk creating a situation where the ACT commissioner, on the one hand, and federal commissioner or federal government, on the other, reach opposite conclusions about compliance with the Commonwealth Act.
20. The approach taken by the *Modern Slavery Act 2018* (NSW) is different. It creates a separate, state-level reporting system for New South Wales public entities, distinct from the Commonwealth Act reporting scheme, and integrates modern slavery risk management into the existing, sophisticated state public procurement supervision arrangements.
21. This avoids this potential for conflicting assessments of a particular entity's compliance, while also maximising the opportunity to leverage existing public procurement arrangements to develop modern slavery risk management capabilities.
22. Second: the question of whether to tie due diligence to the size of a procurement, or the risk it poses to people.
23. In NSW, we take the latter approach. The basis for this is both principled and pragmatic.
24. At the level of principle, we are guided by Australia's commitment to the UN Guiding Principles on Business and Human Rights. They tie an entity's obligations in addressing human rights risks in their supply-chains to the risk itself, not the size of the procurement.
25. At the level of pragmatism, this is also an effective solution. It has the effect of ensuring that organisations allocate scarce due diligence and contract and risk management resources not to their largest areas of procurement spending, but to the greatest sources of risk in their procurement portfolio.
26. In the next couple of months I will be publishing detailed Guidance for public buyers on how to identify those risks and calibrate response accordingly. This is Guidance that has been developed through many months of close consultation with a range of public buyers.

27. Perhaps of interest to this Committee, personnel in the Chief Minister, Treasury and Economic Development Directorate of the ACT Government have been an active and constructive contributor to these discussions, something we welcome given the significant overlap in the supplier base of NSW and ACT public buyers.
28. Third and last: the critical role of survivors.
29. In my view, it is critical that survivor engagement and leadership is at the centre of the development and implementation of the Bill.
30. Survivors are best positioned to explain their needs. And it is notable that the needs of survivors in the ACT may or may not be the same as those in NSW. I note, for example, that ACT hosts a significant diplomatic corps. There is, sadly, a history of heightened vulnerability to modern slavery for domestic workers in diplomatic households, around the world.
31. Recent jurisprudence from the UK's highest court, the UK Supreme Court, makes clear that diplomatic immunity does not extend to treatment of diplomatic household workers that constitutes modern slavery.¹
32. An anti-slavery framework for the ACT is more likely to be fit for purpose for the specific needs of survivors in the ACT if it is designed and implemented in close consultation with survivors.
33. In NSW, we have gone even further, employing a survivor in the Office of the Anti-slavery Commissioner, as a Lived Experience Adviser, from the get-go.
34. We will also have several survivors in the Advisory Panel that I will announce in a week or two from now.
35. Thank you for your time and attention. I look forward to the Committee's questions.

¹ *Basfar v Wong* [2022] UKSC 20.