LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON PUBLIC ACCOUNTS

(Reference: Inquiry into the Modern Slavery Legislation Amendment Bill 2023)

Members:

MRS E KIKKERT (Chair)
MR M PETTERSSON (Deputy Chair)
MR A BRADDOCK

TRANSCRIPT OF EVIDENCE

CANBERRA

WEDNESDAY, 14 JUNE 2023

Secretary to the committee:
Ms S Milne (Ph: 620 50435)

By authority of the Legislative Assembly for the Australian Capital Territory

WITNESSES

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Amended 20 May 2013

The committee met at 8.38 am.

DAVID, MS FIONA, Chief Executive Officer, Fair Futures Pty Ltd

THE ACTING CHAIR (Mr Pettersson): Good morning, and welcome to the public hearing of the public accounts committee inquiry into the Modern Slavery Legislation Amendment Bill 2023. Today the committee will hear from Ms Fiona David, the ACT Human Rights Commission, Dr James Cockayne, the New South Wales Anti-slavery Commissioner, ACT government officials appearing on behalf of the Special Minister of State, and Ms Jo Clay MLA.

The committee wishes to acknowledge the traditional custodians of the land we are meeting on, the Ngunnawal people. The committee wishes to acknowledge and respect their continuing culture and the contribution they make to the life of this city and this region. We would also like to acknowledge and welcome other Aboriginal and Torres Strait Islander people who may be attending today.

The proceedings today are being recorded and transcribed by Hansard and will be published. The hearing today is unable to be livestreamed, but a video recording of the proceedings will be uploaded to the Assembly's Video on Demand website after the hearing's conclusion.

When taking questions on notice, it would be useful if you could use the words, "I will take that as a question on notice." This will help the committee and witnesses to confirm questions taken on notice from the transcript.

We now welcome Ms Fiona David. Could you please confirm that you are appearing as an individual?

Ms David: Correct.

THE ACTING CHAIR: I remind witnesses of the protections and obligations afforded by parliamentary privilege and draw your attention to the privilege statement. Witnesses must tell the truth. Giving false or misleading evidence will be treated as a serious matter and may be considered to be a contempt of the Assembly. Can you please confirm that you understand the implications of the statement and that you agree to comply with it?

Ms David: Confirmed, and I agree.

THE ACTING CHAIR: Would you like to make an opening statement?

Ms David: Certainly. Thank you so much to the committee. First of all, I would like to commend the ACT Legislative Assembly for giving serious consideration to this Modern Slavery Legislation Amendment Bill.

I will give some context regarding my comments. I have worked on these issues dating back to the 1990s. Some of my experience with working on modern slavery includes being very involved in the development of the federal Criminal Code

throughout its progress, from the inception of the slavery trafficking offences; and being very involved in the Modern Slavery Act for the commonwealth and also New South Wales and the UK. I led something called the Global Slavery Index, which is now in its fifth edition. I brought that to life. I also brought together the relationships that form the basis of the current global estimate of modern slavery, which is 49 million people in modern slavery at any point in time in 2021. That is a collaboration between Australia's Walk Free Foundation, the International Labour Organisation in Geneva and the International Organisation for Migration. I am a proud member of our local community, but my work on modern slavery has been very international—globally and in Australia.

With that background, as I have said, I strongly commend the focus on this bill. I am a big supporter of this bill. I do think there are some small changes that could be made to increase its impact. The ACT can be the beneficiary of a very detailed, very high-quality recent review by the commonwealth of its own Modern Slavery Act. There are some features of that review that I will refer to this morning that I think should be picked up in the ACT context.

The first question I would like to speak to briefly is: why does this bill matter? The ACT has been a proud proponent of human rights for more than 20 years. I have been very proud, as a local member of the community, to know that we are one of the few states in Australia that has a human rights approach in its jurisdiction. I think the modern slavery act in the ACT is a natural extension of this approach to human rights in the jurisdiction.

In terms of how modern slavery might be relevant here in the ACT, one of our biggest challenges as a society is, of course, decarbonisation, the energy transition, transitioning out of fossil fuels and transitioning into renewable energy. If you look at, for example, the US list of products produced by forced labour, you will see that some of the raw materials involved in the production of battery energy and storage, wind turbines and solar panels come from parts of the globe which are incredibly high risk for modern slavery.

While no-one would suggest that any ACT public servant would knowingly buy something off the shelf thinking that there might be a risk of modern slavery, the reality of global supply chains is such that, deep in the minerals, in the source materials of wind turbines, batteries and solar panels, you will find products that have been sourced at high risk of modern slavery. If we need a "why", that would be my fundamental statement of why.

If we need another why, the ACT is a big provider of medical services. Again, with products like latex gloves, PPE and other products involved in the medical supply chain, if you talk to your counterparts in New South Wales or other jurisdictions, you will find that is an issue that is causing quite a lot of concern in terms of how to do proper due diligence on those supply chains right back to the source. I hope that gives you a sense of why I think this is important.

In terms of the bill itself, as I have said, the bill is a great innovation. I think there is one change that I would make to strengthen it, and that is to include a very clear reference to and requirement for due diligence. In the same way that you require your

accountant, your lawyer or some other professional service provider to act in your interests, we are essentially asking the ACT public service here to do a risk-based set of checks for us to understand whether there is modern slavery somewhere deep in the supply chains of what they are procuring.

I am suggesting it is great that we have asked them to do those risk checks; now let us give them the methodology for how they do those checks. That is a process called due diligence. In the human rights context, that has a very specific meaning that is outlined in something called the UN Guiding Principles on Business and Human Rights. It is referenced in the federal Modern Slavery Act. It is also referenced in the explanatory materials that are provided to business on that act.

The ACT bill would greatly benefit from having very clear reference in it to due diligence as the central method for how you do risk assessment—not only referencing it but requiring it. That is one of the key findings that came out of the commonwealth Modern Slavery Act 200-page report that has recently been released on reviewing the progress there. That is my major recommendation—to include the due diligence requirements.

My next recommendation is around the anti-slavery commissioner. That is such a critical role. It is about ensuring that they are really equipped to actually do their job. We have some commissioners here today, who I am sure will be much better equipped than I am to give great advice on how to ensure that the commissioner has the right powers and functions. But one that stood out to me was: would the commissioner be able to receive complaints of noncompliance or complaints of failure to follow up on risk assessment or due diligence? Not only is there an obligation to report; it is great to have an obligation to report on risk, but it is better to have an obligation to do a process to identify risk. Behind that, you need some sort of enforcement of "If you don't do your homework, what are the consequences?" That is what I would recommend as a power for the anti-slavery commissioner.

They are my opening points. It is a long bill cross-referencing lots of different pieces of legislation, so I have provided a written submission. With respect to some of the things I note in the written submission, while it is great that the act refers to supply chains, the act, like the commonwealth act, should also be thinking about operations and business relationships right through its value chain. There is some technical wording that could be added there, like "operations" or "value chains" to get the full scope of what we are talking about right back to the source.

There are some inconsistencies in the bill where some parts of the bill refer to remedy as being one of the things that, for example, the agencies will be required to develop, but there does not seem to be a corresponding role for the Auditor-General to look at whether remedy has been provided. There are some technical things like that that I think need to be cross-checked. I have put that in my submission.

I was interested in the proposal to require risk statements from businesses of any size or risk profile tendering for ACT work over $25,000. On the one hand, as an advocate on this issue, I feel very strongly that we all have our job to do on this issue, no matter how big or small your business is. On the other side of that, I know, as a person who runs a small business myself, that it can be very difficult to do the sort of due

diligence we are talking about, and there is a point at which it becomes quite difficult for a small business to seriously do anything on due diligence beyond reading what companies say they do.

My advice there would be to think about the turnover and risk profile of organisations that are tendering into the ACT. You might want to think about some sort of entry framework around risk: "You will have to provide a statement if you meet this sort of risk threshold," for example. Finally, I have recommended some additional powers for the ACT anti-slavery commissioner.

THE ACTING CHAIR: Following on from the latter part of your opening statement and your first recommendation, I would benefit from knowing what the difference is between "operations" and "supply chain".

Ms David: An example of an ACT government supply chain might be the purchase of wind turbines through its procurement process. If the ACT had an energy provider that was wholly government owned, 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 banking and finance—anybody who has an investment portfolio where the operational decisions you are making are about what you invest in. Perhaps some further research could be undertaken to expand on how this would be directly relevant in the ACT context, and how much effort would need to go into supply chain versus operations.

THE ACTING CHAIR: You mentioned your long history of work in this area. Could you provide some examples from other jurisdictions where commonly procured things have been caught up and associated with human slavery and are no longer purchased by governments?

Ms David: In terms of purchasing by governments, I do not know that I would have examples for you. I can point to a slightly different but related process in the United States where goods are subject to import restrictions. Basically, at the customs border in the US, if it is thought that, let us say, cobalt is coming into the United States from the Democratic Republic of Congo in breach of anti-slavery requirements, that cobalt would be stopped at the border, and it would be seized until a process has been gone through to show that that cobalt was mined and sourced in a responsible way. A number of shipments of seafood have been stopped, and solar panels, latex gloves and, I am sure, many other things. The customs agency in the United States has a list of the products that it has seized.

I would also add that, for a government department, sometimes it could be a case of just a choice between suppliers. It is not that you do not buy wind turbines, or you do not buy battery storage, because of course we need these for our energy transition; it is more around how you make thoughtful decisions about where you buy them from and how you buy them. If you are a government and you are buying things at scale, you have a lot of leverage in that relationship, so you have the capability to have very informed conversations with your suppliers about where things are sourced from.

THE ACTING CHAIR: In the Australian context, how commonplace is it that government procurements are associated with entities that use slavery? In terms of informing these decisions, how real is that?

Ms David: I do not have the actual answer for you on that. I would have to refer you to commonwealth procurement colleagues. I would suggest perhaps having a look at: is the ACT government sourcing PPE? Is the ACT sourcing latex gloves? Is the ACT sourcing solar panels, wind turbines and battery storage? Is the ACT government sourcing frozen seafood for use in hospitals or schools? There is a list of 158 products in the US Department of Labor forced labour list, and that would be my starting point.

MR BRADDOCK: I have a couple of technical clarifications regarding your submission. Firstly, with the Auditor-General and the concept of remedy, what is the role that you see for the Auditor-General? Typically, they audit but they do not actually get into conflict resolution and that side of things. Can you please tell me what remedy you are talking about there, and what they will do?

Ms David: Yes. The idea of a remedy would be: let us say you buy some railway sleepers for the ACT and, through some sort of due diligence process, you realise that, with the railway sleepers you have purchased, the workers involved in manufacturing those railway sleepers had their passports withheld, had to pay fees to get those jobs, had been charged 60 per cent interest and were not able to leave, through a whole combination of circumstances. Essentially, there was a finding that the people who had made your railway sleepers were in a forced labour situation.

In that situation, you would want the buyer—in this case the ACT government—to provide some sort of remedy to the people who had had their passports taken off them and who had been charged 60 per cent, usurious interest et cetera. You would want the buyer to provide some sort of remedy to the people impacted.

With respect to the Auditor-General looking at the actions taken by ACT government departments, at the moment, if I have understood the bill correctly, the bill says the Auditor-General can look at the risk assessment and the risk mitigation, but the Auditor-General has not been asked specifically to look at whether the buyer has provided any remedy. It is not necessarily a comment on whether it was the right remedy or the appropriate remedy, but just whether some sort of remedy process step has been taken. The auditor, I imagine, has a very strong function in terms of process rather than outcomes. Has a remedy process been put in place: yes or no?

MR BRADDOCK: The second question is about the $25,000 threshold, which is simple to legislate. You described a risk-based approach to doing that. How would that be legislated?

Ms David: There are two questions to ask before working out how to legislate it. The first would be to understand: what is the profile of the organisations historically that you have tendering for work? If it turns out that 99 per cent of them are big four consulting companies and big multinationals who already would be captured by the Modern Slavery Act, maybe there is not an issue. First of all, what is the turnover of those businesses? Are they captured by existing reporting thresholds?

If it turns out that there are a lot of small consulting businesses, for example, or small providers of food and other services, you know that what you are asking them to do is new. If you are asking a catering company to suddenly report on the modern slavery risk in its provision of sandwiches to the ACT Legislative Assembly at lunchtime, that is a very different profile from asking BHP.

You might want to work, for example, with the commonwealth—in New South Wales we have equivalent processes—to designate a specific set of industries that require a further look. You might say that anything involving imported seafood requires a further look; anything involving renewable energy requires a further look. That is how I would suggest thinking about it, and that might be under supporting regulations or supporting instruments. It could even be prescribed by the anti-slavery commissioner.

THE ACTING CHAIR: You have not taken any questions on notice, so we do not need to worry about that. On behalf of the committee, thank you for your attendance today.

Ms David: My pleasure; thanks so much.

Short suspension.

WATCHIRS, DR HELEN OAM, President and Human Rights Commissioner, ACT Human Rights Commission
TOOHEY, MS KAREN, Discrimination, Health Services, Disability and Community Services Commissioner, ACT Human Rights Commission

THE ACTING CHAIR: We now welcome witnesses from the ACT Human Rights Commission. I remind witnesses of the protections and obligations afforded by parliamentary privilege and draw your attention to the privilege statement. Witnesses must tell the truth. Giving false or misleading evidence will be treated as a serious matter and may be considered to be a contempt of the Assembly. Could you please confirm that you understand the implications of the privilege statement and that you agree to comply with it?

Dr Watchirs: Yes, I do.

Ms Toohey: Yes, I do.

THE ACTING CHAIR: Would you like to make an opening statement?

Dr Watchirs: Yes, a very brief one. We have provided a more detailed submission. We strongly support the objectives and policy underpinning the bill. It is consistent with our public authority duties to protect individuals from all forms of slavery and forced labour, which is in section 26 of the Human Rights Act.

We do not oppose the creation of a dedicated anti-slavery commissioner. I think that, in the interim, it would be effective to establish a collaborative oversight model to ascertain the incidence of modern slavery before committing to a legislative response.

There are lots of players—the Auditor-General, WorkSafe, ACT Policing, Procurement, the Register of Secure Local Jobs Code, migration experts, Fair Work, unions, Red Cross, and even the Human Rights Commission. Currently, Commissioner Karen Toohey handles complaints that touch on this area. Our Victims of Crime Commissioner has a family violence pilot where we sometimes see people that may be subjected to forced marriage and other unsafe practices.

We support the proposal to include in annual reports actions to identify and mitigate the risks, and especially the obligation to establish due diligence systems. 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.

There are some learnings from the New South Wales commissioner. They have a very tailored reporting regime and focus on the procurement probity and integrity framework. I think that would be very effective in the ACT and we should make sure that it is included.

We do not oppose the creation of a commissioner, but it would have to be handled carefully, with the current balance of commissioners. 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.

The incidence of modern slavery in Australia has been estimated to be 41,000. In the ACT the areas you would look at, the local operations, would be unfair and bad conditions of work. Embassies, of course, are one area that have come to the attention of the media. There was a prosecution of Nantahkhum in 2013, involving a sex work business where the person's immigration status was exploited; she worked very long hours, she was not able to leave her premises without being accompanied and her passport was seized. That is not an uncommon story.

It is important to have a victims-focused way to address this. That has certainly been the approach of the New South Wales commissioner. I also refer to the McMillan review, which was only released recently, after we made our submission, with improvements, to have the threshold at $50 million, rather than $100 million, obligations to have due diligence systems, effective penalties for noncompliance with reporting obligations, and obligations to report the incidence, a risk, grievance and complaints process, internal and external consultations, and risk management.

That risk approach, because it is such a hidden problem, is really important. The previous witness, Fiona David, mentioned the kind of products you are looking at and which supply chains are risky. It is about having the whole procurement framework and experts like the Auditor-General focused on this in performance audits. You would need to have the whole ACT framework looking at this before deciding whether to have a commissioner from the start—although a commissioner is a very good way to raise awareness.

THE ACTING CHAIR: How do we go about understanding the nature and incidence of modern slavery in the ACT? How do we grapple with how big this problem is?

Dr Watchirs: That was why we recommended having collaboration with all of the players who have an interest. Policing would have the tip of the iceberg with respect to people. The more obvious would be the sex industry. In the construction industry, I gather, there is a problem. There is also the hospitality industry. I remember a case 15 years ago where Filipino people had been brought out by a restaurant owner and kept in servitude, basically, in very bad conditions. But it was the unions who brought those cases to us. There are a number of players who have that information, but it is very important that the victims trust who they are reporting to. They may not want a police response. They may just want a remedy.

Ms Toohey: That is our consideration, particularly regarding the experience of it in the ACT. There is a range of players involved, and the potential to have it vested in a single position means that you may not have oversight across those various sectors, versus the procurement process, because they are quite different issues—supply chain versus people's experience of it here.

MR BRADDOCK: Your submission recommends that, instead of utilising the Human Rights Act as the legislative vehicle, there should be a standalone act. What

considerations would need to be considered as part of that standalone act, to make sure that it still works with the Human Rights Commission?

Dr Watchirs: The framework of the New South Wales commissioner is quite good. His duties are to combat modern slavery, promote action, identify and provide assistance and support to victims, give advice, education and training to prevent, detect, investigate and prosecute, and monitoring, reporting and effectiveness; and, as I said earlier, raising community awareness. That would be a new standalone act that is not dissimilar to the Discrimination Act that Commissioner Toohey administers.

We do not think modern slavery should be selected, out of all of that list of human rights, and have operational provisions in there. You would have them in a standalone act. You would probably need to amend the Human Rights Commission Act if the commissioner is located in the commission, so that it fits within our existing framework.

MR BRADDOCK: Are there any difficulties in terms of making sure those other acts like the Discrimination Act and the Privacy Act work with the Human Rights Commission as well? Do they need to be considered as part of drafting the standalone act?

Ms Toohey: I think they would need to be considered as part of the drafting, but I think that is a fairly standard process, as you know. At the moment our concern would be about modifying the act, as Dr Watchirs has indicated, to put a reporting obligation in the Human Rights Commission Act which does not exist for any of the other rights. The government is proposing later in the year, as you are probably aware, to have a human rights complaint mechanism, so we are already doing that work looking at how those provisions will interface with other pieces of legislation.

Again, as Dr Watchirs has indicated, there are a range of players that would have a view about what would need to be included in standalone legislation, and you would need information sharing; that would be important.

THE ACTING CHAIR: Is there best practice in another jurisdiction that you think, in an ideal world, the ACT could replicate? I know you have outlined some of the reasons you do not think a standalone commissioner may be the best first option, but if we were to say that a commissioner is the best first option, are there particular models or examples that you think we should look to?

Dr Watchirs: There are only three. The UK, the federal and New South Wales. The commonwealth one has been criticised, and I think the McMillan review addresses a lot of those issues. We did not have the advantage of that when we made our submission, but we support the recommendations made by McMillan. With the New South Wales commissioner, they have had the experience on the ground, and we do not have a federal commissioner, but we are due to have one next year; I would like to see how that works before jumping in to create a commissioner in the ACT Human Rights Commission.

As we said, it is about having a collaborative oversight model to ascertain the problem, who the players are and how we would work together. 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.

MR BRADDOCK: You mentioned resources that would be required by such a commissioner or commission. I think you mentioned 12 in New South Wales. Can you give me an indication of what resources you estimate would be required for the ACT?

Dr Watchirs: It is very hard to say, but the Aboriginal children's commissioner has five, so that would be a starting point. I certainly would not recommend one or two, as was the case with the children's commissioner and the Human Rights Commissioner.

THE ACTING CHAIR: You have not taken any questions on notice. On behalf of the committee, thank you for your attendance today.

Dr Watchirs: Thank you.

Hearing suspended from 9.15 to 10.01 am.

COCKAYNE, DR JAMES, New South Wales Anti-slavery Commissioner

THE CHAIR: We welcome Dr James Cockayne, the New South Wales Anti-slavery Commissioner. I remind witnesses of the protections and obligations afforded by parliamentary privilege and draw your attention to the privilege statement. Witnesses must tell the truth. Giving false or misleading evidence will be treated as a serious matter and may be considered to be a contempt of the Assembly. Please confirm that you understand the implications of the statement and that you agree to comply with it.

Dr Cockayne: I do.

THE CHAIR: Thank you. Would you like to make an opening statement, Dr Cockayne?

Dr Cockayne: Yes, thank you, Chair. Thank you to the committee for this opportunity to join you today to discuss this important bill. I would like to start by acknowledging that I am privileged to be on Ngunnawal Ngambri land today. I pay my respects to elders past, present and emerging, and extend that respect to Aboriginal and Torres Strait Islander colleagues joining us today in any capacity. Within the modern slavery context, it is important, when acknowledging elders present and future, to understand that that means there are First Nations Australians in our community that are survivors and descendants of survivors of practices that today would qualify as modern slavery.

I am the New South Wales Anti-slavery Commissioner. This is an independent statutory role created by the Modern Slavery Act 2018 of New South Wales. That act came into force on 1 January 2022, and I took up this post as the first full-time anti-slavery commissioner on 1 August 2022.

It is important that I note at the outset that, as an independent statutory office holder, I do not speak for the New South Wales government, or any other government, for that matter. I was appointed by the New South Wales Governor, and I report to the New South Wales parliament, not to the government.

The position of the New South Wales commissioner is, as you know, 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 wide range of functions which together position the role to work to address the system failure that modern slavery represents.

My submission and evidence today are offered based on my experience in the role since I took office on 1 August last year, as well as around two decades of prior experience working to combat modern slavery and organised crime, promote human rights and foster responsible business practices around the world.

Chair, I welcome the prospect of the creation of the 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.

I also believe there is an opportunity for the ACT to learn from the commonwealth and New South Wales experiences regarding the importance of independence in oversight of such arrangements. For example, an independent anti-slavery commissioner can play a key role in ensuring that the policies and programs that taxpayer funds are spent on do not amount to mere virtue signalling, but actually prove effective in practice.

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, if I may, on three key points where the approach proposed in the ACT bill would actually differ from the way we approach things in New South Wales under our legislation. I think those differences may potentially be useful for the committee to consider as it reflects on the bill.

They relate to: first, the commissioner's role in assessing compliance with federal legislation; second, the need to allocate limited due diligence resources based on risk to people, not on the size of a particular procurement; and, third, the critical role for survivors in developing and delivering effective anti-slavery policies and programming.

Let me start with the first point—the role of the commissioner in assessing compliance with federal legislation. To my knowledge, it is not common to have a state or territory governmental actor, even one independent from the state or territory's executive government, assess compliance with federal legislation. 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 not compliant with the commonwealth act. I think that 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 soon, perhaps this year.

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. The approach taken in New South Wales under the Modern Slavery Act 2018 of New South Wales is similar but a little different. It creates a separate state-level reporting system specifically for New South Wales public entities that is distinct from the commonwealth act reporting scheme, because the commonwealth act reporting scheme specifically does not address state and territory public entities.

The New South Wales approach integrates modern slavery risk management into the existing sophisticated state public procurement supervision arrangements. This avoids the potential for conflicting assessments of a particular entity's compliance with the federal act—in New South Wales, we do not assess compliance with the federal act;

we assess compliance with state-level obligations—while also maximising the opportunity to leverage existing public procurement arrangements to develop modern slavery risk management capabilities.

The second point to focus on is the question of whether to tie due diligence to the size of a procurement, or the risk that that procurement poses to people.

THE CHAIR: I am sorry; we will take a very short break.

Short suspension.

Dr Cockayne: Let me start that second point again. The first point was around how we ensure that there are not unwitting disconnects between any federal regulatory arrangements and any state or territory-level arrangements. In closing that point, let me stress this is not to suggest that I do not support state and territory arrangements. For obvious reasons, I support state and territory arrangements. It is purely a question of technical-level scheme design, to ensure that you do not end up in a situation where a particular entity is receiving conflicting signals from a state or territory on the one hand and, on the other hand, a federal regulatory body saying, "You are or you are not in compliance with the federal legislation."

We avoid that problem in New South Wales because my office does not assess conformance with the federal legislation. We deal only with entities that do not have obligations under the federal legislation. There is a very small exception to that around state-owned corporations, which are corporate entities; therefore they are obliged by the state legislation to use the voluntary reporting track federally. But we do not assess their conformance with that obligation beyond assessing whether they have actually reported.

We assess conformance with state-level, reasonable steps obligations—obligations to take reasonable steps to ensure that entities are not procuring goods and services made with modern slavery. That is the scheme that I essentially assess conformance with, and I am happy to take questions on that.

Let me come, however, to the second point, which is the question of the basis on which due diligence should be calibrated. Should it be tied to the size of a procurement, with a particular threshold such as $25,000; or should it relate to some other factors? In New South Wales, we primarily tie the level of due diligence that must be undertaken by a procuring entity to the risk of modern slavery in the procurement, and to the capability of the procuring entity, not to the size of the procurement itself.

The reasons for this are both principled and pragmatic. At the level of principle, we are guided by Australia's commitment to the UN Guiding Principles on Business and Human Rights, which tie an entity's obligations in addressing human rights risks—including modern slavery—in their supply chains to the risk itself, not the size of the procurement. 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 to promote effectiveness in the overall scheme.

In the next couple of months, I will be publishing detailed guidance for public buyers on how in New South Wales they are expected to identify those risks and calibrate their response accordingly. It is guidance that has been developed through many months of close consultation with public buyers. We have over 400 public buyers that are expected to report in New South Wales, with an annual procurement spend of over $30 billion between them.

Perhaps of interest to this committee is that personnel in the Chief Minister, Treasury and Economic Development Directorate of the ACT government, who I believe may be testifying before you a little later in the morning, have been an active and constructive contributor to these discussions to develop this guidance—something we welcome, given the significant overlap in the supplier base of New South Wales and ACT public buyers. That is my second point, around how we organise procurement due diligence obligations to ensure they are most effective.

The third point that I will make very briefly relates to the critical role of survivors. In my view, it is critical that survivor engagement and leadership are 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.

For example, there is a significant diplomatic corps in the ACT, and there is, sadly, a well-established history, not only in this country but internationally, of heightened vulnerability to modern slavery of domestic workers in diplomatic households around the world.

Recent jurisprudence from the UK's highest court, the Supreme Court, makes clear that diplomatic immunity does not extend to treatment of diplomatic household workers that constitutes modern slavery, so that traditional defence that has been offered no longer holds. That decision, given it comes from the UK's highest court and is based on a treaty that is also in effect here in Australia, is likely to be highly authoritative in any future litigation on this matter here in Australia.

My point here is that you may have a victim population in the ACT that has quite distinct needs and requirements to what we have in New South Wales, just as in New South Wales the needs of the victim population in rural and regional New South Wales can be quite different from the kinds of vulnerabilities that people face in urban settings.

An anti-slavery framework for 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 adviser 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 will also have several people with lived experience on the advisory panel that I intend to announce next week.

Thank you so much for your time and attention. I am very happy to take your questions.

THE CHAIR: Thank you, Dr Cockayne. That was wonderful. I want to touch base on one of the points in your submission. Andrew, you can have the question, then I will come back to Dr Cockayne.

MR BRADDOCK: Certainly. I wanted to pick away at the idea of the register, in terms of the level of duplication or administrative work that it may create, particularly, for example, where there will be a New South Wales one. Should the ACT go ahead with one, how would that work? Have you experienced any double-handling between your register and what the commonwealth is doing?

Dr Cockayne: No, and there is a simple reason for that. We do not yet have a register. We have an obligation to create one, but we have not stood it up yet, and there is also not one at the federal level. These are important questions, but at the moment they are still in the area of theory.

Let me reflect a little bit on the challenges that we see and how we are looking to address them. First of all, as I explained in my opening presentation, the New South Wales act, as it was amended in 2021—and that is quite important; quite significant amendments were made in 2021 to the original 2018 scheme—steers around federal legislation quite deliberately and carefully. The federal legislation, as you know, deals with reports by, essentially, private sector entities. There are some public sector entities that are caught, but it does not apply to state and territory government entities. That is the lane into which the New South Wales act, as amended, drives; so it sets up its own reasonable steps obligations and framework.

The register in New South Wales, accordingly, as amended, will deal with those entities. It is a register of, essentially, assessments by me and my team as to which public entities that are required by the New South Wales scheme to report under the act are not in conformance with their obligations. It does give me quite wide discretion beyond that. The act says that I can include any other information that I feel is relevant. We are thinking about how to use that effectively.

For example, I have another power under the New South Wales act to develop codes of practice on, essentially, modern slavery risk management in supply chains. That code of practice power is not limited to public entities. I can use that to engage with the private sector if I so choose, and in our initial conversations with a number of private sector entities they are quite interested in having deeper guidance on what good practice looks like in their particular industry. They are getting general guidance at the moment from the federal scheme. There is guidance for reporting entities published originally by the Australian Border Force; it has now been moved into the Attorney-General's Department.

It is not fair to say that it is one size fits all. It is extremely good work that addresses

the huge array, the thousands of companies, that have reporting obligations under the federal scheme. Necessarily, there is a limit to how far that guidance can go in dealing with the particular challenges you see in any given value chain, any particular supply chain, which may be different from what you see in another supply chain because the underlying workforce that you are dealing with may look quite different.

I will give you an example, to bring this to life. Let me take two areas where we know there are modern slavery risks in supply chains. One would be PPE—personal protective equipment—particularly around rubber gloves. The key risks that we are aware of there relate to the treatment of migrant workers in South-East Asian countries in the production of those rubber gloves. Those workers face particular challenges.

An entity like New South Wales Health that buys imported rubber gloves faces particular needs in how it manages those risks. At the same time New South Wales Health runs hospitals that are being cleaned by cleaning crews, and we know that those cleaning crews in certain contexts in New South Wales can face modern slavery risks to do with risks of debt bondage and potentially even forced labour in certain contexts.

The way you manage that risk will be very different if you are New South Wales Health than the way you manage the risks relating to offshore workers in rubber glove factories in South-East Asia. If you are dealing with cleaning crews in New South Wales, your leverage is much stronger. You are much closer to the action, if I can put it that way, and you probably have a much larger market share, frankly. If you are just one of many end buyers in a long, complex supply chain like PPE, you will have to take a very different approach. It will have to be much more collaborative. You have to create leverage and use that leverage overseas. It will look very different.

Underneath, your basic due diligence obligations are similar, but the way you actually implement them will look very different. Reporting entities are looking for that more detailed guidance on how to manage these risks in different contexts and in different supply chains.

Coming back to your question, in the register we are potentially able to say things that address the private sector as well in that context. But that is, frankly, at this point uncharted territory.

I also said that the federal level has no register at the moment. The McMillan review that has just been published, and to which the federal government has not even formally responded yet, does countenance the possibility of, for example, either the minister or the new federal anti-slavery commissioner publishing lists of high-risk sectors, suppliers and supply chains; again, this is uncharted territory at this point.

I think it is entirely feasible to imagine multiple registers. In Western Australia, there is a debarment scheme in place as well. It is just a question of organising carefully how they speak to each other. We are in a federal system. It is the nature of the territory.

MR BRADDOCK: That was going to be my next question: is there anything in the

New South Wales legislation that would prevent you from sharing information from your register with the ACT, should we establish a similar scheme, so that we have oversight of any cross-border operations that might impact both jurisdictions?

Dr Cockayne: Our registers will be public, so once you are on a register, that information will be public. That is required by the law. It has to be a public, electronic register. But the underlying question about information sharing relating to the conduct, or the acts or omissions that led to an entity being placed on a register, is a little more complex, because there are a number of considerations relating potentially to commercial confidentiality, administrative due process, individual privacy, potentially healthcare rules, criminal law and due process rules, if information is being shared across borders between governmental entities around alleged conduct of particular individuals or suppliers for modern slavery crimes.

That is an issue that I know is under active consideration by the existing intergovernmental working group on modern slavery in public procurement, which is convened by the federal Attorney-General's Department. That issue is actively under consideration currently.

THE CHAIR: Just to follow up from the previous question, Dr Cockayne, you mentioned offshore workers. Do current entities in New South Wales have a guideline for how they can make sure they are living in harmony or working in harmony with the Modern Slavery Act?

Dr Cockayne: We are developing quite detailed guidance currently, which we hope to publish in July-August. It will then go up to what is called the Procurement Board in New South Wales, which is the entity with governance responsibility for setting procurement requirements for a wide range of public entities in New South Wales.

We are hopeful that the Procurement Board will endorse that guidance. We have been developing it in close cooperation with a range of public entities. After the approval of the Procurement Board's subsidiary, the Procurement Leadership Group, to do this, we went to them last September—it might have been October—and said, "We believe that guidance is required. We'd like to develop that collaboratively with a wide range of entities that have to report, so that we can give them fit-for-purpose guidance." That is the work that I, along with my colleague Victoria Gordon, who has joined us today, have been doing to develop that detailed guidance.

We think there will be a need for codes of practice in specific supply chains, so the guidance will be a little bit like the federal arrangement. There will be the general guidance, then there will need to be more specific guidance for particularly high-risk areas. We think that will be available by August. We are hopeful. As I mentioned in my submission—I do not know the paragraph off the top of my head—it would be open for other jurisdictions to cross-reference to that, to subscribe in some way to that guidance. It will be a living document. We will update it over time. We are grateful for the informal input from the Chief Minister's department, as we have been thinking through the development of that guidance.

THE CHAIR: Is there a grace period for those entities to fulfil the guidelines that will be recorded, and what is that grace period?

Dr Cockayne: It is not a grace period as such. The obligation is active legally as of 1 July last year. They have to report annually under the relevant legislation. They will have to include this in their annual reporting. They are on different cycles, but for most reporting entities—and there are over 400 reporting entities—we anticipate they will include their reporting on this in their upcoming annual reports. For most of them, that means by October. There is not a grace period as such, but you are probably wondering how they report against guidance that does not exist yet.

THE CHAIR: Common sense, maybe.

Dr Cockayne: Quite. I would say there have been a few signals from us about the kinds of things we are looking for, and we are on the record as saying that in our approach we will be pragmatic. In the first year of reporting, we are particularly interested in them getting certain systems and policies in place internally.

For any major entity that has already been operating in a commercial environment and is aware of the federal act's requirements, the systems and policies they will have to get in place are not out of left field. These are fairly well-known arrangements around due diligence, remediation, grievance mechanisms, responsible exit from contracts and so forth. For those entities, the rubber will hit the road probably more in the second and third years of reporting, when we will look for higher levels of full conformance with the guidance that we are shortly bringing forward.

We will also, in the first year of reviewing their reporting, pay particular attention to certain high-risk supply chains. We want to focus their minds on particular areas. We have not formally announced what those will be yet, but we have had some very useful discussions in the working party around, for example, information and communications technology. There are also very interesting conversations emerging around renewable energy.

THE CHAIR: I am aware that your office opened last year, in August. How many complaints have you received about certain entities in regard to modern-day slavery?

Dr Cockayne: At the moment we are not really in the business of receiving complaints about particular entities' involvement in modern slavery; however, we do receive inquiries from survivors and people with lived experience. The number of those coming forward to us is growing very steadily as we become more visible, as our work becomes more visible.

We have also received five whistleblower approaches from a range of different actors—some are at quite senior levels in different industries in the state—providing quite detailed information about their concerns. As you said, we started on 1 August and we have been gearing up rapidly, so we anticipate using our powers to gather further information to understand the nature of those concerns.

THE CHAIR: With those victim survivors, have their experiences been here in Australia or offshore?

Dr Cockayne: Both. Some only in New South Wales; some in multiple states and territories in Australia; and some in Australia and overseas. I have not received any approach from a survivor whose experience has only been overseas. I have engaged with survivors in New South Wales whose experience has only been overseas, but we approached them. They did not approach us.

MR BRADDOCK: You were discussing replacing the $25,000 threshold with a risk-based approach. Can you walk me through how that could be legislated and implemented in practice?

Dr Cockayne: Sure. That is how we approach things in New South Wales. In New South Wales, the way it works is that the legislative statutory obligation is to take reasonable steps; then it is essentially left to the reporting entities, with guidance from me and my office, to understand what reasonable steps look like. The guidance itself will lay out the decision-making logic for how you understand whether you are dealing with a high, a standard, a low or a minimal-risk procurement.

The first thing to understand is that certain products bring with them higher levels of modern slavery risk because of the way those products are made or distributed, but once you have looked at that inherent risk, you also have to look at the specifics of the particular supplier that you are looking to engage with.

We have quite a decentralised procurement arrangement in New South Wales. Quite a lot of analytical and judgement discretion lies with individual buying entities. The approach that has developed through the conversations with entities to develop the guidance that I mentioned earlier is that, essentially, on our side, the Office of the Anti-slavery Commissioner, we are helping them with the analysis of the inherent risk. If you are buying a widget, or if you are buying a widget from this country, where are you on that spectrum of risk? It is up to them to then do the second part of the analysis, which is to think about: is this supplier more or less risky than that supplier? That is appropriate, given the decentralised nature of the decision-making in New South Wales.

MR BRADDOCK: The guidance that you will be developing is essentially regulation, to help to ascertain what those thresholds are for those reasonable steps?

Dr Cockayne: It is not regulation per se. We do have that option under the act, actually, to organise the adoption of regulation. The guidance itself will not be regulation at this stage, but if it is endorsed by a direction of the Procurement Board, the direction has the force of law. If the Procurement Board adopts a direction that says that reporting entities are to follow the guidance, it will be tantamount to regulation.

The regulation regulates their decision-making process. It does not provide a numerical dollar threshold. It essentially requires them to consider two matters for each procurement: firstly, what is the riskiness from a modern slavery perspective of buying this product from this supplier; and, secondly, what is our capability? The prevailing international norms are quite common-sensical. 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 it is something that we mention in our submission. 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 or medium enterprises; or, indeed, for example, First Nations enterprises.

The risk is that if you make this too difficult—these due diligence and procurement obligations—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.

The prevailing view internationally, which we follow in New South Wales, is that the due diligence expectations need to connect both to the risk of the procurement and to the capability of the particular entity.

On capability, the guidance will essentially allow entities to identify once each reporting cycle what level of capability they sit at. You end up with a matrix where you essentially have capability as one factor, and the risk of the procurement as another factor. Depending on where you sit in that matrix, you will end up with heightened, standard, low or minimal due diligence obligations. The guidance walks you through what those obligations look like, depending on what kind of procurement you are dealing with. This is not that different from the way different kinds of risk at different levels are managed in existing procurement processes.

THE CHAIR: Just to follow up on that $25,000 threshold mark that is in the bill, I am assuming that the author of the bill probably went by what is recorded in our contracts register here in the ACT; when it is $25,000 and over, that is when it is recorded. I have yet to ask her about that, but I will. Does New South Wales have a threshold whereby the New South Wales government contracts are recorded at a certain level?

Dr Cockayne: Yes, we do. It is $150,000, I believe.

THE CHAIR: That is good to know.

Dr Cockayne: If I could offer a further comment on that, this is a regulatory design process. It is important to be pragmatic about this and to think about what the intent here is. Ultimately, my view is that any arbitrary figure that we adopt here, any number we adopt, may be fit for purpose in the particular regulatory context you are operating in. If $25,000 is the threshold that you operate with here in the ACT, that is your starting point. That is what I would say.

The key thing is to think about how the system that we would be putting in place encourages the entities that are subject to the reporting requirements to allocate their scarce resources to the riskiest contracts and riskiest procurements. The threshold that you are operating with may not actually give them the signals that they need. 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.

I am agnostic, in a sense, as to any given threshold, because I think that, regardless of any threshold you may adopt, you may need other mechanisms for signalling to reporting entities which particular contracts and procurements within that group above the threshold they should be focused on. I do not know your system here in the ACT well enough to know how many thousands of contracts are caught above that level; nonetheless this would be my view.

Let me illustrate that a little bit more and explain the approach we took in our submission to the McMillan review of the federal act. One of the contentious issues in that review process was whether the reporting requirement at the federal level should be dropped from $100 million of consolidated annual revenue to $50 million. There was some very important work done to model how many more reporting entities would be caught if we dropped it from $100 million to $75 million to $50 million to $25 million. How much more work will that actually create for the reporting entities and for the people—and this is the critical part—that then have to review those reforms once they come in? That is very important work to think through.

Ultimately, my submission to the McMillan review on that point was: what matters is that you require entities that are connected to the riskiest transactions to report, not what size they are. There may be a lot of large entities, there may be a lot of contracts over $25,000, that are very low modern slavery risk, so why would you use up regulatory oversight resources on reviewing low-risk transactions and procurement work if you are not capturing high-risk transactions, procurement work, because it happens to fall below the threshold?

Those kinds of thresholds sometimes have to be in place for pragmatic reasons, because we do have limited oversight resources, but they need to be complemented with signals and arrangements that ensure the regulatory resources are really focused on the riskiest transactions.

THE CHAIR: How do you know if it is a high-risk entity or not if you do not know about their background and the work that they do, without actually reading their submissions or their report?

Dr Cockayne: You have to do that work. The due diligence requires a process of inquiry into the arrangements that different suppliers—for example, in the context we are talking about—have in place. There is a strong appetite across both public and private sectors to think through ways to streamline or even automate that work.

One of the things we have been talking about in our working party developing our New South Wales guidance is around supplier self-assessment questionnaires. They are a critical tool because that is how you understand what arrangements this entity that is bidding for our contract has in place to manage the modern slavery risks in its own operations and supply chains.

If you make the supplier self-assessment questionnaire too rote, too pro forma, the whole thing just turns into a tick-a-box exercise, and the information that you are getting from them will not necessarily be useful to you. Getting those right and iterating them over time to make sure they are really giving you the information that

you need, to understand where the risk is in your supplier base, will be really critical. It is something that I think we will be working on in my office for many years.

MR BRADDOCK: What steps do you take to verify or audit those returns as well, given they are a self-assessment?

Dr Cockayne: That is a good question. In New South Wales, that is a matter for the individual public entities that are doing the buying. It is a decentralised, devolved procurement context, so that is the kind of discretion that they exercise. But there is scope, under the guidance we are developing, for us, as the entity assessing conformance with those public entities' obligations, to look at that and to consider whether they are doing the necessary work. There is a whole industry now offering services for that verification process. Given the focus on modern slavery reporting in Australia, it is a big growth industry in Australia.

THE CHAIR: I would like to ask about your information gathering. Do you have power to intercept phone calls—tapping power?

Dr Cockayne: No. We do not have police powers under the New South Wales Modern Slavery Act. Policing work is left to the policing agencies. We do have the power to request information and assistance from a wide range of public and some private sector entities, and they have a duty of cooperation with us. I can imagine a context in which we would cooperate with New South Wales Police if they were inquiring into issues in certain industries, for example, but we do not have police powers.

MR BRADDOCK: If we go forward and implement this, and have a commissioner here, how would we be able to integrate work of the ACT, which is an island within the state of New South Wales, to enable the two commissioners to work together? What would be important factors for you to ensure that integration?

Dr Cockayne: The key question actually relates to one you raised earlier. It is around the information sharing arrangements, which is in a sense an operational architecture question more than a statutory design question, if I can put it that way. On our side, under the existing legislation, we have quite a lot of room to move to put in place information sharing arrangements, MOUs and so on, with appropriate governmental actors elsewhere. But the key consideration for us operationally would be around security of that information and the necessary protections around that information, if we were to share it across borders. That would be one aspect.

The other aspect would be, again, an information sharing question around efficiencies, going back to your point about risks of duplication—risk of duplication not only between two jurisdictions but also for, say, suppliers that are getting two different regulatory burdens imposed on them when they are going for contracts from New South Wales and ACT public entities.

There might be scope, for example, to connect the guidance that we are developing to the framework that you are developing. With the way we are developing the guidance, there is no reason that entities from outside New South Wales could not also align with that guidance and participate in the future in its further development. Indeed, as

I have said, in the current development of the guidance, we have had participation from federal, ACT and peak industry body actors. We are committed to that guidance being fit for purpose. We think that the best way to ensure that is user-based consultation.

MR BRADDOCK: I will pick up on a point you mentioned about peak bodies. How has the business community responded to the establishment of your office and the modern slavery legislation in New South Wales? Have they been supportive of it?

Dr Cockayne: Generally, yes. When the legislation was first adopted, the legislation at that time, before its amendment, included private sector reporting obligations. There was some concern from parts of the business community at that point about duplication between the New South Wales legislation, as it then stood, and the commonwealth legislation, both of which had reporting obligations on the same entities. In fact, at that point, they had different thresholds in mind. At that point, there was some hesitation, and that is part of why the New South Wales legislation went through a revision process that culminated in 2021. It was substantially amended to remove those private sector reporting obligations and, instead, focus on an area that was left vacant by the federal legislation—namely, the public sector reporting requirements.

That said, there has been very enthusiastic engagement with our office from the private sector. There is a recognition that, as long as state and territory arrangements ensure alignment with the federal requirements, there can only be benefits from further clarification of market expectations, and in particular from mobilisation of business actors to encourage learning on what good due diligence and remedy arrangements actually look like. The federal government has done important work in that regard, particularly through the Modern Slavery Business Engagement Unit in the commonwealth Attorney-General's Department, but there is certainly scope and space for other governmental actors to support engagement in their own business communities and to support the development of those capabilities.

In my opening presentation, I said that modern slavery is a system failure. What I mean by that is that, if somebody ends up in a situation of modern slavery, we missed opportunities to intervene and prevent that happening when they were suffering other terrible violations of their rights but not so extreme that they amounted to modern slavery. If we want to change a system failure, we have to shift a system. Even something as complex as a procurement system is just part of that system.

In New South Wales, we are told 15,000 officials each year undertake procurement activities, so, for even a small change like asking them to take reasonable steps to address modern slavery risks, we are going to have to go through a large reform effort with those entities as buyers and all of their private sector suppliers. It will be a big reform process to undertake over several years, at least, so we need as many different governmental actors as we can to send the similar signal that it is incumbent on the private sector to engage meaningfully with these expectations and to meet them. There is plenty of scope for multiple commissioners and other governmental actors in this space.

THE CHAIR: Dr Cockayne, I turn your attention to the overview of the New South Wales system in your submission—point 11. Help me to understand this because I could not wrap my brain around it. It says:

> … a small number of NSW State owned corporations are required to submit modern slavery statements under the voluntary reporting pathway provided in the Cth Act …

That I do not understand: you are required to do it in voluntary reporting. Which is which? Help me to understand that.

Dr Cockayne: The federal act deals with private sector entities, mainly. It deals with commonwealth entities as well, but let us leave that aside.

MS CHEYNE: Yes. I have heard that before.

Dr Cockayne: Private sector entities report to the commonwealth level. It deliberately does not impose obligations on state and territory public entities. The New South Wales act, as amended, goes into that space, but, when they looked at public sector entities in New South Wales, there were about eight that were actually structured as corporations under the federal Corporations Act—things like Sydney Water, Hunter Water, and those kinds of entities. They are publicly owned entities, but they walk and talk like corporations and they are treated as corporations for all governance and financial reporting purposes.

The decision was taken, in drafting the New South Wales legislation, that we do not want to treat them like we are treating the Department of Health, the Department of Education or the Brewarrina Shire Council; we want to treat them as corporations. Corporations report to the federal level, so let us get them to report to the federal level. It turns out that, of the eight, six or seven already report at the federal level because they are already above that $100 million threshold, so we are talking about one or two entities, like the Forestry Corporation of NSW, that do not have those obligations and are now mandatorily required by the New South Wales legislation to use that voluntary reporting track that the commonwealth offers. The commonwealth offers a voluntary track that says, "Even if you are not caught by our $100 million threshold, you may volunteer to give us a statement if you want to," but the New South Wales legislation now requires those state-owned corporations to use that track.

THE CHAIR: Okay. That covered a loophole where they would have said, "I do not need to report," and now you have made it mandatory for them to report under the voluntary pathway.

Dr Cockayne: That is right. At the same time, it prevented an overlap between the New South Wales legislation and the commonwealth legislation by saying, "We will not treat you as public entities. You go this different route and report up to the commonwealth."

My obligation in relation to those state-owned corporations is only to assess their procedural performance, if I can put it that way. The register that I have to keep only looks at whether they have actually submitted and published their statement, as

required by the federal act. I do not look into substantive compliance. That is where there may be a difference with the ACT bill, as drafted. The ACT bill requires the commissioner to aver to substantive compliance with the federal act. It is not something that I, fortunately, have to do.

MR BRADDOCK: "Fortunately"? Is that a shortfall or weakness of the New South Wales legislation or a strength?

Dr Cockayne: I think it is a strength, because, if I had to assess compliance with the federal act, it could potentially put me at odds with the federal minister who assesses compliance of the very same entity in a different direction. I think that would undermine comity.

MR BRADDOCK: Thank you.

THE CHAIR: Dr Cockayne, what is the New South Wales Parliament Modern Slavery Committee? You mentioned that towards the end of your submission.

Dr Cockayne: It is a very important new joint standing committee with a non-government chair. It was constituted for the first time just a few months before the last election. It is being reconstituted currently, now that we have a new parliament in New South Wales. Half of the new members have been appointed from the upper house. The lower house members have not yet been appointed to that committee. It has its own independent powers—independent of me, obviously—including full parliamentary inquiry subpoena powers. It will be a critical public policy partner to the commissioner in the years ahead because I can submit reports to the committee and the committee can also undertake its 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 from scratch, frankly, with the concept of modern slavery. I have at least eight dedicated members of parliament who will have been following these issues, understand the complexity that we are getting into today, have been tracking it, and have staff who have been educated and inquire into the issues and have formed their own diverse, independent assessments of the situation. It is a really critical partner for nuanced public policy discussion on these issues going forward.

THE CHAIR: Very quickly, your submission says:

> The NSW Act does not currently impose financial penalties for failure to report or for other violations, except in relation to cooperation with the NSW Parliament Modern Slavery Committee.

What does that entail?

Dr Cockayne: It is the normal contempt powers, essentially, of any parliamentary committee.

THE CHAIR: They can impose a penalty on a particular individual—

Dr Cockayne: An individual for failing to cooperative with, for example, a summons. "Summons" may not be the correct word—excuse me—but there is a criminal offence, essentially, that they can impose for—

THE CHAIR: The committee has the power to impose that?

Dr Cockayne: My understanding is yes. I can reference the bill—

THE CHAIR: Interesting.

MR BRADDOCK: Asking for a friend?

Dr Cockayne: To my knowledge, that is not an innovation under the act; it is a recurring feature of parliamentary practice in Australia. I am going to try and check that, if I can find the act.

THE CHAIR: While you are checking on that, we might have to end, sorry, because we have another witness coming in at 11, in a few minutes. We could have gone on for another hour or two. Before we finish, is there anything you would like to add? You came all the way from Sydney.

Dr Cockayne: I chose, in my opening remarks today, to focus on areas where I think that the bill's design could be strengthened. I want to make very clear, though, that that is not intended to signal anything but support for the legislative intent. This is a critically important area of work for a responsible government in Australia today. The latest estimates suggest that we have 41,000 people in modern slavery in this country. As I reflected in my remarks about the diplomatic corps, it is extremely likely that some of those 41,000 live here in the ACT.

As I am sure you heard from the Human Rights Commission president this morning, governments have a duty to protect human rights. The right to be free from slavery is one of the three human rights in international law that exist at all times and in all places, with no possibility of derogation. It is a governmental responsibility of the highest order to take positive steps to identify and support these populations and to ensure that public moneys are not being used to support modern slavery, not only in our own jurisdictions but in the supply chains that stretch around the world. We are most likely to achieve those effects if we work cooperatively across different government actors.

I commend the bill to you. I believe it is an important signal of the intent of the legislature. There may be areas where the design can be strengthened, as with any bill, but it is a fundamentally important step. I hope there will be opportunities, as the Anti-slavery Commissioner in New South Wales, to work with an anti-slavery commissioner here in the ACT and support the efforts that you, as the legislature and the ACT government, might undertake to support this hidden population in need in your territory. Thank you so much for the opportunity to engage with you today.

THE CHAIR: Thank you, Dr Cockayne. If you have taken any questions on notice—which reminds me: would you be open to taking any questions after this hearing if we have any?

Dr Cockayne: Yes. I am happy to provide you with the source of the committee's power.

THE CHAIR: Thank you. Please provide your answers to the committee secretary within five business days of receiving the proof *Hansard*. On behalf of the committee, I thank you for your attendance today, Dr Cockayne.

Dr Cockayne: Thank you, Chair.

Hearing suspended from 11.00 am to 12.30 pm.

CAMPBELL, MR RUSS, Deputy Under Treasurer, Budget, Procurement and Finance, Treasury
MIRZABEGIAN, MS SANAZ, Executive Group Manager, Procurement ACT, Budget, Procurement and Finance, Treasury

THE CHAIR: Welcome back this public hearing of the Standing Committee on Public Accounts' inquiry into the Modern Slavery Legislation Amendment Bill 2023. The proceedings today are being recorded and transcribed by Hansard and will be published. The hearing today is unable to be live-streamed, although a video recording of proceedings will be uploaded to the Assembly's video-on-demand website after the hearing's conclusion. When taking a question on notice, it would be useful to use the words "I will take this question on notice." This will help the committee and witnesses to confirm questions taken on notice in the transcript.

We welcome the ACT government officials appearing on behalf of the Special Minister of State. I remind witnesses of the protections and obligations afforded by parliamentary privilege and draw their attention to the privilege statement. Witnesses must tell the truth. Giving false or misleading evidence will be treated as a serious matter and may be considered contempt of the Assembly. Please confirm that you understand the implications of the statement and that you agree to comply with it.

Mr Campbell: I understand and will definitely comply with that. I will draw in my colleagues as required, as we go through, and then they will introduce themselves, if that is okay.

THE CHAIR: Okay. Thank you, Mr Campbell. Would you like to make an opening statement?

Mr Campbell: I do not have a particular opening statement to make, other than to say that the government is in the process of considering the bill that has been put forward and will need to take steps once the committee has had an opportunity to provide its report. A lot of discussion today will go to some of the issues that are in play and need to be considered in the development of the response to the bill and the next steps, noting some of the other moving parts that are now in play, particularly in relation the commonwealth's review of the Modern Slavery Act—the statutory three-year review—and if there are any recommendations in that. There is quite a lot in that, including in relation to the appointment of an anti-slavery commissioner. I suspect there will be some lessons to be learnt in terms of where they go with some of that as the primary legislation driving a lot of this at the national level.

THE CHAIR: I do not have many questions. I know you guys are still in discussion. It is quite different when the government bring forward a bill. Then we have questions because they have been preparing for that bill for months and sometimes years. What is at play at the moment?

Mr Campbell: Perhaps it would be helpful to give you a sense of the frameworks we currently have in place. Then the bill can be considered in that context, against some of the actions that have already being taken. To point you to some of the actions that have occurred, there was the establishment of a uniforms panel which was designed to address, effectively, the textiles sector and the risks that are implicit in that industry.

A panel was established for the procurement of uniforms across the territory. It was a very targeted intervention to ensure that we are on the front foot in that area.

Another important one was the use of the Government Procurement Direction 2020. That supports the government's commitment to fair and safe conditions for workers and support of ethical and sustainable procurement. The most important thing that we have developed as a result of some of those directions is an internal guidance document that is going through some user testing across territory entities at the moment. It drawn largely from the material that has been prepared at the commonwealth level to support entities that are procuring from nominated entities—some steps that they have taken to identify modern slavery risks in their supply chains. Our guide has developed some very specific rules and guidance for our territory entities, and we are hoping to be in a position to release that in the next month or two. As I say, it is an internal document at the moment going through some user testing.

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 there needs to be capability uplift to ensure that there is a good understanding of what people are actually looking for when they say, "I need to ensure that suppliers are not in an area where there are modern slavery risks or, if they are, what actions they have taken to address any risks that might be there." You need a well-informed group of procurement people to do that across all the territory entities. One of the roles of Procurement ACT is to try and ensure that capability uplift across the government as part of the government's Procurement Reform Program.

This guide is very specific around anti-slavery. It will be helpful in going forward with the framework we build on top of what is already there. You obviously have the Secure Local Jobs Code and the Ethical Treatment of Workers Evaluation, which are key supporting materials for ensuring that there are appropriate measures put in place for procurement. As we said in the submission, the government sent a submission to the inquiry. Consideration could be given to using that as a possible vehicle for delivering on a lot of the objectives, so we are obviously keen for the committee to consider that element and how that might be enhanced or strengthened within the existing frameworks that we have.

THE CHAIR: What would be the pro in having it with the Secure Local Jobs Code?

Mr Campbell: The most direct link would probably be the Ethical Treatment of Workers Evaluation. The benefits are that it is effectively an already established framework and there are rules and regulations around that evaluation about how people need to comply with it across the territory. By strengthening it by adding in modern slavery, if that is where the government chooses to go, you would be effectively utilising existing frameworks and strengthening them. 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 we are not setting up new architecture if we already have something that is pretty close that can be adjusted and modified as needed.

THE CHAIR: Thank you.

MR BRADDOCK: I have a clarification question on that. Will the guide you are developing for internal use be publicly available so suppliers and the public will be able to scrutinise it?

Mr Campbell: Yes. We usually put these products on our website so that there is broader awareness and transparency around them, in the same way that a lot of material at the commonwealth level is available for people to use and adopt. We would try to go down that path, for sure.

MR BRADDOCK: Going to my substantive question now: how does the ACT government currently undertake due diligence to ensure the supply chains and the suppliers are actually modern slavery free?

Mr Campbell: Sanaz, do you want to take that?

Ms Mirzabegian: Yes. I have read, understood and agree to the privilege statement. In relation to how we deal with modern slavery in our procurements, it is done on a case-by-case basis, depending on the particular procurement. For example, as Mr Campbell indicated, one of the initiatives that we have in Procurement ACT is in relation to the whole-of-government arrangements that we set up and manage. As Mr Campbell was saying, a good example is in relation to our uniforms procurement. That is a whole-of-government arrangement. We undertake that due diligence at the stage of approaching the market to ensure that the suppliers and the supply chains in relation to that procurement are ethical and that the clothing items are ethically sourced.

MR BRADDOCK: Do you take the supplier's word for that? Do you undertake any auditing or checking to establish whether that is correct?

Ms Mirzabegian: That process is done at the approach-to-market stage. Yes; there would be a process for that. It just depends on the risks of the particular procurement. Clothing is considered to be a high risk area in terms of modern slavery. The due diligence that we are undertaking is not just the supplier's word but also evidence from them to demonstrate to us how they meet those requirements.

MR BRADDOCK: What sort of evidence would that be?

Ms Mirzabegian: I have to take that on notice.

MR BRADDOCK: Thank you.

THE CHAIR: Just to follow up with that line of questions, the commissioner from New South Wales mentioned an example—PPE and the chain to get some rubber gloves. You guys only deal with textiles, right? Do you expand to other procurements that involve PPE or other items, or is it just textiles?

Ms Mirzabegian: In terms of the procurements that Procurement ACT undertakes, we undertake whole-of-government procurements.

THE CHAIR: I am referring to the guidelines.

Ms Mirzabegian: The guidelines are far broader. We are identifying things in the guidelines at the moment—a number of different industries where the risk of modern slavery is greater. We are trying to create a risk based approach to what the requirements are in relation to that when we are approaching the market but also when we are managing the contract. It is a whole-of-life approach to modern slavery. It is not just asking somebody a question at the point when we approach the market.

THE CHAIR: So it is all the markets? I was under the impression that you only covered textiles.

Ms Mirzabegian: No. Textiles were just a one-point-in-time example of what we have done. That would have been a procurement that occurred two or three years ago. We have been developing our policies since then. It is culminating in the guide that Mr Campbell was referring to. Going forward, when the guide is launched, it would affect a range of procurements where modern slavery is considered to be an issue.

THE CHAIR: Thank you. Andrew.

MR BRADDOCK: Coming back to that guide, has that been developed in consultation with the New South Wales Anti-Slavery Commissioner?

Ms Mirzabegian: Not at this stage; no.

MR BRADDOCK: Potentially, we could have that set of guidance, which you mentioned will be published shortly, and also yours. I am just trying to understand why there might be some regional variation between the two sets of guidance.

Ms Mirzabegian: As Mr Campbell was suggesting, we are holding off on the publishing of that guide until we have a better understanding of the developments in the various jurisdictions. Procurement ACT is part of the Australasian Procurement and Construction Council. That is a forum comprising all states and territories in Australia and New Zealand. We meet regularly and discuss various topics. Modern slavery is one of those. We are across all different developments in the various jurisdictions and where they are going. One of our aims is to ensure consistent and complementary arrangements across Australia. One of the things that we think about, of course, is what it looks like from the supplier's perspective. We make sure that suppliers also have that consistency and that our standards are comparable.

Mr Campbell: We have colleagues that are sitting on working parties with the New South Wales commissioner as well. It is certainly not about tracking in isolating, if that would be the concern. We are definitely seeing the direction they are heading in and we have been able to make sure that whatever we are developing is cognisant of that, as well as the guides from the commonwealth.

THE CHAIR: Andrew.

MR BRADDOCK: The New South Wales commissioner mentioned that there is slavery happening in Australia, in Canberra, today. Obviously, the steps taken to date

by the ACT government have not been able to address all of that. The imperative is that we have an active duty to address this, so what is the ACT government doing on that?

Mr Campbell: I have not seen that evidence prepared by the New South Wales commissioner. I think it is safe to say that, in every supply chain that any entity across the country is dealing with, they need to assure themselves, as best they can, that modern slavery risks are being addressed. In my experience, having worked in the commonwealth government, particularly during the pandemic, there was lack of knowledge in businesses around their supply chains, more than one or two steps in the chain. We saw the implications of that through the pandemic. It is not a costless exercise to get that information, but everyone has had a clear focus on capability and understanding their supply chains better. There are supply chain resilience initiatives at the commonwealth level that we can leverage. As the New South Wales commissioner identified in their submission, a lot of the supply chains that we are dipping in and out of are very similar to each other. We are procuring very similar products across jurisdictions.

As to whether there is actual modern slavery occurring in the ACT, I have not seen evidence of that, and I would be very keen to see if that has been presented.

MR BRADDOCK: That was literally what he stated in the previous session, so I was just echoing him. Further on that—

THE CHAIR: Can I jump in with a question?

MR BRADDOCK: Yes; sure.

THE CHAIR: Is there a way that you can raise awareness of modern slavery here in the ACT? One of the functions of the commissioner in New South Wales is to raise awareness in the community. That is probably why he has received a few phone calls—not complaints. He did not say they were complaints, but he said they were survivors of modern slavery. What is your department doing with regard to raising awareness of this issue?

Mr Campbell: I go back to the frameworks that we have about ensuring fair and safe treatment of workers and ethical treatment of workers. The government will be in a position, when we consider the findings of this inquiry and the report on considerations of the bill, to think about whether there are additional measures beyond some of the broader measures that are in place to specifically target modern slavery. It may well be about using a lot of the messaging that it is already being prepared at the commonwealth level. There is a lot of material already in existence that we could quite easily leverage—either in an update to a guide that we release publicly or in other forums. The issues, the risks and the supply chains are not unique to the ACT engaging with them. There is a lot of material that we could potentially promulgate more effectively through websites and other fora.

Ms Mirzabegian: Also, in terms of procurement, we have a Procurement Committee of Practice which comprises procurement officers across the territory. There are about 300 members at the moment. These are people on the ground who do procurements.

We have regular communication with them. We have meetings every other month and, in the months that we do not have meetings, we have a publication called *Procurement matters* where we raise various issues. For example, our next issue is going to tackle conflict of interest. Depending on what is topical, what is going on at that point in time, we can adapt our publications and communications to our Community of Practice to cater for those different things.

We also have two kinds of materials sitting under the framework that Mr Campbell was referring to. We have better practice guides and fact sheets. The fact sheets on procurement explain for the procurement officer and, of course, our suppliers as well what a particular process is, and the better practice guides set up a better practice way of doing procurement, and they can be on any topic. They are available on Procurement ACT's public website at the moment.

Mr Campbell: I would like to take on notice whether we can provide you with broader information. We are presenting a set of issues largely around procurement as the main lens, but obviously there are other parts of the bureaucracy in the Justice and Community Safety Directorate where we can see if there is additional material that is already being used and whether that could be leveraged as well. It is something that the government will obviously need to consider as part of its response to the bill, but there are other directorates and we could potentially come back to you if there is anything further to add.

THE CHAIR: That would be great. Thank you.

MR BRADDOCK: You mentioned uniforms and footwear as areas where you had done some work. Have you identified any other areas that have significant risks? What work has been done in that space?

Ms Mirzabegian: This is a developing area, so no. We have identified other areas, but—and you have to remember that in Procurement ACT we do not see all the procurements that are going out—I am not aware of any other areas where we have tried to implement, to the same level, the due diligence and the requirements that we have in relation to the procurement of uniforms for the territory.

MR BRADDOCK: A couple of our witnesses this morning mentioned personal protection equipment as potentially a high-risk supply chain issue regarding modern slavery. You do not have any—

Ms Mirzabegian: That is considered as part of uniforms for us. Yes.

MR BRADDOCK: You have plied the procurement perspective. I would be interested in what you know about what individual directorates are doing when they are purchasing and looking at modern slavery. How do you ensure they are doing what they need to do?

Mr Campbell: We work very closely with all the directorates, as the role of Procurement ACT is to provide the guidance, support and capability uplift, but we do not technically have a monitoring and enforcement role per se. The obligations are very clear in law on the directors-general, who have responsibility for ensuring the

activities of the directorate are in alignment with the steps they need to take to assure themselves in any procurement they undertake.

As we said, there was a need for further guidance to strengthen that, and that is primarily why we developed the guidelines, but we also want to keep a fairly close monitoring role on this over time to make sure that it is not just giving someone a document and training. That is not enough. You want people on the ground to take the right actions in their individual procurements. Do you want to talk a little bit about some of the tiered nature that we were talking about in the procurement reform exercise—

Ms Mirzabegian: Yes, of course.

Mr Campbell: because it shows there are different levels of capability that we are going to implement as part of the procurement reform exercise, which will give us a way of identifying where the biggest risks are, and we can direct some efforts to that as well in terms of education.

Ms Mirzabegian: Under the Procurement Reform Program, there are two pieces that I think Mr Campbell is referring to. One is the accreditation piece. Under accreditation, we will be assessing each territory entity—each directorate or agency's capability and capacity to undertake procurement—and we will assign them an accreditation level. We will then provide that directorate or agency with services that complement their accreditation level. The lower their accreditation the higher the services we provide.

One of the layers of service that we will be providing in the future under the Procurement Reform Program is a managed layer of service where we look after the procurement—the approach to market and the planning of that procurement for the directorate. They will be a stakeholder in the process, but we will be working much more closely than the level of service that we are delivering now to ensure that their procurements are meeting the requirements that they need to meet when their capability is at a lower level, depending on the particular risk of the procurement. That is the most relevant one.

There are two other layers of service that we will be implementing. One of them is Assure, which checks on a procurement at key stages in its life, including the planning stage, just before a tender goes out to market, at the evaluation, and then during the contract formation to ensure that all the relevant requirements that were meant to be met for that procurement are met. Then we have the next level, which is more an enabling service where we provide guidance and ad hoc advice a territory entity needs, as well as templates, fact sheets and other resources available to that entity. Depending on where the risks are and the level of accreditation a particular agency has, we provide services that complement it. That is our way of making sure that those territory entities—the directors-general and the chief executives—are meeting their obligations in relation to procurement and their responsibilities under the government's Procurement Act.

MR BRADDOCK: As part of assurance, does that include any accountability measures or measuring metrics about modern slavery?

Ms Mirzabegian: As I was saying earlier, it would be on a case-by-case basis. The service that we provide would be on a case-by-case basis, and of course, if modern slavery is relevant to a particular procurement, depending on the risks of modern slavery in that procurement, it would include that assurance. Modern slavery for us is not a one-size-fits-all thing. There are certain industries that would present a higher risk, and a higher level of due diligence would be required for those, which is why I am not giving you a one-size-fits-all answer.

MR BRADDOCK: I get that. I am trying to dig into what due diligence steps will be taken to, let us say, a high-risk procurement in terms of modern slavery to ensure due diligence is met by the ACT government?

Ms Mirzabegian: That service is under development at the moment, so I cannot really give you further details on that at this stage.

MR BRADDOCK: Okay. Thank you.

THE CHAIR: How much will it cost to establish the office of the commissioner?

Mr Campbell: We have not undertaken estimates of that. If you look at the New South Wales entity, I think they said there would be about 12 staff. You would probably want to factor that down. If you were going to effectively replicate the functions of that, you would scale that down to the procurement spend, I presume, relative to New South Wales. If you have a population of 600,000 compared to six million or so, you might be looking at one or two people, but it would depend very much on the functions. It is hard to say in the abstract—"Are we going to replicate that function entirely or is it going to be a part function with another function in the government that already exists?"

You would have seen the government's submission. It was clear that thought would need to be given as to whether you would need to establish a completely standalone person or whether a commissioner would have this as part of their functions, with other functions as they currently exist, or does it appropriately sit elsewhere with the registrar of the Secure Local Jobs Code? You can get efficiencies, depending on how you structure it and the range of functions given to a person. But, as I say, we have not put it forward as a government position. Noting that is in the proposed bill, we were just identifying some of the alternatives you could think about.

THE CHAIR: Would you be able to take on notice how much it would cost in each of those scenarios that you listed in your submission? Also, did you put in your submission establishing a standalone office? I do not remember if you did, but I do remember you referring to many other scenarios that you could implement—the issues in existing bodies or existing work. Do you mind taking on notice the cost of them?

Mr Campbell: I possibly would not be a position to give that information. We are obviously developing the government's response and we are working with the government on the government's response. As to the costs, we can give you a sense of what the cost is if you were going to add a staff member. We can give you a number

like that. That is what we could generate. It would potentially be a fairly significant diversion of our resources from what we are doing to costings of different models, though. We do not have that at our fingertips because we would have to create it. In the context of giving you some data about what an additional staff member might cost, we could possibly do that and come back to you on notice.

THE CHAIR: Yes—and how much a standalone commissioner with possibly two staff would cost.

Mr Campbell: Yes, and maybe we could reference what the New South Wales one cost. That could be a good reference point as well.

THE CHAIR: Thank you. Andrew.

MR BRADDOCK: I have no further questions.

THE CHAIR: Me either. Thank you so much.

Mr Campbell: Thank you for your time.

THE CHAIR: Before we finish. Is there anything you would like to add?

Mr Campbell: No. We are looking forward to the inquiry's considerations as part of developing advice for government.

THE CHAIR: Okay. If you have taken any questions on notice, please provide your answers to the committee secretary within five business days of receiving the uncorrected proof *Hansard*. On behalf of the committee, I thank each of you for your attendance today.

Short suspension.

CLAY, MS JO MLA, Member for Ginninderra

THE CHAIR: We welcome Ms Jo Clay MLA, member for Ginninderra. I remind you of the protections and obligations afforded by parliamentary privilege and draw your attention to the privilege statement. Witnesses must tell the truth. Giving false or misleading evidence will be treated as a serious matter and may be considered contempt of the Assembly. Please confirm that you understand the implications of the statement and that you agree to comply with it.

Ms Clay: Yes; I understand and agree.

THE CHAIR: Thank you. Would you like to make an opening statement?

Ms Clay: I have not prepared anything. I would love to reflect a little bit on the evidence today. Thank you very much for running this inquiry. It has been great to hear some of the evidence. I am interested in the submissions and the witnesses stating the magnitude of the problem—that we have 50 million people living in modern slavery at the moment, which is more than at any other time in history—and we had a lot of people reflecting on our colonial history and why, in Australia, it is unacceptable for us not to move on this issue.

We heard that probably 41,000 people in Australia are living in modern slavery. That was pretty interesting evidence and quite chilling. We have heard from the government directorate officials that the ACT government has huge buying power—$1.5 billion of buying power—in our local procurement. For me, in running through this inquiry, this problem seems more urgent. It is great to hear some of the really great drafting feedback and structural feedback as to exactly how we can do this well and quickly in the ACT to make sure we are not contributing to the suffering of others.

THE CHAIR: Thank you. Andrew?

MR BRADDOCK: One question I raised this morning was about the inclusion of operations. I wonder if you had a chance to reflect on that evidence and whether that should be incorporated in your bill.

Ms Clay: I did. I thought that was an excellent drafting point. We will wait for the recommendations from this committee, and then we intend to do some redrafting. That is probably a very good change to make. I liked that feedback very much.

THE CHAIR: I have no questions.

MR BRADDOCK: Okay; fair enough. I will keep going, then. Some people have been proposing an interim proposal of some form before going to some sort of permanent structure. Have you had a chance to think about that and what that might mean for your bill?

Ms Clay: Sure. I have reflected on that a little bit. If I am right, that is coming through from the Human Rights Commission and perhaps the ACT government commission.

MR BRADDOCK: Yes.

Ms Clay: I am slightly uncertain as to what the difference would be between a scheme that commences and is reviewed and a scheme that is interim and is reviewed. I think any new scheme would need to be reviewed within a few years and amended. We are coming in at a pretty useful time here in the ACT, because we have had commonwealth legislation in place for a little while and they have just gone through a major review to look at that. We have a New South Wales scheme which is starting to approach maturity. We heard some really good evidence this morning from the New South Wales Anti-slavery Commissioner. They have been through a couple of iterations, so they are coming in with a reasonably well developed framework which looks pretty appealing to me. Both of those systems are very much showing us why we need an independent commissioner. That independent commissioner may sit in a number of different structures here. The Human Rights Commission may be somewhere else, but I think an independent commissioner is a good idea.

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 some amendments to make and what the difference is in starting it as an interim piece of legislation—starting with a piece of legislation that gets reviewed. I would love to see it.

MR BRADDOCK: Why is it important that it be independent from government?

Ms Clay: We saw this in the 10 submissions that were made to this inquiry. There was strong support that this problem be tackled and that this problem be tackled with reference to the commonwealth and New South Wales. We have heard from a lot of advocates and submitters that not making it independent will really call into question how effective it is. I was very interested to hear this morning from the Anti-slavery Commissioner, who is an independent statutory office holder. He has received five whistleblower calls already in a very short period of time of operation, and, as people become more familiar with what his role is, he has already said that he has seen his workload and the awareness of his role increasing.

Any board or organisational role that is not genuinely independent from government and is not seen to be independent from government will not get whistleblower calls. We will not know. We have three elements to this bill. If one of our goals is to genuinely monitor, reduce and crack down on modern slavery happening within our borders, we are not going to know about it if the person is embedded within government. They will not get those calls. We have probably learned from experience and good policy development already why things like integrity commissions, integrity commissioners, human rights commissioners and victims of crime commissioners need to be independent statutory office holders. I would need to hear a very convincing argument as to why you would embed this within government and not make it independent.

Mr BRADDOCK: In terms of the ACT government's steps to date, why do you think the additional measures provided under this bill are required? What has the ACT government not been able to achieve so far?

Ms Clay: Great question. There has been iterative progress in procurement, which was really good to hear. We probably need a bit more public information about that.

I would love to see those guidelines and I would also love to know how the procurement board is determining the risk and when to apply them. Obviously, looking at textiles is great, but there is a lot more to this picture than just textiles. I was pleased that you asked some good questions about how they determine what they apply them to. There is obviously some good work. I was really reassured by the way they approached those questions. It sounds like they already have a bit of expertise in this area, so I would imagine that establishing and complying with a properly structured system should not be too much more effort, because they are already operating in that kind of field.

The other thing is we heard quite a bit about government progress on procurements. That is one strand of this bill, but this bill has two other strands. One is requiring directorates to report against their risks, and I have not yet heard evidence that it is happening, but I may have missed something.

MR BRADDOCK: No; we have not received such evidence.

Ms Clay: And we do not have any information about the role of the Modern Slavery Commissioner. We heard from the Human Rights Commissioner this morning. In our research in putting this bill together and looking at the commonwealth and New South Wales systems already, and also listening to the New South Wales Anti-slavery Commissioner, it was quite clear that you need an individual who looks at the issue of modern slavery and engages with victim-survivors. That is taking a fairly proactive approach. We are not going to just accidentally stumble across modern slavery unless we are doing it in quite a genuine and structured way.

MR BRADDOCK: There is the requirement in your bill for directorates to report. Why is that important? We do not seem to have seen any accountability or metrics being applied to date in this space. Why is that important?

Ms Clay: No; we have not. I was interested to see some different reflections and submissions on that. We heard, when we were speaking to experts in the field, that it is important that individual directorates would have an obligation. What has happened in other jurisdictions, where there have been some kind of overarching government reports, you do not hear—for instance, here you would not hear what the different risks are in TCCS versus what the risks are in JACS, which would be quite different stories, and you also do not have anybody taking accountability in a management sense for where the errors are happening. It is for the same reason that we make ministers responsible for different things.

Having reporting obligations for individual directorates is a good idea. There would be a lot of easy and administratively efficient ways to incorporate that. Those reporting obligations could be put into annual reports, if that were a good and convenient way to do it. They could be stand-alone reports that are handed up each year. There would be many different ways of doing it—requiring each agency to take custody of their own risk and reporting against it each year, and then requiring the ministers to have to answer questions about that. We already understand from our committee system and from our parliamentary system that that is a really important accountability measure. It is really important in a new system to have that level of accountability because it is a new field.

When it comes in, in the first year, we would expect a low level of sophistication in understanding the risks. You would expect that to increase over time, and it is really important that you go back and say, "Last year, it was suggested that you needed to look at this field," or "Last year, you lodged late," or "Last year, you did this differently. Tell us how you have learned."

MR BRADDOCK: What information should be included in those reports?

Ms Clay: That is an excellent question. I have not turned my mind to that level of detail. Given that we already have an established commonwealth framework that expects corporations over a certain level to do this and given that we already have, in New South Wales, procurement frameworks, and we heard this morning from the government officials that they are already reporting against risk in certain procurements, but not across the board, I would imagine it would be a good idea to look at the sorts of reports that people lodge.

I very much liked the evidence that told us we should look at the risk of harm to people, as to where we should expect more rigorous reports. It might be in certain industries. There is a huge body of work out there and a lot of people are 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." You would have different levels of detail depending on the fields you operate in.

I also quite liked the evidence we heard from the Anti-slavery Commissioner about capability. 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 a quite small agency that does not have much money or many staff. They might be doing a quite simple report.

MR BRADDOCK: Are there any impacts from your bill on businesses who might be tendering for works or are working with the ACT government?

Ms Clay: It will be important for us to make sure that the information and the research that we get people to do is useful rather than needlessly complying with a new requirement. Large corporations are already obliged to follow this. I liked some of the evidence we got about how we could make this easier for small businesses and First Nation companies. We certainly would not want to inadvertently make life harder for people who are not actually working in a high-risk field already. I quite like the framework we heard from the Anti-slavery Commissioner that looks at risk in different fields and looks at capability. If we applied that in the way that we carry this out, that would probably be a really good way to do it.

Having said that, I have run a company. In the modern world, particularly when we know that we have 50 million people living in slavery, I do not find it an acceptable excuse to say, "It is too hard for me to think about." I have been through the process of setting up a company and tracking down my supply chains, trying to work out

which factory in a foreign country we should use. We ended up doing a physical inspection for this. We had one key supplier. You would not do that if you had lots of suppliers, but I find it quite reasonable to ask people to ask questions about where their goods come from and to ask questions about service conditions. We will not get any meaningful change to modern slavery if we are not requiring people to conduct some level of due diligence.

Modern consumers are now imposing this in a non-regulatory way. A lot of companies and businesses are starting to find that, if they operate as good corporate citizens, they tend to have greater market share. They certainly attract staff much more easily. We found that young people do not want to work for businesses that they think are engaged in shady practices. Young smart people want to work for a company they find ethical. Ethical business practice makes sense for a lot of reasons, but we need to make sure that we are imposing the requirements in a sensible way that makes real change and does not make needless work.

MR BRADDOCK: To clarify, you, in a previous role as a small business owner, physically travelled and inspected the factory that was providing the components for your product?

Ms Clay: We did; yes. We put one of our company founders on a plane and she went to Shenzhen. This probably would not be an option for everybody, but that was the best way. We narrowed it down to a list of three. She found that a physical inspection was a quite useful way to do it. There are lots of ways to do due diligence. That is certainly not the only or the best way. Not asking questions and not looking at the human impacts or the environmental impacts of your supply chain is probably not acceptable. In a jurisdiction like ours in the ACT, this is not going to be a general regulatory obligation. This particular obligation in the bill is about government procurements. It only applies to people who want to do government work. We are not making it apply across the board for every organisation that operates here.

If you want public money to provide a public good that is taxpayer funded, it is not unreasonable to expect you to do a certain amount of due diligence—the kind that is normal in New South Wales and the commonwealth—to ensure that the public goods are not made with modern slavery.

MR BRADDOCK: Yes. Have you consulted with business in the development of this bill?

Ms Clay: We have had a lot of consultation with people who have worked in different schemes and with advocates and experts in academics. We reached out to a few businesses and we reached out to the chamber of commerce. I was very much hoping that we would have some submissions from them for this committee inquiry. We have not had much engagement. Perhaps the sorts of businesses that are used to tendering to the ACT government are already pretty familiar with the fact that there are certain obligations you need to comply with already in ACT Procurement. We heard, I think in the previous session, quite a range of obligations that you already have to comply with. It could be that they are quite comfortable that any new regulations will be easy to comply with or it could be that they have not turned their minds to it. I am honestly not sure. I certainly welcome any representations we might get from businesses that

this might affect. We would love to hear how it will affect them and we would love to know if it will affect them.

MR BRADDOCK: Yes. This is a random question in terms of the iterative process that applies here and the educative process that applies. How does that work and what is the benefit of that process?

Ms Clay: We tend to do this in the ACT across the board. We are often bringing in new measures. Whether or not they start with hard penalties, the government's tendency is not to impose hard penalties from day one, which is an excellent approach. With a field like this, there is a lot of quite mature knowledge now in New South Wales, the commonwealth and businesses that provide modern slavery compliance and due diligence frameworks. There is actually quite a lot of knowledge out there, but I would expect that, in the early years of any ACT system, we will have to learn. Nobody needs to learn by being slapped repeatedly with new regulatory penalties.

What we have here is a pretty easy framework that says, "If you want to tender"—not everybody does—"here is a new system." We would probably have a commissioner and an auditor-general oversighting this that would take a fairly educative approach. You know you have it right when you people tell you that you have not gone nearly far enough. A lot of advocates and a lot of the strongest modern slavery experts in Australia have pushed quite strongly for tough compliance from day one and for stronger measures like financial restitution for victims—quite a lot of measures that I think would be a bit difficult to bring in at the start.

It is probably best to start with a new system and say, "Here is what this is. Let us resource an anti-slavery commissioner to have a chat to people. Let us make sure our procurement board and our government officials understand what this is. Let us make sure our directorates know what their reporting duties are. And then let us circle back in a few years and see how that is going."

MR BRADDOCK: In terms of the requirements and how they are not prescriptive as to what needs to be included in the reports or the submissions, was this to ensure that there is capacity for government guidelines to evolve as part of that approach?

Ms Clay: Very much so. I am very much looking forward to the New South Wales Anti-slavery Commission's guidelines. We will have to wait and see them, but those will probably be extremely helpful. I was pleased to hear the government officials say that they are working within a harmonious framework of state and territory procurement that is working together on modern slavery and that they have guidelines coming too. With a bit of luck, it sounds like the New South Wales guidelines and the ACT guidelines might come out at a similar time and might be quite closely matched.

The provision of guidelines on how you report and what a compliant report is—and different sized businesses or different areas of risk might need to do a little bit more work than others—is very useful. That tiered approach from the Anti-slavery Commissioner is probably a very good one to borrow. I would strongly encourage, if this passes—if and when it comes in—that we adopt something like that or draft our own.

MR BRADDOCK: Thank you. I have no further questions.

THE CHAIR: Thank you. Before we finish, is there anything you would like to add?

Ms Clay: No. Thank you very much for your time. I am delighted we could have the inquiry and I am hoping we can kick on.

THE CHAIR: If you have taken any questions on notice, please provide your answers to the committee secretary within five business days of receiving the proof *Hansard*. On behalf of the committee, I thank you for your attendance today.

On behalf of the committee, I would like to thank the witnesses who have assisted the committee through sharing their experience and knowledge. We also thank broadcasting staff and Hansard for their support. If a member wishes to ask questions on notice, please upload them to the parliament portal as soon as practical and no later than five business days after the hearing.

The committee adjourned at 1.27 pm.