

Passed by both Houses



New South Wales

Modern Slavery Amendment Bill 2021

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE COUNCIL, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

Legislative Council
2021

Clerk of the Parliaments



New South Wales

Modern Slavery Amendment Bill 2021

Act No , 2021

An Act to amend the *Modern Slavery Act 2018* to make further provision with respect to slavery, slavery-like practices and human trafficking; and for other purposes.

The Legislature of New South Wales enacts—

1 Name of Act

This Act is the *Modern Slavery Amendment Act 2021*.

2 Commencement

This Act commences on the date of assent to this Act.

Schedule 1 Amendment of Modern Slavery Act 2018 No 30

[1] Section 2 Commencement

Omit “commences on a day or days to be appointed by proclamation”.

Insert instead “commences on 1 January 2022”.

[2] Section 3 Objects of Act

Omit “and commercial organisations” from section 3(h).

[3] Section 3(j)

Insert “or encourage another person to use a digital platform to deal with child abuse material” after “child abuse material”.

[4] Section 3(k)

Insert after section 3(j)—

- (k) to provide for education, training and guidance about identifying and addressing modern slavery taking place within supply chains of organisations.

[5] Section 5 Definitions

Omit section 5(1), definition of *government agency*, paragraphs (c) and (d).

[6] Section 5(1), definition of “modern slavery”, paragraph (b)

Omit “government agencies or non-government agencies”.

Insert instead “organisations”.

[7] Section 5(1), definition of “modern slavery offence”, paragraphs (a) and (b)

Omit “listed” wherever occurring. Insert instead “described”.

[8] Section 5(1), definition of “modern slavery offence”, paragraph (c)

Omit the paragraph. Insert instead—

- (c) conduct engaged in elsewhere than in New South Wales that, if it occurred in New South Wales, would constitute a modern slavery offence under paragraph (a) or (b).

[9] Section 5(1), definitions of “modern slavery risk order” and “non-government agency”

Omit the definitions.

[10] Section 5(1)

Insert in alphabetical order—

organisation includes a government agency and a commercial organisation.

[11] Section 5(3)

Insert after section 5(2)—

- (3) A reference in this Act to a government agency of the State is a reference to a government agency other than a public or local authority constituted by an Act of another jurisdiction.

[12] Sections 6–6F

Omit section 6. Insert instead—

6 Appointment of Anti-slavery Commissioner

- (1) The Governor may appoint an Anti-slavery Commissioner.
- (2) The Commissioner holds office for the term, not exceeding 5 years, specified in the instrument of appointment, but is eligible for re-appointment.
- (3) A person is not eligible to be appointed for more than 2 terms of office as Commissioner, whether or not consecutive terms.
- (4) The office of Commissioner is a full-time office and the holder of the office is required to hold it on that basis, except to the extent permitted by the Minister.

6A Employment and remuneration

- (1) The employment of the Commissioner is, subject to this Act, to be governed by a contract of employment between the Commissioner and the Minister.
- (2) The following provisions of, or made under, the *Government Sector Employment Act 2013* relating to the employment of Public Service senior executives apply to the Commissioner, but in the application of those provisions a reference to the employer of a Public Service senior executive is to be read as a reference to the Minister—
 - (a) provisions relating to the band in which an executive is to be employed,
 - (b) provisions relating to the contract of employment of an executive,
 - (c) provisions relating to the remuneration, employment benefits and allowances of an executive.
- (3) The office of Commissioner is a statutory office and the provisions of the *Government Sector Employment Act 2013* relating to the employment of Public Service employees do not apply to that office, except as provided by this section.

6B Vacancy in office

- (1) The office of Commissioner becomes vacant if the Commissioner—
 - (a) dies, or
 - (b) completes a term of office and is not re-appointed, or
 - (c) resigns the office by instrument in writing addressed to the Minister, or
 - (d) is removed from office by the Governor under section 6C, or
 - (e) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the Commissioner's creditors or makes an assignment of the Commissioner's remuneration for their benefit, or
 - (f) becomes a mentally incapacitated person, or
 - (g) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or
 - (h) is imprisoned in respect of a conviction for an offence punishable in New South Wales by imprisonment or for an offence committed elsewhere than in New South Wales that, if committed in New South Wales, would be an offence so punishable.

- (2) If the office of Commissioner becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

6C Removal from office

- (1) The Governor may remove the Commissioner from office, but only for incompetence, incapacity or misbehaviour.
- (2) The Commissioner cannot be removed from office under the *Government Sector Employment Act 2013*, Part 6.

6D Acting Commissioner

- (1) The Minister may appoint a person to act as the Commissioner during the illness or absence of the Commissioner or during a vacancy in the office of Commissioner.
- (2) A person, while acting as Commissioner, has and may exercise the functions of the Commissioner and is taken to be the Commissioner.
- (3) The Minister may, at any time, remove a person from office as acting Commissioner.
- (4) An acting Commissioner is entitled to be paid the remuneration, including travelling and subsistence allowances, that the Minister may from time to time determine.
- (5) A person must not be appointed to act as the Commissioner for a period that exceeds 6 months or that in total exceeds 6 months in any 12-month period.

[13] Section 7

Omit the section. Insert instead—

7 Independence of Commissioner

The Commissioner is not subject to the control and direction of the Minister in respect of the exercise of the Commissioner’s functions under this Act.

[14] Section 9 General functions of Commissioner

Omit “government and non-government agencies and other bodies and persons” from section 9(1)(d).

Insert instead “persons and organisations”.

[15] Section 9(1)(e)

Omit “and commercial organisations”.

[16] Section 9(3)

Omit “or non-government”.

[17] Section 11 Strategic plan

Omit “*National Action Plan to Combat Human Trafficking and Slavery 2015–19* launched by the Minister for Justice of the Commonwealth in 2014” from section 11(5)(a).

Insert instead “*National Action Plan to Combat Modern Slavery 2020–25* launched by the Assistant Minister for Customs, Community Safety and Multicultural Affairs on 9 December 2020”.

[18] Section 12 Commissioner’s public awareness and advice functions generally

Omit “a government or non-government agency or other body or organisation” from section 12(d).

Insert instead “another person or body”.

[19] Sections 13(2) and 19(3)(c) and Schedule 5

Omit “Department of Family and Community Services” wherever occurring.

Insert instead “Department of Communities and Justice”.

[20] Section 13 Referral of matters to police and other agencies in the State and elsewhere

Omit “under this section” from section 13(4). Insert instead “under this Act”.

[21] Section 14 Co-operation between the Commissioner and New South Wales agencies

Omit section 14(1). Insert instead—

- (1) Government agencies of the State and persons and bodies that provide services to, or advocate for, victims of modern slavery in the State must work in co-operation with the Commissioner in the exercise of the Commissioner’s functions.

[22] Section 14(2)

Omit “, subject to any duty of confidentiality imposed by law,”.

[23] Section 14(5)

Omit “under this section”. Insert instead “under this Act”.

[24] Section 15, heading

Omit the heading. Insert instead—

15 Co-operation with other persons and organisations

[25] Section 15(1)

Omit “government and non-government agencies, and such other persons, bodies and organisations as”.

Insert instead “the persons and organisations that”.

[26] Section 15(2)

Omit “government and non-government agencies and such other persons, bodies and organisations as”.

Insert instead “the persons and organisations that”.

[27] Sections 16 and 16A

Omit section 16. Insert instead—

16 Personal liability—co-operation with Commissioner

- (1) No criminal or civil liability, apart from under this Act, attaches to a person for the following—
 - (a) compliance, or purported compliance in good faith, with a requirement made under this Act,

- (b) providing information to the Commissioner.
- (2) Without limiting subsection (1), if a person provides information, a document or other thing to the Commissioner, no civil liability attaches to the person for doing so, whether the liability would arise under a contract or otherwise.
- (3) If information, a document or other thing is provided to the Commissioner, no liability for defamation or other civil liability is incurred because of the provision of the information, document or thing.

16A Personal liability—Commissioner and others

- (1) A matter or thing done or omitted to be done by the Commissioner or a person acting under the direction of the Commissioner does not, if the matter or thing was done or omitted to be done in good faith for the purpose of exercising a function under this Act or under another law, subject the Commissioner or person so acting personally to an action, liability, claim or demand.
- (2) However, the liability attaches instead to the Crown.

[28] Section 19 Annual and other reports to Parliament

Omit “, workers in non-government agencies” from section 19(3)(a).

[29] Section 20

Omit the section. Insert instead—

20 Reports under Children and Young Persons (Care and Protection) Act 1998 and Crimes Act 1900

- (1) Information obtained by the Commissioner while exercising the Commissioner’s functions may be used for the following purposes—
 - (a) making a report to the Secretary of the Department of Communities and Justice under the *Children and Young Persons (Care and Protection) Act 1998*, section 24,
 - (b) bringing information to the attention of a member of the NSW Police Force that might be of material assistance in securing the apprehension of an offender, or the prosecution or conviction of an offender, for a child abuse offence within the meaning of the *Crimes Act 1900*, section 316A.
- (2) The Commissioner must use the information for those purposes if the Commissioner has reasonable grounds to suspect that a child or young person, or a class of children or young persons, is at risk of significant harm.

[30] Section 24 Transparency of supply chain

Omit the section.

[31] Section 25 Government agency procurement

Omit “the procurement of goods and services by government agencies”.

Insert instead “goods and services procured by government agencies”.

[32] Sections 25A and 25B

Insert after section 25—

25A State owned corporations must make voluntary modern slavery statements if not already required

- (1) This section applies to a State owned corporation that is not a reporting entity within the meaning of the *Modern Slavery Act 2018* of the Commonwealth.
Note— See the *Modern Slavery Act 2018* of the Commonwealth, section 5 for the meaning of “reporting entity” under that Act.
- (2) A State owned corporation to which this section applies must volunteer to comply with the requirements of the *Modern Slavery Act 2018* of the Commonwealth, as referred to in that Act, section 6, if it is eligible to do so.
Note— A corporation that volunteers under the *Modern Slavery Act 2018* of the Commonwealth, section 6 is a reporting entity for the purposes of that Act.
- (3) A State owned corporation that has volunteered under subsection (2) must not revoke a notice given under the *Modern Slavery Act 2018* of the Commonwealth, section 6.

25B State owned corporations must publish Commonwealth modern slavery statements

As soon as is practicable after giving the Minister, within the meaning of the *Modern Slavery Act 2018* of the Commonwealth, a modern slavery statement under that Act, a State owned corporation must—

- (a) publish a copy of the modern slavery statement on a publicly accessible website kept by the corporation, and
- (b) give the Commissioner written notice that the statement has been published.

[33] Section 26 Public register

Omit section 26(1)(a) and (b).

[34] Section 26(1)(c1)–(e)

Insert at the end of section 26(1)(c)—

, and

- (c1) identifies any State owned corporation that has failed to provide the Minister, within the meaning of the *Modern Slavery Act 2018* of the Commonwealth, with a modern slavery statement for a reporting period under that Act, and
- (d) includes other information the Commissioner thinks appropriate, and
- (e) includes other information required by the regulations to be recorded on the register.

[35] Section 26(3)

Insert after section 26(2)—

- (3) The regulations may—
 - (a) require government agencies to give specified information to the Commissioner for inclusion on the register, and
 - (b) specify the way the information is to be given to the Commissioner.

[36] Section 27 Codes of practice

Omit section 27(1). Insert instead—

- (1) The Commissioner may develop, and make publicly available, codes of practice for the purpose of providing guidance in identifying modern slavery taking place within the supply chains of organisations and steps that can be taken to remediate or monitor identified risks.

[37] Section 28 Commissioner’s public awareness and advice functions—supply chains

Omit “government and non-government agencies” wherever occurring in section 28(1) and (2).

Insert instead “organisations”.

[38] Section 28(1)

Omit “encouraging agencies”. Insert instead “encouraging organisations”.

[39] Part 4 Court orders

Omit the Part.

[40] Section 33

Omit the section. Insert instead—

33 Nature of proceedings for offences

Proceedings for an offence under this Act or the regulations may be dealt with summarily before the Local Court.

[41] Sections 35 and 36

Insert after section 34—

35 Commissioner of Police to provide certain information

- (1) The Commissioner of Police is, on request or in accordance with arrangements with the Commissioner, to provide the Commissioner with information regarding modern slavery and victims of modern slavery.
- (2) The Commissioner is not to disclose information provided under this section except with the written consent of the Commissioner of Police.
- (3) The Commissioner of Police is not required to provide information under this section if the Commissioner of Police reasonably believes that to do so would—
- (a) prejudice the investigation of a contravention, or possible contravention, of a law in a particular case, or
 - (b) prejudice a coronial inquest or inquiry, or
 - (c) prejudice care proceedings, or
 - (d) contravene legal professional or client legal privilege, or
 - (e) enable the existence or identity of a confidential source of information in relation to the enforcement or administration of a law to be ascertained, or
 - (f) endanger a person’s life or physical safety, or
 - (g) prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention, or possible contravention, of a law, or
 - (h) not be in the public interest.

- (4) If the Commissioner of Police refuses to provide information in accordance with a request or arrangements under this section, the Commissioner of Police must, at the time the Commissioner of Police notifies the Commissioner of the refusal, provide the Commissioner with reasons in writing for the refusal.

36 Review of Act

- (1) The Modern Slavery Committee—
- (a) is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing the objectives, and
 - (b) while undertaking the review, may investigate any other related matter the Committee considers appropriate.
- (2) The review is to be undertaken as soon as possible after the period of 12 months from the commencement of this Act.
- (3) A report on the outcome of the review and related investigations is to be tabled in each House of Parliament within 24 months from the commencement of this Act.

[42] Schedule 2 Offences

Insert “, but only in relation to tissue that is an organ” after “32” in the matter relating to the *Human Tissue Act 1983*.

[43] Schedule 2

Insert in appropriate order in the matter relating to the Commonwealth Criminal Code—

271.7B	Offence of organ trafficking—entry into and exit from Australia
271.7C	Organ trafficking—aggravated offence
271.7D	Offence of domestic organ trafficking
271.7E	Domestic organ trafficking—aggravated offence

[44] Schedule 3 Savings, transitional and other provisions

Omit clause 1. Insert instead—

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the commencement of—
- (a) a provision of this Act, or
 - (b) a provision amending this Act.
- (2) A savings or transitional provision consequent on the commencement of a provision must not be made more than 2 years after that commencement.
- (3) A savings or transitional provision made consequent on the commencement of a provision is repealed 2 years after that commencement.
- (4) A savings or transitional provision made consequent on the commencement of a provision may take effect before that commencement but not before—
- (a) for a provision of this Act—the date of assent to this Act, or
 - (b) for a provision amending this Act—the date of assent to the amending Act.

- (5) A savings or transitional provision taking effect before its publication on the NSW legislation website does not—
 - (a) affect the rights of a person existing before the publication in a way prejudicial to the person, or
 - (b) impose liabilities on a person for anything done or omitted to be done before the publication.
- (6) In this clause—
person does not include the State or an authority of the State.

[45] Schedule 4 Amendment of Crimes Act 1900 No 40

Omit Schedule 4[2], section 91G(3A). Insert instead—

- (3A) In this section, *circumstances of aggravation* means circumstances in which—
 - (a) the alleged victim is under 10 years of age, or
 - (b) at the time of, or immediately before or after, the commission of the offence, the alleged offender intentionally or recklessly inflicts actual bodily harm on the alleged victim or any other person who is present or nearby, or
 - (c) at the time of, or immediately before or after, the commission of the offence, the alleged offender threatens to inflict actual bodily harm on the alleged victim or any other person who is present or nearby by means of an offensive weapon or instrument, or
 - (d) the alleged offender is in the company of another person or persons, or
 - (e) the alleged victim is, whether generally or at the time of the commission of the offence, under the authority of the alleged offender, or
 - (f) the alleged victim has a serious physical disability, or
 - (g) the alleged victim has a cognitive impairment, or
 - (h) the alleged offender took advantage of the alleged victim being under the influence of alcohol or a drug in order to commit the offence, or
 - (i) the alleged offender deprives the alleged victim of his or her liberty for a period before or after the commission of the offence, or
 - (j) the alleged offender breaks and enters into a dwelling-house or other building with the intention of committing the offence or another serious indictable offence.

[46] Schedule 4[2A]

Insert after Schedule 4[2]—

[2A] Section 91HB

Re-number section 91HAA as section 91HB and move to its appropriate location.

[47] Schedule 4[7], section 93AB(1)

Insert “, in New South Wales” after “if”.

[48] Schedule 4[7], section 93AC(2)

Omit the subsection. Insert instead—

- (2) For the purposes of this section, a child enters into a *forced marriage* if—
 - (a) the child enters into the marriage without freely and fully consenting—

- (i) because of the use of coercion, threat or deception, or
 - (ii) because the child was incapable of understanding the nature and effect of the marriage ceremony, or
- (b) when the marriage is entered into, the child is under 16 years of age.

[49] Schedule 4[7], section 93AC(4) and (5)

Omit the subsections. Insert instead—

- (4) A person is guilty of an offence if the person—
 - (a) enters into a marriage with a child, and
 - (b) knows that it is a forced marriage, and
 - (c) is not a victim of the forced marriage.Maximum penalty—imprisonment for 9 years.
- (5) For the purposes of subsection (2)(a)(i), the subparagraph applies whether the use of the coercion, threat or deception—
 - (a) is by another party to the marriage or by another person, or
 - (b) is against the child or another person.

[50] Schedule 5 Amendment of other Acts and regulations

Insert before Schedule 5.3[1]—

[1A] Section 3 Definitions

Insert in alphabetical order in section 3(1)—

Commonwealth Criminal Code means the Criminal Code set out in the Schedule to the *Criminal Code Act 1995* of the Commonwealth.

[51] Schedule 5.3[1] and [5]

Insert “or the Commonwealth Criminal Code, section 270.7B (Forced marriage offences)” after “of the *Crimes Act 1900*” wherever occurring.

[52] Schedule 5.3[3], section 7(1)(d) and (e)

Omit section 7(1)(d). Insert instead—

- (d) conduct amounting to the coercion or deception of, or a threat to, a child to enter into a forced marriage within the meaning of the *Crimes Act 1900*, section 93AC, or
- (e) conduct amounting to the coercion or deception of, or a threat to, a person to enter into a forced marriage within the meaning of the Commonwealth Criminal Code, section 270.7A (Definition of forced marriage).

[53] Schedule 5.3[4], section 35(2A)

Omit section 35(2A). Insert instead—

- (2A) Without limiting the generality of subsection (2)(f), an apprehended violence order may prohibit behaviour of the defendant that might coerce, threaten or deceive the protected person to enter into a forced marriage within the meaning of the *Crimes Act 1900*, section 93AC or the Commonwealth Criminal Code, section 270.7A (Definition of forced marriage).

[54] Schedule 5.3[8], section 48(2)(c)

Insert “or the Commonwealth Criminal Code, section 270.7A (Definition of forced marriage)” after “the *Crimes Act 1900*”.

[55] Schedule 5.3A

Insert after Schedule 5.3—

5.3A Crimes (High Risk Offenders) Act 2006 No 7

Section 5 Definitions of “serious sex offence” and “offence of a sexual nature”

Insert after section 5(2)(a)—

- (a1) an offence under the *Crimes Act 1900*, Part 3, Division 10A,

[56] Schedule 5.4A and 5.4B

Insert after Schedule 5.4—

5.4A Defamation Act 2005 No 77

Schedule 1 Additional publications to which absolute privilege applies

Insert after clause 34—

35 Matters arising under Modern Slavery Act 2018

Without limiting section 27(2)(a)–(c), matter that is published—

- (a) to or by the Anti-slavery Commissioner or an acting Anti-slavery Commissioner in their capacity as the Anti-slavery Commissioner or an acting Anti-slavery Commissioner, or
- (b) to a member of staff of the Anti-slavery Commissioner in their capacity as a member, or
- (c) in a strategic plan under the *Modern Slavery Act 2018*, section 11, or
- (d) in a report under the *Modern Slavery Act 2018*, section 13, 19 or 20, or
- (e) in a register under the *Modern Slavery Act 2018*, or
- (f) in annual reporting information under the *Modern Slavery Act 2018*, section 31.

5.4B Local Government Act 1993 No 30

[1] Section 428 Annual reports

Insert after section 428(4)(b)—

- (c) a statement of the action taken by the council in relation to any issue raised by the Anti-slavery Commissioner during the year concerning the operations of the council and identified by the Commissioner as being a significant issue,
- (d) a statement of steps taken to ensure that goods and services procured by and for the council during the year were not the product of modern slavery within the meaning of the *Modern Slavery Act 2018*.

[2] Section 438ZE

Insert after section 438ZD—

438ZE Duty to ensure goods and services procured not product of modern slavery

A council must take reasonable steps to ensure that goods and services procured by and for the council are not the product of modern slavery within the meaning of the *Modern Slavery Act 2018*.

[3] Schedule 8 Savings, transitional and other provisions consequent on the enactment of other Acts

Insert at the end of the Schedule, with appropriate Part and clause numbering—

Part Provisions consequent on enactment of Modern Slavery Amendment Bill 2021

Annual reporting about modern slavery—s 428(4)(c) and (d)

Section 428(4)(c) and (d) do not apply to a year commencing before 1 July 2022.

Duty to ensure goods and services procured not product of modern slavery—s 438ZE

Section 438ZE does not have effect until 1 July 2022.

[57] Schedule 5.5, section 38F

Omit the definition of *government agency*. Insert instead—

government agency has the same meaning it has in the *Modern Slavery Act 2018*, but does not include a public or local authority that is constituted by an Act of another jurisdiction that exercises public functions.

[58] Schedule 5.5, section 38G(2)

Omit the subsection. Insert instead—

- (2) In exercising functions under this section, the Auditor-General is to consider whether the government agency—
- (a) has exercised due diligence in relation to procurement of goods and services, and
 - (b) if the *Public Works and Procurement Act 1912*, Part 11 applies to the procurement of goods and services by or for the government agency, has complied with the directions of the NSW Procurement Board under section 175(3)(a1) of that Act.

Note— The *Public Works and Procurement Act 1912*, Part 11 does not apply to the procurement of goods and services by or for—

- (a) a local council or other local authority, or
- (b) the Parliament of New South Wales.

See section 163(2) of that Act.

[59] Schedule 5.6[1]

Omit the item.

[60] Schedule 5.7[2A]

Insert after Schedule 5.7[2]—

[2A] Section 18 Definitions

Insert in alphabetical order—

act of modern slavery—see section 19A.

[61] Schedule 5.7[3], section 19A(1)

Insert “committed in New South Wales” after “related acts”.

[62] Schedule 5.7[3], section 19A(6)

Omit “act of violence”. Insert instead “act of modern slavery”.

[63] Schedule 5.7[5A]

Insert after Schedule 5.7[5]—

[5A] Sections 25(1), (4), (6) and (7), 26 and 27

Insert “or act of modern slavery” after “violence” wherever occurring.

[64] Schedule 5.7[6A]

Insert after Schedule 5.7[6]—

[6A] Section 30A

Insert after section 30—

30A Victims support where act is both act of violence and modern slavery

To avoid doubt, if an act is both an act of violence and an act of modern slavery a victim is eligible once for support under the Scheme in relation to the act.

[65] Schedule 5.7[9A] and [9B]

Insert after Schedule 5.7[9]—

[9A] Sections 34, 35, 36 and 40(5)

Insert “or act of modern slavery” after “act of violence” wherever occurring.

[9B] Sections 36(2) and 37(a)

Insert “or acts of modern slavery” after “acts of violence” wherever occurring.

[66] Schedule 5.7[15A]

Insert after Schedule 5.7[15]—

[15A] Section 46 Persons to whom financial support or recognition payment may be made

Insert “or act of modern slavery” after “act of violence” in section 46(2).

[67] Schedule 5.7[18]

Omit the item.