

MODERN SLAVERY BILL 2018

Schedule of the amendments referred to in the Legislative Council's message of 3 May 2018.

- No. 1 **CDP No. 1 [c2018-022E]**
Page 2, clause 3, line 21. Omit "certain corporate bodies". Insert instead "government agencies and corporate and other bodies".
- No. 2 **CDP No. 2 [c2018-022E]**
Page 3, clause 5 (1). Insert after line 9:
(d) a company incorporated under the *Corporations Act 2001* of the Commonwealth of which one or more shareholders are a Minister of the Crown,
- No. 3 **CDP No. 3 [c2018-022E]**
Page 3, clause 5 (1). Insert after line 20:
Modern Slavery Committee means the joint committee called the Modern Slavery Committee constituted under this Act.
- No. 4 **CDP No. 4 [c2018-022E]**
Page 4, clause 9, line 29. Omit "corporate and other bodies". Insert instead "government agencies and corporate and other bodies".
- No. 5 **CDP No. 5 [c2018-022E]**
Page 5, clause 10, line 2. Insert "generally" after "does not".
- No. 6 **CDP No. 1 [c2018-029A]**
Page 8, clause 21, line 28. Insert "The Commissioner must use the information for that purpose 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." after "1998".
- No. 7 **CDP No. 6 [c2018-022E]**
Page 8. Insert after line 28:

Division 4 Modern Slavery Committee

22 Constitution of Committee

- (1) On the commencement of this Division and as soon as practicable after the commencement of the first session of each Parliament, a joint committee of members of Parliament, to be known as the Modern Slavery Committee, is to be appointed.
- (2) The Modern Slavery Committee has the functions conferred or imposed on it by or under this or any other Act.

23 Functions of Committee

- (1) The Modern Slavery Committee has the following functions under this Act:
 - (a) to monitor and review the exercise by the Commissioner of the Commissioner's functions,
 - (b) to report to both Houses of Parliament, with such comments as it thinks fit, on any matter relating to the Commissioner or

connected with the exercise of the Commissioner's functions to which, in the opinion of the Committee, the attention of Parliament should be directed,

- (c) to examine each annual or other report of the Commissioner and report to both Houses of Parliament on any matter appearing in, or arising out of, any such report,
 - (d) to recommend to both Houses of Parliament any changes that the Committee thinks desirable to the functions and procedures of the Commissioner,
 - (e) to inquire into any question in connection with the Commissioner's functions that is referred to it by both Houses of Parliament, and report to both Houses on that question.
- (2) Nothing in this Division authorises the Modern Slavery Committee to investigate a matter relating to particular conduct.
 - (3) The Commissioner may, as soon as practicable after a report of the Modern Slavery Committee has been tabled in a House of Parliament, make and furnish to the Presiding Officer of that House a report in response to the report of the Committee. Section 20 applies to such a report.

24 Membership of Committee

- (1) The Modern Slavery Committee is to consist of 8 members, of whom:
 - (a) 4 are to be members of, and appointed by, the Legislative Council, and
 - (b) 4 are to be members of, and appointed by, the Legislative Assembly.
- (2) The appointment of members of the Committee is, as far as practicable, to be in accordance with the practice of Parliament with respect to the appointment of members to serve on joint committees of both Houses of Parliament.
- (3) A person is not eligible for appointment as a member of the Modern Slavery Committee if the person is a Minister of the Crown or a Parliamentary Secretary.
- (4) Schedule 2 contains provisions relating to the Modern Slavery Committee.

No. 8 **CDP No. 7 [c2018-022E]**
Page 9. Insert after line 45:

23 Government agency procurement

The Commissioner must regularly consult with the Auditor-General and the NSW Procurement Board to monitor the effectiveness of due diligence procedures in place to ensure that the procurement of goods and services by government agencies are not the product of modern slavery.

No. 9 **CDP No. 8 [c2018-022E]**
Page 14. Insert after line 29:

Schedule 2 Modern Slavery Committee

(Section 24 (4))

1 Definition

In this Schedule, *Committee* means the Modern Slavery Committee.

2 Vacancies

- (1) A member of the Committee ceases to hold office:
 - (a) when the Legislative Assembly is dissolved or expires by the effluxion of time, or
 - (b) if the member becomes a Minister of the Crown or a Parliamentary Secretary, or
 - (c) if the member ceases to be a member of the Legislative Council or Legislative Assembly, or
 - (d) if, being a member of the Legislative Council, the member resigns the office by instrument in writing addressed to the President of the Legislative Council, or
 - (e) if, being a member of the Legislative Assembly, the member resigns the office by instrument in writing addressed to the Speaker of the Legislative Assembly, or
 - (f) if the member is discharged from office by the House of Parliament to which the member belongs.
- (2) Either House of Parliament may appoint one of its members to fill a vacancy among the members of the Committee appointed by that House.

3 Chair and Deputy Chair

- (1) There is to be a Chair and a Deputy Chair of the Committee, who are to be elected by and (subject to subclause (2)) from the members of the Committee.
- (2) The Chair must not be a member of a party that has been elected to Government.
- (3) A member of the Committee ceases to hold office as Chair or Deputy Chair of the Committee if:
 - (a) the member ceases to be a member of the Committee, or
 - (b) the member resigns the office by instrument in writing presented to a meeting of the Committee, or
 - (c) the member is discharged from office by the Committee.
- (4) At any time when the Chair is absent from New South Wales or is, for any reason, unable to perform the duties of Chair or there is a vacancy in that office, the Deputy Chair may exercise the functions of the Chair under this Act or under the *Parliamentary Evidence Act 1901*.

4 Procedure

- (1) The procedure for the calling of meetings of the Committee and for the conduct of business at those meetings is, subject to this Act, to be as determined by the Committee.
- (2) The Clerk of the Parliaments is to call the first meeting of the Committee, and the first meeting of the Committee in each Parliament, in such manner as the Clerk thinks fit.
- (3) At a meeting of the Committee, 4 members constitute a quorum, but the Committee must meet as a joint committee at all times.
- (4) The Chair or, in the absence of the Chair, the Deputy Chair (or, in the absence of both the Chair and the Deputy Chair, a member of the Committee elected to chair the meeting by the members present) is to preside at a meeting of the Committee.

- (5) The Deputy Chair or other member presiding at a meeting of the Committee has, in relation to the meeting, all the functions of the Chair.
- (6) The Chair, Deputy Chair or other member presiding at a meeting of the Committee has a deliberative vote and, in the event of an equality of votes, also has a casting vote.
- (7) A question arising at a meeting of the Committee is to be determined by a majority of the votes of the members present and voting.
- (8) The Committee may sit and transact business despite any prorogation of the Houses of Parliament or any adjournment of either House of Parliament.
- (9) The Committee may sit and transact business on a sitting day of a House of Parliament during the time of sitting.
- (10) Except as otherwise provided by this Act, the practice and procedure of the Committee is to be in accordance with the Standing Rules and Orders of the Legislative Council regulating the committees of the House.

5 Reporting when Parliament not in session

- (1) If a House of Parliament is not sitting when the Committee seeks to furnish a report to it, the Committee may present copies of the report to the Clerk of the House.
- (2) The report:
 - (a) on presentation and for all purposes is taken to have been laid before the House, and
 - (b) may be printed by authority of the Clerk, and
 - (c) if printed by authority of the Clerk, is for all purposes taken to be a document published by or under the authority of the House, and
 - (d) is to be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after receipt of the report by the Clerk.

6 Evidence

- (1) The Committee has power to send for persons, papers and records.
- (2) Subject to clause 7, the Committee must take all evidence in public.
- (3) If the Committee as constituted at any time has taken evidence in relation to a matter but the Committee as so constituted has ceased to exist before reporting on the matter, the Committee as constituted at any subsequent time, whether during the same or another Parliament, may consider that evidence as if it had taken the evidence.
- (4) The production of documents to the Committee is to be in accordance with the practice of the Legislative Council with respect to the production of documents to committees of the Legislative Council.

7 Confidentiality

- (1) If any evidence proposed to be given before, or the whole or a part of a document produced or proposed to be produced to, the

Committee relates to a secret or confidential matter, the Committee may, and at the request of the witness giving the evidence or the person producing the document must:

- (a) take the evidence in private, or
 - (b) direct that the document, or the part of the document, be treated as confidential.
- (2) If a direction under subclause (1) applies to a document or part of a document produced to the Committee:
- (a) the contents of the document or part are, for the purposes of this clause, to be regarded as evidence given by the person producing the document or part and taken by the Committee in private, and
 - (b) the person producing the document or part is, for the purposes of this clause, to be regarded as a witness.
- (3) If, at the request of a witness, evidence is taken by the Committee in private:
- (a) the Committee must not, without the consent in writing of the witness, and
 - (b) a person (including a member of the Committee) must not, without the consent in writing of the witness and the authority of the Committee under subclause (5), disclose or publish the whole or a part of that evidence.
- Maximum penalty: 20 penalty units or imprisonment for 3 months, or both.
- (4) If evidence is taken by the Committee in private otherwise than at the request of a witness, a person (including a member of the Committee) must not, without the authority of the Committee under subclause (5), disclose or publish the whole or part of that evidence.
- Maximum penalty: 20 penalty units or imprisonment for 3 months, or both.
- (5) The Committee may, in its discretion, disclose or publish or, by writing under the hand of the Chair, authorise the disclosure or publication of evidence taken in private by the Committee, but this subclause does not operate so as to affect the necessity for the consent of a witness under subclause (3).
- (6) Nothing in this clause prohibits:
- (a) the disclosure or publication of evidence that has already been lawfully published, or
 - (b) the disclosure or publication by a person of a matter of which the person has become aware otherwise than by reason, directly or indirectly, of the giving of evidence before the Committee.
- (7) This clause has effect despite section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975*.
- (8) If evidence taken by the Committee in private is disclosed or published in accordance with this clause, sections 5 and 6 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* apply to and in relation to the disclosure or publication as if it were a publication of that evidence under the authority of section 4 of that Act.

Note. The *Defamation Act 2005* makes provision for 2 defences in respect of the publication of defamatory matter that is contained in evidence taken by, or documents produced to, the Committee in private, but only if the evidence or documents have been disclosed or published in accordance with this clause.

Section 28 of the *Defamation Act 2005* (when read with clause 8 of Schedule 2 to that Act) ensures that such documents attract the defence relating to public documents in defamation proceedings.

Section 29 of the *Defamation Act 2005* (when read with clause 17 of Schedule 3 to that Act) ensures that proceedings in which such evidence is taken or documents produced attract the defences relating to fair reports of proceedings of public concern in defamation proceedings.

8 Application of certain Acts

For the purposes of the *Parliamentary Evidence Act 1901* and the *Parliamentary Papers (Supplementary Provisions) Act 1975* and for any other purposes:

- (a) the Committee is to be regarded as a joint committee of the Legislative Council and Legislative Assembly, and
- (b) the proposal for the appointment of the Committee is to be regarded as having originated in the Legislative Council.

9 Validity of certain acts or proceedings

Any act or proceeding of the Committee is, even though at the time when the act or proceeding was done, taken or commenced there was:

- (a) a vacancy in the office of a member of the Committee, or
- (b) any defect in the appointment, or any disqualification, of a member of the Committee,

as valid as if the vacancy, defect or disqualification did not exist and the Committee were fully and properly constituted.

No. 10 **GRN No. 1 [c2018-027]**

Page 15, Schedule 2. Insert before line 4:

An offence against the following section of the *Human Tissue Act 1983*:

Section	Description of offence
32	Trading in tissue prohibited

No. 11 **CDP No. 2 [c2018-029A]**

Page 17, Schedule 4 [2]. Insert after line 24:

- (g) 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,
- (h) 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,
- (i) the alleged victim is (whether generally or at the time of the commission of the offence) under the authority of the alleged offender,
- (j) the alleged offender breaks and enters into any dwelling-house

or other building with the intention of committing the offence or any other serious indictable offence.

No. 12 **CDP No. 9 [c2018-022E]**

Page 20, Schedule 4, proposed section 93AB (4). Insert after line 20:

- (d) without limiting paragraph (c), whether the person has been coerced, threatened or deceived into doing anything which involves the supply or sale of the person's tissue (within the meaning of the *Human Tissue Act 1983*).

No. 13 **CDP No. 10 [c2018-022E]**

Page 24, Schedule 5. Insert after line 6:

5.6 Public Finance and Audit Act 1983 No 152

Part 3, Division 2B

Insert after section 38E:

Division 2B Modern slavery audit

38F Definitions

In this Division:

audit includes examination and inspection.

government agency has the meaning it has in the *Modern Slavery Act 2018*.

modern slavery has the meaning it has in the *Modern Slavery Act 2018*.

modern slavery audit means an audit under this Division.

38G Modern slavery audit by Auditor-General

- (1) The Auditor-General may, when the Auditor-General considers it appropriate to do so, conduct a risk-based audit of all or any particular activities of a government agency to determine whether the government agency is ensuring that goods and services procured by and for the agency are not the product of modern slavery.
- (2) In exercising functions under this section, the Auditor-General is to consider whether the government agency has exercised due diligence in relation to procurement of goods and services and has complied with any directions of the NSW Procurement Board under section 175 (3) (a1) of the *Public Works and Procurement Act 1912*.
- (3) In subsection (2), *due diligence* includes taking reasonable steps (whether by way of contractual terms or otherwise) to ensure the primary supplier of goods and services is responsible for implementing processes to eliminate or minimise the risk of the goods or services supplied being products of modern slavery.
- (4) A modern slavery audit is separate from, and does not affect, any other audit required or authorised by or under this or any other Act.
- (5) A single modern slavery audit may relate to the activities of more than one government agency.

38H Advice concerning modern slavery audit

- (1) The Auditor-General is to give the Anti-slavery Commissioner advice as to the result of any modern slavery audit.
- (2) Before giving the advice to the Anti-slavery Commissioner, the Auditor-General is to give the head of the government agency an opportunity to make submissions or comments concerning the modern slavery audit.
- (3) The Auditor-General is to include in the advice any submissions or comments made by the head of the government agency or a summary, in an agreed form, of any such submissions or comments.
- (4) The Auditor-General, in an advice concerning a modern slavery audit under this section:
 - (a) may recommend that the Anti-slavery Commissioner identify the government agency in the register kept under section 23 of the *Modern Slavery Act 2018*, and
 - (b) is to set out the reasons for opinions expressed in the advice, and
 - (c) may include such other recommendations arising out of the audit as the Auditor-General thinks fit to make.

No. 14 **CDP No. 11 [c2018-022E]**

Page 24, Schedule 5.6. Insert after line 7:

[1] Section 162 Definitions

Insert after paragraph (c) of the definition of *government agency*:

- (c1) a company incorporated under the *Corporations Act 2001* of the Commonwealth of which one or more shareholders are a Minister of the Crown,

No. 15 **CDP No. 12 [c2018-022E]**

Page 24, Schedule 5.6 [3], proposed section 175 (4), line 21. Omit “consult during each financial year”. Insert instead “regularly consult”.

No. 16 **CDP No. 13 [c2018-022E]**

Page 24, Schedule 5.6. Insert after line 24:

[4] Section 176 Obligations of government agencies

Insert after section 176 (1):

- (1A) A government agency must ensure that goods and services procured by and for the agency are not the product of modern slavery within the meaning of the *Modern Slavery Act 2018*.
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