



New South Wales

# Modern Slavery Bill 2018

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The objects of this Bill are as follows:

- (a) to combat modern slavery,
- (b) to provide assistance and support for victims of modern slavery,
- (c) to provide for an Anti-slavery Commissioner (the *Commissioner*),
- (d) to provide for detection and exposure of modern slavery that may have occurred or be occurring or that is likely to occur,
- (e) to raise community awareness of, and provide for education and training about, modern slavery,
- (f) to encourage collaborative action to combat modern slavery,
- (g) to provide for the assessment of the effectiveness and appropriateness of laws prohibiting modern slavery and to improve the implementation and enforcement of such laws,
- (h) to provide for mandatory reporting of risks of modern slavery occurring in the supply chains of certain corporate bodies,
- (i) to make forced marriage of a child and certain slavery and slavery-like conduct offences in New South Wales,
- (j) to further penalise involvement in cybersex trafficking by making it an offence to administer a digital platform for the purpose of child abuse material.

## Outline of provisions

### Part 1 Preliminary

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

**Clause 3** states the objects of the proposed Act.

**Clause 4** provides for the extraterritorial application of the proposed Act.

**Clause 5** defines certain words and expressions used in the proposed Act. *Modern slavery* is defined to include any conduct constituting a modern slavery offence or involving the use of any form of slavery, servitude or forced labour to exploit children or other persons taking place in the supply chains of government and non-government agencies. *Modern slavery offences* for the purposes of the proposed Act are those set out in Schedule 2 to the proposed Act. The offences include new offences contained in amendments to the *Crimes Act 1900* set out in Schedule 4 to the proposed Act.

### Part 2 Anti-slavery Commissioner

#### Division 1 Appointment of Commissioner

**Clause 6** provides for the Governor to appoint an Anti-slavery Commissioner.

**Clause 7** ensures the independence of the Commissioner.

**Clause 8** provides for staff and facilities necessary to enable the Commissioner to exercise the Commissioner's functions.

#### Division 2 Functions of Commissioner

**Clause 9** sets out the functions of the Commissioner. It makes it clear that the Commissioner's functions may generally be exercised with respect to any government or non-government agency, person, matter or thing (whether or not they are in or of, or for, the State).

**Clause 10** makes it clear that the Commissioner's role does not include investigating or dealing directly with individual cases.

**Clause 11** requires the Commissioner to prepare strategic plans addressing the Commissioner's key objectives and priorities in the periods to which they relate and setting out how the Commissioner proposes to exercise the Commissioner's functions in the period concerned.

**Clause 12** describes the Commissioner's public awareness and advice functions.

**Clause 13** provides for the exchange of information relating to modern slavery or suspected instances of modern slavery between the Commissioner and other persons and agencies, bodies and organisations.

**Clause 14** imposes a duty on agencies in or of New South Wales that provide or deal with services or issues affecting victims of modern slavery and the Commissioner to work co-operatively in exercising their functions.

**Clause 15** enables the Commissioner to work co-operatively with, and disseminate information to, such other agencies, persons, bodies and organisations as the Commissioner thinks appropriate.

**Clause 16** protects persons providing information to the Commissioner in accordance with the proposed Act and in good faith from criminal or civil liability.

**Clause 17** provides for the exercise by the Commissioner of powers that are necessary to be done in connection with, or reasonably incidental to, the exercise of specific powers conferred on the Commissioner by the proposed Act.

**Clause 18** provides for the delegation of the Commissioner's powers.

### **Division 3      Reports by Commissioner**

**Clause 19** requires the Commissioner to prepare an annual report and furnish it to the Presiding Officer of each House of Parliament. The report is required, in particular, to include a review of action taken by the NSW government about specified matters, action taken by the Department of Family and Community Services to develop a system of support for victims of under age marriage and action taken by the Department of Education to require instruction about preventing forced marriage as part of high school syllabuses.

**Clause 20** provides for the tabling of the Commissioner's annual report in the Houses of Parliament.

**Clause 21** enables information obtained by the Commissioner to be included in a report to the Secretary of the Department of Family and Community Services under section 24 of the *Children and Young Persons (Care and Protection) Act 1998*.

### **Part 3      Supply chains**

**Clause 22** requires certain organisations to prepare a modern slavery statement in each financial year. The statement is to contain such information as may be required by or under the regulations for or with respect to steps taken by the organisation during the financial year to ensure its goods and services are not a product of supply chains in which modern slavery is taking place.

**Clause 23** requires the Commissioner to keep a publicly available register in electronic form that identifies organisations in which goods and services are, or may be, products of supply chains in which modern slavery is taking place.

**Clause 24** enables the Commissioner to develop, and make publicly available, codes of practice that can be used to remediate or monitor identified risks of modern slavery.

**Clause 25** enables the Commissioner to promote public awareness of, and give advice on steps to be taken to remediate or monitor risks of, modern slavery in supply chains.

### **Part 4      Court orders**

**Clause 26** enables a court that convicts a person of certain modern slavery offences to make orders prohibiting the person from engaging in conduct described in the order if it is satisfied as to certain matters. A person who is the subject of such a modern slavery risk order is guilty of an offence if the person contravenes the order without reasonable excuse.

### **Part 5      Miscellaneous**

**Clause 27** provides that the proposed Act binds the Crown.

**Clause 28** provides for expenditure incurred in the administration or execution of the proposed Act.

**Clause 29** describes the nature of proceedings for offences under the proposed Act.

**Clause 30** enables the Governor to make regulations for the purposes of the proposed Act.

### **Schedule 1      Provisions relating to Commissioner**

**Schedule 1** contains provisions relating to the office of Commissioner.

### **Schedule 2      Offences**

**Schedule 2** specifies the offences that are modern slavery offences for the purpose of the proposed Act.

### **Schedule 3 Savings, transitional and other provisions**

**Schedule 3** contains savings, transitional and other provisions consequent on the enactment of the proposed Act or Acts amending it.

### **Schedule 4 Amendment of Crimes Act 1900 No 40**

**Schedule 4** amends the *Crimes Act 1900*. The amendments include provisions:

- (a) to amend section 91G of that Act to provide for an aggravated offence relating to use of a child for production of child abuse material that includes among other matters that the victim is under 10 years of age or the offence has taken place in company (proposed section 91G (3), (3A) and (3C)—**Schedule 4 [2]**), and
- (b) to amend section 91G of that Act to include an evidentiary provision to make it easier to prosecute offences under the section (proposed section 91G (3B)—**Schedule 4 [2]**), and
- (c) to create offences relating to administration of digital platforms used to deal with child abuse material and providing information to persons about avoiding detection for such an offence (proposed sections 91HAA–91HAC—**Schedule 4 [3]**), and
- (d) to create slavery and slavery-like offences and an offence of forced marriage of a child (**Schedule 4 [7]**).

### **Schedule 5 Amendment of other Acts and regulations**

**Schedule 5** amends the Acts and regulations specified in the Schedule. The amendments include amendments:

- (a) to require NSW government agencies to include statements in annual reports about action taken with respect to certain matters concerning modern slavery and procurement of goods and services that are a product of modern slavery (**Schedule 5.1 and 5.2**), and
- (b) to enable apprehended violence orders to be issued in relation to children being forced into marriage (**Schedule 5.3**), and
- (c) to enable assets forfeiture orders and other orders to be made under the *Criminal Assets Recovery Act 1990* where assets are gained through offences committed under proposed section 93AB (Slavery, servitude and child forced labour) of the *Crimes Act 1900* as inserted by Schedule 4 (**Schedule 5.4**), and
- (d) to provide for education about prevention of modern slavery to be included in curriculum for secondary education (**Schedule 5.5**), and
- (e) to ensure that goods and services procured by and for government agencies are not the product of modern slavery (**Schedule 5.6**), and
- (f) to enable primary victims of modern slavery to receive support under the *Victims Rights and Support Act 2013* (**Schedule 5.7**).