



New South Wales

Modern Slavery Amendment Bill 2021

Explanatory note

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

Overview of Bill

The object of this Bill is to make miscellaneous amendments to the *Modern Slavery Act 2018* (the *Principal Act*) to combat modern slavery and provide assistance and support for victims of modern slavery. In particular, the Bill makes further provision to deal with the following—

- (a) the date of commencement of the Principal Act,
- (b) the functions of the Anti-slavery Commissioner,
- (c) co-operation between the Anti-slavery Commissioner and other agencies, including the Commissioner of Police,
- (d) reports by the Anti-slavery Commissioner,
- (e) the repeal of provisions requiring commercial organisations to prepare modern slavery statements about steps taken to ensure goods and services are not products of supply chains in which modern slavery is taking place,
- (f) the repeal of provisions enabling courts to make certain post-conviction orders relating to modern slavery offences,
- (g) the clarification of an uncommenced offence in the *Crimes Act 1900* dealing with child forced marriage,
- (h) the provision of recognition payments under the *Victims Rights and Support Act 2013* to certain victims of acts of modern slavery,
- (i) other matters of a law revision, machinery or savings and transitional nature.

Outline of provisions

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 assent.

Schedule 1 Amendment of Modern Slavery Act 2018 No 30

Schedule 1[1] provides that the Principal Act is to commence on 1 January 2022.

Schedule 1[3] clarifies an object of the Principal Act relating to child abuse material.

Schedule 1[4] clarifies that State owned corporations, and other corporations of which one or more Ministers are a shareholder, are for the purposes of the Principal Act not to be treated as government agencies. **Schedule 1[52]** makes a consequential amendment.

Schedule 1[7] amends the Principal Act, section 5, definition of *modern slavery offence* to clarify that conduct engaged in elsewhere than in New South Wales is a modern slavery offence if, had it occurred in New South Wales, it would constitute a modern slavery offence.

Schedule 1[9] clarifies the meaning of the term government agency of the State for the purposes of the Principal Act.

Schedule 1[13], [15], [16], [19] and [26] make law revision amendments and update a reference.

Schedule 1[17] clarifies that 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 Anti-slavery Commissioner (the *Commissioner*) in the exercise of the Commissioner's functions.

Schedule 1[18] and [21] make amendments to clarify the law relating to the sharing of information with the Commissioner. **Schedule 1[21]** substitutes a provision of the Principal Act to provide that no criminal or civil liability, apart from under the Principal Act, attaches to a person for compliance, or purported compliance in good faith, with a requirement made under the Principal Act or for providing information to the Commissioner. In particular, 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. 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. **Schedule 1[18]** makes a consequential amendment.

Schedule 1[21] also inserts proposed section 16A into the Principal Act to provide that 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 the Principal Act or under another law, subject the Commissioner or person personally to an action, liability, claim or demand. The liability attaches instead to the Crown.

Schedule 1[23] extends a provision to enable information obtained by the Commissioner while exercising the Commissioner's functions to be brought to the attention of a member of the NSW Police Force if it 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.

Schedule 1[25] repeals the Principal Act, section 24 (Transparency of supply chain), being the provision that requires commercial organisations to prepare modern slavery statements about steps taken to ensure goods and services are not products of supply chains in which modern slavery is taking place. **Schedule 1[2], [5], [8], [10]–[12], [14], [20], [22], [24], [27], [30] and [31]** make consequential amendments.

Schedule 1[28] provides that the public register kept by the Commissioner may include additional information that the Commissioner thinks appropriate and other information required by the

regulations to be recorded on the register. **Schedule 1[29]** provides that the regulations may require government agencies to give specified information to the Commissioner for inclusion on the register and may specify the way the information is to be given to the Commissioner.

Schedule 1[32] repeals the Principal Act, Part 4 (Court orders) which enabled the making of modern slavery risk orders. **Schedule 1[8]** makes a consequential amendment.

Schedule 1[33] provides that proceedings for an offence under the Principal Act or its regulations are to be dealt with summarily before the Local Court.

Schedule 1[34] inserts proposed sections 35 and 36 into the Principal Act. Proposed section 35 deals with the provision of information to the Commissioner, on request or in accordance with arrangements, by the Commissioner of Police. Proposed section 36 provides for the review of the Principal Act as soon as possible after 12 months from its commencement.

Schedule 1[35] provides that the offence in the *Human Tissue Act 1983*, section 32 (Trading in tissue prohibited) is a modern slavery offence only in relation to human tissue organs. **Schedule 1[6]** makes a consequential amendment.

Schedule 1[36] inserts Commonwealth Criminal Code offences relating to organ trafficking into the list of modern slavery offences in the Principal Act, Schedule 2.

Schedule 1[37] amends the savings and transitional schedule to the Principal Act to include an updated version of the standard savings and transitional regulation-making provision.

Schedule 1[38] amends the uncommenced provisions creating an aggravated offence relating to the *Crimes Act 1900*, section 91G (Children not to be used for production of child abuse material) offence. The amendment makes the definition provision for *circumstances of aggravation* consistent with other provisions in the *Crimes Act 1900*, including by providing that the circumstance relating to threats to inflict actual bodily harm must be threats by means of an offensive weapon or instrument.

Schedule 1[39] renumbers a section.

Schedule 1[40] amends the uncommenced *Crimes Act 1900*, section 93AB(1) (Slavery, servitude and child forced labour), which is to be inserted into that Act by the Principal Act, Schedule 4[7], to clarify that the prohibited actions must occur in New South Wales.

Schedule 1[41] and [42] substitute the uncommenced *Crimes Act 1900*, section 93AC(2), (4) and (5) (Child forced marriage), which is to be inserted into that Act by the Principal Act, Schedule 4[7], to clarify that a person does not commit the child forced marriage offence if the person is a victim of the forced marriage and make the offence mirror more closely the corresponding Commonwealth Criminal Code offence.

Schedule 1[43]–[47] make amendments to the Principal Act, Schedule 5.3, which amends the *Crimes (Domestic and Personal Violence) Act 2007*, for the following purposes—

- (a) to include a reference to the offences of forced marriage under the Commonwealth Criminal Code in certain definitions of *personal violence offence* and *serious offence* in that Act,
- (b) to include in the definition of *intimidation* in that Act a reference to 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 a person to enter into a forced marriage within the meaning of the Commonwealth Criminal Code, section 270.7A,
- (c) to make it clear that an apprehended violence order under the *Crimes (Domestic and Personal Violence) Act 2007* 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 relevant provisions of the *Crimes Act 1900* or the Commonwealth Criminal Code,
- (d) to make consequential amendments.

Schedule 1[48] provides for an amendment to the *Crimes (High Risk Offenders) Act 2006* to make the offences under the *Crimes Act 1900*, Part 3 (Offences against the person), Division 10A (Sexual servitude) ***offences of a sexual nature*** for the purposes of that Act.

Schedule 1[49] provides for an amendment to the *Defamation Act 2005* to provide that the defence of absolute privilege applies to the publication of certain specified matters arising under the Principal Act.

Schedule 1[50] and [51] amend the Principal Act, Schedule 5.5, which amends the *Public Finance and Audit Act 1983*, to clarify which government agencies are to be the subject of modern slavery audits by the Auditor-General and what the Auditor-General is to consider when conducting those audits.

Schedule 1[56] amends the Principal Act, Schedule 5.7, which amends the *Victims Rights and Support Act 2013*, to provide for recognition payments under that Act to be made to certain victims of acts of modern slavery.

Schedule 1[53]–[55] and [57]–[60] make law revision and consequential amendments to the Principal Act, Schedule 5.7 which amends the *Victims Rights and Support Act 2013*.