

**NEW SOUTH WALES**

**DRAFT GOVERNMENT BILL**

## **Modern Slavery Amendment Bill 2019**

### **Explanatory note**

#### **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 functions of the Anti-slavery Commissioner,
- (b) co-operation between the Anti-slavery Commissioner and other agencies (including the Commissioner of Police),
- (c) reports by the Anti-slavery Commissioner,
- (d) reports to the Anti-slavery Commissioner on the transparency of supply chains by commercial organisations,
- (e) the repeal of provisions enabling courts to make certain post-conviction orders relating to modern slavery offences,
- (f) the repeal of an uncommenced offence in the *Crimes Act 1900* dealing with the administration of a digital platform used to deal with child abuse material,
- (g) the clarification of an uncommenced offence in the *Crimes Act 1900* dealing with child forced marriage,
- (h) 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 a day or days to be appointed by proclamation.

## **Schedule 1      Amendment of Modern Slavery Act 2018 No 30**

**Schedule 1 [1] and [14]** clarify that State owned corporations, and other corporations of which one or more Ministers are a shareholder, are for the purposes of the Principal Act to be treated as non-government organisations and not government agencies.

**Schedule 1 [2]** amends the definition of *modern slavery offence* in section 5 of the Principal Act 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 [4]** clarifies the meaning of the term government agency of the State for the purposes of the Principal Act.

**Schedule 1 [5], [6], [9] and [15]** make law revision amendments.

**Schedule 1 [7]** clarifies that government agencies of the State and non-government agencies 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 [8] and [10]** make amendments to clarify the law relating to the sharing of information with the Commissioner. **Schedule 1 [10]** 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 any requirement made under the Principal Act or providing any information to the Commissioner. In particular, if a person provides any information, document or other thing to the Commissioner, no civil liability attaches to the person for doing so, whether that liability would arise under a contract or otherwise. If any information, document or other thing is provided to the Commissioner, no liability for defamation or other civil liability is incurred because of the provision of that information, document or thing. **Schedule 1 [8]** makes a consequential amendment.

**Schedule 1 [10]** 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 any other law, subject the Commissioner or person personally to any action, liability, claim or demand. That liability attaches instead to the Crown.

**Schedule 1 [11]** provides that information obtained by the Commissioner in the course of exercising the Commissioner's functions may 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 section 316A of the *Crimes Act 1900*).

**Schedule 1 [12] and [13]** clarify that a *commercial organisation* (being a body that must prepare an annual modern slavery statement):

- (a) may include charities and not-for-profit bodies, and
- (b) must have total turnover derived from the supply of goods and services for profit or gain of not less than \$50 million or such other amount as may be prescribed by the regulations under the Principal Act.

**Schedule 1 [16]** provides that the public register kept by the Commissioner may include additional information that the Commissioner thinks appropriate.

**Schedule 1 [17]** provides that the regulations may make provision for or with respect to the manner and form of a voluntary disclosure to the Commissioner by an organisation or body about

whether its goods and services are, or may be, a product of supply chains in which modern slavery is taking place and whether the organisation or body has taken steps to address the concern.

**Schedule 1 [18]** repeals Part 4 (Court orders) of the Principal Act which enabled the making of modern slavery risk orders. **Schedule 1 [3]** make a consequential amendment.

**Schedule 1 [19]** provides that proceedings for an offence under the Principal Act or its regulations may be dealt with summarily before the Supreme Court in its summary jurisdiction (instead of the District Court).

**Schedule 1 [20]** inserts proposed section 35 into the Principal Act to deal with the provision of information to the Commissioner, on request or in accordance with arrangements, by the Commissioner of Police.

**Schedule 1 [21] and [22]** omit the offence contained in section 32 (Trading in tissue prohibited) of the *Human Tissue Act 1983* from the list of modern slavery offences in Schedule 2 to the Principal Act and insert instead references to offences in the Commonwealth Criminal Code relating to organ trafficking.

**Schedule 1 [24]** 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 [25]** makes an amendment to one of the circumstances of aggravation for the purposes of the offence in section 91G (Children not to be used for production of child abuse material) of the *Crimes Act 1900* (which is to be inserted into that Act by Schedule 4 [2] to the Principal Act). The amended circumstance of aggravation is that, at the time of, or immediately before or after, the commission of the relevant 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.

**Schedule 1 [26]** repeals the uncommenced section 91HAA (Administering a digital platform used to deal with child abuse material) of the *Crimes Act 1900* (which was to be inserted into that Act by Schedule 4 [3] to the Principal Act). **Schedule 1 [27]** renumbers other uncommenced sections in Schedule 4 [3]. **Schedule 1 [21], [28], [29] and [30]** make consequential amendments.

**Schedule 1 [31]** amends section 93AB (1) (Slavery, servitude and child forced labour) of the *Crimes Act 1900* (which is to be inserted into that Act by Schedule 4 [7] to the Principal Act) to clarify that the prohibited actions must occur in New South Wales.

**Schedule 1 [32]** substitutes section 93AC (4) (Child forced marriage) of the *Crimes Act 1900* (which is to be inserted into that Act by Schedule 4 [7] to the Principal Act) to clarify that a person does not commit the child forced marriage offence if the person is a victim of the forced marriage.

**Schedule 1 [33]–[37]** make amendments to Schedule 5.3 to the Principal Act (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 the definitions of *personal violence offence* in that Act and *serious offence* in section 40 of that Act,
- (b) to include in the definition of *intimidation* in that Act a reference to any conduct amounting to the coercion or deception of, or a threat to, a child to enter into a forced marriage within the meaning of section 93AC of the *Crimes Act 1900* or any person to enter into a forced marriage within the meaning of section 270.7A of the Commonwealth Criminal Code,
- (c) to make it clear that an apprehended violence order under that Act may prohibit any behaviour of the defendant that might coerce, deceive or threaten 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 [38] and [39]** amend Schedule 5.5 to the Principal Act (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 in conducting those audits.

**Schedule 1 [40]–[42]** make law revision and consequential amendments to Schedule 5.7 to the Principal Act (which amends the *Victims Rights and Support Act 2013*).

## **Schedule 2      Amendment of other Acts**

**Schedule 2.1** amends the *Crimes (High Risk Offenders) Act 2006* to provide that offences under Division 10A (Sexual servitude) of Part 3 (Offences against the person) of the *Crimes Act 1900* are *offences of a sexual nature* for the purposes of that Act.

**Schedule 2.2** amends 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.

**NEW SOUTH WALES**  
**DRAFT GOVERNMENT BILL**

**Modern Slavery Amendment Bill 2019**

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public consultation draft

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**NEW SOUTH WALES**  
**DRAFT GOVERNMENT BILL**

**Modern Slavery Amendment Bill 2019**

No. , 2019

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**A Bill for**

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.

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Modern Slavery Amendment Bill 2019 [NSW]

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Modern Slavery Amendment Act 2019*.

**2 Commencement**

This Act commences on a day or days to be appointed by proclamation.

## **Schedule 1 Amendment of Modern Slavery Act 2018 No 30**

### **[1] Section 5 Definitions**

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

### **[2] Section 5 (1), definition of “modern slavery offence”**

Omit paragraph (c). 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).

### **[3] Section 5 (1), definition of “modern slavery risk order”**

Omit the definition.

### **[4] 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.

### **[5] 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”.

### **[6] 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”.

### **[7] 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 non-government agencies 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.

### **[8] Section 14 (2)**

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

### **[9] Section 14 (5)**

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

### **[10] 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 any information, document or other thing to the Commissioner, no civil liability attaches to the person for doing so, whether that liability would arise under a contract or otherwise.
- (3) If any information, document or other thing is provided to the Commissioner, no liability for defamation or other civil liability is incurred because of the provision of that information, document or thing.

**16A Personal liability—Commissioner and officers of Commission**

- (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 any other law, subject the Commissioner or person so acting personally to any action, liability, claim or demand.
- (2) However, any such liability attaches instead to the Crown.

**[11] Section 20**

Omit the section. Insert instead:

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

- (1) Any information obtained by the Commissioner in the course of 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 section 24 (Report concerning child or young person at risk of significant harm) of the *Children and Young Persons (Care and Protection) Act 1998*,
  - (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 section 316A of the *Crimes Act 1900*).
- (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.

**[12] Section 24 Transparency of supply chain**

Insert "(whether or not the organisation is a charity or not-for-profit body)" after "gain" in paragraph (a) of the definition of *commercial organisation* in section 24 (1).

**[13] Section 24 (1), definition of "commercial organisation"**

Insert "derived from the supply of goods and services for profit or gain" after "turnover" in paragraph (b).

**[14] Section 24 (1), definition of "organisation"**

Insert ", State owned corporation" before "or incorporated partnership" in paragraph (a).

**[15] Section 25 Government agency procurement**

Omit "the procurement of goods and services by government agencies".

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

**[16] Section 26 Public register**

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

, and

- (d) includes any other information that the Commissioner thinks appropriate.

**[17] Section 26 (3)**

Insert after section 26 (2):

- (3) The regulations may make provision for or with respect to the manner and form of the voluntary disclosures referred to in subsection (1) (b).

**[18] Part 4 Court orders**

Omit the Part.

**[19] Section 33 Nature of proceedings for offences**

Omit section 33 (1) (b). Insert instead:

- (b) summarily before the Supreme Court in its summary jurisdiction.

**[20] Section 35**

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 any 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 any information under this section if he or she 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 any care proceedings, or
  - (d) contravene any 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, he or she must, at the time he or she notifies the Commissioner of the refusal, provide the Commissioner with reasons in writing for the refusal.

**[21] Schedule 2 Offences**

Omit the matter relating to section 91HAA of the *Crimes Act 1900*.

**[22] Schedule 2**

Omit the matter relating to the *Human Tissue Act 1983*.

**[23] 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

**[24] Schedule 3 Savings, transitional and other provisions**

Omit clause 1 (2) and (3). Insert instead:

(2) Any such provision:

(a) may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date, and

(b) has effect despite anything to the contrary in this Schedule.

(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:

(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or

(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

(4) Without limiting subclauses (1) and (2), regulations made for the purposes of this clause may amend this Schedule to provide for additional or different savings and transitional provisions instead of including the provisions in the regulations.

**[25] Schedule 4 Amendment of Crimes Act 1900 No 40**

Insert “by means of an offensive weapon or instrument” after “nearby” in section 91G (3A) (h) in Schedule 4 [2].

**[26] Schedule 4 [3]**

Omit section 91HAA.

**[27] Schedule 4 [3]**

Re-number sections 91HAB and 91HAC as 91HAA and 91HAB, respectively.

**[28] Schedule 4 [3], section 91HAB (1) (as renumbered by item [27])**

Omit “or 91HAB”.

**[29] Schedule 4 [4]**

Omit the item.

**[30] Schedule 4 [5] and [6]**

Omit “, 91HAB or 91HAC” wherever occurring. Insert instead “or 91HAB”.

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

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

**[32] Schedule 4 [7], section 93AC (4)**

Omit the subsection. 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.

**[33] 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.

**[34] Schedule 5.3 [1] and [5]**

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

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

Omit section 7 (1) (d). Insert instead:

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

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

Omit section 35 (2A). Insert instead:

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

**[37] Schedule 5.3 [8]**

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

**[38] 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 the following:

- (a) a council, county council or joint organisation within the meaning of the *Local Government Act 1993*,
- (b) any public or local authority that is constituted by an Act of another jurisdiction that exercises public functions.

**[39] 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 Part 11 of the *Public Works and Procurement Act 1912* applies to the procurement of goods and services by or for the government agency, has complied with any directions of the NSW Procurement Board under section 175 (3) (a1) of that Act.

**Note.** Part 11 of the *Public Works and Procurement Act 1912* 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.

**[40] 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.

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

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

**[42] Schedule 5.7 [5A] and [5B]**

Insert after Schedule 5.7 [5]:

**[5A] Section 25 Persons not eligible for support**

Insert “or act of modern slavery” after “violence” in section 25 (1), (4), (6) and (7).

**[5B] Sections 26 and 27**

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

## **Schedule 2 Amendment of other Acts**

### **2.1 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 Division 10A of Part 3 of the *Crimes Act 1900*,

### **2.2 Defamation Act 2005 No 77**

#### **Schedule 1 Additional publications to which absolute privilege applies**

Insert after clause 33:

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