

TASMANIA

Supply Chain (Modern Slavery) Bill 2020

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Supply Chain (Modern Slavery) Bill 2020

(Brought in by Madeleine Ogilvie, Independent Member for Clark)

A BILL FOR

An Act to make provision with respect to supply chains and slavery, slavery-like practices and human trafficking and to provide for a Code of Conduct, appointment of a Commissioner, to address the issue of modern slavery in supply chains, to ensure goods and services are not a product of supply chains in which modern slavery is taking place and to establish practices that can be used to remediate or monitor identified risks of modern slavery in Tasmania's supply chains.

Be it enacted by Her Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

Part 1 - Preliminary

1. Short title

This Act is the *Supply Chain (Modern Slavery) Act 2020*.

2. Commencement

The provisions of this Act commence on a day or days to be proclaimed.

3. Objects of Act

The objects of this Act are as follows:

- (a) to combat modern slavery,
- (b) to provide assistance and support for victims of modern slavery,
- (c) to provide for a Code of Conduct,

(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 government agencies and commercial organisations,

(i) to encourage action on issues of forced marriage of a child and certain slavery and slavery-like conduct offences in Tasmania, and

(j) to identify Tasmanian responses to cybersex trafficking including the use of digital platforms for the purpose of child abuse material.

4. Extraterritorial application

(1) It is the intention of the Parliament that this Act apply within the State and outside the State to the full extent of the extraterritorial legislative capacity of the Parliament.

(2) Without limiting subsection (1), it is the intention of the Parliament that the operation of this Act is, as far as possible, to include operation in relation to the following:

(a) things situated in or outside the territorial limits of this State,

(b) acts, transactions and matters done, entered into or occurring in or outside the territorial limits of this State,

(c) things, acts, transactions and matters (wherever situated, done, entered into or occurring) that would, apart from this Act, be governed or otherwise affected by the law of another jurisdiction.

5. Interpretation

(1) In this Act:

"Commissioner" means the commissioner appointed pursuant to this Act.

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

"forced labour" has the meaning it has in section 270.6 of the Commonwealth Criminal Code.

"function" includes a power, authority or duty, and **"exercise"** a function includes perform a duty.

"government agency" means any of the following:

- (a) a Tasmanian government sector agency,
- (b) a Tasmanian Government Business Enterprise,
- (c) a State-owned corporation,
- (d) a company incorporated under the *Corporations Act 2001* of the Commonwealth of which one or more shareholders are a Minister of the Crown,
- (e) a council, county council owned organisation or joint organisation within the meaning of the *Local Government Act (Tas) 1993*,
- (f) any other public or local authority that is constituted by or under an Act or that exercises public functions,
- (g) any public or local authority that is constituted by an Act of another jurisdiction that exercises public functions.

"modern slavery" includes the following:

- (a) any conduct constituting a modern slavery offence,

(b) any conduct 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 agencies or non-government agencies.

"Modern Slavery Committee" means the committee called the Modern Slavery Committee constituted under this Act.

"modern slavery offence" means any offence committed pursuant to section 270.4 or 270.1 of the Commonwealth Criminal Code.

"non-government agency" includes any commercial or non-commercial body or organisation in this or any other jurisdiction.

"Presiding Officer" means the President of the Legislative Council or the Speaker of the Legislative Council.

"servitude" has the meaning it has in section 270.4 of the Commonwealth Criminal Code.

"slavery" has the meaning it has in section 270.1 of the Commonwealth Criminal Code.

"strategic plan" means a strategic plan prepared pursuant to this Act.

Part 2 – Supply Chain Commissioner

Division 1 – Appointment of Commissioner

6. Appointment of Commissioner

A Supply Chain (Anti-slavery) Commissioner is to be appointed.

7. Independence of Commissioner

Subject to this and any other Act, the Commissioner is not subject to the control and direction of the Premier or any other Minister in respect of the exercise of the Commissioner's functions.

8. Staff of Commissioner

(1) Persons may be employed in the Public Service under the *State Service Act (Tas) 2000* to enable the Commissioner to exercise the Commissioner's functions.

(2) The Commissioner may arrange for the use of the services of any staff or facilities of a government agency and may, with the approval of the Minister, engage such consultants or contractors as are necessary for the purposes of this Act.

Division 2 – Functions of Commissioner

9. General functions of Commissioner

(1) The functions of the Commissioner are as follows:

(a) to advocate for and promote action to combat modern slavery,

(b) to identify and provide assistance and support for victims of modern slavery,

(c) to make recommendations and provide information, advice, education and training about action to prevent, detect, investigate and prosecute offences involving modern slavery,

(d) to co-operate with or work jointly with government and non-government agencies and other bodies and persons to combat modern slavery and provide assistance and support to victims of modern slavery,

(e) to monitor reporting concerning risks of modern slavery occurring in supply chains of government agencies and commercial organisations,

(f) to monitor the effectiveness of legislation and governmental policies and action in combating modern slavery,

(g) to establish a Code of Conduct and to raise community awareness of modern slavery,

(h) to exercise such other functions as are conferred or imposed on the Commissioner by or under this or any other Act.

(2) In exercising the Commissioner's functions, the Commissioner must encourage good practice in:

(a) the prevention, detection, investigation and prosecution of modern slavery, and

(b) the identification of victims of modern slavery.

(3) Unless the contrary intention appears, the Commissioner's functions may 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), so long as the function is exercised in relation to a matter to which this section relates.

10. Restriction on exercise of functions

(1) The Commissioner does not generally have the function of investigating or dealing directly with the complaints or concerns of individual cases but may take them into account and draw conclusions about them solely for the purpose of, or in the context of, considering a general issue.

(2) The Commissioner may provide individuals and their families, friends and advocates with information about and referral to government and non-government programs and services.

11. Strategic plan

(1) In this section:

"strategic plan" means a plan setting out how the Commissioner proposes to exercise the Commissioner's functions in the period to which the plan relates.

(2) The Commissioner must, as soon as reasonably practicable after the Commissioner's appointment, prepare a strategic plan.

(3) The strategic plan is to be prepared in consultation with the Minister.

(4) A strategic plan must:

(a) state the period (not being less than one year or more than 3 years) to which it relates, and

(b) outline the Commissioner's key objectives and priorities for that period.

(5) In particular, and without limiting subsection (4) (b), the plan must address the following:

(a) a strategy to combat human trafficking,

(b) strategies for raising public awareness about modern slavery and providing education and training about combating modern slavery, and

(c) a Supply Chain (Modern Slavery) Code of Conduct for Tasmania.

(6) A new strategic plan may be made in accordance with this section to replace an earlier strategic plan.

(7) The Commissioner is to cause a copy of the strategic plan (and any replacement strategic plan) to be published on a publicly accessible website.

12. Commissioner's public awareness and advice functions generally

The Commissioner is:

(a) to promote public awareness of modern slavery and its effects on its victims, and

(b) to provide advice, education and training on ways to prevent modern slavery taking place and assist the victims of modern slavery, and

(c) to encourage reporting of instances of suspected modern slavery to appropriate authorities, and

(d) to establish and maintain a hotline (or utilise a hotline maintained by a government or non-government agency or other body or organisation) for provision of advice and assistance to children and other persons who are, or may be, victims of modern slavery.

13. Referral of matters to police and other agencies in the State and elsewhere

(1) This section applies to any information obtained by the Commissioner in the course of exercising the Commissioner's functions, being reports or other information relating to modern slavery or suspected instances of modern slavery.

(2) The Commissioner may refer any such information to an investigative or government agency that the Commissioner considers appropriate.

(3) In exercising the Commissioner's functions, the Commissioner may work in co-operation with educational institutions, bodies and organisations representing the interests of any industry and such other persons, bodies and organisations as the Commissioner thinks appropriate.

14. Co-operation between the Commissioner and Tasmanian agencies

(1) The Commissioner and government or non-government agencies in or of the State that provide or deal with services or issues affecting victims of modern slavery must work in co-operation in the exercise of their respective functions.

(2) The duty to co-operate includes, subject to any duty of confidentiality imposed by law, the following duties:

(a) the duty to disclose information that is likely to be of assistance to the Commissioner or an agency in the exercise of functions imposed on the Commissioner or agency with respect to modern slavery and victims of modern slavery,

(b) the duty to provide reasonable assistance and support to the Commissioner or an agency in connection with the exercise by the Commissioner or an agency of functions with respect to modern slavery and victims of modern slavery.

(3) Arrangements may be made by the Minister with the Minister to whom a government agency is responsible to secure such co-operation, including in connection with the provision by the agency of information (or access to documents) required by the Commissioner in relation to services or issues affecting the victims.

(4) A reference in this section to the provision of access to documents includes a reference to the provision of copies of documents.

15. Co-operation with other agencies, persons, bodies and organisations

(1) In exercising the Commissioner's functions, the Commissioner may work in co-operation with government and non-government agencies, and such other persons, bodies and organisations as the Commissioner thinks appropriate.

(2) The Commissioner may consult with, and disseminate information to, government and non-government agencies and such other persons, bodies and organisations as the Commissioner thinks appropriate.

16. Breach of duty of confidentiality excluded

A person does not incur any criminal or civil liability (including liability for breaching any duty of confidentiality) for providing any information to the Commissioner if the information is provided in accordance with this Act and in good faith.

17. Incidental powers

The Commissioner has power to do all things necessary to be done for or in connection with, or reasonably incidental to, the exercise of the Commissioner's functions. Any specific powers conferred on the Commissioner by this Act are not taken to limit by implication the generality of this section.

18. Delegation

The Commissioner may delegate any of the Commissioner's functions (other than this power of delegation) to a member of the staff of the Commissioner or to a person of a class prescribed by the regulations.

Division 3 - Reports by Commissioner

19. Annual and other reports to Parliament

(1) The Commissioner is required to prepare, within the period of 4 months after 30 June in each year, a report of the Commissioner's operations during the year ended on that 30 June and furnish the report to the Minister. The report is to be furnished to the Presiding Officer of each House of Parliament within 14 sitting days after it is given to the Minister.

(2) A report by the Commissioner under this section must include the following:

(a) a description of the Commissioner's activities during that year in relation to each of the Commissioner's functions,

(b) a review of progress on implementation of the strategic plan relevant to the period to which the report relates,

(c) an evaluation of the response of relevant government agencies to the recommendations of the Commissioner,

(d) any recommendations for changes in the laws of the State, or for administrative action, that the Commissioner considers should be made as a result of the exercise of the Commissioner's functions,

(e) a review and report on Code of Conduct efficacy and compliance.

20. Commissioner's report

(1) The report is to include a review of the following:

(a) the extent to which the government of Tasmania has provided training on supply chain modern slavery to front-line government agencies, workers in non-government agencies and the public generally during the year,

(b) the extent to which the government of Tasmania has implemented changes in the information and communications technology use policies

applicable to government agencies to prohibit the viewing of child abuse material and provided clear guidelines for responding to failures to comply with those policies during the year,

(c) action during the year to develop a system of support (including provision of accommodation) for victims of forced under-age marriage, irrespective of whether any offence against the victim has been prosecuted.

(2) The Commissioner may, at any time, make a report on any particular issue or general matter relating to the Commissioner's functions and furnish the report to the Minister who is to furnish the report to the Presiding Officer of each House of Parliament.

(3) The Commissioner is to make a special report to the Minister on any particular issue or general matter requested by the Minister. The special report may be furnished by the Minister to the Presiding Officer of each House of Parliament.

Division 4 – Modern Slavery Committee

21. 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 Supply Chain (Modern Slavery) Committee, is to be appointed.

(2) The Supply Chain (Modern Slavery) Committee has the functions conferred or imposed on it by or under this or any other Act.

22. Functions of Committee

(1) The (Supply Chain) Modern Slavery Committee has the following functions under this Act:

(a) to inquire into and report on matters relating to modern slavery,

(b) to report to both Houses of Parliament on matters relating to modern slavery.

(2) Nothing in this Division authorises the (Supply Chain) Modern Slavery Committee to investigate a matter relating to particular conduct.

(3) The Commissioner may, as soon as practicable after a report of the Supply Chain (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.

23. Membership of Committee

(1) The Supply Chain (Modern Slavery) Committee is to consist of 8 members, of whom:

(a) 4 are to be members of, and appointed by, the House of Assembly, and

(b) 4 are to be members of, and appointed by, the Legislative Council.

(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 Supply Chain (Modern Slavery) Committee if the person is a Minister of the Crown or a Parliamentary Secretary.

Part 3 - Supply chains

24. Transparency of supply chain

(1) In this Act:

"commercial organisation" means an organisation (other than a government agency of the State) having employees in the State that:

(a) supplies goods and services for profit or gain, and

(b) has a total turnover in a financial year of the organisation of not less than \$30 million or such other amount as may be prescribed by the regulations.

"organisation" means the following:

(a) any corporation (within the meaning of section 57A of the *Corporations Act 2001* of the Commonwealth) or incorporated partnership,

(b) an association (including a partnership) other than one referred to in paragraph (a), or other body of persons.

(2) A commercial organisation must prepare a modern slavery for each financial year of the organisation.

(3) The statement is to be prepared in accordance with the regulations within such period after the end of the financial year as is provided for by the regulations.

(4) 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 commercial organisation during the financial year to ensure that its goods and services are not a product of supply chains in which modern slavery is taking place.

(5) The commercial organisation must make its modern slavery statement public in accordance with the regulations.

(6) This section does not apply to a commercial organisation if the organisation is subject to obligations under a law of the Commonwealth or another State or a Territory that is prescribed as a corresponding law for the purposes of this section.

25. Government agency procurement

The Commissioner must regularly consult with the Auditor-General and the Minister 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.

26. Public register

(1) The Commissioner is to keep a register in electronic form that:

(a) identifies any commercial organisation that has disclosed in a modern slavery statement that its goods and services are, or may be, a product of supply chains in which modern slavery may be taking place and whether the commercial organisation has taken steps to address the concern, and

(b) identifies any other organisation or body that has voluntarily disclosed to the Commissioner that 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.

(2) The Commissioner is to make the register publicly available free of charge.

27. Codes of Conduct

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

(2) A Code of Conduct may refer to or incorporate, with or without modification, a standard or other document prepared or published by a body specified in the code, as in force at a particular time or from time to time.

28. Commissioner's public awareness and advice functions—supply chains

The Commissioner may promote public awareness of and provide advice on steps that can be taken by government and non-government agencies to remediate or monitor

risks of modern slavery taking place in their supply chains, including encouraging agencies to develop their capacity to avoid such risks.

29. Information to be made available

The Commissioner may make information available to government and non-government agencies and other persons about matters to consider in relation to employing persons to work in supply chains.

Part 5 - Miscellaneous

30. Act to bind Crown

This Act binds the Crown in right of Tasmania and, in so far as the legislative power of the Parliament of Tasmania permits, the Crown in all its other capacities.

31. Annual reports

(1) The annual reporting information is to include the following matters:

(a) a statement of the action taken by the agency in relation to any issue raised by the Commissioner during the financial year then ended concerning the operations of the agency and identified by the Commissioner as being a significant issue,

(b) a statement of steps taken to ensure that goods and services procured by and for the agency during the financial year then ended were not the product of modern slavery.

32. Expenditure under this Act

Any expenditure incurred in the administration or execution of this Act by the State is to be paid out of money to be provided by Parliament.

33. Regulations

(1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or

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that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) The regulations may create an offence punishable by a penalty not exceeding 50 penalty units.