



Modern Slavery Amendment (Australian Anti-Slavery Commissioner) Act 2024

No. 42, 2024

An Act to amend the *Modern Slavery Act 2018*, and for related purposes

Note: An electronic version of this Act is available on the Federal Register of Legislation (<https://www.legislation.gov.au/>)

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Modern Slavery Amendment (Australian Anti-Slavery Commissioner) Act 2024

No. 42, 2024

An Act to amend the *Modern Slavery Act 2018*, and for related purposes

[Assented to 11 June 2024]

The Parliament of Australia enacts:

1 Short title

This Act is the *Modern Slavery Amendment (Australian Anti-Slavery Commissioner) Act 2024*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 12 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Modern Slavery Act 2018

1 Title

After “risks,” insert “to establish the Australian Anti-Slavery Commissioner.”

2 At the end of section 3

Add:

<p>This Act also establishes the Australian Anti-Slavery Commissioner, sets out the Commissioner’s functions and deals with other matters relating to the role of the Commissioner (including administrative matters).</p>
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3 Section 4

Insert:

Commissioner means the Australian Anti-Slavery Commissioner referred to in section 20B.

paid work means work for financial gain or reward (whether as an employee, a self-employed person or otherwise).

sensitive information: information is **sensitive information** if:

- (a) the public disclosure of the information would, or could reasonably be expected to, prejudice the investigation of, or the prosecution of a person for, an offence; or
- (b) the public disclosure of the information would, or could reasonably be expected to, endanger the life or safety of any person; or
- (c) all of the following apply in relation to the information:
 - (i) the public disclosure of the information would, or could reasonably be expected to, prejudice the security, defence or international relations of Australia;

- (ii) the information was given in confidence to the Commissioner, a member of the staff assisting the Commissioner (see section 20F), a person engaged to assist the Commissioner under section 20G or a person engaged as a consultant under section 20H, acting in that capacity;
- (iii) written consent to the public disclosure of the information has not been given by the person or body that gave the information.

strategic plan means a strategic plan prepared under section 20X and includes a strategic plan as revised under that section.

4 After Part 3

Insert:

Part 3A—Australian Anti-Slavery Commissioner

Division 1—Preliminary

20A Simplified outline of this Part

This Part establishes and sets out the functions of the Australian Anti-Slavery Commissioner.

The Commissioner has functions relating to addressing modern slavery and supporting victims of modern slavery. The Commissioner's functions include consulting and liaising with a range of persons, and advocating to the Commonwealth Government, in relation to modern slavery.

This Part deals with administrative matters relating to the Commissioner, including the appointment of the Commissioner, the terms and conditions on which the Commissioner holds office and arrangements relating to staff, contractors and consultants.

This Part also deals with requests for information from Commonwealth agencies, information disclosure, strategic plans and annual reports.

Division 2—Establishment, functions and powers of Australian Anti-Slavery Commissioner

20B Australian Anti-Slavery Commissioner

There is to be an Australian Anti-Slavery Commissioner.

Note: In this Act, *Commissioner* means the Australian Anti-Slavery Commissioner (see section 4).

20C Functions of Commissioner

- (1) The Commissioner has the following functions:
- (a) to promote compliance with this Act;
 - (b) to support Australian entities and entities carrying on business in Australia to address risks of modern slavery practices in their operations and supply chains, and in the operations and supply chains of entities they own or control;
 - (c) to support collaboration and engagement within and across sectors in relation to addressing modern slavery;
 - (d) to support victims of modern slavery by providing information in relation to government and non-government resources, programs and services, including by developing and maintaining guidance material and making such material publicly available;
 - (e) to engage with, and promote engagement with, victims of modern slavery to inform measures for addressing modern slavery;
 - (f) to support, encourage and conduct education and community awareness initiatives relating to modern slavery;
 - (g) to support, encourage, conduct and evaluate research about modern slavery;
 - (h) to collect, analyse, interpret and disseminate information relating to modern slavery;

- (i) to consult and liaise with Commonwealth, State and Territory governments, agencies, bodies and office holders on matters relating to modern slavery;
 - (j) to consult and liaise with other persons and organisations on matters relating to modern slavery;
 - (k) to advocate to the Commonwealth Government on matters relating to modern slavery, including for continuous improvement in policy and practice;
 - (l) at the request of the Minister, to provide advice to the Minister on matters relating to modern slavery;
 - (m) such other functions as are conferred on the Commissioner by this Act or any other law of the Commonwealth;
 - (ma) to engage with victims of modern slavery to inform and support the performance of the above functions;
 - (n) to do anything incidental or conducive to the performance of any of the above functions.
- (2) To avoid doubt, the Commissioner may not investigate, or resolve complaints concerning, individual instances or suspected instances of modern slavery.

20D Commissioner must have regard to international obligations

In performing the Commissioner's functions, the Commissioner must have regard to Australia's international obligations under the international agreements mentioned in subsection 7(2).

20E Application of finance law

For the purposes of the finance law (within the meaning of the *Public Governance, Performance and Accountability Act 2013*), the Commissioner is an official of the Department.

20F Arrangements relating to staff of the Department

- (1) The staff assisting the Commissioner are to be APS employees in the Department whose services are made available to the Commissioner by the Secretary of the Department, in connection with the performance of any of the Commissioner's functions or the exercise of any of the Commissioner's powers.

- (2) When performing services for the Commissioner under this section, a person is subject to the directions of the Commissioner.

20G Contractors

The Commissioner may, on behalf of the Commonwealth, engage persons under a written agreement to assist the Commissioner to perform or exercise the functions or powers of the Commissioner.

20H Consultants

The Commissioner may, on behalf of the Commonwealth, engage consultants to advise in relation to the performance of the Commissioner's functions.

20J Independence of Commissioner

Subject to this Act and any other Act, the Commissioner:

- (a) has complete discretion in performing or exercising the Commissioner's functions or powers; and
- (b) is not subject to direction from anyone when doing so.

20K Commissioner not to be sued

The Commissioner, and any person acting under the direction or authority of the Commissioner, is not liable to an action, suit or proceeding in relation to an act done or omitted to be done in good faith in the performance or purported performance, or exercise or purported exercise, of a function or power conferred by this Act.

Division 3—Appointment

20L Appointment of Commissioner

- (1) The Commissioner is to be appointed by the Governor-General by written instrument, on a full-time basis.
- (2) A person must not be appointed under subsection (1) as the Commissioner unless the Minister is satisfied that:

- (a) the person has appropriate qualifications, knowledge or experience in two or more of the following fields:
 - (i) human rights issues relating to business practices;
 - (ii) regulation;
 - (iii) public policy relating to modern slavery or related forms of human exploitation;

Note: Qualifications, knowledge or experience in public policy relating to modern slavery or related forms of human exploitation may include experience engaging with victims of modern slavery or human trafficking.
- (b) the selection of the person for the appointment is the result of a process that:
 - (i) was merit-based; and
 - (ii) included public advertising of the position.
- (3) Paragraph (2)(b) does not apply in relation to the reappointment of a person who, immediately before the start of the period of reappointment, holds office as the Commissioner under a previous appointment under subsection (1).

20M Obligation to fill vacancy as soon as practicable

As soon as practicable after the office of the Commissioner becomes vacant, a Commissioner or acting Commissioner must be appointed under section 20L or 20P.

20N Period of appointment

- (1) The Commissioner holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.
- (2) A person is not eligible to be appointed to the office of the Commissioner more than twice.

20P Acting appointments

- (1) The Minister may, by written instrument, appoint a person to act as the Commissioner:
 - (a) during a vacancy in the office of the Commissioner (whether or not an appointment has previously been made to the office); or
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- (b) during any period, or during all periods, when the Commissioner:
 - (i) is absent from duty or from Australia; or
 - (ii) is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901*.

- (2) A person must not be appointed to act as the Commissioner unless the Minister is satisfied that the person has appropriate qualifications, knowledge or experience to be appointed as the Commissioner.

Division 4—Terms and conditions etc.

20Q Remuneration and allowances

- (1) The Commissioner is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the member is to be paid the remuneration that is prescribed by the rules.
- (2) The Commissioner is to be paid the allowances that are prescribed by the rules.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

20R Leave of absence

- (1) The Commissioner has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The Minister may grant the Commissioner leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.

20S Other paid work

The Commissioner must not engage in paid work outside the duties of the Commissioner's office without the approval of the Minister.

20T Resignation

- (1) The Commissioner may resign the Commissioner's appointment by giving the Governor-General a written resignation.
- (2) The resignation takes effect on the day it is received by the Governor-General or, if a later day is specified in the resignation, on that later day.

20U Termination of appointment

- (1) The Governor-General may terminate the appointment of the Commissioner:
 - (a) for misbehaviour; or
 - (b) if the Commissioner is unable to perform the duties of the Commissioner's office because of physical or mental incapacity.
- (2) The Governor-General may terminate the appointment of the Commissioner if:
 - (a) the Commissioner:
 - (i) becomes bankrupt; or
 - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounds with the Commissioner's creditors; or
 - (iv) makes an assignment of remuneration for the benefit of the Commissioner's creditors; or
 - (b) the Commissioner is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
 - (c) the Commissioner engages, except with the Minister's approval, in paid work outside the duties of the Commissioner's office (see section 20S); or
 - (d) the Commissioner fails, without reasonable excuse, to comply with section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests) or rules made for the purposes of that section.

20V Other terms and conditions

The Commissioner holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Governor-General.

Division 5—Other matters**20W Commissioner may request information from Commonwealth agencies**

- (1) If the Commissioner reasonably believes that a Commonwealth agency has information relevant to the performance of the Commissioner's functions, the Commissioner may, in writing, request the agency to give the information to the Commissioner.
- (2) The request may specify a period within which the information is to be given. The period specified must be reasonable.
- (3) The agency must, so far as is reasonably practicable, comply with the request.
- (4) In this section:

Commonwealth agency means:

- (a) a Commonwealth entity (within the meaning of the *Public Governance, Performance and Accountability Act 2013*); or
- (b) a person who performs the functions of, or performs functions within, a Commonwealth entity (within the meaning of that Act).

20WA Disclosure of information by Commissioner

- (1) This section applies to information obtained by any of the following persons in the person's capacity as such a person:
 - (a) the Commissioner;
 - (b) a member of the staff assisting the Commissioner (see section 20F);
 - (c) a person engaged to assist the Commissioner under section 20G;
 - (d) a person engaged as a consultant under section 20H.
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- (2) The Commissioner may disclose the information to a person or body mentioned in subsection (3) if the Commissioner reasonably believes the disclosure will enable or assist the person or body to perform or exercise any of the person or body's functions or powers.
- (3) The persons and bodies are the following:
 - (a) a Department, agency or authority of the Commonwealth;
 - (b) the Australian Federal Police;
 - (c) a person who holds an office or appointment under a law of the Commonwealth.
- (4) This section does not limit any other powers the Commissioner has to disclose information.

20X Strategic plan

- (1) The Commissioner must:
 - (a) prepare a strategic plan in relation to the Commissioner's functions; and
 - (b) ensure that:
 - (i) the first strategic plan comes into force as soon as practicable after the commencement of this section; and
 - (ii) a strategic plan is in force at all times after the first strategic plan comes into force.
- (2) A strategic plan must:
 - (a) relate to a period of up to 3 years; and
 - (b) state the Commissioner's priorities and principal objectives for the period in relation to the performance of the Commissioner's functions; and
 - (c) include, as one such principal objective, the Commissioner making guidance material publicly available to support victims of modern slavery.
- (3) A strategic plan must not include sensitive information.
- (4) A strategic plan prepared by the Commissioner is in force for the period to which the plan relates.

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- (5) The Commissioner may revise a strategic plan at any time during the period to which the strategic plan relates.
 - (6) In preparing or revising a strategic plan, the Commissioner must consult:
 - (a) the Minister; and
 - (b) the Secretary of the Department.
 - (7) The Commissioner must cause a strategic plan to be published on the Commissioner's website as soon as practicable after the plan is prepared or revised (as the case may be).
 - (8) A strategic plan is not a legislative instrument.

20Y Annual report by Commissioner

- (1) The Commissioner must, within 3 months after the end of a financial year, prepare and give to the Minister an annual report on the Commissioner's activities during the financial year.

Note: See also section 34C of the *Acts Interpretation Act 1901*, which contains extra rules about periodic reports.

- (2) The report prepared by the Commissioner for a financial year must set out:
 - (a) the Commissioner's activities during the financial year in relation to the Commissioner's functions; and
 - (b) the progress made towards any objectives set out in the strategic plan or plans that were in force during all or part of the financial year; and
 - (c) a description of any milestones in relation to the Commissioner's activities that were reached during the financial year; and
 - (d) any emerging issues relating to the Commissioner's functions.
- (3) If the Commissioner considers that the annual report contains sensitive information, the Commissioner must also prepare and give to the Minister, at the same time as the annual report, a version of the report which does not contain that information.

- (4) In determining whether the annual report contains sensitive information, the Commissioner may consult the Minister.
- (5) The Minister must cause a copy of:
- (a) the annual report; or
 - (b) if the annual report contains sensitive information—the corresponding version of the report which does not contain that information;
- to be tabled in each House of the Parliament within 15 sitting days of that House after the report is given to the Minister.
- (6) The Commissioner must cause a copy of:
- (a) the annual report; or
 - (b) if the annual report contains sensitive information—the corresponding version of the report which does not contain that information;
- to be published on the Commissioner’s website as soon as practicable after the report is tabled in the House of Representatives.

5 Section 21

Omit “the Minister’s capacity to delegate powers and functions”, substitute “delegations”.

6 After section 22

Insert:

22A Delegation by Commissioner

- (1) The Commissioner may, in writing, delegate all or any of the Commissioner’s functions or powers under this Act to an APS employee whose services have been made available under section 20F and who is:
- (a) an SES employee; or
 - (b) an acting SES employee; or
 - (c) classified as Executive Level 2 or equivalent; or
 - (d) acting in a position usually occupied by an APS employee who is so classified.

- (2) In performing functions or exercising powers under the delegation, the delegate must comply with any written directions of the Commissioner.

7 Section 23 (at the end of the heading)

Add “**by Minister**”.

8 Application—annual reports

- (1) Section 20Y of the *Modern Slavery Act 2018*, as inserted by this Schedule, applies in relation to a financial year beginning on or after the commencement of this item.
- (2) That section applies in relation to the first annual report prepared by the Commissioner under that section as if a reference to the financial year were instead a reference to the period:
- (a) starting on the commencement of this item; and
 - (b) ending at the end of the financial year.

*[Minister’s second reading speech made in—
House of Representatives on 30 November 2023
Senate on 8 February 2024]*

(156/23)
