

Discussion Paper: A Code of Practice to Reduce Modern Slavery through Lending, Investment and Asset Management

May 2024

Acknowledgement of Country

As New South Wales Anti-slavery Commissioner, I acknowledge that Aboriginal and Torres Strait Islander peoples are the first peoples and traditional custodians of Australia and the oldest continuing culture in human history.

I acknowledge that First Nations communities in New South Wales have survived practices that today we call modern slavery.

The legacies of that treatment continue to affect Aboriginal and Torres Strait Islander people today, and through them affect the New South Wales community and economy.

My Office and I pay our respects to elders past and present and commit to respecting the lands we walk on, and the communities we walk with.

We celebrate the deep and enduring connection of Aboriginal and Torres Strait Islander peoples to country and acknowledge their continuing custodianship of the land, seas and sky. We acknowledge their ongoing stewardship and the important contribution they make to our communities and economies.

We reflect on the continuing impact of government policies and practices and recognise our responsibility to work together with and for Aboriginal and Torres Strait Islander peoples, families and communities, towards improved economic, social and cultural outcomes, self-determination and for real freedom.

Discussion Paper: A Code of Practice to Reduce Modern Slavery through Lending, Investment and Asset Management

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1 Instruction

Since I took on the role of Anti-slavery Commissioner in August 2022 I have heard repeated calls from financial sector stakeholders in New South Wales to support the sector to move beyond a compliance based approach to modern slavery risk management, focused on analysing and reporting on risks, towards a more proactive approach that supports investors and lenders to develop and use leverage to reduce modern slavery.

Section 27 of the *Modern Slavery Act 2018* (NSW) empowers the NSW Anti-slavery Commissioner to “develop, and make publicly available, codes of practice for the purpose of providing guidance in identifying modern slavery taking place within the supply chains of organisations and steps that can be taken to remediate or monitor identified risks.”

The first such Code of Practice, addressing modern slavery risks in renewable energy value-chains, is currently under development in collaboration with the Clean Energy Council. It is expected to build on the recently issued *Guidance on Reasonable Steps to manage modern slavery risks in operations and supply-chains*, issued by the NSW Anti-slavery Commissioner to assist public buyers in NSW to meet their obligations (in force since 2022) to take ‘reasonable steps’ to ensure they do not procure goods and services made with modern slavery. Between them, these buyers spend more than \$45 billion annually on procurement.

This Discussion Paper sets out a proposed approach to providing support to financial sector actors in NSW to further develop their contribution to the fight against modern slavery, through the development and publication of a *Code of Practice to reduce modern slavery through lending, investment and asset management*.

2 Findings of consultations to date

Shortly after I commenced as the inaugural ongoing NSW Anti-slavery Commissioner on 1 August 2022, I began receiving approaches from financial sector stakeholders – both public and private – asking how the Office of the NSW Anti-slavery Commissioner (OASC) could help support leadership by financial sector actors to tackle modern slavery issues.

In the 22 months since, I have consulted with over 25 banks, superannuation funds, managers, private equity funds, industry associations, and other financial sector stakeholders, to understand where there might be appetite for OASC engagement.

2.1 Strengths

My consultations suggest that reporting obligations under the *Modern Slavery Act 2018* (Cth) have driven a significant increase in awareness, across the industry, of modern slavery risks, and of the expectations of financial sector conduct that flow from Australia’s commitments to the UN Guiding Principles on Business and Human Rights, and the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct.

There is also a growing awareness of the range of guidance available for different financial sector actors, such as:

- The UN-backed *Blueprint for Mobilizing Finance Against Slavery and Trafficking* (2019)
- The Australian Council of Superannuation Investors and Responsible Investment Association of Australasia’s *Modern Slavery Reporting – Guide for Investors* (2019)
- The Australian Human Rights Commission and KPMG Australia’s *Financial Services and Modern Slavery: Practical responses to managing risks to people* (2021);
- The Australian Banking Association’s Working Paper *Typologies and Indicators of Modern Slavery* (March 2022)

Important initiatives have also emerged that seek to move beyond guidance and reporting to practical action.

- *Investors Against Slavery and Trafficking Asia Pacific* is an investor-led multistakeholder project. It was established in 2020 to engage with companies in the Asia-Pacific region to promote effective action in finding, fixing and preventing modern slavery in operations and supply chains, primarily through active collective engagement by investors with invested companies. IAST APAC comprises 49 investors with AU\$12 trillion in Assets Under Management (AUM), together with the Australian Council of Superannuation Investors (ACSI), Walk Free and the Finance Against Slavery and Trafficking (FAST) initiative.
- The International Centre for Missing and Exploited Children – Australia (ICMEC Australia) runs a *Collaboration Working Group* that brings together key stakeholders from financial services, law enforcement, and government agencies to enhance the detection, reporting and prevention of illicit financial activities that fund child sexual exploitation.
- Good Shepherd Australia New Zealand runs a *Financial Inclusion Action Plan (FIAP) Program* that supports member organisations to develop Financial Inclusion Action Plans focused on taking strategic and practical actions that will improve the financial wellbeing of their customers, employees, business, and community partners. Good Shepherd also facilitate learning and collaboration across the 40+ member network.
- A diverse group of advocates, led by Professor Jennifer Burn AM, have argued for several years for the establishment of a single national compensation scheme for victims of modern slavery.¹

2.2 Opportunities

My consultations have also identified several recurring themes regarding the limits of the current approach to modern slavery amongst financial sector stakeholders in New South Wales.

- **Concern that the focus on reporting is not producing clear impact on modern slavery risks.** An often heard concern was that reporting under the *Modern Slavery Act 2018* (Cth) is not clearly leading to reduced modern slavery or even reduced modern slavery risks.² Many of those I have consulted suggested that there is a need for leaders in the sector to come together to move further, faster.
- **Growing concern about potential regulatory and fiduciary exposure.** Many of those I consulted expressed concern that reporting arrangements in Australia are not keeping up with evolving regulatory and market expectations overseas, especially with the expected

¹ See Frances Simmons, Jennifer Burn and Fiona McLeod AO SC, “Modern slavery and material justice: the case for remedy and reparation” (2022) 45(1) *UNSWLJ* 148.

² See e.g. Australian Council of Superannuation Investors, *Compliance without ambition: Taking stock of ASX200 reporting under Australia’s Modern Slavery Act* (April 2023).

arrival of the European Corporate Sustainability Due Diligence Directive and European Forced Labour Regulation, and the proposed adoption of an Australian forced labour import ban.³ There was concern that financial sector actors in NSW, and their directors, may face growing risk exposure in courts, barriers to access to offshore markets or capital, or shareholder actions if they do not proactively adopt modern slavery (and broader human rights) due diligence arrangements that go beyond the requirements currently set out in the Australian *Modern Slavery Act 2018* (Cth). Some of those we consulted suggested that the adoption of the NSW *Modern Slavery Act 2018* (NSW) and the subsequent release of the *Guidance on Reasonable Steps* and related tools, such as the Inherent Risk Identification Tool, now give NSW public entities greater clarity on their due diligence and remedy obligations than they enjoy.

- **A sense of disconnect between modern slavery reporting and broader ESG policy initiatives.** Many of those I consulted suggested that modern slavery reporting has become siloed from broader ESG policy initiatives. There is a sense that Australia is ‘catching up’ with other jurisdictions in the development of ESG taxonomies and standards, and that in the process environmental issues are displacing a focus on human rights, including modern slavery.
- **A continuing lack of certainty on how modern slavery risks should be measured at the investment level.** Those we consulted with pointed to ongoing difficulties accessing scalable, reliable data on modern slavery risks at the level of specific investments. Many organisations reported scepticism about the quality of commercially available modern slavery or forced labour risk data, noting for example that many modern slavery risk metrics assess risk based on a company’s domicile, not the true geography of its workforce.
- **An appetite for guidance on effective engagement with people with lived experience of modern slavery** and related stakeholders such as those at high risk of modern slavery. Many of the organisations I have consulted have indicated that they want to ‘move beyond survivor story-telling’ but lack a roadmap for institutionalising responsible engagement with people with lived experience. They point to a lack of guidance and standards, confusion around terms like ‘trauma-informed response’, and a lack of industry-wide standards on how to ensure that indicators of exposure to modern slavery risks do not become a barrier to access services (for example because they trigger AML red flags).
- **A notable silence on questions of remedy.** Financial sector actors are notably quiet about their role in providing and enabling remedy. This is notable given their potentially significant leverage in this area. It suggests a nervousness about opening the door to liability where organisations’ financing or asset management activities link them to modern slavery harms. Yet there is significant learning from overseas, and indeed from Australia, about the roles that financial sector actors can play in enabling remedy without opening the door to liability. If anything, the continuing absence of discussion of such learning could magnify these organisations’ longer term risk exposure.
- **A desire to move from analytics and discussion to collaborative action.** Those we consulted made clear that there is limited appetite for general discussion of the problem – but significant appetite for collaborative action that tackles modern slavery risks in specific value-chains or develops new capabilities for remedy and response. Ideas suggested along these lines included:
 - Collaboration amongst investors, lenders and/or asset managers to agree roadmaps for addressing modern slavery risks in specific sectors, assets or value-chains such as ports, construction, agriculture, hospitality

³ See further James Cockayne, ‘[Modern slavery as a governance risk](#)’, 2023 Phil Spathis Governance Address – Australian Council of Superannuation Investors, 16 October 2023.

- Blended finance opportunities for accommodation for those at risk of, or who have been victims of, modern slavery
- Sustainability-linked financing for support services to victims of modern slavery
- A pooled fund to support survivor leadership and capability development

3 The need for a Code of Practice to support leadership

These consultations have convinced me that there is an appetite amongst wholesale and institutional investors, asset managers, and large lenders, operating in NSW, for both:

1. greater clarity around what good practice in tackling modern slavery looks like, specifically in lending, investing and asset management; and
2. opportunities for collaborative learning and practical leadership, including potentially specific opportunities for action and even financing.

At the same time, there were clear signals during our consultations that industry actors felt that what was needed was not just a set of principles, or even a forum for debate and discussion, but a structured initiative that will develop shared approaches and practical collaborations, focused on impact.

Based on these consultations, I have prepared a tentative draft *Code of Practice to reduce modern slavery through investment and lending*, contained in the Appendix to this Discussion Paper.

The *Code of Practice* would work by offering actors in the investment, lending and asset management space an opportunity to work together in a safe and structured format to develop leadership in this area. It aims to establish a vanguard group of investors, lenders and asset managers who make defined commitments that together aim to move participants beyond ‘modern slavery risk analysis’ and derisking towards active reduction of modern slavery, through practical initiatives.

The Office of the NSW Anti-slavery Commissioner will support these efforts through facilitating collaboration amongst signatories and external experts, including people with lived experience, around practical initiatives. Signatories will be invited to meet together, in a confidential format, around three times each year, to discuss and advance implementation of the Code of practice.

Signatories to the Code will report briefly annually to the NSW Anti-slavery Commissioner, through an online form, on what they have done to implement each of the specific commitments. The Commissioner will publish an ‘Annual Digest’ of the resulting practice, to ensure the public accountability and legitimacy of the initiative, and allow the leadership that signatories are showing to be more broadly recognised.

4 Invitation to provide feedback

We invite feedback on this Discussion Paper and the draft Code of Practice until **15 July 2024**. We particularly welcome feedback on the following questions:

1. Does the draft Code of Practice provide a framework that will support lenders, investors and asset managers operating in NSW who are committed to tackling modern slavery to move beyond a focus on risk analytics and management, to achieve impact in reducing modern slavery?
2. What is missing?
3. Which entities or individuals should be eligible to become a signatory to the Code?
4. Are the obligations of signatories appropriate and clearly articulated?
5. Should there be a Steering Group of signatories to advise the Commissioner on its implementation? How should this be selected and organised?
6. What practical initiatives should signatories focus on in the first two years of operation of the Code of Practice, and why?

Please provide feedback by emailing antislavery@dcj.nsw.gov.au by 15 July 2024, using the subject line 'Feedback on Code of Practice on lending, investing and asset management'.

5 Appendix

Draft NSW Anti-slavery Commissioner's Code of Practice on reducing modern slavery through lending, investing and asset management

Clause 1 – The role of lenders, investors and asset managers

Lenders, investors and asset managers have key roles to play in combating modern slavery. These include:

- identifying, and assisting with the identification of, people at risk of or victimised by modern slavery;
- conducting due diligence to identify and address modern slavery;
- developing and using leverage to ensure that businesses with whom they are connected identify, address and remedy modern slavery;
- providing or enabling remedy;
- combating financial exclusion of people at risk of modern slavery;
- supporting survivor recovery and capability development.

Clause 2 – General commitment to collaboration along the value-chain

The Signatories to this Code of Practice acknowledge that combating modern slavery requires collaboration by actors along value-chains in which victims of modern slavery are present.

The Signatories to this Code of Practice commit to practical collaboration with each other and relevant parties on a pre-competitive basis, and within the confines of competition law and other commercial obligations, to combat modern slavery.

Clause 3 – Specific Commitments

To combat modern slavery and achieve the general commitment made in clause 2, signatories to this Code of Practice specifically commit to:

- 3.1 Conduct lending, investment and asset management activities in line with Australia’s anti-slavery commitments**, including commitments to the UN Guiding Principles on Business and Human Rights and OECD Guidelines for Multinational Enterprises on Responsible Business Conduct. In meeting these commitments, Signatories will look to authoritative guidance such as the Commonwealth Government’s *Guidance to Business Entities* and the NSW Anti-slavery Commissioner’s *Guidance on Reasonable Steps for managing modern slavery risks in operations and supply-chains*.
- 3.2 Centre people with lived experience** of modern slavery in the development of modern slavery policies, practices and systems. Engagement with people with lived experience of modern slavery will be trauma-informed and culturally appropriate.
- 3.3 Use best available data, typologies and indicators** to strengthen identification of modern slavery risks and incidences in their lending, investment and asset management.
- 3.4 Train personnel** to recognise indicators of modern slavery and develop the capabilities relevant to their function to ensure safe, responsible efforts to address modern slavery. For retail-facing personnel this will involve developing workforce skills to ensure personnel can identify modern slavery and access suitable, trauma-informed, culturally appropriate referral and support pathways and practices. For commercial-facing personnel this will involve developing workforce skills to ensure personnel can develop and use leverage to address modern slavery and provide or enable remedy.
- 3.5 Ensure lived experience of modern slavery is not a barrier** to accessing financial services, or the services of business to or in whom the Signatory lends or invests. This could include, for example, development of financial inclusion systems to ensure people with lived experience are not prevented from accessing credit due to their past experiences. Or it could involve encouraging designation of a portion of housing infrastructure is made available to people with lived experience of modern slavery, or that healthcare services are suitably trained in identification of people at risk of modern slavery.
- 3.6 Develop and use leverage to address modern slavery harms** to which the Signatory is linked. This may include active engagement with clients, individually or jointly, through initiatives such as Investors Against Slavery and Trafficking APAC. It could include use of ownership positions to promote anti-slavery initiatives by management. It could also include lobbying for integration of modern slavery risks into sustainability frameworks, investment screening or deal making.
- 3.7 Move beyond derisking towards active lending, investment and asset management initiatives intended to address modern slavery drivers and reduce modern slavery incidence.** This could include investing in accessible housing solutions for those at risk of modern slavery, development of social bonds funding anti-slavery service provision, sustainability-linked bonds and financing instruments for public investments, or initiatives aimed at encouraging asset managers to address specific modern slavery risks in their businesses.
- 3.8 Provide or enable effective remedy** for modern slavery harms where the lender or investor has caused, contributed to, or is linked to, those harms, as required by Australia’s international commitments. Signatories will actively explore ways to support strengthened remedy options in Australia, including, as appropriate, through investment, lending or asset management services.

Clause 4 – Participation requirements for signatories

4.1 A Signatory must be:

- 4.1.1 a registered institutional or wholesale investor, financial institution conducting lending activities, and/or an asset manager, operating in New South Wales;

4.1.2 registered as a signatory to this Code of Practice through submission of an application in the prescribed form to the New South Wales Anti-slavery Commissioner.

4.2 Signatories will:

4.2.1 collaborate with other signatories to develop and contribute to practical initiatives to implement the commitments made in clauses 2 and 3;

4.2.2 attend and actively contribute to at least 2 sessions per year organised by the NSW Anti-slavery Commissioner to support Signatories to learn more about, share and develop good practice, and drive implementation of practical initiatives to implement this Code of Practice;

4.2.3 report to the NSW Anti-slavery Commissioner by 31 August each year, through a simple online portal, about the Signatory's efforts in the previous financial year to meet each of these commitments. This reporting will form the basis for an Annual Digest of signatories' practice, prepared and published by the Anti-slavery Commissioner;

4.2.4 consider in good faith any feedback provided by the NSW Anti-slavery Commissioner to the Signatory regarding their implementation of the Code of Practice.

4.3 If a Signatory does not meet these commitments, or, in the assessment of the NSW Anti-slavery Commissioner is not demonstrating a good faith effort to implement this Code of Practice, the NSW Anti-slavery Commissioner may write to the Signatory and request an explanation. If no explanation is received, or the NSW Anti-slavery Commissioner considers that it does not demonstrate a good faith effort to address deficiencies in implementation of the Code, the NSW Anti-slavery Commissioner may suspend or terminate the participation of the Signatory from the Code of Practice.

Clause 5 – Governance of the Code of Practice

5.1 The Code of Practice is published by the NSW Anti-slavery Commissioner.

5.2 The NSW Anti-slavery Commissioner may appoint, or organise for the election or selection, of an Advisory Group from amongst the Signatories, to assist the Commissioner in the implementation of the Code of Practice.

5.3 The Code of Practice may be terminated or amended by the NSW Anti-slavery Commissioner, but only upon consultation with the existing Signatories.

Dr James Cockayne
NSW Anti-slavery Commissioner

Office of the
NSW Anti-slavery
Commissioner