

Managing modern slavery risks in NSW government procurement of electric vehicles

Report 1: Which steps are reasonable?

May 2025





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Not legal advice

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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.

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Abbreviations

Abbreviation	Description
The Act	<i>Modern Slavery Act 2018</i> (NSW)
Procurement Board	New South Wales Procurement Board
CATL	Contemporary Amperex Technology Co., Limited
Code of Practice	Code of Practice on managing modern slavery risks in renewable energy value chains.
The Commissioner	The NSW Anti-slavery Commissioner
DRC	Democratic Republic of the Congo
EVs	Electric vehicles
Foton	Foton Mobility Distribution Pty Ltd
Guidance or GRS	Guidance on Reasonable Steps
Huayou	China Huayou Cobalt Industry
IRIT	Inherent Risk Identification Tool
Li-ion	Lithium-ion
MCCs	Model Contract Clauses
MTCs	Model Tender Clauses
NSW	New South Wales
OASC or 'my office'	Office of the NSW Anti-slavery Commissioner
OECD Guidelines	Organisation for Economic Cooperation and Development's Guidelines for Multinational Enterprises on Reasonable Business Conduct
SIP	Shared Implementation Plan
Standing Order 52	Standing Order 52 was passed on 19 March 2025 by the NSW Legislative Council in relation to bus manufacturing and procurement by certain NSW Government agencies.
UNGPs	United Nations Guiding Principles on Business and Human Rights
VDI	Vehicle Dealers International Pty Ltd
VSETCs	Vocational Skills and Education Training Centres

Executive Summary

This is the first of three reports considering modern slavery risks in the procurement of electric vehicles ('EVs') and EV charging infrastructure by NSW government agencies. Taken together, these reports will set out the findings of a monitoring probe my Office (or 'OASC') is conducting into these risks ('EV monitoring probe'). This first report will explain the obligations of NSW government agencies to identify, manage and remediate modern slavery harms in their supply chains when buying EVs and EV charging infrastructure. Future reports will analyse whether these obligations have been met and make recommendations for future practice.

Beginning in February 2025, a number of questions were asked in the NSW Parliament about the government's procurement of electric buses under an arrangement known as 'Bus Procurement Panel 4'. In particular, concerns were flagged that batteries used in some of these buses are manufactured by companies linked to allegations of forced labour in the People's Republic of China and the Democratic Republic of the Congo ('DRC'). I commenced the EV monitoring probe in response to these concerns, and in accordance with my monitoring and other functions under the *Modern Slavery Act 2018* (NSW) ('the Act').

The Act and related legislation came into force on 1 January 2022, imposing modern slavery due diligence and reporting obligations on a range of public entities in NSW. These included requirements for NSW government agencies to take '**reasonable steps**' to ensure that they are not buying goods or services that are products of modern slavery.

This 'reasonable steps' obligation means that government agencies must undertake proper due diligence to identify salient modern slavery risks, particularly when procuring products or services with high modern slavery risks. They must also provide or enable remedy for any modern slavery harms they are connected to through their supply chain.

However, the 'reasonable steps' obligation does not strictly prohibit agencies from buying any products or services that have high risks of modern slavery. Instead, what is expected in all circumstances is that risk is appropriately identified, mitigated and managed. Agencies conducting high-risk procurements must understand the risks in their value chains and ask the right questions of their suppliers. They must create robust modern slavery due diligence, risk management and remediation strategies, commensurate with their capabilities and leverage over suppliers, and build these into procurement planning and contract management processes.

In some cases, that will require action not just by individual agencies, but at the system level – with NSW government buyers and other stakeholders working in collaboration to move suppliers away from reliance on forced labour, to slavery-free supply.

It is important to acknowledge that NSW Government entities will sometimes have little option but to procure products or services that have a high risk of modern slavery. The obligation to take reasonable steps requires each entity to integrate consideration of these risks into their procurement planning in line with its capability and leverage. It does not require an entity not to buy these products, just as nothing in NSW procurement law or policy requires an entity not to buy a product or service that is high risk for some other reason – for example because of counter-party or financial risk. Instead, what is expected in all these circumstances is that risk is appropriately mitigated and managed, and harm appropriately remedied.

Crucially, the actions that agencies take to manage and remedy modern slavery risk must be driven by **risk to people**, rather than risk to the agency's reputation or bottom line. This is especially important where actions that would 'de-risk' an agency – such as immediately terminating a supplier

contract – could also place vulnerable people in much worse situations (e.g., by leaving that supplier’s workforce suddenly unemployed).

The objective of reducing the connection between NSW government buying and modern slavery is only a means to a larger end: reducing modern slavery. The aim is not simply to disconnect NSW government agencies from modern slavery but, where possible, to use NSW government buyers’ leverage to combat modern slavery. Sometimes, that requires ‘staying and engaging’ with suppliers that have modern slavery risks. At other times, there is no reasonable prospect of using leverage to achieve change, and termination may be the only reasonable option.

But what is reasonable, when?

These three reports, which will be published in sequence through 2025, seek to explain whether NSW government agencies have taken and are taking the reasonable steps expected of them to navigate this complexity.

The issue is not simply *if* buyers are in some way connected to suppliers with real modern slavery risks. Given the ubiquity of modern slavery – with 50 million people affected worldwide – and the complexity of contemporary supply-chains, such links are disturbingly easy to find. No, the issue is what buyers do to identify, manage – and reduce – those risks *when* they are identified, working individually and, critically, together, to prevent and remedy harm.

This report

The purpose of this first report is to provide a baseline understanding about the Act and related legislation, the key principles underlying modern slavery risk management for high-risk procurements, and sources of information about risks in EV and charging infrastructure supply chains.

Part 1 sets out the background and context for my role, the Act and the EV monitoring probe. It explains how the Act seeks to tackle modern slavery in NSW government supply chains and the nature of NSW public entities’ due diligence and reporting obligations. It explains my reasons for examining EV procurement, including reports by highly credible research organisations identifying modern slavery risks in these and related supply chains, scrutiny of government contracts by the NSW Parliament, and my relevant statutory powers and functions. Finally, it explains the methodology of this monitoring probe and explains the sequence of three reports that this probe will produce.

Part 2 explains the benchmark for ‘reasonable steps’ during the period covered by the monitoring probe. It begins by providing a detailed explanation of my functions related to government agency procurement and supply chains, as well as agencies’ due diligence and reporting requirements. It also clarifies that the concept of ‘reasonable steps’ in NSW law aligns with prevailing international and market norms, to which Australia has long been committed. These include the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct. Australia’s alignment with these frameworks in managing modern slavery risks in commercial settings is made clear in the guidance for reporting entities under the Commonwealth *Modern Slavery Act 2018* (which is distinct from the NSW Act), as well as guidance published by NSW Procurement after the entry into force of the Act but before my appointment. Finally, this section explains the relevance of the [Guidance on Reasonable Steps](#) (**‘GRS’ or ‘Guidance’**) and complementary resources published by my Office in late December 2023.

This section also details my Office’s efforts to support NSW government agencies to implement the GRS since its publication. Following the publication of the GRS, I convened a Working Group to develop a ‘Shared Implementation Plan’ (**‘SIP’**). The SIP would set timebound milestones for implementation of different aspects of the GRS and would be given binding effect through a Direction of the New South Wales Procurement Board. While this Direction was originally planned to be finalised in June 2025, the timeline has been revised to ensure that implementation of the GRS

aligns with complementary social procurement and industrial relations reforms that the NSW Government has signalled it intends to undertake. As a result, while the GRS provides an authoritative interpretation of what reasonable steps are expected of NSW government buyers, no Direction is yet in place that formally makes the GRS (as opposed to the 'reasonable steps' standard) legally binding on public entities.

Finally, this section also flags my power under section 27 of the Act to create codes of practice. I have partnered with the Clean Energy Council to create a code of practice on managing modern slavery risks in the renewables sector. Development of this code is underway, and a draft code should be released for public comment in coming months.

Part 3 of this report elaborates on which steps are 'reasonable', in line with the GRS. First, it describes the GRS and the resources we have provided NSW government agencies to implement it, including the Inherent Risk Identification Tool and Model Tender and Contract Clauses. It then introduces key concepts in modern slavery risk management, including:

- the forms of modern slavery covered by NSW and federal law,
- sources of modern slavery risk, including regulatory context, vulnerable populations, and supply chain models,
- ways that NSW public entities can be connected to modern slavery through their supply chains (i.e., by causing, contributing to or being directly linked to modern slavery) and their obligations to prevent, mitigate and remediate harms depending on the nature of that connection,
- risk to people: the idea that modern slavery risk management must be driven by the risk of modern slavery harms to people in your supply chain, rather than legal or reputational risk to an organisation,
- salience: the idea that due diligence efforts should focus on addressing the most salient modern slavery risks to people first, recognising that a delayed response may impact the ability to fix or remedy the harm, and
- how entities can determine their capability levels, and what factors will impact their leverage over suppliers.

This section then sets out the seven Reasonable Steps articulated in the GRS and summarises what is expected from NSW public entities under each. The Reasonable Steps are:

Commit: sets out measures NSW public entities should implement across their organisation to ensure they have a clear commitment to modern slavery risk management from leadership that is embedded throughout all their business activities. Requires entities to engage key stakeholders, identify salient risks, and adopt a modern slavery policy and risk management plan.

Plan: requires NSW public entities to integrate modern slavery risk analysis into procurement planning, supply-chain mapping, sourcing strategy and early market engagement. Entities must consider modern slavery risks when they are planning each new procurement activity, as well as reviewing risks inherent in their procurement portfolio at least annually. They can do so by identifying and mapping risks associated with the procurement of specific goods or services, and by developing risk-reducing sourcing strategies (particularly for high-risk procurements).

Source: requires NSW public entities to take measures to ensure that the suppliers they select are not procuring products or components made with modern slavery, and have appropriate processes in place to manage, mitigate and remediate any inherent modern slavery risks in their business activities. Modern slavery due diligence and risk management must be integrated into prequalification, tender evaluation and contracting processes. Agencies must select suppliers capable of managing modern slavery risk in accordance with the GRS and adopt a shared responsibility approach in contracting. This involves setting a contractual expectation that all

parties in the supply-chain will be take reasonable steps to identify, manage and mitigate modern slavery impacts.

Manage: requires NSW public entities to take reasonable steps to build effective relationships with suppliers to allow them to work with suppliers to manage modern slavery risks appropriately during the life of the contract. Public entities should monitor and evaluate supplier performance, including through audits, KPIs, and engagement with workers. They must also develop supplier capabilities (e.g. by providing training) where necessary.

Remedy: requires NSW public entities to provide or enable effective remedy to any person who suffers modern slavery harm connected to their business activities. 'Remedy' means restoring a victim to the situation that they would have been in if the harm had not occurred. Under human rights law, providing remedy can take many forms, including steps to ensure the harm cannot recur, formal apologies, compensation, medical and mental health support, returning confiscated documentation, reimbursement of recruitment fees, and in some cases, responsible withdrawal from supplier relationships.

To demonstrate this step has been met, agencies must provide or enable access to effective grievance mechanisms, take safe immediate steps to remedy harm where they identify clear indicators of modern slavery, and use their leverage to remediate deficient supplier practices. They should withdraw responsibly, and as a last resort, only where a supplier or other business partner is unable or unwilling effectively to address modern slavery risks or concerns.

Report: requires NSW public entities to establish a victim-centred reporting protocol to govern reporting of suspected instances of modern slavery, as well as to report annually on their steps to manage risk in line with their statutory obligations.

Improve: requires that NSW government entities demonstrate continuous improvement in their management of modern slavery risk over time, including by learning lessons from their performance and others', training their workforce, and cooperating with my office.

Part 4 of this report details plausible information concerning modern slavery risks in EV and charging infrastructure supply chains that was available to public buyers since 1 January 2022. NSW public buyers would be expected to have had access to information from credible sources regarding major sectoral or geographic risks. This is particularly true if the information is common knowledge, disseminated widely throughout the industry or passed on directly to the entity. Government buyers should reasonably be expected to attend to this information and use it to inform their reasonable steps (as set out in Part 3).

This section outlines a simplified summary of the EV and charging infrastructure supply chain. It sets out, at a high level, information about modern slavery risks associated with (a) cobalt production in the Democratic Republic of the Congo, and (b) EV and lithium-ion battery production in Xinjiang, People's Republic of China. For each supply chain, it provides a timeline and summary of publications that describe plausible information about modern slavery risks.

Subsequent reports

The second report will focus specifically on Bus Procurement Panel 4 and the specific allegations raised about connections to modern slavery risks in this procurement. It will review information shared with me by NSW government agencies and assess whether this reflects 'reasonable steps' to manage identified risks.

The third report will provide a broader analysis of government agencies' modern slavery risk management practices in EV procurements. In accordance with my statutory functions, it will provide my recommendations for good practice in risk management. It will also identify any capability uplift needed across the NSW government procurement system to manage risks appropriately and support the emergence of lower-risk supply.

1

Introduction

1.1 What is the issue?

1.1.1 Tackling modern slavery in NSW government supply-chains

The post of NSW Anti-slavery Commissioner ('**Commissioner**') is an independent statutory office established by the Act. I was appointed to a five-year term commencing 1 August 2022.

As an independent statutory office holder, I do not speak for the New South Wales ('NSW') Government, nor any other government. The Commissioner is appointed by the NSW Governor on the recommendation of the Executive Council, but reports independently to NSW Parliament, not to the executive Government.

The Act came into force on 1 January 2022. From 1 July 2022, the Act and related amending legislation¹ created new modern slavery due diligence and reporting obligations for a wide range of NSW public entities, including government departments and agencies, local councils, state owned corporations and some universities. In all there are more than 420 entities affected.

The main obligations applicable to NSW government agencies, specifically, are:

1. **Due diligence:** NSW government agencies must take reasonable steps to ensure that goods and services procured by and for the agency are not the product of modern slavery, and
2. **Reporting:** NSW government agencies must report annually on the reasonable steps the agency has taken in the reporting period, as well as actions taken in relation to any significant operational issue raised by the Commissioner in the reporting period.

The specific legal obligations for NSW Government entities are set out in detail in **section 2.1** of this report, focused on the statutory framework.

The purpose of these obligations is not simply to disconnect NSW government agencies from exposure to modern slavery, but to help combat modern slavery by reducing demand for slave-made goods.

Globally, there are close to 50 million people in modern slavery, with around 28 million of them in forced labour.² The best available survey-based estimates that around 41,000 in Australia are in situations of modern slavery.³ Of these, on historical reporting patterns, some 16,400 are probably in NSW.

Of course, there are also millions more people, beyond these 16,400, who may be in modern slavery overseas, making things that are bought in NSW. NSW public procurement represents an estimated \$42 billion of spending annually. Public procurement arrangements therefore have an important role to play in mitigating risks of modern slavery in NSW government value chains, and an important role to play in ensuring respect for labour standards and the human right to be free from slavery, in communities both within and outside NSW.

The nature and extent of NSW public procurement means the NSW Government may be exposed to a range of modern slavery risks in both onshore and offshore supply chains. The focus of this probe – the procurement of EVs and related infrastructure – involves complex offshore supply chains.

There are significant economic costs from tolerating modern slavery in supply chains. Modern slavery cases that occur in NSW likely cost the economy at least \$956 million – and perhaps as

¹ See *Modern Slavery Amendment Act 2021* (NSW).

² International Labour Organization, Walk Free and International Organization for Migration. [Global Estimates of Modern Slavery: Forced Labour and Forced Marriage](#). (September 2022).

³ Walk Free. [Modern Slavery in Australia - Global Slavery Index 2023 Country Study](#). (2023).

much as \$9.6 billion – over the lifetime of these cases.⁴ Modern slavery practices provide an illegal subsidy to some producers, creating unfair competition for legitimate operators that respect labour standards.⁵ Modern slavery also reduces productivity and innovation, increases inequality and poverty, and breeds corruption.⁶

1.1.2 An obligation of due diligence

The Act aims to address these issues. However, it does so not by creating an absolute prohibition on buying goods made with forced labour or modern slavery, but rather by requiring that agencies take ‘reasonable steps’ not to procure goods and services made with modern slavery.

This is a risk-based approach.⁷ It makes clear that just as NSW entities are permitted to undertake procurements that are high risk due to counterparty or financial risk, so they are permitted to procure goods and services that are at a high risk of being made with modern slavery. In all cases, whatever the source of this high risk, those entities are however expected to put safeguards and risk mitigation and management strategies in place. This is what the simple phrase ‘reasonable steps’ signals.

Inevitably, this begs the question: which steps are reasonable?

Are government agencies permitted to balance the risk that a product is made with modern slavery against some other factors – such as price, or the community’s need for access to certain goods or services? Does what is reasonable vary by agency, depending on its size or some other factor? Does what is reasonable depend on the information available to an agency when it first contracts for the goods or services, or can it change, if information later comes to light connecting a supplier to modern slavery risks?

As soon as I commenced in the new role of NSW Anti-slavery Commissioner on 1 August 2022, I started receiving requests from NSW government departments and other covered entities, for guidance on what constitutes ‘reasonable steps’. I consulted with a wide array of government agencies, other covered entities, and local experts for over a year.

In December 2023, I published the [Guidance on Reasonable Steps](#) (**‘Guidance’** or **‘GRS’**) which took effect from 1 January 2024.

This almost 200-page Guidance document, developed through extensive consultations with relevant stakeholders in 2022-2023, is the central plank of a Shared Implementation Framework designed to give public buyers in NSW greater certainty about what constitutes ‘reasonable steps’ to ensure they do not procure products of modern slavery.

⁴ Figures calculated based on NSW case data and methodologies used in: Reed, S., Roe, S., Grimshaw, J., and Oliver, R. [The economic and social costs of modern slavery: Research Report 100](#). UK Home Office. (July 2018); Lyneham, S., Dowling, C., and Bricknell, S. [Estimating the dark figure of human trafficking and slavery victimisation in Australia: Statistical Bulletin no. 16](#). Australian Institute of Criminology. (February 2019).

⁵ See Cockayne, J. [Developing Freedom: The Sustainable Development Case for Ending Modern Slavery, Forced Labour and Human Trafficking](#). United Nations University. (January 2021).

⁶ Ibid.

⁷ The centrality of the risk-based approach to the legislative framework underpinned by the *Modern Slavery Act 2018* (NSW) is made explicit in the Auditor-General’s risk-based modern slavery audit power in section 38G of the *Government Sector Audit Act 1983* (NSW). Under section 38G(1) of the *Government Sector Audit Act 1983* (NSW), the Auditor-General may, when the Auditor-General considers it appropriate to do so, conduct a *risk-based audit* of all or any particular activities of a government agency to determine whether the government agency is ensuring that goods and services procured by and for the agency are not the product of modern slavery. When conducting such an audit, the Auditor-General is to consider whether the government agency exercised due diligence in relation to the procurement of goods and services, including the reasonable steps (whether by way of contractual terms or otherwise) to ensure the primary supplier of goods and services is responsible for implementing processes to eliminate or minimise the risk of the goods or services supplied being products of modern slavery (section 38G(2)(3) of the *Government Sector Audit Act 1983* (NSW)).

Other elements of the Shared Implementation Framework include the:

- **GRS Inherent Risk Identification Tool ('IRIT')**: a simple-to-use risk mapping tool that allows covered entities to identify the modern slavery risk associated with different product categories from which they procure, and
- **GRS Model Tender Clauses ('MTCs')**: comprised of two versions – the Heightened version for procurements requiring Heightened modern slavery due diligence, and the Streamlined version for procurements requiring Light, Minimal or Standard modern slavery due diligence, as defined under the GRS:
 - [GRS Model Tender Clause – Heightened version: for procurements requiring Heightened modern slavery due diligence](#)
 - [GRS Model Tender Clause – Streamlined version: for procurements requiring Light, Minimal or Standard due diligence](#)
- **GRS Model Contract Clauses ('MCCs')**: comprised of two versions – the Heightened version for procurements requiring Heightened modern slavery due diligence, and the Streamlined version for procurements requiring Light, Minimal or Standard modern slavery due diligence, as defined under the GRS:
 - [GRS Model Contract Clause – Heightened version: for procurements requiring Heightened modern slavery due diligence](#)
 - [GRS Model Contract Clause – Streamlined version: for procurements requiring Light, Minimal or Standard due diligence](#)

These are discussed in further detailed in **section 2.2** and throughout **section 3**.

1.2 Why look into electric vehicle procurement now?

1.2.1 Modern slavery risks in electric vehicle supply-chains

It was clear from the commencement of the operation of the Act that certain supply-chains were more likely to contain salient modern slavery risks than others. This included a number of supply-chains to which NSW Government buyers are exposed, such as the supply-chain for cleaning services, the supply-chain for uniforms, and certain agricultural and computer technology supply-chains. Amongst these were also the supply-chains connected to certain renewable energy technologies and lithium-ion ('Li-ion') batteries.

As I canvas much further in **section 4.2** of this Report, evidence of modern slavery risks in the supply-chains of a broad range of EVs and related technologies (e.g. recharging infrastructure) has been steadily growing in recent years. This evidence includes:

- Clean Energy Council. [Addressing Modern Slavery in the Clean Energy Sector](#). (November 2022).
- Murphy, L., Salcito, K., Uluyol, Y. & Rabkin, M. [Driving Force: Automotive Supply Chains and Forced Labor in the Uyghur Region](#). Sheffield Hallam University Helena Kennedy Centre for International Justice. (December 2022).
- Brehm, S. and Magnusson, H. [Supply Chain Screening. Forced Labour at Battery and Bus Manufacturers in China](#). Globalworks Lund AB. (June 2023).
- Human Rights Watch. [Asleep at the Wheel: Car Companies' Complicity in Forced Labor in China](#). (February 2024).

My office identified the procurement of EVs and related technology as a High Modern Slavery Risk procurement for covered entities, including NSW Government agencies. This identification is set out in the GRS [Inherent Risk Identification Tool](#) ('IRIT'), which was published in January 2024 to assist relevant entities with implementation of the Guidance.

The IRIT set out that there are child and forced labour risks in multiple components of vehicle manufacturing.⁸ Notably, these include risks of child and forced labour in the production of cobalt used in producing Li-ion batteries used in EVs. The IRIT assesses the modern slavery risk associated with Heavy Vehicle procurement,⁹ and indeed broader vehicle procurement, as 'High'.¹⁰

1.2.2 Scrutiny of NSW government contracts

Beginning in February 2025, a number of questions were asked by the Hon. Damien Tudehope MLC, the Hon. Aileen MacDonald MLC, the Hon. Natalie Ward MLC and the Hon. Wes Fang MLC in the NSW Parliament about government procurement of electric buses under a procurement arrangement known as Bus Procurement Panel 4.¹¹ In particular, concerns were raised that batteries used in some of these buses are manufactured by companies linked to allegations of forced labour in China and DRC.

The specific concerns raised were about the modern slavery risk management processes of two NSW government suppliers under Bus Procurement Panel 4 – Foton Mobility Distribution Pty Ltd ('**Foton**'), and Vehicle Dealers International Pty Ltd ('**VDI**'). Concerns were also raised about Yutong¹² who supply buses to VDI, as well as the batteries supplied by Contemporary Amperex Technology Co., Limited ('**CATL**') to Foton and VDI, to be used in the EVs supplied to the NSW government under Bus Procurement Panel 4.

'Bus Procurement Panel 4' is a NSW government procurement panel comprised of several suppliers of new buses, including battery electric buses, and was established by Transport for NSW on 1 March 2024.¹³

On 24 February 2025, I received a letter from the Hon. Damien Tudehope MLC expressing concerns about the risk of modern slavery, including the possible use of child labour, in the supply chain for electric buses to be supplied to the NSW government. The Hon. Damien Tudehope MLC, on behalf of the Opposition, formally requested that I *'investigate this procurement and take whatever steps you consider necessary to help ensure that the NSW Government does not purchase electric buses from companies with a high risk that forced labour is used in any part of their supply chain.'* This letter is reproduced in **Appendix A** to this report.

On 3 March 2025, I responded to the Hon. Damien Tudehope MLC. My response is reproduced in **Appendix B** to this report. The response explains the responsibility of government agencies to address modern slavery risks in their supply-chains under the Act. (These are further set out and discussed in **section 2.1** of this Report). I also explained the statutory functions and powers of the NSW Anti-slavery Commissioner. Notably, the Commissioner does not have the power to 'investigate' specific cases, but the Commissioner does have functions relating to monitoring risks of modern slavery in government supply-chains and promoting good practice in managing these risks. Significantly, the Commissioner also has powers to raise issues with agencies and to report to Parliament.

⁸ See tab 64 of the IRIT.

⁹ See the section headed 'Weighting' in tab 64 of the IRIT for a discussion of these risks.

¹⁰ See tabs 61-67 of the IRIT.

¹¹ See Legislative Council. [Hansard Transcript](#). (19 February 2025).

¹² The VDI [website](#) says that it is the Australian national distributor of bus manufacturer Yutong, and refers to both Zhengzhou Yutong Bus Co. Ltd and Yutong Australia Pty Ltd.

¹³ Transport for NSW. [New bus procurement panel in place](#). (1 March 2024).

Under section 31 of the Act, the Commissioner can raise a significant issue about a government sector finance agency's operations, with that agency. The Commissioner may also, 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 Attorney-General, who is to furnish the report to the Presiding Officer of each House of Parliament under section 19(4) of the Act.

On 19 March 2025, the NSW Legislative Council passed Standing Order 52 in relation to bus manufacturing and procurement by certain NSW Government agencies ('**Standing Order 52**').¹⁴ Standing Order 52 required certain NSW Government Ministers and agencies to produce specified documents to NSW Parliament.

Specifically, Standing Order 52 required the Premier, the Special Minister of State, Minister for Transport, Minister for the Arts and Minister for Music and the Night-time Economy, the Minister for Finance, Minister for Domestic Manufacturing and Government Procurement, and Minister for Natural Resources, the Premier's Department, the Cabinet Office, Treasury or Transport for NSW to produce the following documents created since 25 March 2023 to NSW Parliament relating to bus manufacturing and procurement:

- all documents relating to Bus Panel 4;
- all documents relating to the procurement of 319 electric buses as part of Transport for NSW's Zero Emission Buses program announced on 20 December 2024;
- all documents relating to the bus manufacturing facility in Nowra announced by the Government on 30 January 2025;
- all documents relating to modern slavery provisions in Transport for NSW procurement processes; and
- any legal or other advice regarding the scope or validity of this order of the House created as a result of this order of the House.




These documents were due to NSW Parliament on 9 April 2025. The tabled returns of documents to the Standing Order 52 are set out in **Table 1** below.

The returns of documents subject to privilege claims are not publicly available. The returns of documents publicly available can be viewed in person at NSW Parliament. Refer to the far-right column in the table below for an index of those documents.

Table 1. Standing Order 52 Returns

Date	Return to Order	Privileged or public	Index of documents available?
9 April 2025	Return to order – Bus manufacturing and procurement – A return received on Wednesday 9 April 2025 from The Cabinet Office, of documents subject to a claim of personal information	Privileged	No
9 April 2025	Return to order – Bus manufacturing and procurement – A return received on Wednesday 9 April 2025 from The Cabinet Office, of documents subject to a claim of privilege	Privileged	No

¹⁴ Legislative Council. [Order for Papers – Bus Manufacturing and Procurement](#). (19 March 2025).

Date	Return to Order	Privileged or public	Index of documents available?
9 April 2025	Return to Order – Bus manufacturing and procurement – A return received on Wednesday 9 April 2025 from The Cabinet Office, together with an indexed list of documents	Public	Yes: 
11 April 2025	Return to order – Bus manufacturing and procurement – A return received on Friday 11 April 2025 from The Cabinet Office, of documents subject to a claim of personal information	Privileged	No
11 April 2025	Return to order – Bus manufacturing and procurement – A return received on Friday 11 April 2025 from The Cabinet Office, of documents subject to a claim of privilege	Privileged	No
11 April 2025	Return to Order – Bus manufacturing and procurement – A return received on Friday 11 April 2025 from The Cabinet Office, together with an indexed list of documents	Public	Yes: 
7 May 2025	Redaction of Personal Information – Bus manufacturing and procurement – A return received on Wednesday 7 May 2025 from The Cabinet Office, together with an indexed list of documents with personal information that should not be made public redacted as requested	Public	Yes: 

I will discharge my monitoring and reporting functions under the Act to review information available to me both through my own statutory powers (discussed further below) and the documents returned under the Standing Order 52 (subject to privilege claims). My statutory functions and powers under the Act, including in relation to monitoring and reporting, are set out below. An analysis of these documents will be included in Reports 2 and 3 of this probe, which will be published in subsequent reports.

1.2.3 The Commissioner’s statutory functions and powers in respect of this matter

Section 9 of the Act provides the following relevant functions of the NSW Anti-slavery Commissioner:

- 9(1)(a): to advocate for and promote action to combat modern slavery,
- 9(1)(c): to make recommendations and provide information, advice, education, and training about action to prevent, detect, investigate and prosecute offences involving modern slavery,
- 9(1)(e): to monitor reporting concerning risks of modern slavery occurring in supply chains of government agencies,
- 9(1)(f): to monitor the effectiveness of legislation and governmental policies and action in combating modern slavery,

Section 9(3) states that:

Unless the contrary intention appears, the Commissioner’s functions may be exercised with respect to any 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.

However, section 9 must be read in conjunction with section 10:

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, despite subsection (1), provide individuals and their families, friends, and advocates with information about and referral to government and non-government programs and services.*

Section 10 restricts the Commissioner from exercising their functions to investigate individual modern slavery cases. It does not prevent the Commissioner from discharging their functions of monitoring reporting concerning risks of modern slavery occurring in supply chains of government agencies (section 9(1)(e)) and of monitoring the effectiveness of legislation and governmental policies and action in combating modern slavery (section 9(1)(f)), especially where the Commissioner is 'considering a general issue' (section 10(1)).

Section 31 of the Act (in relation to the annual reports of government sector finance agencies - see **section 2.1** for further detail) also makes clear that the Anti-slavery Commissioner can approach a government sector finance agency at any time and raise an issue 'concerning the operations of the agency and identified by the Commissioner as being a significant issue'.

1.2.4 Commissioner's powers to access information in discharge of monitoring and other functions

The Act sets out a framework for the Commissioner to access information from Government agencies while discharging the Commissioner's statutory functions. Section 14 states:

14 Co-operation between the Commissioner and New South Wales agencies

- (1) Government agencies of the State ... must work in co-operation with the Commissioner in the exercise of the Commissioner's functions.*
- (2) The duty to co-operate includes 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.*
- (5) Information must be provided in accordance with this section despite the [Privacy and Personal Information Protection Act 1998](#) and the [Health Records and Information Privacy Act 2002](#) but only to the extent that it is relevant to the exercise of a function of the Commissioner under this Act.*

Section 16 works to ensure that such information can be provided even where it may otherwise be commercial-in-confidence or disclosure could give rise to liability:

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 information, a document or other thing to the Commissioner, no civil liability attaches to the person for doing so, whether the liability would arise under a contract or otherwise.

(3) If information, a document, or other thing is provided to the Commissioner, no liability for defamation or other civil liability is incurred because of the provision of the information, document or thing.

1.3 Establishing a monitoring probe

Pursuant to my statutory functions set out above, in March 2025 I commenced a monitoring probe into the identification and management of modern slavery risks in the procurement of EVs and related (charging) infrastructure, by the NSW Government.

This probe involves the collection and analysis of information from certain NSW government agencies about the modern slavery due diligence steps in place in the procurement of EVs and related infrastructure, as a 'general matter' under section 19(4) of the Act. I am seeking information that will clarify whether these NSW government agencies have had reasonable steps in place to address these risks, since the Act commenced on 1 January 2022. The analysis of this information will also allow me to clarify for all covered entities, and other stakeholders, what reasonable steps are in procurement from these complex and risky supply-chains.

This probe does not involve an investigation of a specific case of modern slavery but rather involves monitoring of government policies and action in relation to modern slavery risks in government agency supply-chains as a 'general matter' under section 19(4) of the Act.

1.3.1 Which entities are covered by this probe?

The following NSW government agencies are subject to this probe:

- NSW Department of Climate Change, Energy, the Environment and Water
- NSW Department of Communities and Justice
- NSW Department of Creative Industries, Tourism, Hospitality and Sport
- NSW Department of Customer Service
- NSW Department of Education
- NSW Department of Planning, Housing and Infrastructure
- NSW Department of Primary Industries and Regional Development
- NSW Health
- NSW Treasury
- NSW Premier's Department
- TAFE NSW
- Transport for NSW

These agencies were selected for the probe because they are either members of the Procurement Board¹⁵ or NSW government procurement data indicated that they had significant procurement spend on EVs or related infrastructure in the calendar years 2022 to 2024.

¹⁵ The current members of the Procurement Board are NSW Treasury, Department of Communities & Justice, Department of Creative Industries, Tourism, Hospitality and Sport, Department of Customer Service, Department of Education,

1.3.2 Methodology

On 18 March 2025, I wrote to all agencies that are members of the Procurement Board concerning modern slavery risks in the procurement of EVs and related infrastructure.

I sought information from these agencies in accordance with my monitoring and reporting functions under the Act and the provisions under the Act that permit me to access information from government agencies in discharge of my monitoring and other functions.

Information was requested from all agencies who are members of the Procurement Board by 17 April 2025.

Following the analysis of NSW government procurement data, I also requested information from two additional agencies, Department of Climate Change, Energy, the Environment and Water and TAFE NSW.¹⁶

Several agencies requested extensions for providing the requested information. The table at **section 1.3.4** below (**Table 2. Information received from NSW government agencies**) sets out the date I received, or expect to receive, the requested information from agencies.

1.3.3 Information requested

Specifically, I requested the following information from these agencies:

1. *A summary of the steps your agency has taken since 1 January 2022 to manage modern slavery risks associated with the procurement of EVs and/or charging infrastructure. If these steps have changed since 1 January 2022, please provide a timeline of changes to your practice and procedure.*
2. *A copy of your agency's:*
 - a. *Modern Slavery Policy, or any organisational policy addressing governance of modern slavery risks and accountability arrangements for management of those risks, including how risks will be assessed, prevented, mitigated, remedied and reported – including the date on which this policy or equivalent document was approved or adopted, and by whom.*
 - b. *Modern Slavery Risk Management Plan, or any organisational risk management plan that operationalises commitments made in your agency's Modern Slavery Policy or otherwise relating to modern slavery – including the date on which it was approved or adopted, and by whom.*
3. *Details of any training provided to agency staff since 1 January 2022 on modern slavery risks in procurement, including any training plan or equivalent arrangements for procurement officials in relation to modern slavery risks.*
4. *Details (and, where available, copies) of any sourcing strategy created on or after 1 January 2022 which addresses modern slavery risks related to your agency's procurement of EVs and/or EV charging infrastructure.*

Department of Planning, Housing & Infrastructure, Department of Primary Industries & Regional Development, NSW Health, Premier's Department and Transport for NSW. The Procurement Board is the chief governance board in relation to NSW Government procurement. It is established under the PWP Act and oversees the procurement of goods and services by and for government agencies (see sections 164 and 172 of the *Public Works and Procurement Act 1912* (NSW)).

¹⁶ Correspondence was sent to the Department of Climate Change, Energy, the Environment and Water on 7 April 2025, requesting information by 7 May 2025. Correspondence was also sent to TAFE NSW on 17 April 2015, requesting information by 17 May 2025.

5. Copies of any documents or communications to, from or between agency personnel, dated on or after 1 January 2022, which refer to modern slavery risks associated with the supply chains of EVs and/or charging infrastructure that your agency was procuring or was intending to procure.
6. Provide a table in the form of the table below with details of any procurement involving EVs and/or charging infrastructure, where that procurement process was completed after 1 January 2022, or involved a contract that was ongoing on or after 1 January 2022.

[If applicable] Procurement ID	Date procurement initiated	Supplier(s) engaged	Date of formal commencement of supplier relationship	Product/s or services procured	Value	Duration of arrangement	Procurement modality (scheme, panel, etc.) – provide details

You should include all procurements that fit these criteria, from the relevant period, regardless of the scheme, panel or contractual mechanism used. However, you do not need to include information pertaining to procurement processes that were cancelled or discontinued before an agreement was entered into.

7. For each procurement you list in the table provided in response to Question 6, please also provide the following information:
 - a. describe any active due diligence into modern slavery risks associated with specific suppliers that was undertaken during the sourcing process, including:
 - i. whether any questions pertaining specifically to modern slavery risks were put to suppliers, and if so, what they were (provide copies); and
 - ii. details of any open-source or commercially provided risk information used to assess modern slavery risks in this process.
 - b. Provide copies of any and all tender evaluation reports (or equivalent documents) relating to the procurements listed in the table provided in Question 6, highlighting any aspects of these documents that pertain specifically to modern slavery risks.
 - c. Provide copies of any binding agreements relating to the procurements listed in the table at Annexure 1, highlighting any contractual or equivalent provisions that pertain specifically to modern slavery risks. Where relevant also provide details of any negotiations with suppliers concerning these modern slavery provisions.
 - d. Describe any steps taken by your agency, after the supplier agreement commenced, to proactively monitor for and manage modern slavery risks associated with this procurement, including through any dedicated contract management arrangements.
 - e. Describe, for each procurement, for the period after the supplier agreement was in place:
 - i. any reports related to risks or incidents of modern slavery in the supply chains for this procurement, whether made to your agency by suppliers, other parties or identified by your agency itself, and
 - ii. any steps your agency has taken in response to these reports.

I highlighted to agencies that in accordance with section 16 of the Act (set out in **section 1.2.4** above), the provision of information shall give rise to no criminal or civil liability, meaning that the

information may be shared by agencies even where it is commercial-in-confidence. I also highlighted to agencies that section 14 of the Act does not require disclosure of information or documents protected by legal professional privilege. Any commercial-in-confidence information provided by agencies will be treated with strict confidentiality. It may be analysed as part of this probe but will not be published as part of the report.

1.3.4 Information received to date and document analysis

Table 2 below sets out the date I received, or expect to receive, the requested information from agencies. It also notes the volume of the documents received by reference to number of pages.

Table 2. Information received from NSW government agencies

Department	Received	# Pages
NSW Department of Climate Change, Energy, the Environment and Water	Due 16 May	-
NSW Department of Communities and Justice	6 May	36
NSW Department of Creative Industries, Tourism, Hospitality and Sport	17 Apr	2
NSW Department of Customer Service	15 Apr	23
NSW Department of Education	22 Apr	10
NSW Department of Planning, Housing and Infrastructure	6 May	186
NSW Department of Primary Industries and Regional Development	24 May	949
NSW Health	17 Apr	472
NSW Treasury	17 Apr	551
NSW Premier's Department	29 Apr	6
TAFE NSW	Due 23 May	-
Transport for NSW	1 May	3340

As noted in **section 1.2** above, documents have also been produced to NSW Parliament under Standing Order 52 by some agencies who are also subject to this probe.

My Office has viewed the publicly available documents at NSW Parliament and will review the documents returned under Standing Order 52 to identify relevant information related to Bus Procurement Panel 4 and modern slavery risk management.

My Office is currently analysing the information received from agencies (approx. 5575 pages) and obtained from the Standing Order 52 (approx. 4400 pages).

This analysis will inform Reports 2 and 3 in this probe, as explained in further detail in **section 1.4** below.

1.4 What will this probe produce?

In accordance with section 19(4) of the Act, I will report on any findings or conclusions from this probe to the Attorney-General, who is to furnish the report to the Presiding Officer of each House of Parliament.

This probe will produce findings in three reports which will each be furnished to the Attorney-General, and through him to the NSW Parliament:

- **Report 1: Which Steps are Reasonable?** (this report)

This report summarises the relevant statutory frameworks and guidance available to NSW government agencies from 2022 to present. It will provide an explanation of key risk

management concepts and the ‘reasonable steps’ required under the Guidance to manage modern slavery risks in covered entities’ supply chains. This part of the probe also reviews open-source resources to summarise the nature of modern slavery allegations in EV supply chains and highlight the salient risks that could reasonably have been known to EV buyers at specific points in time since 1 January 2022.

- **Report 2: Bus Procurement Panel 4**

This report will focus specifically on the NSW government procurement process known as ‘Bus Procurement Panel 4’. This report will explain the specific allegations raised concerning connections to modern slavery risks in this procurement. It will review the information made available to me and assess whether it reflects ‘reasonable steps’.

- **Report 3: Managing modern slavery risks in NSW Government procurement of electric vehicles**

This report will expand on Reports 1 and 2 to provide an analysis of the modern slavery risk management and procurement practices of NSW government agencies in relation to the procurement of EVs. In accordance with my statutory functions, it will provide my recommendations and assessment of any capability uplift needed across the government procurement system to manage risks appropriately.¹⁷

1.4.1 Application of report to covered entities

This report is relevant for all covered entities under the Act and related legislation: NSW government agencies, local councils, State-owned corporations, certain universities and others.¹⁸

The findings that will be addressed in forthcoming Reports 2 and 3 from the probe will focus on modern slavery risks in the procurement of EVs by NSW government agencies.

¹⁷ See *Modern Slavery Act 2018* (NSW) ss 9(1)(c),(e) and (f).

¹⁸ See GRS Appendix E *Which entities are covered?* for an overview of covered entities under the Act and related legislation.

2

What is the benchmark for reasonable steps?

2.1 Statutory framework

In 2018, NSW Parliament passed the Act. The Act came into effect on 1 January 2022 following amendments in 2021.¹⁹

As explained in **section 1.1** above, the Act created a new, independent statutory office – the role of NSW Anti-slavery Commissioner – and endowed it with various functions, including functions relating to modern slavery risks in public supply-chains. Notably, the Commissioner has the following functions in respect of government agency procurement and supply chains.

25 Government agency procurement

The Commissioner must regularly consult with the Auditor-General and the NSW Procurement Board to monitor the effectiveness of due diligence procedures in place to ensure that goods and services procured by government agencies are not the product of modern slavery.

28 Commissioner's public awareness and advice functions – supply chains

- (1) The Commissioner may promote public awareness of and provide advice on steps that can be taken by organisations to remediate or monitor risks of modern slavery taking place in their supply chains, including encouraging organisations to develop their capacity to avoid such risks.
- (2) Without limiting subsection (1), the Commissioner may make information available to organisations and other persons about matters to consider in relation to employing persons to work in supply chains.

Section 27 of the Act also permits the Commissioner to develop and publish 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.

Since 1 July 2022, more than 400 public entities in NSW have had legal obligations to take steps to address modern slavery risks and operations in their supply-chains, and to report on those risks. The specific obligations differ depending on the type of covered entity, and some entities fall within more than one category.

2.1.1 NSW government agencies

The relevant legislative provisions for NSW government agencies, which are summarised below, are set out in the:

- [Modern Slavery Act 2018 \(NSW\)](#) (the Act)
- [Public Works and Procurement Act 1912 \(NSW\)](#)
- [Government Sector Finance Act 2018 \(NSW\)](#)
- [Government Sector Audit Act 1983 \(NSW\)](#)

The main obligations for NSW government agencies are:

1. **Due diligence:** to take reasonable steps to ensure that goods and services procured by and for the agency are not the product of modern slavery, and
2. **Reporting:** to report annually on the reasonable steps the agency has taken in the reporting period, as well as actions taken in relation to any significant operational issue raised by the Commissioner in the reporting period.

¹⁹ See *Modern Slavery Amendment Act 2021 (NSW)*.

2.1.1.1 Due diligence

Section 176(1A) of the *Public Works and Procurement Act 1912* (NSW) sets out that:

A government agency must take **reasonable steps** to ensure that goods and services procured by and for the agency are not the product of modern slavery within the meaning of the *Modern Slavery Act 2018*.

The *Government Sector Audit Act 1983* (NSW) makes clear that for relevant NSW government agencies, due diligence obligations include not only examination of primary (i.e. Tier 1 suppliers), but also taking reasonable steps to ensure that primary suppliers are responsible for implementing processes to eliminate or minimise modern slavery risks further down the supply-chain.²⁰

NSW government agencies must also comply with Procurement Board Directions or policies regarding modern slavery.²¹ As explained in **section 2.2** below, there are no Procurement Board Directions currently in force regarding the Guidance.

2.1.1.2 Reporting

Reporting obligations for NSW government agencies are defined under the Act for Government Sector Finance agencies.²²

Section 31 of the Act sets out that:

The annual reporting information for a GSF agency under the *Government Sector Finance Act 2018* is to include the following matters —

- (a) a statement of the action taken by the agency in relation to any issue raised by the NSW Anti-slavery 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 within the meaning of the *Modern Slavery Act 2018*.

2.1.1.3 Other obligations and provisions relevant to NSW Government agencies

In addition to the due diligence and reporting obligations, summarised below are other obligations and relevant provisions applicable to NSW government agencies:

- **Duty of co-operation:** government agencies of the State (and persons and bodies that provide services to, or advocate for, victims of modern slavery in the State) must work in co-operation with the Commissioner in the exercise of the Commissioner's functions.²³
- **Public register:** the Commissioner is to keep a public register that identifies any government agency failing to comply with directions of the Procurement Board under section 175 of the *Public Works and Procurement Act 1912* (NSW) concerning procurement (within the meaning

²⁰ See section 38G(3) of the *Government Sector Audit Act 1983* (NSW)

²¹ *Public Works and Procurement Act 1912* (NSW) sections 175(3)(a1) and 176(1)

²² NSW Government agencies are also Government Sector Finance agencies (see section 2.4 *Government Sector Finance Act 2018* (NSW)). See also section 7.11(1)(d) of the *Government Sector Finance Act 2018* (NSW) regarding the requirement to include information in annual reports required by other legislation. Note also for the period of 1 July 2022 to 1 July 2023 the reporting obligation for NSW Government agencies was set out in the (now repealed) *Annual Reports (Departments) Act 1985* and the *Annual Reports (Statutory Bodies) Act 1984* and their relevant regulations.

²³ *Modern Slavery Act 2018* (NSW) section 14

of Part 11 of that Act) of goods and services that are the product of modern slavery and whether the government agency has taken steps to ensure compliance in the future.²⁴

- **Effectiveness of due diligence:** the Commissioner must regularly consult with the Auditor-General and the Procurement Board to monitor the effectiveness of due diligence procedures in place to ensure that goods and services procured by government agencies are not the product of modern slavery.²⁵
- **Modern slavery audit:** The Auditor-General may, when the Auditor-General considers it appropriate to do so, conduct a risk-based audit of all or any particular activities of a government agency to determine whether the government agency is ensuring that goods and services procured by and for the agency are not the product of modern slavery. The Auditor-General is to give the Commissioner advice as to the result of any modern slavery audit and may recommend a government agency is identified in the public register kept under section 26 of the *Modern Slavery Act 2018* (NSW).²⁶

Figure 1. The role of international legal norms in defining ‘reasonable steps’

The role of international legal norms in defining ‘reasonable steps’

The GRS provides covered entities with detailed guidance on discharging their obligations to ‘take reasonable steps’ to manage modern slavery risks in their procurement activities and operations. This guidance is based on the international anti-slavery instruments and norms Australia has committed to, including the United Nations Guiding Principles on Business and Human Rights (‘**UNGPs**’) and the Organisation for Economic Cooperation and Development’s Guidelines for Multinational Enterprises (‘**OECD Guidelines**’).

Modern slavery in global supply chains is a fundamentally international issue. Australia is party to a number of international treaties and conventions – including instruments relating to human rights, transnational crime, labour protections and responsible business conduct – which require Australia to protect and respect the right to be free from slavery and ensure access to remedy for victim-survivors.²⁷

These instruments are supported by internationally recognised standards and guidance on responsible business conduct which articulate the content of public and private sector obligations: most relevantly, the UNGPs and OECD Guidelines.²⁸ These documents are considered authoritative statements of the duties of governments and businesses around the world to prevent and remedy human rights harms (including modern slavery) caused through business activities.

Australia has consistently championed and committed itself to these international standards. Notably, it co-sponsored the 2011 resolution in the UN Human Rights Council which led to the unanimous adoption of the UNGPs,²⁹ and adhered to the OECD Council Recommendation on the Role of Government in Promoting Responsible Business Conduct in December 2022, which

²⁴ *Modern Slavery Act 2018* (NSW) section 26(c)

²⁵ *Modern Slavery Act 2018* (NSW) section 25

²⁶ *Government Sector Audit Act 1983* (NSW) sections 38G-38H.

²⁷ Notably, Article 8 of the [International Covenant on Civil and Political Rights](#) (1966); the [Slavery Convention](#) (1926) and [Supplementary Convention](#) (1956); the ILO [Forced Labour Convention](#) (C029) (1930); and the UN [Convention against Transnational Organized Crime](#) (2000) and the ILO [Protocol of 2014 to the Forced Labour Convention](#) (P029)(1930).

²⁸ See also: [Sustainable Development Goals](#) 8.7 and 12.7; OECD. [Due Diligence Guidance for Responsible Business Conduct](#). (May 2018).; OECD. [Recommendation on the Role of Government in Promoting Responsible Business Conduct](#). (December 2022); [ISO 20400:2017 Sustainable Procurement – Guidance](#).; [ISO 31000:2018 Risk management – Guidelines](#); and [BS 25700:2022 Organizational responses to modern slavery – Guidance](#).

²⁹ See Zanetti, L., McGrath, S., Nolan, J. [At the crossroads: 10 years of implementing the UN Guiding Principles on Business and Human Rights in Australia](#). Australian Human Rights Institute. (September 2021).

affirms adherents commitment to the UNGPs and OECD Guidelines.³⁰ Both the UNGPs and OECD Guidelines are cited extensively in guidance drafted by the Commonwealth Attorney-General's Department for businesses that report under the *Modern Slavery Act 2018* (Cth).

The first reason for situating the GRS in the language of international human rights norms, therefore, is to help ensure Australia meets its international commitments. The second is to align responsible business practices in NSW with international and regional markets.

A number of jurisdictions are adopting regulatory frameworks and national action plans which adapt or reflect the UNGPs and OECD Guidelines. In 2024, the European Union adopted the Corporate Sustainability Due Diligence Directive, which requires large corporations to undertake risk-based human rights and environmental due diligence and is aligned in important respects with the UNGPs;³¹ a similar framework has been proposed in South Korea.³² A number of countries in the Asia-Pacific, including Indonesia,³³ Thailand³⁴ and Japan,³⁵ have taken steps to embed the UNGPs and OECD Guidelines into domestic law and policy.

Aligning 'reasonable steps' under the Act with international principles is therefore about more than compliance. It will ensure that NSW moves in step with international and regional regulatory trends, that expectations on suppliers to the NSW government are equivalent those in other markets.

In other words, it helps to future-proof NSW public procurement.

2.2 Timeline of available guidance

As explained above (see **Figure 1** above, the due diligence framework established under the Act aligns with Australia's human rights commitments, notably the federal government's commitment to the UNGPs and the OECD Guidelines. These prevailing international norms underpin the Australian Government's approach in the National Action Plan to Combat Modern Slavery and Human Trafficking and the Commonwealth *Modern Slavery Act 2018* (Cth).

This prevailing international approach has been in place since well before 1 January 2022 when the Act commenced. Entities that wished to prepare prior to the Act commencing on 1 January 2022 had ample time and access to relevant materials to understand this prevailing international approach. What was absent, however, was any formal, detailed guidance on how to adopt this approach within the confines of NSW public procurement rules and processes. Nor was there a system of oversight in place, prior to 1 January 2022.

Table 3 below sets out what guidance was available for covered entities *since* the Act commenced on 1 January 2022.

³⁰ OECD. [Recommendation on the Role of Government in Promoting Responsible Business Conduct](#). (December 2022).

³¹ See Sacco, M.P. & Cope, A. [The EU Corporate Sustainability Due Diligence Directive: key requirements and considerations around alignment with the UNGPs](#). International Bar Association. (July 2024).

³² [Bill on Human Rights and Environmental Protection for Sustainable Corporate Management](#). (2023). See also Crockett, A. & Chin, R. [South Korea tables mandatory human rights and environmental due diligence law](#). Herbert Smith Freehills. (September 2023).

³³ International Labour Organization. [Indonesia strengthens the implementation of its National Strategy on Business and Human Rights](#). (August 2024).

³⁴ Ministry of Foreign Affairs, Kingdom of Thailand. [Thailand is Committed to Implementing the United Nations Guiding Principles on Business and Human Rights \(UNGPs\)](#). (November 2022).

³⁵ Crockett, A., Rheuben, J., O'Keefe, N. et al. [Japan Publishes Guidelines on Corporate Human Rights Due Diligence](#). Herbert Smith Freehills. (September 2022).

Table 3. Timeline of available guidance

Date	Timeline of available guidance
1 January 2022	<p>The Act commences and amendments to section 176(1A) of the <i>Public Works and Procurement Act 1912</i> (NSW) come into effect for NSW Government agencies. NSW Government agencies are henceforth expected to take 'reasonable steps' to ensure that goods and services procured are not the product of modern slavery. Modern slavery risk management guidance already available included:</p> <ul style="list-style-type: none"> • UN Guiding Principles on Business and Human Rights ('UNGPs') • the Organisation for Economic Co-operation and Development Guidelines for Multinational Enterprises on Responsible Business Conduct ('OECD Guidelines') and related official Guidance • Commonwealth Modern Slavery Act 2018 Guidance for Reporting Entities³⁶
11 January 2022 – 2 February 2022	<p>NSW Procurement (within NSW Treasury) published general guidance on Buy.NSW regarding modern slavery for NSW government agencies. This guidance was updated on 2 February 2022 and is reproduced in Appendix C.</p> <p>It provided an overview of the Act and the Commonwealth Government's national strategy to address modern slavery, and confirms the relevance of the UN Guiding Principles on Business and Human Rights. It also set out five principles for agencies to follow when addressing modern slavery risks, which reflect the UNGPs and international best practice: 1) prioritise risks 2) embed into business as usual 3) build awareness and capability 4) balance options and 5) collaborate and share.</p> <p>It also provided guidance on assessing modern slavery risks, addressing modern slavery risks in the procurement lifecycle and responding to modern slavery. And provided links to additional template resources, including:</p> <ul style="list-style-type: none"> • template modern slavery checklist • simple risk assessment template • model tender schedule • model contract clauses
1 July 2022	Reporting obligations commence under the Act and related legislation.
1 August 2022	NSW Anti-slavery Commissioner commenced 5-year term.
1 August 2022 – December 2023	Consultation with covered entities and the development of the GRS; OASC providing advice and guidance to covered entities.
19 September 2022	As part of the above consultation process, the Discussion paper #001: NSW public procurement and modern slavery (September 2022) is published by the OASC which provides information for NSW public entities on good practice (see Annex 2 – Good practice in modern slavery due diligence)
20 December 2023	<p>The GRS is published by the OASC, along with:</p> <ul style="list-style-type: none"> • IRIT: a simple-to-use risk mapping tool that allows covered entities to identify the modern slavery risk associated with different product categories from which they procure, and • GRS Model Tender Clauses and GRS Model Contract Clauses.
1 January 2024	The GRS formally takes effect.

³⁶ This Commonwealth guidance was updated to reflect that the Modern Slavery and Human Trafficking function moved from the Australian Border Force to the Attorney-General's Department in late 2022.

It is important to note that between 1 January 2022, when the Act came into force, and the end of December 2023, the only formal statement on how NSW government agencies should implement their obligations was the limited guidance material available from NSW Procurement (see Appendix C). It was only from 1 January 2024 that the full Guidance on Reasonable Steps became the benchmark against which modern slavery risk management efforts are measured. The GRS guidance is broadly consistent with – but provides much more detail than – the earlier NSW Procurement guidance.

At present the Guidance is just that – guidance to covered entities on how to meet their legal obligations to take reasonable steps. There are existing mechanisms under the *Public Works and Procurement Act 1912* (NSW) to give the Guidance the force of law for NSW Government agencies. The Procurement Board – the chief governance body for NSW government procurement – may issue a Direction to NSW government agencies regarding the reasonable steps that are to be taken to ensure that goods and services procured by and for government agencies are not the product of modern slavery within the meaning of the Act.³⁷ Alternatively, the Minister³⁸ may direct the Procurement Board to comply with a specified government-wide procurement policy.³⁹

However, to date the Procurement Board has *not* adopted a Direction mandating compliance with the Guidance. Nor has there been a Ministerial Direction mandating compliance with the Guidance as ‘specified Government-wide procurement policy’.

I have been working towards the adoption of a Procurement Board Direction with NSW government agencies since the last quarter of 2022. In December 2023, I approached the Procurement Board to approve a draft Direction that would have required NSW government entities to conform their procurement practice, over time, to the GRS.

Specifically, I submitted a paper to an Out of Session Meeting of the Procurement Board requesting that it, among other items, approve and issue a Direction giving effect to the GRS under sections 175(1)(a) and 175(3)(a1) of the *Public Works and Procurement Act 1912* (NSW). The Procurement Board narrowly declined to proceed. It voted four in favour, three against, with three abstentions, to approve the recommendations in that paper. Since six affirmative votes were needed, the proposed Direction was not passed.

After consulting with relevant Procurement Board Members, it became apparent that the central concern of those members that voted against the proposal was not the substance of the changes to procurement practice that would have followed, but the absence of a formal phased implementation timeline with agreed milestones.⁴⁰

By agreement with the Procurement Board, in 2024 I formed a Working Group with various government agencies, to develop a ‘Shared Implementation Plan’ (‘SIP’) to set timebound milestones for implementation of different aspects of the GRS. This Working Group had originally intended to prepare a new draft Procurement Board Direction, for presentation to the Board in mid-2025. The agreed intent was to fashion a Direction that would require agencies to meet the milestones set out in this SIP.

However, this timeline has recently been revised due to the NSW Government’s responses to two recent parliamentary inquiries in NSW, which have signalled that it intends to integrate modern

³⁷ *Public Works and Procurement Act 1912* (NSW) section 175(3)(a1).

³⁸ The responsible Minister under the *Public Works and Procurement Act 1912* (NSW) is the Minister for Domestic Manufacturing and Government Procurement.

³⁹ *Public Works and Procurement Act 1912* (NSW) section 166(2).

⁴⁰ Note that the GRS itself makes clear that what is ‘reasonable’ must factor in available resources, and signals an expectation that implementation will take time.

slavery due diligence and reporting obligations more closely with industrial relations and social procurement frameworks:

- the **Ethical Clothing Inquiry** ([Modern Slavery Committee – Inquiry into the Ethical Clothing Extended Responsibilities Scheme 2005 \(NSW\)](#))
- the **Social Procurement Inquiry** ([Standing Committee on Social Issues - Inquiry into the Procurement practices of government agencies in New South Wales and its impact on the social development of the people of New South Wales](#))

The wider policy changes to NSW government procurement as a result of these parliamentary inquiries and the intersection with modern slavery are yet crystallise.

Accordingly, at present, the Guidance is not legally binding for NSW government agencies – nor any other type of covered entity. However, it remains the authoritative guide to how these entities can discharge their legally binding obligation to take ‘reasonable steps’. The NSW Auditor-General – who, as discussed above, has the statutory power to conduct a modern slavery audit – has indicated that the GRS would form the auditable standard for such an audit. In proceedings before the Standing Committee on Social Issues in April 2024, former Auditor-General Ms Margaret Crawford PSM responded to a question about her Office’s approach to modern slavery audits that, ‘[i]f we conduct an audit, it would be looking at, really, compliance against the arrangements that the Commissioner might put in place... It was only late last year that specific guidance [*Note: the GRS*] was provided to agencies, so it is really only now that I think we’ve got some framework that we can start to audit against.’⁴¹

In that sense, the GRS provides the common standard for modern slavery risk management for NSW public buyers. And uptake and conformance with the reasonable steps in the Guidance continue to increase. There are numerous positive examples of covered entities successfully implementing the GRS. For example, in December 2024, the NSW Department of Customer Service updated the [mandatory whole-of-government ICT contracting framework](#) to meet the GRS requirements. The template contracts under that framework now include the GRS Model Contract Clauses. As another example, on 10 February 2025, the City of Sydney Council [updated its Modern Slavery Policy](#) in line with the GRS and OASC recommendations. And the GRS and the IRIT have also been adopted into the practice of numerous ASX-listed companies, including some of Australia’s largest and best-known blue-chip companies.

2.3 Code of Practice

As noted in **section 2.1** above, section 27 of the Act permits the Commissioner to develop and publish codes of practice.

It is clear that some higher risk supply chains, including renewable energy, require additional sector specific guidance, supplementing the GRS, because, for example, slavery-free supply may not yet be available.

In partnership with the Clean Energy Council and through consultations with a wide range of stakeholders, I am developing a code of practice under section 27 of the Act on managing modern slavery risks in renewable energy value chains (Code of Practice). Consultations on this Code of Practice began in 2023 and a draft of the Code of Practice is expected to be released for public feedback in the coming months.

⁴¹ Standing Committee on Social Issues. [Procurement Practices of Government Agencies in New South Wales and its Impact on the Social Development on the People of New South Wales](#), Hearing at Macquarie Room, Parliament House, Sydney on [Wednesday, 3 April 2024](#), pp 38-9, 42.

3

Which steps are
reasonable?

3.1 Introduction

Section 2 set out the source of the obligation on NSW government agencies to take reasonable steps to ensure that goods and services procured by and for the agency are not the product of modern slavery. This section expands on what ‘reasonable steps’ means in the context of procurements with high modern slavery risks.

The first part of this section sets out the guidance and resources developed by the OASC to assist NSW public entities to discharge their statutory obligations, which have been in effect since 1 January 2024.

The second part provides an introduction to key modern slavery risk management concepts set out in the GRS. All officers involved in managing or authorising procurements should be familiar with these key concepts.

The second sets out a summary of the reasonable steps that agencies can take to manage high-risk suppliers throughout the life cycle of the procurement, in line with the GRS.

As outlined above, the GRS was not in effect for NSW government agencies until 1 January 2024. However, the general principles of modern slavery risk management on which the GRS is based – including the UNGPs, and the OECD Guidelines – were available throughout the period covered by this report.

3.2 Guidance and resources on ‘reasonable steps’

The Shared Implementation Framework was developed by the OASC in consultation with NSW government agencies to assist them in discharging their obligations under the Act. It includes the following tools:

- The NSW Anti-slavery Commissioner’s Guidance on Reasonable Steps to Manage Modern Slavery Risks in Operations and Supply-Chains (**‘GRS’**)
- Inherent Risk Identification Tool (**‘IRIT’**)
- Model Tender Clauses (**‘MTCs’**), and
- Model Contract Clauses (**‘MCCs’**)

Each of these resources is described further in **section 3.4** below.

The Framework is designed to apply not only to entities that participate in the NSW Procurement Policy Framework – governed by the Procurement Board – but also to other entities that do not participate in that framework but have due diligence or reporting obligations under NSW law. This includes local councils, certain universities in NSW, Local Aboriginal Land Councils, and others.

The OASC has also developed the following GRS Resources (**Table 4**). These are short-form factsheets which address specific aspects of modern slavery risk management in an accessible way.

Table 4. GRS resources

Tool	Publication Date	Summary
Quick reference document for GSF agencies	December 2023	Summarises the key obligations of agencies defined as ‘GSF agencies’ in the <i>Government Sector Finance Act 2018</i> (NSW).

Tool	Publication Date	Summary
What GRS Capability Level is your entity?	December 2023	Covered entities are classified into three groups for the purpose of implementation of the GRS, based on their size and general procurement capability: Low, Moderate and High. This resource explains the basis of these different capability levels.
Covered Entities	December 2023	Explains the source of the due diligence and reporting obligations of NSW public entities
Implementation timelines and expectations	December 2023	Explains the Commissioner's approach to assessing conformance with and implementation of the GRS, including particular areas of focus.
GRS Due Diligence Levels	December 2023	Shows which level of diligence is due at each combination of GRS Inherent Modern Slavery Risk Level (for a given product) and GRS Capability Level (for a given buyer entity).
Instructions for Annual Reporting	December 2023	Provides instructions for entities reporting annually against the GRS through the online GRS annual reporting form.
Developing a Modern Slavery Policy – Guidance	May 2024	Sets out detailed guidance on how to prepare a modern slavery policy.
Developing a Modern Slavery Policy – Template	May 2024	Sets out a proposed good-practice template that organisations can use to structure their modern slavery policy.
Developing a Modern Slavery Risk Management Plan	November 2024	Provides detailed guidance on how entities can prepare a modern slavery risk management plan.
Integrating Modern Slavery Risk Assessments into Procurement Processes	April 2025	Provides guidance for procurement officers on how to effectively integrate modern slavery risk assessments into procurement processes, in line with the GRS. Includes good practice examples of a Modern Slavery Procurement checklist, tender evaluation of responses to the MTCs, and suggested adjustments to sourcing strategies to address modern slavery considerations.

3.3 Introduction to key concepts in modern slavery risk management

Taking reasonable steps to manage modern slavery risk requires that NSW public entities ensure that all staff involved in managing or approving procurements understand the following basic concepts in modern slavery risk management:

- sources of modern slavery risk
- forms of connection to modern slavery
- risk to people
- salience, and
- your agency's capability and leverage over suppliers.

3.3.1 Modern slavery

In general terms, ‘modern slavery’ describes situations where offenders use coercion, threats or deception to exploit victims and undermine their freedom. It is an umbrella term which encompasses a number of exploitative practices that have been criminalised under NSW and Australian federal law:⁴²

Table 5. Forms of modern slavery

Key Term	Definition	Offences under Australian / NSW law
Slavery	In general, the status or condition of a person over whom any or all the powers attaching to the right of ownership are exercised.	<i>Crimes Act 1900</i> (NSW), section 93AB(1) Commonwealth Criminal Code, s 270.3
Servitude	In general, a situation where the victim’s personal freedom is significantly restricted and they are not free to stop working or leave their place of work.	<i>Crimes Act 1900</i> (NSW), section 93AB(1) Commonwealth Criminal Code, s 270.5
Forced labour	In general, work or service exacted from any person under the menace of any penalty and for which the said person has not offered themselves voluntarily.	Commonwealth Criminal Code, s 270.6A
Deceptive recruiting	Deceptive recruiting for labour or services describes situations where the victim is deceived about whether they will be exploited or subjected to modern slavery.	Commonwealth Criminal Code, s 270.7
Forced Marriage	In general, where coercion, threats or deception are used to make a victim marry or where the victim does not understand or is incapable of understanding the nature and effect of the marriage ceremony.	<i>Crimes Act 1900</i> (NSW), section 93AC Commonwealth Criminal Code, s 270.7B
Debt bondage	In general, a situation where a person is forced to work for an employer to pay off their own debts or those they have inherited, on unreasonable terms. Specifically, a situation where the victim’s services are pledged as security for a debt and the debt is manifestly excessive or the victim’s services are not applied to liquidate the debt, or the length and nature of the services are not limited and defined. See ILO Convention No. 29. For specific requirements see Cth Criminal Code section 270.7C.	Commonwealth Criminal Code, s 270.7C
Trafficking in persons	In general, recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. See UN	Commonwealth Criminal Code, s 271.2.

⁴² In NSW, ‘modern slavery offences’ are those set out in Schedule 2 of the *Modern Slavery Act 2018* (NSW).

Key Term	Definition	Offences under Australian / NSW law
	Protocol and for specific requirements see section 271.2 of the Commonwealth Criminal Code.	
The worst forms of child labour	Work that deprives children of their childhood, their potential and their dignity, and that is harmful to physical and mental development.	<i>Crimes Act 1900</i> (NSW), sections 91G, 91H, 91HAA, section 93AB(1)(b) Commonwealth Criminal Code, s 270.8(1)(a)

Entities should also be mindful of other harmful practices that might be present in their supply chains. While workplace abuse and harassment, discrimination, wage theft, substandard working conditions, fraud, and violations of freedoms of movement and association may not rise to the level of modern slavery, modern slavery can often result from a failure to intervene to address these kinds of practices.

A good or service, including construction, is a ‘product of modern slavery’ if produced in whole or in part through the forms of modern slavery above. Modern slavery at any point in the supply-chain – including during the production or distribution of components or goods – renders any downstream good or service, at any subsequent tier, a product of modern slavery.

3.3.2 Sources of modern slavery risk

To identify where modern slavery risk might occur within their operations and supply chains, NSW public entities should understand the intersecting factors that produce the conditions for modern slavery.

The key sources of modern slavery risk are:

- **regulatory context** in which the goods and services the entity procures are produced, or in which the entity’s own operations are undertaken.
For example: does the jurisdiction in which the goods are produced have laws against modern slavery? Are these laws enforced consistently and effectively? Are forms of state-imposed forced labour present?
- **vulnerable populations:** do workers and communities involved in the supply chain face barriers to enforcing their rights for, e.g., legal, social or economic reasons?
For example, are most workers in the industry temporary migrants, women, or young people?
- **supply chain model:** the way goods and services are made may generate or facilitate exploitation by perpetrators.
For example, does the industry rely on seasonal or gig labour, labour hire or just-in-time manufacturing? Are the supply chains of a good long, complex and difficult to trace?

Modern slavery often emerges at the intersection of these factors.

Figure 2. The GRS Inherent Risk Identification Tool

The IRIT is a simple-to-use risk mapping tool developed by my office in collaboration with the Institute of Transport and Logistics Studies at the University of Sydney Business School. It allows covered entities to identify the modern slavery risk associated with different product categories from which they procure.

Version 1 of the IRIT, which came online on 1 January 2024, assigns one of four GRS Inherent Modern Slavery Risk Levels (High, Moderate, Low, Minor) to each of 374 product categories then in the NSW Government procurement environment, using a taxonomy provided by NSW Government and current as of early December 2023. These risk ratings are assigned based on credible, open-source evidence about the presence of the three modern slavery risk factors discussed above.

27 categories covered by version 1 of the IRIT have High modern slavery risk. The IRIT identifies seven categories relating to vehicle procurement as high risk. Commentary on these categories flags risks of child and forced labour, state-sponsored labour transfer programs, and debt bondage in vehicle supply chains generally, and Li-ion batteries used in EVs specifically.

The IRIT tells a buyer about the inherent risk associated with an entire procurement category. Buyers must then undertake their own due diligence to identify the risk associated with the specific product they are procuring from within that category, and the suppliers they are working with. The IRIT simply provides a common baseline for understanding modern slavery risk across NSW public buyers at the category level.

The IRIT is currently being updated to reflect revisions to the whole-of-government taxonomy used by NSW government agencies. Version 2 will be available in June 2025.

3.3.3 Forms of connection to modern slavery

Under the prevailing international norms, to which Australia is committed, what an entity needs to do to prevent or mitigate modern slavery risks, or remediate harm, will depend on how it is connected to that harm. An entity may be linked to modern slavery by causing it, contributing to it, or by having a direct link to another entity that causes or contributes to it.

Table 6⁴³, below, explains how the degree of connection impacts expectation on buyers:

Table 6. How causation, contribution and direct linkage impact expectations on buyers

	Causation	Contribution	Direct linkage
Nature	Buyer’s actions have caused or may cause negative impact	Buyer’s actions, together with those of others, caused or may cause adverse impacts	Buyer did not contribute to the adverse impact, but is directly linked to a business actor that did
Prevention and mitigation	Buyer should cease, prevent or mitigate the impact	Buyer should cease or prevent contribution, and use or increase its leverage with other parties to mitigate remaining impact	Buyer should seek to prevent and mitigate the impact, using leverage in the context of its business relationship, based on severity of impact and consequences of termination; and consider using leverage to enable remedy
Remediation	Buyer should provide for remediation through legitimate processes	Buyer should contribute to remediation of harm through legitimate processes	Buyer may take a role in remediation

⁴³ Adapted from Shift (2014), [Remediation, Grievance Mechanisms and the Corporate Responsibility to Respect Human Rights](#)

3.3.4 Risk to people

NSW public entities are accustomed to managing risk in their business activities. However, most forms of organisational risk are understood as risk *to the agency*, in a legal/regulatory, operational, reputational or financial sense. Taking reasonable steps to address modern slavery risks, particularly in the context of high-risk procurements, requires entities to centre their risk management approach around *risk to people*. This means the risk that an entity's business activities are connected to harm to other people's enjoyment of their human right to be free from slavery.

Risks of harm to people in your supply chain will, in most cases, also create or be associated with legal/regulatory, operational, financial and/or reputational risks. However, the GRS sets out, in line with international norms to which Australia is committed, that the way you manage modern slavery risk should always be directed at reducing risk to people.

Figure 3. Reducing the incidence of modern slavery

Critically, this means that the intent of anti-slavery efforts in procurement is *not* simply to disconnect an entity from modern slavery risk, but rather to reduce the incidence of modern slavery in the system.

3.3.5 Salience

NSW public entities have limited resources and time to invest in this work. This means they must prioritise. Prioritisation of which modern slavery risks to address should be based on which operational and procurement activities represent the most **salient** modern slavery risks to people, and not how much the buyer spends on particular goods or services.

The concept of salience is set out in the GRS and based on international norms for risk management to which Australia has committed.⁴⁴ Salience has three dimensions:

- **Scale:** the gravity of the adverse impact (How seriously could someone be harmed?)
- **Scope:** the reach of the impact (How many people could be affected?)
- **Irremediable character:** any limits on the ability to restore the individuals to a situation equivalent to their situation before the adverse impact (How hard would it be to fix or remediate the harm?)

Salient risks can arise in procurements of any size or value. Due diligence efforts should focus on addressing the most salient modern slavery risks to people first, recognising that a delayed response may impact the ability to fix or remedy the harm.

Further detail about how agencies can assess the salient risks of their procurement is set out below in **section 3.4**.

3.3.6 Capability and leverage

Under the prevailing international norms, expectations on efforts to prevent and mitigate modern slavery risks depend not only on an entity's connection to a source of potential harm, but also the entity's capabilities – and specifically its 'leverage'. The GRS consequently sets out that the steps that are considered 'reasonable' for NSW public entities will depend on each entity's capability, and

⁴⁴ See, e.g., Commonwealth of Australia. [National Action Plan to Combat Modern Slavery](#). (December 2020); OECD. [Due Diligence Guidance for Responsible Business Conduct](#). (May 2018).; United Nations. [Guiding Principles on Business and Human Rights](#). (2011).

the leverage it has over a supplier or business partner in the context of a particular procurement or relationship.

An entity's **capability level** determines which modern slavery risk management steps are reasonable for any given procurement or operational activity. The GRS classifies three different levels of capability (Low, Moderate and High). Entities' capability levels may differ depending on the type of procurement they are undertaking (goods and services vs. construction), and indeed the entity's accreditation level.⁴⁵ The GRS also sets out, in detail, how an entity can identify its capability level. An entity's capability levels, in combination with the inherent risk of the procurement, will inform the level of due diligence required: see **Figure 4** below:

Figure 4. GRS due diligence levels

GRS Inherent Modern Slavery Risk Level	High	Heightened	Heightened	Heightened
	Moderate	Light	Standard	Standard
	Low	Minimal	Light	Standard
	Minor	Minimal	Minimal	Light
		Low	Moderate	High
Entity's GRS Capability Level (for this kind of procurement or activity)				

As shown in **Figure 4**, procurements with high modern slavery risk will require heightened modern slavery due diligence, regardless of an entity's capability level.

Leverage is the ability to influence or change another entity's conduct. This is relevant to *how* an entity carries out due diligence and manages risk in the context of a high-risk procurement. Leverage will depend on numerous factors specific to a particular business relationship, such as the entity's size and capability, its market power, its access to governmental or regulatory authority, and market structure.

An entity's leverage may be affected by its:

- Size and capability – for example, a small entity may rely more heavily on collaborative approaches in carrying out due diligence, whereas a larger entity may have more access to expertise to assist in their due diligence and may have greater leverage in contract negotiation.

⁴⁵ An explanation of GRS Capability Levels is set out in Appendix G to the GRS, as well as the GRS Resource [What GRS Capability Level is your entity?](#). Agencies subject to the PWP Act will have a High capability level for a procurement if they are either accredited to Goods and Services Accreditation Level 2, or (for a construction procurement) accredited under the Construction accreditation program. They will have a Moderate capability level if they are accredited to Goods and Services Accreditation Level 1 or (for a construction procurement) are not construction accredited. They will have a Low capability only where they are procuring goods and services and are unaccredited.

As agencies may have different accreditations under different programs, the relevant accreditation is the one which pertains to the type of procurement an agency is conducting in any given procurement process. Where, under an Accreditation Program, an agency requires endorsement for a particular procurement due to its value, it is the accreditation level of the procuring agency, not the endorsing agency, that is used to determine GRS Capability Level. The endorsing agency will need to comply with their obligations under the relevant Accreditation Program but does not need to report on this activity in their modern slavery reporting information.

- Operational or market context – for example, an entity may be operating in a market with a limited number of suppliers or where there is no alternative supply to products that have a high modern slavery risk. In this case, an entity may need to collaborate with other buyers and use collective leverage to influence the conduct of suppliers, to foster the emergence over time of ‘slavery-free’ supply.
- Supply chain – for example, an entity may have identified modern slavery risk in its supply chain with a Tier 2 supplier that it does not have a direct contractual relationship with. In this case, the entity may need to collaborate with its Tier 1 supplier to generate collective leverage to influence the conduct of the Tier 2 supplier. In other cases, it may be necessary to engage an independent worker representative or union to jointly improve leverage over lower-tier suppliers.

Leverage can be applied through a range of means, both commercial and non-commercial, such as:

- engaging suppliers and external stakeholders at an operational or senior management level to communicate modern slavery obligations and expectations
- using the GRS MTCs and GRS MCCs in your tender documents and contracts (see below)
- engaging organisations that can help manage modern slavery risks and remediate modern slavery harms, either individually, or in collaboration with other covered entities.

Importantly, the prevailing international norms make clear that the expectation of effective due diligence is not just about *using* leverage, but also *creating* leverage, so that the underlying modern slavery risks and harms are proactively addressed. This means that a NSW public entity with limited leverage over a supplier in a high-risk procurement must seek to increase or develop its leverage. One way to do this is by collaborating with other stakeholders, provided that this is done in a manner consistent with competition law, which applies to government entities in circumstances where they are carrying on a business.⁴⁶ For example:

- entities sourcing from the same supplier could develop a common set of modern slavery risk management requirements of the supplier
- entities in the same supply chain or sector could work at a sector-wide, regional or local level to identify and engage specific suppliers to address shared risks
- collaborating with other buyers who procure the same goods and services to collectively engage a third-party provider to help manage modern slavery risks, remediate modern slavery harms or train and upskill suppliers across a common industry.

A small entity with limited leverage could consider establishing prequalification processes so that only suppliers that meet required modern slavery risk management capabilities are engaged or use existing prequalification schemes with embedded modern slavery requirements.

⁴⁶ See, e.g., *Plath v Snowy Monaro Regional Council* [2019] NSWCATAP 165. See also ACCC. [Sustainability collaborations and Australian competition law](#). (December 2024).

3.4 Reasonable steps to manage procurements with high modern slavery risks

The GRS identifies seven Reasonable Steps that NSW public entities can take to fulfil their obligations to take reasonable steps to ensure that goods and services procured by and for the entity are not the product of modern slavery:

Figure 5. Reasonable Steps



NSW public entities should take these steps to manage modern slavery risk in all procurements. However, it is particularly important that the measures recommended in the GRS are in place for high-risk procurements.

The Commissioner's Guidance is considered to be operative ('take effect') from 1 January 2024. However, the Commissioner has acknowledged that it will take time for NSW public entities to be able to fully conform with the Guidance. Entities are expected to show continuous improvement in implementing the Reasonable Steps set out below.

3.4.1 Reasonable Step 1: Commit

Reasonable Step 1 sets out the measures NSW public entities should implement across their organisation to ensure they have a clear commitment to modern slavery risk management from leadership that is embedded throughout all their business activities.

Entities should:

- **Engage key stakeholders**, particularly survivors of modern slavery, workers in high-risk parts of the entity's operations and supply chains, and members of communities impacted by modern slavery risks connected to the organisation's business activities. The objective of this engagement should be to:
 - identify which stakeholders are most vulnerable to modern slavery impacts connected to the entity's business activities,
 - hear and respond to stakeholder perspectives,
 - receive feedback from stakeholders about how the entity can best identify, assess and prioritise risks, and track how effectively it addresses them,
 - ensure that stakeholders are aware of and trust available grievance mechanisms.

Stakeholder engagement could take place through, for example, surveys, meetings, hearings, or consultation proceedings. To be meaningful, it must be two-way, done in good faith, safe, responsive, ongoing and equitable.

Entities should engage stakeholders when designing and reviewing their modern slavery risk management frameworks, including modern slavery policies, grievance mechanisms, and remediation plans.

The GRS provides detailed guidance on stakeholder engagement throughout the risk management lifecycle.

- **Identify salient risks** across their organisation's operational activities and supply chains. A Salient Modern Slavery Risk Assessment should be performed to identify and prioritise higher-risk areas of the entity's business activities. This will require a broad scoping exercise to identify broad vectors of risk, followed by an in-depth analysis to identify and evaluate prioritised risks related to a specific business activity or relationship.

This assessment should accord with the principles of salience discussed above, and should consider whether the organisation might cause, contribute to, or be directly linked to modern slavery.

- **Adopt a Modern Slavery Policy.** This should be developed and adopted by an organisation's senior governing body. It should set high-level targets for addressing salient modern slavery risks and evaluating the entity's progress. As set out in the GRS, NSW public entities were expected to have an organisation-wide modern slavery policy in place by 30 June 2024.
- **Adopt a Modern Slavery Risk Management Plan.** This should operationalise the commitments made in an entity's Modern Slavery Policy and should assign responsibility for implementing aspects of the Policy across relevant business units or functions. It should particularly address actions and decisions relating to high-risk parts of an organisation's business activities. Best practice risk management plans will set high-level and operational targets, monitor and evaluate progress towards these targets (and disclose progress towards targets), and assign responsibility to leadership for addressing salient modern slavery risks.

3.4.2 Reasonable Step 2: Plan

Reasonable Step 2 requires NSW public entities to integrate modern slavery risk analysis into procurement planning, supply-chain mapping, sourcing strategy and early market engagement. 'Plan' requires that entities take steps to consider modern slavery risks when they are planning each new procurement activity, as well as reviewing risks inherent in its procurement portfolio at least annually.

It is important to acknowledge that NSW government entities will sometimes have little option but to procure products or services that have a high risk of modern slavery. The obligation to take reasonable steps requires each entity to integrate consideration of these risks into their procurement planning in line with its capability and leverage. It does not require an entity *not* to buy these products, just as nothing in NSW procurement law or policy requires an entity not to buy a product or service that is high risk for some other reason – for example because of counter-party or financial risk. Instead, what is expected in all these circumstances is that risk is appropriately mitigated and managed, and harm remedied.

In the planning phase of procurement processes, NSW public entities should take the following measures:

- **Identify and map the risks associated with procurement of a particular good / service** (including construction), using the IRIT and other relevant sector-specific guidance.
- **Develop a risk-reducing sourcing strategy** when they identify new or existing procurement arrangements as high risk. This requires NSW public entities to:
 - conduct due diligence to understand sources and drivers of modern slavery risk in the supply chain of the good / service (including construction) they are procuring
 - understand their own leverage and determine their ambition and level of influence within the market
 - identify equivalent products or services with lower modern slavery risks, or new market opportunities that enable different approaches to risk management

- undertake early market engagement to understand suppliers' risk management challenges and any solutions

The GRS recommends that NSW scheme owners and panel managers consider how to integrate modern slavery risk management considerations into whole-of-government arrangements. It suggests that agencies start by integrating these modern slavery considerations into arrangements involving high-risk products, components and services, including motor vehicles and EV fleet charging.

3.4.3 Reasonable Step 3: Source

Reasonable Step 3 requires NSW government entities to take measures to ensure that the suppliers they select are not procuring products or components made with modern slavery, and have appropriate processes in place to manage, mitigate and remediate any inherent modern slavery risks in their business activities. It involves integrating modern slavery due diligence and risk management into prequalification, tender evaluation and contracting processes.

Government entities should take the following measures when sourcing goods and services (including construction):

- **Select appropriate suppliers**, i.e. suppliers capable (either currently, or in time) of managing risk in accordance with the GRS. Entities can assess this by:
 - Incorporating criteria relating to modern slavery risk management into specifications for procurements or pre-qualification schemes
 - Conducting due diligence on suppliers through use of the Model Tender Clauses and / or supplier self-assessment questionnaires

Figure 6. GRS Model Tender Clauses

The **GRS Model Tender Clauses (MTCs)** were developed by the OASC as a resource for NSW public entities. They should be used in accordance with guidance set out in the GRS. The MTCs are intended to supplement the existing clauses in the relevant tender documents, and where used, should be adjusted for consistency with the tender documents in which the clauses are inserted.

Two versions of the MTCs exist: a Heightened version (for use in procurements with High modern slavery risk) and a Streamlined version (for all other procurements).

In the Heightened MTCs, modern slavery weighted evaluation criteria are recommended. This encourages Tenderers to provide more extensive responses to the tender schedule to allow the Buyer to undertake more extensive due diligence on the Tenderers. It also allows Buyers to factor the Tenderer's modern slavery response into the overall weighted score of the Tenderer, and into contracting.

In assessing responses to the Heightened MTCs, buyers should:

- assess and score the quality of the responses of the modern slavery tender schedule, as they would do for any other weighted evaluation criteria in accordance with the tender documents and tender evaluation guide
- refer to the Guidance to inform their assessment of tenderer's responses
- establish an effective scoring approach to suit the procurement and allow clear differentiation between tenderers' responses to the modern slavery criteria.

The GRS MTCs set out a 5-band scoring regime. The scoring methodology of the modern slavery evaluation criteria must be consistent with the evaluation process set out in the tender documents.

- **Adopt a shared responsibility approach in contracting.** This means setting a contractual expectation that all parties in the supply-chain will be take reasonable steps to identify, manage and mitigate modern slavery impacts. Where an incident of modern slavery is identified, the parties will collaborate to cure the deficiency and remedy the harm.

Figure 7. GRS Model Contract Clauses

The **GRS MCCs** were developed by the OASC in partnership with the Responsible Contracting Project and their pro bono counsel, Allens. As with the MTCs, the Heightened version should be used for high modern slavery risk contracts, and the Streamlined version for all other procurements.

The MCCs do not take the ‘representations and warranties’ approach, which is unrealistic and ineffective in practice. Instead, they adopt a performance-based contracting approach that recognises the buyer and supplier’s shared responsibility for managing modern slavery risks, through ongoing due diligence and remediation.

The Heightened MCCs contain the following provisions:

- MCC 1.1 defines key terms
- MCC 1.2 contains Core Obligations. Both parties commit not to engage in modern slavery, and to take steps that are reasonable in the circumstances to prevent, identify, mitigate and remedy modern slavery.
- MCC 1.3 concerns Price. Each party agrees that the contracted price supports each party to comply with its Core Obligations – that is, not to engage in modern slavery, and to take reasonable steps to prevent, mitigate and remedy modern slavery.
- MCC 1.4 commits each party to establish, implement and maintain appropriate systems and policies as required to meet its Core Obligations. The effect of this provision is to commit both parties to conform with the Modern Slavery Policy and Modern Slavery Risk Management Plan obligations set out in Reasonable Step 1 of the Guidance on Reasonable Steps, or equivalent.
- MCC 1.5 sets out obligations relating to management of modern slavery harms, training, notification and grievance related matters. It also commits both parties not to require workers to pay recruitment fees, not to withhold identification documents, and to ensure worker accommodation is adequate. This provides a framework for collaboration to give effect to the anti-slavery commitments in the contract.
- MCC 1.6 commits parties to provide reasonable assistance to meet their anti-slavery obligations.
- MCC 1.7 deals with disclosure.
- MCC 1.8 deals with material breach and termination. This clause commits the parties to respond to a material breach by developing a Remediation Plan.
- MCC 1.9 explains how such Remediation Plans work.

3.4.4 Reasonable Step 4: Manage

Reasonable Step 4 requires NSW public entities to take reasonable steps to build effective relationships with suppliers to allow them to work with suppliers to manage modern slavery risks appropriately during the life of the contract. Building a collaborative relationship with suppliers of high-risk goods and services will ensure that organisations have transparency over modern slavery risk and can manage it effectively throughout the life of the contract.

NSW public entities should:

- **Monitor and evaluate supplier performance** by engaging with suppliers positively, proactively and collaboratively. This may involve audits or workplace assessments, establishment of KPIs, and engagement with workers (either directly, through worker voice tools, or via unions / worker organisations).
- **Develop supplier capabilities** to manage modern slavery risk effectively. In some cases, this may involve training, awareness-raising, direct engagement and technology development. Where risks in the market for a product are structural, and low-risk supply is limited or unavailable, buyers should work with other stakeholders in the value-chain to find ways to incentivise development of new supply options. This may include exercising collective leverage to engage government.

3.4.5 Reasonable Step 5: Remedy

Reasonable Step 5 requires NSW public entities to provide or enable effective remedy to any person who suffers modern slavery harm connected to their business activities. Organisations that procure high-risk goods or services (including construction) should consider how they will work with suppliers and other partners to remediate any harms that they identify in the supply chains for these goods and services.

Figure 8. Remedy

‘Remedy’ means restoring a victim of a harm to the situation that they would have been in if the harm had not occurred. Providing remedy can take many forms, including steps to ensure the harm cannot recur, formal apologies, compensation, medical and mental health support, returning confiscated documentation, reimbursement of recruitment fees, and in some cases, responsible withdrawal from supplier relationships.

Under the prevailing international norms to which Australia has committed, entities that are connected to modern slavery harms in their operations or supply-chains are expected to provide or enable effective remedy, depending on the nature of that connection:

- Entities that cause modern slavery are expected to provide effective remedy.
- Entities that contribute to modern slavery, for example through ineffective due diligence over an extended period of time, are expected to proportionately contribute to effective remedy.
- Entities that are directly linked to modern slavery, for example because a supplier upstream in their supply-chain engages in modern slavery, are expected to enable effective remedy. This means they are not required to provide remedy, but should use their leverage to work with the entity that caused the impact to prevent or mitigate the harm and its recurrence.

The type of remedy or combination of remedies that is appropriate will depend on the nature and extent of the modern slavery (and other) harms. In determining appropriate forms of remedy, you should pay attention to:

- Existing standards – In some cases domestic and international standards or laws exist on what constitutes appropriate forms of remedy.
- Precedent – Where domestic and international standards do not exist, the enterprise may seek to be consistent with what was provided in similar cases.
- Stakeholder preferences – The perspective of those affected is important.

In order to provide or enable effective remedy, NSW public entities should:

- **Provide or enable access to effective grievance mechanisms.** Entities can either develop their own, work with other NSW public buyers to develop one, and/or engage existing mechanisms. An effective grievance mechanism must, in line with the UNGPs, be:
 - legitimate
 - accessible
 - predictable
 - equitable
 - transparent
 - rights-compatible,
 - a source of continuous learning, and
 - based on engagement and dialogue.

The GRS sets out detailed guidance on how to design and implement effective grievance mechanisms. As discussed above, safe and meaningful stakeholder engagement is an essential part of this.

- **Take safe immediate steps to remedy harm** where they identify clear indicators of modern slavery. Organisations should be prepared for the eventuality of modern slavery occurring in their supply chains and can ensure they are ready to respond by pro-actively establishing standard operating procedures. Steps to remedy harm should be directed by the wishes and best interests of the persons harmed. They should be taken in collaboration with relevant stakeholders including mandated government bodies, trusted partners, and other buyers.
- **Use leverage to remediate deficient practices:** After taking immediate safe steps to remedy harm (see above, **section 3.4.5**), entities should develop a plan to remediate deficient operational or supply-chain practices and prevent further harm.

Where an entity has caused or contributed to the exploitation, it should provide for, or cooperate in, the remediation of that harm. If it is directly linked to the exploitation by a business relationship, it can play a role in remediation. In particular, it should use its leverage to work with the entity that caused the harm to prevent or mitigate its recurrence, including by helping to address underlying structural factors that contribute to exploitation. Where appropriate, entities should consider opportunities to collaborate with international and local organisations or civil society groups.

The GRS sets out good practice examples of remediation and of a blueprint remediation plan.

- **Withdraw responsibly**, and as a last resort, where a supplier or other business partner is unable or unwilling effectively to address modern slavery risks or concerns.

Withdrawal and disengagement should only happen:

- after failed attempts at preventing or mitigating severe impacts,
- when adverse impacts are irremediable,
- where there is no reasonable prospect of change, or
- when severe adverse impacts or risks are identified and the entity causing the impact does not take immediate action to prevent or mitigate them.

Any consideration of disengagement should take into account:

- how disengagement might change impacts on the ground – including by potentially increasing modern slavery risks to people,
- how crucial the supplier or business relationship is to an entity, and

- the legal implications of remaining in or ending the relationship.

In some cases, taking immediate action to terminate a contract may cause further harm to those involved; for example, by exposing workers to retaliation or destitution. The priority should be to work closely with the supplier to help victims and those at risk and prevent recurrence.

3.4.6 Reasonable Step 6: Report

Reasonable Step 6 requires NSW public entities to report suspected instances of modern slavery, and report annually on their steps to manage risk in line with their statutory obligations.

Organisations should:

- **Establish a victim-centred reporting protocol** to define when and how it will report suspected modern slavery offences in its operations and supply chains. These protocols should prioritise the wellbeing and wishes of victim-survivors, for whom reporting exploitation to authorities may not be safe or possible.

A reporting protocol should provide appropriate confidentiality and other safeguards, earmark sufficient resources to support the welfare of victim-survivors during the reporting process, identify suitably trained and supported individuals to oversee critical responses and reporting in modern slavery context, and be communicated effectively to the organisation's personnel.

The GRS sets out a good practice example of a victim-centred reporting protocol.

- **Report on your modern slavery risk management efforts**, in line with statutory obligations. NSW public entities must report annually as required by statutory obligations and submit a copy of its annual reporting information using the online template provided by OASC.⁴⁷

3.4.7 Reasonable Step 7: Improve

Reasonable Step 7 requires that NSW government entities demonstrate continuous improvement in their management of modern slavery risk over time.

Entities should:

- **Learn lessons from their performance and others'**, using feedback received from stakeholders (particularly survivors of modern slavery and workers in the entity's supply chains). Entities should periodically review their modern slavery risk management performance, analyse lessons learned, and consider disclosing progress towards high-level targets.
- **Train your workforce:** Entities should set out a timeline for internal modern slavery awareness raising and training in their Modern Slavery Risk Management Plan. This training should ensure that individuals are being trained on the modern slavery risks that they are most likely to encounter, the entity's relevant policies, and suitable responses. The OASC has produced a number of training modules available to NSW public entities on the Comperio platform. Numerous civil society and commercial organisations also offer anti-slavery training.
- **Cooperate with the Anti-slavery Commissioner**, in line with the statutory duty of cooperation applicable to NSW public entities under section 14 of the Act. The Commissioner supports covered entities' efforts to strengthen their due diligence by receiving and monitoring reporting by covered entities, supporting access to information and training, providing bespoke advice and support, and convening the biannual Anti-slavery Forum.

⁴⁷ GRS, Appendix K GRS Annual Reporting Template.

4

What plausible
information was available,
when?

4.1 What information are government buyers reasonably expected to pay attention to?

How can busy procurement professionals know what the modern slavery risks involved in specific procurements are? One part of the answer lies in using the IRIT, provided by my Office, and discussed above (see **section 3.2**). But beyond this, what information can procurement decision-makers reasonably be expected to be aware of, especially as they conduct due diligence into individual suppliers? We live, after all, in information overload.

The Guidance that I and my Office have provided NSW public entities on these questions hews closely to the international practice that has emerged in the implementation of the same international norms that Australia has committed to – the UNGPs and the OECD Guidelines.

The GRS outlines that when conducting risk assessments, entities have an obligation to draw from a variety of well-informed sources. It also makes clear that the risk assessment process should be ongoing and responsive to changes in the risk environment. It is not acceptable for entities to wait for matters to materialise; rather, they should proactively seek out plausible information relevant to operational and sourcing categories and locations.⁴⁸

What is ‘plausible information’? This matter has been considered closely in the European context recently, as members of the European Union are implementing due diligence obligations flowing from that bloc’s adherence to the UNGPs. The prevailing approach, drawing on a framework developed in Germany, and now summarised by the European Commission, states that:

Plausible information means information of an objective character that allows the company to conclude that there is a reasonable likelihood that the information is true. This may be the case where the company concerned has received a complaint or is in the possession of information, for example through credible media or NGO reports, reports of recent incidents, or through recurring problems at certain locations about likely or actual harmful activities at the level of an indirect business partner. Where the company has such information, it should carry out an in-depth assessment.⁴⁹

It is not difficult today to access objective analysis of the major human rights risks in any given sector. So, entities have ready access to plausible information regarding major sectoral and geographic risks. This is particularly the case where the information is common knowledge, disseminated widely throughout the industry or passed on directly to the entity.⁵⁰

The German government explains that entities assessing plausible information should consider the ‘degree of possibility’ that a violation may have occurred:

⁴⁸ Mark Hodge. [What is risk-based due diligence? And what is it not? Getting back to basics as part of EU Omnibus simplification](#). Shift. (April 2025).

⁴⁹ European Commission. [Proposal for a Directive of the European Parliament and of the Council amending Directives 2006/43/EC, 2013/34/EU, \(EU\) 2022/2464 and \(EU\) 2024/1760 as regards certain corporate sustainability reporting and due diligence requirements](#). (2025). p. 26. See also: Federal Office for Economic Affairs and Export Control (BAFA). [Guidance on collaboration in the supply chain between obliged enterprises and their suppliers](#). (August 2023)

⁵⁰ See Mark Hodge. [What is risk-based due diligence? And what is it not? Getting back to basics as part of EU Omnibus simplification](#). Shift. (April 2025); Ahmed, I.A. [The Corporate Sustainability Due Diligence Directive \(CSDDD\) Under the Omnibus Package: Key Changes and Timeline](#). (March 2025).

Figure 9. Degree of Possibility. Sourced from Federal Office for Economic Affairs and Export Control (BAFA). Frequently Asked Questions. (2024).

- The violation does not need to be evident, certain, obvious, or even probable. ‘Possible’ events also include events whose likelihood of occurrence is less than 50 percent.
- The information available does not need, in and of itself, to indicate that a violation has occurred with a supplier.
- It must at least be possible to locate the risk in the enterprise’s own supply chain with reasonable efforts using methods recognised in the industry. Reasonableness is measured in accordance with the overall circumstances, and in particular in accordance with the principle of proportionality. The more specific a suspicion has become, the greater the effort that can reasonably be expected in terms of locating the cause.
- Even the state of the discussion within a sector can have an indicative effect: any knowledge within the sector that has become established, for instance alerts, is part of plausible information.

As part of their due diligence processes, entities should proactively review reliable sources of plausible information, such as those outlined in **Figure 10** below.

Figure 10. Sources of plausible information. Adapted from Federal Office for Economic Affairs and Export Control (BAFA). Guidance on collaboration in the supply chain between obliged enterprises and their suppliers. (August 2023).

Sources of plausible information relating to modern slavery risks in supply chains

- Guidance from the NSW Anti-slavery Commissioner (e.g. [the IRT](#))
- Official documents produced by the United Nations system (committee reports, analysis by the [Office of the UN High Commissioner for Human Rights](#), reports from [ILO](#) bodies)
- [United Nations Global Compact](#) reports
- [Business and Human Rights Resource Centre](#)
- US State Department: [country reports on human rights](#) and the annual [Report on Trafficking in Persons](#)
- US Department of Labor [List of Goods Produced by Child Labor or Forced Labor](#)
- Reports and guidance from non-governmental and multi-stakeholder organisations (e.g. [Amnesty International](#), [Human Rights Watch](#), [IndustriAll](#), [International Trade Union Confederation](#))

Applying this standard, there is – and has been, since 2022 – a sizeable body of plausible information available in the public sphere to indicate significant modern slavery risks in EV supply chains. This specific information is discussed below.

4.2 Plausible information on modern slavery risks in electric vehicle supply chains

4.2.1 Background

The IRIT⁵¹ has categorised procurement of vehicles as inherently ‘High’ modern slavery risk since it came online on 1 January 2024, noting risks associated with EVs and related infrastructure such as charging stations.

Even prior to this, allegations similar to those raised in NSW Parliament earlier this year have previously been raised in other jurisdictions, for example in New Zealand. In April 2021, allegations were made concerning the purchase of vehicles from Chinese company CRRC for several transport services, including Auckland’s CityLINK, Wellington’s Metlink, Kiwirail and Tranzit.⁵² CRRC was named by the Australian Strategic Policy Institute⁵³ as a company potentially benefitting from the use of Uyghur workers through labour transfer programs.

Later, in May 2024, concerns were raised in the UK over an approved deal between Go-Ahead Group (a UK transport company) and Chinese supplier BYD over the supply of 100 electric buses for London.⁵⁴ Concerns had been raised by researchers⁵⁵ about BYD’s possible connection to forced labour. And in March 2025, following questions in NSW about Bus Procurement Panel 4, concerns were likewise raised over the ACT Government’s deal with VDI in 2023 for the delivery of 90 Yutong E12 electric buses.⁵⁶

Automotive supply chains are complex, involving a large range of raw materials and assembled components from potentially thousands of suppliers. This complex supply chain, overlaid with varying regulatory contexts across producing regions, obscures visibility and makes it more difficult for end-product buyers to exercise effective oversight and leverage.

In relation to the allegations raised in NSW Parliament (see **section 1.2**), the scope of this probe primarily focuses on the supply chain associated with the supply of EVs and batteries. A simplified summary of this supply chain is depicted in **Figure 11**.⁵⁷

⁵¹ Office of the NSW Anti-slavery Commissioner. [Inherent Risk Identification Tool. \(January 2024\)](#). Inherent modern slavery risks associated with a range of vehicle-related procurement categories are set out in Tabs 62-67 of the IRIT.

⁵² Daalder, M. [NZ’s electric buses prompt forced Uyghur labour concerns](#). Newsroom. (April 2021).

⁵³ Xu, V.X. Cave, D., Leibold, J., Munro, K. & Ruser, N. [Uyghurs for Sale](#). Australian Strategic Policy Institute. (March 2020).

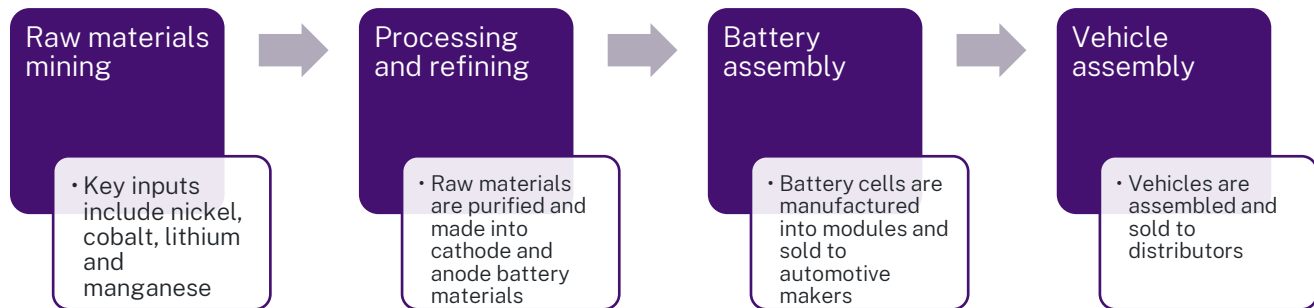
⁵⁴ Kelly, L. [London is getting a brand-new fleet of electric double-decker buses](#). Time Out. (May 2024).

⁵⁵ Brehm, S. and Magnusson, H. [Supply Chain Screening. Forced Labour at Battery and Bus Manufacturers in China](#). Globalworks Lund AB. (June 2023).

⁵⁶ Coleman, J. [Canberra’s electric buses under investigation after slave-labour claims](#). Region Canberra. (March 2025).

⁵⁷ Information on key supply chain stages from Anti-Slavery International, Helena Kennedy Centre for International Justice, Investor Alliance for Human Rights. [Respecting Rights in Renewable Energy: Investor guidance to mitigate Uyghur forced labour risks in the renewable energy sector](#). (January 2024). Further detail on key materials and processes is available in Murphy, L., Salcito, K., Uluyol, Y. & Rabkin, M. [Driving Force: Automotive Supply Chains and Forced Labor in the Uyghur Region](#). Sheffield Hallam University Helena Kennedy Centre for International Justice. (December 2022).

Figure 11. Key stages of the electric vehicle supply chain



There are child and forced labour risks, and risks of other modern slavery offences, in multiple components of vehicle manufacturing. These include, notably, risks of child labour in the production of cobalt for Li-ion batteries used in EVs, and risks associated with production of steel, aluminium, copper, electronics, interior materials, and tyres. Several of these inputs have been flagged on the United States Department of Labor List of Goods Produced by Child Labor or Forced Labor⁵⁸.

All of these sources of modern slavery risk will be relevant for NSW government buyers. However, we focus here on the two most salient risks in this supply chain – known modern slavery risks in cobalt production in DRC; and known modern slavery risks related to Xinjiang in the People’s Republic of China.

4.2.2 Known modern slavery risks in cobalt production in the Democratic Republic of the Congo

The production of cobalt in DRC is a source of salient modern slavery risk in the EV supply chain. This risk is salient because it is severe in scale, large in scope (affects many people), and is difficult to remedy.

Li-ion batteries used in EVs require up to 20kg of cobalt per 100kWh pack, and up to 70% of global cobalt supply comes from DRC.⁵⁹ Cobalt mining in DRC occurs in both large-scale and artisanal small-scale mines. The small-scale mining industry is estimated to employ between 100,000 to 200,000 people and provides up to 30% of global cobalt supply.⁶⁰ Due in part to a lack of regulatory oversight, workers are subjected to extremely hazardous working conditions, including high risk of injury or death. Notably, children as young as seven have been documented working at these sites – a violation which constitutes the worst forms of child labour.⁶¹ A 2023 study by the US Department of Labor found that an estimated 78% of employed cobalt workers experienced

Figure 12. Indicators of forced labour

Relevant indicators of forced labour:

- Deceptive recruitment
- Restricted freedom of movement
- Abuse of vulnerability
- Withheld wages
- Involuntary excessive overtime
- Physical violence

⁵⁸ U.S. Department of Labor. [List of Goods Produced by Child Labor or Forced Labor](#). (Last updated September 2024). See also Table 7 and Table 8 for further information.

⁵⁹ Cockayne, J., Huerta, E.R., Burcu, O. [The Energy of Freedom](#). The British Academy. (July 2022).

⁶⁰ Ibid.

⁶¹ Amnesty International. [“This is what we die for”: Human rights abuses in the Democratic Republic of the Congo power the global trade in cobalt](#). (January 2016). See also: [The Worst Forms of Child Labour Convention](#) (1999).

forced labour including deceptive recruitment, forced overtime and exposure to abusive conditions.⁶² The relevant indicators of forced labour are highlighted in **Figure 12**.⁶³

Up to 80% of the DRC's cobalt output is owned or controlled by Chinese companies.⁶⁴ A 2023 investigation by Swedish research organisation Globalworks⁶⁵, concluded that two major EV battery manufacturers operate joint ventures with Chinese mining corporations associated with forced labour allegations in DRC.

The first, **CATL**, is alleged to jointly run a mine in DRC with a company called China Molybdenum. A case in Congolese court⁶⁶, which ruled in favour of an injured worker, indicates that this is Kisanfu mine. CATL also receives raw materials from Tenke Fungurume mine, one of DRC's largest industrial mines, which is also owned (80%) by China Molybdenum. Globalworks cite an investigation by The Guardian⁶⁷ which identified, through direct worker testimony, a system of abuse, precarious employment and negligible wages at this site. A statement from the US Department of Labor also identifies that China Molybdenum has blocked safety inspectors from accessing Tenke Fungurume and employed military force to expel artisanal miners, resulting in fatalities.⁶⁸

The second identified battery manufacturer, **LG Chem**, has a joint venture agreement with China Huayou Cobalt Industry (Huayou). Huayou is the sole owner of Congo Dongfang, a smelter which processes ore in DRC before exporting to China. Congo Dongfang has been identified as having evicted local residents from their land, subjecting workers to hazardous conditions (including a lack of proper safety equipment), and physically abusing Congolese workers.⁶⁹

The same Globalworks report claimed that **Yutong**, a major Chinese bus manufacturer, is linked to this supply chain through its agreement for the supply of batteries from CATL, which is valid from 2022 until 2032.

Table 7 highlights key dates when pertinent plausible information became publicly available.

Table 7. Timeline of publication of plausible information about salient modern slavery risks related to the Democratic Republic of the Congo – cobalt mining

Publication Date	Development
September 2009	List of Goods Produced by Child Labor or Forced Labor U.S. Department of Labor Cobalt, coltan and copper from DRC are identified as goods produced with child labour. These goods have remained on each iteration of this list, including the most recent update released in September 2024.
January 2016	“This is what we die for”: Human rights abuses in the Democratic Republic of the Congo power the global trade in cobalt Amnesty International

⁶² U.S. Department of Labor. [Forced Labor in Cobalt Mining in the Democratic Republic of the Congo](#). (May 2023)

⁶³ See ILO. [Indicators of Forced Labour](#); For further detail on violations, see U.S. Department of Labor. [Forced Labor in Cobalt Mining in the Democratic Republic of the Congo](#). (May 2023)

⁶⁴ Congressional-Executive Commission on China. [From Cobalt to Cars: How China Exploits child and Forced Labor in the Congo](#). (November 2023).

⁶⁵ Globalworks is a not-for-profit organisation researching the situation of workers and communities in places without strong institutions to protect their legal rights. Brehm, S. and Magnusson, H. [Supply Chain Screening. Forced Labour at Battery and Bus Manufacturers in China](#). Globalworks Lund AB. (June 2023).

⁶⁶ RAID. [DR Congo court issues rare decision in favour of injured worker at cobalt mine](#). (February 2022).

⁶⁷ Pattison, P. [‘Like slave and master’: DRC miners toil for 30p an hour to fuel electric cars](#). The Guardian. (November 2021).

⁶⁸ U.S. Department of Labor (before the Tom Lantos Human Rights Commission). [Child Labor and Human Rights Violations in the Mining Industry of the Democratic Republic of Congo](#). (July 2022).

⁶⁹ Niarchos, N. [The Dark Side of Congo’s Cobalt Rush](#). The New Yorker. (May 2021).

Publication Date	Development
	This report documents the hazardous conditions in which artisanal miners, including children, mine cobalt in DRC. It highlights that despite the potentially fatal health effects of prolonged exposure to cobalt, workers frequently work without basic protective equipment.
2019	<p><u>Cobalt for Development</u></p> <p>This multi-stakeholder initiative, launched in 2019, pilots an approach to improve the conditions of artisanal miners and their communities in DRC. The program provides technical assistance to 14 mining cooperatives in Lualaba including training on health and safety, environmental management and protective equipment. It also includes programs to improve education, vocational training and financial literacy in surrounding communities. The program is financed by BASF, BMW, Samsung Electronics, Samsung SDI and Volkswagen Group, and is implemented by GIZ, the Good Shepherd International Foundation and Artisan Act.</p>
2020	<p><u>Fair Cobalt Alliance</u></p> <p>This multi-stakeholder initiative was founded to improve working conditions and child rights, and develop long-term resilience for artisanal mining communities in DRC. Their focus includes the professionalisation of artisanal mine site management, building a child labour referral system to enable children to attend school, and the promotion of investment in programmes for sustainable livelihoods.</p>
May 2021	<p><u>The Dark Side of Congo's Cobalt Rush</u> Niarchos, N. <i>The New Yorker</i>.</p> <p>This article documents the perilous conditions associated with cobalt mining in DRC. It finds that thousands of children work in the mines, and that prostitution of women and young girls close to mine sites is pervasive. It documents incredibly dangerous working conditions, in many cases leading to death, and claims that the treatment of Congolese workers by Chinese bosses is 'reminiscent of the colonial period'.</p>
November 2021	<p><u>'Like slave and master': DRC miners toil for 30p an hour to fuel electric cars</u> Pattison, P. <i>The Guardian</i></p> <p>This article investigates conditions at several mines in DRC run by Chinese companies. Interviewed workers allege that they are victims of severe exploitation, including wages as low as 30p an hour, employment without contracts, racism, and paltry food rations.</p>
July 2022	<p><u>The Energy of Freedom</u> Cockayne, J., Huerta, E.R., Burcu, O. <i>The British Academy</i></p> <p>This report estimates risk of forced labour in the supply chain of renewable energy products, with an aim to move towards a global 'just transition'. It identifies Li-ion batteries, and particularly cobalt, as a key source of risk and highlights state incapacity and informal governance arrangements as factors contributing to this heightened risk.</p> <p><u>Child Labor and Human Rights Violations in the Mining Industry of the Democratic Republic of Congo</u> Tom Lantos Human Rights Commission</p> <p>This US Congressional hearing examines human rights violations in DRC's mining sector, including child and forced labour, disregard for worker safety, and environmental degradation. It also assesses the role played by outside actors, including Chinese and Russian involvement in government regulatory regimes in DRC.</p>
January 2023	<p><u>Cobalt Red: How the Blood of the Congo Powers Our Lives</u> Kara, S.</p> <p>This book documents the testimonies of people working in and living adjacent to DRC's cobalt industry. It identifies that workers (including children) are subject to sub-human conditions and militia control over the mining territories.</p>

Publication Date	Development
May 2023	<p>Forced Labor in Cobalt Mining in the Democratic Republic of the Congo <i>United States Department of Labor</i></p> <p>This official US Government report gathers quantitative data on the prevalence and nature of forced labour in DRC's cobalt mining sector and estimates that 78% of employed cobalt workers experience forced labour. Findings show that workers are subject to deceptive recruitment and excessive overtime, and are unable to refuse to do hazardous work.</p>
June 2023	<p>Supply Chain Screening. Forced Labour at Battery and Bus Manufacturers in China <i>Brehm, S. and Magnusson, H., Globalworks Lund AB</i></p> <p>This report alleges connections between key actors in EV and battery manufacturing in Xinjiang to cobalt mines in DRC. The findings show that two key battery manufacturers maintain joint ventures with Chinese mining corporations associated with forced labour in DRC. Investigations at the identified sites indicate that Congolese workers are exposed to a system of abuse, injury, precarious employment and minimal wages.</p>
November 2023	<p>From Cobalt to Cars: How China Exploits Child and Forced Labor in the Congo <i>Congressional-Executive Commission on China</i></p> <p>This US Congressional hearing highlights the role of certain actors in perpetuating child and forced labour in DRC's cobalt industry. The witnesses report incredibly hazardous working conditions, the use of child labour, exposure to toxic materials and physical abuse of workers. It also highlights that at least 14 of the largest cobalt mines in DRC are controlled by the studied companies.</p>
September 2024	<p>List of Goods Produced by Child Labor or Forced Labor <i>U.S. Department of Labor</i></p> <p>Copper products from DRC, including those supplied to EVs, are identified as downstream goods at risk of being produced with child labour.</p>

4.2.3 Known modern slavery risks related to Xinjiang, People's Republic of China

The connection of some suppliers in the EV supply-chain to workforces in and from Xinjiang, a western province in the People's Republic of China, is a source of salient modern slavery risk in those supply-chains. This risk is salient because it is potentially severe in scale, large in scope (affects many people), and is difficult to remedy.

China is a major sourcing location in the global EV supply chain, with key research concluding that 'it would be difficult to find an EV battery that has no input from a Chinese manufacturer.'⁷⁰ The automotive industry was named as a priority area in the Chinese government's 'Made in China 2025' plan to convert the country to a manufacturing superpower⁷¹. Chinese manufacturers produce up to 70% of cells for EV batteries, 78% of cathodes and 91% of anodes, and represent 6 of the top 10 EV battery manufacturers in the world. China processes the majority of the world's iron, bauxite, lithium and cobalt, with a significant share of this work taking place in Xinjiang.⁷² Both the Chinese and Xinjiang governments have dedicated significant resources to relocating and expanding facilities for

⁷⁰ Murphy, L., Salcito, K., Uluyol, Y. & Rabkin, M. [Driving Force: Automotive Supply Chains and Forced Labor in the Uyghur Region](#). Sheffield Hallam University Helena Kennedy Centre for International Justice. (December 2022). p. 34.

⁷¹ State Council. [Notice of the State Council on Issuing "Made in China 2025"](#). (May 2015).

⁷² Murphy, L., Salcito, K., Uluyol, Y. & Rabkin, M. [Driving Force: Automotive Supply Chains and Forced Labor in the Uyghur Region](#). Sheffield Hallam University Helena Kennedy Centre for International Justice. (December 2022).

these processes to Xinjiang in recent years, initiatives which are part of broader strategic goals to transform the region.⁷³

Xinjiang is the traditional homeland of the Uyghur and other largely Muslim Turkic minority groups. While Uyghur and other ethnic minority populations have long been subject to discriminatory policies, in recent years, mounting evidence indicates an increasingly oppressive strategy for controlling this population. Elements of this scheme involve workforce management strategies that plausible information suggests involves high modern slavery risks. **Figure 13** highlights relevant indicators of forced labour in this context.⁷⁴

One source of risk has been the internment of large numbers of Uyghurs in ‘Vocational Skills and Education Training Centres’ (VSETCs), facilities which detain individuals for ‘re-education’ under the guise of preventing religious extremism.⁷⁵ This system may affect hundreds of thousands of people. Individuals do not need to be convicted or even suspected of criminal activity to be detained in such facilities. Within these sites, individuals are plausibly alleged to be subjected to mandatory labour, Mandarin language lessons and political indoctrination, with the intention to assimilate minorities into the Han-majority culture. The VSETC program frequently pairs workers to industrial facilities located nearby or within the camps, providing a source of low-cost labour to industrial enterprises within the Xinjiang region. Plausible first-hand accounts report that workers are subject to abuse, torture, and extensive surveillance, and receive little or no wages for their labour.⁷⁶

Figure 13. Indicators of forced labour

Relevant indicators of forced labour:

- Restricted freedom of movement, such as constant surveillance and fenced-in factories
- Abuse of vulnerability, such as by threats to family members
- Excessive working hours, including mandatory after-work language classes and political indoctrination sessions
- Abusive working conditions, such as military-style management and a ban on religious practices
- Being subject to the threat of arbitrary detention and intimidation by security personnel
- Isolation, such as living in segregated facilities.
- Physical violence

An additional stream of unfree labour occurs through a ‘Poverty Alleviation’ scheme, which transfers individuals from Xinjiang to wage labour in farms and manufacturing facilities across Xinjiang and greater China.⁷⁷ This program of deploying ‘surplus labour’ and displacing individuals from their communities shows significant signs that participation is not freely chosen. This includes active efforts by government officials to meet recruitment quotas, land transfers, and the assignment of Han ‘minders’ to live within the Uyghur households, as well as the ever-present coercive threat of internment for those who do not cooperate. Labour transfers reached a record in 2021, and the Xinjiang government announced that it had conducted 3.05 million transfers between January and September of 2023 alone.⁷⁸

⁷³ Ibid.

⁷⁴ See ILO. [Indicators of Forced Labour](#); For further detail see Cockayne, J. [Making Xinjiang sanctions work](#). University of Nottingham. (July 2022); Xu, V.X. Cave, D., Leibold, J., Munro, K. & Ruser, N. [Uyghurs for Sale](#). Australian Strategic Policy Institute. (March 2020); and the sources discussed below.

⁷⁵ See Zenz, A. [New Evidence for China’s Political Re-Education Campaign in Xinjiang](#). (May 2018).

⁷⁶ Cockayne, J. [Making Xinjiang sanctions work](#). University of Nottingham. (July 2022).

⁷⁷ See Zenz, A. [Coercive Labor and Forced Displacement in Xinjiang’s Cross-Regional Labor Transfer Program](#). (March 2021).

⁷⁸ Murphy, L., Salcito, K., Uluyol, Y. & Rabkin, M. [Driving Force: Automotive Supply Chains and Forced Labor in the Uyghur Region](#). Sheffield Hallam University Helena Kennedy Centre for International Justice. (December 2022).

Critically, there is evidence that local governments, commercial brokers and receiving factories are compelled to participate in this program, either by coercion or through financial incentives.⁷⁹ While complete tracing of the EV supply chain is difficult, since at least December 2022 there has been important plausible information available in the public domain mapping the connections between major industry actors and facilities that may be implicated in participation in these programs, both within and outside of Xinjiang.⁸⁰

In this heightened risk environment, it is particularly concerning that efforts to assess working conditions and engage directly with workers have been significantly and intentionally suppressed. Since reporting on violations in Xinjiang began in 2018, workers have reported increasing cases of interview subjects being coached, intimidated and threatened by Chinese state authorities; and there have been numerous incidents of reputable audit firms themselves being raided and subject to constant surveillance.⁸¹ In 2020, five major auditing firms announced they would no longer conduct audits in Xinjiang.⁸² Outside of Xinjiang, audits are highly sanitised to exclude any reference to Uyghurs or other information that indicates ethnic or religious composition of the workforce.

Chinese authorities have taken several measures to criminalise and punish cooperation with foreign social audits, including the adoption of an 'Unreliable Entities List', which grants China's Ministry of Commerce the power to investigate and list foreign entities (organisations, enterprises or individuals) engaging in activities that endanger China's national sovereignty or cause damage to the interests of Chinese enterprises. Entities or individuals on this list may be subject to import and export bans, travel controls and bans, monetary bans and 'other necessary measures'. In 2021 further laws were introduced which allow Chinese officials to issue orders prohibiting companies from complying with foreign laws and judgements, making it illegal for any organisation or individual to implement or assist in 'restrictive measures taken by foreign countries against Chinese citizens and organisations.'⁸³ Considering these factors of intimidation, withdrawal of key actors, and criminalisation by Chinese authorities, components of the due diligence system, such as traditional workplace audits, interviews and supplier assessments, cannot reliably be used to assess conditions in this instance.

It is important to note that the government of the People's Republic of China contests many of these allegations. However, plausible and credible sources, including government documents from within China, and analysis from the UN Office of the High Commissioner for Human Rights, suggest that many of these allegations are well-founded.⁸⁴

Table 8 highlights key dates when pertinent plausible information became available to the public.⁸⁵

⁷⁹ Zenz, A. [Forced Labor in the Xinjiang Uyghur Autonomous Region: Assessing the Continuation of Coercive Labor Transfers in 2023 and Early 2024](#). The Jamestown Foundation. (February 2024). See also Cockayne, op. cit; and Xu et al, op. cit.

⁸⁰ See Murphy, L., Salcito, K., Uluyol, Y. & Rabkin, M. [Driving Force: Automotive Supply Chains and Forced Labor in the Uyghur Region](#). Sheffield Hallam University Helena Kennedy Centre for International Justice. (December 2022) and associated [interactive map](#); Brehm, S. and Magnusson, H. [Supply Chain Screening. Forced Labour at Battery and Bus Manufacturers in China](#). Globalworks Lund AB. (June 2023).

⁸¹ For a detailed account, see section 2.3.3.2 of Cockayne, J. [Making Xinjiang sanctions work](#). University of Nottingham. (July 2022).

⁸² Xiao, E. [Auditors to Stop Inspecting Factories in China's Xinjiang Despite Forced-Labor Concerns](#). The Wall Street Journal. (September 2020).

⁸³ For further details, see section 2.3 of Cockayne, J. [Making Xinjiang sanctions work](#). University of Nottingham. (July 2022).

⁸⁴ United Nations, Office of the High Commissioner for Human Rights. [Assessment of human rights concerns in the Xinjiang Uyghur Autonomous Region, People's Republic of China](#). (August 2022). See also: Response from the People's Government of Xinjiang Uyghur Autonomous Region. [Fight against Terrorism and Extremism in Xinjiang: Truth and Facts](#). (August 2022).

⁸⁵ This conclusion is echoed in Anti-Slavery International, Helena Kennedy Centre for International Justice, Investor Alliance for Human Rights. [Respecting Rights in Renewable Energy: Investor guidance to mitigate Uyghur forced labour risks in the renewable energy sector](#). (January 2024). p.19.

Table 8. Timeline of publication of plausible information about salient modern slavery risks related to Xinjiang

Publication Date	Development
September 2009	<p>List of Goods Produced by Child Labor or Forced Labor <i>U.S. Department of Labor</i></p> <p>Electronics from China are identified as goods produced with child labour and forced labour. This has remained on each iteration of this list, including the most recent update released in September 2024.</p>
July 2019	<p>China calls Xinjiang camps training centres, but government's own documents say otherwise, researcher finds Gan, N.</p> <p>This article highlights work by academic Adrian Zenz which examines a body of Chinese government documents to determine the nature and true extent of Xinjiang's 'boarding schools'. He concludes that there is evidence of coercive internment, heavy presence of police guards and political brainwashing, and suggests a 'speculative upper limit' of 1.5 million detainees.</p>
March 2020	<p>Uyghurs for Sale Xu, V.X., Cave, D., Leibold, J., Munro, K. & Ruser, N. <i>Australian Strategic Policy Institute</i></p> <p>This report estimates that the Chinese government transferred 80,000 Uyghurs out of Xinjiang to work across factories in China between 2017 and 2019. The report identifies 54 companies connected to forced labour schemes within Xinjiang, and an additional 82 foreign and Chinese companies potentially benefitting from the use of Uyghur workers through labour transfer programs outside of Xinjiang.</p>
May 2022	<p>Application of International Labour Standards 2022: Report of the Committee of Experts on the Application of Conventions and Recommendations <i>International Labour Organisation</i></p> <p>This report recalls observations by the International Trade Union Confederation alleging that the Chinese government has been engaging in a widespread programme involving the extensive use of forced labour of the Uyghur and other minorities for agriculture and industrial activities throughout Xinjiang. In response, the Committee expresses concern with the government's discriminatory programmes and identifies indicators within China's labour transfer policies that the ability to freely choose employment is significantly restricted in this case.</p>
July 2022	<p>Until Nothing is Left Murphy, L, Elimä, N, Tobin, D.</p> <p>This report considers alleged human rights violations perpetrated by the Xinjiang Production and Construction Corps against the Uyghur people, including their role in engineering labour transfer and forced labour programs.</p>
August 2022	<p>Assessment of human rights concerns in the Xinjiang Uyghur Autonomous Region, People's Republic of China <i>United Nations, Office of the High Commissioner for Human Rights</i></p> <p>This assessment finds that serious human rights violations have been committed in Xinjiang in a manner that is discriminatory to Uyghur and other predominantly Muslim communities, which may rise to the level of crimes against humanity. The report finds that these groups have been subject to arbitrary deprivation of their liberty, particularly in vocational training and other facilities, at least between 2017 and 2019.</p>
October 2022	<p>Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences <i>United Nations Special Rapporteur</i></p> <p>The United Nations Special Rapporteur regards it as reasonable to conclude that forced labour among Uyghur and other ethnic minorities has been occurring in the manufacturing sector of Xinjiang. The Special Rapporteur also concludes that the nature and extent of powers exercised over affected workers may, in some instances, amount to enslavement as a crime against humanity.</p>

Publication Date	Development
November 2022	<p>Addressing Modern Slavery in the Clean Energy Sector <i>Clean Energy Council, Norton Rose Fulbright</i></p> <p>This report reviews evidence of modern slavery risk in the renewable energy sector, including battery technologies. It identifies that although a large portion of risk exposure sits at the extraction of raw materials and manufacture of components, the Australian renewable energy industry has an important role to play in efforts to eliminate modern slavery, and identifies strategies to do so.</p>
December 2022	<p>Driving Force: Automotive Supply Chains and Forced Labor in the Uyghur Region <i>Murphy, L., Salcito, K, Uluyol, Y, Rabkin, M, et al. Sheffield Hallam University Helena Kennedy Centre for International Justice.</i></p> <p>This report describes the expansion of the auto parts and materials supply chain in Xinjiang and documents the abuses allegedly committed by major industry actors. The research identifies 96 mining, processing or manufacturing companies relevant to the automotive sector operating in Xinjiang, of which at least 38 have documented engagement in state-sponsored labour transfer programs. The report suggests that due to connections at several key nodes in the supply chain (including raw materials mining/processing and auto parts manufacturing), numerous automotive and EV manufacturers have significant exposure to forced labour in Xinjiang.</p>
June 2023	<p>Supply Chain Screening. Forced Labour at Battery and Bus Manufacturers in China <i>Brehm, S and Magnusson, H, Globalworks Lund AB</i></p> <p>This report analyses forced labour risks at seven key battery manufacturing companies, exploring links to upstream raw material sources and downstream electric bus manufacturing sites. The findings identify 28 labour transfers involving direct participation of three of the investigated manufacturers. Allegations include:</p> <ul style="list-style-type: none"> • BYD performs own business operations in Tibet and in a Tibetan Autonomous Prefecture, where the risk of political repression and state-imposed forced labour is very high. • BYD, CATL, and Durapower may be linked to state-imposed forced labour in Xinjiang via their joint-venture partners or shareholders, which perform own business activities in cooperation with Xinjiang-based mining and processing enterprises. • Samsung, LG Chem, and Panasonic may be linked to state-imposed forced labour in Xinjiang through products, operations or services from suppliers. • BYD, LG Chem, and Panasonic may be contributing to state-imposed forced labour as they may have participated in labour transfer programs in western and central China. • At Yutong, forced labour risks are mainly linked to a supplier contract with CATL providing batteries for all of the companies' electric buses at least until 2032.
August 2023	<p>OVEREXPOSED: Uyghur Region Exposure Assessment for Solar Industry Sourcing <i>Crawford, A. & Murphy, L.</i></p> <p>This report highlights forced labour violations associated with the renewable energy sector in Xinjiang. It identifies that in responses to concerns about the region and related US-government import restrictions, several companies have bifurcated their supply chains to create product lines that they claim are free of Xinjiang inputs. It notes that it is sometimes impossible to determine if these products are indeed free of Xinjiang inputs, because companies do not disclose sufficient supply chain information.</p>
October 2023	<p>Human Rights Risks Behind Electric Buses in Swedish Public Transportation <i>ETI Sweden, Storstockholms Lokaltrafik (SL), Västtrafik, Skånetrafiken, and Luleå Lokaltrafik.</i></p>

Publication Date	Development
	This report investigates working conditions at battery and electric bus manufacturing facilities in China. The investigations, conducted in 2022, review workers' social media accounts, as well as social media accounts and webpages of Government authorities and Party organisations. The findings indicate connections to forced labour and extensive risks of poor working conditions in factories manufacturing batteries and electric buses.
1 January 2024	<p>Inherent Risk Identification Tool <i>Office of the NSW Anti-slavery Commissioner</i></p> <p>Version 1 of the tool is released in late December 2023, becoming 'effective' 1 January 2024. This tool identifies the procurement of vehicles as inherently 'High' risk.</p>
February 2024	<p>Forced Labor in the Xinjiang Uyghur Autonomous Region: Assessing the Continuation of Coercive Labor Transfers in 2023 and Early 2024 Zenz, A. <i>The Jamestown Foundation</i></p> <p>This report highlights Xinjiang state and media sources indicating the coercive employment and poverty alleviation programs are continuing to be implemented until at least 2025. Forced labour transfers in 2023 exceeded those from the previous year and surpassed state-mandated quotas. It also explains that land use rights, covering up to 90 percent of land in some areas, are being transferred away from local farmers to state-run cooperatives, forcing the local population into wage labour through coercive labour transfers.</p> <p>Asleep at the Wheel: Car Companies' Complicity in Forced Labor in China <i>Human Rights Watch</i></p> <p>This report highlights how the car industry is participating in or benefitting from the repression of Uyghurs and other ethnic minorities in their Chinese supply chains. The report identifies that despite high risks, some manufacturers have succumbed to government pressure to weaken their human rights standards in Chinese facilities.</p>
September 2024	<p>Australia's climate ambitions have a modern slavery problem: examining the origins of our big batteries <i>Australian Strategic Policy Institute</i></p> <p>This article examines the supply chains for major battery projects across Australia and finds that, even when the batteries are sourced from US-based companies, critical components are still obtained from Chinese suppliers, which carry well-documented risks of involvement in human rights violations.</p> <p>List of Goods Produced by Child Labor or Forced Labor <i>U.S. Department of Labor</i></p> <p>The following downstream goods from China are identified as being at risk of being produced with forced or child labour:</p> <ul style="list-style-type: none"> • auto parts and components • Li-ion batteries • electrolytic copper products
February 2025	<p>Application of International Labour Standards 2025: Report of the Committee of Experts on the Application of Conventions and Recommendations <i>International Labour Organisation</i></p> <p>This report highlights that forced labour of Uyghurs and other ethnic minorities is not confined to internment camps, but also includes long-term imprisonment and large-scale labour transfers into key industries including batteries, electronics and vehicle parts.</p>

5

Conclusion

Since 2022, NSW government agencies have had obligations to take ‘**reasonable steps**’ to ensure that they are not buying goods or services that are products of modern slavery. This ‘reasonable steps’ obligation means that government agencies must undertake proper due diligence to identify salient modern slavery risks, particularly when procuring in industries with high modern slavery risks. They must also provide or enable remedy for any harms they are connected to through their supply chain.

Since these obligations came into effect, substantial plausible information has been available about modern slavery risks in the supply chains of EV and charging infrastructure. This report draws attention specifically to plausible information surrounding risks associated with cobalt mining in the Democratic Republic of the Congo and manufacturing in Xinjiang, People’s Republic of China.

This report is the first of three reports considering modern slavery risks in the procurement of EV and EV charging infrastructure by NSW government agencies. Future reports will analyse whether NSW government agencies have met their modern slavery due diligence obligations, considering available plausible information, and make recommendations for future practice. Over the coming weeks, my office will undertake a detailed analysis of data received from agencies and obtained from the Standing Order 52. This analysis will inform Reports 2 and 3 on the EV monitoring probe, which I expect to publish later in 2025.

6

Appendices

Appendix A. Letter from Hon. Damien Tudehope MLC to the NSW Anti-slavery Commissioner



The Hon. Damien Tudehope MLC

Shadow Treasurer

Shadow Minister for Industrial Relations

Leader of the Opposition in the Legislative

24 February 2025

Dr James Cockayne

NSW Anti-slavery Commissioner

antislavery@dcj.nsw.gov.au

Dear Dr Cockayne

Re: Transport for NSW procurement of electric buses from VDI-Yutong and Foton Mobility Distribution

I am concerned that there has been a failure of due diligence by Transport for NSW in assessing the risk of modern slavery, including the possible use of child labour, in the supply chain for electric buses to be supplied to the NSW Government by two suppliers – Foton Mobility Distribution and VDI-Yutong.

After asking some [questions](#) about this procurement in the Legislative Council on Wednesday 19 February 2025, the Opposition then asked the Minister for Domestic Manufacturing and Government Procurement to refer this matter to you for investigation and report. The Minister's answer (attached) referred to the modern slavery provisions in relation to approved suppliers under Bus Panel 4, with no indication that, in the light of the specific matters raised in question time, the Minister would make a referral to you.

In the light of the evidence (summary attached) that the electric buses to be supplied by Foton Mobility Distribution and VDI-Yutong to Transport for NSW will use CATL batteries, and the finding by the independent Swedish research organisation [Globalworks](#) that CATL is very high risk for the use of forced labour of Uighur people in China, as well as of forced labour in the Democratic Republic of the Congo, on behalf of the Opposition, I formally request you to investigate this procurement and take whatever steps you consider necessary to help ensure that the NSW Government does not purchase electric buses from companies with a high risk that forced labour is used in any part of their supply chain.

Mail: Parliament House, Macquarie St, SYDNEY NSW 2000

Phone 02 9230 3679

Email damien.tudehope@parliament.nsw.gov.au

If I can assist you with any further information, please let me know.

Yours sincerely

A handwritten signature in blue ink, reading "Damien Tudehope".

The Hon. Damien Tudehope MLC

Shadow Treasurer

Shadow Minister for Industrial Relations

Leader of the Opposition in the Legislative Council

ATTACHMENTS:

- A. Summary of evidence for the very high risk of forced labour in the supply chain of electric buses from Foton Mobility Distribution and VDi-Yutong.
- B. Answer to Supplementary Question for Written Answer

Summary of evidence for the very high risk of forced labour in the supply chain of electric buses from Foton Mobility Distribution and VDI-Yutong

BUS PANEL 4

VDI-Yutong and Foton Mobility Distribution were added to the new panel for approved bus suppliers to the NSW Government – Bus Panel 4 – established on 1 March 2024. (See answer to Supplementary Question for Written Answer 20 February 2025)

[New bus procurement panel in place | Transport for NSW](#)

The list of approved suppliers is reportedly not publicly available: [Panel 4 vs Panel 3 -](#)

On 20 December 2024 the Government announced that 319 electric buses were to be supplied by four bus manufacturers Custom Denning, Foton Mobility Distribution, VDI-Yutong and Volvo.

<https://www.transport.nsw.gov.au/news-and-events/media-releases/transition-to-net-zero-accelerates-purchase-of-319-zero-emission>

Custom Denning is a Western Sydney based old Australian bus manufacturing company. It does not use CATL batteries.

CATL BATTERIES USED BY YUTONG AND FOTON

At this stage both VDI-Yutong and Foton Mobility Distribution essentially import Chinese manufactured electric buses with some local assembly or fit-out in Australia.

Both companies use CATL batteries.

[Electric City Bus 12.5m - Foton Mobility Distribution Australia](#)

[CATL Battery Technology | VDI Australia](#)

While VDI-Yutong is wholly owned by Peter Woodward, Woodward is also a Managing Director of Yutong Bus Australia, a subsidiary of the Zhengzhou Yutong Bus Co. – China's largest bus manufacturing company.

<https://www.linkedin.com/in/peter-woodward-6a333118/?originalSubdomain=au>

Foton Mobility Distribution is half-owned by Neil Wang and half-owned by **Go Zero Group**.

Neil Wang has worked for both Yutong (2013-2020) and for Foton Bus Australia (2020-2021).

Foton Bus Australia is a subsidiary of Foton, another major bus company in China. It is wholly owned by BAIC, a Chinese State-Owned Corporation.

[\(21\) Neil Wang | LinkedIn](#)

VERY HIGH RISK – FORCED LABOUR

Yutong, and CATL are named in a June 2023 publication [“SUPPLY CHAIN SCREENING Forced Labour at Battery and Electric Bus Manufacturers in China”](#) by independent Swedish research organisation [Globalworks](#) as being at “Very High Risk” of using forced labour in their supply chains, including Uighur forced labour in China and African slave labour in molybdenum mines in the Democratic Republic of the Congo.

[Supply Chain Screening.pdf](#)

There is also evidence of child labour in the mines in the Democratic Republic of the Congo which may include mines supplying to CATL:

[Child Labor in the DRC and the Automotive Industry](#)

The Hon Courtney Houssos MLC

Minister for Finance

Minister for Domestic Manufacturing and Government Procurement

Minister for Natural Resources

On 19/02/2025 the following question was asked in the Legislative Council:

QUESTION

The Hon. Aileen MacDonald MLC: "My supplementary question for written answer is directed to the Minister for Domestic Manufacturing and Government Procurement. Will the Minister refer the procurement by the Government of electric buses from China to the Anti-Slavery Commissioner for investigation and report?"

ANSWER


I am advised that Buses are procured in NSW from approved suppliers as determined by Bus Panel 4.

Bus Panel 4 is a formal and long-standing procurement process operated by Transport for NSW (TfNSW).

The Deed of Standing Offer that applies for Bus Procurement under Bus Panel 4 has provisions concerning modern slavery.

In accordance with the NSW Government Procurement Policy Framework Government agencies are responsible for the day-to-day management and enforcement of contractual provisions.

NSW Government agencies can seek best practice advice from the NSW Anti-slavery Commissioner on modern slavery due diligence in government contracts.



The Hon Courtney Houssos MLC

Minister for Finance

Minister for Natural Resources

19/20/2025 19 February 2025

Appendix B. Letter from the NSW Anti-slavery Commissioner to Hon. Damien Tudehope MLC

OFFICIAL: Confidential

The Hon. Damien Tudehope MLC
Shadow Treasurer
Shadow Minister for Industrial Relations
Leader of the Opposition in the Legislative Council
Via - Richard.Egan@parliament.nsw.gov.au

Our Reference: D25/575240

25 February 2025

Dear Mr Tudehope

Modern slavery risks in NSW Government procurement of electric vehicles and related infrastructure

Thank you for your letter dated 24 February 2025 drawing my attention to your concern that “there has been a failure of due diligence by Transport for NSW” in relation to the purchase of electric buses from Foton Mobility Distribution and VDI-Yutong.

As you set out in your letter and accompanying materials, your specific concern relates to the risk that components in these buses, specifically electric batteries, could be made through forced labour or child labour (‘modern slavery’).

In your letter, you “formally request [me] to investigate this procurement and take whatever steps [I] consider necessary to help ensure that the NSW Government does not purchase electric buses from companies with a high risk that forced labour is used in any part of their supply chain”.

This letter sets out my response. It:

- explains the responsibility of government agencies to address modern slavery risks in their supply-chains;
- notes the growing evidence of a general issue concerning modern slavery risks in the procurement of electric vehicles and related technology (e.g. charging stations);
- considers the statutory functions and powers relevant in this matter – which do not include an investigation power, but do include a power to monitor reporting on modern slavery risks in government agency supply-chains;
- explains the statutory framework for the NSW Anti-slavery Commissioner to access relevant information;
- identifies what can be done with any resulting conclusions; and
- sets out my intended next steps.

OFFICIAL: Confidential

Government agencies' responsibilities to address modern slavery risks in their supply-chains

Section 176(1A) of the *Public Works and Procurement Act 1912* (NSW) sets out that:

A government agency must take reasonable steps to ensure that goods and services procured by and for the agency are not the product of modern slavery within the meaning of the [Modern Slavery Act 2018](#).

This obligation has been in force since 1 July 2022. In December 2023, after extensive consultation with Government agencies and other stakeholders, I published detailed [Guidance on Reasonable Steps](#), and a set of tools to assist government agencies to identify and address modern slavery risks in their supply-chains.

Government sector finance agencies also have certain reporting obligations, set out in section 31 of the *Modern Slavery Act 2018* (NSW) ('the Act'):

31 Annual reports

(1) The annual reporting information for a GSF agency under the [Government Sector Finance Act 2018](#) is to include the following matters —

- (a) a statement of the action taken by the agency in relation to any issue raised by the Anti-slavery 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 within the meaning of the [Modern Slavery Act 2018](#).

Growing evidence of modern slavery risks in electric vehicle (EV) supply-chains

Your letter draws my attention to the specific issue of the procurement of electric buses by Transport for NSW.

There is growing evidence of a general issue with modern slavery risks in the supply-chains of a broad range of electric vehicles (EV) and related technologies (e.g. recharging infrastructure). This evidence includes:

- Murphy, L., Salcito, K., Uluyol, Y., & Rabkin, M. (2022). *Driving Force: Automotive Supply Chains and Forced Labor in the Uyghur Region*. Sheffield, UK: Sheffield Hallam University Helena Kennedy Centre for International Justice. Available at: https://media.business-humanrights.org/media/documents/Driving_Force_Auto_Supply_Chains_and_Uyghur_Forced_Labour_1.pdf.
- Brehm, S., & Magnusson, H. (2023). *Supply Chain Screening: Forced Labour at Battery and Electric Bus Manufacturers in China – An Online Document Analysis*. GlobalWorks, June 2023. Available at: <https://www.globalworks.se/wp-content/uploads/2023/06/forced-labour-electric-buses.pdf>.
- Human Rights Watch. (2024). *Asleep at the Wheel: Car Companies' Complicity in Forced Labor in China*. Available at: https://www.hrw.org/sites/default/files/media_2024/01/china0224web_1.pdf.
- Clean Energy Council. (2022). *Addressing Modern Slavery in the Clean Energy Sector*. Available at: <https://assets.cleanenergycouncil.org.au/documents/resources/reports/Addressing-Modern-Slavery-in-the-Clean-Energy-Sector.pdf>.

OFFICIAL: Confidential

For this reason, I have identified procurement of electric vehicles and related technology as a High Modern Slavery Risk procurement for NSW Government agencies. This identification is set out in the GRS [Inherent Risk Identification Tool](#) ('IRIT'), which was published in January 2024 to assist relevant entities with implementation of the *Guidance on Reasonable Steps*.

Tab 64 of the IRIT set outs that there are child and forced labour risks in multiple components of vehicle manufacturing. Notably, these include risks of child and forced labour in the production of cobalt used in producing lithium-ion ('Li-ion') batteries used in electric vehicles. The IRIT assesses the modern slavery risk associated with Heavy Vehicle procurement as 'High'. The discussion of these risks is contained in the section headed 'Weighting'. Tabs 61-67 deal with procurement of a range of vehicle types; all assess procurement risk as 'High'.

Government agencies purchasing such goods are expected to undertake 'Heightened Modern Slavery Due Diligence'. The *Guidance on Reasonable Steps* sets out in extensive detail what this involves. There is a growing suite of training and other resources available on my official website to assist agencies meet these expectations – available at: <https://dcj.nsw.gov.au/legal-and-justice/our-commissioners/anti-slavery-commissioner/due-diligence-and-reporting.html#%3Cb%3EGRS9>.

At present this Guidance is just that – guidance to covered entities on how to meet their legal responsibility to take reasonable steps. To date the NSW Procurement Board has not adopted a Direction mandating compliance with the Guidance. I have been working towards such a Direction with Government agencies since the last quarter of 2022.

My statutory functions and powers in respect of this matter

Section 9 of the *Modern Slavery Act 2018* (NSW) ('the Act') provides the following relevant functions of the NSW Anti-slavery Commissioner:

- 9(1)(a) to advocate for and promote action to combat modern slavery,
- 9(1)(c) to make recommendations and provide information, advice, education, and training about action to prevent, detect, investigate and prosecute offences involving modern slavery,
- 9(1)(e) to monitor reporting concerning risks of modern slavery occurring in supply chains of government agencies,
- 9(1)(f) to monitor the effectiveness of legislation and governmental policies and action in combating modern slavery,

Section 9(3) states that:

Unless the contrary intention appears, the Commissioner's functions may be exercised with respect to any 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.

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However, section 9 must be read in conjunction with section 10:

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, despite subsection (1), provide individuals and their families, friends, and advocates with information about and referral to government and non-government programs and services.

Section 10 restricts the Commissioner from exercising their functions to investigate individual modern slavery cases. It does not prevent the Commissioner from discharging their functions of monitoring reporting concerning risks of modern slavery occurring in supply chains of government agencies (section 9(1)(e)) and of monitoring the effectiveness of legislation and governmental policies and action in combating modern slavery (section 9(1)(f)), especially where the Commissioner is “considering a general issue” (section 10(1)).

Commissioner’s powers to access information in discharge of monitoring and other functions

The Act sets out a framework for the Commissioner to access information from Government agencies while discharging the Commissioner’s statutory functions. Section 14 states:

14 Co-operation between the Commissioner and New South Wales agencies

(1) Government agencies of the State and persons and bodies that provide services to, or advocate for, victims of modern slavery in the State must work in co-operation with the Commissioner in the exercise of the Commissioner’s functions.

(2) The duty to co-operate includes 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.

(5) Information must be provided in accordance with this section despite the [Privacy and Personal Information Protection Act 1998](#) and the [Health Records and Information Privacy Act 2002](#) but only to the extent that it is relevant to the exercise of a function of the Commissioner under this Act.

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Section 16 works to ensure that such information can be provided even where it may otherwise be commercial-in-confidence or disclosure could give rise to liability:

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

Section 31 of the Act, set out above, also makes clear that the Anti-slavery Commissioner can approach a government sector finance agency at any time and raise an issue “concerning the operations of the agency and identified by the Commissioner as being a significant issue”.

What can be done with any conclusions resulting from this monitoring?

Section 19(5) of the Act states that:

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.

The relevant Minister is the Attorney-General of New South Wales. The Attorney-General has not requested me to make a special report in relation to the matter you have drawn to my attention.

However, section 19(4) of the Act states that:

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.

In addition, as discussed above, under section 31 of the Act the Commissioner can raise a significant issue about a government sector finance agency’s operations with that agency.

And the Commissioner must also “regularly consult with the Auditor-General and the NSW Procurement Board to monitor the effectiveness of due diligence procedures in place to ensure that goods and services procured by government agencies are not the product of modern slavery” (section 25 of the Act).

My intended next steps

Based on the provisions discussed above, I intend to write in coming days to relevant NSW Government agencies to seek further information about the modern slavery due diligence

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steps currently in place in the procurement of electric vehicles and related infrastructure, as a general issue.

I intend to seek information that will clarify whether these Government agencies have reasonable steps in place to address these risks.

This will not constitute an investigation of a specific case of modern slavery, but rather will involve monitoring of government policies and action in relation to modern slavery risks in government agency supply-chains.

In writing to these agencies, I will draw on my statutory functions and look forward to their cooperation in accordance with their obligations under the Act, including the timely provision of relevant information I request, as provided for by sections 14 and 16 and otherwise in the Act.

In accordance with section 19(4) of the Act, I will report on any findings or conclusions from this monitoring to the Attorney-General, who is to furnish the report to the Presiding Officer of each House of Parliament.

If appropriate, I may also notify relevant agencies of a “significant issue” in their operations (under section 31 of the Act) and consult with the NSW Auditor-General and the NSW Procurement Board.

This process may take some time. I look forward to furnishing my report to the Attorney-General at the earliest practicable opportunity.

Please do not hesitate to contact me at any time if you have further questions or concerns.

Yours sincerely,



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cc The Hon. Michael Daley MP, Attorney-General of New South Wales
 The Hon. Courtney Houssos MLC, Minister for Domestic Manufacturing and Government Procurement
 Dr Joe McGirr MP, Chair of the Modern Slavery Committee
 Mr Bola Oyetunji, NSW Auditor-General

Appendix C. NSW Procurement Guidance (superseded)

Modern slavery and procurement

UPDATED: 2 FEB 2022

Guidance on steps you can take to ensure goods and services procured for government agencies are not the product of modern slavery.

Addressing modern slavery risks can be a complex process and agency responses are likely to evolve over time. The Procurement Board may issue more materials to guide agency responses to modern slavery risks in procurement.

This guidance is not exhaustive, and it is not legal advice.

What modern slavery is

'Modern slavery' is the term used to describe situations where coercion, threats or deception are used to exploit victims and undermine or deprive them of their freedom.

The NSW [Modern Slavery Act 2018](#) defines modern slavery as several types of serious exploitation, including:

- slavery, servitude, forced labour, deceptive recruiting for labour or services, forced marriage

- trafficking in persons, trafficking in children

- debt bondage

- sexual servitude

- forced child marriage

- the use of a child in the production of child abuse material and related offences

- the slavery, servitude or forced labour of a child.

Modern slavery is a global issue that is often hidden. Estimates of the number of people living in modern slavery vary. A report by the International Labour Organisation and Walk Free Foundation estimates that in 2016 over 40 million people were victims of modern slavery globally.

Modern slavery exists all over the world, including here in Australia. The Australian Institute of Criminology estimated that between 1,300 and 1,900 people were victims of human trafficking and modern slavery in Australia during 2015–16 and 2016–17.

Between July 2020 and June 2021, 224 suspected instances of modern slavery were reported to the Australian Federal Police, including 35 cases of forced labour. [Research](#) estimates that for every victim and survivor detected in Australia, 4 remain undetected.

The national strategy

The Australian Government has established a national strategy to address modern slavery. This includes:

the [Modern Slavery Act 2018 \(Cth\)](#), in force since 1 January 2019, establishes a practical risk-based framework to directly target modern slavery practices in global supply chains and support the Australian business community to identify and address their modern slavery risks.

comprehensive slavery and human trafficking offences in the criminal code.

requirements under the Commonwealth for certain entities with \$100 million or more of annual consolidated revenue to submit modern slavery statements. These can be found on the [Register for Modern Slavery Statements](#).

[National Action Plan to Combat Modern Slavery 2020–25 \(PDF\)](#), which agencies can consider when managing the risk of modern slavery in procurement.

[commonwealth guidance \(PDF\)](#) in relation to modern slavery risks.

Combating modern slavery in NSW

The NSW [Modern Slavery Act 2018](#) was passed in June 2018. Following an inquiry, the [Modern Slavery Amendment Bill 2021](#) was passed in November 2021. Most parts of the Act commence on 1 January 2022.

From 1 January 2022, the NSW Act requires reasonable steps to be taken to ensure that goods and services procured by and for government agencies are not the product of modern slavery.

Agencies are required to include these reasonable steps in their annual report, as well as action taken by the agency in relation to any issue raised by the Anti-Slavery Commissioner that year, including how recommendations of the Anti-Slavery Commissioner were addressed.

The Anti-Slavery Commissioner may complete an evaluation of an agency's response to their recommendations.

Under the NSW Act, the Anti-Slavery Commissioner also advocates for action to combat modern slavery, monitors risks, and supports victims.

Five principles for effective action

NSW Government can influence positive change through procurement. By keeping ethical considerations at the forefront of buying decisions, agencies can promote decent working conditions and human rights.

Suppliers also play an important role in addressing modern slavery risks.

An agency's approach to modern slavery risks should be underpinned by the following 5 principles which reflect the [UN Guiding principles on business and human rights \(PDF\)](#) and international best practice.

1. Prioritise risks

Adopt a risk-based approach to the procurement and supplier, as well as during the engagement.

Emphasise the importance of transparency and demonstrate a willingness to work with suppliers to address any issues.

2. Embed into business as usual

Embed ethical buying practices in business processes and organisational culture.

Update policies, procedures, and systems to reflect the agency's commitment to addressing modern slavery risks.

Use statutory declarations and contract provisions to ensure suppliers understand the agency's approach to modern slavery.

Encourage whistleblowing to identify breaches of policy and contracts.

3. Build awareness and capability

Focus on training and awareness tailored to relevant roles.

Communicate with buyers and suppliers so that everyone understands the part they can play in eradicating modern slavery.

4. Balance actions

Balanced actions can be taken that are tailored to a specific agency and procurement. Developing an effective response to modern slavery risks may take time.

Procurement and contract management activity should be proportionate to the level of risk, noting that modern slavery offence violations or non-compliance with the [Supplier Code of Conduct](#) may result in termination of the contract.

Agencies may consider the burden on small and medium enterprises (SMEs) and ensure that any information or evidence requested is proportionate to the risk.

5. Collaborate and share

Agencies are encouraged to work together and share resources and experiences to make a bigger impact and build capability. A consistent approach helps everyone to do the right thing.

Assessing modern slavery risk

There are common indicators that increase the likelihood of modern slavery risks in procurement.

Conducting a simple modern slavery risk assessment can help determine the level and nature of modern slavery risks in procurement or category.

[Download a modern slavery risk assessment template DOCX, 37.52 KB.](#)

Risks differ for each agency, procurement and category

Modern slavery risks refer to the potential for an agency to cause, contribute to, or be directly linked to modern slavery through its operations and supply chains (as set out in the [UN Guiding principles on business and human rights \(PDF\)](#)).

Agencies should assess the level of modern slavery risk as far down the supply chains as reasonably practicable.

Responsible procurement principles should be embedded into category management strategies for high-risk categories.

Prioritise actions where risk is higher

Agencies should prioritise actions informed by the outcome of the risk assessment, and where modern slavery risks are likely to be most significant and most severe.

An agency's procurement spend may help identify where the agency can make the most impact. However, high procurement spending should not be the sole factor in guiding its response.

Action should be tailored to the procurement, taking a balanced risk-based approach and not impose any unnecessary burdens that would deter a diversity of suppliers, including small and medium-sized enterprises (SMEs), from working with NSW Government.

Addressing modern slavery risks in the procurement lifecycle

Agencies can address modern slavery risks at each stage of the procurement lifecycle. The [modern slavery checklist DOCX, 33.59 KB](#) may be helpful.

Procurement practices that create downward pressure on suppliers may increase the risk of modern slavery. These include:

- short-term supplier relationships
- changes to orders or order timing
- downward price pressures
- unrealistic budgets
- volatility in order volumes and specifications

- lack of access to working capital
- labour subcontracting
- late payments
- production quotas.

Agencies can help to reduce the likelihood of contributing to these issues by implementing recommended sustainable supply chain practices such as:

- paying suppliers in fair timeframes
- avoiding undue delays to payments
- avoiding unreasonable contract variations
- avoiding shifts to less reputable suppliers.

Plan stage

Collapse All

Action 1.1. Reflect modern slavery risks in the procurement strategy

The procurement strategy should reflect the outcome of the risk assessment and identify opportunities to address modern slavery risks. It can also address:

- scope of modern slavery concerns that will be considered during the procurement process
- the standard required from suppliers
- how the agency will manage the risk of modern slavery in the procurement process
- roles and responsibilities for the modern slavery component of the procurement.

Modern slavery statements published on the Australian Border Force's [modern slavery statement register](#) can help identify baseline actions and risk mitigation measures in a particular industry.

Action 1.2. Raise awareness when engaging the market

Market engagement opportunities, such as supplier forums and market soundings can be used to raise awareness of modern slavery risks and legislative obligations. They can also help an agency:

- assess the level of market maturity in responding to modern slavery risks
- ensure that agency and suppliers' understanding of modern slavery risks are aligned
- update on any modern slavery risks not already known.

Action 1.3. Conditions for participation can emphasise the importance of a supplier's response to modern slavery risks

Agencies can consider including in the request for tender, conditions of participation relating to modern slavery risk mitigation, remediation and due diligence.

Source stage

[Collapse All](#)

Action 2.1. Use the procurement process to understand potential suppliers' responsible business practices

Agencies should clearly communicate with suppliers about expectations relating to modern slavery throughout the procurement. This can include discussions about how the agency's own expectations and demands may contribute to the risk of modern slavery.

Agencies can ask suppliers to complete the [model tender schedule DOCX, 40.31 KB](#) which has questions designed to help an agency understand a supplier's risk management processes.

Agencies should consider how a response to the model tender schedule (or equivalent) will be evaluated. The [Small and Medium Enterprise and Regional Procurement Policy](#) sets a 10% non-price sustainability criterion which can be used to assess response to modern slavery risks, as well as other government objectives.

Responses to the model tender schedule should be transparent, complete, and candid, and demonstrate a supplier's willingness to work with the government to implement and improve modern slavery risk mitigation strategies over time.

Action taken by suppliers to address modern slavery risks can vary across industries, and therefore supplier action should be tailored and effective for the relevant industry.

A tender price that is far below reasonable expectations could indicate modern slavery risks. This should be discussed further with the supplier and considered in the evaluation as appropriate.

Action 2.2. Include a modern slavery clause in contracts to keep suppliers accountable

[Model contract clauses DOCX, 68.65 KB](#) (short and long-form) are available to help agencies manage modern slavery risks during the term of a contract and keep suppliers accountable, including to notify agencies of any actual or potential instances of modern slavery.

While the model contract clauses should be tailored to specific contracts, a consistent approach across government will make it easier for suppliers, especially SMEs, tendering for multiple government contracts.

Avoid using contract clauses or statutory declarations that require suppliers to guarantee their supply chains are 'slavery free'. This approach may be counterproductive and impact the transparency of a supplier's response to meet the requirements. It may also be unrealistic for a supplier to make this guarantee.

Agencies responsible for managing the whole-of-government arrangements such as schemes and panels should consider how modern slavery risks will be addressed. This can involve:

- updating scheme rules
- discussions with suppliers
- by agreement, a contract variation to include the model contract clause
- including the model contract clause as part of any additional requirements.

Agencies buying off a whole-of-government arrangement are responsible for understanding due diligence processes under the arrangement and determining whether they are an effective response to modern slavery risks.

This may include requesting additional information from a supplier where necessary, such as a response to the model tender schedule.

Action 2.3. Work with suppliers to agree on key performance indicators relating to modern slavery

For high-risk procurements, agencies can consider including key performance indicators (KPIs) in the contract.

KPIs should provide an agreed minimum standard of supplier performance and support the continuous improvement of the supplier's response to modern slavery. KPIs can cover:

- specific actions the supplier has committed to, including any action plan
- outcomes and relevant evidence of improved business practices to address modern slavery risks, for example, measuring changes in awareness of modern slavery among key suppliers
- for suppliers that are more mature in their response to modern slavery risks, evidence that findings from ongoing monitoring and review processes have fed into business practices and improvements
- a supplier's audit, inspection, and review practices.

As noted above, certain KPIs in a contract may increase the risk of modern slavery, for example, relating to tight production deadlines which may unintentionally increase pressure on workers who are producing the goods on production lines.

Action 2.4. Request a modern slavery action plan for high-risk procurements

Agencies can require suppliers to develop an action plan to address modern slavery risks for high-risk procurements, with measurable outcomes and deadlines, to monitor progress and review impacts.

For example, an action plan may include supply chain mapping and set out the supplier's commitments over the next 12 months and align KPIs with those commitments.

Manage stage

[Collapse All](#)

Action 3.1. Support suppliers to develop an effective approach to managing modern slavery risks

A positive and collaborative relationship, where an agency proactively engages with suppliers, can encourage transparency, and help improve a supplier's response to modern slavery risks.

Where a contract was entered into before 1 January 2022, agencies are encouraged to embed discussions about modern slavery risks into existing contract management processes. The agency may also incorporate the model contract clause into any contract extensions, upon agreement with the supplier.

The [Supplier Code of Conduct](#) also sets out expected supplier behaviour. Suppliers must provide a fair and ethical workplace that is free from bullying, harassment, victimisation and abuse. Suppliers must also take reasonable action to ensure that businesses within their supply chain are not engaged, or complicit with, human rights abuses such as forced or child labour.

Failure by a supplier to comply with the code may result in:

- termination of contracts
- loss of future work
- suspension or removal from prequalification schemes and panel arrangements
- referral for criminal investigation.

Action 3.2 - Monitor modern slavery risks on an ongoing basis to identify new concerns

Discussing modern slavery risks at review meetings is an opportunity for the agency to become aware of new issues, including any weaknesses identified in the supplier's initial response to managing modern slavery risks.

Agencies can seek input from suppliers to monitor the risks of modern slavery in procurement, through one or a combination of the following:

The [simple modern slavery risk assessment DOCX, 37.52 KB](#) to help assess the effectiveness of supplier action and identify any new modern slavery risks during the term of a contract.

The supplier questionnaire in the [model tender schedule DOCX, 40.31 KB](#) to help ensure suppliers are taking seriously the need to develop their response to modern slavery. Responses to the model tender schedule or similar self-assessment questionnaires (covering statistics on employment, complaints, monitoring, and measures to improve human rights protections) can be used to identify areas for improvement. An agency can ask a supplier to include supporting documentation with its response.

Audits or site inspections (random and scheduled, usually undertaken by a third party) to better understand what is happening in practice. Agencies can discuss with NSW Procurement any coordinated

processes for audits and site inspections.



Implementation tip

Third-party audits of key suppliers (or potential suppliers) can be a useful way to better understand the experience of workers in the supply chain.

Agencies can cross-check audit results with other sources of information about the supplier, such as NGO reports.

Responding to modern slavery

There is no one correct response to a suspected instance of modern slavery. An agency's response should be tailored and appropriate to the situation and may be impacted by factors such as:

- location (whether in Australia or overseas)

- the extent to which the supplier or agency knew about or caused it

- the agency's relationship to modern slavery (whether it has occurred in its own operations, or in the operations or supply chains of one of its suppliers).

An agency's response can involve the following steps:

Collapse All

1. Understand and protect the rights of the victim

The agency's priority must be to act in the best interests of the suspected victim and prevent further harm.

Where there is a risk of immediate harm agencies may involve law enforcement. Call the Australian Federal Police (131 237) or call triple zero (000).

Generally, information about a victim should only be disclosed with that person's informed consent. Some actions could have unintended negative consequences for the victim, such as industry blacklisting, so it is important to carefully consider the response.

It is also possible the agency is not fully aware of all victims involved. There could be unintended consequences for others, for example, exploitation involving victims on other sites or factories of a supplier.

Where a child may be at risk of significant harm, comply with the [mandatory reporting guidelines](#) and call the Child Protection Helpline on 132 111.

As well as providing informed consent to any action that involves them, victims of modern slavery should be provided with independent advice and the person's privacy should be protected.

2. Develop a plan

The agency working with the supplier can develop a plan to address instances of modern slavery, highlighting any audit findings and root causes and giving the supplier the opportunity to implement an appropriate response.

The plan should include:

- specific actions (corrective and preventative) to remedy any finding, including responsibilities
- deadlines or milestones
- verification of completed actions and potential consequences where the action is not taken.

Agencies should monitor the response and consider whether it is effective and meets contractual requirements.

3. Seek support

Depending on the situation, different roles within an agency (for example, procurement officers, contract managers, human resources and legal teams) may need to work together.

Agencies can also seek advice from the Anti-Slavery Commissioner.

Agencies should report any actual or suspected instances of modern slavery in procurement to NSW Procurement to support a coordinated NSW Government response, particularly where a supplier works with more than one agency or where the suspected modern slavery has occurred overseas.

The response may involve partnering with a trusted NGO or civil society group that understands the local context.

The United Nations High Commissioner for Human Rights has produced a list of organisations, including NGOs and foundations who work to counter modern slavery in high-risk industry sectors and countries. For more information, visit the [OHCHR website](#).

4. Carefully consider contract termination

A supplier's identification of an instance of modern slavery may reflect the effectiveness of the supplier's policies and procedures to identify, assess and address modern slavery.

Terminating a contract reactively can lead to suppliers withholding information and put victims at greater risk.

Maintaining transparency of issues and risks is important, and where modern slavery is identified, the aim is to work together to respond to and remediate modern slavery.

Terminating a contract should be a last resort, reserved for situations where, despite the repeated efforts from the agency, the supplier fails to engage in the required due diligence process or demonstrate a willingness to address modern slavery issues.



Before terminating a contract

Before terminating a contract, the agency should seek legal advice as well as consider the following:

Has the supplier been open and transparent?

Has the supplier taken reasonable steps to stop the abuse and support the victim?

What will happen if the contract is terminated? Is it likely to stop modern slavery or make it worse?

Finding templates and other resources

The following templates can help buyers to ask the right questions and know what to look for.

[modern slavery checklist DOCX, 33.59 KB](#)

[simple risk assessment template DOCX, 37.52 KB](#)

[model tender schedule DOCX, 40.31 KB](#)

[model contract clauses DOCX, 68.65 KB](#)

For more information, you can refer to the following resources:

[NSW Modern Slavery Act 2018 No 30](#)

[Media release: NSW Government secures landmark laws against modern slavery](#)

[Commonwealth Modern Slavery Act 2018](#)

[Commonwealth Modern Slavery Act 2018 guidance for reporting entities \(PDF\)](#)

[International Labour Organization: Forced labour, modern slavery and human trafficking](#)

[Australian Institute of Criminology: Human trafficking and slavery victimisation in Australia](#)

[Walk Free Foundation](#) guide: [Tackling modern slavery in supply chains](#) for procurement, supply chain and sustainability professionals in companies, organisations and governments.

Getting help

Modern slavery is a serious issue and it is important government agencies work together.

For more information, please contact the NSW Procurement Service Centre on [1800 679 289](tel:1800679289) or nswbuy@treasury.nsw.gov.au

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Call 1800 FREEDOM (1800 37 33 36)
for confidential support and advice
for victims of modern slavery
