

**Submission
No 16**

INQUIRY INTO REVIEW OF THE MODERN SLAVERY ACT 2018

Organisation: NSW Treasury
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Dr Joe McGirr MP
Chair, Modern Slavery Committee
Parliament House
Macquarie Street, SYDNEY, NSW 2650
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Re: Review of the NSW Modern Slavery Act 2018 (Act)

Dear Dr McGirr

NSW Treasury appreciates the opportunity to provide a submission to the review of the Act (the Review). This submission represents the views of NSW Treasury and is not NSW Government policy.

The role of NSW Treasury and NSW Procurement

NSW Treasury is the NSW Government's principal whole-of-government financial and economic adviser. Treasury provides advice to inform budget decision-making; manages the State's principal financial assets and liabilities; monitors the performance of its commercial agencies; advises on performance and financial management policies; and supports the development of policy advice and implementation of programs focused on energy, climate-change mitigation and adaptation, and the transformation to a new low-cost, clean-energy economy.

NSW Procurement sits within the Commercial group of NSW Treasury. We implement innovative, outcome driven procurement approaches to maximise value for money and make it easier to do business with government. We specialise in providing agencies with consultancy and advisory services, analytics, category management, procurement policy and access to procurement enabling technologies.

We are responsible for whole-of-government procurement policies as well as government-wide electricity, waste, professional services, contingent labour, fleet, and travel-related arrangements. We support government departments and agencies with the necessary resources and capability to achieve their business objectives within a devolved procurement framework.

Implementation of the government procurement requirements of the Act

The NSW Procurement policy team worked with the then-Department of Premier and Cabinet and the interim Anti-slavery Commissioner from 2018 onwards to prepare NSW Government agencies for the procurement impacts of the new Act. We released interim guidance on steps agencies can take to address modern slavery risks in their supply chains in January 2022 to coincide with the commencement of the Act. This is available at <https://info.buy.nsw.gov.au/resources/modern-slavery-and-procurement>.

Since August 2022, we have worked closely with the NSW Anti-slavery Commissioner to deliver further guidance, tools and support for government agencies to manage their modern slavery-related supply chain risks. The revised guidance is being finalised by the Office of the Anti-slavery Commissioner and will be available later this year.

Treasury's submission is focused on the procurement aspects of the Act and its objectives, including amendments to other legislation pertaining to modern slavery and procurement. This includes updates to the *Public Works and Procurement Act 1912* sections 171(b), 175(a) and 176(1A).

Chief Procurement Officers from lead departments were invited to contribute to this submission. We received comments from Transport for NSW and NSW Health, which have been included in this letter.

In response to the review, we provide the following comments:

1. Definition of an *organisation*

The definitions are clearly written and easy to understand. However, we suggest that the definition of *organisation* be expanded to explicitly include or exclude not-for-profit organisations (NFPs) and non-government organisations (NGOs).

2. Training to identify and address modern slavery risks should specify responsibility

Section 3(k) states the 'object of the Act is... to provide for education, training and guidance about identifying and addressing modern slavery taking place within supply chains of organisations.' The scope of the Commissioner's responsibilities is detailed at s. 12(b), which states 'the Commissioner is to... provide advice, education and training on ways to prevent modern slavery taking place and assist the victims of modern slavery.'

The Commissioner's responsibilities do not specifically refer to education, training and guidance for identifying and addressing modern slavery risk in organisations' supply chains, including NSW Government departments and agencies. We recommend clearly stating who has responsibility to provide this training for government buyers and suppliers. Our preference is that the Anti-slavery Commissioner be responsible for implementing the mandatory training centrally, to ensure consistency across the government sector. This would also enable the Commissioner to monitor who has completed the training and identify gaps in the system from a central location.

We see this as a priority as we have received regular feedback from agencies and suppliers that there is a need for training on identifying and managing modern slavery risks. Understanding industry-specific risks is another emerging need. This is particularly the case in high modern slavery risk sectors such as information, communications and technology or construction.

Responsibility for administration and compliance in NSW Government procurement is devolved to agency heads and requirements are constantly changing. For procurement officers to understand how to effectively manage modern slavery risk they require additional support and appropriate levels of training.

3. Further scope to clarify when hotline and training will be available

Part 2, division 2, Functions of the Commissioner provides detail around the appointment, obligations and duties of the Anti-slavery Commissioner. Section 12 specifies the Commissioner's public awareness and advice functions. We believe this section could be improved by clarifying the timing to establish the public

awareness functions such as the assistance hotline addressed in s. 12(d) which states that the Commissioner is:

to establish and maintain a hotline (or utilise a hotline maintained by another person or body) for provision of advice and assistance to children and other persons who are, or may be, victims of modern slavery.

Clarity on when the public awareness functions will be established may be beneficial for entities in developing their modern slavery due diligence strategies.

4. Opportunity to provide Commissioner with further powers to enforce compliance

Part 2, division 2 also details the obligations on Government agencies to cooperate with the Commissioner, and the Commissioner's incidental powers to undertake his duties. This could be strengthened by also providing the Commissioner with powers to enforce his Strategic Plan or Guidance on Reasonable Steps within public agencies.

5. Consultation with NSW Auditor General and Procurement Board

Section 25 *Government agency procurement* refers to the obligation of the Commissioner to consult with the Auditor General and the NSW Procurement Board to monitor the effectiveness of due diligence procedures. We suggest the word "reasonable" be inserted before "due diligence" in this section. This is necessary as reasonable due diligence measures will (and should) look different for each lead department and agency. For example, procurement by NSW Health may require a higher level of due diligence than those by NSW Treasury due to the nature of the goods and services procured.

Other comments

1. Further support for intergovernmental consistency and information sharing

Delegates from NSW Procurement attend an Australian intergovernmental network on modern slavery and public procurement. We support continued transparency and sharing of information across jurisdictions and recommend further support from the NSW Government to facilitate this.

2. Agency implementation of the requirements of the Act

The Act requires agencies to manage and report on modern slavery supply chain risks and mitigations. This may include dedicated modern slavery procurement officers and teams, digital systems, third-party auditors and due diligence activities such as inspections of supplier facilities both locally and in other countries.

Such interventions are becoming commonplace for large businesses that manage international supply chains and are obliged to report on modern slavery risks across multiple jurisdictions. The NSW Government manages comparable – and in some cases larger – supply chains with similar inherent modern slavery risks as these organisations.

Potentially, the Act and the associated 'reasonable steps' defined by the Anti-slavery Commissioner could require greater due diligence by NSW Government agencies than is currently placed on large businesses.

Agencies manage budgets and prioritise expenditure according to strategic and operational priorities. Management of procurement risks, including modern slavery in supply chains, needs to be effectively balanced against primary service delivery, organisational priorities and other resourcing requirements.

3. Upcoming guidance on reasonable steps

The NSW Anti-slavery Commissioner led a procurement working party during 2023 to develop new comprehensive guidance on reasonable steps to address modern slavery. The guidance is likely to introduce new reporting requirements for government agencies and should be available later this year. We believe this will improve the current standards of managing modern slavery risks in NSW Government supply chains.

Sincerely

Michael Coutts-Trotter
Secretary, NSW Treasury

27 October 2023