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Provost & Deputy Vice-Chancellor

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Dr James Cockayne  
NSW Anti-slavery Commissioner  
c/- NSW Department of Communities and Justice

By email: [antislavery@justice.nsw.gov.au](mailto:antislavery@justice.nsw.gov.au)

Dear Commissioner,

The University of Sydney congratulates you on your recent appointment as NSW Anti-slavery Commissioner under the *Modern Slavery Act 2018 (NSW)* ('the NSW Act'). We welcome the opportunity to make a submission in response to Discussion Paper #001 on **NSW public procurement and modern slavery** issued in September 2022 ('Discussion Paper'), which is set out in **Attachment A**.

The University of Sydney has a strong and multidimensional relationship with the NSW Government, partnering with many agencies through our work in research and education. In preparing this submission, we have drawn on two distinct roles the University plays in addressing modern slavery. First, our feedback is informed by our experience as an organisation that is committed to respecting human rights and is taking meaningful action to address the global human rights issue of modern slavery. The University is a reporting entity under the *Modern Slavery Act 2018 (Cth)* ('the Cth Act'). This submission draws on the lessons learnt from embedding awareness and respect for human rights across our policies, processes and governance.<sup>1</sup> Second, we draw on the expertise of members of our academic staff to convey their insights about modern slavery and human rights due diligence. A list of academic contributors to our submission is included at **Attachment B**.

**Key themes and recommendations:**

The Discussion Paper sets out seven key issues and corresponding propositions regarding the approach to modern slavery due diligence within the NSW public procurement framework ('the Framework'). Our detailed response to these seven propositions is set out in Attachment A, with the key themes and recommendations highlighted below:

1. **The NSW Anti-slavery Commissioner has an important role in supporting government procurers and their suppliers to adopt best practice on identifying and addressing modern slavery in their operations and supply chains.** While addressing modern slavery is the shared responsibility of government, business, not-for-profit and civil society, in keeping with the state duty to protect human rights (including the prohibition on slavery), the NSW Anti-slavery Commissioner has a unique role and opportunity to enable strong and effective compliance across sectors by:
  - **Publishing and maintaining up-to-date centralised lists of high-risk products, sectors, suppliers and supply-chains**, in conjunction with academia and civil society, drawing on risk information from a wide range of both government and non-government sources.

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<sup>1</sup> The Commonwealth Attorney-General's Department is currently undertaking a review into the first three years of operation of the *Modern Slavery Act 2018 (Cth)*. The University provided a detailed submission in response to the issues paper released as part of that review, which is available here: <https://www.sydney.edu.au/about-us/governance-and-structure/university-policies.html>.



- **Developing a centralised portal for reporting entities and their suppliers to access guidance materials, toolkits and training to support capacity building on modern slavery due diligence.** Such materials should include guidance on effective stakeholder engagement and be harmonised wherever possible with relevant requirements in other jurisdictions. The portal will particularly address the need for capacity building and support for suppliers of various sizes who may seek to work with NSW Government reporting entities.
  - **Developing shared due diligence mechanisms such as model contract clauses, data capture and analysis and supplier questionnaires.** This should be done in conjunction with NSW public procurement staff and their suppliers. This will ensure due diligence mechanisms are effective and can be easily implemented and monitored, whilst ensuring that efforts to address modern slavery do not hamper or hinder its identification.
  - **Facilitating partnerships to enable capacity building on stakeholder engagement in accordance with the UN Guiding Principles on Business and Human Rights (UNGPs).** This may be done through the establishment of sector-specific forums or working groups with relevant stakeholders. Lessons learnt from such processes should be identified and fed into broader understandings of modern slavery risk assessment and due diligence.
  - **Facilitating collaborations and capacity building on the provision of remedy in accordance with the UNGPs,** including between government, civil society and commercial entities for the development of mechanisms for access to remedy in specific sectors.
2. **We broadly support the propositions set out in the Discussion Paper** which, we note, have been developed in line with the **UNGPs**. We recommend due diligence provisions be supplemented by comprehensive guidance and capacity building for both procurers and suppliers on what constitutes effective modern slavery due diligence which considers the following:
- a harmonised approach to due diligence provisions that is aligned with developments in other jurisdictions and international best practice;
  - the need for further tailored guidance on contract and risk identification and management, which acknowledges supplier size and capacity to comply; and
  - the importance of building a shared understanding on the role and responsibilities of NSW government entities and their suppliers to provide access to remedy as part of their modern slavery due diligence.

By modelling best practice through its own procurement standards and practices, the NSW Government can play a pivotal leadership role in driving the significant behavioural changes it seeks to achieve in its suppliers. This is especially the case in high-risk sectors where the NSW Government has significant purchasing power and influence (i.e. health sector, ICT, apparel, renewable energy). We look forward to engaging with the NSW Government and supporting the NSW Anti-Slavery Commissioner in achieving this important objective.

We hope that our input has been helpful. If further information is required, please do not hesitate to contact us at [anti.slavery@sydney.edu.au](mailto:anti.slavery@sydney.edu.au). We would, for example, be more than happy to arrange a face-to-face or online meeting with representatives from our modern slavery team and members of our academic staff.

Yours sincerely,

(signature removed)

**Professor Annamarie Jagose**

#### **Attachments**

**A:** The University of Sydney submission to the NSW Anti-slavery Commissioner in response to Discussion Paper No. 001

**B:** List of contributors to the University of Sydney's submission.



**The University of Sydney submission to the NSW Anti-slavery Commissioner in response to Discussion Paper No. 001, December 2022**

The University’s responses to the Commissioner’s seven propositions that will form the basis for embedding modern slavery due diligence in the NSW public procurement framework are summarised in the table below.

NSW Issue 3.1.1	Summary of NSW Anti-slavery Commissioner Proposition
<b>PART 3.1: PLAN</b>	
<p><i>What is a ‘product of modern slavery’?... Is there some content threshold below which a downstream good or service should not be considered a ‘product of modern slavery’? How many tiers back in the supply-chain are NSW public procurers expected to look for modern slavery?</i></p>	<p>Any good or service made in whole or in part by modern slavery, at any tier upstream.</p>
<b>The University’s response</b>	
<p>We agree with this proposition. It is consistent with the UNGPs and the Commonwealth Guidance for Reporting Entities under the <i>Modern Slavery Act</i> (‘the Cth Guidance’) and is the approach the University is taking to its own modern slavery due diligence. Further, it is preferable for guidance to develop in a manner that is consistent with emerging good practice internationally. Noting the existence of and movements toward the introduction of ban lists and orders to prohibit importation of goods in other jurisdictions<sup>1</sup>, NSW should look to those jurisdictions to learn from their experience in implementing such provisions and supporting companies to comply with such orders.</p> <p>We note also that suppliers of goods and services, regardless of whether they operate in other jurisdictions, increasingly need to monitor emerging international human rights regulations (e.g., in the EU, Canada, US and Germany) to carry out due diligence on their business relationships and meet the expectations of partners and customers.</p> <p>We note however that supply chain mapping, critical to an entity identifying and understanding their relationship to risks, is in its infancy in corporate Australia. More than 400 modern slavery statements under the Cth Act, including by the ASX 100, show limited disclosure of critical details about reporting entities’ supply chain, such as the number of suppliers or their distribution by country.<sup>2</sup></p> <p>Risk identification is further limited beyond Tier 1 of the supply chain, as demonstrated by research from the University of Sydney’s Law School and Business School.</p>	

<sup>1</sup> See for instance the US Uyghur Forced Labour Prevention Act (UFLPA) which was signed into law on 23 December 2021: <https://www.cbp.gov/trade/forced-labor/UFLPA>, and the EU proposal to ban products made with forced labour, available at: [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_5415](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_5415).

<sup>2</sup> International Justice Mission, *Spot Fires in Supply Chains: An analysis of Australian corporate modern slavery statements and recommendations for extinguishing risk through protecting workers in South Asia*, 2022, 22; Pham, Cui & Ruthbah, *Modern Slavery Disclosure Quality Ratings*, 17.

Swagota Kotoky’s research<sup>3</sup> shows that only one of the ASX 100 entities specifically reported that they had commenced mapping some of their Tier 2 suppliers while initial analysis<sup>4</sup> of the second reporting cycle indicates the majority of reporting entities do not disclose actions to address risks beyond the first tier.

An analysis of over 400 modern slavery statements shows a positive correlation between disclosure of extended supply chain risks and actions taken to address risks. Reporting entities that disclosed risks beyond Tier 1 were more likely to have due diligence and remediation measures in place, including having consulted with at least one potentially affected group in the risk assessment process.<sup>5</sup>

NSW Issue 3.1.2	Summary of NSW Anti-slavery Commissioner Proposition
<p><i>Risk identification and prioritisation: How should NSW public procurers identify and prioritise risk? Should they focus due diligence efforts first on specific products, suppliers, commodities or industries? Or according to spend?</i></p>	<p>Focus on modern slavery risks to people, assessed through ongoing ‘salience’ analysis. To facilitate this, task the Anti-slavery Commissioner to identify higher risk products, suppliers or supply-chains.</p>

**The University’s response**

We agree with the proposition as set out in the Discussion Paper, and emphasise the importance of a focus on ‘risk to people’, which is consistent with the approach to human rights due diligence as set out in the UNGPs. There is a clear need to provide centralised information on modern slavery risks that is reliable, evidence-based and regularly reviewed and updated in response to changing risk profiles, such that all procurers and buyers, regardless of their size or capacity, are able to access the same risk information.

Learning from the experience of reporting under the Cth Act, modern slavery reporting by Australia’s largest companies<sup>6</sup> and entities in diverse sectors from seafood and horticulture to apparel and healthcare<sup>7</sup> largely reflects a lack of effective action to identify and address modern slavery.

The NSW public procurement framework should establish clear risk identification and reporting standards and provide sector-specific guidance to better enable reporting entities and their suppliers to identify and assess salient modern slavery risks specific to their sector.

The Anti-slavery Commissioner should lead the development of these standards, informed by meaningful engagement with civil society and the university sector and academic experts on modern slavery risks, particularly in relation to modern slavery data, effective compliance measures, sector-specific risks, and risks related to vulnerable groups (including international students and temporary visa holders). This would enable both the development of evidence-based sector-specific guidance and drive strong compliance with the Framework.

We recommend that in compiling centralised information regarding higher risk products, suppliers or supply chains, that the Anti-slavery Commissioner should work with academia and civil society to develop contextual and sector-specific information, which is evidence-based and regularly reviewed and updated in response to emerging and changing risks.

<sup>3</sup> Swagota Kotoky, ‘An evaluation of the implementation of Australia’s anti-modern slavery laws by the ASX 100 companies’, (LLM Thesis, The University of Sydney, 2022) 128-129, 134-137.

<sup>4</sup> Forthcoming, *An investigation of modern slavery risk mitigation in supply chains: A natural language processing approach*, Bhattacharjya J, Sydney Business School/Business School Pilot Research Grant.

<sup>5</sup> International Justice Mission, *Spot Fires in Supply Chains*, 8.

<sup>6</sup> Alexander Coward, *Moving from paper to practice: ASX200 reporting under Australia’s Modern Slavery Act*, Australian Council of Superannuation Investors, 2021; Nga Pham, Bei Cui & Ummu Ruthbah, *Measuring Disclosure Quality of Modern Slavery Statements: ASX300 Companies*, Monash University Centre for Financial Studies, 2021.

<sup>7</sup> Amy Sinclair & Freya Dinshaw, *Paper Promises? Evaluating the early impact of Australia’s Modern Slavery Act*, Human Rights Law Centre, 2022.

NSW Issue 3.2.1	Summary of NSW Anti-slavery Commissioner Proposition
<b>PART 3.2: SOURCE</b>	
<p><i>What indicators of effective due diligence and modern slavery risk management should NSW public procurers look for when evaluating suppliers? Does this depend on the risk in question and/or the capabilities of the supplier?</i></p>	<p>Procurers should evaluate suppliers based on six areas of their management of modern slavery risks: 1) governance; 2) stakeholder engagement; 3) risk identification and prioritisation; 4) acting on identified risks; 5) monitoring and evaluating effectiveness in addressing risks; 6) providing and enabling remedy. Which steps are “reasonable” in each area will depend on the salience of the risk, the involvement of the procurer in the modern slavery risk, and the capabilities of the supplier.</p>
<b>The University’s response</b>	
<p>We agree with this proposition, which presents a robust approach to modern slavery due diligence that is consistent with emerging best practice and guidance. We support the critical role of the Anti-slavery Commissioner in developing tailored toolkits and guidance materials for NSW reporting entities and their suppliers in this regard. We consider that meaningful action on modern slavery through public procurement and, by extension, through business operations and supply chains, requires an approach that is risk-based, consistent, evidence-based and context-specific, all of which are reflected in this six-step approach.</p> <p>A review of the ASX 100 modern slavery statements under the Cth Act by the Sydney Law School’s Master of Laws (Research) student Swagota Kotoky shows that most reporting entities “used their discretion to pick and choose” their definition of due diligence and corresponding actions, with few statements reflecting stakeholder consultation, integration of risk assessments into governance mechanisms or the use of leverage to mitigate adverse human rights impacts, key tenets of the UNGPs.<sup>8</sup></p> <p>One area where further work may be required concerns principle 18 of the UNGPs, which calls for any assessment of human rights risks by business enterprises (which would include modern slavery risks) to “involve meaningful consultation with potentially affected groups and other relevant stakeholders, as appropriate to the size of the business enterprise and the nature and context of the operation.”<sup>9</sup> We note this principle is incorporated throughout the proposed six criteria for the evaluation of suppliers’ management of modern slavery risks, as set out in Part 3.2.1 and in Annexure 2 of the Discussion Paper.</p> <p>For many businesses, this would be a gap in current practice, and we submit that the NSW Anti-slavery Commissioner is best placed to provide guidance to reporting entities and set standards and clear expectations for business enterprises that will be suppliers to reporting entities on how to engage and work with affected stakeholders and their representatives. The NSW Anti-slavery Commissioner could also play a leading role in this regard, including through the establishment of forums or working groups to facilitate such engagement and ensure that lessons learnt are identified and feed into broader understandings of modern slavery risk assessment and due diligence.</p>	
NSW Issue 3.2.2	Summary of NSW Anti-slavery Commissioner Proposition
<b>PART 3.2.2: Contracting</b>	
<p><i>What contracting arrangements are “reasonable steps” to remove products of modern slavery from NSW public procurement?</i></p>	<p>Contracting should not contribute to modern slavery risks (for example by purchasing at a price that does not permit payment of a living wage). Contracting should create leverage and opportunities for</p>

<sup>8</sup> Swagota Kotoky, ‘An evaluation of the implementation of Australia’s anti-modern slavery laws by the ASX 100 companies’, (LLM Thesis, The University of Sydney, 2022) 155.

<sup>9</sup> Guiding Principles on Business and Human Rights, United Nations Human Rights Office of the High Commissioner, 2011, Principle 18(b).

collaboration with suppliers to promote modern slavery prevention, mitigation and remedy – and not only create a basis for termination or suspension. Contracting should create enforceable performance conditions, and not rely only on warranties or certification.

**The University’s Response**

We agree with this proposition, which is consistent with the UNGPs.

In our experience, changes in corporate and commercial practice arising from the introduction of the Cth Act indicate a divergence emerging in legal approaches to contracting arrangements with suppliers to address the risks of modern slavery, or respond to actual instances of modern slavery. We support the views concerning the significant role of contracting in addressing and mitigating modern slavery risks, as set out in the Discussion Paper.

The Anti-slavery Commissioner has a critical role to play in driving a shared understanding of the role of contract clauses in supplier and other agreements and should develop guidance materials and model contract clauses to address key issues such as risk in different contexts; enable leverage as appropriate to the relationship, and address actual instances of modern slavery, with a focus on the protection of people at risk of harm. Contract clauses should also facilitate management and oversight by contract managers through the inclusion of specific risk indicators that set standards to be adhered to or stipulate what information ought to be provided and when.

The Anti-slavery Commissioner can support the promulgation of this shared understanding amongst NSW government entities and their suppliers, through their engagements and communications.

**NSW Issue 3.3.1**

**Summary of NSW Anti-slavery Commissioner Proposition**

**PART 3.3: MANAGE: 3.3.1 - Leverage**

*What “reasonable steps” are required of procurers to act on identified risks during contract management?*

NSW public procurers should build and use leverage to address modern slavery risks within procurement relationships. This includes use of both contractual (e.g. Supplier Code of Conduct) and non-contractual mechanisms (e.g. supplier training, active engagement, remediation of business practices, policy engagement). Termination or suspension should be considered only where leverage is unavailable or proves ineffective, and should itself be considered as a source of leverage.

**The University’s Response**

We agree with this proposition, which is consistent with the UNGPs. To deliver on this proposition, we support the critical role of the Anti-slavery Commissioner in developing tailored toolkits and guidance materials for NSW reporting entities and their suppliers, to support the growth of a shared understanding of the role of both procurers and suppliers in managing these risks. As noted at 3.2.2 above, contract clauses should also facilitate management and oversight by contract managers through the inclusion of specific risk indicators which set standards to be adhered to or stipulate what information ought to be provided and when.

To drive successful supplier engagement and the reduction of modern slavery risks as the intended outcome, procurers should ensure that modern slavery due diligence requests are integrated and consistent with other elements of the contract management process and relationship.

NSW Issue 3.3.2	Summary of NSW Anti-slavery Commissioner Proposition
<b>PART 3.3.2: Remedy</b>	
<p><i>What “reasonable steps” are required of procurers to remedy instances of modern slavery in supply-chains when they are identified?</i></p>	<p>NSW public procurers should provide or enable effective remedy if they contribute to, or are linked to, modern slavery in their supply-chains. This could include supporting engagement with judicial and non-judicial grievance mechanisms, including the Office of the Anti-slavery Commissioner and the hotline mandated by the <i>Modern Slavery Act 2018</i> (NSW), and the Australian National Contact Point for Responsible Business Conduct. In some cases, procurers may wish to consider collective enabling of remedy, including through cooperation with commercial peers and civil society organisations.</p>
<b>The University’s Response</b>	
<p>We support this proposition which is consistent with the UNGPs. To deliver on this proposition, we support the critical role of the Anti-slavery Commissioner in driving education and awareness and a shared understanding for NSW reporting entities and their suppliers of their obligations and responsibilities in this regard.</p> <p>NSW public procurers should be encouraged to be transparent in disclosing any identified instances of modern slavery. This would enable the Anti-slavery Commissioner’s Office to consolidate all such instances across the state and accordingly propose industry/sector/commodity-specific remedial measures in consultation and collaboration with peak bodies in procurement such as the Chartered Institute of Procurement &amp; Supply (CIPS) and The Australasian Procurement and Construction Council Inc (APCC).</p> <p>The Anti-slavery Commissioner should facilitate collaborations between government, civil society and commercial entities with respect to the provision of remedy in sector-specific areas.</p>	
NSW Issue 3.4	Summary of NSW Anti-slavery Commissioner Proposition
<b>PART 3.4 COOPERATE</b>	
<p><b>3.4:</b> <i>How can NSW public procurers cooperate to more effectively address modern slavery risks in procurement?</i></p>	<p>NSW public procurers should work with the Anti-slavery Commissioner to explore benefits of cooperation in each phase of procurement (Plan, Source, Manage), for example through joint risk analysis, a shared supplier questionnaire infrastructure, common contract performance conditions, shared performance monitoring and active engagement capacity.</p>
<b>The University’s Response</b>	
<p>We agree with this proposition and support the critical role of the Anti-slavery Commissioner in developing shared due diligence mechanisms such as data analysis and supplier questionnaires for NSW reporting entities and their suppliers in this regard. Such an approach will reduce the burden on individual entities, and ensure that a focus on risks to people is embedded in the design of any due diligence processes that are developed. It will also facilitate regular review and provide for agility in responding to emerging due diligence needs in response to a changing modern slavery risk environment.</p>	



## Contributors to the University of Sydney's submission

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### Contributors to the University of Sydney's submission

Our submission was co-authored by the University's Modern Slavery Unit Director, Esty Marcu, and Senior Human Rights Advisor, Nicole D'Souza, along with the following academic contributors.

The [Modern Slavery Unit](#) provides a University-wide strategic approach to identifying and addressing modern slavery risks, embedding respect for human rights across our governance, policy and operational settings. The Unit also connects academics with business, government and civil society, enabling opportunities for collaboration and innovation on business and human rights.

#### **Dr Jyotirmoyee Bhattacharjya**

[Jyotirmoyee Bhattacharjya's](#) research and PhD supervision projects focus on modern slavery risk management in global supply chains and circular supply chains for waste management. Her research on modern slavery risk management utilises natural language processing (NLP) and deep learning (DL) techniques.

#### **Tarang Jain**

Tarang Jain is a PhD candidate with the University of Sydney's Institute of Transport and Logistics Studies, focused on modern slavery risk mitigation strategies for IT and telecommunications sector supply chains. He holds a Bachelor of Engineering in IT and a Master of Commerce in Information Systems. Tarang is a seasoned procurement practitioner with experience in retail, not-for-profits, consulting and semi-conductors.

#### **Swagota Kotoky**

Swagota Kotoky's recent research focused on the implementation of the *Modern Slavery Act 2018* by the ASX100 in their first year of reporting. She received her Master of Laws (Research) from the Faculty of Law, University of Sydney and has more than 18 years of experience in law, including as a litigator as well as corporate counsel for large multinational corporations.