**Modern Slavery Model Contract Clause**

**Guide Note for Agencies**:

**Commonwealth**

In summary, the Commonwealth’s *Modern Slavery Act 2018* (Commonwealth MSA) requires a business to annually report on the risks of modern slavery in their operations and supply chains (including actions taken to assess and address those risks) if it has consolidated revenue in its annual accounting period of at least AUD$100 million. Eligible businesses that do not have to report may elect to do so voluntarily). The Commonwealth MSA mandates the content for required modern slavery statements. Modern slavery statements are required to be made publicly available and are published on the Commonwealth’s Modern Slavery Statements Register, maintained by the responsible Minister.

A broad objective of the legislation is to encourage larger businesses and Government agencies to describe the risks of modern slavery in their supply chains and the actions they have taken to respond to those risks, including any remediation processes, recognising that this is likely, in many instances, to be a complex and lengthy process.

**NSW**

With the passage of the *Modern Slavery Amendment Bill 2021* through the NSW Parliament on 19 November 2021, the *Modern Slavery Act 2018* (NSW) (NSW MSA) is due to commence on 1 January 2022. The NSW MSA will impose due diligence obligations on government agencies to report on steps taken to ensure the goods and services they procure are not the product of modern slavery, but does not specifically impose obligations on non-government agencies.

**Government agencies’ due diligence obligations**

The NSW MSA, once commenced, will impose certain due diligence obligations on government agencies under the *Public Works and Procurement Act 1912*, the *Government Sector Finance Act 2018* and other legislation to be amended by the NSW MSA.

Once relevant provisions of the NSW MSA commence, government agencies will be required, as part of their annual reports, to report on steps taken to ensure the goods and services they procure are not the product of modern slavery. The effectiveness of their modern slavery due diligence processes will be monitored by the Anti-slavery Commissioner (ASC), the Auditor-General and the NSW Procurement Board.

In establishing such processes, agencies will need to take account of relevant guidance issued by the ASC and any relevant Procurement Board directions that apply to the agency concerned. (Not all government agencies under the NSW MSA will be subject to Procurement Board directions because the NSW MSA defines “government agency” more broadly than the *Public Works and Procurement Act 1912*.) Pending any such guidance, agencies are referred to the Commonwealth’s Guidance for Reporting Entities (consultation draft, referable to the *Modern Slavery Act 2018* (Cth)), available at <https://www.homeaffairs.gov.au/how-to-engage-us-subsite/files/draft-modern-slavery-act-reporting-entity-guidance.pdf>.

A consequence of these agency obligations is that suppliers who are not required to report under the modern slavery legislation may nonetheless be required to implement sufficient due diligence processes to enable customer agencies to discharge their own statutory obligations. (The position may be similar for the private sector, in that small businesses may find that they need to meet due diligence requirements imposed on them by larger suppliers, as a consequence of larger suppliers being required to report under the legislation.)

**Scope of reasonable inquiries of suppliers**

An agency’s inquiries of its suppliers with regard to actual or suspected occurrences of modern slavery should ordinarily not seek personal information about individuals (in summary, information about an individual from which that individual’s identity is apparent or can be reasonably ascertained) unless the agency has powers to obtain and deal with personal information in these circumstances without breaching applicable privacy legislation. If suppliers wish to report cases about individuals for further investigation they should be referred to the NSW Police or Australian Federal Police, as appropriate.

**NSW Anti-slavery Commissioner**

The NSW legislation also establishes an ASC, with functions that include:

> promoting action to combat modern slavery,

> identifying and assisting victims,

> providing information, advice and guidance eg in the form of codes of practice;

> providing a general information and referral service for individuals; and

> monitoring reporting on risks of modern slavery in the supply chains of government agencies and the effectiveness of government policies and action in combating modern slavery.

**Model clause**

To support agencies’ due diligence processes, a model Modern Slavery clause (in long and short form) has been developed for inclusion in agencies’ new procurement contracts or as a variation to existing procurement contracts.

The long form clause has been developed for procurements involving larger suppliers, high value contracts and/or where an agency has identified there is a high risk of modern slavery in the relevant procurement. When determining whether a suppler is a large supplier, consider amongst other things whether the supplier is a “reporting entity” required to prepare a modern slavery statement under the Commonwealth MSA.

The short form clause is simpler and more focussed on information-sharing and cooperation. Refer to the long form clause to identify the matters omitted from the short form version.

The model clause is not mandatory. Agencies should consider if it is appropriate for their procurement and re-frame it as necessary on a case-by-case basis, having regard to matters such as:

> agencies’ duties to ensure appropriate due diligence with regard to their supply chains;

> general government procurement policy objectives of not overburdening suppliers and ensuring that the compliance burden is, so far as possible, matched to the level of risk and the size of the supplier’s business;

> the supplier’s capacity to meet the particular requirements imposed, for example, to develop policies and respond to modern slavery incidents in its supply chains;

> the compliance cost impact for the supplier; and

> the need to avoid duplicating the requirements of the modern slavery legislation when requiring information from suppliers about their activities in relation to modern slavery.

Model clause (long form)

**X. Modern Slavery**

**X.1 Definitions**

In this clause [X] (Modern Slavery):

“Anti-slavery Commissioner” means the Anti-slavery Commissioner appointed under the *Modern Slavery Act 2018* (NSW).

“Information” may include (as applicable) information about:

(a) any risks of, actual or suspected occurrences of, and/or remedial action taken in respect of, Modern Slavery;

(b) Modern Slavery policies and due diligence frameworks;

(c) Modern Slavery training programs;

(d) Supplier engagement with its supply chain and/or subcontractors in relation to Modern Slavery;

(e) Modern Slavery audits (including any independent audit of the Supplier or its owned or controlled entities) and factory inspections; and

(f) the source, place and country of origin of goods and services being supplied,

but excludes ”personal information” as defined in the *Privacy and Personal Information Protection Act 1998* (NSW) or information which tends to identify individuals.

“Modern Slavery” has the same meaning as in the Modern Slavery Laws and includes slavery, servitude, forced labour, human trafficking, debt bondage, organ trafficking, forced marriage and the exploitation of children.

“Modern Slavery Laws” means, as applicable, the *Modern Slavery Act 2018* (NSW) and the *Modern Slavery Act 2018* (Cth).

“Modern Slavery Offence” has the same meaning as in the *Modern Slavery Act 2018* (NSW).

“Modern Slavery Statement” means a modern slavery statement as required or volunteered under the *Modern Slavery Act 2018* (Cth).

“Related Offence Provisions” means those provisions of the *Crimes Act 1900* (NSW), the *Human Tissue Act 1983* (NSW) and the Commonwealth *Criminal Code* which create slavery and associated offences, as listed from time to time in Schedule 2 to the *Modern Slavery Act 2018* (NSW).

“Self-Assesses” means self-assesses using a methodology that is satisfactory to the Customer, acting reasonably.

**X.2 Compliance**

X.2.1 The Supplier warrants that, as at the date of its execution of this Contract:

(a) any Information it has provided to the Customer in relation to Modern Slavery is, to the best of its knowledge, complete and accurate.

(b) neither the Supplier, any entity that it owns or controls or, to the best of its knowledge, any subcontractor of the Supplier, has been convicted of a Modern Slavery Offence; and

(c) the Supplier is not aware of any circumstances within its operations that could give rise to an official investigation or prosecution of a Modern Slavery Offence.

X.2.2 The Supplier:

1. must not, and must take reasonable steps to ensure that any entity that it owns or controls does not, engage in any activity or practice in the nature of Modern Slavery in its operations;
2. must take reasonable steps to ensure that Modern Slavery is not occurring in its (or in any entity that it own or controls) supply chains; and
3. must otherwise comply, and take reasonable steps to ensure that any entity that it owns or controls complies, with the Modern Slavery Laws and the Related Offence Provisions, to the extent applicable.

**X.3. Information**

X.3.1 The Supplier must:

1. subject to any restrictions under any applicable laws by which it is bound, provide to the Customer, within 30 days of a request by the Customer, any Information and other assistance, as reasonably requested by the Customer, to enable the Customer to meet its obligations under the *Modern Slavery Act 2018* (NSW) and associated regulatory requirements (for example, annual reporting requirements and any NSW Procurement Board directions), including cooperating in any Modern Slavery audit undertaken by the Customer (including by a third party on behalf of the Customer) or the NSW Audit Office and providing reasonable access to the Customer’s/Audit Office’s auditors to interview the Supplier’s staff;
2. within 7 days of providing a Modern Slavery Statement to the Commonwealth, provide a copy of that Modern Slavery Statement to the Customer; and

(c) notify the Customer in writing as soon as it becomes aware of either or both of the following:

(i) a material change to any of the Information it has provided to the Customer in relation to Modern Slavery; and

(ii) any actual or suspected occurrence of Modern Slavery in its operations or supply chains (or those of any entity that it owns or controls).

X.3.2 Without limiting clause [X.3.1(b)], in providing Information to the Customer as to any actual or suspected occurrence of Modern Slavery in the Supplier’s operations or supply chains (or in those of any entity that it owns or controls), the Supplier must provide sufficient Information:

(a) to identify where the occurrence has arisen in those operations or supply chains and its scale and severity; and

(b) to enable the Customer to be satisfied, acting reasonably, that the Supplier is taking reasonable steps to respond to and address that occurrence in accordance with any internal Modern Slavery policy and procedures of the Supplier and any relevant Code of Practice/Conduct or other guidance issued by the Anti-slavery Commissioner or the NSW Procurement Board.

X3.3 Promptly following execution of this Contract, the Supplier must communicate to its relevant staff (and those of any entity that it owns or controls):

(a) the name and contact details of a specified representative of the Supplier whom staff are invited to contact in respect of any actual or suspected occurrence of Modern Slavery in the Supplier’s operations and supply chains (or in those of any entity that it owns or controls); and

(b) where to access further information about Modern Slavery Laws, including contact details for the Anti-slavery Commissioner.

X.3.4 In providing any requested Information to the Customer, the Supplier must:

(a) make such inquiries in relation to its operations and supply chains as may be reasonably expected to inform its response; and

(b) communicate openly about the extent to which the Information it provides is complete and accurate (including a statement as to the limitations of the Information provided).

X.3.5 The Supplier may provide any Information or report requested by the Customer in the form of a previously-prepared statement or re-purposed report, for example a statement provided in response to a similar request for Information from another Australian public sector agency, or refer the Customer to its publicly available Modern Slavery Statement, provided that such statement or report provides generally the same Information as that sought by the Customer.

X.3.6 The Supplier must, during the term of this Contract and for a further period of seven (7) years:

(a) maintain; and

(b) upon the Customer’s reasonable request, give the Customer access to, and/or copies of,

a complete set of records in the possession or control of the Supplier to trace, so far as practicable, the supply chain of all goods and services provided under this Contract and to enable the Customer to assess the Supplier’s compliance with this clause [X] (Modern Slavery).

X.3.7 The Supplier consents to the Customer sharing Information obtained from the Supplier in respect of Modern Slavery, including records referred to in clause X.3.6, with any other NSW Government agency or entity:

(a) for the purpose of identifying or addressing that actual or potential Modern Slavery; or

(b) to the extent the Customer has a reasonable belief of Modern Slavery actually or potentially occurring in the operations or supply chains of the Supplier or any entity that it owns or controls.

X.3.8 Without limiting any other provision of this clause X.3, the Supplier:

(a) agrees that the communication of such information to any Government Agency is a communication falling within section 30 of the *Defamation Act 2005* (NSW); and

(b) releases and indemnifies the Customer and the State of New South Wales from and against any Claim in respect of any matter arising out of such communications, including the use of such information by the recipient.

**X.4** **Modern Slavery policy, due diligence processes, staff programs and training**

X.4.1 Without affecting the generality of clause [X.2.2], if the Supplier:

(a) submits a Modern Slavery Statement; or

(b) Self-Assesses as at high risk of causing or contributing to Modern Slavery in its operations or supply chains,

the Supplier must, if, and to the extent, requested by the Customer:

(c) develop and implement, and ensure that any entity that it owns or controls and which is exposed to similar risks develops and implements, a Modern Slavery plan, which includes a strategy on how to respond to and address an actual or suspected case of Modern Slavery and due diligence processes in relation to Modern Slavery in its operations and supply chains;

(d) provide programs and training for its staff about Modern Slavery, including to:

(i) ensure compliance with the Modern Slavery Laws and any Modern Slavery strategy and due diligence processes of the Supplier;

(ii) promote awareness of the risks of Modern Slavery taking place in the Supplier’s operations and supply chains; and

(iii) develop capacity to assess and effectively address such risks; and

(e) provide the Customer with:

(i) a copy of each of the strategy and processes referred to in clause [X.4.2(d)] and Information on their implementation; and

(ii) Information on implemented training and programs.

**X.5 Subcontractors**

The Supplier must take reasonable steps to ensure that all subcontracts of the whole or part of this Contract contain Modern Slavery provisions that are reasonably consistent with the provisions in this clause [X] (Modern Slavery), having regard to the nature of the procurement.

**X.6 Response to Modern Slavery incident**

X.6.1 If the Supplier becomes aware of any actual or suspected occurrence of Modern Slavery in its operations or supply chains (or in those of any entity that it owns or controls), the Supplier must take reasonable steps to respond to and address the occurrence in accordance with any applicable policies and guidance as identified in clause [X.3.2(b)].

X.6.2 Any action taken by the Supplier under clause [X.6.1] will not affect any rights of the Customer under this Contract, including its rights under clause [X.7 (Termination on ground of Modern Slavery)].

**X.7 Termination on ground of Modern Slavery**

In addition to any other right or remedy of the Customer under this Contract or at law, including rights of termination or rights to damages, the Customer may, in its sole discretion, terminate this Contract, upon written notice, with immediate effect and without any requirement to pay compensation in respect of such termination (other than payment for work performed by the Supplier under this Contract and unpaid up until the date of termination), on any one or more of the following grounds:

(a) The Supplier has failed to disclose to the Customer, prior to execution of this Contract, that the Supplier, or any entity owned or controlled by the Supplier, has been convicted of a Modern Slavery Offence;

(b) The Supplier, or any entity owned or controlled by the Supplier, is convicted of a Modern Slavery Offence during the term of this Contract;

(c) In the Customer’s reasonable view, the Supplier has failed to notify the Customer as soon as it became aware of an actual or suspected occurrence of Modern Slavery in its operations or supply chains (or in those of any entity that it owns or controls

(d) In the Customer’s reasonable view the Supplier has failed to take reasonable steps to respond to and address an actual or suspected occurrence of Modern Slavery in its operations or supply chains (or in those of any entity that it owns or controls); or

(e) In the Customer’s reasonable view, the Supplier has otherwise committed a substantial breach (including multiple minor (non-trivial) breaches) of clause [X.2] (Compliance), clause [X.3] (Information) or clause [X.5] (Subcontractors).

Model clause (short form)

**X. Modern Slavery**

**X.1 Definitions**

In this clause [X] (Modern Slavery):

“Anti-slavery Commissioner” means the Anti-slavery Commissioner appointed under the *Modern Slavery Act 2018* (NSW).

“Information” may include (as applicable) information as to any risks of, actual or suspected occurrences of, and remedial action taken in respect of, Modern Slavery but excludes ”personal information” as defined in the *Privacy and Personal Information Protection Act 1998* (NSW) or information which tends to identify individuals.

“Modern Slavery” has the same meaning as in the Modern Slavery Laws and includes slavery, servitude, forced labour, human trafficking, debt bondage, organ trafficking, forced marriage and the exploitation of children.

“Modern Slavery Laws” means, as applicable, the *Modern Slavery Act 2018* (NSW) and the *Modern Slavery Act 2018* (Cth).

“Modern Slavery Offence” has the same meaning as in the *Modern Slavery Act 2018* (NSW).

“Modern Slavery Statement” means a modern slavery statement as required or volunteered under the *Modern Slavery Act 2018* (Cth).

**X.2 Compliance**

The Supplier warrants that, as at the date of its execution of this Contract, neither the Supplier, any entity that it owns or controls or, to the best of its knowledge, any subcontractor of the Supplier, has been convicted of a Modern Slavery Offence.

**X.3 Information**

X.3.1 The Supplier must:

1. subject to any restrictions under any applicable laws by which it is bound, provide to the Customer, within 30 days of a request by the Customer, any Information and other assistance, as reasonably requested by the Customer, to enable the Customer to meet its obligations under the *Modern Slavery Act 2018* (NSW) and associated regulatory requirements (for example, annual reporting requirements and NSW Procurement Board directions), including cooperating in any Modern Slavery audit undertaken by the Customer (including by a third party on behalf of the Customer) or the NSW Audit Office, providing reasonable access to the Customer’s/Audit Office’s auditors to interview the Supplier’s staff and, so far as these matters are known to the Supplier, disclosing the source, place and country of origin of goods and services being supplied;
2. within 7 days of providing a Modern Slavery Statement to the Commonwealth, provide a copy of that Modern Slavery Statement to the Customer; and
3. notify the Customer in writing as soon as it becomes aware of either or both of the following:

(i) a material change to any of the Information it has provided to the Customer in relation to Modern Slavery; and

(ii) any actual or suspected occurrence of Modern Slavery in its operations or supply chains (or those of any entity that it owns or controls).

X.3.2 The Supplier may provide any Information or report requested by the Customer in the form of a previously-prepared statement or re-purposed report, for example a statement provided in response to a similar request for information from another Australian public sector agency, or refer the Customer to its publicly available Modern Slavery Statement, provided that such statement or report provides generally the same Information as that sought by the Customer..

X.3.3 The Supplier must, during the term of this Contract and for a further period of seven (7) years:

(a) maintain; and

(b) upon the Customer’s reasonable request, give the Customer access to, and/or copies of,

a complete set of records in the possession or control of the Supplier to trace, so far as practicable, the supply chain of all goods and services provided under this Contract and to enable the Customer to assess the Supplier’s compliance with this clause [X] (Modern Slavery).

**X.4 Modern Slavery due diligence**

The Supplier must take reasonable steps to ensure that:

1. Modern Slavery is not occurring in the operations and supply chains of the Supplier and any entity that it owns or controls; and
2. it does not use, nor procure, any goods, plant, equipment or other materials and work or services that are the product of Modern Slavery.

**X.5 Subcontractors**

The Supplier must take reasonable steps to ensure that all subcontracts of the whole or part of this Contract contain Modern Slavery provisions that are reasonably consistent with the provisions in this clause [X] (Modern Slavery), having regard to the nature of the procurement.

**X.6 Response to Modern Slavery incident**

X.6.1 If the Supplier becomes aware of any actual or suspected occurrence of Modern Slavery in its operations or supply chains (or in those of any entity that it owns or controls), the Supplier must take reasonable steps to respond to and address the occurrence in accordance with any internal Modern Slavery strategy and procedures of the Supplier and any relevant Code of Practice/Conduct or other guidance issued by the Anti-slavery Commissioner or (if the Customer notifies the Supplier that it requires the Supplier to comply with the relevant NSW Procurement Board Code/guidance) by the NSW Procurement Board.

X.6.2 Any action taken by the Supplier under clause [X.6.1] will not affect any rights of the Customer under this Contract, including its rights under clause [X.7 (Termination on ground of Modern Slavery)].

**X.7 Termination on ground of Modern Slavery**

In addition to any other right or remedy of the Customer under this Contract or at law, including rights of termination, or rights to damages, the Customer may, in its sole discretion, terminate this Contract, upon written notice, with immediate effect and without any requirement to pay compensation in respect of such termination (other than payment for work performed by the Supplier under this Contract and unpaid up until the date of termination), on any one or more of the following grounds:

(a) The Supplier has failed to disclose to the Customer, prior to execution of this Contract, that the Supplier, or any entity owned or controlled by the Supplier, has been convicted of a Modern Slavery Offence;

(b) The Supplier, or any entity owned or controlled by the Supplier, is convicted of a Modern Slavery Offence during the term of this Contract;

(c) In the Customer’s reasonable view, the Supplier has failed to notify the Customer as soon as it became aware of an actual or suspected occurrence of Modern Slavery in its operations or supply chains (or in those of any entity that it owns or controls);

(d) In the Customer’s reasonable view, the Supplier has failed to take reasonable steps to respond to and address an actual or suspected occurrence of Modern Slavery in its operations or supply chains (or in those of any entity that it owns or controls); or

(e) In the Customer’s reasonable view, the Supplier has otherwise committed a substantial breach (including multiple minor (non-trivial) breaches) of clause [X.2] (Compliance) or clause [X.3] (Information).