# GRS Model Tender Clause – Heightened

**December 2023**

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| **Explanatory Note:** These GRS Model Tender Clauses on modern slavery have been prepared by the Office of the NSW Anti-slavery Commissioner. The GRS Model Tender Clauses are intended as a resource for NSW public entities and should be read in conjunction with the NSW Anti-slavery Commissioner’s *Guidance on Reasonable Steps*. The concepts of ‘Heightened’, ‘Standard’, ‘Light’ and ‘Minimal’ Due Diligence procurements are set out in that Guidance.  |

***Drafting Note****: These tender clauses and schedule are designed to be used in conjunction with the NSW Anti-slavery Commissioner’s Guidance on Reasonable Steps (‘GRS’) and the NSW Anti-slavery Commissioner’s Model Contract Clauses on modern slavery.*

*These clauses should be used where the reporting entity determines, in conformance with the GRS, that the procurement requires Heightened Due Diligence.*

*These tender clauses and schedule assist the reporting entity to discharge its statutory responsibility to take reasonable steps to ensure it is not procuring goods or services that are products of modern slavery.*

*They do this by facilitating effective due diligence by the Buyer on the Tenderer.*

*In these clauses the reporting entity is referred to as the ‘Buyer’ and the bidders are referred to as the ‘Tenderer’. The tender document is referred to as the ‘Tender’. This terminology should be adjusted for consistency with the tender documents in which these clauses will be inserted.*

## Tender clause

### Modern Slavery

#### Definitions

**Modern Slavery**:

* + 1. means any conduct that constitutes or would constitute a modern slavery offence, namely an offence against one of the following provisions, or an offence of attempting or incitement to commit an offence against one or more of the following provisions:

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| An offence against the following sections of the [*Crimes Act 1900*](https://legislation.nsw.gov.au/view/html/inforce/current/act-1900-040)— |
| **Section** | **Description of offence** |
| 80D | Causing sexual servitude |
| 80E | Conduct of business involving sexual servitude |
| 91G (1) and (2) | Children not to be used for production of child abuse material |
| 91G (3) | Aggravated offence of using children for production of child abuse material |
| 91H | Production, dissemination or possession of child abuse material |
| 91HAA | Administering a digital platform used to deal with child abuse material |
| 93AA–93AC | Slavery and slavery-like offences |
| An offence against the following section of the [*Human Tissue Act 1983*](https://legislation.nsw.gov.au/view/html/inforce/current/act-1983-164)— |
| **Section** | **Description of offence** |
| 32, but only in relation to tissue that is an organ | Trading in tissue prohibited |
| An offence against any of the following sections of the Commonwealth Criminal Code— |
| **Section** | **Description of offence** |
| 270.3 | Slavery offences |
| 270.5 | Servitude offences |
| 270.6A | Forced labour offences |
| 270.7 | Deceptive recruiting for labour or services |
| 270.7B | Forced marriage offences |
| 270.7C | Offence of debt bondage |
| 270.8 | Slavery-like offences—aggravated offences |
| 271.2 | Offence of trafficking in persons |
| 271.3 | Trafficking in persons—aggravated offence |
| 271.4 | Offence of trafficking in children |
| 271.5 | Offence of domestic trafficking in persons |
| 271.6 | Domestic trafficking in persons—aggravated offence |
| 271.7 | Offence of domestic trafficking in children |
| 271.7B | Offence of organ trafficking—entry into and exit from Australia |
| 271.7C | Organ trafficking—aggravated offence |
| 271.7D | Offence of domestic organ trafficking |
| 271.7E | Domestic organ trafficking—aggravated offence |

* + 1. includes any conduct that constitutes or would constitute an offence under any of the Modern Slavery Laws as amended from time to time, including an offence of attempting or incitement to commit such an offence; and
		2. includes conduct engaged in elsewhere than in New South Wales that, if it occurred in New South Wales, would constitute a modern slavery offence under paragraphs (a) or (b).

**Modern Slavery Laws** means:

* + 1. the Modern Slavery Act 2018 (Cth);
		2. the Modern Slavery Act 2018 (NSW);
		3. Divisions 270 and 271 of the Commonwealth Criminal Code;
		4. section 176(1A) of the Public Works and Procurement Act 1912 (NSW);
		5. section 438ZE of the *Local Government Act 1993* (NSW); and
		6. any other laws, regulations, codes and international conventions aimed at combatting modern slavery, forced labour or human trafficking, from time to time in force in or ratified by Australia and, where relevant, in or by other jurisdictions in which the parties operate,

each as amended from time to time.

**reasonable steps** means those steps that are reasonable in the circumstances to prevent, identify, mitigate and remedy modern slavery. In assessing whether steps are reasonable, the parties may refer to the NSW Anti-slavery Commissioner’s Guidance on Reasonable Steps and related information and resources published by the Anti-slavery Commissioner.

#### Modern slavery contract clauses

By lodging a Tender, the Tenderer agrees that, if it is the successful Tenderer, it will comply with the modern slavery contract clauses at clause XX of the draft Contract in the Tender documents.

#### Price

By submitting a Tender, the Tenderer acknowledges and agrees that if it is awarded the Tender based on the pricing or compensation information it has submitted in its tender documents, this submitted pricing or compensation will support it to comply with its Core Obligations as defined in the modern slavery contract clause at clause XX of the draft Contract in the Tender documents.

#### Evaluation

Tenders will be evaluated to determine the Tender which represents the best value for money to the Buyer.

In considering the Tender, the Buyer will apply the following evaluation criteria:

**Modern slavery** **(*[INSERT 5 or 10]%* weighting)**

The Tender will be evaluated with reference to whether it has demonstrated that it is capable of taking reasonable steps to identify, assess and address Modern Slavery in its operations and supply chain and ensure compliance with Modern Slavery Laws.

[***Drafting note****: this clause is intended to supplement the existing evaluation clause in the tender documents, and should be adjusted for consistency with the tender documents in which these clauses will be inserted. The use of a weighted modern slavery tender evaluation clause is not mandatory and alternative evaluation criteria or clauses may be considered for the particular tender (for example, incorporating modern slavery within other ‘social’ criteria for high value and complex tenders).*]

## Tender schedule

**Question: The Tenderer is to provide details of the reasonable steps it takes to identify, assess and address Modern Slavery in its operations and supply chain and ensure compliance with Modern Slavery Laws.**

**Note**: reasonable steps means those steps that are reasonable in the circumstances to prevent, identify, mitigate and remedy modern slavery. In answering the tender schedule, the Tender may refer to the NSW Anti-slavery Commissioner’s Guidance on Reasonable Steps and related information and resources published by the ASC.

**Answer: [Tenderer to provide details below]**

## Guidance on use

### General Guidance

Modern slavery tender clauses and schedules should be proportionate and not impose any unnecessary burdens that would deter a wide diversity of suppliers, including small and medium sized enterprises (SMEs) and Aboriginal and Torres Strait Islander entities from bidding for government contracts. The model tender clauses should be adjusted for consistency with the tender documents, including in particular the evaluation clauses.

Buyers should refer to the *NSW Anti-slavery Commissioner’s Guidance on Reasonable Steps (‘GRS’)* to inform their assessment of Tenderer’s responses.

### Use and adaptation of MTCs

For *Heightened* modern slavery due diligence procurements, there is an expectation that the MTCs are used in some form.

The MTCs including the evaluation clause, are intended to supplement the existing clauses in the tender documents, and should be adjusted for consistency with the tender documents in which the clauses will be inserted. The use of a weighted modern slavery tender evaluation clause is not mandatory and alternative evaluation criteria or clauses may be considered for the particular tender (for example, incorporating modern slavery within other ‘social’ criteria for high value and complex tenders)].

### Evaluation Criteria

For *Heightened Due Diligence* procurements, modern slavery weighted evaluation criteria are recommended to 1) encourage Tenderers to provide more extensive responses to the tender schedule to allow the Buyer to undertake more extensive due diligence on the Tenderers and 2) allow Buyers to factor the Tenderer’s modern slavery response into the overall weighted score of the Tenderer, and into contracting.

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 *NSW Anti-slavery Commissioner’s Guidance on Reasonable Steps (‘GRS’)* 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. For example, under the 5-band scoring regime below the optimal tender response could score 5 (Excellent), whilst a non-response or complete failure to meet the required standard would score 0 (Fail). The scoring methodology of the modern slavery evaluation criteria must be consistent with the evaluation process set out in the tender documents.

### Evaluation Guidance

See below example. The evaluation of the modern slavery evaluation criteria must be consistent with the evaluation process set out in the tender documents.

## Evaluation Guidance for Heightened modern slavery due diligence procurements

| Requirement  |
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| The Tender will be evaluated with reference to whether it has demonstrated that it is capable of taking reasonable steps to identify, assess and address Modern Slavery in its operations and supply chain and ensure compliance with Modern Slavery Laws.**Has the Tenderer demonstrated that it is capable of taking reasonable steps to identify, assess and address Modern Slavery in its operations and supply chain and ensure compliance with Modern Slavery Laws?** |
| ***Assessment against the evaluation criteria***  | ***Score*** |
| **Excellent:** the response exceeds what is expected for the modern slavery criteria. The response therefore shows: * Excellent understanding of the reasonable steps required to identify, assess and address Modern Slavery in its operations and supply chain and ensure compliance with Modern Slavery Laws.
* Demonstrated through relevant and thorough evidence.
* The response also proposes additional value above that expected.
 | **5** |
| **Very good:** meets the modern slavery criteria to a high standard.The response therefore shows: * Very good understanding of the reasonable steps required to identify, assess and address Modern Slavery in its operations and supply chain and ensure compliance with Modern Slavery Laws.
* Demonstrated through relevant evidence.
 | **4**  |
| **Good:** meets the modern slavery criteria to a good standard.The response therefore shows: * Good understanding of the reasonable steps required to identify, assess and address Modern Slavery in its operations and supply chain and ensure compliance with Modern Slavery Laws.
* Demonstrated through some evidence, but evidence lacking in some areas.
 | **3** |
| **Fair:** meets the modern slavery criteria to a fair standard.The response therefore shows: * Fair understanding of the reasonable steps required to identify, assess and address Modern Slavery in its operations and supply chain and ensure compliance with Modern Slavery Laws.
* Demonstrated through minimal evidence, with evidence lacking in some areas.
 | **2** |
| **Poor:** partially addresses the modern slavery criteria, with obvious deficienciesThe response therefore shows: * Minimal or low understanding of the reasonable steps required to identify, assess and address Modern Slavery in its operations and supply chain and ensure compliance with Modern Slavery Laws.
* Minimal or low relevant evidence.
 | **1** |
| **Fail**: non response or complete failure to address the modern slavery criteria.  | **0** |