

Discussion Paper: A Code of Practice on Managing Modern Slavery Risks in Renewable Energy Value-Chains

August 2023

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.

Discussion Paper: A Code of Practice on Managing Modern Slavery Risks in Renewable Energy Value-Chains

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1 Introduction: the need for a modern slavery risk management framework

1. There is growing evidence of serious modern slavery risks in the production and distribution of renewable energy, including but not limited to the manufacture of lithium-ion batteries, photovoltaic solar panels and wind turbines.¹
2. Particular attention has been drawn to evidence that a high proportion of photovoltaic, on-grid solar energy is produced using solar panels that contain polysilicon from Xinjiang, where there is evidence of state-sponsored forced labour practices in its manufacturing.² There is also significant evidence of the involvement of illegal child and forced labour in the production of key components in lithium-ion batteries, notably cobalt mining in Democratic Republic of Congo.
3. Reliance on source materials and components produced or distributed through forced labour and other forms of modern slavery poses serious reputational, litigation and, increasingly, regulatory risks for actors in renewables value chains. These risks are not limited to manufacturers, distributors, developers and installers, but also extend to buyers, investors, insurers, generators, retailers, large offtake entities, and others involved in the value-chain, such as financial and professional services firms.³
4. This creates uncertainty for the transition to renewable energy globally, including in New South Wales. Allegations that renewable energy infrastructure is made with modern slavery could disrupt or slow major infrastructure projects, increase cost or restrict access to finance or insurance, or cause reputational or other complications.
5. There is precedent for litigation leading to Australian financial institutions compensating people whose human rights have been harmed by projects in which they have invested.⁴ If such precedent were applied in the case of investment in NSW renewable energy projects, this could be costly.
6. Governments and industry worldwide are beginning to take action to address these risks.⁵ In the US, more than 2 GW of imported solar panels were detained at the point of entry into the country in 2022, on the basis that they contain components made by forced labour.⁶ In Europe, the European legislative bodies are currently considering banning marketing of goods made with forced labour, and are in the process of negotiating an EU Directive on corporate sustainability due diligence.⁷
7. In Australia, the federal Senate passed a bill that would ban import of goods made with forced labour, but the bill lapsed when Parliament rose prior to the May 2022 election.⁸ A similar bill is now once again in motion.⁹ There is also growing media scrutiny of modern slavery risks in global renewable energy supply-chains,¹⁰ as highlighted by the 2023 Global Slavery Index, published by Walk Free, a global human rights organisation based in Western Australia.¹¹
8. In November 2022, the approval of a Development Application near Wagga Wagga was made conditional, by the Planning Panel, on certification that the “manufacture of the solar panels” meets defined anti-slavery standards.¹² Further afield, numerous international investors, particularly in Europe, are tying investment in renewable energy projects to contractual obligations relating to respect for human rights.¹³
9. Despite this growing government attention to modern slavery risks in the renewables sector, there is a continuing lack of clarity regarding market and regulatory expectations, and a lack of transparency in some renewables value-chains. There is, however, a growing recognition that traditional approaches to procurement, which rely on supplier warranties of good

practice, may not work to effectively manage risk in these supply-chains, and do little to reduce modern slavery – as opposed to corporate exposure to it.

10. There is also a growing recognition that ‘clean’ (i.e. ‘slave-free’) supply is very difficult to come by, particularly for solar panels, where polysilicon from different sources are frequently admixed, and the main manufacturers of ‘slave-free’ solar panels are also the leading manufacturers of ‘slave-made’ solar panels.¹⁴
11. In response, a number of industry initiatives have emerged overseas that aim to provide clarity and leadership on how modern slavery and other human rights risks in renewables value-chains can be effectively managed. These include a Code of Conduct under development by the Solar Stewardship Initiative (a joint effort of SolarPower Europe and Solar Energy UK)¹⁵; and the US-based Solar Energy Industries Association Forced Labor Pledge, Buyers Guidance and Traceability Protocol.¹⁶
12. There is no such framework in place in Australia, placing Australian decarbonisation efforts at a practical and commercial disadvantage. Yet there are clear signs that market actors in Australia are willing to engage in a process that clarifies these expectations and offers a benchmark against which modern slavery risk management efforts can be reliably and comparatively assessed. The Clean Energy Council (CEC), for example, has announced the adoption of a voluntary ‘Pledge Against Modern Slavery’ setting out CEC members’ commitment to manage modern slavery risks. Yet there is no prevailing standard or benchmark in New South Wales or the rest of Australia against which such a commitment can currently be tested.
13. The federal *Modern Slavery Act 2018* (Cth) (‘Cth Act’) does not currently provide such a benchmark. The Cth Act and subsequent Guidance¹⁷ provided by the federal government to businesses obliged to report under the Act set out broad reporting requirements, but do not offer detailed guidance, especially in high-risk contexts such as the purchase of solar panels.
14. A recent independent review, conducted by Prof John McMillan AO, recommends changes to the Cth Act which could lead to the creation of a requirement for some businesses to institute an internal anti-slavery ‘due diligence system’; and, in time, the development of detailed sectoral guidance for the operation of such due diligence systems, by the federal Attorney General and/or a proposed federal Anti-Slavery Commissioner.¹⁸ Yet the development and operationalisation of any such federal guidance for the renewable sector remains some time off.

2 What role for the NSW Anti-slavery Commissioner?

15. The complexity of renewable energy value-chains, their sensitivity to tariff and trade policy settings, and the high capital costs of developing new sources of supply all suggest that effective management of modern slavery risks along the value-chain will require concerted cross-border action.
16. This does not obviate the need for clarification of market and, where possible, government expectations on modern slavery risk management. The absence of clear standards or benchmarks creates uncertainty and contributes to growing risk exposure for market players here in Australia.
17. In New South Wales, over 400 public buyers have had legal obligations since 1 July 2022 to take reasonable steps to ensure they are not buying goods and services made by modern slavery. Some of the covered entities have expressed to the NSW Anti-slavery Commissioner their desire for clarity on due diligence and risk management expectations where, for

example, they are buying solar panels or renewable energy more broadly.

18. The role of independent Anti-slavery Commissioner was created by the *Modern Slavery Act 2018* (NSW) ('NSW Act') as amended in 2021. The role reports to NSW Parliament. The Commissioner is charged, amongst other things, with advocating for and promoting action to combat modern slavery, and providing advice, education and training on ways to prevent modern slavery taking place and to assist the victims of modern slavery.

19. Section 27 of the NSW Act states:

27 Codes of practice

- (1) The Commissioner may develop, and make publicly available, 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.
- (2) A code of practice may refer to or incorporate, with or without modification, a standard or other document prepared or published by a body specified in the code, as in force at a particular time or from time to time.

20. Section 26 of the NSW Act further requires the Commissioner to establish a public, electronic register that identifies certain public entities that are not complying with their statutory modern slavery risk management obligations. This section also permits the Commissioner to "include other information that the Commissioner thinks appropriate".

3 Proposal: A Renewable Energy Code of Practice

21. To address this burgeoning need for market clarity, the Office of the NSW Anti-slavery Commissioner is initiating consultation to develop a Code of Practice on Managing Modern Slavery Risks in Renewable Energy Value-Chains ('Renewables COP'), with related Implementation Guide(s), with a view to publish a Code and related Implementation Guide(s) in the first half of 2024. We will partner closely with the Clean Energy Council, Australia's renewable energy association, as we develop and implement this Code of Practice.

3.1 How will the Code of Practice work?

22. The Renewables COP will provide a set of principles for effective management of modern slavery risks in renewable energy value-chains. It will be technology neutral and future-proofed. It will be potentially applicable to all renewable energy generation technologies, with specific Implementation Guide(s) (discussed further below) providing guidance on how the Renewables COP can be effectively implemented in specific sectors (such as solar power, battery technology, wind generation, hydro, hydrogen).

23. The Renewables COP will align with the regulatory context in NSW, notably the NSW Act, the Cth Act and Australia's existing international commitments and obligations, notably under relevant ILO Conventions, the UN Guiding Principles on Business and Human Rights, and relevant OECD Guidelines and guidance.

24. The Renewables COP will also make reference, where appropriate to other relevant standards and codes, notably:

- ISO 20400:2017 on Sustainable Procurement¹⁹
- BS 25700:2022 Organizational responses to modern slavery²⁰

- The Code of Conduct under development by the Solar Stewardship Initiative (a joint effort of SolarPower Europe and Solar Energy UK)²¹
 - The Solar Energy Industries Association Forced Labor Pledge, Buyers Guidance and Traceability Protocol²²
 - The Operational Guidance for Importers under the *Uyghur Forced Labor Prevention Act* issued by US Customs and Border Protection²³
25. We anticipate that the Renewables COP will reflect and align with the issues addressed in the forthcoming NSW Anti-slavery Commissioner’s Guidance on Reasonable Steps to address modern slavery risks in public procurement, such as:
- Governance, systems and policies
 - Stakeholder engagement
 - Risk identification and prioritisation
 - Acting on identified risks – including through contracting, contract management, and remediation
 - Monitoring and evaluating effectiveness in addressing risks
 - Providing and enabling remedy.²⁴
26. The Code of Practice itself will be supplemented by Implementation Guide(s). These will provide guidance on how the Renewables COP can be effectively implemented in specific sectors (such as solar power, battery technology, wind generation, hydro, hydrogen), and will address issues along the value-chain, including: manufacturing, distribution and wholesale, development, retail and installation, finance and operation.

3.2 How will the Code of Practice be implemented?

27. The Renewables COP will provide an open standard or benchmark, rather than a membership based or assurance initiative.
28. Uptake and impact will be driven through two vectors:
- a. **Voluntary private sector uptake:** Private sector actors will voluntarily sign onto and implement the Code. For Clean Energy Council (CEC) members, for example, this offers a way to discharge commitments under the CEC’s Pledge Against Modern Slavery. The Office of the NSW Anti-slavery Commissioner (‘OASC’) will work with CEC to support these efforts.
 - b. **Public procurement:** NSW public buyers that purchase renewable energy, specifically photovoltaic solar power, are likely to be directed, by the forthcoming Anti-slavery Commissioner’s Guidance on Reasonable Steps, to undertake heightened due diligence and reporting, in order to meet their legal obligation to take “reasonable steps” to ensure they are not buying goods and services made with modern slavery. That Guidance is expected to direct reporting entities to conform with any Code of Practice issued by the Anti-slavery Commissioner pursuant to section 27 of the NSW Act.
29. As an open standard or benchmark, the Renewables COP will not dictate assurance or audit arrangements. Entities will be free to adopt assurance and audit arrangements of their choice.
30. However, as a Code of Practice issued by the Anti-slavery Commissioner, OASC will also be in a position to consider conformity with the Renewables COP in line with his existing mandate, functions and powers. Using his existing information-gathering powers, the Anti-slavery Commissioner may receive and consider information relating to (non-)conformance. Under

section 26 of the Act, the Anti-slavery Commissioner has the power to include any other information the Commissioner thinks appropriate in his public electronic register. This may include, for example, information on conformance or non-conformance with the Renewables COP.

3.3 How will the Code of Practice be developed?

31. The Renewables COP and Implementation Guide(s) will be developed by the Anti-slavery Commissioner, in collaboration with the Clean Energy Council and with the support of Norton Rose Fulbright (NRF). Development will also include extensive public consultation.

32. Key dates in the process are:

August 2023	Initiative announced. Discussion Paper released for comment and feedback (details below).
September 2023	Initial drafting of the Code of Practice by the Office of the Anti-slavery Commissioner
Oct-Nov 2023	Internal review and revision of the draft Code of Practice by the Office of the Anti-slavery Commissioner in partnership with the CEC Risks of Modern Slavery Working Group
December 2023	Release of the draft Code of Practice for public notice and comment (until February 2024)
February 2024	Closure of the public notice and comment process, revision of the Code of Practice. Final consultations.
March 2024	Release of the Renewables Code of Practice Office of the Anti-slavery Commissioner and CEC commence drafting first Implementation Guide(s)
June 2024	Targeted release of first Implementation Guide(s)
2024 and beyond	Office of the Anti-slavery Commissioner supports implementation of the Renewables COP by NSW public buyers; and works with CEC to support implementation by its members

3.4 How can I comment on this process or the draft Code?

33. You are welcome to comment on this Discussion Paper, and on the draft Code once released – anticipated December 2023 – until February 2024. A specific closing date will be announced later in 2023. Send your comments to antislavery@justice.nsw.gov.au. All submissions will be published, unless they are marked not for publication.

Dr James Cockayne
NSW Anti-slavery Commissioner
August 2023

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- ¹ Clean Energy Council, *Addressing Modern Slavery in the Clean Energy Sector* (November 2022); A McGregor et al., *Achieving a just transition: Human rights and renewables* (Norton Rose Fulbright, June 2022).
- ² L T Murphy and N Elimä, *In broad daylight: Uyghur forced labour and global solar supply chains* (Sheffield Hallam University, May 2022); Office of the UN High Commissioner for Human Rights, *OHCHR Assessment of human rights concerns in the Xinjiang Uyghur Autonomous Region, People's Republic of China*, August 2022.
- ³ See Investor Alliance for Human Rights, “Investor Action on the Human Rights Crisis in the Uyghur Region”, n.d.
- ⁴ *EC and IDI v. Australia and New Zealand Banking Group*, Australian National Contact Point, summarised at <https://www.oecdwatch.org/complaint/ec-and-idi-vs-australia-and-new-zealand-banking-group/>.
- ⁵ See www.xinjiangsanctions.info; and see J Cockayne, E Rodríguez Huerta and O Burcu, “*The Energy of Freedom?*” *Solar energy, modern slavery and the just transition* (University of Nottingham Rights Lab, April 2022).
- ⁶ Bernreuter Research, “U.S. customs detained more than 2 GW of solar panels in 2022”, 29 March 2023.
- ⁷ EU Parliament, *Amendments adopted by the European Parliament on 1 June 2023 on the proposal for a directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937 (COM(2022)0071 – C9-0050/2022 – 2022/0051(COD))*, Brussels, 1 June 2023; EU Commission, “*Commission moves to ban products made with forced labour on the EU market*”, Brussels, 14 September 2022.
- ⁸ Customs Amendment (Banning Goods Produced by Forced Labour) Bill 2021.
- ⁹ Customs Amendment (Banning Goods Produced by Forced Labour) Bill 2022.
- ¹⁰ Daniel Mercer, “How ‘dark underbelly’ and forced labour is helping to fuel Australia’s love affair with cheap solar”, *ABC News*, 17 May 2023; Nick Cater, “Labor’s green obsession is blinding them to the shameful truth about Chinese solar panel production”, skynews.com.au, 15 February 2023.
- ¹¹ Daniel Mercer and Nick Dole, “Forrest group Walk Free warns of slavery threat in Australia’s solar panel supply chains”, *ABC News*, 24 May 2023; Jenna Clarke, “New Walk Free study shows Australia’s push for green transition exploits slave labour”, *The Weekend Australian*, 11 June 2023; Walk Free, *2023 Global Slavery Index* (Perth).
- ¹² PPSSTH-149 – Wagga Wagga – DA22/0122 at BOOROOL 1268 Oxley Bridge Rd URANQUINTY NSW 2652 – Electricity Generating Works – Solar Farm, determined by the Southern Regional Planning Panel on 24 November 2022.
- ¹³ See J Cockayne et al., “*The Energy of Freedom?*”, op. cit.
- ¹⁴ Ibid.
- ¹⁵ See <https://www.solarstewardshipinitiative.org/our-code/>.
- ¹⁶ See <https://www.seia.org/initiatives/supply-chain-ethics-sustainability>.
- ¹⁷ Commonwealth of Australia, *Modern Slavery Act 2018: Guidance to Reporting Entities* (Canberra, May 2023).
- ¹⁸ John McMillan, *Report of the statutory review of the Modern Slavery Act 2018 (Cth): The first three years* (Canberra: May 2023).
- ¹⁹ See <https://www.iso.org/standard/63026.html>.
- ²⁰ BSI, *BS25700:2022 Organizational responses to modern slavery – Guidance* (2022).
- ²¹ See <https://www.solarstewardshipinitiative.org/our-code/>.
- ²² See <https://www.seia.org/initiatives/supply-chain-ethics-sustainability>.
- ²³ See <https://www.cbp.gov/document/guidance/uflpa-operational-guidance-importers>.
- ²⁴ See OASC, Discussion Paper #001: NSW public procurement and modern slavery (Sydney, September 2022), Annex 2; and see Shift, “Signals of Seriousness” for Human Rights Due Diligence (New York: February 2021).