

Supplying WA's Energy Transition

Getting to grips with risk of
forced labour in supply chains.

By Fiona David and Shannon Hobbs

Executive Summary

The Western Australian (WA) Government has allocated \$2.8 billion in the 2023-2024 budget to spend on transitioning its energy system.¹ This represents a critical investment in the clean energy transition, the achievement of which needs to be facilitated. However, in the race to rapidly transition to renewable energy sources, we cannot ignore the reality that some of the critical minerals and materials involved in manufacturing solar panels and batteries are sourced from, or processed in, markets where child labour and modern slavery are prevalent. The risk of modern slavery in renewable supply chains needs to be understood and managed by governments and businesses involved in the energy transition.

While the *Modern Slavery Act 2018* (Cth) requires large corporations and the Commonwealth to report on steps they are undertaking to manage modern slavery risk, this does not apply to the State and Territory governments. In the WA context, there have been only very limited efforts made to address modern slavery risk in relation to procurement. As a result, WA government procurement of renewables may be progressing with limited or even no due diligence being undertaken on modern slavery risk.

Government agencies play a critical role in ensuring government funds are spent in line with community expectations on value for money but also values. This has been recognised in NSW where the Government has introduced specific laws requiring “reasonable efforts” to be undertaken to manage modern slavery risk in public procurement. Other State and Territory governments are yet to follow.

There are a number of simple steps the WA Government could and should be taking, to more coherently integrate consideration of human rights into the energy transition agenda.

The risk of modern slavery in renewable supply chains needs to be understood and managed by governments and businesses involved in the energy transition.

In the short term, the WA Government could:

1. Require WA Government agencies to voluntarily report under the Federal Modern Slavery Act. This simple step would help to bring focus to the issues at hand quickly, and help align Federal and WA Government procurement. This would also open up expertise on this topic to the WA Government.
2. Ensure decisions around expenditure of public funds on renewable energy are subjected to human rights due diligence. Key decisions include major government procurement but also include investment decisions, loans, grants, procurement and household subsidies that are supporting the energy transition.
3. Promote a collaborative approach to managing these risks. Shared efforts on modern slavery, which should be a pre-competitive issue, will cut valuable time and cost. Key steps that the WA could take include:
 - a. Engaging with the NSW Government to learn from its experience of public sector procurement reform.
 - b. Seeking to engage the existing Intergovernmental Network on Modern Slavery in Public Procurement on renewables.
 - a. Engaging with the Federal government to create a forum where industry, government and civil society organisations can work together to identify known human rights risks that are being experienced across key industries, prioritise the different challenges, and problem solve issues as they arise.

In the longer term, Australian governments will need to respond to global regulatory trends that increasingly require human rights and environmental due diligence on business, but also government procurement. Without this, WA and Australia risk becoming a dumping ground for high risk products that will increasingly be excluded from major global markets through business and human rights requirements.

WA's transition to clean energy and the risk of forced labour in public procurement supply chains.

Background

The Western Australian (WA) Government has allocated \$2.8 billion in the 2023-2024 budget to spend on transitioning its energy system.² This represents a critical investment in the clean energy transition, the achievement of which needs to be facilitated. Nonetheless, in the race to rapidly transition to renewable energy sources, we cannot ignore the reality that the risk of modern slavery can be buried in renewable energy supply chains. Several of the critical minerals and materials involved in manufacturing solar panels and batteries are sourced from, or processed in, markets where child labour and modern slavery are prevalent.³ Indeed, Australia's own Clean Energy Finance Corporation has identified the risk of modern slavery impacting the supply of solar energy and batteries in its list of top eight material Environmental, Social and Governance (ESG) risks.⁴

These risks are not new or unique to the renewable energy supply chains. However, what is new is the compressed time frame in which massive system-wide change must be achieved, given the global warming that we have already experienced. As the International Energy Agency have noted, the "pathway to net zero is narrow":

*"Staying on it requires the massive deployment of all available clean energy technologies – such as renewables, EVs and energy efficient building retrofits – between now and 2030. For solar power, it is equivalent to installing the world's current largest solar park roughly every day."*⁵

Also new is the scale and speed of the investment involved, across both public and private sectors. To reach net zero by 2050 we will need to invest US\$4 trillion by 2030 in clean energy globally.⁶ The pressures on already stretched supply chains are enormous. As Alan Finkel, Australia's Former Chief Scientist, notes in his recent book *Powering Up*, "demand growth for clean energy is outstripping the rate at which the resources underpinning it are being mined, processed and transported."⁷

The risk of modern slavery in renewable supply chains needs to be understood and managed by governments and businesses involved in the energy transition. In this paper, we examine the issues as they concern the energy transition in Western Australia. We argue there are important, simple steps the WA Government could and should be taking. These will strengthen existing State regulatory frameworks in ways that would provide even stronger support to the energy transition, while ensuring modern slavery risks are mitigated.

In shining a light on these issues, the purpose is not to call into question the necessity of the energy transition. This is taken as a given. Rather the purpose is to draw attention to a serious, foreseeable human rights risk in supply chains that are necessary for the energy transition. We hope WA will strengthen existing efforts to enable the energy transition to occur in a way that does not rely on abuse and exploitation. Environmental and social goals do not always immediately align, and it will take effort to work out how we can integrate pressing social concerns into the energy transition agenda.



To reach net zero by 2050 we will need to invest US\$4 trillion by 2030 in clean energy globally.⁶



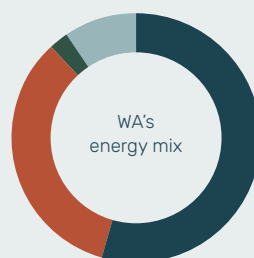
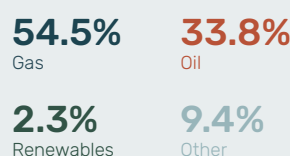
WA's transition to renewable energy

Between 2021–22, WA was the third largest contributor of greenhouse gas emissions in Australia (22%), after Queensland (28.6%) and New South Wales (24.5%).⁸ WA is the powerhouse of Australia's mining economy, and as such its mineral mining and processing industry contributed 49.1 MtCO₂e⁹ of 80.1 MtCO₂e total emissions in 2020–21.¹⁰ Mining has consistently dominated WA's economic activities, with the industry contributing \$200 billion to Gross State Product in 2022–2023.¹¹

Paradoxically, mining is also part of the solution to the energy transition. Not only is mining a hard-to-abate industry, but the minerals and materials being extracted are critical for the development of solar and wind power technologies.¹² To illustrate, WA is currently the largest lithium supplier in the world and is growing its export economy in other necessary battery and critical minerals.¹³ Here we can see that WA is uniquely positioned to transform a problem into a solution.

The WA Government has committed to achieving net zero carbon emissions in the State by 2050.¹⁴ As at 2023, WA's energy mix was dominated by gas (54.5%) and oil (33.8%), with renewables only accounting for 2.3%.¹⁵ The state's Energy Transformation Strategy Stage 2, which is being delivered by Energy Policy WA, sets out the forward plan to ensure the delivery of secure, reliable, sustainable and affordable electricity to WA for years to come, consistent with the state government's Climate Policy.¹⁶ This strategy is being guided by the Whole of Systems Plan model, whereby the WA Government has modelled four different scenarios and subsequent pathways for how the state can transition to renewable energy. The four pathways identify the most impactful and cost-effective strategies, and in all four scenarios renewable energy makes up more than 70% of the energy mix by 2040.¹⁷ Based upon the current state of WA's energy mix,¹⁸ renewable energy will need to be scaled by a factor of 30 to achieve 70% renewable energy.

WA's energy mix, as at 2023:¹⁵



WESTERN AUSTRALIA

Role of Solar Energy in WA's transition

WA's Whole of Systems Plan model sees solar rooftop photovoltaic (PV) systems to be one of the most important and fastest growing forms of new renewable energy. Depending on which scenario is adopted, a further 1,000MW – 4,000MW of rooftop PVs will need to be installed by 2030.¹⁹

WA Government departments are central to funding this transformation. For example, thanks to the efforts of the Energy Transformation Taskforce, one in three houses and businesses have solar rooftop PVs installed, and this is expected to rise to 1 in 2 by 2030.²⁰ Likewise, the Clean Energy Future Fund is a \$19 million fund administered by the Department of Water and Environment Regulation, with support from Energy Policy WA. In the first round of funding, two solar projects were awarded \$2.6 million that will collectively install 35MW of solar power in WA.²¹

What are the human rights challenges associated with solar panels?

Solar-grade polysilicon is the primary material in 95% of solar modules,²² of which 35% of the global supply comes from the Xinjiang Uyghur Autonomous Region (Xinjiang) in Western China.²³ Labour conditions in Xinjiang have received scrutiny for concerns of forced labour of Uyghur and other Muslim nationals in China's 'surplus labour transfers' and 're-education' schemes.²⁴ For example, in 2022, the UN's High Commissioner for Human Rights expressed concern that there is "large-scale arbitrary deprivation of liberty of members of Uyghur and other predominantly Muslim communities" in Xinjiang.²⁵ In this context, it is reported that state-sponsored forced labour is being widely used in the mining and production of metallurgical grade silicon and solar-grade polysilicon.²⁶ Claims of state imposed forced labour and other human rights abuses have been rejected by the Government of China.²⁷

The U.S. Government has responded to these concerns by seeking to prohibit the import of goods produced in Xinjiang. U.S. customs law prohibits the import of goods into the U.S. where they have been produced by forced labour.²⁸ In 2021, the US Government introduced the US Uyghur Forced Labour Prevention Act, which created a rebuttable presumption that the importation of any goods mined, produced, or manufactured wholly or in part in the Xinjiang region would be prohibited under U.S. law. As of February 2024, the Customs and Border Protection had detained 7,058 shipments under the Act, with 2,974 denied entry.²⁹

In 2021, China introduced laws to seek to counter foreign sanctions. The laws come into effect where a person or organisation has been involved in "direct and indirect" participation in "discriminatory restrictive measures".³⁰ The terms of the law appear to be broad. For example, one legal researcher has noted, "Theoretically, if a European company refuses to transact with a Chinese company for fear of violating US sanctions against China, such refusal may constitute "indirect" participation in the "implementation" of the US sanctions, thereby rendering the European company liable to Chinese sanctions."³¹ Some commentators have interpreted the laws as making it a criminal offence for third parties to be involved in undertaking corporate due diligence in the Xinjiang region.³²

Understanding and being able to respond to the risk of modern slavery in solar panel supply chains is complex, time consuming and resource intensive. Recent research suggests the supply chains of some solar panel manufacturers have been getting increasingly opaque, possibly in response to sanctions.³³ In an effort to overcome this, the Forced Labour Lab at Sheffield Hallam University developed a model to estimate exposure to Uyghur region labour, in the production



and manufacturing of solar panels, based on publicly available data. Their recent report, *Over-Exposed*, assesses ten solar panel manufacturers' exposure to the Uyghur Region, with companies selected for size and diversity. Their research focused on the top five manufacturers (which together manufacture 70% of the world's solar modules) and some smaller brands. Their assessments of risk are intended to indicate the extent to which a company or module is exposed to the Uyghur Region, meaning there is a heightened risk that a supply chain includes a Uyghur Region input, based on available sourcing disclosures. According to this research, "These assessments make clear that many solar modules being sold into international markets are indeed still very much exposed to Uyghur forced labor",³⁴ and therefore WA's net zero strategy that relies on solar energy must mitigate such risks.

The Sheffield Hallam team have identified several companies with significant modern slavery risks, who are major suppliers in the Australian market.³⁵ These companies have been assessed by the Sheffield Hallam team as having either high exposure, or very high exposure, to risk of reliance on Uyghur forced labour, either directly and/or in their immediate supply chain. Downstream contracts are not included in their analysis. Information is not available on market share of these companies in the WA market. However, it is reasonable to assume that government departments and businesses involved in procuring solar panels in WA will be procuring from some of these companies.

The risk of forced labour in solar supply chains is not confined to those that are sourced from any single market or region. As the solar industry relies on manufacturing in emerging markets, due diligence to identify and remedy human rights risks should be on the radar of responsible companies. For example, in 2023, First Solar disclosed that it has identified passports being held, along with workers being charged recruitment fees and having wages withheld, at sites in Malaysia.³⁶ Maxeon also noted instances of "potential non-compliance" in its 2022 Modern Slavery Report but the location is not included.³⁷

A SPOT-ON SHOWCASE

The Clean Energy Finance Corporation (CEFC)

The CEFC is an Australian state-owned green bank that facilitates investment into products and projects necessary for Australia's transition to net zero. CEFC steps up to its human rights obligations by incorporating the *Modern Slavery Act* into its ESG Policy. The policy requires similar steps to those laid out by the UN Guiding Principles on Business and Human Rights (UNGP); for its investments it does the following:³⁸

- *Modern Slavery Act* risk assessments and due diligence.
- The potential application of mitigation prior to investing.
- Ongoing monitoring of direct counterparties and material indirect counterparties, where assessed as material or higher risk.

The CEFC upholds values of communication outlined in the UNGP. They have issued a series of *Modern Slavery Act* statements, which have identified the material and relevant human rights risks tied to its green investments. The 2021-2022 statement notes:

*"The CEFC may be indirectly exposed to Modern Slavery via its investments in solar and battery developments by virtue of the Modern Slavery risks associated with the raw materials and manufacturing of componentry. We have established that the solar and battery supply chains pose a high risk of Modern Slavery."*³⁹

Role of battery energy and storage in WA's transition

Battery energy and storage is also a critical part of WA's energy transition, because renewable sources do not provide energy on demand, and therefore do not necessarily produce energy in sync with users' needs. Battery storage is seen as a key solution to balance out both mismatches in supply and demand, and periodic 'dunkelflaute' (dark lull) periods when neither solar nor wind assets are generating sufficient energy. WA's Whole of Systems Model showed that in the first year of the energy transition, WA needs to install between 50MW of two-hour duration to 20MW of four-hour duration large-scale battery storage.⁴⁰

The WA Government has awarded Western Power and Synergy more than \$1 billion in contracts to install large scale lithium-ion batteries in Kwinana and Collie. CATL will supply 300 EnerC Plus containerised liquid-cooling battery systems for Kwinana Battery Stage Two, and about 650 EnerC Plus for Collie; and Power Electronics will deliver 72 inverters for the Kwinana battery and 160 inverters for the Collie battery.⁴¹ The batteries are part of the Big Battery Project, which has already successfully installed a 100MW/200MW generating capacity battery in Kwinana.⁴² The 2023-2024 budget has further allocated \$2.3 billion towards two new battery energy storage systems, which includes a bigger battery (500MW) to be installed in Collie.⁴³

Smaller-scale storage is imperative in the context of mass rooftop solar PV deployment in WA. The progress report on the Distributed Energy Resources Roadmap

notes that 13 'PowerBanks' have successfully been installed, which are seeing community batteries support the Western Power network.⁴⁴ Western Power partnered with Synergy to install community-scale batteries utilising Tesla technology between 2018-2021.⁴⁵ Synergy has since secured \$3 million to roll out more community Power Banks from the \$200 million Community Batteries for Household Solar Grant, which are expected to be installed by March 2025 (the Community Batteries for Household Solar Grant plans to deliver 400 batteries nationally).⁴⁶

What are the human rights challenges related to battery energy and storage?

One risk of modern slavery in the battery supply chain that must be addressed is found among cobalt mining. The Democratic Republic of Congo (DRC) produced 74% of the world's cobalt supply in 2021.⁴⁷ That production is made up of a combination of large-scale industrial mines and artisanal or small-scale mines (ASM), which have informal workers who mine using spades, buckets, and sometimes their bare hands.⁴⁸ The contribution of ASM to the DRCs cobalt production appears unclear, with reports citing between 20-30%.⁴⁹

Artisanal mining's smaller share of the DRCs cobalt industry masks its disproportionate contribution to labour issues. An estimated 400,000 people are artisanal miners in the DRC.⁵⁰ There is evidence of wide-spread child labour in cobalt mines, not solely used in mining, but also for prostitution in the camps.⁵¹ Artisanal mining conditions are also hazardous, with workers exposed to toxic cobalt dust without access to

adequate personal protective equipment (PPE). In 2019, 43 workers were killed while working illegally in artisanal mining on a Glencore-owned mine.⁵²

Although human rights concerns have typically centred around the artisanal mines, recent field research conducted by UK-based corporate watchdog Rights and Accountability in Development (RAID) and the Centre d'Aide Juridico-Judiciaire (CAJJ), a Congolese legal aid centre specialising in labour rights, has found substandard working conditions in the industrial cobalt mines. They found evidence of widespread exploitation and labour rights abuses, including excessive working hours, pay below the living wage, unsafe working conditions, degrading treatment, discrimination and racism.⁵³

The battery and battery electric vehicle (BEV) industries have responded with rapid investment, and progress, in developing alternate battery chemistries that do not require as much, or any, cobalt. So-called NMC (Nickel-Manganese-Cobalt) lithium-ion batteries have moved to reduce the proportions of cobalt by changing the ratios of materials in the cathode. The latest, NMC-811, uses less than half the cobalt of earlier versions.

Yet with the development of low, or no-cobalt batteries, new modern slavery risks are surfacing over the use of the lithium itself in lithium-ion batteries. Anti-Slavery International submitted evidence to the UK Government's 2023 Foreign Affairs Committee inquiry into critical minerals, in which they state that China is now estimated to process 44% of the world's chemical lithium, and produce 78% of cathodes, 91% of anodes, and 70% of lithium-ion battery cells, and that a growing share of these processes are shifting into the Uyghur Region.⁵⁴ Researchers at Sheffield Hallam University have also noted that the world's most significant manufacturer of batteries, and China's top producer of lithium, in 2022 registered joint ventures in the Uyghur Region.⁵⁵ In the United States, Republicans have raised concerns about companies including Ford signing major deals with the China based battery giant, CATL, which they allege has links with lithium in the Xinjiang region that is connected to Uyghur labour.⁵⁶ CATL has been publicly announced as a key supplier in WA's Big Battery Project.⁵⁷

With both lithium and cobalt remaining key ingredients in the production of batteries, human rights risks need to be considered.

Implications for WA

As expert commentators such as Alan Finkel have noted, to ensure supply chains are robust and resilient we need to diversify the sources of supply so they are not too concentrated in one area or one country. Indeed, Dr Finkel gives the example that too much of the cobalt needed for lithium-ion batteries comes from the Democratic Republic of Congo.⁵⁸ It is in the environmental, economic and social interests of Western Australia to support the development of alternative sources for these minerals that are both environmentally and socially sustainable.

From an economic perspective, there is an opportunity that WA wants to seize; to become a mining base for energy transition minerals. The Australian Government is supporting this opportunity by awarding \$28 million in funding to six critical mineral projects in WA.⁵⁹ Continuing to rely on supply that is sourced from areas with poor human rights records undermines the ability of local businesses in Australia, or other jurisdictions, to build alternative supply that is more environmentally and socially responsible. While 'cheap' supply may seem to secure 'cost-savings', this is a short-term perspective if it undermines wider economic objectives, such as building WA into a base for energy transition minerals.

Under international standards, businesses have obligations to address human rights impacts that are caused by, contribute to, and even indirectly linked to their operations.⁶⁰ These obligations are only getting stronger, as key markets such as the European Union introduce mandatory human rights and environmental due diligence requirements. As such, WA businesses should be engaging in human rights due diligence across their supply chains. Given that the risks are deeply hidden and wide-spread, WA agencies and business will need to factor these considerations into procurement planning so that risk mitigation efforts can be put in place, and WA's impact on labour standards in global markets for renewable energy technology is a positive one.

Governments have a role to play in creating the enabling environment for the renewable energy transition to be achieved in ways that comply with human rights obligations. One way governments can support business is through creating safe spaces for businesses to engage in pre-competitive collaboration on complex tasks affecting many players, like human rights due diligence on renewable energy supply chains. Governments also need to set clear expectations regarding due diligence required for tax-payer funded procurement and investment decisions. In these regards, there is more that the WA government could be doing to level the playing field, and tip the scales in favour of a truly clean energy transition.

FROM PRINCIPLES TO PRACTICE

Guidance for NSW public buyers on managing modern slavery risks in supply-chains

What are reasonable steps for public buyers to take, to manage modern slavery risk in the supply chains? Where would a public procurer begin?

The NSW Anti-Slavery Commissioner has developed a Shared Implementation Framework, to help public entities comply with due diligence and reporting obligations under *The Modern Slavery Act 2018* (NSW) and related laws.⁶¹ This includes Guidance on Reasonable Steps to Manage Modern Slavery Risks in Operations and Supply-Chains,⁶² alongside other tools that will help public buyers understand and respond to risk.

According to the Guidance, “reasonable steps” include the following:⁶³

- Committing to effectively address modern slavery risks.
- Planning effective modern slavery risk management.
- Sourcing products that are not linked to modern slavery.
- Managing relationships with suppliers so that buyers and suppliers together excel in managing modern slavery risks, while meeting obligations.
- Providing remedy to modern slavery harms to which they are connected.
- Reporting on modern slavery and responses to modern slavery risks.
- Improving the effectiveness of their modern slavery risk management efforts.



The Framework bridges modern slavery issues with practical actions that companies should take. Included in the Framework are various tools that support risk identification, tender and contracting processes. Below are two examples that are helpful for businesses to utilise when adhering to *The Modern Slavery Act 2018* (NSW):

The Inherent Risk Identification tool⁶⁴

helps agencies “identify the modern slavery risk associated with different product categories from which they procure”. The tool ranks risks for 378 product categories, and maps the source of the risk – vulnerable populations, supply chain, regulatory context, or where there is other sufficient evidence to consider a modern slavery risk.

The model contract clauses⁶⁵

for situations where “heightened due diligence” is required, such as buying high risk products identified by the Interest Risk tool. The clauses stipulate some “common preventative measures” each party will take, such as:

1. Training on modern slavery
2. Implementing a Migrant Worker Standard
3. Ensuring no recruitment fees are paid by workers
4. Not destroying or exclusively possessing workers travel documents

Ensuring safe and clean accommodation, where this is provided. The model contract clauses also cover expectations on the Supplier including:

5. Ensuring that all workers in their operations will have access to effective grievance mechanisms; and
6. Ensuring the buyer is provided with the information and documents necessary to verify compliance and meet audit requirements.

Existing regulatory context

The Federal Government has enacted the *Modern Slavery Act* which applies to Federal Government agencies and companies. The *Modern Slavery Act* also applies to entities with a consolidated revenue of at least AU\$100 million over a twelve-month period, that are either Australian entities or foreign entities carrying on business in Australia. "Reporting entities" are required to report on the efforts they are taking to respond to modern slavery risk in their supply chains.⁶⁶ This includes reporting on:

- **Risks of modern slavery practices**
Risks of modern slavery practices in the operations and supply chains of the reporting entity and any entities it owns or controls.
- **Actions taken to assess and address risks**
Actions taken by the reporting entity and any entities it owns or controls to assess and address these risks, including due diligence and remediation processes.
- **Assessing effectiveness of actions**
How the reporting entity assesses the effectiveness of these actions.
- **Consultation**
The process of consultation with any entities the reporting entity owns or controls.⁶⁷

The *Modern Slavery Act* has helped to trigger businesses in Australia to focus on this issue. However, more than three years since its introduction, the time for reform is overdue. Expert commentators have noted the limitations of merely requiring entities to report, and have pointed to the need to shift to a stronger framework that requires entities to actually undertake due diligence.⁶⁸ Encouragingly, a recent Inquiry recommended strengthening Australia's laws on modern slavery, which would require companies to have due diligence systems in place, and to explain how these are being operationalised.⁶⁹

Many of the major businesses operating in WA fall within the scope of the *Modern Slavery Act*. As such, major businesses in WA are all grappling with the same challenges of how to undertake human rights due diligence as they engage in the energy transition.

However, from a WA perspective, there are significant gaps in coverage of the Federal *Modern Slavery Act*. First, the Act does not cover the many small and medium sized entities in the market, many of whom may be involved in rolling out WA's energy transition. Second, the *Modern Slavery Act* does not apply to WA government entities. Given the role of the government in procurement, notably by funding solar and storage projects as discussed above, these omissions are significant.



WA Government

Government agencies play a critical role in ensuring government funds are spent in line with community expectations on value for money but also values. At least at the federal level, it is clear from the *Modern Slavery Act* that the community expects Federal Government agencies to take reasonable steps to ensure there is no modern slavery connected to the goods and services they procure.

The situation appears less clear for WA Government entities involved in tax-payer funded procurement. Some obligations to control for modern slavery risk may flow through to WA Government departments and government-owned enterprises, where finance is secured under the Clean Energy Finance Corporation (CEFC). The CEFC has an ESG policy, in line with a Ministerial Directive, which provides that it will undertake negative screening against criteria including modern slavery and other human rights abuses.⁷⁰

The WA Government has provided very little guidance on responding to modern slavery risk, whether in relation to the energy transition or other areas of government expenditure. The one exception is that in 2020, amendments were made to Procurement Regulations in WA which establishes grounds and processes through which a supplier can be excluded from doing business with the WA Government, including where a supplier is involved in human trafficking under the Federal Criminal Code, or does not comply with the *Modern Slavery Act* (Cth).⁷¹ The regime is administered by the WA Department of Finance, and there are no examples of this having been used in relation to modern slavery issues.⁷²

The approach taken in WA can be contrasted to the approach of regulators in Australia's largest state economy, NSW. In that State, lawmakers enacted a NSW specific *Modern Slavery Act* that requires NSW Government agencies, including government sector finance agencies to include "a statement of steps taken to ensure that goods and services procured by and for the agency during the financial year then ended were not the product of modern slavery"⁷³ in their annual reports. These obligations cover government agencies but also ten universities and the 120 local councils across NSW.⁷⁴



In NSW, the state government procurement focus has enabled collaborative work to commence, looking for ways to mitigate risks of modern slavery embedded in renewable energy supply chains. In 2023, the NSW Anti-Slavery Commissioner initiated consultation to develop a Code of Conduct for procurement of renewables in NSW. Being developed in consultation with the Clean Energy Council, the Code will apply mandatorily to the States procurement, and the Commissioner is working with the Clean Energy Council to develop the Code in ways that will be suitable for voluntary adoption by businesses.⁷⁵ Collaborative efforts like this have the potential to reduce uncertainty and burden on individual agencies and businesses, through clarifying ground rules and enabling sharing of resources and expertise.

There are valuable insights that can be gained from looking overseas at how governments all around the world are trying to enable businesses to power up the energy transition, while still taking account of social risk. Modern slavery is a pre-competitive issue and governments have a role in creating the space for pre-competitive collaboration to occur. For example, in the Netherlands, the government has convened government agencies, financial institutions, businesses and civil society groups via an ongoing multi-stakeholder initiative on human rights and renewables.⁷⁶ This provides a standing forum and a safe place for industry, government and civil society to share experiences and develop solutions.

There are valuable insights that can be gained from looking overseas at how governments all around the world are trying to enable businesses to power up the energy transition, while still taking account of social risk.

Strengthening Responses

As an issue of international concern, the Federal Government has a key role to play in responding to the risk of modern slavery. While progress has been made over time, there is a need to progress reforms to strengthen the *Modern Slavery Act* and re-open consideration of the role of import restrictions or other market-based measures, to keep high risk products out of the Australian market. Also, while the Australian Critical Minerals Strategy notes the importance of keeping Australia at the forefront of ESG leadership, to date it is not clear how this will be achieved as it relates to social risk in imported supply.⁷⁷

But state governments also have a role to play. There is both an economic and a moral case to be made for the WA Government to pay much closer attention to the risk of modern slavery in the energy transition. A failure to engage with embedded human rights risk has the potential to undermine the effort to position WA as a source of clean and green energy transition minerals. Equally, Australian taxpayers expect that government funding will not expose them to involvement, however indirect, in serious crimes like modern slavery.

There are several steps that the government in Western Australia could look to take, as part of more coherently integrating consideration of serious human rights issues into the energy transition agenda.

In the short term, the WA Government should:

1. Require WA Government agencies to voluntarily report under the Federal Modern Slavery Act. This simple step would help to bring focus to the issues at hand quickly, and help align Federal and WA Government procurement.
2. Ensure decisions around expenditure of public funds on renewable energy are subjected to human rights due diligence. Key decisions include major government procurement but also should include investment decisions, loans, grants, procurement and household subsidies that are supporting the energy transition.

Our shared humanity and values demand that we put every effort into ensuring that the energy transition is not built on the abuse and exploitation of others.

3. Promote a collaborative approach to managing these risks. Shared efforts on modern slavery, which should be a pre-competitive issue, will cut valuable time and cost. Key steps that the WA could take include:
 - a. Engaging with the NSW Government to learn from its experience of public sector procurement reform.
 - b. Seeking to engage the existing Intergovernmental Network on Modern Slavery in Public Procurement on renewables.
 - c. Engaging with the Federal government to create a forum where industry, government and civil society organisations can work together, to identify known human rights risks that are being experienced across key industries such as renewables, prioritise the different challenges, and problem solve issues as they arise.

In the longer term, Australian Governments will need to respond to regulatory trends that increasingly require human rights and environmental due diligence on business but also government procurement. Without this, WA and Australia risk becoming a dumping ground for high risk products that will increasingly be excluded from major global markets through business and human rights requirements.

The urgency of the energy transition demands that governments anticipate these clearly foreseeable risks and put active plans in place, so that the transition is not slowed down or even derailed by failure to anticipate human rights risks. And our shared humanity and values demand that we put every effort into ensuring that the energy transition is not built on the abuse and exploitation of others.



Endnotes

- 1 Government of Western Australia (2023) \$3 billion investment for a cleaner energy future. Available at: [https://www.wa.gov.au/government/media-statements/McGowan-Labor-Government/\\$3-billion-investment-for-a-cleaner-energy-future-20230511](https://www.wa.gov.au/government/media-statements/McGowan-Labor-Government/$3-billion-investment-for-a-cleaner-energy-future-20230511).
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