



Australian
Human Rights
Commission

2020

Responsible Sourcing Policy

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1 Purpose

Public procurement is a tool nation states can use to help fulfil their duty to protect human rights and realise the human rights of vulnerable groups. Globally, government entities are increasingly expected to ensure they are not directly linked to human rights harms through their procurement, and to lead by example when spending taxpayer funds. Leveraging public spending to address human rights risks in government supply chains can encourage suppliers to meet their responsibility to respect human rights in their own operations and supply chains. It can also help create a 'level playing field' for businesses supplying to government, who are taking steps to respect human rights in their activities.

As a procurer of goods and services, the Australian Human Rights Commission (**Commission**) enters into relationships with a wide variety of businesses, suppliers, service providers, agents and others. This Responsible Sourcing Policy (**Policy**) sets out the Commission's commitment to protecting and promoting human rights through its procurement practices.

This Policy supports the Commission's:

- response to the *Modern Slavery Act 2018* (Cth) (**Modern Slavery Act**)
- implementation of the 2011 *United Nations Guiding Principles on Business and Human Rights* (**UNGPs**)¹ and contributing to the achievement of Targets 8.7 and 12.7 of the *Sustainable Development Goals* (**SDGs**)²
- management of public resources including application of the *Commonwealth Procurement Rules*³ and the *Public Governance, Performance and Accountability Act 2013* (**PGPA Act**)
- wider procurement policies, practices procedures.

2 Application and scope

2.1 Commission staff

This Policy applies to all Commission staff; in particular those involved in any procurement activity on behalf of the Commission. All Commission staff will receive training on this Policy and any supporting processes applicable to their role. This Policy should be read in conjunction with the Commission's existing procurement policies and procedures.

The responsibilities and accountabilities across the Commission for implementing this Policy are outlined at Item 8.

2.2 Suppliers

The Commission expects all Suppliers to the Commission to familiarise themselves with this Policy, in particular Item 5.

2.3 Procurement

This Policy applies to all procurement undertaken by the Commission, including existing Supplier contracts and relationships and new procurement activity.

However, the Commission also acknowledges that adverse human rights impacts may arise in respect of the Commission's own operations, including in the context of Commission employment. The Commission is committed to respecting human rights through its own direct operations and employment practices and has a range of policies in place to address human rights risks in this context.

3 Policy statement

The Commission is committed to protecting and promoting human rights through its procurement practices.

To support this commitment the Commission will:

- take action to ensure human rights risks are identified and effectively managed within the Commission's supply chains, using a human rights due diligence approach in the context of the Commission's procurement, with a priority focus on the severe risks (see Item 6)
- support the promotion and realisation of human rights of marginalised groups through social procurement (see Item 7).

4 Policy Context

This section sets out the international human rights standards and the Australian law and regulations that inform this Policy.

4.1 2011 United Nations Guiding Principles on Business and Human Rights

The 2011 United Nations Guiding Principles on Business and Human Rights (**UNGPs**) are a set of globally recognised standards for preventing, addressing and remediating business-related human rights harms. The UNGPs were unanimously endorsed by the

United Nations (UN) Human Rights Council in 2011, and the Australian Government has agreed to implement the UNGPs.⁴

The expectations on nation states and businesses, set out in the three Pillars of the UNGPs are summarised below. This Policy supports the Commission in implementing Pillar I of the UNGPs by promoting business respect for human rights through Commission procurement.

United Nations Guiding Principles on Business and Human Rights	
Pillar I 'Protect'	<i>Nation states have a duty to protect</i> against human rights violations by businesses, through measures such as laws, regulation, policy and adjudication. Pillar I also focuses on the 'nation state-business nexus,' providing that States should promote business respect for human rights via government procurement through their relationships with suppliers of goods and services.
Pillar II 'Respect'	<p>All businesses have a <i>responsibility to respect human rights</i> in their operations and business relationships (including supply chains). This is a 'do no harm standard' that asks businesses to avoid infringing on the human rights of others and remediating adverse impacts with which they are involved.</p> <p>Businesses do this by engaging in a process of 'human rights due diligence'. This is a process to identify, prevent, mitigate and account for adverse human rights impacts the business may cause, contribute or be directly linked to. The scale of the measures required to meet this responsibility should reflect the business' size, operational context, ownership, structure and the severity of the business' actual or potential human rights impacts.</p>
Pillar III 'Remedy'	Sets out the expectation that victims have a right to remedy, and that states and business should enable <i>access to effective remedy</i> for victims.

4.2 UN Sustainable Development Goals

This Policy also aims to support the achievement of the following SDGs:

Goal 8, Target 8.7:

Take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour... and by 2025 end child labour in all its forms.

Goal 12, Target 12.7:

Promote public procurement practices that are sustainable, in accordance with national policies and priorities.⁵

Sustainable procurement practices should reflect the environmental, social and economic dimensions of sustainable development, including human rights.⁶

4.3 Modern Slavery Act 2018 (Cth)

The Modern Slavery Act draws on principles in the UNGPs. The Modern Slavery Act requires businesses with a consolidated annual revenue of \$100 million or more, and the Commonwealth Government, to publish annual modern slavery statements outlining the steps they are taking to identify and address the risks of modern slavery in their operations and supply chains.⁷ The purpose of this law is to 'support the Australian business community to identify and address their modern slavery risks and maintain responsible and transparent supply chains'.⁸

The Global Slavery Index estimates there are 40.3 million victims of modern slavery worldwide.⁹ The Government has explained that there is a 'high risk Australian businesses are exposed to modern slavery risks and that Australian goods and services are tainted by modern slavery'.¹⁰

While the Commission is not required to report under the Modern Slavery Act,¹¹ the Commission will take steps to identify and manage its modern slavery risks, by taking a human rights approach in its procurement practices, in accordance with this Policy. The Commission's procurement practices will also be governed by the Commonwealth Resource Management Framework, Procurement Framework and other regulations where relevant, including in relation to modern slavery.

As the primary work of the Commission is office-based work in Australia, the Commission considers the risk of modern slavery arising in its direct internal operations and in relation to Commission staff to be low. However, given the prevalence of modern slavery globally, and the complex nature of supply chains in a globalised economy, the Commission may have modern slavery risks that arise through its relationships with Supplier businesses who in turn may have their own supply chains both in Australia and overseas. In addition, the Commission acknowledges that modern slavery is unlikely to flourish in contexts where other human rights are respected.

4.4 Commonwealth Procurement Rules

The Commonwealth Procurement Rules,¹² in particular rule 10.19 and the accompanying Government guidance,¹³ support Commission staff making reasonable enquiries of Suppliers to support the human rights and social procurement approach to procurement outlined in this Policy (see further details in **Appendix B**).

5 Expectations of Suppliers

The Commission expects that all its Suppliers will take reasonable steps to respect human rights in their operations and business relationships (including in their supply chains).

The Commission expects that our Suppliers adhere to all applicable laws and regulations in their countries of operation and, in accordance with the UNGPs, will seek ways to honour the principles of internationally recognised human rights when faced with conflicting requirements' between national laws and human rights.

6 Managing human rights risks in Commission procurement

6.1 Risk management in Commission procurement

Under this Policy, the Commission will identify and manage risks of adverse human rights impacts arising in the context of procurement undertaken by the Commission, using the 'human rights due diligence' approach.¹⁴

The Commission already has an active risk management program to identify, assess, monitor and manage perceived strategic and business risks. There are legal, financial, political and reputational risks for state actors that fail to manage the human rights risks in their supply chains. However, taking a human rights due diligence approach to managing human rights risks means focusing on 'risks to people', rather than the traditional risk management approach of focusing on 'risks to business'.

Where necessary, the existing Commission procurement policy and procedures will be amended and regularly reviewed to support the Commission's inclusion of a human rights due diligence approach in its procurement practices.

6.2 Human rights due diligence

Human rights due diligence is an ongoing risk management process which asks businesses to identify, prevent, mitigate and account for how an organisation addresses

its adverse human rights impacts. The human rights due diligence approach asks organisations to prioritise addressing their most severe risks first, which allows for a targeted deployment of resources.

There are four key aspects of human rights due diligence:

1. identifying and assessing actual and potential adverse human rights impacts
2. integrating and acting upon the findings by taking context appropriate action to prevent or mitigate risks of adverse human rights impacts, starting with the most severe risks¹⁵
3. tracking and measuring the effectiveness of the measures implemented
4. communicating how impacts are addressed.

6.3 Implementing human rights due diligence in Commission Procurement

Human rights due diligence is an ongoing process, which will be embedded into the Commission's Risk Management Framework and procurement practices.

The Commission will undertake a risk identification and assessment to identify the Commission's actual and potential adverse human rights impacts in its procurement. The Commission will take action to prevent and mitigate the Commission's potential adverse human rights impacts, using context appropriate measures and prioritising action on the most severe risks first.

Example

Examples of potentially appropriate responses to human rights risks in Commission procurement which may be developed as part of the Commission's human rights response to procurement in coming years may include measures such as: engaging with Suppliers about human rights and modern slavery risks in their operations and supply chains; requesting Suppliers provide the Commission information about their visibility of their supply chain and awareness and management of their business' human rights risks; incorporating modern slavery related tender criteria; incorporating contractual clauses in Supplier agreements such as requirements for social auditing; working with Suppliers to progressively address their human rights risks.

The Commission will assess the human rights risks arising in Commission procurement, and the Commission's responses on an ongoing basis. The Commission will also track the effectiveness of its responses to human rights risks (including in relation to internal awareness raising and training) in Commission procurement and communicate progress annually and publicly.

6.4 The Commission context

In the context of the Commission's procurement there are certain human rights—in particular labour rights—that are more likely to be at risk of violation, especially in its supply chains. The Commission will prioritise responding to more severe risk to human rights (such as modern slavery) in its procurement in accordance with the UNGPs.

As a small corporate Commonwealth entity, the Commission acknowledges it may not have the same market leverage, and therefore the same capacity, as large businesses or large government agencies, to influence the behaviour of its Suppliers. The Commission also acknowledges the benefits of whole of government or cross Government approaches to procurement when seeking to influence Suppliers and recognises the need to avoid the creation of unnecessary compliance burdens.

The Commission will seek opportunities to increase its leverage when managing procurement-related human rights risks, including where appropriate, by aligning its efforts under this Policy with existing Commonwealth Government efforts relating to modern slavery or other human rights considerations in procurement.

6.5 Grievances and responding to allegations of human rights breaches

Commission staff, Suppliers and any other stakeholders that have concerns about potential or actual adverse human rights impacts arising in the Commission's procurement can report these to the Commission at **bhr@humanrights.gov.au** for consideration by the Commission's Chief Executive where appropriate.

Where adverse human rights impacts are identified in the Commission's procurement, the Commission will be guided by the UNGPs in its response.¹⁶ Where the Commission is directly linked to an adverse human rights impact through a Supplier, the Commission will use its leverage to work with the relevant Supplier to prevent or mitigate the harm and its recurrence, and play a role in ensuring the victims are remediated by the Supplier. If this is unsuccessful, the Commission will consider ending their business relationship with the Supplier. Where the Commission lacks leverage with the relevant Supplier, the Commission will seek ways to increase its leverage including through engaging with other Government entities who use the same Supplier.

Where instances or allegations of modern slavery are identified in the Commission's procurement the Commission will work with the Commonwealth Modern Slavery Business Engagement Unit to respond. The Commission's response will prioritise the safety of potential victims and draw on best practice guidance for responding to instances of modern slavery. Where allegations relate to modern slavery occurring in Australia, the Commission will engage where appropriate with relevant civil society experts and government agencies such as the Australian Federal Police or the Fair Work Ombudsman.¹⁷

7 Social procurement

7.1 Social procurement policy statement

Public procurement can also be used to help realise the human rights of minorities or marginalised groups, by sourcing from Suppliers that support, employ or are owned by such groups (**social procurement**). Social procurement can help support marginalised communities and reduce disadvantage.

These Suppliers may include, for example:

- NGOs
- social enterprises
- Indigenous suppliers
- businesses that promote fair trade, ethical employment or work practices in contexts where exploitation is common.

Example

In 2019 the Commission's Business and Human Rights team purchased beaded lanyards for approximately 130 people for the annual Business and Human Rights Dialogue event from the Trading Circle. The Trading Circle is an NGO that aims to create economic and educational opportunities for women and girls in poverty, with six producer groups in South East Asia that make hand crafted products.¹⁸

The Commission commits to the promotion and realisation of human rights of vulnerable groups through social procurement and will set a target and strategy for this each year.

The Commission will set a social procurement target and strategy for each financial year, which will be subject to monitoring and evaluation.

8 Roles and responsibilities

8.1 Key responsibilities and oversight

This section describes which roles will be accountable and responsible for implementation of this Policy.

- The **President** has overall responsibility for implementation of this Policy.

- The **Chief Executive**, supported by the Modern Slavery Steering Committee, has overall responsibility for direction and efficacy of human rights approach to procurement outlined in this Policy.
- The **Senior Policy Executive—Partnerships and International Engagement** and the **Chief Finance Officer** will have input into ensuring the Policy remains accurate, up to date, reflects relevant activities within the Commission and incorporates expertise from the Business and Human Rights policy area at the Commission.

9 Review

This Policy was developed with input from representatives across the Commission. This Policy will be reviewed at least every two years, with the first review one year after the effective date of this Policy (see **Appendix C**).

10 Definitions

‘Human rights’ means all internationally recognised human rights. These include:

- the International Bill of Human Rights (consisting of the Universal Declaration of Human Rights and the main instruments through which it has been codified: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights) and
- the principles concerning fundamental rights set out in the International Labour Organization’s Declaration on Fundamental Principles and Rights at Work.

‘Modern slavery’ refers to a range of serious human rights violations that are also crimes in Australia: trafficking in persons; slavery; servitude; forced marriage; forced labour; debt bondage; deceptive recruiting for labour or services; and the worst forms of child labour.¹⁹

‘Procurement’ has the same meaning as ‘procurement’ as set out in the Commonwealth Procurement Rules, as outlined in Appendix A.²⁰ However, under this Policy ‘procurement’ is limited to goods and services that have been acquired by the Commission in exchange for payment of money.

‘Severe risks’ means the human rights potentially at risk of the most negative impact through the activities and business relationships of the Commission’s Suppliers. Severity is determined by reference to the scope (number of people affected), scale (seriousness of the impact) and whether the harm is irremediable (are there any limits to restoring the individual impacted to at least the same as, or equivalent to, her or his situation before the adverse impact occurred).²¹ Severity is also tied to likelihood of a risk

occurring, though due attention should be paid to high severity, low likelihood adverse impacts.²²

'Supplier' means a business that is paid to supply goods or services to the Commission. In the Commission context a Supplier may also be an individual without an ABN.

'Supply chain' means all activities and materials that go into goods or services. It covers the production of raw materials, manufacturing stages, transport, delivery, and end-of-life disposal. It includes activities of Suppliers and sub-contractors.

'Minorities or marginalised groups' include but are not limited to:

- people with disability
- Aboriginal and Torres Strait Islander peoples
- indigenous groups
- present and former refugees and asylum seekers
- economically disadvantaged minorities or other communities
- former prisoners
- veterans
- persons living in conflict zones.

11 Appendices

Appendix A Commonwealth Procurement Rules – meaning of procurement

Definition of Procurement in the Commonwealth Procurement Rules, paragraphs 2.7 – 2.10

2.7 *Procurement* is the process of *acquiring* goods and services. It begins when a need has been identified and a decision has been made on the procurement requirement. *Procurement* continues through the processes of risk assessment, seeking and evaluating alternative solutions, and the awarding and reporting of a *contract*.

2.8 In addition to the *acquisition* of goods and services by a *relevant entity* for its own use, *procurement* includes the *acquisition* of goods and services on behalf of another *relevant entity* or a third party.

2.9 *Procurement* does not include:

- a. grants (whether in the form of a *contract*, conditional gift or deed);
- b. investments (or divestments);
- c. sales by tender;

- d. loans;
- e. *procurement* of goods and services for resale or *procurement* of goods and services used in the production of goods for resale;
- f. any property right not acquired through the expenditure of *relevant money* (for example, a right to pursue a legal claim for negligence);
- g. statutory appointments;
- h. appointments made by a Minister using the executive power (for example, the appointment of a person to an advisory board); or
- i. the engagement of employees, such as under the *Public Service Act 1999*, the *Parliamentary Services Act 1999*, a *relevant entity's* enabling legislation or the common law concept of employment.

2.10 Following the awarding of the *contract*, the delivery of and payment for the goods and services and, where relevant, the ongoing management of the *contract* and consideration of disposal of goods, are important elements in achieving the objectives of the *procurement*.

Appendix B Commonwealth Procurement Rules

The approach to procurement outlined in this Policy is supported by the Commonwealth Procurement Rules.²³ Rule 10.19 provides:

Officials must make reasonable enquiries that the *procurement* is carried out considering relevant regulations and/or regulatory frameworks, including but not limited to *tenderers'* practices regarding:

- a. labour regulations, including ethical employment practices;
- b. workplace health and safety; and
- c. environmental impacts.

Each of these three areas (a)–(c) can have an impact on human rights. The Government's guidance on r 10.19 explains that:

- this rule reaffirms 'the Government's commitment to efficient, effective, economical and **ethical procurement**, which includes procurement officials making reasonable enquiries that their procurement is carried out considering relevant regulations and/or regulatory frameworks'
- 'where **one of these areas of regulation is not applicable, or other forms of significant regulation apply**', officials 'should use their judgement to guide the appropriate enquiries'.²⁴

In addition, the guidance explains that some possible tools and options to this end may include officials requiring potential suppliers to demonstrate their sustainability credentials.

Further, r 6.7 notes that government entities **must** not seek to benefit from supplier practices that may be dishonest, unethical or unsafe.

To meet our obligations under the Commonwealth Procurement Rules, the Commission will use its judgement in the field of human rights to identify those instances where further enquiries and actions in relation to certain Suppliers and procurement are warranted, in accordance with this Policy. In some instances, these enquiries may look beyond legal compliance with regulations, as envisioned by the Modern Slavery Act.

The Commission acknowledges that while implementing r 10.19, the Commission is expected to be 'mindful of minimising red tape and additional costs to suppliers'.²⁵

Appendix C Review of this Policy

See section 9 above.

Policy approval date: 20 May 2020

Policy effective date: 1 July 2020

Revision date	Major, minor or editorial changes	Description of revisions
July 2021		
By July 2023		

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- ¹ United Nations, Office of the High Commissioner for Human Rights, 'Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework' (2011), available at http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf
- ² United Nations General Assembly, Transforming our World: the 2030 Agenda for Sustainable Development, 21 October 2015, A/RES/70/1 at <https://sustainabledevelopment.un.org/post2015/transformingourworld/publication>
- ³ Department of Finance, *Commonwealth Procurement Rules: Achieving Value for Money* (2019) under section 105B(1) of the *Public Governance, Performance and Accountability Act 2013* (Cth)
- ⁴ Danish Institute for Human Rights, *Driving change through public procurement: A toolkit on human rights for policy makers and public buyers (Road-testing version)*, (November 2019), 14 at https://www.business-humanrights.org/sites/default/files/documents/danish_institute_driving_change_through_public_procurement_-_a_toolkit_on_human_rights_for_policy_makers_and_public_buyers_.pdf
- ⁵ The 2030 that sets out the Sustainable Development Goals are expressly 'seek to realize the human rights of all'. Preamble; United Nations General Assembly, Transforming our World: the 2030 Agenda for Sustainable Development, 21 October 2015, A/RES/70/1 at <https://sustainabledevelopment.un.org/post2015/transformingourworld/publication>
- ⁶ The Danish Institute for Human Rights, *The Danish Institute for Human Rights - Business and Human Rights Work*, (January 2020), 1 at https://www.humanrights.dk/sites/humanrights.dk/files/media/dokumenter/udgivelser/hrd_2020/nhri_case_stories/denmark_nhri_bhr_case_study_2020.pdf
- ⁷ The meaning of Operations and Supply chains is set out in detail in Department of Home Affairs, *Guidance for Reporting Entities: Modern Slavery Act 2018*, (2019), 32-33 at <https://www.homeaffairs.gov.au/criminal-justice/files/modern-slavery-reporting-entities.pdf>
- ⁸ Department of Home Affairs, *Guidance for Reporting Entities: Modern Slavery Act 2018*, (2019), 16 at <https://www.homeaffairs.gov.au/criminal-justice/files/modern-slavery-reporting-entities.pdf>
- ⁹ Global Slavery Index, '2018 Findings: Global Findings', *2018 The Minderoo Foundation Pty Ltd*, accessed 23 January 2020 at <https://www.globalsslaveryindex.org/2018/findings/global-findings/>
- ¹⁰ Commonwealth Government of Australia, *Explanatory Memorandum: Modern Slavery Bill 2018* (Cth), [5]
- ¹¹ *Modern Slavery Act 2018* (Cth), s 5(c) and *Explanatory Memorandum, Modern Slavery Bill 2018* (Cth), [82]. The Commission is a Commonwealth Corporate Entity but does not have consolidated revenue of \$100 million
- ¹² Department of Finance, *Commonwealth Procurement Rules: Achieving Value for Money* (2019) under section 105B(1) of the *Public Governance, Performance and Accountability Act 2013* (Cth) accessed at <https://www.legislation.gov.au/Details/F2019L00536>
- ¹³ Commonwealth Department of Finance, *Consideration of relevant regulations and/or frameworks* (2019) accessed at <https://www.finance.gov.au/sites/default/files/2020-01/consideration-of-relevant-regulations-and-or-frameworks.pdf> accessed at 7 February 2020
- ¹⁴ This is the same approach the Commonwealth Government has encouraged reporting entities under the *Modern Slavery Act 2018* (Cth) to take in Department of Home Affairs, *Guidance for Reporting Entities: Modern Slavery Act 2018*, (2019) at <https://www.homeaffairs.gov.au/criminal-justice/files/modern-slavery-reporting-entities.pdf>
- ¹⁵ 'Severe risks' are defined in this Policy at Item 10 Definitions
- ¹⁶ See UNGPs, Principle 19
- ¹⁷ In particular drawing on commentary Department of Home Affairs, *Guidance for Reporting Entities: Modern Slavery Act 2018*, (2019), Appendix 3, 83 and other up-to-date best practice guidance from civil society and other experts.
- ¹⁸ The Trading Circle, *Our Story*, <http://www.thetradingcircle.com.au/our-story> accessed 6 February 2020
- ¹⁹ *Modern Slavery Act 2018* (Cth), s 4 which references to offences under Division 270 or 271 of the Commonwealth *Criminal Code*

- ²⁰ Department of Finance, Commonwealth Procurement Rules: Achieving Value for Money (2019), at [2.7] – [2.10]
- ²¹ Danish Institute for Human Rights, *Driving change through public procurement: A toolkit on human rights for policy makers and public buyers (Road-testing version)*, (November 2019) p.37 https://www.business-humanrights.org/sites/default/files/documents/danish_institute_driving_change_through_public_procurement_-_a_toolkit_on_human_rights_for_policy_makers_and_public_buyers_.pdf. See further commentary about severe risks at the UNGPs Reporting Framework, *Salient Human Rights Issues*, <https://www.ungpreporting.org/resources/salient-human-rights-issues/> accessed at 12 February 2020
- ²² UNGPs Reporting Framework, *Salient Human Rights Issues*, <https://www.ungpreporting.org/resources/salient-human-rights-issues/> accessed at 12 February 2020
- ²³ Commonwealth Department of Finance, Commonwealth Procurement Rules: Achieving value for money (20 April 2019) Authorised Version F2019L00536 registered 05/04/2019
- ²⁴ Commonwealth Department of Finance, *Consideration of relevant regulations and/or frameworks* (2019) accessed at <https://www.finance.gov.au/sites/default/files/2020-01/consideration-of-relevant-regulations-and-or-frameworks.pdf> accessed at 7 February 2020 (emphasis added)
- ²⁵ Commonwealth Department of Finance, *Consideration of relevant regulations and/or frameworks* (2019) accessed at <https://www.finance.gov.au/sites/default/files/2020-01/consideration-of-relevant-regulations-and-or-frameworks.pdf> accessed at 7 February 2020