FAIRSUPPLY

Submission to the Attorney-General's Department: *Strengthening Australia's Response to Modern Slavery in Supply Chains*

25 September 2026

1. Introduction

Fair Supply appreciates the opportunity to provide a submission in relation to the public consultation process for the proposed amendment for the addition of a criminal offence under the Modern Slavery Act 2018 (Cth) (the Act), and other related proposals, as described in the Attorney-General Department's Consultation Paper, *Strengthening Australia's response to modern slavery in supply chains*.

Fair Supply fully supports the amendment of the Act in a manner that is appropriately tailored towards:

- improving the overall quality of reporting and public disclosure by reporting entities,
- providing reporting entities with a clear, fair, and practically workable legislative and regulatory framework under which corporate responsibilities for reasonably proportional substantive due diligence can be met, and
- imposes sanctions on delinquent reporting entities, including through criminal liability in appropriate cases, for unreasonably disregarding a legal obligation to take reasonably proportional steps to identify, assess, address and report on potential areas of modern slavery risk in their supply chains and operations.

Fair Supply's respectful position is that a criminal offence (and associated amendments) proposed in the Consultation Paper is not the most appropriate means of achieving the aforementioned objectives. Instead, we respectfully suggest that there are alternative amendment pathways that are preferable to the proposed approach and, in practical terms, more likely to achieve the stated core objectives in the Consultation Paper for "*strengthening the accountability of large entities to address modern slavery risks within their supply chains" and "encouraging corporations to actively identify, assess and address modern slavery risks in their supply chains.*"

2. Overview of preferable reform pathways (including corporate criminal liability)

This submission proposes three alternative reform pathways to the approach described in the Consultation Paper. On the understanding that the Attorney-General's Department considers the introduction of a specific criminal offence (or offences) under the Act to be an indispensable component of any reform, all of our three preferred alternatives provide a suggested pathway by which this can occur. Should this understanding be incorrect, the first two proposals can be altered to eliminate the proposed inclusion of a criminal offence component.

Our proposed preferred alternatives can be summarised in the following terms:

1st Preferred Amendment Option

Mandatory substantive due diligence, aligned with the central recommendation of the McMillan Review. This could include the introduction of potential criminal liability for a company's failure to undertake such action following non-compliance with a formal rectification process for mandatory due diligence of the kind already embedded in the Act.

2nd Preferred Amendment Option

The introduction of a criminal offence (or suite of offences) that focus on serious dereliction in a reporting entity's existing duties under the Act.

This approach would, in a legislative-specific way, criminalise serious and sustained non-compliance under the Act. It would not be limited to deliberately or recklessly misleading representations in Modern Slavery Statements (which, as discussed below, is also criminalised under general provisions of the Commonwealth Criminal Code). Rather, it could extend to corporate misconduct such as a reporting entity failing, without reasonable excuse, to lodge annual modern slavery statements and/or repeated failure to comply with official directions for rectification in reporting via the process for formal rectification of the kind already embedded in the Act.

3rd Preferred Amendment Option

An offence broadly similar to the one proposed in the Consultation Paper but without the (currently proposed) reverse onus and burden of proof that places a positive obligation on a corporate defendant to establish a "defence", on the balance of probabilities.

Instead, and in line with the overwhelming body of criminal law in Australia (including for corporate misconduct), the burden should be on the prosecuting authority to prove, to the ordinary criminal standard (beyond reasonable doubt), a company's failure to take reasonable steps to prevent modern slavery in its supply chain.

Fair Supply's position is that the 1st Preferred Amendment Option is, by a considerable margin, the best approach for meeting the Attorney-General's Department's stated objectives and the other important policy considerations described at the beginning of this submission.

We suggest that the 2nd Preferred Amendment Option is an appropriate approach in circumstances where the Attorney-General's Department is not in favour of introducing mandatory substantive due diligence in line with the McMillan Report's core recommendation. It would also be open to amending the Act with a combination of some or all of the core characteristics in the 1st and 2nd Preferred Amendment Options.

The only circumstance in which we believe the 3rd Preferred Amendment Option should be considered is if a criminal offence of the kind proposed by *Strengthening Australia's response to modern slavery in supply chains* is the only reform pathway that is proposed to be put forward to Parliament.

3. Existing criminal liability in relation to obligations under the *Modern Slavery Act 2018*

We note that a focus area of much discourse and criticism relating to the efficacy of the Act since even well before the public consultation process was the suggested lack of a specific criminal offence for any kind of non-compliance.

Our respectful position is that such criticisms of the Act's asserted lack of criminal sanctions in all aspects of its operation and compliance are misleading and do not properly reflect the full operation of Commonwealth Criminal Law.

Section 137.1 of the Commonwealth Criminal Code (the Code) already creates an offence for providing false or misleading information to any Commonwealth entity or official, including through material omission. The maximum penalty is 12 months' imprisonment. It is our understanding that this general offence provision is reasonably open to be applied so that any company who submits a modern slavery statement with the Attorney-General's Department knowing that any material aspect of that Statement is false nor misleading already commits a criminal offence in contravention of s.137.1 of the Code and is liable to prosecution for same.

It follows, in our view, that if an entity is aware of a significant modern slavery risk factor in its supply chain (e.g. the sourcing of a product that may be tainted by forced labour), but deliberately omits disclosure of the nature and extent of that known risk in its annual Modern Slavery Statement, then that entity is liable to prosecution for an existing offence under the Code.

If further specific legislative clarity is required (which we understand may be desirable from a policy perspective), then the Act could simply be amended to confirm that a reporting entity's submission of an annual statement to the Modern Slavery Statements Register administered by the Attorney-General's Department amounts to the provision of information to a Commonwealth entity, including for the purpose of s.137.1 of the Code.

In addition to the fact that certain serious misconduct in reporting under the Act already gives rise to potential criminal liability, we also note that the existing context for criminal liability under the Act via the general offence provision under s.137.1 of the Code substantively aligns with the recent recommendation of the New Zealand Parliamentary Education and Workforce Committee, in supporting the passage of the Modern Slavery Bill **(our emphasis added)**:

"...we recommend amending the offence and penalty regime in the bill as introduced to be broadly based on the New Zealand climate-related disclosures regime. This includes:

- **an offence related to giving a false or misleading statement or information** (clause 26A)
- an offence related to liability of directors or senior managers (clause 26B)
- pecuniary penalties (clause 26C).

We recommend specifying that offences would only apply to information given that person knows to be false or misleading in a material way. This reflects our expectation that minor errors or omissions should not be treated as offences."

Accordingly, if this recommendation of the Education and Workforce Parliamentary Committee carries through into the legislation ultimately passed in New Zealand, it seems that this forthcoming international anti-slavery regime will essentially be aligned with the status quo under the Act and Australian criminal law.

4. Concerns relating to the Proposed Amendment

Notwithstanding our full support for the stated objectives for the Proposed Amendment, there are several key reasons underpinning our position that the specific approach described in the Consultation Paper is neither the most effective nor otherwise most appropriate approach to amending the Act. In summary, these include:

- The apparent total disconnect between the Proposed Amendment and the several year process of public consultation, expert input, and the Australian Government's formal response in relation to the statutory review of the Act.

- The wholly unintended but likely substantial chilling effect that the Proposed Amendment, if enacted, will have on candid and detailed disclosures by reporting entities in their annual reporting under the Act. This is particularly concerning given that such disclosures are unquestionably one of the bright spots that have been widely commended by third party stakeholders since the Act's commencement, very much against the current of criticism that has otherwise dominated the statutory review landscape.

- Several practical realities ranging from the inherent nature of modern slavery in global supply chains (categorically different to other criminal conduct such as the bribery of foreign officials) to the potentially insurmountable evidentiary issues that seem highly likely to inhibit the proposed amendment from having a positive real-world impact in fulfilling its stated objectives.

The McMillan Review Process and Conclusions versus the Proposed Amendment

Prior to the media release from the Attorney-General's Department on 16 July 2026, the most recent substantive commentary or published information relating to the Act was the official Government response to the McMillan Report – Australian Government response to the review report of the Modern Slavery Act 2018 (Cth) in December 2024 (**Government Review Response**). The Government Review Response contains no indication of any kind of potential change to the Act that in any way resembles the Proposed Amendment. Instead, the Government Review Response position, without any mention of potential criminal liability (emphasis added) states:

> "In relation to the imposition of specific financial penalty provision – ***The Attorney-General's Department will consult on the introduction and operation of civil penalties***..."

Whilst the Government can, of course, choose to pursue a different policy objective or pathway in relation to the Act's future operation, we note that the information released to date has provided no justification or explanation for seemingly totally disregarding and going in a completely unforeseen direction from anything that arose from the entirety of McMillan statutory review. This stark departure and change of direction seems to apply not only Professor McMillan's recommendations and the Government Review Response, but also to the full scope of the extensive and multi-staged public consultation process with the plethora of considered (and in numerous cases, expert) public submissions that were received in connection with it.

Whilst calls for the addition of specific corporate criminal liability have been a feature of the lively public discourse surrounding the Act since prior to its enactment, we are not aware of any published submission or other stakeholder input, at any stage, that has proposed criminal liability in a form that is substantively comparable to the type of offence encapsulated in the Proposed Amendment.

Practical realities and likely challenges in implementation and enforcement

Fair Supply recognises that various practical challenges relating to the administration of modern slavery legislation can be met through careful and detailed official guidance, targeted capacity building and education for reporting entities and other productive collaborative efforts. It is also axiomatic that any legislative amendment that has minimal practical impact or cannot be realistically enforced is ineffective for advancing the underlying policy objectives, however commendable.

Our position is that there several inherent characteristics of modern slavery practices in global supply chains that present potentially insurmountable challenges for the implementation and enforcement of a corporate criminal offence of kind suggested by the Proposed Amendment, including:

- the virtual ubiquity of global slavery practices hidden deep within opaque and extremely complex global supply chains,
- whether a workable and appropriate nexus between the reporting entity company and deep-tiered slavery can be developed and implemented in the context of a serious corporate criminal offence, and
- given that an indispensable element of the offence under the Proposed Amendment is proof, to the criminal standard, of actual slavery practices, based on the history of anti-slavery efforts to date, issues arise as to the practical likelihood of there being sufficient evidence / discovered cases where corporate culpability may be properly assigned in Australia.

Notwithstanding the proposed inclusion of an absolute liability, the Proposed Amendment, is wholly dependent upon an ability to prove, through admissible evidence and to the criminal standard, an actual incidence of modern slavery. In the international supply chain context, this may, in practical terms, be an insurmountable challenge.

Although it is, of course, incredibly important to ensure that modern slavery practices within Australia are detected and prosecuted, such conduct is already fully criminalised. With the current state of accessorial liability under Australian federal law, this also appears to provide a significant degree of existing prosecutorial scope in relation to suppliers that substantially cause or contribute towards such practices, including those that have reasonable grounds to believe that such serious offending is occurring, but fail to report it to law enforcement.

It is also our position that the relatively recently introduced corporate offence under the *Crimes Legislation Amendment (Combatting Foreign Bribery) Act 2024* should not, in any meaningful way, be treated as an analogous situation that creates an appropriate legislative or policy-based pathway to justify a substantively similar approach to address the issue of modern slavery in global supply chains. Whilst foreign bribery is unquestionably an appropriate focus of extra-territorial corporate regulation and may be a crime that is regrettably commonplace, it does not seem to us to be even remotely comparable in its prevalence and worldwide ubiquity of modern slavery.

One need only consider the most recent estimates of total enslaved persons in the Global Slavery Index at approximately 50 million individuals worldwide, or the candid acknowledgement in the Modern Slavery Statements of good practice reporting entities that it is virtually inevitable that modern slavery exists in a diverse array of global supply chains that virtually **any company** that buys smartphones, laptop computers, staff uniforms made with cotton, solar panels on its office buildings, or has transitioned to an Electric Vehicle fleet, almost certainly has real-world incidences of modern slavery in its supply chains.

This creates a unique and paradoxical situation for appropriately regulating corporate conduct in relation to modern slavery in global supply chains, namely, the best research and human rights efforts continually indicate the virtually ubiquitous presence of modern slavery in a huge number of common product lines that many Australian reporting entities procure from, but the ability to pin down with admissible evidence, an individual instance of such slavery practices overseas remains a seemingly insurmountable practical challenge.

Another important feature of the broader transparency landscape that has existed since even before the introduction of mandatory modern slavery reporting in Australia is the important practice of reputable human rights organisations, leading researchers and other interested third-party stakeholders publishing information that credibly links the actual or suspected supply chains of (usually well-known) named companies with potential forced labour or other forms of modern slavery.

One of the more prominent examples of this since the Act's commencement is the Australian Strategic Policy Institute's Report: "Uyghurs For Sale: 'Re-education', forced labour and surveillance beyond Xinjiang" (March 2020). One of the key findings of the Report was that it named 82 well-known global brands covering technology, clothing and automotive sectors, including Apple, BMW, Gap, Huawei, Nike, Samsung, Sony and Volkswagen that had supply chains that strongly suggest forced labour of Uyghur workers in the Xinjiang region of China.

Particularly when considering the "reverse onus" approach raised by the Proposed Amendment, a practical issue that immediately arises is whether all of these 82 companies that are also reporting entities under the Act would be characterised presumptively within the scope of the proposed new offence, unless it could positively prove that reasonable steps had been taken to prevent such forced labour.

More recently, in June 2026, the international NGO, ***Global Witness*** published the findings of a year-long investigation in a report titled, *"Who buys Rwanda's smuggled coltan?"* One of several compelling features of the report is its identification of potential supply chain linkages between smuggled "conflict-tainted" coltan and the conclusion that, including through the alleged systemic manipulation of existing due diligence certification schemes:

> ***"... conflict coltan may have found its way to global brands including Microsoft, Vodafone, Sony, Amazon, Nvidia, LG Display, Ericsson, Toyota and Apple –and into products we use every day."***

These reports have demonstrated that sufficiently credible evidence may be found to appropriately name companies with alleged supply linkages to modern slavery. However, to date this seems to have almost exclusively occurred in the context of human rights watchdog reporting. This is, of course, categorically different to obtaining proof in criminal proceedings. Overall, we consider that the collective experience to date seems to indicate that finding definitive linkages, including the kind that might equate admissible evidence to the criminal standard have proven, in practice, to be virtually non-existent.

Such practical realities of detecting and linking international slavery practices to the necessary degree are an important consideration in evaluating whether an offence of the kind to be introduced under the Proposed Amendment would operate to achieve its legislative purposes.

Developing a workable nexus / causal connection in the context of criminal prosecution

Related to the above practical difficulties arising to the inherent characteristics of modern slavery deep within global supply chains, is the development of an appropriate and workable principle for causation and sufficient connection (nexus) with the incidence of slavery and the defendant corporation.

The Consultation Paper appears to recognise this critical issue (at p.11) but does not describe a clear preference or proposed details for how it might be resolved. Whilst there is a degree of familiarity with the well-recognised UNDG language, there is considerable uncertainty, especially given the necessary departure from established criminal law principles of causation. Such a novel approach seems virtually unavoidable, including through the example that the Consultation Paper describes as "[an] [a]lternative formulation... [that] may better reflect the complex and multi-casual nature of modern slavery", namely, potential liability where the company, "materially contributed to, facilitated, or enabled". Assuming this reflects proposed statutory language, these are not terms that are well-settled in Australian criminal law. Given the non-binding legal status of any official guidance, and without the inclusion of highly detailed statutory definitions (which has not been indicated or proposed), it seems highly likely that corporations will face considerable uncertainty with how, in practice, principles of causation and nexus will actually operate.

Seemingly because the offence under the Proposed Amendment is so novel and unprecedented, we are not aware of any kind of existing modern-slavery-related criminal offence in any other jurisdiction worldwide from which practical guidance as to these issues of causation / nexus could be drawn. On this separate but related practical issue, we reiterate our respectful position that an attempt to draw analogy with foreign bribery offences is highly problematic.

Unintended Chilling Effect on Candid and Detailed Disclosure in Reporting

Another area of concern that intersects with the practical and evidentiary difficulties discussed above is the fact that self-disclosure through modern slavery reporting is one of the few, albeit still genuinely exceptional, in which disclosures of actual modern slavery practices have occurred.

Despite the overwhelmingly negative views generally expressed by commentators over the history of the Act's operation, one "best practice" reporting approach that has been widely commended, is the detailed public disclosure of actual detected incidences of modern slavery in the supply chains of a select few reporting entities.

Perhaps the most notable (and widely lauded) example of this practice was the disclosure, in Woolworths' 2021 and 2022 Modern Slavery Statements, that candidly disclosed what, in effect, was the actual detected incidence of forced labour in its Malaysian supply chain, including an explanation of subsequent remedial action. The Woolworths' Statements also included relatively detailed descriptions that explained the nature and extent of the detected forced labour practice.

In light of this undisputed high point from the history of overall reporting quality under the Act, we are concerned that such published disclosure might cease entirely. Worse still, under the Proposed Amendment it might conceivably, amount to the prima facie admission of a serious corporate criminal offence.

Ultimately, we consider that the encouragement of fuller transparency in self-reporting and the continuation of largely unfettered publication (and, hopefully, corporate responses) of reports by human rights / research institutions – such as the work just published by *Global Witness*, is of significant public value. It should be actively encouraged, rather than suppressed (even inadvertently).

From our perspective, there seems to be significant potential for an overall chilling effect (and general resistance) in relation to this kind of commendable disclosure if it is suddenly occurring in a landscape where the potential for serious corporate criminal liability must be weighed into the broader corporate risk matrix. This is a significant potential downside in the overall landscape of corporate accountability.

5. Further details relating to Preferred Alternative Approaches

First Preferred Alternative Approach

Mandatory substantive due diligence, aligned with the central recommendation of the McMillan Review. This could include the introduction of potential criminal liability for a company's failure to undertake such action following non-compliance with a formal rectification process for mandatory due diligence of the kind already embedded in the Act.

Fair Supply supports an underlying policy objective that seeks to appropriately transition and improve the Act from a purely reporting-based scheme to an action-based model.

However, we suggest that the best approach for doing this is through the phased introduction of mandatory substantive due diligence, in a manner that is aligned with McMillan Report's core recommendations. This, in our view, will better position Australia with prevailing international trends in good practice for ESG reporting.

Mandatory substantive due diligence requirements could be effectively enforced and regulated through the existing explanatory and remedial framework established under s.16A of the Act.

If the introduction of a specific criminal offence is considered by the Attorney-General's Department to be an essential feature of the current amendment pathway, viable options under this pathway include:

- a provision whereby a reporting entity that fails, without reasonable excuse, to undertake appropriate and proportional due diligence in relation to modern slavery risks in its supply chains and operations commits an offence; and/or
- amending s.16A(4) whereby an entity that fails to comply with a request under s.16(1) commits an offence.

Fair Supply also believes that significantly broadening the potential use of the existing explanation, rectification and remedial mechanisms under s.16A can achieve most of the key stated justifications that might otherwise be pursued via Deferred Prosecution Agreements (**DPAs**). Given the already highly novel nature of the core aspects of the Proposed Amendment, it seems to us that the attempted introduction of a currently non-existent feature of Australian criminal law (DPAs) is only apt to create further complexities, difficulties in practical implementation and potential confusion / ambiguity for reporting entities.

Second Preferred Alternative Approach

The introduction of a criminal offence (or suite of offences) that focus on serious dereliction in a reporting entity's existing duties under the Act.

This approach would, in a legislative-specific way, criminalise serious and sustained non-compliance under the Act. It would not be limited to deliberately or recklessly misleading representations in Modern Slavery Statements. Rather, it could extend to corporate misconduct such as a reporting entity failing, without reasonable excuse, to lodge annual modern slavery statements and/or repeated failure to comply with official directions for rectification in reporting via the process for formal rectification of the kind already embedded in the Act.

The poor performance by a substantial proportion of reporting entities in meaningfully responding to the Act's reporting criteria has been a consistent criticism since the Act's introduction. This was strongly echoed throughout the statutory review process and the McMillan Report's core findings. Most recently, a key focus area of the ABC's 4 Corners broadcast was that reporting entities, including those operating in high-risk sectors, were simply "copy and pasting" for the entirety of their annual Modern Slavery Statements.

All of these well-documented trends are matters of significant concern for the overall efficacy of the Act in fulfilling a public interest purpose. Despite this, the Proposed Amendment does not operate as a direct response (or potential deterrent solution to) grossly inadequate reporting practices.

It is our respectful position that there is substantial scope to greatly improve the overall quality of reporting under the Act through the introduction of criminal and/or civil penalty provisions that are targeted at the most serious incidences of delinquency in modern slavery reporting. As per our discussion above relating to the potential expanded use of the existing mechanisms in s.16A(4), such offence provision(s) may be incorporated so that they only potentially operate once a reporting entity has failed, without reasonable excuse, to comply with official Government directions for explanation, rectification and/or remediation.

Third Preferred Alternative Approach

An offence broadly similar to the one proposed in the Consultation Paper but without the (currently proposed) reverse onus and burden of proof that places a positive obligation on a corporate defendant to establish a "defence", on the balance of probabilities. Instead, and in line with the overwhelming body of criminal law in Australia (including for corporate misconduct), the burden should be on the prosecuting authority to prove, to the ordinary criminal standard (beyond reasonable doubt), a company's failure to take reasonable steps to prevent modern slavery in its supply chain.

Should the Attorney-General's Department decide to proceed with plans to amend the Act with an offence of the kind in the Proposed Amendment, then, at a minimum, we suggest that the reversal of the criminal burden of proof such that a defendant is required to positively prove reasonable steps (of any kind) be removed.

This can be simply done with the substitution of a reverse onus "defence", with an additional essential element to the offence whereby the prosecution must prove that the defendant has "failed to take reasonable steps to identify, assess and address risks that have [contributed / other adopted causal language] the identified modern slavery incidence".

If the an intention persists with an offence whereby culpability arises based on the mere existence of modern slavery practice in the company's supply chain, it should not then fall to a charged company to defend the allegation by positively proving (on the balance of probabilities) that it had taken reasonable steps to mitigate such a risk (or some variation thereof, depending on the ultimately adopted statutory language.) There does not appear to us to be any compelling reason of policy or practice that should shift, in any way, the fundamental obligation that the burden and standard of criminal proof rest solely on the prosecuting authority.

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This document sets out the submission made by Fair Supply Analytics Pty Limited ACN 637 115 587 (Fair Supply) to the Attorney-General's Department in response to the 'Strengthening Australia's Response to Modern Slavery in Supply Chains' Consultation Paper.

This document has been published for general information. The content has been modified slightly from the version lodged with the Department due to formatting and length. This document presents the full substance of the analysis on which the lodged submission was based.

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