FAIRSUPPLY

"Strengthening Australia's Legislative Response to Modern Slavery in Supply Chains"

Key points in relation to the proposed legislative framework Consultation Paper

Created: August 2026

Introduction

On 16 July 2026, the Australian Government announced proposed reforms to the Modern Slavery Act 2018 (Cth) ("the Act"), through the planned introduction of a new criminal offence for companies failing to prevent modern slavery in supply chains, alongside civil penalties and strengthened enforcement of the Act.

The Attorney-General's Department released its consultation paper, ***Strengthening Australia's legislative response to modern slavery in supply chains*** on 21 August 2026, ("the Consultation Paper"). The Consultation Paper is a 26-page document, which sets out some further details on key features of the proposed legislative framework and how it might operate. Stakeholder feedback is now being sought from the Attorney-General's Department, with a submission deadline of midnight AEST on **25 September 2026.**

If enacted, the proposals will represent a significant shift in Australia's modern slavery regime — from a framework principally focused on corporate transparency and reporting, towards one in which corporations face criminal liability for failing to prevent modern slavery in their supply chains, unless they can demonstrate that reasonable steps were taken to prevent the conduct.

The Consultation Paper directly references the proposed reasonable steps defence with internationally recognised approaches to human rights due diligence, including the *UN Guiding Principles on Business and Human Rights* and the *OECD Guidelines for Multinational Enterprises on Responsible Business Conduct*. The proposed framework is reflective of a broader shift in focus from "what does a business report?" towards "what did the business actually do to identify, assess and address the risk?"

This update is a first look overview of some of the key points raised by the Consultation Paper. To reflect the Attorney-General Department's approach in how it has framed the key issues, we have reproduced significant text from the wording of the Consultation Paper.

Fair Supply will shortly publish separate practical guidance examining what the proposed reforms may mean, potential issues to raise as part of a substantive submission to the consultation process, and the practical implications for businesses on an emerging regulatory and enforcement focus on human rights due diligence and "reasonable steps".

Submissions close at midnight AEST on 25 September 2026.

Primary source: Australian Government, Attorney-General's Department, *Strengthening Australia's legislative response to modern slavery in supply chains – Consultation paper* (August 2026).

Executive Summary

- **Who the proposed reforms cover**: corporations with annual consolidated revenue over $100 million – i.e. current reporting entities under the Modern Slavery Act 2018 (Cth).

- **What is proposed**: a new criminal offence for failure to prevent specified modern slavery in a corporation's supply chain.

- **Defence**: a corporation could defend the charge by proving, on the balance of probabilities, that it took reasonable steps to prevent the conduct.

- **Some big questions that appear to remain unanswered**:
  - the proximity required between the corporation and the exploitation (e.g. slavery practices in the deepest tiers of supply chains),
  - the fault element
  - appropriate penalty range and principles; and
  - the detail / legal status of official guidance.

- **Timing for implementation**: the Government proposes a 12–18 month delayed commencement after the reforms take effect.
- **Consultation closes**: 25 September 2026.

What is changing?

The Australian Government is considering a move beyond a reporting only model. The proposed offence(s) would sit alongside existing modern slavery offences in the Commonwealth Criminal Code and relate to whether a corporation failed to prevent modern slavery connected with its supply chain to such an extent as to warrant criminal punishment.

The core policy idea is preventative: corporate liability could arise even without proof that the corporation intended, knew about or participated in the exploitation, depending on the fault model ultimately adopted. The practical effect is a likely increased focus on the practical impact and overall appropriateness of a corporation's governance, due diligence and risk controls to identify, assess and address modern slavery risk.

How the proposed offence would work

1. **Actual modern slavery practice detected**
   Although seemingly extra-territorial in intended scope (i.e. including acts that occur outside Australia), the underlying modern slavery conduct would be limited to specified offences already criminalised under Divisions 270 and 271, with the consultation focusing on slavery, servitude, forced labour and debt bondage. Deceptive recruitment is discussed but is not proposed to be included in the specified conduct.

2. **There is a supply-chain connection**
   The conduct would need to relate to the production, manufacturing or distribution of goods, services, labour, materials or other inputs within the corporation's sourcing arrangements, potentially extending beyond direct suppliers.

3. **There is a connection to the corporation's conduct**
   The Consultation Paper is seeking specific input on how strong this link should be. Language / proposed descriptions include conduct that caused or significantly contributed to the exploitation, versus broader formulations such as materially contributing to, facilitating or enabling it, including through material omission.

4. **The applicable fault model**
   Strict liability, absolute liability or recklessness all appear to be under consideration.

5. **The corporation may rely on the reasonable steps defence**
   The corporation would bear the legal burden of proving, on the balance of probabilities, that it took reasonable steps to prevent the modern slavery conduct. This is a proposal for a "reverse onus" criminal offence, which is relatively unusual under Australian law and has potentially significant implications.

What is a Failure to Prevent Offence?

The Consultation Paper continues to characterise the proposed reforms as a "failure to prevent offence", which is a specific form of corporate criminal liability designed to encourage businesses to actively mitigate wrongdoing that may occur or be committed by others that it is not directly connected to (i.e. not employees or company directors).

Rather than requiring prosecutors to prove that the corporation itself intended, authorised or knew about the misconduct, the offence can make the corporation liable where prohibited conduct is committed by a person with some legally defined connection to the business, and the corporation has failed to take appropriate steps to prevent it.

The policy objective of such an offence type includes an intention to encourage companies to implement effective governance, risk management, compliance and due diligence systems, particularly where misconduct may occur through employees, agents, suppliers or other business relationships.

Australia currently has a form of failure to prevent offence in relation to foreign bribery. Under section 70.5A of the Criminal Code Act 1995 (Cth), a corporation can commit an offence where an associate of the business bribes a foreign public official for the corporation's profit or gain. The corporation can be liable even if it did not authorise, know about or participate in the bribery. However, it has a defence if it can demonstrate that it had adequate procedures in place designed to prevent the conduct.

The Government is now considering a similar model for modern slavery, adapted to reflect the complexity of supply chains and the nature of modern slavery as both a serious crime and a human rights abuse. The seemingly fundamental differences between foreign bribery and the global prevalence of modern slavery, including deep in the supply chains of commonly used products in many businesses and day-to-day life, is anticipated to be a focus of submissions invited by the Consultation Paper, including whether such differences require a more targeted and considered approach to corporate criminal liability.

The five Government case studies in the Consultation Paper

Case 1: Purchasing pressure

A large clothing retailer pushes suppliers on price and delivery times. Forced labour and debt bondage are later found at a subcontractor, with evidence that the retailer's purchasing practices made lawful production difficult. The scenario gives rise to questions relating to whether commercial purchasing practices can "cause or significantly contribute" to exploitation and thereby lead to liability for criminal prosecution.

Case 2: Ignored red flags in labour hire

A horticulture company accepts labour supplied below lawful wage rates, knows the price is unusually low, and receives worker complaints but does not investigate. Forced labour and debt bondage are later confirmed. The scenario gives rise to questions relating to the significance of known warning signs, omissions and continuing commercial benefit.

Case 3: Active due diligence but concealed conduct

A food company identifies forced-labour indicators, investigates, remediates, strengthens monitoring and engages workers, but the supplier deliberately conceals continuing forced labour. The scenario gives rise to questions relating to how a reasonable steps defence may operate where meaningful preventative action was taken. It does not seem to grapple with the fundamental issue of whether such a company should be criminally prosecuted (and have to "prove" a positive defence) in the first place.

Case 4: Traceability in a multi-tier supply chain

An electronics company's supplier shifts mineral sourcing to a high-risk jurisdiction with credible forced-labour allegations. The minerals are blended and cannot be traced to specific components, but forced labour is later confirmed upstream. The scenario gives rise to questions relating to how the supply-chain nexus should operate where exact product-level traceability is impossible.

Case 5: Policies without operational due diligence

A seafood importer knows the sector has recognised forced-labour risks but relies on outdated policies, limited resourcing and no senior oversight, mapping beyond direct suppliers or substantive due diligence. Forced labour is later found several tiers down. The scenario gives rise to questions relating to the legal weight that might be afforded to governance, appropriate resource allocation and risk-based due diligence in establishing reasonable steps.

The proposed offence: Executive Snapshot

The table below reflects the nine design components in the Consultation Paper alongside initial questions for an executive briefing. The Consultation Paper's case studies are illustrative only; and have been expressly described as not reflecting whether the proposed offence would apply in any particular case.

Proposed element	Government proposal announced	Illustrative case study	Initial takeaway
Application of the offence	Applies to corporations with annual consolidated revenue over $100 million. The new offence would not directly apply to directors or other office holders, although existing accessorial liability provisions may still apply in some circumstances.	All five Government case studies involve Australian companies with revenue exceeding $100 million, illustrating the intended corporate threshold.	The proposed threshold mirrors the current Modern Slavery Act reporting threshold. The offence itself is directed at the corporation, not individual Directors.
Underlying criminal conduct	The offence would focus on specified modern slavery offences under Divisions 270 and 271: principally slavery, servitude, forced labour and debt bondage. The consultation does not propose including deceptive recruitment as specified conduct.	Cases 1 and 2 involve forced labour and debt bondage. Cases 3, 4 and 5 involve forced labour.	A prosecution would need proof beyond reasonable doubt that the underlying modern slavery conduct occurred, but not necessarily a conviction of the individual perpetrator.
Connection to sourced products or services	There must be a sufficient nexus between the exploitation and goods, services, labour, materials or other inputs in the corporation's sourcing arrangements. The precise threshold is still open for consultation.	Case 4: minerals from a high-risk region are blended into electronic components, making it impossible to identify which individual products contain inputs linked to forced labour. Case 5: forced labour is found by several intermediaries down a seafood supply chain.	The unique challenge of multi-tier supply chains and traceability appears to have been given some recognition. Liability may not depend on being able to trace exploitation to a single finished product.
Connection to the corporation's conduct	In addition to the supply-chain nexus, the Government is considering a further link between corporate conduct and exploitation. Options range from "caused or significantly contributed" to materially contributed, facilitated, enabled, or a significant omission that contributed to the offending.	Case 1: aggressive price pressure and compressed deadlines allegedly made lawful production difficult. Case 2: the company continued accepting labour at unusually low cost despite complaints and indicators of exploitation.	This seems to be one of the most important consultation questions. Critical (as yet unresolved) issues relating to the degree of connection between a company's purchasing practices, commercial pressure or other conduct (or non-conduct) to the detected slavery incidence before criminal liability should attach.

Proposed element	Government proposal announced	Illustrative case study	Initial takeaway
Fault element	The consultation considers absolute liability, strict liability or recklessness. Strict or absolute liability would remove the need to prove knowledge or intention; strict liability would retain a mistake-of-fact defence. Recklessness would require proof that the corporation was aware of a substantial risk and unjustifiably took that risk.	Case 2 contains clear warning signs known to management. Case 3 is the opposite scenario: the company identifies risk and acts, but the supplier deliberately conceals the forced labour.	The final fault model will determine critical legal issues such as what the corporation knew, compared with what due diligence, risk assessment systems and other preventative measures it had in place.
Reasonable steps defence	A corporation could defend the charge by proving, on the balance of probabilities, that it took reasonable steps to prevent modern slavery. The court would assess this case by case, having regard to guidance and the corporation's circumstances.	Case 3: the company identifies indicators, investigates, remediates, strengthens monitoring and audits, and engages workers and local stakeholders; the supplier nevertheless conceals forced labour. Case 5 contrasts this with stale policies, minimal resourcing, no senior oversight, no mapping beyond tier 1 and no substantive due diligence.	The Consultation Paper indicates that evidence of due diligence, governance arrangements and compliance measures will be relevant to establishing "reasonable steps" have been taken (meaning the company avoids criminal liability). The requirement for a defendant company to "prove" this, in the context of a criminal prosecution is a significant outstanding issue.
Ministerial guidance	The Minister would issue guidance on reasonable steps. It would draw on the UN Guiding Principles on Business and Human Rights and OECD Guidelines, and would be principles-based rather than a checklist. Controls would be expected to be proportionate to the corporation's risk profile.	Cases 3 and 5 show the contrast the proposed guidance is likely to illuminate: active risk identification, investigation, remediation and monitoring versus policies that exist on paper without supporting governance or due diligence.	The Consultation Paper characterises the proposed official guidance as important evidence. However, it also suggests that compliance with such guidance is not necessarily a bar to criminal prosecution. Courts would assess reasonable steps in the circumstances of each case.
Penalty	The Government seeks views on a maximum penalty aligned with comparable serious corporate offences. Options include 100,000 penalty units (currently $36.4 million), three times the benefit obtained, or 10% of annual turnover where the benefit cannot be determined.	The case studies do not address penalty quantum; they are designed to test the operation of the offence rather than sentencing outcomes.	The proposed penalty options are significant and reinforce that the reform is intended as a criminal accountability mechanism, not simply an extension of reporting obligations.
Commencement	The Government proposes a 12–18 month delayed commencement period after the reforms take effect, to allow time for guidance and for corporations to make necessary changes to governance, procurement and supply-chain management practices.	No specific case study addresses commencement.	The proposed transition period is described as being intended to provide time for the compliance expectations to be clarified before the offence commences.

Alternative enforcement

Deferred Prosecution Agreements (DPAs)

DPAs do not currently exist under Australian law for any form of criminal conduct – whether corporate or relating to individuals.

The Consultation Paper is also consulting on whether Australia should introduce a DPA scheme alongside the proposed offence. A DPA would allow prosecutors to defer criminal proceedings against a corporation subject to agreed conditions. If those conditions are met, the prosecution would not proceed or would be discontinued.

The underlying justification or purpose as to why, despite not currently existing in any form in Australia, the Attorney-General's Department is now considering DPAs as potentially appropriate for the proposed modern slavery offence is not explained in detail in the Consultation Paper.

A DPA could be considered where there is reasonable suspicion that an offence has been committed, reasonable grounds to believe an investigation would establish a realistic prospect of conviction, and it is in the public interest to pursue a DPA rather than prosecution.

Possible DPA terms include a financial penalty, improvements to governance and compliance controls, cooperation with investigations, compensation or other remediation for victims, payment of investigation costs and publication of key terms. Australia does not currently have a DPA scheme.

Civil remedies

The Consultation Paper also raises the issue of whether existing civil remedies provide adequate avenues for victims and survivors seeking redress in connection with a failure to prevent offence, and whether an additional civil remedy should be considered. Existing avenues identified by the Government include reparation orders, Fair Work Act remedies, common law claims, victim compensation schemes and other statutory remedies. Clearly, these appear to focus primarily on alleged modern slavery practices that occur within Australia.

The Consultation Paper notes that creating a new civil remedy could also increase complexity, litigation cost and duplication.

What specific input is being sought by the Australian Government from stakeholders?

Model

Is the proposed legislative design for the failure to prevent offence appropriate, including its scope, nexus, fault element, defence, guidance, penalty and commencement?

Impact

What measures could minimise compliance costs while preserving the effectiveness of the offence, and what unintended consequences should be considered?

Support

What guidance, training or other resources would corporations need, and how should Australian guidance interact with international standards and comparable regimes?

DPA scheme

What are the benefits and limitations of a DPA scheme for failure to prevent modern slavery offences, and what terms should be available?

Civil remedies

What civil remedies are currently available to victims and survivors, are they adequate, and what enhancements may be required?

Key dates and status

Current status and potential pathway of the reforms into law

- The proposals described in the Consultation Paper have not received final Government approval, and no specific draft legislative wording has been provided yet.
- Submissions relating to the Consultation Paper close at **midnight AEST** on **Friday, 25 September 2026.**
- If, following the public consultation period, the Attorney-General's Department decides to proceed with proposing actual draft legislation, then a legislative bill (with specific wording of the offence provision(s) and other formal statutory amendments) will need to be put before the Federal Parliament for debate and consideration.
- If the Parliament were to pass such a bill into law, then the Attorney-General's Department has indicated in the Consultation Paper that it is proposing a deferred commencement period (i.e. after the law is passed by Parliament but before it becomes operational for companies) of 12-18 months.

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