Australian Government
Attorney-General's Department

Strengthening Australia's legislative response to modern slavery in supply chains

Acknowledgement of country

We acknowledge Aboriginal and Torres Strait Islander peoples as custodians of Australia and pay our respects to Elders, past and present. We also acknowledge their ongoing connection to land, sea and communities throughout Australia, and their contributions to the lives of all Australians.

Help and Support

Help is available for any person experiencing, or at risk of, modern slavery.

If you have immediate concerns for your safety, the safety of another person, or there is an emergency, call Triple Zero (000).

You can contact the Australian Federal Police (AFP) on 131 237 (131 AFP) or go to the AFP website at www.afp.gov.au for help. The AFP can keep you safe, provide advice and refer you to other services that provide accommodation, financial support, counselling, and legal and immigration advice.

The Salvation Army and specialist partner organisations can provide free and confidential support to:

- help you understand your rights and options
- offer free legal advice about your experience of modern slavery
- help with your immediate needs
- refer you to the Support for Trafficked People Program if eligible.

Find out more at www.salvationarmy.org.au/additional-referral-pathway/ or for more information call 1800 000 277.

Anti-Slavery Australia provides free, confidential legal and migration services to people who have experienced, or are at risk of, modern slavery in Australia. If you have experienced modern slavery, or you are worried about someone in this situation, contact Anti-Slavery Australia for free and confidential legal advice and support. Call (02) 9514 8115 (9 am – 5 pm AEST, Monday to Friday), or email ASALegal@uts.edu.au.

If you are in, or at risk of, forced marriage, you can contact My Blue Sky, Australia's national forced marriage service. Call (02) 9514 8115, text +61 481 070 844 (9 am – 5 pm AEST, Monday to Friday), email help@mybluesky.org.au or visit www.mybluesky.org.au for support and free, confidential legal advice.

The Forced Marriage Specialist Support Program, delivered by Life Without Barriers, provides individualised needs-based support to people who have experienced, or are at risk of, forced marriage. To access support you can call 1800 403 213 or visit the Life Without Barriers website.

Free interpreter services are available to help any person communicate with service providers in their own language. Call the Translating and Interpreting Service on 131 450. All calls are free and confidential.

Introduction

Modern slavery, including forced labour, remains a significant and evolving challenge in businesses' supply chains.

Australia has established a strong framework to criminalise serious forms of exploitation, including offences relating to slavery, servitude, forced labour, debt bondage, deceptive recruiting and human trafficking under Divisions 270 and 271 of the *Criminal Code Act 1995* (Cth) (Criminal Code). These criminal offences complement the modern slavery reporting regime established under the *Modern Slavery Act 2018* (Cth) (Modern Slavery Act), which applies across the public and private sectors.

On 16 July 2026, the Australian Government announced its intention to introduce a new criminal offence for the failure to prevent modern slavery, strengthening the accountability of large entities to address modern slavery risks within their supply chains. The government also intends to introduce civil penalties and associated enforcement powers to address non-compliance with existing obligations under the Modern Slavery Act.

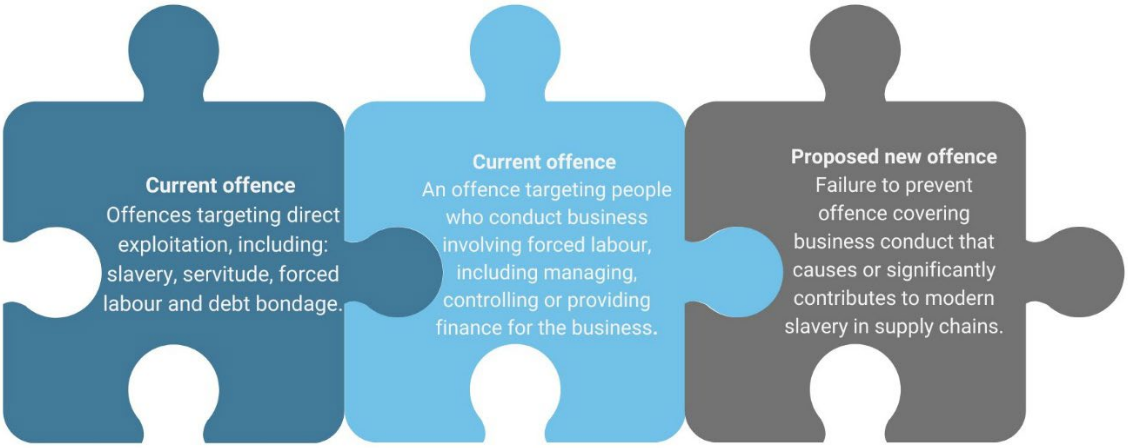
The proposed reforms aim to strengthen Australia's response to modern slavery by enhancing corporate accountability for preventing modern slavery in supply chains, improving protections for workers vulnerable to exploitation, and creating a level playing field for businesses that are already taking meaningful action to identify, manage and address modern slavery risks.

As illustrated in Figure 1, the proposed failure to prevent offence would operate alongside Divisions 270 and 271 of the Criminal Code. More specifically, under the proposed offence, corporations with an annual consolidated revenue over $100 million could be found criminally liable for modern slavery in their supply chains unless the corporations have taken reasonable steps to prevent the criminal conduct.

The government has also announced that it will consult on the possible introduction of a Deferred Prosecution Agreement (DPA) scheme, with the aim of providing an additional enforcement tool to support the effective investigation and resolution of complex corporate offending while maintaining strong safeguards and oversight. This mechanism may also provide an opportunity for companies to identify and report modern slavery related issues proactively.

Taken together, compliance with the new and existing obligations is expected to significantly reduce the likelihood that goods and services linked to modern slavery could enter Australia and become a part of Australian supply chains.

Figure 1 – Current and proposed criminal law offences targeting modern slavery



The government is also seeking views on the feasibility of possible avenues through which victims and their representatives may pursue civil remedies as an additional mechanism for addressing corporate misconduct.

This consultation paper seeks stakeholder submissions on the legislative design of the failure to prevent modern slavery offence. The paper is divided into two parts:

- **Part A** – Core legislative components of a failure to prevent offence
- **Part B** – Alternative enforcement

The measures subject to this consultation will be progressed alongside other reforms announced by the government to strengthen Australia's modern slavery framework, including the introduction of civil penalties under the Modern Slavery Act and further guidance for business. Together, they are intended to improve corporate accountability, strengthen regulatory and enforcement responses, and better protect individuals from modern slavery and related forms of exploitation.

Have your say

You can respond to this consultation paper by visiting our consultation hub and clicking 'Make a submission'.

We encourage you to respond to the questions in this consultation paper by completing our survey.

Submitting your response through the survey helps us publish responses in a way that all users can access.

The measures outlined in this paper have not received final government approval and are not yet law. The options outlined in this consultation paper are also subject to change, following feedback from stakeholders and government consideration.

You are welcome to answer only those questions that are relevant to you or your organisation.

The consultation period closes at midnight (AEST) on Friday, 25 September 2026.

We will publish written submissions on our consultation hub, where we have your permission to do so. Please refrain from including personal information about other individuals in your responses. We may redact parts of published submissions if appropriate.

We may use an artificial intelligence (AI) tool for the purposes of analysing submissions and responses. Any AI tool used for this purpose will be securely hosted for departmental use within Australia and will comply with all departmental and government obligations on AI use.
No information used within the AI tool will be shared outside of the department or be used for training any AI models.

We will treat any personal information shared through the consultation process in accordance with the *Privacy Act 1988* (Cth). For more information on how we collect, store and use personal information, read our Privacy policy.

Part A – Core legislative components of a failure to prevent offence

This section seeks stakeholder feedback on the design of the core components of the proposed offence. This includes the elements of the offence, proposed defences and potential guidance. Stakeholders are invited to consider how each component should operate in practice, including scope, application and interaction with the existing modern slavery framework and the broader criminal law framework.

What is a failure to prevent offence?

Failure to prevent offences enacted to date have generally imposed corporate liability for misconduct carried out by an entity's employees, agents or other business associates where the corporation does not have adequate procedures or guidance in place to prevent such misconduct, particularly in complex organisational and transnational settings. These models have most commonly been adopted in relation to economic crimes such as bribery and fraud.[1]

Failure to prevent models are intended to promote a preventative approach to risk management. They incentivise companies to strengthen their compliance systems and governance frameworks, while also providing an additional enforcement option.

The most recent example of a failure to prevent offence within Australian legislation is section 70.5A of the Criminal Code, which relates to the failure to prevent foreign bribery. A corporation commits the offence of failing to prevent foreign bribery if an associate of the corporation commits the offence of bribing a foreign public official and the associate does so for the profit or gain of the corporation. Absolute liability applies to this offence, meaning a corporation can be held liable regardless of whether it authorised, knew about or participated in the bribery. However, it is a defence if the corporation demonstrates that it had adequate procedures in place designed to prevent foreign bribery by its associates and equivalent conduct occurring overseas.

While the model of a modern slavery failure to prevent offence may share some similarities with the foreign bribery failure to prevent model, there are material differences between these crime types. Foreign bribery is an economic crime committed by a corporation or its associates for the corporation's benefit. Modern slavery can also be understood as an economic crime, as it may involve exploitation for economic gain, but it is also a serious human rights abuse that can cause significant direct harm to victims and survivors. In addition, modern slavery risks often occur within complex, multi-tiered supply chains where corporations may have varying levels of visibility and influence over labour practices, requiring careful consideration of the scope of corporate responsibility, the requisite connection to the harm and the preventative measures that should reasonably be expected of corporations.

The impact of modern slavery on victims, survivors and vulnerable workers is another potentially significant point of distinction requiring consideration not only of corporate conduct but also of the

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[1] Examples of failure to prevent offences include: *Criminal Code Act 1995* (Cth) s 70.5A (failure to prevent foreign bribery) (Australia); *Bribery Act 2010* (UK) s 7 (failure of commercial organisations to prevent bribery); *Criminal Finances Act 2017* (UK) ss 45–46 (failure to prevent facilitation of tax evasion); and *Economic Crime and Corporate Transparency Act 2023* (UK) s 199 (failure to prevent fraud).

experiences and needs of those subject to exploitation. Stakeholders are invited to consider how these practical challenges should be addressed within the design of the offence.

An investigation could be initiated through a range of mechanisms and based on information received from a range of sources, such as referrals, reporting, self-disclosures or other credible information indicating that modern slavery may have occurred. The Australian Federal Police would be responsible for determining whether there are sufficient grounds to commence an investigation.

Proposed elements of a failure to prevent offence for modern slavery

The failure to prevent modern slavery offence may include the following components:

- an underlying offence committed by a person
- a connection between the conduct and the corporation
- no requirement to prove fault (such as intention or knowledge) on the part of the corporation, as the offence could have strict liability or absolute liability
- a defence where the corporation can demonstrate it had taken reasonable steps to prevent the conduct.

Proposed legislative design of nine key components are set out in the table for consideration, with additional detail provided below.

Components	Proposed approach
(a) Application of the offence	In line with the government's announcement, the offence will apply to corporations with annual consolidated revenue over $100 million. The offence would not directly apply to directors or other office holders within a corporation.
(b) Underlying criminal conduct (i.e. the conduct that needs to be prevented)	Specified types of modern slavery that are criminalised under Divisions 270 and 271.
(c) Connection to a corporation's sourced product or services	There should be a sufficient nexus between the underlying criminal conduct and the goods, services, labour, materials or other inputs that form part of the corporation's sourcing arrangements.
(d) Connection to a corporation's conduct	In addition to the nexus between modern slavery and the goods that form part of the corporation's sourcing arrangements, there could be an additional link or nexus between the corporation's conduct and the underlying criminal conduct. There are a number of different forms of connection that could be considered, such as where a corporation's activities or conduct, including omissions, caused, contributed, facilitated or enabled the exploitation. This is discussed further below.

Components	Proposed approach
(e) Fault element	Either strict liability, absolute liability or recklessness could apply to the relevant physical elements of the offence, such as the conduct, circumstances or results referred to in paragraphs (b), (c) and (d) above. Strict or absolute liability means there is no requirement to prove fault, i.e. it would not be necessary to show that the corporation knew or should have known that their conduct contributed to modern slavery in its supply chain. The primary difference between strict and absolute liability is that strict liability would allow the corporation to rely on a defence of mistake of fact. Recklessness requires proof that the corporation was aware of a substantial risk that the relevant circumstances existed or that the relevant result would occur, and that it was unjustifiable to take that risk. In the case of a corporation, this generally requires attributing that state of mind to the corporation through its board, senior management or corporate culture.
(f) Defence	A defence would apply where a corporation can demonstrate on the balance of probabilities it had taken reasonable steps to prevent modern slavery. Whether the 'reasonable steps' defence is made out would be determined by the courts on a case-by-case basis, having regard to the guidance and any other reasonable steps taken by the corporation.
(g) Guidance	The responsible Minister would be required to issue clear guidance on the steps a corporation could take. This guidance would ensure corporations have flexibility to take appropriate action according to their circumstances, but it would provide clear advice as to the steps that would be considered reasonable for a corporation to take. Evidence of compliance with the guidance could constitute evidence of reasonable steps.
(h) Penalty	This should align with offences of comparable seriousness. For example, the maximum penalty for the offence could be set as: • a fixed maximum penalty (100,000 penalty units)

Components	Proposed approach
	• three times the value of the benefit obtained from the offending conduct, or • if the value of the benefit cannot be determined, 10% of the corporation's annual turnover during the relevant turnover period.
(i) Commencement	Commencement would be delayed for a period of 12-18 months to give corporations time to implement any changes required in accordance with the guidance.

(a) Application of the offence

The annual consolidated revenue threshold of more than $100 million would align with the reporting threshold under the Modern Slavery Act. The offence would be framed to apply to corporations and not to directors or other office holders within a corporation. While the offence would not apply to individuals, directors and other office holders may be subject to criminal liability under existing Criminal Code provisions in certain circumstances, such as where they aid, abet, counsel or procure the offending conduct.

(b) Underlying criminal conduct

The underlying criminal conduct that corporations are required to prevent would be limited to those types of modern slavery that are currently criminalised under offences in Divisions 270 and 271.

It would focus on those forms of modern slavery most likely to arise within supply chains, including slavery, servitude, forced labour and debt bondage.[2] Although deceptive recruitment practices may also arise in supply chains, they would not be included within the specified conduct. This reflects that the deceptive recruitment offence captures conduct that may be a precursor to exploitation (for example, deception regarding the confiscation of travel documents), as well as recruitment for the purposes of exploitation. The proposed offence seeks to capture the exploitation itself, which is addressed through the proposed reference to slavery, servitude, forced labour and debt bondage.

Liability would require proof beyond reasonable doubt that modern slavery had occurred but would not be contingent on the conviction of the individual who engaged in the underlying conduct.

(c) Connection to a corporation's sourced product or service

Components (c) and (d) are intended to operate together to link the underlying criminal conduct to the corporation and factors reasonably within the corporation's control. The focus of component (c) is on the link between the underlying criminal conduct and the corporation's supply chain.[3]

[2] See ss 270.1A (debt bondage), 270.1 (slavery), 270.4 (servitude), 270.6 (forced labour) of the Criminal Code for definitions of these terms.

[3] The linkages in components (c) and (d) are proposed in place of the threshold adopted in the foreign bribery failure to prevent offence, which requires the underlying offence to be committed by an associate for the profit or gain of the corporation. This reflects the fact that entities within a supply chain generally operate for their own commercial benefit.

The term ‘supply chains’ is not currently defined in the Modern Slavery Act. However, the Guidance for Reporting Entities issued under the Act describes supply chains as:

> the products and services (including labour) that contribute to the entity’s own products and services. This includes products and services sourced in Australia or overseas and extends beyond direct suppliers.

Adopting a similar concept for modern slavery would generally capture conduct that contributes directly to the corporation’s commercial outputs, while still extending to both direct and indirect suppliers.

However, it may not be possible to identify which specific goods or services were linked to the exploitation. Alternatively, the nexus could be broadened to include where modern slavery occurs in the goods, services, labour, materials or other inputs that form part of the corporation’s sourcing arrangements, regardless of whether they can be linked to a particular product or service.

Stakeholders are invited to comment on the appropriate threshold for establishing a nexus between underlying criminal conduct occurring in the production of goods or provision of services by a supplier and the goods or services sourced by a corporation.

In considering different options, it is important to ensure that the threshold is capable of practical enforcement, having regard to the nature of supply chains, the challenges of tracing goods and materials through production processes, and the evidentiary difficulties associated with demonstrating that particular goods or services were produced using forced labour.

(d) Nexus between offence and the corporation

Requiring a connection between the conduct and the corporation’s supply chain, together with a requirement that the corporation’s activities in some way contributed to the harm, is intended to ensure liability is appropriately linked to corporate conduct while recognising the complex nature of modern supply chains.

Any threshold would need to establish a sufficient nexus between the corporation’s conduct and the underlying offending to ensure that criminal liability is imposed fairly and proportionately. However different formulations would likely be interpreted as establishing different thresholds and forms of connection.

One possible approach would be to require that the corporation’s conduct *caused or significantly contributed to* the underlying offending. For example, the threshold may be met where a corporation’s purchasing practices, including excessive cost pressures or unrealistic production deadlines, significantly contribute to a supplier’s use of forced labour within its supply chain as it is not possible to meet the corporation’s expectations using lawful labour practices. This approach would provide a strong causal nexus between the corporation’s conduct and the exploitation.

Alternative formulations may better reflect the complex and multi-causal nature of modern slavery, the dynamics of global supply chains, and the influence that Australian businesses may have on conditions within those supply chains. For example, liability could arise where a corporation’s conduct *materially contributed to*, *facilitated*, or *enabled* the underlying offending, or where a significant omission by the corporation contributed to the offending.

Stakeholders are invited to describe the forms of connection that should be required to establish a sufficient basis for attributing criminal liability to a corporation for the underlying offending. A few examples of circumstances are provided below:

- the corporation's act or omission brought about the conduct
- the corporation's act or omission was an important or substantial contributing factor in the exploitation occurring, even if it was not the sole or predominant cause
- the corporation's act or omission made the exploitation easier, more likely, more effective or possible
- the corporation's conduct made possible, permitted or provided the means for the exploitation to occur.

Appendix A contains illustrative case studies demonstrating how different forms of connection between a corporation and underlying offending may arise in practice.

The objective is to establish a sufficient nexus to ensure corporations are held appropriately liable while avoiding overly broad liability for matters outside of a corporation's control. Careful consideration is required to assess the implications of different nexus formulations, including their alignment with the policy intent, principles of criminal responsibility, and other elements of the offence.

(e) Fault elements

The proposed offence could apply absolute liability to the relevant physical elements of the offence, in line with the approach adopted in the foreign bribery failure to prevent offence. This reflects that the focus of the framework is on holding corporations to account where business practices led to modern slavery, rather than establishing corporate intent, knowledge or recklessness in relation to the underlying conduct. Given the practical challenges associated with proving a corporation's state of mind across complex corporate structures and supply chains, an absolute liability approach would support the effectiveness and enforceability of the offence.

An alternative approach would be to apply strict liability to the offence. However, this approach may not provide corporations with any meaningful additional protection. The key difference between strict liability and absolute liability, is that strict liability would allow a corporation to rely on the defence of mistake of fact under section 9.2 and 12.5 of the Criminal Code. This defence provides that a corporation will not be liable if:

- the employee, agent or officer of the corporation who carried out the conduct was under a mistaken but reasonable belief about facts that, had they existed, would have meant that the conduct would not have constituted an offence; and
- the corporation proves that it exercised due diligence to prevent the conduct.

However, as the mistake of fact defence requires proof of due diligence, there is likely to be significant overlap with the proposed reasonable steps defence. Accordingly, the mistake of fact defence may add little practical protection beyond that already provided by the reasonable steps defence.

Alternatively, recklessness could be adopted as the fault element for the offence. However, this approach should be considered in the context of the complex and often opaque nature of supply chains, and whether it aligns with the objective of encouraging corporations to actively identify, assess and address modern slavery risks in their supply chains.

(f) Defences

The proposed reasonable steps defence would provide an opportunity for a corporation to demonstrate that it had taken reasonable steps to prevent modern slavery from occurring within its operations and supply chains. This defence is intended to incentivise proactive due diligence and risk management rather than impose liability where a corporation has taken appropriate measures to prevent modern slavery.

Consistent with section 13.5 of the Criminal Code, the corporation would bear the legal burden of proving the defence on the balance of probabilities, reflecting that evidence of its due diligence processes, governance arrangements and compliance measures will ordinarily be within the knowledge and control of the corporation.

Stakeholders are invited to comment on the appropriate formulation of the defence. This includes whether a reasonable steps defence is the most effective mechanism for achieving the policy objective or whether alternative approaches could better encourage corporations to take proactive and effective steps to address modern slavery risks within their supply chains.

(g) Guidance

The responsible Minister will issue guidance, including on the reasonable steps defence, to assist corporations to take action to tackle modern slavery in their supply chains. The guidance will draw from existing resources and key standards on business and human rights, set out in the *United Nations Guiding Principles on Business and Human Rights* and the Organisation for Economic Cooperation and Development (OECD) *Guidelines for Multinational Enterprises on Responsible Business Conduct*. These frameworks provide internationally recognised approaches to human rights due diligence, including risk identification and actions to address risks. Stakeholders are invited to comment on whether, and if so, how these international standards should be reflected in the guidance and whether such standards should be relevant when assessing whether reasonable steps have been taken.

Guidance would not be used as a 'checkbox' approach but would instead outline key principles with practical examples. It will emphasise that corporations will need to tailor their controls and actions to be proportionate to their own risk profile. Care will also be taken to ensure that guidance is compatible with existing obligations under the Modern Slavery Act.

Ultimately, whether 'reasonable steps' have been taken would be determined by the courts on a case-by-case basis, having regard to the particular circumstances of the case. For example, in determining whether the defence has been proven, the court may consider any steps undertaken by the corporation (either in line with the guidance or otherwise), and whether these steps were reasonable and proportionate having regard to the size of the corporation and the nature of their operations.

The government could also provide additional guidance to strengthen compliance with existing obligations under the Modern Slavery Act or to assist corporations with their anti-slavery responses, as well as sector-specific guidance, education and engagement initiatives, developed with industry, civil society and the Australian Anti-Slavery Commissioner. Stakeholders are invited to provide their views on the type, content and level of detail that would be most useful in supporting compliance with the proposed offence and the reasonable steps defence.

(h) Penalty

Stakeholder views are sought on the appropriate maximum penalty for a failure to prevent modern slavery offence. Any penalty should reflect the seriousness of modern slavery, provide a meaningful deterrent, and be proportionate and enforceable in practice.

As outlined in the table above, the 3 key options are:

- 100,000 penalty units[4]
- three times the value of the benefit obtained from the offending conduct, or
- where the value of the benefit cannot be determined, 10% of the corporation's annual turnover during the relevant turnover period.

There may be practical difficulties in identifying or quantifying the benefit derived from the offending conduct, as the supply chain may be indirect, dispersed across multiple business relationships and arise several tiers removed from a corporation. This could increase the complexity of sentencing proceedings.

Regardless of the approach that is adopted, the maximum penalty should be consistent with penalties for existing offences of a similar kind or of a similar seriousness, in line with the *Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers*. The below table includes the penalties for several offences involving serious corporate misconduct.

Offence	Maximum penalty
Failure to prevent foreign bribery **Criminal Code, s 70.5A**	The maximum penalty for the offence of failing to prevent foreign bribery in subsection 70.5A(1) is the greatest of the following: • 100,000 penalty units; • Three times the value of the benefit obtained from the offending conduct; or • If the value of the benefit cannot be determined, 10% of the corporation's annual turnover during the relevant turnover period.
Industrial Manslaughter **Model *Work Health and Safety Act 2011* (Cth)**	Maximum monetary penalty is $21,274,000 for bodies corporate and 20 years imprisonment for an individual.
Cartel conduct ***Competition and Consumer Act 2010* (Cth), ss 45AF and 45AG**	The maximum fine for breaches is the greater of: • $100,000,000; • Three times the value of the benefit; or • 30% of adjusted turnover during the breach turnover period.

[4] The current value of a penalty unit is $364, meaning that the maximum penalty would be $36,400,000.

Money laundering **Criminal Code, Part 10.2; *Crimes Act 1914* (Cth), s 4B**	Life imprisonment and/or a fine of 10,000 penalty units. Fines of up to 100,000 penalty units also apply under the civil penalty regime in the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth).

(i) Delayed commencement

A 12-18 month delayed commencement period is intended to provide corporations with greater certainty regarding compliance expectations and sufficient time to implement any necessary changes to their governance, procurement and supply chain management practices. This will also enable the department to develop and consult on suitable guidance to accompany the offence.

Case studies

Appendix A contains illustrative case studies demonstrating how modern slavery may occur within a corporation's supply chain and how a corporation may respond to such risks or incidents. These case studies are provided to assist stakeholders in considering how different elements of the proposed offence may apply in practice, and may provide an additional means of informing the development of, and assessing the potential impacts of, the proposed offence. The case studies are illustrative only and are not intended to indicate that the proposed offence would capture all of the scenarios outlined.

The department welcomes stakeholders' views on how the proposed offence could apply to the case studies, as well as any additional case studies they consider relevant when responding to the consultation questions.

Part A: Questions

Question 1 – Model: What are your views on the proposed legislative approach to the core components of a failure to prevent modern slavery offence?

Are there any other components that should be included within the legislation, or alternative approaches considered, to clearly establish its scope, application and interaction with existing modern slavery and broader legislative frameworks?

The core components include:

a) application of the offence
b) the underlying criminal conduct to be prevented
c) the connection to corporations' sourced product or services
d) the connection to corporations' conduct
e) fault elements
f) defence
g) guidance
h) penalty
i) commencement.

In your response, you may wish to consider:

- if the scope of the offence appropriately targets entities best placed to prevent modern slavery
- the suitability of the proposed physical and fault elements of the offence

- the appropriate connection between the corporation and the underlying criminal conduct
- the construction of the proposed reasonable steps defence
- how the offence could account for the practical challenges of identifying, monitoring and addressing modern slavery risks in complex, multi-tiered supply chains
- ensuring the reasonable steps defence provides for accountability and incentivises corporations to take action to proactively address modern slavery risks in supply chains
- whether other defences should be considered
- how the scope of the offence can be designed to operate effectively with related domestic and international frameworks.

You may want to use the case studies at **Appendix A** to assist with your responses.

Question 2 – Impact: What measures could be adopted to minimise costs for affected corporations, while ensuring the offence remains effective in achieving its objective?

Recognising that the proposed failure to prevent modern slavery offence would apply only to corporations with annual consolidated revenue of more than $100 million, stakeholders are invited to be as specific as possible and consider:

- measures that could reduce compliance costs and the associated estimated costs of these measures on corporations (if any)
- potential economic, competition, social and distributional impact/s, including flow on effect on entities in a corporation's supply chain and workers
- potential effects on annual modern slavery statements and related reporting, referrals of suspected modern slavery by corporations to law enforcement, victim support and engagement with law enforcement
- any unintended consequences
- any additional changes that could be considered.

You may want to use the case studies at **Appendix A** to assist with your responses.

Question 3 – Support: What support might corporations need to effectively understand and comply with the proposed offence and defence, including to help business more broadly take action to combat modern slavery?

You may want to consider:

- the role of ministerial or other guidance, training or other resources
- the format the guidance should take, and matters it should address
- the international standards or other existing resources guidance should draw from
- how the guidance should complement or interact with existing guidance products from the Attorney-General's Department, Australian Anti-Slavery Commissioner and NSW Anti-slavery Commissioner
- how guidance, the offence and the reasonable steps defence can operate to minimise duplication for corporations that are already complying with comparable international regimes.

Part B – Alternative enforcement

Part B invites stakeholders to consider mechanisms that could support accountability, remediation and redress in connection with a proposed failure to prevent modern slavery offence. This includes both a Deferred Prosecution Agreement (DPA) scheme and possible civil remedies.

These mechanisms seek to provide practical pathways to address non-compliance, promote corporate cooperation and remediation, support redress for victims where appropriate and encourage businesses to strengthen systems and controls to prevent modern slavery.

Stakeholder views are sought on the potential benefits, risks and implementation considerations associated with these approaches.

Deferred Prosecution Agreements

Overview of DPAs

A DPA scheme can provide an alternative to a contested prosecution by enabling criminal matters to be resolved through a negotiated agreement between prosecutors and corporations. Through a DPA, corporations may agree to measures such as strengthening governance and compliance systems, remediating harm, providing compensation where appropriate and cooperating with related investigations.

It is a statutory mechanism that enables prosecutors (or another designated authority) to defer criminal proceedings against a business, subject to the business complying with agreed conditions within a specified timeframe. If the conditions are met, the prosecution would not be progressed or would be discontinued.

To enter DPA negotiations the following requirements could apply:

- reasonable suspicion that a company committed an offence
- reasonable grounds to believe an investigation would establish a realistic prospect of conviction
- it is in the public interest to seek a DPA instead of a prosecution.

Examples of terms that are traditionally included in DPA style schemes include:

- a statement of facts that gives particulars relating to the conduct that is relevant to each offence to which the DPA relates
- an end date by which all requirements under the agreement must be satisfied
- requirements to be fulfilled by the corporation under the DPA
- a specified financial penalty, unless exceptional circumstances apply
- circumstances which constitute a material contravention of the DPA
- a term allowing the Commonwealth to bring proceedings on indictment in the event of a material contravention of the DPA, without the corporation having been examined or committed for trial.

Further terms which could be included in DPAs are:

- a term requiring the corporation to review and, if necessary, make improvements to its controls and actions

- where victims can be identified, a term requiring a corporation to compensate victims or take other remedial action
- a term requiring the corporation to donate money to a charity or other third party
- a term requiring the corporation to cooperate with any investigation or prosecution relating to the matters outlined in the DPA and any other related matters, including related offending by the corporation or by other persons (including individuals and related corporate entities)
- a term requiring the corporation to pay reasonable costs incurred by a Commonwealth entity relating to investigation of matters relevant to the DPA and negotiations for the DPA.

Although previously examined in a corporate crime context, including by the Australian Law Reform Commission, such a scheme has not yet been adopted in Australia.[5] A scheme was contemplated most recently in the Crimes Legislation Amendment (Combatting Corporate Crime) Bill 2019 which lapsed at the end of the 46th Parliament.

DPAs exist in the United Kingdom, United States and Canada for relevant corporate crimes. Specifically in the foreign bribery context, the 2021 OECD recommendation for Further Combatting Bribery of Foreign Public Officials in International Business Transactions (2021 Recommendation) recommends that members consider using non-trial resolutions to resolve cases related to offences under the Anti-Bribery Convention.

DPAs in the modern slavery context

A DPA scheme could be introduced alongside a failure to prevent offence as a practical and proportionate enforcement mechanism. Rather than relying solely on prosecution, it would provide a pathway for corporations to acknowledge failures, cooperate with authorities, address underlying issues, and implement improvements to prevent future harm.

For corporations, DPAs could provide greater certainty regarding enforcement outcomes by establishing agreed consequences and obligations in advance. Depending on the circumstances, a corporation may agree to review and strengthen its governance arrangements, due diligence processes, risk controls and supply chain oversight to better address modern slavery.

DPAs could also provide a mechanism to deliver tangible remediation outcomes. Agreed terms may include compensation or other remedial measures for victims, commitments to strengthen corporate systems and controls, and cooperation with investigations into related misconduct.

While there may be a perception that businesses can “buy” their way out of a conviction, and corporate crime may be treated differently,[6] DPAs could provide a mechanism to both penalise wrongdoing and support redress for victims. Appropriate safeguards could be included to ensure that victims, their representatives or victim advocacy groups’ views are sought and considered before a DPA is finalised, including where the agreement contemplates remediation or compensation measures. Transparency requirements would further support confidence in the process by requiring

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[5] A deferred prosecution scheme was included as part of the foreign bribery framework in the Crimes Legislation Amendment (Combatting Corporate Crime) Bill 2017 and again as part of the Crimes Legislation Amendment (Combatting Corporate Crime) Bill 2019. Ultimately, both bills lapsed and a DPA was not included in the final amendments that were passed in the *Crimes Legislation Amendment (Combatting Foreign Bribery) Act 2024*. See also ALRC, *Corporate Criminal Responsibility (ALRC Report 136)*, ALRC, Australian Government, 2020.

[6] AGD, *Improving enforcement options for serious corporate crime: a proposed model for a Deferred Prosecution Agreement scheme in Australia*, AGD, Australian Government, 2016 and 2017.

publication of key terms of the DPA, such as the nature of the misconduct, corrective actions to be undertaken, any remediation measures and reasons for a DPA being approved. Importantly, a DPA would not extinguish any existing legal rights or remedies available to victims.

A DPA may also provide a range of operational benefits. For example, a DPA may assist law enforcement and prosecutors by giving access to relevant records, including those held overseas, and may reduce reputational harm for business while ensuring public reporting of corrective action to demonstrate how the business is being held to account. As such, DPAs may provide an efficient enforcement option, supporting cooperation with authorities, self-reporting and corporate compliance and remediation.

DPAs would still require a detailed investigation to support the making of the DPA. The underlying modern slavery offences present a number of investigative and evidentiary challenges that may limit the availability of DPAs in some circumstances.

Implementing a DPA scheme in Australia would involve consideration of legal and regulatory factors, as well as costs. The specific operation of Australia's criminal justice system, such as the separation of police and prosecutorial functions (in some jurisdictions investigators and prosecutors are in the same agency), may need to be taken into account in considering the potential effectiveness of international DPA models in the Australian context. Other implementational decisions would include the appropriate agencies to administer a DPA scheme within the Commonwealth and the individual that would be responsible for administering and approving a DPA, such as a retired judge.

Civil remedies

In addition to DPAs, stakeholders are invited to consider the extent to which existing civil remedies may provide appropriate avenues for redress in connection to the proposed failure to prevent offence. [7]

The purpose of this discussion is to better understand stakeholder perspectives on the applicability, effectiveness and accessibility of existing civil remedies in this context. Consideration of civil remedies associated with the existing criminal offences in Divisions 270 and 271 of the Criminal Code is outside the scope of this consultation.

Stakeholders are invited to identify any enhancements that could be made in relation to redress for victims and survivors.

Stakeholders are also invited to consider whether it would be appropriate to introduce an additional civil remedy for a failure to prevent offence, where no equivalent remedy exists for other Commonwealth criminal offences, including other modern slavery offences. Should a new civil remedy be considered, its design would require careful consideration of matters including the gaps it is intended to address, the basis for liability, who should be able to bring a claim, available remedies, procedural considerations, and its interaction with existing legal and regulatory frameworks.

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[7] Existing frameworks and mechanisms could include reparation orders under section 21B of the *Crimes Act 1914* (Cth), employment-based rights and remedies under the *Fair Work Act 2009,* common law remedies (torts), State and Territory victim compensation schemes, and other statutory remedies under Commonwealth, State and Territory legislation. In addition, the Australian National Contact Point for Responsible Business Conduct provides an existing voluntary mechanism to resolve complaints about multinational enterprises, which may lead to remediation.

The introduction of a civil remedy alongside a criminal offence may also create complexity for victims and corporations, including inconsistency in outcomes, increased litigation costs, and duplication of enforcement and legal processes.

Part B: Questions
Question 4 – DPA scheme: What are the benefits and limitations of a DPA scheme in addressing failure to prevent modern slavery offences? What terms and conditions should be available for inclusion in a DPA scheme? Stakeholders may wish to comment on: • legal and regulatory factors relevant to the introduction and operation of a DPA scheme • international evidence and experience • appetite for engaging with such a scheme.
Question 5 – Civil remedies: What existing civil remedies would be available to victims and survivors seeking redress in connection with a failure to prevent modern slavery offence? Are these remedies adequate? If not, what enhancements could be considered?

Appendix A – Illustrative case studies

The following case studies present a range of scenarios in which modern slavery may arise and are intended to support consideration of how the proposed offence may operate in different factual circumstances. They are not intended to indicate whether the proposed offence should apply in any particular case, or whether other offences, regulatory powers or enforcement mechanisms may be more appropriate. The scenarios may also involve contraventions of other Commonwealth laws, such as the *Fair Work Act 2009* (Cth) and State or Territory laws, such as labour hire licensing laws. In some cases, additional liability may arise from the underlying modern slavery offences. For example, in Case Study 2, the labour hire provider could potentially be convicted for an underlying forced labour offence.

Case Study 1

Company A is an Australian clothing retailer with annual revenue exceeding $100 million that sources garments from several small and medium-sized manufacturers overseas. Company A represents a significant proportion of these manufacturers' business and routinely requires suppliers to accept lower prices and meet increasingly compressed production timeframes, with the threat of losing future contracts if these expectations are not met.

An investigation later finds that one of the manufacturers' subcontractors subjected workers to forced labour and debt bondage. Evidence provided from a whistleblower within the manufacturer indicates that Company A's purchasing practices created commercial pressures that made it extremely difficult for suppliers to meet contractual requirements using lawful labour practices.

Case Study 2

Company B is an Australian horticulture business with annual revenue exceeding $100 million. To meet seasonal labour demands, the company engages a labour hire provider to supply workers for harvesting and packing operations.

Company B has maintained a commercial arrangement with the labour hire provider that allows labour to be supplied at rates significantly lower than legislated minimum pay rates. Internal records show that managers were aware the provider was able to supply workers at unusually low cost but did not make further inquiries. The company also became aware through worker complaints and community organisations that some workers were being paid substantially less than promised, had wages withheld, and were unable to freely access their identity documents.

Although Company B required the labour hire provider to comply with applicable laws and had a basic supplier code of conduct, it did not investigate the complaints, undertake additional due diligence, or take steps to verify workers' living and working conditions.

An investigation finds that the labour hire provider subjected workers to forced labour and debt bondage, including through the confiscation of passports, withholding of wages, and the use of threats that workers would lose accommodation and employment if they attempted to leave. Evidence indicates that Company B's continued acceptance of labour at significantly reduced costs, despite indicators of exploitation, contributed to the continuation of these practices.

Case Study 3

Company C is an Australian food company with annual revenue exceeding $100 million. Through its risk management processes, the company identifies indicators of forced labour at an overseas supplier and promptly investigates the allegations.

Company C works with the supplier to implement remediation measures, strengthens its monitoring and audit arrangements, and engages with workers and local stakeholders to address identified risks. Despite these efforts, the supplier is later found to have engaged in forced labour practices that were deliberately concealed from Company C and its auditors in order to reduce labour costs and increase profit margins.

Case Study 4

Company D is an Australian electronics manufacturer with annual revenue exceeding $100 million. As part of its manufacturing operations, Company D purchases a critical electronic component from a long-standing supplier.

Due to disruptions affecting its existing supply arrangements and rising production costs, the supplier notifies Company D that it intends to source certain mineral inputs for the component from a new overseas supplier operating in a higher-risk jurisdiction. The supplier advises that the change will help maintain production volumes and avoid significant cost increases.

Public reporting, industry alerts and information from civil society organisations identify credible allegations of forced labour associated with the extraction and processing of the relevant minerals in that region.

The minerals are processed, blended and incorporated into components supplied to a range of manufacturers, including Company D's supplier. While the minerals contribute to the components purchased by Company D and used in its manufacturing operations, it is not possible to determine which individual components or finished products contain minerals linked to the alleged exploitation.

An investigation later confirms that forced labour occurred at facilities supplying the mineral inputs.

Case Study 5

Company E is a large Australian food importer and wholesaler with annual revenue exceeding $100 million that procures significant volumes of seafood from overseas suppliers. The company has imported seafood from one region for many years and is aware that labour exploitation and forced labour risks in parts of the global seafood industry have been widely documented.

Company E has a supplier code of conduct and a modern slavery policy. However, these documents have not been reviewed or updated for several years. Responsibility for modern slavery risk management sits with a single employee as part of their broader duties, with limited resources, no specialist training, and no formal oversight from senior management or the board.

The company does not conduct supply chain mapping beyond its direct suppliers and has not sought information about entities further down its supply chain. It does not undertake risk assessments, supplier engagement, audits, monitoring activities, or other due diligence processes to identify and address potential modern slavery risks associated with its seafood sourcing.

An investigation by a non-government organisation later identifies forced labour at a seafood processing facility that supplies product to Company E through several intermediaries.

Appendix B – Consolidated list of consultation questions

Part A – Failure to prevent offence for modern slavery

Question 1 – Model: What are your views on the proposed legislative approach to the core components of a failure to prevent modern slavery offence?

Are there any other components that should be included within the legislation, or alternative approaches considered, to clearly establish its scope, application and interaction with existing modern slavery and broader legislative frameworks?

The core components include:

a) application of the offence
b) the underlying criminal conduct to be prevented
c) the connection to corporations' sourced product or services
d) the connection to corporations' conduct
e) fault elements
f) defence
g) guidance
h) penalty
i) commencement.

In your response, you may wish to consider:

- if the scope of the offence appropriately targets entities best placed to prevent modern slavery
- the suitability of the proposed physical and fault elements of the offence
- the appropriate connection between the corporation and the underlying criminal conduct
- the construction of the proposed reasonable steps defence
- how the offence could account for the practical challenges of identifying, monitoring and addressing modern slavery risks in complex, multi-tiered supply chains
- ensuring the reasonable steps defence provides for accountability and incentivises corporations to take action to proactively address modern slavery risks in supply chains
- whether other defences should be considered
- how the scope of the offence can be designed to operate effectively with related domestic and international frameworks.

You may want to use the case studies at **Appendix A** to assist with your responses.

Question 2 – Impact: What measures could be adopted to minimise costs for affected corporations, while ensuring the offence remains effective in achieving its objective?

Recognising that the proposed failure to prevent modern slavery offence would apply only to corporations with annual consolidated revenue of more than $100 million, stakeholders are invited to be as specific as possible and consider:

- measures that could reduce compliance costs and the associated estimated costs of these measures on corporations (if any)
- potential economic, competition, social and distributional impact/s, including flow on effect on entities in a corporation's supply chain and workers

- potential effects on annual modern slavery statements and related reporting, referrals of suspected modern slavery by corporations to law enforcement, victim support and engagement with law enforcement
- any unintended consequences
- any additional changes that could be considered.

You may want to use the case studies at **Appendix A** to assist with your responses.

Question 3 – Support: What support might corporations need to effectively understand and comply with the proposed offence and defence, including to help business more broadly take action to combat modern slavery?

You may want to consider:

- the role of ministerial or other guidance, training or other resources
- the format the guidance should take, and matters it should address
- the international standards or other existing resources guidance should draw from
- how the guidance should complement or interact with existing guidance products from the Attorney-General's Department, Australian Anti-Slavery Commissioner and NSW Anti-slavery Commissioner
- how guidance, the offence and the reasonable steps defence can operate to minimise duplication for corporations that are already complying with comparable international regimes.

Part B –Alternative enforcement

Question 4 – DPA scheme: What are the benefits and limitations of a DPA scheme in addressing failure to prevent modern slavery offences? What terms and conditions should be available for inclusion in a DPA scheme?

Stakeholders may wish to comment on:

- legal and regulatory factors relevant to the introduction and operation of a DPA scheme
- international evidence and experience
- appetite for engaging with such a scheme.

Question 5 – Civil remedies: What existing civil remedies would be available to victims and survivors seeking redress in connection with a failure to prevent modern slavery offence? Are these remedies adequate? If not, what enhancements could be considered?