Modern Slavery Reform Team
Attorney-General's Department
Robert Garran Offices
3–5 National Circuit
BARTON ACT 2600

Submitted via Attorney-General's Department consultation portal

25 September 2026

Dear Modern Slavery Reform Team,

Subject: Strengthening Australia's legislative response to modern slavery in supply chains — BCSDA submission

The Business Council for Sustainable Development Australia (BCSDA) welcomes the opportunity to comment on the proposed failure-to-prevent modern slavery offence, the possible Deferred Prosecution Agreement (DPA) scheme and civil-remedy issues in the Attorney-General's Department's August 2026 consultation paper.[1]

BCSDA supports the objective of stronger prevention and corporate accountability. Our submission focuses on the points at which legal design is most likely to change business conduct in practice: the boundary of corporate criminal responsibility; the evidence that should be relevant to a reasonable-steps defence; the commercial decisions that can increase or reduce modern-slavery risk; and the incentives the regime creates for engagement, remediation and supply-chain visibility.

BCSDA's perspective is informed by Australian business experience and our connection to the World Business Council for Sustainable Development. The central issue for this consultation is not whether companies can produce more modern-slavery documentation. It is whether the offence is designed so that businesses direct attention and resources to the decisions and relationships that can prevent exploitation, identify harm earlier and respond effectively when risk materialises.[1][6][7]

Yours sincerely,

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Executive summary

BCSDA supports the objective of strengthening prevention and corporate accountability. This submission examines how the proposed failure-to-prevent offence could be designed to achieve that objective without substituting paperwork for effective action.

Our analysis identifies five design issues that matter most to whether the regime changes conduct in practice.

- **The boundary of criminal responsibility** is created by the combined effect of the sourcing nexus, the corporation-conduct nexus, fault and the reasonable-steps defence. Those elements should be considered together rather than calibrated independently.
- **Guidance should distinguish evidence** that a compliance system exists from evidence that it operates. OECD's 2026 Responsible Business Outlook, based on public disclosures from the largest 10,000 listed companies globally, reports that 7% disclose integrating social supply-chain policy into purchasing practices, 17% report a formal human-rights grievance mechanism and 10% report a commitment to remedy affected stakeholders. The OECD cautions that these indicators are only a partial measure of actual due-diligence uptake.[6] The data nevertheless show that operational measures are disclosed much less frequently than policies and management systems, reinforcing the need for guidance to look beyond policy architecture alone.
- **Purchasing practice is not peripheral to prevention**. The Department's own consultation paper recognises that excessive cost pressure or unrealistic production deadlines can contribute to forced labour.[1] Guidance should therefore help businesses understand the relevance of commercial decisions — not only supplier due-diligence processes — where the statutory nexus is otherwise engaged.
- **The regime should avoid creating a visibility paradox**: the way liability and evidence expectations are designed may encourage indiscriminate disengagement or push duplicated assurance demands down the supply chain, reducing relationship-level visibility without necessarily improving prevention. OECD 2026 analysis documents audit fatigue and duplicative information requests under overlapping due-diligence regimes, while a 2026 German study found that firms anticipating supply-chain due-diligence regulation were less likely to source from higher-risk country-sector combinations. OECD standards nevertheless recognise that continued engagement may often be preferable where mitigation is feasible and improvement is realistic; responsible disengagement remains appropriate in other circumstances.[6][9][10][11]
- **Interoperability should mean evidence reuse, not legal equivalence**. Multinational businesses should be able to reuse credible risk, grievance, remediation and monitoring evidence generated under comparable systems where it is relevant to the Australian requirement, while the Australian statute and courts remain controlling.[1][4][5][8][9]

About BCSD Australia

BCSDA is the Australian partner of the World Business Council for Sustainable Development. Our members operate across complex domestic and global value chains and across sectors with different sourcing, labour, financing and supplier-management models.

BCSDA's contribution to this consultation is therefore directed to the interaction between criminal-law design and the business systems through which modern-slavery risks are identified, escalated, prevented and remediated.[7]

Question 1 — Model: core components of the offence

BCSDA considers that the core legal design issue is the cumulative boundary created by the sourcing nexus, the corporation-conduct nexus, fault and the reasonable-steps defence. A broader setting in one element may be workable only if another element supplies sufficient legal constraint.

BCSDA's response focuses on the components where its business evidence and analysis can add value and does not express a position on every proposed component, including the application threshold or the precise categories of underlying criminal conduct.

Looking at each component in isolation risks producing a boundary that is either too difficult to enforce or too weakly connected to conduct within the corporation's control.[1][2][3]

Design choice	What the research indicates
Sourcing nexus	A narrower product/service link offers greater traceability and boundary certainty but may under-reach where inputs are commingled or exploitation cannot be traced to a particular output. A broader sourcing-arrangements nexus addresses that evidentiary problem but places greater weight on the corporation-conduct nexus to prevent relationship-only liability.[1]
Corporation-conduct nexus	Cause/significant contribution provides a clearer attribution threshold. A material-contribution/facilitation formulation may better reflect multi-causal supply chains and purchasing influence, but requires a clear materiality threshold so that mere commercial connection is not enough. If a significant omission is included, clarity about when a failure to act forms part of the corporation-conduct nexus would materially assist businesses in understanding the scope of the offence.[1]
Fault	Absolute liability removes fault requirements for the relevant physical elements and makes mistake of fact unavailable. Strict liability also removes fault requirements but preserves the Criminal Code mistake-of-fact defence; AGD notes that, for corporations, this may overlap substantially with the proposed reasonable-steps defence because due diligence is also required. Recklessness requires proof of awareness of a substantial risk and unjustifiable risk-taking.[1][2]
Reasonable steps	The defence can incentivise prevention, but the legal burden on the corporation means guidance will materially shape what evidence businesses retain. Guidance should not imply that a policy, audit or statement is sufficient by itself.[1][4]

Reasonable steps: from system existence to system operation

BCSDA considers that the reasonable-steps guidance should distinguish between evidence of governance and evidence of operation. The first includes accountability, risk assessment, policies and controls. The second includes how those controls affect purchasing and contracting decisions, how red flags are escalated, whether workers can raise concerns, what corrective action or remediation follows, and how the effectiveness of the response is monitored. This distinction is consistent with the gap in current OECD public-disclosure data: companies disclose policies and management systems more frequently than measures addressing impacts, while the OECD cautions that its indicators are only a partial measure of actual due-diligence uptake.[6]

This does not require the legislation to prescribe a due-diligence checklist. It means that guidance can make clear that documentary controls are relevant evidence, but their weight depends on whether they are proportionate to risk and used in practice. The Attorney-General's foreign-bribery guidance takes a similar principles-based approach and states that the mere existence of controls is not sufficient to establish adequate procedures.[4]

Commercial decisions can be relevant evidence

The consultation paper itself recognises that a corporation's purchasing practices — including excessive cost pressures or unrealistic production deadlines — may contribute to underlying offending.[1] This is important.

Modern-slavery prevention cannot be assessed only through supplier questionnaires and audits if the corporation's own commercial decisions can increase the risk that those controls are intended to manage. Guidance should use worked scenarios to show how procurement, labour-hire and operational decisions may be relevant where the statutory nexus is otherwise satisfied.

Penalty and commencement

The proposed penalty architecture raises a practical valuation issue that is less pronounced in some economic offences: where exploitation occurs several tiers removed, the benefit attributable to the offending may be difficult to isolate, which may increase reliance on a specified maximum or turnover-based fallback.[1][3]

BCSDA considers that the penalty choice should therefore be assessed for proportionality and administrability in the specific supply-chain context rather than assumed to transfer cleanly from foreign bribery.

For commencement, the practical preparation period depends on when the final statutory design and guidance are sufficiently settled for businesses to change governance, contracts, supplier segmentation, escalation processes, training and evidence systems. A nominal 12–18-month period may provide materially less usable implementation time if final guidance arrives late in that period.[1]

Question 2 — Impact: costs, supply chains, workers and unintended consequences

BCSDA considers that the impact assessment should look beyond the direct compliance cost of large corporations. The more important system question is how the offence changes behaviour through supply chains — including the information requested from suppliers, assurance requirements, purchasing decisions, willingness to investigate emerging risk and the response when harm is found.[1][6]

Three consequences warrant particular attention. **First**, OECD analysis shows that overlapping due-diligence and reporting requirements can cascade to suppliers through duplicative information requests, questionnaires and audits, with particular burden and audit fatigue reported by SMEs and upstream actors.[10] **Second**, supplier exit is a credible behavioural response rather than a hypothetical one: a 2026 German study found firms anticipating supply-chain due-diligence regulation were 3.5 percentage points less likely to source a product from higher-risk country-sector combinations, although the authors caution that the evidence is context-specific and does not show whether firms also engaged constructively with suppliers.[11] **Third**, a regime that produces more risk documentation without stronger worker voice, escalation and remediation may increase cost without materially improving prevention.[6][9][10]

OECD's 2026 public-disclosure evidence is relevant here. It shows that large listed companies report policies and management systems more frequently than measures addressing impacts, while cautioning that the available indicators are only a partial measure of actual practice. OECD standards also recognise that continued engagement may often be preferable where there is a realistic prospect of improvement, while responsible disengagement remains appropriate where mitigation is not feasible or the harm is severe.[6][9] BCSDA considers this a useful reason for the Department to test not only administrative burden but the behavioural incentives created by the offence.

Implementation costs may also fall unevenly across organisational types. BCSDA Member feedback has identified the potential significance of additional prevention, assurance and behaviour-change costs for not-for-profit organisations. Implementation design should therefore consider organisational capacity and proportionality, including whether transitional arrangements or appropriately scaled expectations are needed, while preserving the preventative purpose of the regime.

Question 3 — Support: guidance, interoperability and implementation

BCSDA considers that the most useful guidance would be organised around business decision points rather than around generic policy documents. The foreign-bribery guidance provides a useful Australian precedent for principles-based, scenario-supported guidance, but modern slavery requires different scenarios because the underlying harm often arises across multi-tier supply chains and because affected workers may be remote from the corporation.[1][4]

Worked examples would be most useful where they show how the statutory elements relate to: supplier onboarding and risk segmentation; pricing, lead-time and contract changes that may increase risk; labour-hire and recruitment red flags; escalation of worker complaints; remediation and responsible disengagement; and evidence constraints in cross-border settings. These examples should illustrate legally relevant evidence without becoming mandatory steps or safe harbours.[1][4][6][9]

Interoperability should also be made practical. Businesses operating across jurisdictions increasingly maintain overlapping human-rights due-diligence systems. The Department can reduce duplication by recognising that evidence generated under a comparable system may be relevant to the Australian inquiry where it addresses the same risk or control, while making clear that compliance with another framework is not automatic proof of the Australian defence.[1][6][8][9]

Financial services require clarity. Current Modern Slavery Act reporting guidance treats lending and investment exposures thematically rather than requiring lenders to monitor each borrower or investee individually.[5][13] The proposed criminal offence, by contrast, is being designed around sourced products or services and the corporation's own conduct.[1] Guidance should therefore distinguish those concepts so that financing activity is neither assumed automatically to fall within the sourcing nexus nor treated as an implied carve-out from broader responsible-business-conduct expectations.

Question 4 — Deferred Prosecution Agreements

A DPA would be valuable only if it changes incentives in a way that improves accountability and outcomes: earlier cooperation or self-reporting, preservation of evidence, corrective action, remediation and enforceable monitoring. The counter-risk is that a negotiated resolution could be perceived as reducing accountability for serious human-rights harm if approval, transparency, victim/survivor interests and breach consequences are weak.[1][12]

BCSDA does not take a position on whether a DPA scheme should be introduced. If Government proceeds, the design should ensure that cooperation and remediation are additional to — rather than substitutes for — credible accountability. Independent or judicial approval, publication of material reasons and facts, enforceable corrective obligations, monitoring where appropriate and clear consequences for breach are among the safeguards that warrant consideration.[1][12]

Question 5 — Civil remedies

The existence of a remedy in law and practical access to remedy are different questions. The consultation paper identifies a range of existing avenues, including criminal reparation orders, employment remedies, tort claims and State and Territory victim-compensation schemes, while also acknowledging possible complexity, duplication and litigation cost if a new civil remedy is added.[1]

BCSDA considers that a staged approach is appropriate: first identify and evidence the specific access gap connected to the proposed failure-to-prevent offence, and then consider a targeted additional remedy where existing mechanisms cannot address that gap. Relevant questions include who would have standing; what conduct and loss the remedy would address; how causation and proof would operate where the underlying exploitation is overseas; how the remedy would interact with criminal proceedings and remediation under a DPA; and whether existing mechanisms are practically accessible to affected workers. Those questions should be answered before assuming either that existing remedies are adequate or that a new statutory cause of action is necessary.[1]

Conclusion

BCSDA supports stronger prevention and corporate accountability. The value of the proposed offence will depend on whether its legal architecture gives businesses a clear boundary for responsibility while directing effort toward the decisions and relationships that can change modern-slavery risk in practice.

A mature prevention system is not demonstrated by the volume of policies, questionnaires or audits it produces. Where legally relevant, the more informative evidence is whether risk changed a commercial decision; whether a red flag was escalated; whether workers had a credible route to raise concerns; whether harm was investigated and remediated; and whether the organisation learned from the outcome. Current OECD public-disclosure data show that these operational measures are reported less frequently than policies and management systems, while the OECD cautions that the indicators are only a partial measure of actual uptake.[6] Guidance that helps businesses understand that distinction — while remaining subordinate to the statute — would strengthen both accountability and implementation.

For BCSDA, the priority is therefore coherence: a fair and enforceable liability boundary; guidance that distinguishes paper controls from operational evidence; proportionate supply-chain effects; practical interoperability; and enforcement and remedy mechanisms that preserve accountability while improving prevention and remediation.

Disclosures

Organisational position. This submission reflects BCSDA's consolidated position following consultation with Learn and Lead Members. It does not purport to state the individual position of every BCSDA Member. Where Members provided attributed input, attribution is expressly noted; all other feedback is de-identified.

AI-assisted analysis. BCSDA used AI-enabled tools to assist source review, comparison and analysis. All substantive positions, evidence selections and final wording remain subject to human review and approval by BCSDA.

References

[1] Australian Government, Attorney-General's Department, Strengthening Australia's legislative response to modern slavery in supply chains, Consultation paper, August 2026.

[2] Criminal Code Act 1995 (Cth), including ss 5.4, 6.1–6.2, 9.2, 12.5, 13.4–13.5 and 70.5A (current compilation accessed September 2026).

[3] Attorney-General's Department, Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers, 24 May 2024.

[4] Attorney-General's Department, Guidance on adequate procedures to prevent the commission of foreign bribery, 28 August 2024.

[5] Modern Slavery Act 2018 (Cth) and Australian Government guidance for reporting entities under the Modern Slavery Act.

[6] OECD, OECD Responsible Business Outlook 2026, including company due-diligence indicators based on public disclosures from the largest 10,000 listed companies globally; OECD notes the indicators are partial measures of due-diligence uptake.

[7] World Business Council for Sustainable Development, Executive Action Brief for Human Rights, 1 December 2025, and current Human Rights program resources.

[8] United Nations, Guiding Principles on Business and Human Rights, 2011.

[9] OECD, Guidelines for Multinational Enterprises on Responsible Business Conduct and OECD Due Diligence Guidance for Responsible Business Conduct.

[10] OECD, Reporting requirements in social and environmental due diligence legislation, 3 April 2026 — duplicative analysis and information requests, supplier questionnaires, audit fatigue, data reuse and SME/upstream burden.

[11] Keilbach, H., Koetter, M., Ludolph, M. and Woebbeking, F., "The limits of local laws in global supply chains: Cutting ties or 'edutrading' procurement partners?", Journal of Development Economics 182 (2026) 103804.

[12] Australian Law Reform Commission, Corporate Criminal Responsibility, Report 136, 2020 — DPA design and oversight context.

[13] Australian Government, Commonwealth Modern Slavery Act 2018 Guidance for Reporting Entities — guidance on investment and financial lending arrangements.