Q&A with Allens on Australia's proposed modern slavery reforms

September 2026

Global Compact Network Australia | Allens

Acknowledgement of Country

The UN Global Compact Network Australia and Allens acknowledge the Aboriginal and Torres Strait Islander peoples as the First Peoples of Australia. We pay our respects to Elders past, present and emerging and recognise the valuable contributions Aboriginal and Torres Strait Islander peoples make towards all aspects of Australian life. Our vision for reconciliation is a future where all Australians are united by our shared past, present, future and humanity.

About the organisations

UN Global Compact Network Australia

As a special initiative of the United Nations (UN) Secretary General, the UN Global Compact is a call to companies everywhere to align their operations and strategies with Ten Principles in the areas of human rights, labour, environment and anti-corruption. Our ambition is to accelerate and scale the global collective impact of business by upholding the Ten Principles and delivering the Sustainable Development Goals (SDGs) through accountable companies and ecosystems that enable change. With more than 18,000 companies and 4,000 non-business signatories based in over 160 countries and 65 local networks, the UN Global Compact is the world's largest corporate sustainability initiative — one Global Compact uniting business for a better world.

Locally, UN Global Compact Network Australia (UNGCNA) brings together signatories to the UN Global Compact, including over 50 listed companies, other businesses, non-profits and universities, to advance the private sector's contribution to sustainable development. We lead, enable and connect businesses and stakeholders to create a sustainable future by supporting businesses to act responsibly and helping them find opportunities to drive positive business outcomes.

www.unglobalcompact.org.au

Allens

Allens is an international law firm that helps clients navigate some of their most complex, consequential and market-shaping challenges. For more than 200 years, we have worked alongside businesses, governments and institutions through periods of change, growth and transformation, bringing deep expertise, commercial insight and human judgement to the decisions that matter most.

Clients turn to us when the path forward is not yet clear. From market-defining transactions and major projects to first-of-their-kind regulatory, technological and societal issues, we help organisations navigate unprecedented territory with confidence.

What distinguishes Allens is not only the complexity of the work we do, but how we work. We listen deeply, understand our clients' ambitions and challenges, and bring together expertise from across our firm to help them move forward with clarity and confidence.

As the first organisation in Australia to become a signatory to the United Nations Global Compact, we are also committed to responsible business, ethical practice and creating a positive impact in the communities in which we operate.

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About this publication

In this publication, the UNGCNA asked Allens to respond to a series of questions to provide insight into the proposed new criminal offence for failing to prevent modern slavery for companies with an annual consolidated revenue above $100 million, and the proposed new civil penalty and enforcement regime to address non-compliance with the *Modern Slavery Act 2018* (Cth).

An introduction to the proposed measures

Under the current *Modern Slavery Act 2018* (Cth) (***MSA***), Australian entities or entities carrying on business in Australia with an annual consolidated revenue above $100 million must prepare and submit an annual modern slavery statement. Reporting entities must address seven mandatory criteria, however there are no penalties for non-compliance – or for failing to submit a report.

Following a statutory review of the MSA that concluded in May 2023, (the ***McMillan review***), the Australian government undertook a two-year consultation process on measures to strengthen the MSA.

On 16 July 2026, Attorney-General Michelle Rowland announced that the Australian government proposes to strengthen its laws with respect to modern slavery in supply chains by introducing:

- civil penalties and associated enforcement powers to address non-compliance with existing reporting obligations under the MSA; and
- a new criminal offence directed at companies with an annual consolidated revenue of $100 million that fail to prevent modern slavery in their supply chain (noting that a defence would be available if a company can demonstrate it took 'reasonable steps' to prevent modern slavery).

The government has opened a consultation process inviting public submissions that closes on 25 September 2026. The consultation focuses on questions concerning the proposed new criminal offence, as well as alternative enforcement models (referring specifically to Deferred Prosecution Agreements (***DPAs***) and civil remedies).

Following the consultation process, it is anticipated that new legislation will be introduced in 2027.

How companies can prepare for these new measures

In anticipation of the proposed reforms, aside from participating in the consultation process, companies can begin taking stock of their current approach to modern slavery risk assessment and identify whether there are any capability-related or process-related gaps.

Specific steps may include:

- briefing senior management, legal, risk and compliance and other relevant functions on the anticipated reforms and their likely impact on the business;
- undertaking a risk assessment, ideally under legal professional privilege, to assess their potential liability (including any indirect exposure of directors, officers or other employees);
- identifying and then implementing any risk mitigants (such as uplifting controls and procedures);
- assessing the effectiveness of existing reporting pathways or grievance mechanisms to understand whether these are being utilised and leveraged to address risks.

Q&A with Allens

What type of non-compliance with the MSA could attract a civil penalty?

The government has not identified the proposed types of non-compliance that would attract penalties. However, drawing from the McMillan review, it is likely penalties may apply in the following circumstances:

- failing to submit a modern slavery statement within the reporting period;
- submitting a modern slavery statement that knowingly includes false information;
- failing to comply with a written notice to undertake remedial action.

Drawing from the types of enforcement powers that exist in other contexts, it is likely that the proposed enhanced enforcement powers would include enabling the regulator to issue infringement notices, enter into enforceable undertakings or otherwise compel companies to take certain remedial actions.

The government has not disclosed the proposed regulator. The Attorney-General's Department is the primary regulator for administering the MSA. This will likely change if civil penalties are applied to failure to comply with modern slavery reporting obligations.

The government has not indicated the likely quantum of any penalties.

Where did the 'failure to prevent' formulation come from?

The failure to prevent modern slavery offence has been the subject of discussions in academic law reform circles and was briefly canvassed in the McMillan review. However, the McMillan review did not recommend that it be introduced. It instead stated that the next step in uplifting Australia's modern slavery framework should be to introduce mandatory modern slavery due diligence together with strengthened reporting requirements. Likely resulting from this, the failure to prevent concept was not part of the subsequent consultation process.

However, the proposed failure to prevent offence and related defence of 'reasonable steps' to prevent modern slavery is not a new regulatory concept in Australia. It has parallels in existing regulatory regimes, including the anti-bribery offence in the *Criminal Code Act 1995* (Cth) (***Criminal Code***), Australian sanctions laws, and the positive duty on employers to eliminate sexual harassment and related conduct in the *Sex Discrimination Act 1984* (Cth). This means there may be lessons from these regimes in understanding what this defence could look like in practice.

However, while Attorney-General's Department has noted the parallels between the proposed failure to prevent modern slavery offence and existing anti-bribery offence in its consultation paper, the Department also observed that there are very important differences as well. Specifically, modern slavery itself is a very serious human rights issue with severe and ongoing impacts to victims/survivors. Further, by contrast with bribery, modern slavery may occur within complex, multi-jurisdictional supply chains where companies captured by the proposed criminal offence have significantly less direct oversight.

According to the Attorney-General's Department, this means that there will need to be careful consideration of the required connection between the preventative measures companies can be reasonably expected to take, and the occurrence of an incident of modern slavery itself, before criminal liability should be imposed.

What does 'reasonable steps' mean?

The initial announcement from the Australian government stated that companies would be able to rely upon a defence if they can demonstrate they took reasonable steps to prevent modern slavery from occurring in their supply chain. However, it is worth noting that the consultation paper expressly invites stakeholders to comment upon whether or not this would be the most effective mechanism for achieving the policy objective of incentivising proactive due diligence and risk management to prevent modern slavery from occurring.

As such, the nature of the proposed defence is still to be confirmed. The comparable 'failure to prevent' regimes referenced above have similar defences of 'adequate procedures' (in the case of the anti-bribery offence), 'reasonable precautions' (in the case of sanctions offences) and 'reasonable and proportionate measures' (in the case of the positive duty to eliminate sexual harassment and related conduct).

We consider it likely that companies would need to demonstrate that certain minimum preventative and proportionate measures have been taken in order to avoid criminal liability.

Guided by our understanding of existing comparable regimes and drawing from the United Nations Guiding Principles on Business and Human Rights (***UNGPs***), we suggest that these measures would include the following:

- **top-level management** – senior leaders should be accountable for and have a high level of understanding and awareness of modern slavery risk in their company's operations and supply chain, as robust leadership is essential to effective modern slavery prevention;
- **risk assessment** – documented risk assessments that are periodically updated or updated in response to changing circumstances, to serve as the basis for designing a compliance program that is responsive to the actual and potential identified risks in line with the expectations in the UNGPs;
- **due diligence** – involving research, investigation, assessment and ongoing monitoring in relation to both new and existing business relationships, noting that the level of due diligence should be proportionate, for example, to the inherent risk connected with a particular supplier or supply chain;
- **training and capability building** on modern slavery risk management and responses to indicators of modern slavery – including targeted training as required for specific roles, like procurement;
- **effective reporting and grievance mechanisms** –so that individuals can report grievances or complaints related to incidents or risks of modern slavery, noting that the UNGPs set out the relevant effectiveness principles, any reporting pathway or grievance mechanism should be legitimate, accessible, predictable, equitable, transparent, rights-compatible and based on engagement and dialogue with stakeholders (ensuring that insights are drawn to enhance prevention measures);
- **monitoring and review** – ongoing monitoring of the effectiveness of the modern slavery prevention framework to ensure that the company continues to learn, adjust and adapt controls as required.

How does this new proposed offence interact with foreign laws that may inhibit information gathering?

Foreign laws, such as China's recent Decree 834 and 835, may limit the types of due diligence and information gathering activities that may be conducted across a company's supply chain.

At present, it is unclear whether the scope of the 'reasonable steps' defence will take into consideration whether what is 'reasonable' will depend on the specific regulatory settings that apply to the particular supplier or supply chain. This will likely be an issue that is raised during the consultation process, as it seems it would be appropriate for any guidance materials on the reasonable steps defence to expressly address this issue.

How far down the supply chain does this obligation apply?

The government has not set out an express position on this. However, the consultation paper refers to the definition of 'supply chain' used in the current guidance for modern slavery reporting, which extends beyond tier 1, and notes that adopting a similar concept for the offence would capture both direct and indirect suppliers. It is likely that the framing of the offence and its elements would include a nexus requirement that requires a specific level of connection between the company and the underlying modern slavery offence.

Any nexus requirement would likely require a consideration of the extent to which a company's activities or conduct, including acts or omissions, caused, facilitated, enabled or otherwise contributed to the underlying conduct. In addition to being relevant to an element of the offence, where a company has responded to an impact in line with the UNGPs, this would also be relevant to demonstrating that the company has taken reasonable steps to prevent modern slavery in line with global human rights standards.

In practice, this may mean that it would be difficult to make out this nexus in cases involving suppliers in Tier 2 or Tier 3 and beyond. We anticipate this would be a key issue agitated by stakeholders in consultations.

How will the connection to a company's conduct be assessed?

The consultation paper expressly refers to the UNGPs and the 'connection to impact' assessment, however no specific model has been presented regarding the relevant nexus that must be made before a company can be held criminally liable for an incident of modern slavery within its supply chain.

There are challenges in applying the 'connection to impact' assessment from the UNGPs in the context of criminal liability. It is framed in the UNGPs as a spectrum of conduct so that a company can identify the appropriate steps it should take in response to an identified human rights impact. That is, it is not framed as a test of causation to determine whether a company is legally culpable for that impact.

There are also factual and other evidentiary challenges to providing a connection between the underlying criminal offence and the company beyond reasonable doubt. For example, in practice, many companies may be connected to an incident of modern slavery in different ways, and quantifying or determining their respective connection to this impact may be difficult. There will also likely be evidentiary barriers for law enforcement authorities in cases where the underlying conduct occurred overseas.

Does the 'failure to prevent' apply to a company's operations as well?

On 16 July 2026, the initial announcement from the Attorney-General referred to a criminal offence applicable where relevant companies fail to prevent modern slavery in their supply chain only. This announcement did not mention that the failure to prevent might also apply to a company's operations.

This is consistent with the way the failure to prevent offence is framed in the Attorney-General Department's consultation paper released on 21 August 2026. Indeed, the discussion of the 'components' of the proposed offence include 'connection to a corporation's sourced products or services' and 'the nexus between the underlying criminal conduct and the goods, services, labour, materials or other inputs *that form part of the corporation's sourcing arrangements*', reinforcing the focus on the supply chain rather than operations.[1]

Accordingly, at this stage, it seems that the offence is intended to address supply chain risk rather than operational risk. It is important to also recall that there are already primary offences in the Commonwealth Criminal Code relating to modern slavery that would likely be more applicable in an operational context.

What potential criminal penalties could apply?

The Attorney-General's Department is specifically seeking stakeholder views on the appropriate maximum penalty for the failure to prevent modern slavery in a company's supply chain.

Three options have been outlined:

- 100,000 penalty units;
- 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 company's annual turnover during the relevant turnover period.

Notably, the maximum penalty for the failure to prevent foreign bribery offence in the Criminal Code is calculated based on the greatest of the above. However, unlike in the context of a foreign bribery offence, the nexus between the company's actions (or omissions) and the underlying criminal conduct may be far more remote, meaning that there may be a basis for a lesser maximum penalty, given a company's level of control and visibility may be far lower.

What standard of liability could apply?

The consultation paper has noted that either strict liability, absolute liability or recklessness could apply to certain elements of the offence of failing to prevent modern slavery in the supply chain.

In the case of an absolute liability offence, there is no requirement to establish that the relevant company intended to commit the relevant offence – rather, liability is established simply if the underlying conduct occurred, and the other elements can be established, including with respect to the nexus between the company and the underlying conduct, such that the company is liable for failing to prevent it occurring.

In the case of strict liability, a company may be able to avoid liability if it can prove that a mistake of fact occurred. However, as outlined in the consultation paper, in practice there would be little

[1] Consultation paper August 2026, p 8. Emphasis added.

practical difference between absolute liability and strict liability in this context. This is because there is already a defence of 'reasonable steps' which, for all practical purposes, would overlap with the defence of mistake.

For this reason, the consultation paper also suggests that the failure to prevent offence could include a fault element such that it must be proved that the company was reckless as to whether or not modern slavery could occur within its supply chain. This would require a prosecutor to prove various facts about the relevant state of mind of the company, which would significantly increase the complexity of the offence.

It is difficult to predict at this stage what standard of liability will apply to the proposed offence. On one hand, the comparable failure to prevent bribery offence is an absolute liability offence. On the other, the particular stigma attached to modern slavery may point towards imposing a fault element. It is notable that there seems to again be some overlap between the concept of 'recklessness' in this context and the defence of 'reasonable steps', noting that that again, this inquiry will concern matters including:

- what risks where known by senior management and other responsible individuals; and
- what, if any, steps were taken to address, mitigate or eliminate these risks.

Will there be a pathway for companies to self-report?

No pathway for self-reporting has been announced. Currently, the proposed new criminal offence would, if enacted in its current form, disincentivise self-reporting, as it could lead to a criminal prosecution.

However, the consultation process will expressly consider the potential role of Deferred Prosecution Agreements (***DPAs***), in relation to the proposed new criminal offence. DPAs enable a prosecutor to suspend criminal proceedings (i.e. defer prosecution) and enter into an agreement with a defendant that requires the defendant to take certain steps (including remedial actions and uplifting compliance processes). Once those steps have been taken, and the terms of the DPA have been fulfilled, the matter can be resolved.

DPAs could provide a pathway for companies to proactively engage with the relevant authorities in the event of an identified incident of modern slavery in their supply chain. The purpose of DPAs is to encourage self-reporting by companies, and cooperation with information and evidence-gathering.

Significantly, DPAs could also provide a potential pathway for victim-survivors to access remedy, as the terms of DPAs could include requiring the defendant provide appropriate forms of remediation, which is also in alignment with the objectives of the proposed new criminal offence.

Will individual directors or officers face potential criminal or civil liability?

Under the current MSA, a reporting entity's principal governing body is required to sign its modern slavery statement. The intention has always been to encourage scrutiny and awareness at the highest levels. The proposed new civil penalty and enforcement regime, and the proposed failure to prevent offence will, however, transform the risks associated with failures of governance and accountability.

While the proposed new criminal offence does not seek to impose direct liability on directors and officers as presently framed, boards will need to consider the potential for 'two-step' liability.

This is because, if a company is found criminally liable for failing to prevent modern slavery in its supply chain, then directors or officers may subsequently be liable for breaching their duty of care obligations under the *Corporations Act 2001* (Cth), as it could be argued that they failed to personally exercise powers or discharge their duties with a reasonable degree of care in the circumstances.

What should Boards and executives be doing differently in response to the proposed new criminal offence?

It is important that Boards and executives have sufficient capability to ensure that they are able effectively oversee their company's modern slavery risk management framework, and ensure that information regarding modern slavery compliance and risk management is appropriately escalated to the Board and executive level. In practice this means, in addition to the 'reasonable steps' outlined above, ensuring:

- there is a top-down culture of accountability and transparency, such that there is an organisation-wide expectation that incidents of non-compliance (or concerns regarding conditions conducive to modern slavery or any emerging risks) are appropriately escalated;
- enterprise modern slavery risk management and prevention frameworks are approved and periodically monitored at the Board and executive level;
- at the Board, executive and senior management level, there are people with suitable capabilities who are accountable for implementing and managing modern slavery risk management processes, including by ensuring that they appropriately test and challenge these processes as required.

What are the potential unintended consequences of the proposed new criminal offence?

It is notable that the McMillan review did not recommend the introduction of a 'failure to prevent' style obligation, instead recommending that the next steps be to introduce mandatory due diligence, strengthen existing reporting obligations, and enhance compliance oversight. There was also concern that a 'failure to prevent' style obligation would be antithetical to the transparency objectives of the MSA – indeed, it seems highly likely that the proposed new criminal offence will have a chilling effect on the information that companies will publicly disclose, and therefore compromise the quality of information that is available to shareholders and other interested stakeholders.

Moreover, if the proposed new criminal offence encourages companies to divest from higher-risk suppliers or jurisdictions (rather than engage with them), this may mean that instead of exercising leverage to improve conditions that may be conducive to modern slavery, companies exit relationships and these conditions do not change. This unintended consequence is contrary to the very objectives of the proposed new criminal offence and the MSA.

What should companies engaging with the consultation process consider?

As outlined above, there are several important considerations that are being canvassed, and the consultation process represents a meaningful opportunity to provide input that may shape the final form of the proposed reforms. Companies should consider whether or not to put forward their position on matters including:

- whether the proposed failure to prevent modern slavery is the more appropriate mechanism to drive up standards of due diligence and encourage proactive and preventative measures – and any potential unintended consequences that could flow from enacting the proposed new offence;
- what measures should be considered sufficient to prove 'reasonable steps' were taken;
- whether the offence should be framed, or guidance material provided, to confirm the scope of the failure to prevent requirement (including the extent of the supply chain it is intended to cover);
- the appropriate penalties (civil or criminal) that should be applied that will act as appropriate deterrents in light of the gravity of the underlying conduct, but which are also proportionate to the relative level of involvement of the company (as opposed to the specific perpetrator of the offence); and
- whether the failure to prevent modern slavery offence should include a fault element.