

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

October 2026

The Australian Retail Council (ARC) welcomes the opportunity to provide feedback to the Attorney-General's Department's consultation on *Strengthening Australia's legislative response to modern slavery in supply chains*.

ARC represents the Australian retail sector. Valued at \$444 billion, retail supports more than 1.4 million jobs, including employing more young Australians than any other industry. Retail is embedded throughout the economy and plays a critical role in the supply chain of Australian businesses. ARC advocates for policies and reform that drive growth, resilience, and long-term prosperity for Australian retail and the millions who rely on it.

Executive Summary

ARC condemns modern slavery in all its forms and supports effective measures to prevent exploitation in Australian and global supply chains. Businesses have an important responsibility to identify modern slavery risks, act on credible concerns and use their influence to improve outcomes for workers.

ARC supports reforms that strengthen corporate accountability and protections for workers, provided they are practical, effective and proportionate. Well-designed reform also presents an opportunity to improve consistency across industry and ensure businesses investing in effective supplier governance and due diligence are not disadvantaged relative to those with less mature systems.

ARC does not support the proposed failure to prevent criminal offence. Businesses should be held accountable for their own conduct, including their risk management systems, sourcing and purchasing practices, response to identified risks and use of available leverage, rather than being held criminally responsible for outcomes beyond their reasonable control.

Large retailers may have hundreds or thousands of businesses within their supply chains, many with substantial workforces of their own. Visibility and influence vary across those relationships and generally diminish through successive tiers of the supply chain. Different sourcing models also create materially different levels of visibility and leverage. A retailer may, for example, have significantly greater influence over a private-label supply chain than the upstream supply chain of a national brand product it sells.

ARC's principal concern is that the proposed offence could be counterproductive to the Australian Government's objective. Effective modern slavery frameworks depend on businesses actively examining their supply chains, identifying risks, engaging with suppliers and workers, disclosing concerns and taking action to remediate exploitation. The framework should ensure that businesses are not disadvantaged as a result of effective due diligence identifying modern slavery risks or incidents.

ARC recommends a risk-based framework centred on whether businesses have taken reasonable and proportionate steps to identify, mitigate and remediate modern slavery risks and responded appropriately when concerns are identified. If the Government proceeds with criminal liability, the offence should be confined to genuinely culpable corporate conduct, with a clear and meaningful connection between the corporation's conduct and the underlying exploitation – particularly actual knowledge of specific and credible indicators of exploitation, deliberate avoidance of confirming these indicators, and evidence that the corporation's conduct caused or significantly contributed to the exploitation.

Ultimately, the success of reform should be measured by whether it supports earlier identification of modern slavery risks, effective remediation and better outcomes for vulnerable workers.

Recommendations

ARC recommends that the Australian Government:

1. **Preserve the transparency and remediation objectives of the existing modern slavery framework**, ensuring businesses are not disadvantaged where effective due diligence identifies modern slavery risks or incidents, and recognising good-faith disclosure, cooperation and remediation.
2. **Do not proceed with the proposed failure to prevent criminal offence**. Instead, focus any regulatory response on whether a corporation has culpably failed to take reasonable and proportionate steps to identify, mitigate and remediate modern slavery risks, using compliance notices, enforceable undertakings and injunctive relief, with civil or criminal liability reserved for clearly defined and sufficiently serious conduct.
3. **If a criminal offence proceeds, reject strict or absolute liability and require actual knowledge** of specific and credible indicators of exploitation, having regard to knowledge, contribution, control, leverage, proximity and practical capacity to act.
4. **Establish a practical and risk-based reasonable-steps framework**, with the core principles prescribed in legislation and detailed guidance that recognises supply-chain complexity, differing levels of visibility and leverage, existing governance systems and internationally recognised due diligence approaches.
5. **Ensure implementation and enforcement remain focused on worker outcomes**, including through worker voice and grievance mechanisms, industry collaboration, graduated enforcement, appropriate self-reporting protections, recognition of established due diligence systems and sufficient time for implementation.

Question 1: Model

ARC does not consider a broad failure to prevent criminal offence to be the most effective way to achieve the Government's objectives.

Australia already criminalises serious forms of exploitation, including slavery, servitude, forced labour, debt bondage, deceptive recruiting and human trafficking under Divisions 270 and 271 of the *Criminal Code Act 1995* (Cth). The *Modern Slavery Act 2018* (Cth) separately requires large entities to report publicly on modern slavery risks in their operations and supply chains and the actions taken to assess and address those risks.

The regulatory gap identified by the Government is therefore narrower: there is currently no specific offence making a corporation criminally liable for failing to prevent modern slavery occurring within its supply chain. ARC considers the critical question is whether imposing that additional layer of criminal liability will materially improve outcomes for workers without undermining the investigation, transparency, cooperation and remediation that the existing framework is intended to encourage.

1.1 The proposed offence risks undermining the existing framework

The proposed offence must complement, rather than undermine, the existing transparency framework under the Modern Slavery Act.

Effective due diligence may uncover exploitation that would otherwise remain hidden. The identification of a modern slavery risk or incident does not, of itself, demonstrate a failure of due diligence. In some circumstances, its discovery may demonstrate that a business's due diligence, worker engagement or grievance mechanisms are functioning effectively.

The framework should therefore preserve incentives to actively investigate, identify and disclose risks. Good-faith identification and disclosure should be considered in the context of the corporation's overall conduct, including its existing due diligence, Modern Slavery Statements and the steps taken to investigate, mitigate and remediate the risk. The legislation should provide statutory protection from prosecution under the proposed offence arising from voluntary, good-faith disclosures to relevant authorities. The identification or reporting of modern slavery should not, of itself, be treated as evidence of corporate culpability.

Without appropriate safeguards, the proposed offence risks shifting resources and behaviour towards defensive legal compliance rather than measures that improve conditions for workers.

Recommendation 1

Preserve the transparency and remediation objectives of the existing modern slavery framework, ensuring businesses are not disadvantaged where effective due diligence identifies modern slavery risks or incidents, and recognising good-faith disclosure, cooperation and remediation.

1.2 Responsibility must reflect the realities of complex supply chains

Retail supply chains can involve hundreds or thousands of businesses, subcontractors, labour-hire arrangements and service providers across multiple countries and tiers. Visibility is generally strongest at the direct supplier level and diminishes further down the supply chain.

This does not diminish the responsibility of businesses to undertake effective due diligence. It does mean that responsibility should reflect what a corporation can reasonably identify, influence and address.

The framework should distinguish between different commercial relationships and levels of control. Private-label products, national brands, outsourced services and labour-hire arrangements may each involve significantly different levels of visibility, contractual control and leverage.

Responsibility must also account for shared suppliers. Where multiple businesses source from the same supplier, an individual business may have limited influence and may not itself have caused or materially contributed to the underlying conduct. The framework should clarify how contribution and leverage will be assessed in those circumstances and encourage collective action where this provides a more effective means of improving worker outcomes.

Supply-chain complexity should not excuse inaction. Where credible and serious risks are identified, businesses should be expected to investigate and use available leverage appropriately. Equally, businesses should not be criminally responsible for conduct they could not reasonably identify, control or prevent despite proportionate due diligence.

Particular consideration is required where risks involve state-imposed forced labour or jurisdictions in which access, independent audit, worker engagement or verification is restricted. The reasonable-steps framework should recognise circumstances where information may be unavailable or deliberately concealed, or where attempts to investigate may create risks for locally based workers, employees or suppliers.

1.3 A clear nexus between corporate conduct and exploitation

If criminal liability is introduced, the prosecution should establish that the corporation's own conduct caused or significantly contributed to the underlying exploitation. The mere presence of modern slavery somewhere in a corporation's supply chain should not be sufficient to establish criminal responsibility. Liability for an omission should require actual knowledge of specific and credible indicators, a clearly defined duty and practical capacity to act, and failure to act that caused or significantly contributed to the exploitation.

In determining that connection, relevant factors should include:

- knowledge of the relevant risk
- contribution to the conduct
- proximity to the exploitation
- control or influence
- commercial leverage
- practical capacity to intervene.

The legislation should also clarify the circumstances in which an omission may give rise to liability, including when a duty to act arises and the required connection between an omission and the underlying exploitation.

Greater clarity is also required regarding the circumstances in which purchasing practices, commercial pressures or supplier-management decisions may constitute a sufficient contribution to modern slavery, particularly where suppliers service multiple customers and an individual business has limited leverage.

The legislation should clearly distinguish the persons and relationships within the criminal offence's scope, including employees, agents, contractors, labour-hire providers and direct suppliers, and indirect suppliers addressed through due diligence expectations. It should also clarify whether the sourcing connection extends to goods, services, labour, materials and other inputs, including where those inputs cannot readily be traced to a particular finished product or service.

Liability based solely on a supplier relationship should be confined to direct suppliers with which the corporation has a contractual relationship. Risks in more remote tiers should remain subject to risk-based due diligence and reporting expectations but should not independently establish liability under the proposed offence. Criminal liability should not arise where exploitation was deliberately concealed from the corporation despite reasonable controls and the corporation neither knew of specific and credible indicators nor deliberately avoided confirming them.

The failure to prevent model should not be transposed from the foreign bribery framework without accounting for the material differences between foreign bribery and modern slavery. Modern slavery may occur several tiers removed from a corporation, may be deliberately concealed and may involve parties with which the corporation has no direct

contractual relationship. Visibility, causation, control and the practical capacity to intervene must be central to the design of any offence.

1.4 A risk-based and proportionate alternative

ARC considers that a more effective approach would focus on whether a corporation has culpably failed to take reasonable and proportionate steps to identify, mitigate and remediate modern slavery risks.

ARC's preferred approach is to enforce clearly prescribed obligations through compliance notices, enforceable undertakings and injunctive relief, supported where necessary by proportionate administrative fines. These mechanisms should require businesses to address deficiencies and support timely remediation for affected workers.

Businesses cannot apply identical levels of scrutiny to every supplier, product, country and tier of a complex supply chain. A risk-based approach should allow resources to be prioritised towards the most severe and likely risks to workers and the areas where businesses are best placed to achieve meaningful improvement.

This approach would align more closely with internationally recognised human rights due diligence principles and appropriately focus accountability on corporate conduct rather than requiring businesses to guarantee an outcome beyond their reasonable control.

Recommendation 2

Do not proceed with the proposed failure to prevent criminal offence. Instead, focus any regulatory response on whether a corporation has culpably failed to take reasonable and proportionate steps to identify, mitigate and remediate modern slavery risks, using compliance notices, enforceable undertakings and injunctive relief, with civil or criminal liability reserved for clearly defined and sufficiently serious conduct.

If the Government proceeds with a failure to prevent offence, the reasonable-steps framework will be critical to distinguishing genuinely culpable corporate conduct from circumstances in which modern slavery occurs despite appropriate due diligence and controls.

The core considerations governing reasonable steps should be prescribed in legislation rather than left entirely to non-binding guidance. Relevant considerations should include risk severity and likelihood, proportionality, control, leverage, proximity, available information, supplier cooperation, worker engagement and remediation.

If the offence is intended to create substantive mandatory due diligence obligations, those obligations should be clearly prescribed in legislation and subject to appropriate consultation and parliamentary scrutiny, rather than arising indirectly through a criminal defence and Ministerial guidance.

ARC does not support the proposed offence being subject to strict or absolute liability. If, contrary to ARC's preferred position, strict liability is adopted for any physical element, the legislation should preserve the ordinary mistake-of-fact defence and a robust reasonable-steps defence.

If criminal liability proceeds, actual knowledge should be required. The prosecution should establish that the corporation knew of specific and credible indicators of exploitation and culpably failed to respond, or deliberately avoided addressing those indicators. General awareness of elevated risk associated with a country, sector or product should inform appropriate due diligence but should not in itself establish criminal culpability. Prosecution should be reserved for systemic failures or patterns of wilful neglect, rather than isolated incidents occurring despite robust compliance systems.

The legislation should also state expressly how conduct, knowledge and state of mind are to be attributed to a corporation, including whether Part 2.5 of the Criminal Code will apply without modification and whose knowledge is relevant for the purposes of the offence. This is particularly important where relevant information may be dispersed across business units, suppliers and different levels of management.

If the Government proceeds with criminal liability, the prosecution should bear the burden of establishing the elements of the offence beyond reasonable doubt, including the corporation's failure to take reasonable and proportionate

steps. Whether reasonable steps were taken goes directly to the conduct the offence seeks to regulate and should therefore form part of the prosecution's case rather than operating solely as a defence.

The legislation should provide a clear safe harbour where, after receiving a report or credible information about exploitation, a corporation promptly investigates and responds reasonably and in good faith. Relevant actions should include protecting affected workers, using available leverage, cooperating with appropriate authorities and supporting remediation. For criminal liability, the assessment should focus on the corporation's response to information actually known to it, rather than information it arguably ought to have discovered.

Any maximum penalty should be proportionate to the corporation's culpability and connection to the underlying conduct. ARC does not support an approach under which turnover-based penalties automatically apply merely because any benefit arising from conduct within a complex supply chain cannot be quantified. Penalties should appropriately reflect fault, contribution and nexus.

Recommendation 3

If a criminal offence proceeds, reject strict or absolute liability and require actual knowledge of specific and credible indicators of exploitation or deliberate avoidance of confirming or addressing those indicators, having regard to knowledge, contribution, control, leverage, proximity and practical capacity to act.

Question 2: Impact

2.1 Focus resources on genuine risk reduction

ARC recognises that effective modern slavery due diligence requires businesses to invest in risk identification, supplier engagement, monitoring, investigation and remediation. These are appropriate costs of responsible supply chain management.

The concern is that the proposed criminal offence may generate additional costs and operational impacts directed primarily towards managing legal exposure, rather than addressing modern slavery risks. Businesses may adopt more defensive contracting and assurance requirements, increase legal oversight of sourcing and supplier decisions, and invest more heavily in documentation and evidentiary processes to demonstrate compliance.

For retailers managing large and complex supplier networks, these requirements may increase the time and complexity involved in supplier onboarding, procurement and ongoing supplier management, including where there is no identified modern slavery concern. The impacts may also flow through the supply chain as businesses seek additional contractual protections, information, traceability and assurance from suppliers, including smaller businesses not themselves subject to the offence.

These measures may reduce potential legal exposure without necessarily improving visibility of modern slavery risks or outcomes for affected workers. The framework should therefore preserve the distinction between meaningful due diligence and defensive compliance, and support businesses to direct resources towards areas where they can most effectively identify, mitigate and remediate modern slavery risks.

Businesses that have already invested significantly in responsible sourcing, supplier assurance, governance, grievance and remediation systems should not be required to establish duplicative processes solely to satisfy the Australian framework where existing arrangements achieve equivalent outcomes.

The framework should recognise credible:

- existing due diligence and responsible-sourcing systems
- equivalent international frameworks
- shared audits and supplier assurance processes
- industry and multi-stakeholder initiatives
- collaborative traceability systems

- collective remediation programs.

Recognition of existing systems would also help ensure businesses investing in mature supplier governance and effective due diligence are not placed at a competitive disadvantage relative to businesses with less developed controls.

2.2 Avoid counterproductive changes in supply-chain behaviour

The framework should avoid creating incentives for businesses simply to withdraw from higher-risk markets or suppliers to minimise potential criminal exposure.

Responsible engagement, supplier capability-building and remediation may deliver better outcomes for vulnerable workers than disengagement. At the same time, there will be circumstances where businesses have no practical ability to obtain reliable information or exercise meaningful influence, and responsible disengagement may ultimately be necessary.

The legislation should also avoid incentives for businesses to restructure sourcing relationships or reduce transparency in ways that diminish rather than strengthen their capacity to improve working conditions.

Compliance expectations should therefore remain proportionate to the nature and severity of the risk and the corporation's practical capacity to respond.

Question 3: Support

Clear and practical guidance will be critical if the Government proceeds with the proposed offence.

Guidance should align with recognised international frameworks, including the UN Guiding Principles on Business and Human Rights and OECD Guidelines for Multinational Enterprises on Responsible Business Conduct, and should complement rather than duplicate existing Australian guidance.

ARC supports practical, sector-specific guidance for retail. Retail supply chains involve private-label products, national brands, distributors, importers, subcontractors, labour-hire providers, outsourced services and shared suppliers, each involving different levels of visibility, risk and leverage.

Guidance should provide practical examples addressing:

- direct and indirect suppliers
- proportionate risk prioritisation
- purchasing practices and shared suppliers
- supplier non-cooperation and deliberate concealment
- high-risk sourcing arrangements and state-imposed forced labour
- worker voice and grievance mechanisms
- responsible use of leverage and disengagement
- remediation expectations
- reasonable evidentiary and record-keeping expectations.

Comprehensive mapping or auditing of every supplier and every tier should not be established, expressly or indirectly, as the benchmark for reasonable steps.

Recommendation 4

Establish a practical and risk-based reasonable-steps framework, with the core principles prescribed in legislation and detailed guidance that recognises supply-chain complexity, differing levels of visibility and leverage, existing governance systems and internationally recognised due diligence approaches.

Worker voice should remain an important part of effective modern slavery due diligence. Businesses should be encouraged to establish accessible mechanisms through which workers and other stakeholders can safely raise concerns, recognising that audits and documentary assessments alone may not identify exploitation.

Government should also support industry collaboration, shared audits, information-sharing and collective remediation. These approaches can provide greater visibility and leverage across shared supply chains than isolated entity-by-entity action.

Before commencement, the Government should provide clarity on the scope of the offence, attribution of corporate conduct and knowledge, evidentiary expectations, and investigation and enforcement processes. Guidance should also address the interaction between the offence, reasonable-steps framework, Modern Slavery Statements, self-reporting, Deferred Prosecution Agreements (DPAs) and any civil remedy.

Guidance should state whether, when and to whom a corporation is expected to self-report an incident or credible indicator of modern slavery, and how self-reporting, cooperation and remediation will affect investigative, prosecutorial and DPA decisions.

Except where conduct is egregious, enforcement should proceed through compliance notices and enforceable undertakings before criminal charges are considered. Businesses should receive clear notice of identified deficiencies and a reasonable opportunity to address them, while urgent injunctive relief should remain available where necessary to protect workers.

Implementation should commence no earlier than 18–24 months after publication of final legislation and supporting guidance. This would allow businesses sufficient time to assess their systems, engage suppliers, address gaps, train personnel and implement necessary governance changes.

ARC also supports an independent statutory review commencing within three years after the reforms take effect to assess whether they are delivering improved worker outcomes and to identify any unintended consequences.

Recommendation 5

Ensure implementation and enforcement remain focused on worker outcomes, including through worker voice and grievance mechanisms, industry collaboration, graduated enforcement, appropriate self-reporting protections, recognition of established due diligence systems and sufficient time for implementation.

Question 4: Deferred Prosecution Agreements

ARC's preferred position is that a broad failure to prevent criminal offence should not proceed.

However, if the Government introduces criminal liability, ARC supports the availability of DPAs as part of a proportionate enforcement framework.

A DPA could, where appropriate, provide for:

- compensation and other remediation for affected workers
- improvements to due diligence and supply-chain risk management
- strengthened worker grievance and reporting mechanisms
- supplier improvement and remediation plans
- cooperation with relevant authorities
- independent monitoring in serious cases
- proportionate financial penalties.

A DPA should not, however, compensate for an offence that is too broadly designed or substitute for proper consideration of whether prosecution is warranted. Where a corporation has taken reasonable and proportionate

steps, cooperated transparently and responded appropriately to identified risks, those matters should be capable of being recognised before criminal proceedings are commenced.

Any DPA scheme should be voluntary and subject to appropriate independent oversight and transparency. The framework should also clearly explain how DPAs interact with the reasonable-steps framework, self-reporting, Modern Slavery Statements and any civil remedies to avoid duplicative or conflicting enforcement processes.

Question 5: Civil remedies

ARC supports effective and accessible redress for victims and survivors of modern slavery.

Depending on the facts and applicable jurisdiction, existing avenues may include employment-based remedies under the *Fair Work Act 2009* (Cth), reparation orders following conviction under section 21B of the *Crimes Act 1914* (Cth), common law claims and state or territory victim-assistance schemes. Their availability and adequacy vary and should not be assumed.

The introduction of a failure to prevent criminal offence would not, of itself, establish the need for an additional civil cause of action.

Before introducing a new civil remedy, the Government should clearly identify the remedial gap it is intended to address and assess whether that gap could more effectively be addressed through existing compensation, remediation or enforcement mechanisms.

ARC's concern is not with access to redress, but with ensuring that remedies are effective and accessible while avoiding overlapping proceedings, inconsistent liability standards and unnecessary duplication.

If a material gap is identified and a new civil remedy is contemplated, it should be subject to separate consultation, including consideration of its basis of liability, causation, standing, available remedies, overseas conduct and interaction with criminal and other regulatory proceedings.

About ARC

ARC represents the Australian retail sector. Valued at \$444 billion, retail is the nation's largest private sector employer, supporting more than 1.4 million jobs, including more young Australians aged 15 to 24 years than any other industry. ARC's membership is diverse. From family-owned small and independent businesses, comprising 95 per cent of our membership, to large national and international retailers supporting communities across metropolitan and regional Australia. With more than 155,000 retail outlets nationwide and a growing online presence, the retail sector is embedded throughout the economy, playing a critical role in the supply chain of Australian businesses. ARC advocates for policies and reform that drive growth, resilience, and long-term prosperity for Australian retail and the millions who rely on it. At a time of rapid change, from technological disruption and international competition to shifting consumer behaviour and sustainability expectations, effective policy settings are critical for retailers, workers, consumers, and communities.