

25 September 2026

Attorney-General's Department
4 National Circuit
BARTON ACT 2600

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

1. Executive Summary

ASX welcomes the opportunity to provide feedback on the consultation on Strengthening Australia's legislative response to Modern Slavery in supply chains. ASX supports the objective of strengthening Australia's modern slavery framework and of ensuring that reforms are practical, effective and proportionate to better protect individuals from modern slavery.

This consultation is taking place alongside broader reforms to Australia's modern slavery framework, including potential changes to due diligence steps, high-risk designations and other measures. Those reforms are intended to operate together to improve corporate accountability and support effective action to identify and address modern slavery risks.

In ASX's view, consideration of any offence-based liability should follow the finalisation of the underlying obligations and supporting guidance, including due diligence requirements and high-risk designations, that were the subject of earlier consultation¹ so that the framework is clear, coherent, proportionate and capable of practical implementation by reporting entities.

The design of the regime should take account of comparable overseas frameworks. Where appropriate maintaining consistency with evolving international frameworks may help reduce unnecessary complexity and compliance costs for Australian businesses operating across multiple jurisdictions.

2. About ASX

ASX is a listed exchange group that offers listings, trading, clearing, settlement, technical and information services, technology, data and other post-trade services. It acts as a market operator, clearing house and payments system facilitator. It oversees compliance with its operating rules, promotes standards of corporate governance among Australia's listed companies and helps to educate retail investors.

ASX operates markets for a wide range of asset classes including equities, fixed income, commodities and energy. As an integrated exchange, ASX's activities span primary and secondary market services, including the raising, allocation and hedging of capital flows; trading and price discovery; central counterparty risk transfer; and securities settlement for both the equities and fixed income markets.

3. ASX's recommendations to enhance the operation of the Modern Slavery Act

ASX supports efforts to strengthen Australia's response to modern slavery and acknowledges that businesses have an important role in helping identify, prevent and address modern slavery risks.

ASX's recommendations are set out below:

¹ Consultation in September 2025 Strengthening the Modern Slavery Act 2018 (Cth) - Attorney-General's Department - Citizen Space which was followed by targeted confidential consultation earlier this year which ASX provided a confidential submission to.

1. Adopt a staged and considered approach to reform by finalising and implementing the broader Modern Slavery Act reforms before introducing a failure to prevent modern slavery offence ('failure to prevent offence'), so that the practical operation and effectiveness of the revised framework can be properly assessed.
2. Provide clear, practical guidance on the substantive obligations applying to reporting entities, including due diligence, reporting, remediation and governance expectations, and how those expectations apply across complex and indirect supply chains.
3. Ensure reforms promote meaningful, risk-based action that recognises an entity's circumstances, risk profile, degree of control, practical influence over suppliers, and the reasonable steps available to it.
4. Distinguish between inaction and residual risk, so that the framework differentiates between entities that fail to take reasonable action and entities that take genuine, documented and risk-based steps but continue to face limitations in visibility or leverage options.
5. As part of a phased reform program, the Government should first prioritise implementation support, guidance, practical examples and capability uplift, including sufficient implementation time. This should be followed by supervisory engagement and, proportionate enforcement mechanisms focusing on remediation and continuous improvement before considering the introduction of a failure to prevent modern slavery offence. Consultation should then be undertaken to determine how best to design the failure to prevent modern slavery offence.
6. Design principles for the offence should include an appropriate fault element to ensure it is appropriately directed to circumstances involving culpable corporate conduct. If a fault based model is not adopted, it should be supported by a reasonable steps defence. Regardless of the liability model adopted, the new offence should be clear, targeted and workable, including through clear standards, a practical reasonable steps defence, comprehensive guidance and alignment with the broader modern slavery framework.

4. The proposed failure to prevent modern slavery offence should not be considered in isolation

This consultation is occurring while other significant reforms to Australia's modern slavery framework remain under development, including proposed due diligence obligations, reporting requirements, high-risk designations and regulatory oversight mechanisms. These reforms are intended to operate as an integrated framework and should be considered collectively when assessing whether a failure to prevent offence is necessary and proportionate.

The appropriate design and operation of the failure to prevent offence can only be properly evaluated once the underlying statutory obligations, regulatory guidance and enforcement settings have been finalised. It will therefore be important to understand how the broader framework operates before determining whether a failure to prevent offence is proportionate and capable of practical implementation.

Further consultation on the proposed offence should occur after the Government has finalised the broader reform package and reporting entities have had a reasonable opportunity to understand the practical implications of the new framework. This would support a more cohesive assessment of the proposed offence and how it can be designed in a way that is practical, effective and proportionate.

Recommendation 1. Adopt a staged and considered approach to reform by finalising and implementing the broader Modern Slavery Act reforms before introducing a failure to prevent modern slavery offence ('failure to prevent offence'), so that the practical operation and effectiveness of the revised framework can be properly assessed

5. Practical Challenges in addressing the risk of Modern Slavery

ASX supports efforts to strengthen Australia's response to modern slavery and recognises that Australian businesses have an important role in improving corporate accountability and protecting individuals from exploitation. At the same time, addressing modern slavery risks can be inherently complex, particularly where risks arise within global or indirect supply chains and outside an entity's direct control. Reporting

entities will usually have the greatest visibility and influence over direct suppliers, with that visibility and influence decreasing further down the supply chain.

In practice, information about suppliers beyond Tier 1 may be difficult to obtain, and an entity's ability to verify information or influence conduct may be limited in some circumstances. These limitations do not reduce the importance of taking meaningful action, but they are relevant to how obligations are designed and how compliance should be assessed.

ASX considers that any future offence, and any assessment of whether an entity has taken reasonable preventative steps, should recognise these practical constraints including an entity's circumstances. As a critical infrastructure provider, ASX may not be able to easily disengage from some critical suppliers. Clear guidance will be needed on the scope of new obligations including due diligence steps, expectations flowing from high-risk designations, expectations for engagement with suppliers, documentation and assurance requirements, and how regulators will assess compliance. Without this clarity, entities may face uncertainty about the practical steps required to discharge their obligations and demonstrate reasonable preventative action.

A proportionate framework should also distinguish between circumstances where an entity has failed to take reasonable action and circumstances where modern slavery risks remain despite genuine, documented and risk-based efforts to identify, prevent and address those risks.

Recommendation 2. Provide clear, practical guidance on the substantive obligations applying to reporting entities, including due diligence, reporting, remediation and governance expectations, and how those expectations apply across complex and indirect supply chains.

Recommendation 3. Ensure reforms promote meaningful, risk-based action that recognises an entity's circumstances risk profile, degree of control, practical influence over suppliers, and the reasonable steps available to it.

Recommendation 4. The framework should differentiate between entities that take reasonable action and entities that take genuine, documented and risk-based steps but continue to face limitations in visibility or leverage options.

6. Sequencing of reforms and a phased implementation approach

ASX supports a sequenced approach that allows industry and regulators to establish, test and understand the new framework before the failure to prevent offence is introduced. This approach is more likely to support reforms that are practical, effective and proportionate, while helping ensure that reporting entities are focused on meaningful action to identify, prevent and address modern slavery risks.

In ASX's view, the Government should first finalise the substantive obligations that reporting entities will be required to meet, clarify regulator expectations, publish detailed guidance and practical examples, and provide implementation support through industry engagement. This would help ensure entities are set up for success and focused on achieving practical modern slavery outcomes.

A period of education, capability uplift, supervisory engagement and practice improvement would also allow regulators and industry to develop a shared understanding of what effective compliance looks like in practice. During this period, regulatory tools should support continuous improvement and corrective action, including through mechanisms such as enforceable undertakings or deferred prosecution arrangements where appropriate.

Once the new obligations have been operating for a sufficient period, industry practice has matured, guidance has been tested, regulatory expectations are well understood and practical implementation challenges are known, consultation be undertaken to determine how a failure to prevent offence should be designed.

Recommendation 5. As part of a phased reform program, the Government should first prioritise implementation support, guidance, practical examples and capability uplift, including sufficient implementation time. This should be followed by supervisory engagement and, proportionate enforcement mechanisms focusing on remediation and continuous improvement before considering the introduction of

a failure to prevent modern slavery offence. Consultation should then be undertaken to determine how best to design the failure to prevent modern slavery offence.

7. Design Principles if an Offence Proceeds

Given the seriousness of criminal liability and the complexity of modern supply chains, if the Government proceeds with the offence, it should be designed to include an appropriate fault element, such as knowledge, recklessness or intention. This would help ensure the offence is directed towards circumstances involving culpable corporate conduct, rather than entities that have taken genuine, documented and risk-based steps to identify, prevent and address modern slavery risks but nevertheless remain exposed to misconduct that is concealed or occurs beyond their practical visibility, control or influence.

If a fault-based model is not adopted, ASX considers that any offence should be clear and be supported by a practical reasonable steps defence. Complex and indirect supply chains can make modern slavery risks difficult to identify and address. Entities should therefore have clear opportunity to demonstrate that their governance, due diligence, remediation and supplier engagement measures are proportionate to their risks and circumstances.

Regardless of the liability model adopted, the legislation and accompanying guidance should clearly articulate the connection required between the reporting entity and the relevant modern slavery conduct. In ASX's view, a proportionate framework should focus on circumstances where there is a sufficiently direct connection between the entity's conduct and the relevant modern slavery risk, rather than imposing liability solely because modern slavery may exist somewhere within an extended supply chain. Comprehensive guidance should also be provided prior to commencement to assist entities in understanding regulatory expectations and implementing the framework effectively.

Recommendation 6. Design principles for the offence should include an appropriate fault element to ensure it is appropriately directed to circumstances involving culpable corporate conduct. If a fault based model is not adopted, it should be supported by a reasonable steps defence. Regardless of the liability model adopted, the new offence should be clear, targeted and workable, including through clear standards, a practical reasonable steps defence, comprehensive guidance and alignment with the broader modern slavery framework.

Conclusion

ASX supports the Government's objective of strengthening Australia's modern slavery framework and agrees that reforms should support meaningful action to identify, prevent and address modern slavery risks. ASX also supports the Government's focus on ensuring that any reforms are practical, effective and proportionate.

To achieve those objectives, ASX considers that the Government should first finalise the substantive obligations that entities will be required to meet, provide clear guidance and implementation support, and allow sufficient time for those obligations to become embedded in practice. A phased approach that prioritises education, guidance, capability uplift and supervisory engagement before introducing a failure to prevent offence is more likely to deliver practical and sustained improvements in modern slavery risk management, while providing regulated entities with the certainty required to comply effectively.

We would welcome the opportunity to discuss these matters further with you.

Yours sincerely,

Diane Lewis
General Manager, Public Policy & Advocacy