



**FEDERAL
CHAMBER OF
AUTOMOTIVE
INDUSTRIES**

25 September 2026

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

Submitted via Have your say

Dear Slavery Reform Team,

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

I attach for your consideration a brief submission responding to the above Consultation Paper.

The FCAI would be pleased to provide further information if requested.

Yours sincerely

Dianne O'Hara
Director Industry Operations

FCAI submission in response to Attorney-General's Department's consultation paper, *Strengthening Australia's legislative response to modern slavery in supply chains*

1. Introduction

The Federal Chamber of Automotive Industries (FCAI) welcomes the opportunity to respond to the Attorney General's Department consultation paper, *Strengthening Australia's legislative response to modern slavery in supply chains* (Consultation Paper).

The FCAI is the peak Australian industry organisation representing over 60 global automotive brands that design, manufacture, import, distribute and sell light duty passenger vehicles, light commercial vehicles, and motorcycles in Australia. During 2025, FCAI members supplied more than 1.2 million new vehicles to the Australian market across more than 380 models. A full list of FCAI members is available at <https://www.fcai.com.au/about-fcai/member-manufacturers/>.

The FCAI brings its members together through various committees in compliance with the *Competition and Consumer Act 2010* (Cth) to consider the Australian legislative and regulatory environment, develop industry-wide perspectives and drive collective outcomes for the benefit of its members, the broader industry and Australian consumers.

2. Executive Summary

The FCAI supports strong measures to address modern slavery risks within supply chains. A number of FCAI members currently provide Modern Slavery Statements as required under the *Modern Slavery Act 2018* (Cth) (Modern Slavery Act). The FCAI notes the ongoing review of the Modern Slavery Act, and supports measured, evidence-based reform that provides regulated entities with clear and workable requirements and proportionate sanctions and penalties.

- **Implementation of a civil pecuniary penalty for reporting offences.** The FCAI notes the lack of substantive penalties for failure to comply with the reporting requirements in the Modern Slavery Act and would support the introduction of an appropriate civil penalty for non-compliance. The FCAI believes this change should be implemented in the first instance as a measured further step prior to the introduction of a new criminal offence.
- **Fault element and connection to a corporation's conduct.** In the event that the Government does proceed with the introduction of a criminal offence, the FCAI believes that strict liability should apply to the offence. The FCAI does not support the imposition of absolute liability. The FCAI considers that it is important that corporations have the defence of mistake of fact available to them, including under sections 9.2 and 12.5 of the *Criminal Code Act 1995* (Cth), especially in the context where supply chains are global, complex and multi-tiered, making accurate identification and verification of all instances of modern slavery exceedingly difficult. Similarly, it is important that a sufficiently robust nexus exist between a corporation's conduct and the underlying offence. The FCAI believes the threshold should be no less than *caused or significantly contributed to* the offending. The FCAI strongly opposes the alternate options suggested in the paper (*materially contributed to, facilitated, or enabled*) on the basis these options are not suitably rigorous standards for a criminal offence.
- **Guidance.** The FCAI supports the publication of comprehensive guidance by the responsible Minister outlining the steps required to ensure the *reasonable steps* defence remains available to a corporation. The FCAI notes that the guidance will draw from existing resources and standards on business and human rights, as set out in the *United Nations Guiding Principles on Business and Human Rights* and the *Organisation for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises on Responsible Business Conduct*.
- **Global group compliance programs.** New vehicles supplied in Australia are developed through complex and multi-tier value chains, including those involving globally sourced raw materials. Given the international nature of the industry, the FCAI fully supports the recognition of global group compliance programs as a reasonable means for local corporations to fulfill their compliance due diligence.

- **Penalty.** The FCAI supports the introduction of a measured and proportionate penalty regime. The FCAI notes the proposed maximum penalty of 100,000 penalty units or three times the value of the benefit obtained from the offending conduct. The FCAI opposes the imposition of a penalty equal to 10% of the corporation's annual turnover during the relevant period where the value of the benefit obtained by the corporation cannot be determined as disproportionate and overly onerous.
- **Transition.** The FCAI recommends a transition period of at least 24 months apply to the changed requirements, commencing only after the legislation, regulations and comprehensive ministerial guidance have been finalised and published.
- **Deferred Prosecution Agreements.** The FCAI notes that a deferred prosecution agreement (DPA) regime for corporate offences does not currently exist in Australia. The FCAI would only support a DPA regime if it was implemented as a proportionate mechanism designed to encourage cooperation (rather than as an adversarial tool), with safeguards around administration, approval, transparency and victim consultation.
- **Compliance costs and adverse impacts.** The FCAI notes that the proposed offence will impose significant compliance costs on FCAI members. The FCAI is concerned that the regime may incentivise defensive supplier disengagement rather than remediation.

3. Commentary on specific measures

3.1 Implementation of a civil pecuniary penalty for reporting offences

The Modern Slavery Act requires a reporting entity with an annual consolidated revenue of at least \$100 million to publish an annual Modern Slavery Statement, describing and assessing the measures implemented by the reporting entity to identify, mitigate and remediate modern slavery risks in its operations and supply chains. The 2023 statutory review of the Modern Slavery Act noted that the Act did not contain any offence or civil penalty for non-compliance with the reporting requirement.¹ The fact that the reporting obligation was not properly enforceable was regarded as a weakness in the legislation. It is further noted that the review did not recommend the introduction of a criminal offence in response to the perceived deficiencies in the Modern Slavery Act.

The FCAI would support the introduction of measured civil penalties and enforcement powers to better address instances of non-compliance with the Modern Slavery Act. It is the FCAI's view that such a civil penalty should be developed and implemented for a reasonable period before introducing a criminal offence. Imposition of the proposed *failure to prevent* modern slavery criminal offence should only occur if and when the enhanced enforcement and penalty regime fails to satisfactorily address non-compliance with the Modern Slavery Act.

This sequencing is consistent with international practice. No comparable jurisdiction imposes a standalone corporate criminal offence for failing to prevent modern slavery:

- the United Kingdom (*Modern Slavery Act 2015*) and Canada (*Fighting Against Forced Labour and Child Labour in Supply Chains Act*) rely on transparency reporting;
- Germany (*Lieferkettensorgfaltspflichtengesetz*), Norway (*Transparency Act*) and the European Union (*Corporate Sustainability Due Diligence Directive*) rely on administrative supervision and civil enforcement of due diligence duties; and
- the United States (*Uyghur Forced Labor Prevention Act*) and the EU *Forced Labour Regulation* operate through import prohibition.

Australia would therefore be the first jurisdiction to criminalise a preventive failure of this kind.

A measured civil penalty regime, tested before any move to criminalisation, would align Australia with the mainstream international approach while still remedying the enforceability gap identified in the 2023 statutory review.

¹ Professor John McMillan, AO: *Report of the statutory review of the Modern Slavery Act 2018 (Cth). The first three years*, page 24.

FCAI recommendation: Instead of implementing the proposed criminal offence, introduce measured civil penalties and enforcement powers to better address instances of non-compliance with the reporting regime as currently prescribed by the Modern Slavery Act.

3.2 Fault element and connection to a corporation's conduct

As noted above, the FCAI cautions against introducing a new *failure to prevent* modern slavery criminal offence without first testing whether the introduction or enhanced enforcement and penalty provisions achieves the desired compliance objectives. If the Commonwealth Government nonetheless decides to legislate a criminal offence without the interim step, the FCAI would make the suggestions set out in paragraphs 3.2 – 3.8 of this submission specifically directed at the proposed criminal offence.

In the first instance, the FCAI believes that any such criminal offence should be a strict (rather than absolute) liability offence. Given the complex, multi-layered supply chains, including those involving globally sourced raw materials, within the automotive sector, the FCAI believes it is reasonable that its member reporting entities have available to them a defence of mistake of fact.

Absolute liability for a serious criminal offence would also place Australia out of step with comparable regimes. Where foreign frameworks attach liability for supply chain failings (for example the civil liability regimes under the *French Duty of Vigilance Law* and the *EU Corporate Sustainability Due Diligence Directive*), that liability is civil and is predicated on a failure to exercise due care, not on absolute liability divorced from fault. Applying absolute liability would impose a more severe basis of liability than any comparator for conduct occurring in supply chains over which Australian entities often have limited visibility - a difficulty the Consultation Paper itself acknowledges.

The FCAI supports the requirement that there must be a sufficient nexus between the conduct by the reporting entity and the goods, materials or other inputs that form part of the corporation's sourcing arrangements. It is particularly important that the sanction imposed is fair and proportionate if the corporation's conduct is to be subject to a criminal offence. While the Consultation Paper canvasses a number of potential approaches, the FCAI supports a nexus that requires an element of positive action on the part of the reporting entity. The FCAI believes that a minimum requirement for the corporation's conduct would be *to cause or significantly contribute to* the underlying conduct. The FCAI strongly opposes the alternate options suggested in the paper (*materially contributed to, facilitated, or enabled*) on the basis these options are not suitably rigorous standards given the conduct may result in the imposition of a criminal offence.

The FCAI would propose that any offence consider the complexity of modern supply chains and ensure that liability is suitably eliminated or qualified in instances of untraceable inputs where exploitation cannot be linked to a particular product. This is particularly of concern to the automotive sector given complex and multi-tier value supply chain traceability constraints including those involving globally sourced raw materials such as batteries, semiconductors and minerals.

FCAI recommendation: Strict rather than absolute liability should apply to any new criminal offence in order to retain the mistake of fact defence. The corporation's conduct should have *caused or significantly contributed to* the underlying conduct before the proposed criminal offence is enlivened. The FCAI opposes lower thresholds such as *materially contributed to, facilitated, or enabled*, which are not sufficiently rigorous for a criminal offence.

3.3 Guidance

The FCAI notes the intention that the responsible Minister will issue guidance on the steps a reporting entity could take to meet the *reasonable steps* defence and that such guidance will draw from existing resources and key standards on business and human rights set out in the *United Nations Guiding Principles on Business and Human Rights* and the *Organisation for Economic Cooperation and Development (OECD) Guidelines for Multinational*

Enterprises on Responsible Business Conduct. The guidance will inform the meaning of *reasonable steps*, the required degree of connection between a corporation and the offence, and the breadth of the supply chain nexus.

Given the importance of the guidance to the operation of the scheme, the FCAI believes the draft guidance should be released for industry consultation before the offence provisions are finalised or introduced. Additionally, any transition period applicable to the amended Modern Slavery Act should only commence following the publication of the final guidance documentation.

FCAI recommendation: The draft guidance should be released for industry consultation before the offence provisions are finalised or introduced.

3.4 Global group compliance programs

Appropriate recognition of global group compliance programs is an important aspect of any regime directed at eliminating modern slavery. The FCAI believes that recognition of group-wide compliance measures is appropriate given the complexity of global supply chains and the position of FCAI members within that chain. The FCAI would support the inclusion in the regime of a mechanism that recognises comparable overseas frameworks and minimises duplication for local reporting entities already complying with international regimes. Under such a mechanism, the Australian entity would remain responsible for establishing its own reasonable steps, but evidence of a global parent's due diligence and compliance program should be expressly relevant. The local entity would of course retain responsibility for domestic supply arrangements.

The FCAI encourages the Government to adopt a tiered, risk-based approach to supply-chain depth modelled on established international practice. Under Germany's *Supply Chain Due Diligence Act*, comprehensive obligations attach to an entity's own operations and direct suppliers, while obligations toward indirect suppliers arise only where the entity obtains substantiated knowledge of a possible violation. A comparable tiering in the Australian offence would appropriately calibrate liability to the Australian entity's actual visibility and leverage, which is relevant in the automotive sector where globally sourced raw materials are procured several tiers upstream.

FCAI recommendation: Local reporting entities, acting reasonably, should be able to rely on global compliance and due diligence programs.

3.5 Penalty

The FCAI notes the maximum penalties for a failure to prevent modern slavery offence proposed in the Consultation Paper. The FCAI supports the notion that penalty provisions should provide a meaningful deterrent in a proportionate manner. The FCAI does not support the proposed maximum penalties. In particular, the FCAI opposes the proposal that a maximum penalty of 10% of the corporation's annual turnover be applied where the value of the benefit cannot be determined. The FCAI does not believe that such a penalty is reasonable and proportionate, particularly in instances where the modern slavery offence may arise several tiers upstream within the supply chain. The FCAI understands that the proposed 10% of turnover penalty is markedly higher than the maximum administrative penalties in other international due diligence regimes.

FCAI recommendation: The proposed maximum penalty relating to 10% of annual turnover is unreasonable and disproportionate.

3.6 Commencement and transition

The Consultation Paper proposes a delayed commencement of 12–18 months to give corporations sufficient time to implement any necessary changes to their governance and supply chain management practices. The FCAI would support a transition period of at least 24 months before the commencement of the amended Modern Slavery Act to

provide its members reasonable opportunity for tasks including supplier contract renegotiations, multi-tier supply-chain diligence and staff training. Critically, the period should commence only when the legislation, regulations and regulatory guidance are final and available. A transition period that runs while critical guidance remains unsettled does not provide corporations with a meaningful implementation period.

FCAI recommendation: Provide a transition period of at least 24 months, commencing from the finalisation of the legislation, regulations and regulatory guidance.

3.7 Deferred prosecution agreements

The FCAI notes the discussion in the Consultation Paper relating to the potential introduction of a DPA scheme to be introduced alongside a *failure to prevent* offence. While noting such agreements do not currently operate within the Australian corporate context, the FCAI would cautiously support a DPA regime if it is intended to operate as a proportionate mechanism that encourages self-reporting and cooperation (rather than be employed as an efficiency tool for prosecution). The FCAI would expect that any such regime would include measured safeguards around administration, approval, transparency and victim consultation.

FCAI recommendation: Provide cautious support for a DPA scheme designed to encourage cooperation.

3.8 Compliance costs and adverse impacts

The FCAI notes that the proposed offence, if implemented, will impose material compliance costs on reporting entities within the automotive sector. These costs include expanded supply chain mapping and traceability programs, enhanced audit and monitoring arrangements across multi-tier supplier networks, specialist training for procurement and compliance personnel, and the engagement of external advisors to assess modern slavery risks. These compliance burdens are likely to be compounded by the global nature of automotive supply chains and the limited visibility that Australian entities have over suppliers operating several tiers removed from the reporting entity.

The FCAI is concerned that a criminal offence regime with broad liability thresholds may incentivise defensive supplier disengagement rather than remediation. Where a reporting entity identifies indicators of modern slavery within its supply chain, the rational compliance response under an absolute or broad liability model may be to terminate the relevant supplier relationship rather than invest in remediation measures. Such an outcome would be counterproductive to the objectives of the legislation, as it may result in adverse consequences for vulnerable workers without addressing the underlying conditions that give rise to exploitation.

The FCAI encourages the Government to consider measures that would support remediation-focused responses, rather than creating incentives for disengagement.

FCAI recommendation: The FCAI recommends that the guidance and, where appropriate, the legislation expressly recognise good-faith, continued engagement and remediation with an at-risk supplier as conduct consistent with *reasonable steps*, rather than treating continued sourcing as evidence of failure. This approach is consistent with the *UN Guiding Principles on Business and Human Rights* and the *OECD Guidelines for Multinational Enterprises*, which prioritise the use and building of leverage to remediate harm over disengagement. Without such recognition, a broad or absolute liability model creates a rational incentive to terminate supplier relationships upon detecting risk, an outcome that harms vulnerable workers and undermines the objectives of the reform.

4. Conclusion

The FCAI supports reform that addresses modern slavery risks within supply chains, and gives corporations clear, workable and internationally consistent obligations. The FCAI's central request is that enhanced civil enforcement and penalties be introduced and tested in the first instance, prior to any move to introduce a criminal offence regime.

In the event that the Government proceeds with a criminal offence, the FCAI requests that the Government:

- impose strict (rather than absolute) liability in relation to the conduct, ensuring a defence of mistake of fact applies;
- ensure a sufficient nexus exists between the corporation's conduct and the underlying criminal conduct by requiring that the corporation's conduct *caused or significantly contributed to* the underlying offence;
- require comprehensive ministerial guidance be drafted and subject to further industry consultation prior to implementing application the offence;
- permit local corporations, acting reasonably, to rely on global group compliance and due diligence programs;
- ensure maximum penalties are fair and proportionate;
- provide a transition period of at least 24 months from the finalisation of legislation, regulations and guidance; and
- adopt measures to guard against defensive supplier disengagement and support good faith remediation.