

**Professor Annamarie Jagose**  
Senior Deputy Vice-Chancellor and Provost

22 September 2026

Ms Lace Wang  
Assistant Secretary  
Modern Slavery and Human Trafficking Branch  
International Cooperation and Human Rights Division  
Integrity and Security Group  
Attorney-General's Department

By email: [Slavery.Reform@ag.gov.au](mailto:Slavery.Reform@ag.gov.au)

Dear Ms Wang,

**Re: Consultation on a Proposed Failure to Prevent Modern Slavery Offence**

The University of Sydney welcomes the opportunity to contribute to the consultation on *Strengthening Australia's legislative response to modern slavery in supply chains*.

In preparing our submission (see **Attachment A**), we have drawn on the two distinct roles the University plays in addressing modern slavery. Our recommendations are informed by our experience as a reporting entity under the *Modern Slavery Act 2018* (Cth) and *Modern Slavery Act 2018* (NSW), including lessons learnt from embedding modern slavery due diligence across our governance, policies and practices. Our submission also draws on the multidisciplinary expertise of our academic community.

The University supports strengthening Australia's response to modern slavery and broadly supports the introduction of a Failure to Prevent offence model. However, consideration should also be given to the Failure to Prevent offence model operating as part of a strengthened broader human rights due diligence framework aligned with internationally recognised standards, including the United Nations Guiding Principles on Business and Human Rights (UNGPs) and OECD Due Diligence Guidance.

Similarly, the corporate nexus and reasonable steps defence should be framed within existing frameworks and supported by government sector guidance. The University's recommendations are guided by four objectives:

1. Ensuring the Failure to Prevent offence model supports prevention rather than compliance alone.
2. Aligning Australian requirements with established international frameworks.
3. Promoting transparency, disclosure and remediation.
4. Improving outcomes for people affected by modern slavery.

Overall, the University supports a strengthened, internationally aligned, risk-based, and outcomes-focused anti-slavery framework that combines a Failure to Prevent offence model with human rights due diligence to better prevent modern slavery and improve outcomes for affected people.

Yours sincerely,

*(signature removed)*

**Professor Annamarie Jagose**

Senior Deputy Vice-Chancellor and Provost

**Attachment** The University of Sydney submission to the Attorney-General's Department 'Strengthening Australia's legislative response to modern slavery in supply chains' consultation paper

**The University of Sydney submission to the Attorney-General's Department  
Strengthening Australia's legislative response to modern slavery in supply chains  
consultation paper, September 2026**

## RECOMMENDATIONS

| Consultation Question                                                                                                                                                                                                                                             | University of Sydney Recommendation                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
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| Question 1 – Model: What are your views on the proposed legislative approach to the core components of a failure to prevent modern slavery offence?                                                                                                               | <p><b>Recommendation 1: The Failure to Prevent offence model should be implemented as part of a strengthened and internationally aligned human rights due diligence framework</b>, which should inform the corporate nexus, the reasonable steps defence and criminal liability.</p> <p><b>Recommendation 2: Reforms should prioritise outcomes for affected people and preserve incentives for transparency and remediation, as aligned with the United Nations Guiding Principles on Business and Human Rights.</b> Any strengthening of Australia's legislative response should ultimately be assessed by whether it improves outcomes for workers and people and reduces the incidence of modern slavery.</p> |
| Question 2 – Impact: What measures could be adopted to minimise costs for affected corporations, while ensuring the offence remains effective in achieving its objective?                                                                                         | <p><b>Recommendation 3: Compliance costs should be reduced through proportionality, alignment and integration</b> - and ensuring the Failure to Prevent offence model operates within a coherent, practical and integrated due diligence framework as noted above.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| Question 3 – Support: What support might corporations need to effectively understand and comply with the proposed offence and defence, including to help business more broadly take action to combat modern slavery?                                              | <p><b>Recommendation 4: Government should develop sector-specific guidance before commencement.</b> This is especially needed for sectors within unique risks such as the Higher Education Sector if captured under the Failure to Prevent offence model.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| Question 4 – DPA scheme: What are the benefits and limitations of a DPA scheme in addressing failure to prevent modern slavery offences? What terms and conditions should be available for inclusion in a DPA scheme?                                             | <p><b>Recommendation 5: Any Deferred Prosecution Agreement (DPA) scheme should place remediation and affected people at its centre and should only be an option for organisations who have voluntarily disclosed instances of modern slavery in their supply chain.</b></p>                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| Question 5 – Civil remedies: What existing civil remedies would be available to victims and survivors seeking redress in connection with a failure to prevent modern slavery offence? Are these remedies adequate? If not, what enhancements could be considered? | <p><b>Recommendation 6: Access to remedy should be strengthened and made more effective for victims and survivors of modern slavery, including through the establishment of a national compensation scheme.</b></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |

## Consultation Paper Response

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**Question 1 – Model: What are your views on the proposed legislative approach to the core components of a failure to prevent modern slavery offence?**

**Recommendation 1: The Failure to Prevent (FTP) offence model should be implemented as part of a strengthened and internationally aligned human rights due diligence framework, which should inform the corporate nexus, the reasonable steps defence and criminal liability.**

The University broadly supports the introduction of an FTP offence model as an accountability mechanism. However, consideration should be given to the FTP offence model being implemented within a broader human rights due diligence framework rather than as a standalone reform. This framework should align, to the greatest extent possible, with:

- the United Nations Guiding Principles on Business and Human Rights (UNGPs);
- Organisation for Economic Co-operation and Development (OECD) Due Diligence Guidance for Responsible Business Conduct;
- OECD Guidelines for Multinational Enterprises on Responsible Business Conduct; and
- existing Commonwealth and New South Wales (NSW) modern slavery obligations.

Subject to the outcomes of an appropriate regulatory impact assessment, adoption of a human rights due diligence framework would provide greater certainty regarding corporate expectations, align with international developments, and better support the preventative objectives of the proposed FTP offence model. The FTP offence model should therefore operate as a backstop accountability mechanism within a broader due diligence regime that encourages continuous improvement and responsible business conduct.

### Rationale

**Without an accompanying human rights due diligence framework, there is a risk that the proposed offence will focus corporate attention on legal defensibility rather than meaningful outcomes for workers.**

Effective prevention requires reporting entities to identify actual and potential human rights harms, prevent and mitigate harms, monitor effectiveness, engage affected stakeholders, publicly communicate their efforts, and provide remediation where harms occur. These elements are well established in the UNGPs and OECD Due Diligence Guidelines and underpin emerging legislative frameworks internationally.

Without accompanying strengthening of human rights due diligence (or at a minimum modern slavery due diligence obligations), organisations may prioritise documenting compliance measures or obtaining contractual assurances in order to demonstrate a defence, rather than investing in the activities most likely to reduce modern slavery and human rights related harm.

**Similarly, the reasonable steps defence should be explicitly grounded in internationally recognised human rights due diligence standards and recognise actions undertaken to comply with existing Commonwealth and NSW requirements.**

At a minimum, the reasonable steps should include requirements such as:

- governance and board oversight;
- identification and assessment of actual and potential modern slavery risks;
- integration of modern slavery risk management into decision-making processes;
- meaningful engagement with affected stakeholders;
- preventative and mitigation measures, including access to effective grievance mechanisms;
- monitoring and evaluation;
- transparent public reporting; and
- remediation processes.

The defence should recognise actions already undertaken to comply with Commonwealth and NSW modern slavery obligations, including reporting requirements, reasonable steps frameworks and associated risk management processes. Organisations that can demonstrate mature and effective due diligence processes

should not be required to establish additional parallel systems solely to satisfy the requirements of the FTP offence model.

The University further considers that assessment of the reasonable steps defence should consider the quality of an entity's modern slavery statement, and the due diligence systems that underpin it.

**The proposed corporate nexus should also be carefully aligned with the established concepts of “cause, contribute, directly linked” set out in the UNGPs, which are well-understood internationally and provide a coherent framework for assessing responsibility in complex business relationships.**

The consultation paper proposes alternative formulations such as “facilitated”, “enabled” or “materially contributed”. While these concepts may overlap with existing international standards, introducing new terminology may create uncertainty and inconsistency.

Whereas established UNGP concepts already provide a framework that has been adopted widely by governments, businesses, investors and international organisations. Case Study 1 in the Appendix, for example, demonstrates how the “cause, contribute, directly linked” concepts could be used to determine who is responsible and accountable for the forced labour found in that supply chain.

The University also considers that criminal liability should generally be limited to circumstances in which a corporation causes or contributes to modern slavery harms. Circumstances in which an organisation is directly linked to harm through a business relationship should primarily be addressed through due diligence, risk management and remediation obligations.

## **Recommendation 2: Reforms should prioritise outcomes for affected people and preserve incentives for transparency and remediation, as aligned with the United Nations Guiding Principles on Business and Human Rights.**

Any strengthening of Australia's legislative response should ultimately be assessed by whether it improves outcomes for workers and people and reduces the incidence of modern slavery.

### **Rationale**

There is a risk that an FTP offence model, if not carefully designed, could unintentionally discourage transparency, disclosure of modern slavery instances and engagement with suppliers to seek process improvement and remedy for workers.

The proposed reforms should encourage companies to identify and disclose modern slavery risks, engage with government and civil society, cooperate with investigations, and remediate harms when identified. Corporations should not be placed in a position where the discovery of exploitation creates a disincentive to investigate further, or report concerns due to fear of criminal liability.

While Deferred Prosecution Agreements (DPAs) may partially address these concerns by providing incentives for disclosure and cooperation, they are unlikely to fully remove the tension between transparency and liability. The broader framework should therefore include strong incentives for self-reporting, remediation and good-faith engagement, including recognition of voluntary disclosure, meaningful cooperation with investigations, timely remediation of harms, and demonstrable efforts to strengthen due diligence systems.

### **Additional legislative model design considerations**

The University:

- supports aligning the application threshold with the existing Modern Slavery Act reporting threshold of AUD 100 million annual consolidated revenue;
- supports delayed commencement to allow entities sufficient time to assess systems, implement improvements and respond to guidance;
- supports the application of absolute liability as the fault element for the FTP offence model, provided a meaningful and appropriately framed reasonable steps defence is available; and
- considers any penalties should be proportionate to the seriousness of the conduct and consistent with comparable Commonwealth corporate offences.

The University does not presently take a position on the specific offences that should comprise the underlying criminal conduct beyond noting the importance of clear legislative drafting and alignment with the overall objectives of the reform.

## **Question 2 – Impact: What measures could be adopted to minimise costs for affected corporations, while ensuring the offence remains effective in achieving its objective?**

### **Recommendation 3: Compliance costs should be reduced through proportionality, alignment and integration.**

Compliance costs can be minimised by ensuring the Failure to Prevent offence model operates within a coherent, practical and integrated due diligence framework.

A proportionate risk-based approach should allow organisations to focus their resources on areas presenting the greatest risk of severe harm and that is proportionate to its size and resourcing, rather than requiring equal effort across all suppliers and activities.

Such an approach is consistent with international standards and the UNGPs and helps direct resources to where they are most likely to improve outcomes for workers.

#### **Rationale**

**Companies should be able to rely on existing systems and processes undertaken for complying with existing obligations including:**

- Commonwealth Modern Slavery Act reporting;
- NSW Modern Slavery Act obligations;
- UNGP human rights due diligence activities;
- OECD due diligence processes;
- supplier and procurement due diligence frameworks; and
- responsible business conduct programs.

**The reasonable steps defence should explicitly recognise these existing activities and systems and encourage organisations to demonstrate continuous improvement.** Organisations that can demonstrate mature and effective due diligence processes should not be required to create additional parallel systems solely for the purpose of complying with the FTP offence model.

**An integrated approach will reduce duplication, promote consistency and improve effectiveness while limiting unnecessary regulatory burden.** International approaches recognise that corporations operating in complex global supply chains cannot guarantee complete visibility or prevent every instance of exploitation. Instead, they impose expectations that businesses take proportionate, risk-based and ongoing steps to identify, prevent, mitigate and address adverse impacts. The proposed Australian regime should reflect this.

**Alignment across jurisdictions is a particularly important and pragmatic way to reduce compliance costs, especially for organisations operating internationally.** Divergence in key concepts, terminology or compliance expectations creates regulatory duplication, increases compliance costs and reduces certainty. Organisations should not be required to maintain separate and inconsistent approaches for Australia, Europe, United Kingdom, United States, NSW and other relevant jurisdictions.

**As outlined above, greater clarity regarding what constitutes reasonable steps will also reduce uncertainty and compliance costs.** Businesses are more likely to invest in effective prevention measures where expectations are clearly articulated and consistent with existing international standards and requirements from other jurisdictions.

**Question 3 – Support: What support might corporations need to effectively understand and comply with the proposed offence and defence, including to help business more broadly take action to combat modern slavery?**

**Recommendation 4: Government should develop sector-specific guidance before commencement.**

The University considers sector-specific guidance essential for successful implementation of the proposed reforms. This is especially the case for organisations that have unique risks such as the higher education sector, should universities be captured by the definition of corporation.

**Rationale**

Modern slavery risks differ significantly between sectors, industries and operating environments. Accordingly, guidance should include both overarching expectations and sector-specific examples.

Guidance should be released well before commencement of any FTP offence model and should include:

- sector-specific risk profiles;
- practical examples of reasonable steps;
- illustrative case studies;
- examples of effective remediation;
- stakeholder engagement expectations; and
- indicators of high-risk procurement practices.

The higher education sector faces unique and complex modern slavery risks across its value chains, including in supply chain, research activities, investments, student safeguarding, student placements and recruitment, donations and partnerships.

Government should seek to leverage existing guidance and tools developed by the Australian Anti-Slavery Commissioner and NSW Anti-Slavery Commissioner to promote consistency and minimise duplication.

**Question 4 – DPA Scheme: What are the benefits and limitations of a DPA scheme in addressing failure to prevent modern slavery offences? What terms and conditions should be available for inclusion in a DPA scheme?**

**Recommendation 5: Any Deferred Prosecution Agreement scheme should place remediation and affected people at its centre, and should only be an option for organisations who have voluntarily disclosed instances of modern slavery in their supply chain.**

The University supports consideration of a DPA scheme, provided the scheme is designed to prioritise remediation, transparency and corporate reform.

It is noted that the development of a DPA scheme would be a first for Australia. DPAs have the potential to achieve outcomes that may be more difficult through criminal prosecutions alone. They can facilitate cooperation, encourage disclosure, secure admissions, strengthen governance systems and deliver tangible remedial outcomes for affected workers.

Strong incentives for self-reporting should be incorporated into the scheme to support early disclosure and cooperation. Independent oversight, judicial approval, public reporting and external monitoring should also be included to maintain public confidence.

**Rationale**

A DPA should be used to incentivise early and voluntary disclosure of modern slavery and encourage process improvement and meaningful remediation action for affected workers.

To align with the UNGP framework, **any DPA regime should require meaningful remediation measures rather than focusing solely on financial penalties.** At a minimum, agreements should consider:

- identification of affected workers;

- remediation plans;
- financial compensation where appropriate;
- reimbursement of recruitment fees (where relevant);
- measures to prevent retaliation;
- rehabilitation and support services;
- apologies;
- guarantees of non-repetition; and
- access to grievance mechanisms.

However, **DPAs should not become the default response**. Serious cases involving deliberate concealment, repeated misconduct, obstruction of investigations or significant un-remediated harm should remain subject to prosecution.

### Academic Insight

Professor Simon Bronitt at Sydney Law School has written extensively on DPAs. His research would be informative should DPAs be further explored as part of this proposed reform. Publications which may be relevant to the department include:

S Bronitt “Deferred Prosecution Agreements: Negotiating Punishment Before Conviction?” in V Colvin and P Stenning (eds), *The Evolving Role of the Public Prosecutor*, (New York: Routledge, 2019), pp. 45-59.

S Bronitt “Regulatory bargaining in the shadows of preventive justice: Deferred prosecution agreements” in T Tulich, R Ananian-Welsh, S Bronitt & S Murray (eds), *Regulating Preventive Justice: Principle, Policy and Paradox* (Abingdon, Oxon: Routledge, 2017), Ch 12, pp 211-226.

S Bronitt “New regulatory paradigms for preventing institutional child sexual abuse: Lessons from corporate crime and white-collar criminals” in Y Smaal, A Kaladelfos & M Finnane (eds), *The Sexual Abuse of Children: Recognition and Redress* (Clayton: Monash University Publishing, 2016), Ch 13, pp 178-192.

See also submissions relating to other Australian Parliamentary and Law Reform submissions regarding DPAs:

*Deferred Prosecution Agreement Scheme: Code of Practice Consultation Draft* - Public Consultation Paper (July 2018). <https://www.ag.gov.au/Consultations/Documents/Deferred-prosecution-agreement-scheme-code-of-practice/DPA-Code-Consultation-Simon%20Bronitt-Submission.PDF>

*Proposed amendments to the foreign bribery offence in the Criminal Code Act 1995 (Cth)* - Public Consultation Paper (with Zoe Brereton): <https://www.ag.gov.au/sites/default/files/2020-03/Foreign-bribery-submission-Bronitt-Brereton.pdf>

*A proposed model for a Deferred Prosecution Agreement (DPA) scheme in Australia* - Public Consultation Paper: <https://www.ag.gov.au/Consultations/Documents/Proposed-model-for-a-deferred-prosecution-agreement-scheme-in-australia/Bronitt-DPA-submission.PDF>

Professor Simon Bronitt would be open to participate in any further discussions relating to the development of a DPA. Please feel free to contact Professor Simon Bronitt directly at [simon.bronitt@sydney.edu.au](mailto:simon.bronitt@sydney.edu.au).

**Question 5 – Civil Remedies: What existing civil remedies would be available to victims and survivors seeking redress in connection with a failure to prevent modern slavery offence? Are these remedies adequate? If not, what enhancements could be considered?**

**Recommendation 6: Access to remedy should be strengthened and made more effective for victims and survivors of modern slavery, including through the establishment of a national compensation scheme.**

Access to remedy is a core pillar of the UNGPs and should form part of any strengthened modern slavery framework.

Existing avenues for redress, including reparation orders, Fair Work Act remedies, common law claims and victim compensation schemes, provide important mechanisms through which victims and survivors may seek remedy.

However, victims and survivors may face practical barriers in accessing those mechanisms, including financial constraints, evidentiary challenges, language barriers, fear of retaliation, immigration-related concerns and difficulties pursuing claims involving complex supply chains and multiple jurisdictions.

## Rationale

A national compensation scheme could help address these barriers by providing a consistent and accessible pathway to financial redress. Such a scheme may be particularly important where:

- no criminal conviction is obtained;
- perpetrators cannot be located or are unable to pay compensation;
- civil litigation is not practically achievable; or
- victims require timely support while other legal processes remain ongoing.

A national scheme would also promote greater consistency across Australia, reducing reliance on differing state and territory compensation arrangements and ensuring that access to remedy does not depend on geographic location.

The University considers that any such scheme should be developed in consultation with victims, survivors and people with lived experience, and should complement rather than replace existing criminal, employment and civil remedies

The Report on [\*Establishing A National Compensation Scheme for Victims of Commonwealth Crime\*](#) by Professor Jennifer Burn AM, Fiona McLeod SC and Nicola Knackstredt already provides a workable framework for how such a scheme could be implemented.

### Academic insight

Associate Professor Anna Boucher, a Government and International Relations colleague and current [ANZSOG Fellow](#) on trauma-informed policymaking, relevantly highlights the multiple barriers to remedy for victim-survivors. The Fellowship focuses on strengthening trauma-informed approaches to policymaking and leadership within the public sector. The work explores how public institutions can better recognise and respond to the impacts of trauma, and how this understanding can support ethical, resilient and effective policy practice.

[ARC Future Fellowship research](#) by Associate Professor Boucher will further investigate workplace sexual violence experienced by migrants and identify reforms to strengthen protections and support. Associate Professor Boucher is also part of a [research project exploring the justice system experience of domestic and family violence victim survivors](#) and has undertaken [research regarding the barriers to mechanisms for redress for migrant workers](#).

Associate Professor Anna Boucher would be open to participate in any further discussions relating to access to remedy for victim-survivors. Please feel free to contact Associate Professor Anna Boucher directly at [anna.boucher@sydney.edu.au](mailto:anna.boucher@sydney.edu.au).