

25 September 2026

Australian Government Attorney-General's Department

<https://consultations.ag.gov.au/crime/modern-slavery/consultation/intro/>

The below responses will be submitted to the Australian Government Attorney-General's Department online system on or before 25 September 2026.

ASIFMA AMG Response to Australian Consultation on Strengthening Australia's legislative response to modern slavery in supply chains

1. Name	Yvette Kwan
2. Email address	ykwan@asifma.org
3. Do your views officially represent those of an organisation?	Yes
4. If yes, please specify the name of the organisation	Asia Securities Industry & Financial Markets Association ("ASIFMA")
5. If you are responding on behalf of an organisation, is your organisation a reporting entity under the Modern Slavery Act?	No We are a trade association representing asset manager members, some of which may report under the Modern Slavery Act through entities including Australian branches.
6. Which of the following describes the sector in which you work?	Financial, insurance and real estate activities

Part A – Core legislative components of a failure to prevent offence

Question 1 – Model

The core components include:

- a. application of the offence
- b. the underlying criminal conduct to be prevented
- c. the connection to corporations' sourced product or services
- d. the connection to corporations' conduct
- e. fault elements
- f. defence
- g. guidance
- h. penalty
- i. commencement.

In your response, you may wish to consider:

- if the scope of the offence appropriately targets entities best placed to prevent modern slavery

DEVELOPING ASIAN CAPITAL MARKETS

- the suitability of the proposed physical and fault elements of the offence
- the appropriate connection between the corporation and the underlying criminal conduct
- the construction of the proposed reasonable steps defence
- how the offence could account for the practical challenges of identifying, monitoring and addressing modern slavery risks in complex, multi-tiered supply chains
- ensuring the reasonable steps defence provides for accountability and incentivises corporations to take action to proactively address modern slavery risks in supply chains
- whether other defences should be considered
- how the scope of the offence can be designed to operate effectively with related domestic and international frameworks.

You may want to use the case studies at **Appendix A** to help with your responses.

What are your views on the proposed legislative approach to the core components of a failure to prevent modern slavery offence?

Asia Securities Industry & Financial Markets Association (ASIFMA) is an independent, regional trade association with over 140 member firms. ASIFMA Asset Management Group (AAMG) is a separate and independent division of ASIFMA established in 2014 to represent the interest of the asset management members of ASIFMA. AAMG currently has 42 members, most of which are among the world's largest asset managers. AAMG members manage collectively over USD75 trillion in AUM globally. A list of the AAMG members can be found at <https://www.asifma.org/membership/members/>. Some of our AAMG members may operate a branch in Australia under licence relief granted by Australian Securities and Investments Commission (ASIC).

AAMG supports the Australian Government's efforts to strengthen legislation against modern slavery in supply chains. We also believe the legislative framework should be proportionate, recognise when businesses have taken reasonable steps to address risks, require a clear connection between a corporation's conduct and any offence, recognise the practical limits on supply-chain accountability, as well as acknowledge the limited influence investment managers have over portfolio company supply chains.

Importance of distinguishing a nexus to an adverse impact: AAMG considers that the proposed offence should include a clear and appropriately calibrated connection between the corporation's conduct and the underlying modern slavery conduct. In particular, the legislation and accompanying guidance should distinguish between different ways in which a corporation may be connected to an adverse impact, consistent with the OECD framework (as discussed further below): where a corporation may cause an adverse impact, contribute to an adverse impact, or be directly linked to an adverse impact through its business relationships, products or services.

This distinction is important because the nature of an entity's connection to the conduct should inform both the scope of the offence and the assessment of whether a reporting entity has taken reasonable steps. For example, reasonable steps expected of an entity that caused or contributed to the relevant conduct would likely differ from those expected where the entity is directly linked to the conduct through a supplier, client, investee company, portfolio company (when the investor is a managed fund or financial institution) or other business relationship, particularly where a reporting entity has limited control and can only exercise influence or leverage.

Furthermore, in the case of supply chains, organisations typically have direct contractual leverage and visibility over their Tier 1 suppliers, while influence over Tier 2, Tier 3, and lower-tier suppliers

becomes increasingly limited, thus the level of control, leverage, and access to information available differs.

For asset managers, the abovementioned distinction is particularly relevant in the context of investments in portfolio companies. Investment managers may be able to conduct due diligence, assess modern slavery risks, engage with portfolio companies, use stewardship tools and escalate concerns where appropriate. However, they generally do not control the operations, procurement practices or supply chains of investee companies. The offence and reasonable steps defence should therefore recognise these practical limits and assess the adequacy of steps taken by reference to the nature of the relationship, the degree of control or influence available, and the severity, likelihood and proximity of the modern slavery risk.

Existing international practices: AAMG recommends that any guidance issued in connection with the offence and the reasonable steps defence should draw on and be consistent with existing international frameworks and guidance, including the “Ten Principles of the United Nations Global Compact”, “OECD Due Diligence Guidance for Responsible Business Conduct” and the OECD paper “Responsible business conduct for institutional investors: Key considerations for due diligence under the OECD Guidelines for Multinational Enterprises”. This would help ensure that the offence operates coherently with established responsible business conduct standards and avoids creating duplicative or inconsistent expectations and operational complexity for multinational organisations already applying these frameworks.

Are there any other components that should be included within the legislation, or alternative approaches considered, to clearly establish its scope, application and interaction with existing modern slavery and broader legislative frameworks?

AAMG recommends that the offence be designed so that it does not undermine the current reporting framework’s emphasis on transparency, due diligence and continuous improvement. The identification or disclosure of modern slavery risks should not, of itself, be treated as evidence that a corporation has failed to take reasonable steps. Rather, legislation and guidance should recognise that transparent risk identification, escalation and disclosure are important components of effective due diligence and should encourage corporations to continue improving their approach over time.

Question 2 – Impact

Recognising that the proposed failure to prevent modern slavery offence would apply only to corporations with annual consolidated revenue of more than \$100 million, stakeholders are invited to be as specific as possible and consider:

- measures that could reduce compliance costs and the associated estimated costs of these measures on corporations (if any)
- potential economic, competition, social and distributional impact/s, including flow on effect on entities in a corporation’s supply chain and workers
- potential effects on annual modern slavery statements and related reporting, referrals of suspected modern slavery by corporations to law enforcement, victim support and engagement with law enforcement
- any unintended consequences
- any additional changes that could be considered.

You may want to use the case studies at Appendix A to assist with your responses.

What measures could be adopted to minimise costs for affected corporations, while ensuring the offence remains effective in achieving its objective?

[x]

Question 3 – Support

You may want to consider:

- the role of ministerial or other guidance, training or other resources
- the format the guidance should take, and matters it should address
- the international standards or other existing resources guidance should draw from
- how the guidance should complement or interact with existing guidance products from the Attorney-General's Department, Australian Anti-Slavery Commissioner and NSW Anti-slavery Commissioner
- how guidance, the offence and the reasonable steps defence can operate to minimise duplication for corporations that are already complying with comparable international regimes.

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?

Reasonable steps: Proposed Appendix A presents a range of scenarios in which modern slavery may arise without indicating whether the proposed offence or any other offence may apply. We would encourage the Australian Government to additionally provide as much clarity as possible through regulatory guidance on what constitutes “reasonable steps”, such as a non-exhaustive range of case studies and worked examples. Given the significant size of the financial sector in Australia, it could be useful to provide case studies for this sector, such as the case of asset managers investing in portfolio companies.

Proportionate and risk-based approach: Companies should be evaluated on the reasonableness and effectiveness of their due diligence efforts, including risk assessments, contractual requirements, supplier engagement, and remediation activities, rather than an expectation to guarantee the absence of modern slavery across all tiers of a complex global supply chain. Guidance should give clarity to and support a risk-based approach, allowing companies to implement consistent, risk-based compliance programmes which can prioritise higher-risk suppliers, categories, and geographies where the potential for adverse impacts is greatest. Its intent should not be to limit responsibility, but clarify what constitutes reasonable and practical accountability within complex multi-tier supply chains.

Recognition of centralised global procurement and enterprise-wide due diligence models: We refer to our response to Question 1 on the importance of distinguishing a nexus to an adverse impact. Global asset managers typically due diligence and manage third-party data providers (which provide information on portfolio companies) at the global headquarter level. In such scenarios, it would be useful to clarify for the reporting entity how it can demonstrate it has taken “reasonable steps” in the assessment of service providers and if there are any additional expectations for the assessment of portfolio companies’ compliance. We believe that the extent of a reporting entity’s criminal liability should be based on its ability to exercise material influence over relevant procurement decisions. To reduce operational uncertainty and complexity, we wonder if the Australian Government would consider safe harbour provisions where an entity reasonably relies on documented group-wide procurement and due diligence programmes.

Comparable international regimes: AAMG encourages the Australian Government to consider learnings from comparable international regimes, including the EU Corporate Sustainability Due Diligence Directive (CSDDD), its carveout for financial undertakings and ongoing legislative refinements under the Omnibus reforms as the CSDDD moves to a more targeted and risk-based model, while recognising that the proposed Australian offence is different in design and scope. In particular, guidance on the reasonable steps defence could usefully draw on established due diligence concepts, including risk identification and assessment, risk-based prioritisation, prevention and mitigation measures, escalation, monitoring of effectiveness, transparent communication and remediation pathways where appropriate. This would help ensure that the proposed offence incentivises robust and continuous due diligence, rather than discouraging entities from identifying or disclosing modern slavery risks. Guidance should also make clear that the relevance of these steps will depend on the corporation's connection to the relevant conduct, degree of control or influence, and available leverage.

Part B – Alternative enforcement

Question 4 – DPA [deferred prosecution agreement] scheme

Stakeholders may wish to comment on:

- legal and regulatory factors relevant to the introduction and operation of a DPA scheme
- international evidence and experience
- appetite for engaging with such a scheme.

What are the benefits and limitations of a DPA scheme in addressing failure to prevent modern slavery offences?

AAMG supports the introduction of a Deferred Prosecution Agreement (DPA) scheme as a proportionate enforcement mechanism alongside any failure to prevent modern slavery offence. A DPA framework could encourage cooperation, remediation and continuous improvement in due diligence practices while avoiding outcomes that may discourage organisations from proactively identifying and addressing modern slavery risks. Any DPA assessment should take account of whether an organisation has implemented risk-based due diligence and exercised appropriate leverage consistent with the OECD Guidelines for Multinational Enterprises and related international standards. For investors and asset managers, the assessment should recognise that influence is often exercised indirectly through stewardship, engagement and contractual relationships rather than through operational control of investee entities or supply chain participants.

What terms and conditions should be available for inclusion in a DPA scheme?

Any DPA scheme should be focused on remediation and prevention rather than punishment alone. Conditions could include cooperation with investigations, implementation or enhancement of due diligence processes, remediation measures for affected individuals, independent review of controls where appropriate, and periodic reporting on compliance improvements. A DPA should be available where an organisation has acted in good faith and can demonstrate that it has implemented reasonable, risk-based due diligence measures consistent with the OECD Guidelines for Multinational Enterprises and other recognised international standards.

The scheme should recognise that organisations may not always be able to prevent adverse impacts occurring deep within complex value chains despite taking reasonable steps. In particular, for

investors and asset managers, assessments should take into account the nature of the investor-investee relationship and the degree of leverage available to influence outcomes. Eligibility for a DPA should not depend on an ability to exercise direct control over investee entities or third parties where such control does not exist.

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?

[x]

Are these remedies adequate? If not, what enhancements could be considered?

Any enhancements should focus on improving access to effective remedy for victims and survivors rather than expanding liability beyond internationally recognised due diligence standards. If enhancements are considered, they should be targeted at reducing practical barriers to redress, improving access to information, and facilitating remediation where harm has occurred.

Any civil liability framework should remain proportionate and should not impose liability solely on the basis of a commercial, investment or business relationship. Consistent with the OECD Guidelines for Multinational Enterprises, liability should be linked to an organisation's own acts or omissions and should take account of whether the organisation caused, contributed to, or was directly linked to the adverse impact, as well as the reasonable steps taken to identify, prevent, mitigate and address risks. For investors and asset managers, the framework should recognise that stewardship and engagement are generally exercised through leverage rather than operational control and should avoid creating de facto strict liability for harms occurring within investee entities or broader value chains.