



Friday, 2 October 2026

Katrina Tweddell
A/g Director
Modern Slavery and Human Trafficking Branch
Attorney-General's Department
3-5 National Circuit
Ngunnawal Country
Barton ACT 2600

Dear Ms Tweddell

Re: Strengthening Australia's response to modern slavery in supply chains

The Clean Energy Council (**CEC**) welcomes the opportunity to provide this submission to the Attorney-General's Department in relation to proposed reforms to the *Modern Slavery Act 2018* (Cth) (**Act**) outlined in the 'Strengthening Australia's legislative response to modern slavery in supply chains' consultation paper dated August 2026 (**Consultation Paper**). The Consultation Paper seeks stakeholder submissions on the legislative design of a proposed 'failure to prevent modern slavery offence', including core legislative components of the offence and alternative enforcement mechanisms.

The CEC is the peak body for the clean energy industry in Australia, representing nearly 1,000 businesses operating across renewable energy generation, energy storage and the broader clean energy supply chain. Our members include: equipment manufacturers; developers, owners and operators of wind energy facilities, solar energy facilities, battery energy storage systems (**BESS**) and associated infrastructure; and investors.

The CEC supports the intent of the proposed reforms to the Act, which aim to enhance corporate accountability for preventing modern slavery in supply chains, improve protections for workers vulnerable to exploitation, and create a level playing field for businesses that are already taking meaningful action to identify, manage and address modern slavery risks. However, this submission makes several recommendations regarding the design of the proposed offence, with a focus on clear, proportionate and practical requirements. It also highlights a number of areas where additional guidance and practical mechanisms would support effective implementation.

We also set out at **Annexure A** various illustrative case studies relating to the renewable energy sector, which seek to provide further context on the practical realities and challenges associated with renewable energy technology supply chains.

Summary

Our recommendations are as follows:

Recommendation 1: Clarify in ministerial guidance how ‘carries on business in Australia’ will be interpreted for the purposes of applying the proposed offence.

Recommendation 2: Clarify the extent of the supply chain that the proposed offence is intended to cover either in the proposed definition of ‘supply chains’ and/or associated guidance. This should distinguish between direct suppliers, identified indirect suppliers, common upstream processors and manufacturers, and remote or presently unidentified entities.

Recommendation 3: Require an additional nexus (Nexus Requirement Part 2) between the corporation’s conduct and the underlying modern slavery, so that liability applies only where the corporation caused or materially contributed to the harm, and not where the harm is merely directly linked to the corporation through a business relationship (e.g. simply by purchasing a product or service).

Recommendation 4: Expressly recognise in guidance materials that merely purchasing a product or service will not satisfy the Nexus Requirement Part 2.

Recommendation 5: Provide further clarification or case studies to explain the required nexus between the corporation’s conduct and underlying modern slavery. This should address circumstances where a corporation has limited or no realistic alternatives to sourcing a critical component from a particular supplier or market.

Recommendation 6: Consider further the appropriate drafting of any proposed nexus requirement, including testing this against the ‘cause / contribute / directly linked framework’ in the UNGPs.

Recommendation 7: The CEC recognises that members hold differing views on the appropriate fault element and that each of the options proposed presents distinct challenges and potential unintended consequences. Further work should therefore be undertaken by the Attorney-General’s Department to evaluate the options and ensure the fault element supports an effective and proportionate offence. Subject to that further work, strict liability may be the most appropriate option, provided it is accompanied by the design safeguards discussed elsewhere in this submission, including a clearly defined corporate-conduct nexus (Nexus Requirement Part 2) and a reasonable steps defence that is meaningful, proportionate and supported by clear ministerial guidance.

Recommendation 8: The basic elements of a reasonable steps defence should be included in the Act, with further detail on what constitutes reasonable steps set out in accompanying ministerial guidance. Any prescribed measures should function as guidance on what may be considered evidence of reasonable steps, without creating mandatory requirements.

Recommendation 9: The reasonable steps defence should be flexible and practical, having regard to the company’s size, resources and operations; geographic and supply chain footprint; severity and visibility of the risk; information reasonably available; capacity to influence, prevent or remedy conduct; use of leverage; applicable regulatory settings; and availability of alternative suppliers or markets.

Recommendation 10: Ministerial guidance should be developed in close consultation with industry to ensure it is workable and reflects the diverse circumstances of affected corporations. In addition, sector-specific guidance for the renewable energy sector should be prepared, including worked examples for wind, solar, BESS and construction supply chains.

Recommendation 11: Ministerial guidance should emphasise a risk-based approach to due diligence and supplier engagement. It should also confirm that reasonable steps do not require complete traceability, auditing every supplier or guaranteeing that modern slavery is absent. Guidance should recognise that in-scope corporations include Original Equipment Manufacturers (**OEMs**) and manufacturers, and that reasonable steps should not default to open-ended flow-down warranties onto suppliers who face the same upstream visibility constraints as their customers. It should provide clear examples of the types of steps that would be considered reasonable to take, and cover topics such as navigating challenges of limited supplier choice, supplier engagement, responsible continuation of critical supplier relationships, remediation and responsible exit.

Recommendation 12: Ministerial guidance should expressly address scenarios where foreign laws may limit the types of due diligence and information gathering activities that may be conducted across a company's supply chain. This should confirm that what is 'reasonable' will necessarily depend on the specific regulatory settings that apply to the particular supplier or supply chain.

Recommendation 13: Commencement should be delayed for a period of 18–24 months from the passage of final ministerial guidance (rather than passage of amending legislation). Consideration should also be given to a phased approach that allows corporations of varying size and complexity to transition to compliance in a realistic timeframe.

Recommendation 14: Introduce appropriate grandfathering arrangements for existing contracts and supplier relationships that existed prior to the commencement of the proposed offence. Grandfathering arrangements should also extend to variations, call-offs and purchase orders made under master agreements entered before commencement.

1. Model: proposed components of a failure to prevent modern slavery offence

The Consultation Paper outlines nine key components of the proposed failure to prevent modern slavery offence for stakeholder consideration. This submission focuses on a subset of these components, which relate to: application of the offence; the connection to a corporation's sourced products or services and its conduct; the fault element; the proposed reasonable steps defence; ministerial guidance; and delayed commencement.

Application of the offence

The Consultation Paper proposes that the offence will apply to corporations with annual consolidated revenue over \$100 million, in alignment with the Act's reporting threshold. The offence would not directly apply to directors or other office holders within a corporation.

The CEC considers the proposed \$100 million consolidated revenue threshold is appropriate. This threshold targets entities with greater resources and capacity to undertake meaningful action to identify, manage and address modern slavery risks and influence supply chain conduct.

The CEC notes, however, that the threshold does not and should not imply equivalent levels of supply chain visibility or leverage across all in-scope corporations. As noted in the Consultation Paper, modern slavery risks often occur within complex, multi-tiered supply chains where corporations may have varying levels of visibility and influence over labour practices. Accordingly, the degree of supply chain visibility and leverage a corporation has, in practice, should be considered in the context of the reasonable steps defence (discussed below).

Separately, the CEC also notes that the offence may apply to foreign corporations that carry on business in Australia within the meaning of the *Corporations Act 2001* (Cth). While the CEC appreciates that the 'carries on business in Australia' concept is not new,¹ given the proposed offence would carry criminal rather than merely reporting consequences, associated ministerial guidance should clearly explain how 'carries on business in Australia' will be interpreted in this context, particularly for foreign corporations with limited Australian operations. Clarity regarding jurisdictional reach and enforcement mechanisms will be important to provide certainty for potentially in-scope foreign corporations.

Recommendation 1: Clarify in ministerial guidance how 'carries on business in Australia' will be interpreted for the purposes of applying the proposed offence.
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Connection to a corporation's sourced products or services (Nexus Requirement Part 1)

The Consultation Paper provides that the underlying criminal conduct (i.e. modern slavery) should be linked to the corporation and the factors reasonably within the corporation's control. There are two elements to this nexus: firstly, there 'should be a sufficient nexus between the underlying criminal conduct and the goods, services, labour, materials or other inputs that form part of the corporation's sourcing arrangements'.² That is, this component focuses on the link between the underlying criminal conduct and the corporation's supply chain (**Nexus Requirement Part 1**). Secondly, an additional nexus is proposed, whereby the corporation's actions must have in some way contributed to the harm (**Nexus Requirement Part 2**).

¹ *Modern Slavery Act 2018* (Cth), subsection 5(2).

² Consultation Paper, page 8.

The appropriate threshold for establishing a link between the corporation's supply chain and the underlying criminal conduct (i.e. modern slavery) requires careful consideration. Although the term 'supply chains' is not currently defined in the Act, the Consultation Paper proposes that a similar definition of 'supply chains' to that in the Guidance for Reporting Entities could be incorporated.³ The CEC supports, in principle, a definition of 'supply chains' that captures both direct and indirect suppliers, consistent with the Guidance for Reporting Entities issued under the Act.

However, in the context of a proposed criminal offence, care should be taken to avoid extending the scope of the proposed offence to more remote tiers of indirect suppliers, where corporations may have limited visibility or practical influence over labour practices (see **Annexure A** for further explanation).

We recommend that the Act and/or ministerial guidance should distinguish between, for example:

- direct suppliers over which the corporation has contractual leverage;
- identified indirect suppliers about which information can reasonably be obtained;
- common upstream processors and manufacturers that many downstream suppliers rely on for inputs at industry-wide control points; and
- remote or presently unidentified entities over which the corporation has little visibility or influence.

These distinctions should also be incorporated into the reasonable steps defence and associated guidance, for example by endorsing a risk-based approach to due diligence and supplier engagement, instead of requiring a blanket approach to direct and indirect suppliers generally.

Recommendation 2: Clarify the extent of the supply chain that the proposed offence is intended to cover either in the proposed definition of 'supply chains' and/or associated guidance. This should distinguish between direct suppliers, identified indirect suppliers, common upstream processors and manufacturers, and remote or presently unidentified entities.

Connection to a corporation's conduct (Nexus Requirement Part 2)

In addition to the nexus between modern slavery and the goods that form part of the corporation's sourcing arrangements, the Consultation Paper suggests there could be an additional link or nexus between the corporation's conduct and the underlying criminal conduct (i.e. Nexus Requirement Part 2). It suggests various models for the relevant nexus, including with reference to the 'cause / contribute / directly linked framework' under the UN Guiding Principles on Business and Human Rights (**UNGPs**).

³ Attorney-General's Department (Cth), *Commonwealth Modern Slavery Act 2018: Guidance for Reporting Entities* (Guidance, May 2023). Page 34 of that guidance describes supply chains as follows: 'the products and services (including labour) that contribute to the entity's own products and services. This includes products and services sourced in Australia or overseas and extends beyond direct suppliers'.

The CEC supports the Nexus Requirement Part 2, which would help to ensure that any criminal liability is imposed fairly and proportionately.

The Nexus Requirement Part 2 should apply where a corporation, through its acts or omissions, has caused or materially contributed to modern slavery; 'materially' being an important qualifier to exclude remote connections. For example, where the corporation's purchasing practices (such as excessive cost pressures, or unrealistic production deadlines) materially contribute to the use of forced labour within its supply chain. However, the offence should not extend to conduct that is merely 'directly linked' through a business relationship. Purchasing a product or service should not, of itself, constitute a sufficient nexus.

The CEC also welcomes further clarification or illustrative case studies explaining how the Nexus Requirement Part 2 would operate in practice, including circumstances in which a corporation has limited or no realistic alternatives to sourcing a critical component from a particular supplier or market. We suggest these worked examples should reference industries where risks of modern slavery are higher, and exist in a layered and indirect supply chain. For example, the worked examples could address a corporation which identifies modern slavery concerns associated with a critical component for which there is no readily available alternative supplier. The case study should address a scenario where the corporation continues to procure, while independently investigating the concerns, requiring and monitoring corrective action, and using its available leverage to improve conditions. This should be distinguished from a corporation that continues purchasing without investigating or responding to the warning signs.

Finally, the CEC notes that consistency with the UNGPs (including the 'cause / contribute / directly linked framework') can be beneficial to help align with existing corporate practice and to reduce divergent requirements for entities operating across multiple regimes. However, we also note that the 'cause / contribute / directly linked framework' is not framed as a test of causation to determine whether a company is liable for a particular human rights impact. We recommend that the Attorney-General's Department gives further consideration to the appropriate drafting of any proposed nexus requirement, including testing this against the UNGPs.

Recommendation 3: Require an additional nexus (Nexus Requirement Part 2) between the corporation's conduct and the underlying modern slavery, so that liability applies only where the corporation caused or materially contributed to the harm, and not where the harm is merely directly linked to the corporation through a business relationship (e.g. simply by purchasing a product or service).

Recommendation 4: Expressly recognise in guidance materials that merely purchasing a product or service will not satisfy the Nexus Requirement Part 2.

Recommendation 5: Provide further clarification or case studies to explain the required nexus between the corporation's conduct and underlying modern slavery. This should address circumstances where a corporation has limited or no realistic alternatives to sourcing a critical component from a particular supplier or market.

Recommendation 6: Consider further the appropriate drafting of any proposed nexus requirement, including testing this against the 'cause / contribute / directly linked framework' in the UNGPs.

Fault element

The Consultation Paper proposes that strict liability, absolute liability or recklessness could apply as the fault element for the proposed failure to prevent modern slavery offence. Given the practical challenges of identifying, monitoring and addressing modern slavery risks in complex, multi-tiered supply chains, and the significant consequences of criminal liability, the appropriate fault element requires careful consideration.

Feedback from CEC members indicates differing views on the appropriate fault element for the proposed offence. Members have identified potential benefits, challenges and unintended consequences associated with each of the three options, as discussed below. The CEC therefore considers that further work should be undertaken by the Attorney-General's Department to evaluate the options and ensure the fault element supports an effective and proportionate offence.

Against that background, the CEC offers the following observations to assist further consideration, noting that they do not necessarily reflect the views of every member.

Some members consider that recklessness (which requires proof that the corporation was aware of a substantial risk that the relevant circumstances existed or that the relevant result would occur, and that it was unjustifiable to take that risk) may be more appropriate than strict or absolute liability. This view reflects the substantial shift from the current reporting regime that the proposed offence would represent, together with the significant maximum penalties that would apply. A recklessness standard could help to ensure that the offence targets the most serious forms of corporate misconduct, while avoiding liability for matters beyond a corporation's awareness.

Other members have noted, however, that a recklessness standard could create evidentiary challenges across complex corporate structures and supply chains, making enforcement more difficult and potentially weakening the deterrent effect of the offence. It could also have the unintended effect of discouraging corporations from assessing and investigating modern slavery risks, to avoid acquiring subjective awareness of those risks. If recklessness were pursued, further consideration should therefore be given to: (1) how the standard could be implemented without diminishing the offence's deterrent effect through evidentiary or enforcement difficulties; and (2) how to avoid disincentivising robust due diligence for fear of establishing fault.

By contrast, some members consider that strict liability could better support the policy objective of encouraging corporations to actively identify, assess and address modern slavery risks in their supply chains. At the same time, members have cautioned that a strict liability model could inadvertently shift corporate behaviour away from effective, victim-centred risk management and remediation towards legal risk management and minimisation of criminal exposure. This concern would be greater under an absolute liability model, which would not permit a defence of mistake of fact.

Unlike absolute liability, strict liability would allow a corporation to rely on the defence of mistake of fact. Although there may be significant practical overlap between that defence and the proposed reasonable steps defence, the availability of a mistake of fact defence may provide an important safeguard where supply chain visibility is limited or information available to a corporation is incomplete or inaccurate.

Overall, the CEC recognises that each of the three proposed fault elements presents distinct challenges and potential unintended consequences, and that members do not hold a uniform view. Further work is therefore needed to assess the options and determine which approach would best support an effective and proportionate offence. Subject to that further work, strict liability may be the most appropriate option, provided it is accompanied by the design safeguards discussed elsewhere in this submission, including a clearly defined corporate-conduct nexus (Nexus Requirement Part 2) and a reasonable steps defence that is meaningful, proportionate and supported by clear ministerial guidance.

Recommendation 7: The CEC recognises that members hold differing views on the appropriate fault element and that each of the options proposed presents distinct challenges and potential unintended consequences. Further work should therefore be undertaken by the Attorney-General's Department to evaluate the options and ensure the fault element supports an effective and proportionate offence. Subject to that further work, strict liability may be the most appropriate option, provided it is accompanied by the design safeguards discussed elsewhere in this submission, including a clearly defined corporate-conduct nexus (Nexus Requirement Part 2) and a reasonable steps defence that is meaningful, proportionate and supported by clear ministerial guidance.

Reasonable steps defence

The Consultation Paper proposes that a defence would apply where a corporation can demonstrate on the balance of probabilities it had taken reasonable steps to prevent modern slavery. Whether the reasonable steps defence is made out would be determined by the courts on a case-by-case basis, having regard to ministerial guidance and any other reasonable steps taken by the corporation.

The CEC supports a flexible, proportionate and risk-based reasonable steps defence that accounts for the practical realities of global supply chain management. The defence should recognise the practical challenges businesses can face when assessing modern slavery risks across complex and sometimes opaque global supply chains, which can materially constrain corporations' ability to conduct modern slavery due diligence and implement effective risk management and remediation measures (see **Annexure A** for further explanation).

We recommend that the basic elements of a reasonable steps defence be included in the Act, with further detail on what constitutes reasonable steps included in accompanying ministerial guidance. Importantly, any prescribed measures should function as guidance on what may be considered evidence of reasonable steps, without creating mandatory requirements. This would ensure that corporations have appropriate flexibility to implement controls and take action according to their circumstances and risk profile (whether in line with guidance or otherwise).

As noted above, the reasonable steps defence should be flexible and practical. We suggest that assessment of reasonable steps should consider factors such as:

- the company's size and resources;
- the nature of the entity's operations;
- the relevant geographic footprint;

- operating context (including sector);
- position in the supply chain;
- severity of risk;
- the degree of visibility over the relevant supply chain and information reasonably available to the corporation;
- the corporation's capacity to influence suppliers, and prevent or remedy the conduct;
- whether / how leverage was used;
- specific regulatory settings applicable to a particular supplier or supply chain; and
- whether alternative suppliers or markets were available to the corporation.

Recommendation 8: The basic elements of a reasonable steps defence should be included in the Act, with further detail on what constitutes reasonable steps set out in accompanying ministerial guidance. Any prescribed measures should function as guidance on what may be considered evidence of reasonable steps, without creating mandatory requirements.

Recommendation 9: The reasonable steps defence should be flexible and practical, having regard to the company's size, resources and operations; geographic and supply chain footprint; severity and visibility of the risk; information reasonably available; capacity to influence, prevent or remedy conduct; use of leverage; applicable regulatory settings; and availability of alternative suppliers or markets.

Ministerial guidance

The Consultation Paper provides that the responsible Minister will issue guidance, including on the reasonable steps defence, to assist corporations to take action to tackle modern slavery in their supply chains. The guidance will draw from existing resources and key standards on business and human rights, set out in the UNGPs and the *Organisation for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises on Responsible Business Conduct (OECD Guidelines)*.

The CEC welcomes the proposal for ministerial guidance on the 'reasonable steps' a corporation could take, and supports this guidance expressly drawing on the UNGPs and OECD Guidelines. We also support the proposal that 'guidance would not be used as a "checkbox" approach but would instead outline key principles with practical examples'.⁴ We recommend that the guidance be developed in close consultation with industry to ensure it is workable and reflects the diverse circumstances of affected corporations.

Ministerial guidance should emphasise a risk-based approach to due diligence and supplier engagement in line with existing guidance issued under the Act. It should also confirm that reasonable

⁴ Consultation Paper, page 12.

steps do not require complete traceability, auditing every supplier or guaranteeing that modern slavery is absent.

Guidance should also recognise that in-scope corporations include OEMs and manufacturers, and that reasonable steps should not default to open-ended flow-down warranties onto suppliers who face the same upstream visibility constraints as their customers.

In addition, examples of reasonable steps covered in guidance should include:

- progressive, risk-based supply chain mapping and supplier screening, and prioritisation of high-risk technologies, materials, geographies and suppliers;
- contractual requirements and supply chain mapping obligations;
- supplier questionnaires, management engagement and site visits;
- meaningful engagement with workers and their legitimate representatives, including through independent worker interviews and worker-driven monitoring where appropriate;
- appropriately scoped independent audits and corrective-action follow-up;
- accessible grievance mechanisms and effective remediation processes, with protections against retaliation;
- employee and procurement training;
- compliance with recognised industry standards and initiatives, and reliance on third-party auditing, assurance or certification schemes and sector-led monitoring programs;
- reliance on credible supplier-sponsored or collaborative audits, subject to reviewing their scope, methodology, recency and findings (in recognition of the challenges in some jurisdictions of unilaterally imposing audits from outside the jurisdiction of interest);
- reliance on audits commissioned by an OEM or its parent, conducted by accredited independent third parties;
- compliance with comparable overseas due diligence regimes, where they achieve substantively equivalent outcomes; and/or
- participation in collaborative supply chain initiatives.

Guidance on reasonable steps should also cover topics such as navigating challenges of limited supplier choice, supplier engagement, responsible continuation of critical supplier relationships, remediation and responsible exit. See **Annexure A** for further explanation.

In addition, the CEC notes that foreign laws in some jurisdictions may constrain investigations, audits or disclosures undertaken to meet foreign legal requirements. Such laws may limit the types of due diligence and information gathering activities that may be conducted across a corporation's supply chain, as well as the disclosures required to comply with Australian laws. This could make it difficult for Australian businesses to obtain the information needed to assess conditions throughout their supply chains and demonstrate that they have taken reasonable steps.

We recommend that ministerial guidance expressly addresses this issue, including to confirm that what is 'reasonable' will necessarily depend on the specific regulatory settings that apply to the particular

supplier or supply chain. This would help to ensure consistency of approach across in-scope corporations and reduce foreign supplier audit fatigue.

Finally, additional sector-specific ministerial guidance should be prepared for the renewable energy sector, in collaboration with industry. This should acknowledge the specific context and challenges of energy infrastructure supply chains, which are global, complex and highly concentrated in certain jurisdictions (see **Annexure A** for further explanation). Such guidance should also recognise the objectives of Australia's clean energy transition (which relies on these supply chains for solar panels, batteries, wind turbines, inverters, transformers and other critical equipment). We recommend that sector-specific guidance includes worked examples for wind, solar, BESS and construction supply chains.

Recommendation 10: Ministerial guidance should be developed in close consultation with industry to ensure it is workable and reflects the diverse circumstances of affected corporations. In addition, sector-specific guidance for the renewable energy sector should be prepared, including worked examples for wind, solar, BESS and construction supply chains.

Recommendation 11: Ministerial guidance should emphasise a risk-based approach to due diligence and supplier engagement. It should also confirm that reasonable steps do not require complete traceability, auditing every supplier or guaranteeing that modern slavery is absent. Guidance should recognise that in-scope corporations include OEMs and manufacturers, and that reasonable steps should not default to open-ended flow-down warranties onto suppliers who face the same upstream visibility constraints as their customers. It should provide clear examples of the types of steps that would be considered reasonable to take, and cover topics such as navigating challenges of limited supplier choice, supplier engagement, responsible continuation of critical supplier relationships, remediation and responsible exit.

Recommendation 12: Ministerial guidance should expressly address scenarios where foreign laws may limit the types of due diligence and information gathering activities that may be conducted across a company's supply chain. This should confirm that what is 'reasonable' will necessarily depend on the specific regulatory settings that apply to the particular supplier or supply chain.

Delayed commencement

It is proposed that commencement of the offence would be delayed for a period of 12–18 months, to give corporations time to implement any changes required to prepare for compliance and align with ministerial guidance.

The CEC agrees in principle with delayed commencement, however we note that a 12–18 month period may be insufficient for large corporations with complex global supply chains to implement the necessary governance, procurement and compliance changes. A staged or longer transition may be needed for requirements involving deep supply chain mapping or traceability of high-risk materials. For example, major renewable energy procurement processes have long lead times (in some instances in excess of 70 weeks), and existing contracts may not contain the information, flow-down obligations or audit rights needed under the new regime.

We recommend a delayed commencement period of 18–24 months from the passage of final ministerial guidance (rather than passage of amending legislation), with consideration given to a phased approach that allows corporations of varying size and complexity to transition to compliance in a realistic timeframe.

Additionally, we recommend that existing contracts and established supplier relationships should be protected through appropriate grandfathering arrangements. Businesses should not face criminal exposure for continuing contracts entered before the amendments to the Act commence, provided they undertake reasonable steps (such as ongoing monitoring and responding appropriately to any identified risks) as clarified in ministerial guidance.

Recommendation 13: Commencement should be delayed for a period of 18–24 months from the passage of final ministerial guidance (rather than passage of amending legislation). Consideration should also be given to a phased approach that allows corporations of varying size and complexity to transition to compliance in a realistic timeframe.

Recommendation 14: Introduce appropriate grandfathering arrangements for existing contracts and supplier relationships that existed prior to the commencement of the proposed offence. Grandfathering arrangements should also extend to variations, call-offs and purchase orders made under master agreements entered before commencement.

2. Impact of the proposed offence

The Consultation Paper invites stakeholders to consider potential impacts of the proposed offence, including: measures that could be adopted to minimise compliance costs for affected corporations; potential economic, competition, social and distributional impacts; and any unintended consequences.

As the architecture and key elements of the proposed offence remain under consideration, the CEC offers the following preliminary observations on its potential impacts. We welcome further engagement with the Attorney-General's Department on these matters as the reforms progress and guidance is developed.

Measures to reduce compliance costs

The CEC considers that clear and practical guidance on what may constitute reasonable steps will be critical to helping corporations understand their obligations and minimise compliance costs. The specific recommendations outlined above – including developing the guidance in close consultation with industry, providing worked examples, and adopting a risk-based approach – are intended to support this objective. We welcome sector-specific ministerial guidance for the renewable energy sector (with illustrative case studies, as discussed above), and suggest this be developed in consultation with industry, the Australian Anti-Slavery Commissioner, and civil society.

We also recommend consideration of the following measures, which could help to minimise compliance costs, reduce duplication and direct resources towards the suppliers, products and geographies presenting the greatest modern slavery risks:

- **Government-provided risk information:** government-provided country, commodity and technology risk information. For example, high-risk product, sector and geography declarations of the kind proposed by the Australian Anti-Slavery Commissioner would help entities focus effort where risks are greatest. See also the ‘Government-endorsed supplier assurance framework’ recommendation under ‘Compliance support’ at section 3 below;
- **Template materials:** standardised supplier questionnaires, contract clauses, audit protocols and corrective-action templates, as well as templates for documenting decisions where visibility, leverage, access or alternative supply is limited;
- **Competition law class exemption:** a competition law class exemption for collaborative modern slavery activity, building on ACCC guidance on sustainability collaborations, to enable joint supplier assessments and remediation without triggering competition law concerns. We also recommend consideration is given to mechanisms for sharing supplier assessments and audit findings, subject to confidentiality and competition law safeguards. Any framework for joint assessments or information sharing should include safeguards for assessed suppliers, including: accuracy standards; an opportunity to respond to findings before they are shared or relied upon; and appropriate confidentiality protections;
- **Recognition of comparable due diligence:** recognition of equivalent due diligence undertaken under comparable international regimes, to avoid regulatory duplication and unnecessary cost for corporations already subject to equivalent overseas obligations;
- **Guidance on reliance on third party data and initiatives:** guidance on when corporations may rely on credible supplier-sponsored audits, recognised industry initiatives, third-party auditing or certification schemes and sector-led monitoring programs as evidence of reasonable steps (noting entities should not be required to duplicate credible due-diligence processes);
- **Consolidated reasonable steps framework:** a single, consolidated reasonable-steps framework to minimise overlapping or inconsistent regulatory expectations; and
- **Safe harbour provisions and enforcement approach:** introduction of safe harbour provisions for corporations that can demonstrate good-faith compliance efforts; and an initial ‘learning phase’ approach to enforcement during the period after commencement, consistent with the responsive-regulation model proposed by the Australian Anti-Slavery Commissioner.⁵

The CEC considers that recommended compliance support measures outlined below at section 3 would also help corporations better understand their obligations and, in doing so, minimise their compliance costs.

⁵ Office of the Australian Anti-Slavery Commissioner, *Recommendations to Strengthen Australia’s Modern Slavery Laws: Initial Position Paper* (Initial Position Paper, 30 January 2026) page 17.

Broader impacts and unintended consequences

The CEC recommends that consideration is given to the following (non-exhaustive) potential unintended consequences of introducing a failure to prevent modern slavery offence:

- **Chilling effect on modern slavery action:** there is a real risk that the proposed offence could shift corporate behaviour away from effective, victim-centred human rights risk management and remediation, towards a focus on legal risk management and minimisation of criminal liability. For example, the proposed offence could encourage companies to divest from higher-risk suppliers or jurisdictions (rather than engage with them) to reduce legal exposure, even where continued engagement and corrective action would arguably produce better outcomes for workers. This could in turn lead to job losses or push production into less visible supply chains. Such outcomes would be contrary to the objectives of the proposed new offence and the Act, and undermine effective modern slavery prevention and remediation.
- **Reduced competition:** compliance costs may favour the largest manufacturers and exclude smaller or emerging suppliers without necessarily reducing underlying risks.
- **Reduced transparency:** suppliers may become less willing to disclose information where doing so could give rise to litigation, regulatory, confidentiality or reputational risks. This could in turn compromise the quality of information available to entities within the supply chain and other interested stakeholders.
- **Audit duplication:** multiple customers might commission overlapping audits of the same facilities, increasing cost and audit fatigue without improving worker outcomes.
- **Over-reliance on certifications:** companies may adopt defensive, tick-box approaches rather than tailored, worker-centred due diligence.
- **Concentrated inputs where alternatives are limited:** guidance should recognise that immediate substitution can result in loss of employment, loss of worker access to grievance and remedy, and displacement of risk into less transparent supply chains, without necessarily improving worker outcomes. In line with the OECD Guidance, where a supplier is "crucial" and no reasonable alternative source exists, the corporation should continue to monitor, use leverage, seek independent verification and revisit its decision as circumstances change – rather than automatically disengaging.
- **Conflicting overseas requirements:** local laws or practical conditions may limit information sharing, worker interviews or on-site auditing. The reasonable steps defence should account for documented legal, safety and access constraints.
- **Defensive compliance activity:** unclear requirements may encourage excessive record keeping and low-value audits principally to establish a legal defence – contributing to overly inflated compliance costs for Australian entities and their suppliers.

3. Compliance support

The CEC provides the following observations regarding support that would be most useful in assisting companies to effectively understand and comply with the proposed offence:

- **Guidance:** ministerial guidance (including sector-specific guidance for renewables) that aligns with the UNGPs and OECD Guidelines. Alignment between Commonwealth guidance and guidance issued by the Australian and NSW Anti-Slavery Commissioners would also be highly beneficial. See the CEC's detailed recommendations regarding matters to be included in guidance at section 1 above.
- **Training:** educational resources and training to help facilitate compliance with the proposed offence, including training tailored to Boards, procurement, legal and sustainability teams.
- **Dedicated helpline:** a dedicated helpline or advisory service for corporations seeking to understand their obligations under the new offence, supplemented with ongoing opportunities for dialogue and engagement between government and industry.
- **Government-endorsed supplier assurance framework:** the Australian Government should establish and maintain a list of endorsed suppliers, products and assurance or certification schemes that Australian businesses can rely on for the purposes of complying with the proposed offence. Procurement from an approved source should provide a safe harbour or strong evidence that a corporation has taken reasonable steps. The framework should:
 - be developed by government in consultation with affected industries;
 - include transparent, objective and evidence-based criteria for inclusion, review, suspension and removal, such criteria to be refined in consultation with industry. Listing criteria must not discriminate on the basis of ownership or country of origin. Additionally, adverse media, desktop screening or third party intelligence should not be relied on for an adverse listing decision unless it has been appropriately verified and corroborated by credible, identifiable sources, and the supplier has been given the underlying material and an opportunity to respond. It is critical that suspension or removal processes follow principles of natural justice, with commercially sensitive information protected;
 - provide a clear and timely pathway for new and emerging suppliers to obtain approval;
 - recognise equivalent overseas government and industry assurance schemes;
 - clarify the extent to which businesses may rely on the list for the reasonable steps defence; and
 - be supported by government intelligence about relevant jurisdictional, commodity and supply-chain risks.

Such a framework should not entrench incumbent suppliers or create an unnecessary barrier to market entry. New suppliers may offer lower cost or more innovative products as they establish their credibility. A clear, timely and proportionate listing process could help preserve



competition, while reducing project costs and facilitating the timely rollout of Australia's clean energy transition.

The CEC welcomes further engagement in relation to this matter. If you have any queries or would like to discuss this submission in more detail, please contact Elise Rutherford on erutherford@cleanenergycouncil.org.au or Tiana MacLeod on tmacleod@cleanenergycouncil.org.au.

Kind regards

A handwritten signature in black ink, appearing to read 'Elise Rutherford', with a stylized flourish at the end.

Elise Rutherford

General Manager – Planning & Environment

A handwritten signature in black ink, appearing to read 'Tiana MacLeod', in a cursive style.

Tiana MacLeod

Senior Policy Officer – Planning & Environment

Annexure A: illustrative case studies

Challenges arising from concentrated renewable energy supply chains

Renewable energy technologies rely on long, concentrated and multi-tiered supply chains. The International Energy Agency (*IEA*) reports that China accounts for around 85% of solar photovoltaic (*PV*) and 80% of lithium-ion battery supply chain production capacity, with still higher concentration in PV wafers and battery anode materials.⁶ It also identifies production stages in solar, wind and battery supply chains where capacity outside the largest exporter would be insufficient to meet demand.

In 2022, the CEC published a white paper in collaboration with law firm Norton Rose Fulbright titled *Addressing Modern Slavery in the Clean Energy Sector (White Paper)*.⁷ The White Paper outlines the risks of modern slavery in the clean energy sector and suggested strategies for managing those risks. It identifies component manufacturing and raw material extraction as key areas of modern slavery exposure across solar, wind and battery supply chains.

A renewable energy developer may be able to choose between several Tier 1 solar, wind or battery suppliers, but those suppliers may rely on the same limited group of upstream manufacturers, processors or material sources. Replacing the Tier 1 supplier may therefore change the contractual counterparty without materially changing the upstream risk.

Proposed implications for the offence

Where alternatives are not reasonably available, the Act and guidance should not assume that termination or substitution is the only reasonable response. Depending on the facts, reasonable steps could include:

- seeking greater upstream transparency;
- including traceability, notification and flow-down requirements in contracts (as appropriate);
- escalating credible modern slavery risks;
- using commercial leverage individually or collaboratively;
- requiring and monitoring corrective-action plans; and
- developing a responsible exit where serious risks cannot be prevented or mitigated.

This approach is consistent with the OECD Due Diligence Guidance for Responsible Mineral Supply Chains, which describes due diligence as risk-based, progressive and based on reasonable, good faith

⁶ International Energy Agency, 'Supply chain risks and industrial competitiveness' (Web Page, 2026) <<https://www.iea.org/reports/energy-technology-perspectives-2026/supply-chain-risks-and-industrial-competitiveness>>.

⁷ Clean Energy Council and Norton Rose Fulbright Australia, *Addressing Modern Slavery in the Clean Energy Sector* (White Paper, November 2022) <<https://assets.cleanenergycouncil.org.au/documents/resources/reports/Addressing-Modern-Slavery-in-the-Clean-Energy-Sector.pdf>>.

efforts.⁸ Except in the most harmful circumstances, the OECD advises companies to use leverage to improve conditions rather than embargoing high-risk sourcing areas.

Commentary on the scale and complexity of renewable energy supply chains

Renewable energy technologies pass through multiple supply chain stages before reaching an Australian project. These can include raw material extraction, refining and processing, intermediate-material production, component manufacturing, technology assembly, international logistics, Australian construction and subcontracted labour.

For example:

- Solar PV: raw materials, metallurgical-grade silicon, polysilicon, ingots, wafers, cells, modules, frames, glass, inverters, mounting systems and logistics.
- Wind: steel, copper, fibreglass, carbon fibre, resins, balsa or other core materials, rare earth magnets where used, bearings, generators, blades, towers and turbine assembly.
- BESS: lithium, nickel, cobalt, manganese, graphite and other materials, followed by refining, cathode and anode production, cells, modules, packs, control systems, enclosures and system integration.

The White Paper identifies component manufacturing and raw material extraction as important points of exposure across solar, wind and battery technologies. It also notes that renewable energy is the primary user of some inputs, such as solar-grade polysilicon, but one of many end users of materials such as copper.

A practical approach to the offence would assess whether the corporation has made reasonable, risk-based efforts to look beyond Tier 1, prioritising high-risk technologies, materials and geographies. Complete end-to-end mapping should not be treated as the only means of demonstrating reasonable steps.

A developer may contract directly with an OEM, engineering contractor or Australian distributor while having no direct contractual relationship with the entities undertaking upstream processing, component manufacturing or mineral extraction. The Tier 1 supplier may itself source from numerous facilities and subcontractors, which in turn purchase from additional processors and traders. Materials may also be blended or aggregated during processing, making their origin difficult to trace through conventional procurement records.

Furthermore, supply continuity constraints have arisen from recent geopolitical disruption and blocking of shipping routes. OEMs require flexibility to account for geopolitical challenges and operational

⁸ Organisation for Economic Co-operation and Development, *Due Diligence Guidance for Responsible Mineral Supply Chains* (Web Page) <<https://www.duediligenceguidance.org/>>.

constraints, recognising that there may be a long lead time between tender/contract award and the OEM being given notice to proceed. In practice, this may mean that:

1. OEMs may not reasonably be able to provide a closed list of subcontractors for developers to audit; and
2. developers may place an order with the OEM based on an audit of the disclosed supply chain, however that supply chain could change due to factors beyond the developer's and OEM's control (e.g. due to supplier unavailability). Where this occurs, mitigation measures may be available, such as change notification obligations, re-assessment on substitution, contractual flow-down and ongoing monitoring.

Implications for defining 'supply chains' and 'reasonable steps' guidance

Having regard to the above, a definition of 'supply chains' should be broad enough to capture relevant upstream risks, but it should not create identical expectations at every tier. It should distinguish between direct suppliers, identified indirect suppliers, common upstream processors and manufacturers, and remote or presently unidentified entities. See the CEC's recommendations at 'Connection to a corporation's sourced products or services (Nexus Requirement Part 1)' in section 1 above.

Additionally, ministerial guidance should recognise that OEMs and manufacturers may also be within the scope of the proposed offence. Guidance should make clear that reasonable steps should not default to open-ended flow-down warranties onto suppliers who face the same upstream visibility constraints as their customers.

Practical limitations on undertaking modern slavery due diligence across the renewable energy technology supply chain

Even where a renewable energy developer undertakes enhanced due diligence, there may be significant limits on what that work can establish. The proposed offence should encourage corporations to investigate and address risks without treating complete traceability or immediate disengagement as the only reasonable response. The OECD describes responsible mineral due diligence as risk-based, progressive and grounded in reasonable, good faith efforts, with constructive use of supplier leverage except in the most harmful circumstances.

Set out in the table below is a non-exhaustive list of practical limitations on undertaking modern slavery due diligence across the renewable energy technology supply chain.

Limited traceability	Tier 1 suppliers may not know, control or be permitted to disclose all upstream suppliers. Commercial confidentiality may restrict access to supplier identities, facility locations or material origins. Commodities may pass through traders, processors or blended-material streams that make source-level attribution difficult. Public industry examples show companies responding by requiring traceability reporting, disclosure of manufacturing sites and raw material suppliers, modern slavery notifications and management plans. However, the complexity of solar
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	supply chains continues to make comprehensive end-to-end due diligence challenging, particularly for upstream raw materials.
Limits of audits	Facility audits provide information about a particular site at a particular time. They may not cover the full upstream supply chain and may not reliably identify hidden coercion, recruitment debt or state-imposed forced labour. Their effectiveness can also be limited where: • access is controlled or announced in advance; • workers cannot be interviewed freely and confidentially; • records are incomplete or unreliable; • language or cultural factors inhibit disclosure; • workers fear retaliation; or • the relevant risk sits further upstream than the audited facility. An audit can therefore be useful evidence of due diligence without conclusively demonstrating that modern slavery is absent across the product's supply chain.
Limited leverage	An Australian project developer may represent a relatively small share of a global manufacturer's sales. Its ability to require disclosure or change practices may be materially lower than that of the OEM, a major international buyer or the government of the manufacturing jurisdiction.
Jurisdictional constraints	Local laws, government controls or safety conditions may restrict supply chain disclosure, independent worker interviews, site access or investigation of certain labour practices. A company may take reasonable steps but remain unable to verify particular issues independently.
Rapidly changing supply chains	Suppliers, factories and material sources may change during a long procurement or construction period. Due diligence completed at tender stage can become outdated unless supported by ongoing notification, monitoring and contractual flow-down requirements.

Implications for the proposed offence

Reasonable steps should be judged by the quality, proportionality and follow-through of the company's due diligence, not solely by whether it identified the underlying offence. Guidance should recognise a combination of risk screening, supply chain mapping, contractual controls, worker-focused assessment, audits, corrective actions, collaboration and documented escalation. See also the CEC's recommendations at 'Reasonable steps defence' and 'Ministerial guidance' at section 1 above.



Developers can apply risk screening, contractual disclosure requirements, progressive supply chain mapping, independent audits, corrective-action plans and collaborative initiatives. However, the IEA identifies a shortage of granular and timely clean energy supply chain data,⁹ while the OECD identifies data quality, verification, secure data sharing and differing supply chain complexity as practical challenges in implementing effective traceability systems.¹⁰

⁹ International Energy Agency, *Clean Energy Technology Supply Chain Data: Challenges and Potential Solutions* (Report, February 2026) <<https://www.iea.org/reports/clean-energy-technology-supply-chain-data>>.

¹⁰ Organisation for Economic Co-operation and Development and International Energy Agency, *The Role of Traceability in Critical Mineral Supply Chains* (Report, 28 February 2025) <<https://doi.org/10.1787/edb0a451-en>>.