



MINERALS COUNCIL OF AUSTRALIA

MODERN SLAVERY IN SUPPLY CHAINS SUBMISSION

2 OCTOBER 2026

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1. EXECUTIVE SUMMARY

The Minerals Council of Australia (MCA) supports strengthening Australia's response to modern slavery. Any reform to the *Modern Slavery Act 2018 (Cth)* (the Act) should improve prevention, protect workers, encourage businesses to identify and address risks, increase transparency and access to remedy, and deliver practical outcomes.

Modern slavery due diligence, grounded in human rights due diligence principles, should be central to reform. It should be ongoing, risk-based and proportionate, embedded in procurement, contracting, risk management and operational decisions. It should enable businesses to prioritise serious risks, respond according to their capacity to influence outcomes and improve systems over time.

The framework should align with comparable international regimes, reduce complexity from divergent requirements and allow businesses to focus resources on addressing modern slavery risks rather than parallel compliance processes. Government should draw on existing business experience and avoid indiscriminately cascading obligations onto smaller suppliers.

MCA does not support the proposed corporate failure-to-prevent offence. The case for additional corporate criminal liability has not been established. Government has not demonstrated why the offence is necessary or how it would improve outcomes beyond clear and enforceable modern slavery due diligence obligations.

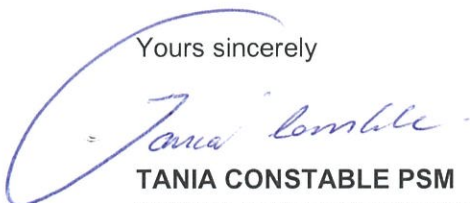
Separately, MCA supports a broader Commonwealth Deferred Prosecution Agreement (DPA) framework for appropriate corporate criminal matters, including existing modern slavery offences, irrespective of whether the proposed offence proceeds. A DPA is an enforcement mechanism, not a substitute for establishing whether a new offence is justified. It should recognise responsible self-reporting, cooperation, remediation and stronger corporate systems, while preserving prosecution where negotiated resolution is inappropriate.

Modern slavery risks may arise several tiers removed from direct operations, where visibility, control and influence are limited. Criminal liability should not arise merely because offending occurs within a commercial relationship. The proposed offence could discourage transparency, investigation, supplier collaboration and remediation if effective systems create greater exposure. Discovery must be separated from culpability and responsible conduct encouraged.

The better course is a coherent framework that puts modern slavery due diligence at the centre of prevention and corporate accountability, supports practical implementation and aligns enforcement incentives with transparency and remediation. Targeted assurance may also improve disclosure quality, subject to appropriate thresholds and compliance costs.

The minerals industry stands ready to continue working constructively with the Department to ensure any reform to Australia's modern slavery legislative framework is proportionate and aligns with appropriate, well-defined regulatory due diligence frameworks. If the Department has any questions, Matthew Denyer, Principal Adviser – Indigenous Partnerships and Communities can be contacted on matthew.denyer@minerals.org.au or 0428 605 143.

Yours sincerely



TANIA CONSTABLE PSM
CHIEF EXECUTIVE OFFICER

2. RECOMMENDATIONS

Recommendation 1

The Government should establish modern slavery due diligence, grounded in international human rights due diligence principles, as the central framework for strengthening corporate prevention, accountability and remediation.

Recommendation 2

The Government should not proceed with the proposed corporate failure-to-prevent offence unless it can establish why additional corporate criminal liability is necessary and would achieve outcomes that clear, enforceable due diligence obligations cannot.

Recommendation 3

The Government should adopt risk-based and proportionate obligations that reflect severity, available information, control and practical leverage, while aligning Australian requirements with comparable international due diligence regimes and avoiding unnecessary burdens on smaller suppliers.

Recommendation 4

The Government should design implementation and enforcement settings that encourage businesses to identify modern slavery risks, investigate and disclose suspected wrongdoing, protect affected workers and remediate harm, and establish a Commonwealth DPA framework for appropriate corporate criminal matters, including existing modern slavery offences.

Recommendation 5

The Government should not create a new standalone civil cause of action without first establishing a genuine gap in existing remedies and demonstrating that targeted reform is required to address it.

3. PROPOSED MODEL

The central regulatory design question is what corporations should be required to do to identify, prevent and address modern slavery risks. Clear due diligence obligations answer that question directly by defining the conduct expected of businesses before and after risks are identified, rather than making additional corporate criminal liability the centre of reform.

Those obligations should require businesses to identify and assess risks, take proportionate preventative and corrective action, monitor effectiveness, communicate outcomes and support remediation where appropriate.¹

These obligations should be embedded in procurement, contracting, risk management and operational decision-making.² Their intensity should reflect the seriousness of the risk, the information reasonably available, the corporation's relationship to the relevant activity and its practical capacity to influence outcomes.³

Australian regulatory experience supports separating those corporate obligations from offences directed to modern slavery conduct itself. In 2024 the Parliament of NSW undertook a statutory review of the *Modern Slavery Act 2018 (NSW)* (NSW Statutory Review) which distinguished criminal offences from due diligence, reporting, cooperation and procurement obligations,⁴ and recognised that enforcement must be designed for the obligation being enforced. Although the NSW parliamentary committee recommended that the NSW Government explore the use, scope and efficacy of penalties, the NSW Government noted that modern slavery conduct was already subject to criminal offences and penalties.⁵ The NSW Anti-slavery Commissioner separately supported considering penalties for non-compliance with clear obligations.⁶ What is clear from the NSW experience is a need to define corporate due diligence expectations before determining what enforcement response is appropriate.

Commonwealth offence-framing principles lead to the same threshold inquiry. The Commonwealth's own guidelines describe a criminal offence as the ultimate sanction and recognises that civil penalties, enforceable undertakings, infringement notices and administrative sanctions may in some circumstances be as effective or more effective in addressing non-compliance.⁷ Modern slavery conduct remains serious criminal wrongdoing. The separate question is whether corporations several steps removed from that conduct require an additional offence when due diligence duties can specify expectations for risk identification, prevention, mitigation, monitoring, remediation and reporting.⁸

Global minerals operations rely on complex, multi-tiered supply chains spanning contractors, labour hire, equipment providers, logistics providers, service providers, processors and refiners, internationally sourced materials and other multi-tiered commercial relationships. These relationships involve materially different levels of ownership, control, visibility and leverage. Those differences are central to how businesses identify risks, prioritise action and decide what preventative or corrective steps are practical.

¹ Office of the High Commissioner for Human Rights, [Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework](#), United Nations, New York and Geneva, 2011, pp 17–22, viewed 3 September 2026

² *Ibid.*

³ *Ibid.*

⁴ Modern Slavery Committee, [Report No. 3 Review of the Modern Slavery Act 2018 — Part 2](#), Parliament of New South Wales, Sydney, 20 December 2024, pp 15–20, 33, viewed 25 September 2026

⁵ NSW Government, [Government response — Modern Slavery Committee Report No. 3 — Review of the Modern Slavery Act 2018 — Part 2](#), NSW Government, Sydney, 20 March 2025, p 4, viewed 25 September 2026

⁶ Office of the NSW Anti-slavery Commissioner, [Review of the Modern Slavery Act 2018 — Part 2: Response of the NSW Anti-slavery Commissioner](#), Office of the NSW Anti-slavery Commissioner, Sydney, 18 March 2025, pp 5–6, viewed 25 September 2026

⁷ Attorney-General's Department, [A Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers](#), Commonwealth of Australia, Canberra, 24 May 2024, pp 15–18, 37–41, viewed 1 September 2026

⁸ Australian Law Reform Commission, [Final Report: Corporate Criminal Responsibility, ALRC Report 136](#), Commonwealth of Australia, Canberra, 30 April 2020, pp 178–184

The existing \$100 million annual consolidated revenue threshold under the Act provides a practical reference point when considering the coverage of any strengthened due diligence framework.

The ownership profile of the Australian minerals industry shows why regulatory design must account for different corporate structures, operating models and capacities while maintaining clear and consistent expectations for responsible business conduct.

Australian operating mines are owned by diverse corporate groups, including multinational miners, foreign industrial firms, trading houses, major Australian resource companies and smaller specialist producers. Given the scale of mining operations and the consolidated revenue of their connected corporate structures, most owners of Australian operating mines are likely to exceed the \$100 million threshold, with exceptions largely confined to smaller or emerging producers.

Table 1: Illustrative ownership archetypes for Australian operating mines

Type	Typical characteristics	Typical relationship to \$100 million threshold
Global diversified mining group	Large multinational mining company with multiple operations across commodities and jurisdictions. Australian operations form part of a global portfolio	Above
Foreign industrial or steel producer	Manufacturing, steel or industrial groups that hold mining assets to secure raw material supply	Above
Diversified trading and investment house	Trading houses with equity interests in mining projects alongside energy, infrastructure, manufacturing and commodity marketing activities	Above
Large Australian mining group	Australian headquartered resource company with multiple producing assets and significant export activity	Above
Mid-tier producer	Established producers operating one or more mines, often focused on a commodity or region	Frequently above
Single-asset or emerging producer	Companies operating a limited number of mines or recently transitioned into production. Revenue can vary materially across commodity cycles and mine life stages	May fall above or below the threshold
Explorer or project developer	Companies focused on exploration, feasibility studies or project development rather than established production	Often below the threshold, although individual cases vary

This industry structure makes due diligence better suited to the task because it regulates the quality of corporate systems and action while distinguishing commercial connection, capacity to influence conduct and responsibility for how a risk is managed.

By contrast, the proposed failure-to-prevent model risks treating supply-chain connection as a basis for criminal exposure even where a corporation has limited visibility or influence over third-party conduct. Translating complex sourcing relationships into criminal responsibility would create uncertainty and could draw ordinary commercial activity into the scope of liability without showing that the corporation controlled or contributed to the offending.

Modern slavery risks can arise several tiers removed from direct operations. In those circumstances, practical responsibility should turn on what a corporation knew or could reasonably identify, what influence it could exercise and how it responded. Criminalisation should not be treated as the default or necessary mechanism for improving prevention where the relevant conduct may be committed by independent third parties.

Minerals traceability illustrates why regulation should focus on risk-based due diligence rather than supply-chain exposure alone.⁹ Minerals and mineral-containing inputs may pass through multiple traders, processors, refiners and manufacturers before reaching an Australian business. They may be blended or commingled, lose clear physical traceability and become difficult or impossible to attribute to a single source. Research into aluminium supply chains¹⁰ associated with Xinjiang has identified both serious forced-labour risks and circumstances in which material is traded, remelted and combined so that its source becomes physically indeterminable. The appropriate response is to assess whether a corporation undertook proportionate due diligence and acted responsibly on the information available, not to treat incomplete traceability as a basis for criminal responsibility.

Focusing on the quality of corporate systems and action also provides clearer accountability than detailed criminal tests tied to third-party offences. It specifies the conduct expected across the risk-management cycle and supports consistent assessment of prevention, corrective action, monitoring, disclosure and remediation.

By contrast, imposing criminal consequences where the underlying conduct may be committed by independent third parties will create questions that go to the heart of procedural fairness and practical effect. Layering fault standards, legal burdens and defence rules¹¹ onto that model would add complexity without defining as directly what corporations should do to prevent and address modern slavery risks.

The Commonwealth's treatment of fault sharpens that concern. Ordinary Criminal Code fault elements are the reference point, and proof of fault is a fundamental protection. Strict and absolute liability remove that requirement and should be confined to limited, adequately justified circumstances. Strict liability retains an honest and reasonable mistake of fact defence; absolute liability does not.¹² Requiring a corporation to prove a matter on the balance of probabilities is also not a neutral design choice and requires separate justification,¹³ particularly where liability may turn on independent third-party conduct across complex international supply chains.

Direct due diligence obligations would provide a significantly stronger foundation. They can recognise severity and foreseeability of risk, proximity, available information, control, contractual rights, leverage, traceability limits and feasible assurance or worker-engagement measures.

A due diligence framework can also assess conduct before and after a risk is identified, recognising that reasonable prevention is not guaranteed prevention.

Penalty design presents a further practical problem with making corporate criminal liability the central reform mechanism.

Penalties should remain proportionate to the wrongdoing and connected to the conduct at issue. The Commonwealth's guidance recognises that a penalty based on a multiple of the financial benefit obtained from the wrongdoing is most defensible where that benefit is direct and measurable. The

⁹ Organisation for Economic Co-operation and Development, [OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas: Third Edition](#), OECD Publishing Paris, 6 April 2016, pp 13-19, viewed 1 September 2026

¹⁰ United States Department of State, [2025 Trafficking in Persons Report](#), Washington D.C., viewed 1 September 2026

¹¹ Attorney-General's Department, [A Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers](#), Commonwealth of Australia, Canberra, 24 May 2024, pp 22–26, 47–49, viewed 1 September 2026

¹² *Ibid*, pp 24–26

¹³ *Ibid*, pp 47–49

Guidance cautions against percentage-of-turnover penalties because total turnover may have little connection to the contravening conduct.¹⁴

In diversified minerals businesses, consolidated turnover may bear little relationship to the conduct, harm or benefit at issue. As the analysis below illustrates, a 10 per cent consolidated-turnover penalty can therefore produce outcomes that are difficult to reconcile with proportionality. Clear, enforceable due diligence duties provide a more direct basis for improving corporate practice and worker outcomes.

Table 2: Illustrative impact of a 10 per cent consolidated turnover penalty

Ownership archetype	Illustrative turnover	Penalty at 10% of turnover	100,000 penalty units
Global diversified mining group	\$50 billion	\$5 billion	\$36.4 million
Foreign industrial or steel producer	\$100 billion	\$10 billion	\$36.4 million
Diversified trading and investment house	\$150 billion	\$15 billion	\$36.4 million
Large Australian mining group	\$20 billion	\$2 billion	\$36.4 million
Mid-tier producer	\$2 billion	\$200 million	\$36.4 million
Single-asset or emerging producer	\$500 million	\$50 million	\$36.4 million
Smaller producer near threshold	\$100 million	\$10 million	\$36.4 million

¹⁴ *Ibid*, p 40

4. MEASURING IMPACTS

Once substantive obligations are established, regulatory design determines where costs, obligations and incentives fall. Requirements for exhaustive mapping of every supply-chain tier, universal auditing, identical treatment of every supplier, complete physical provenance for every input or collection of information unrelated to material risk would redirect resources from prevention, worker protection and remediation to low-value administration.

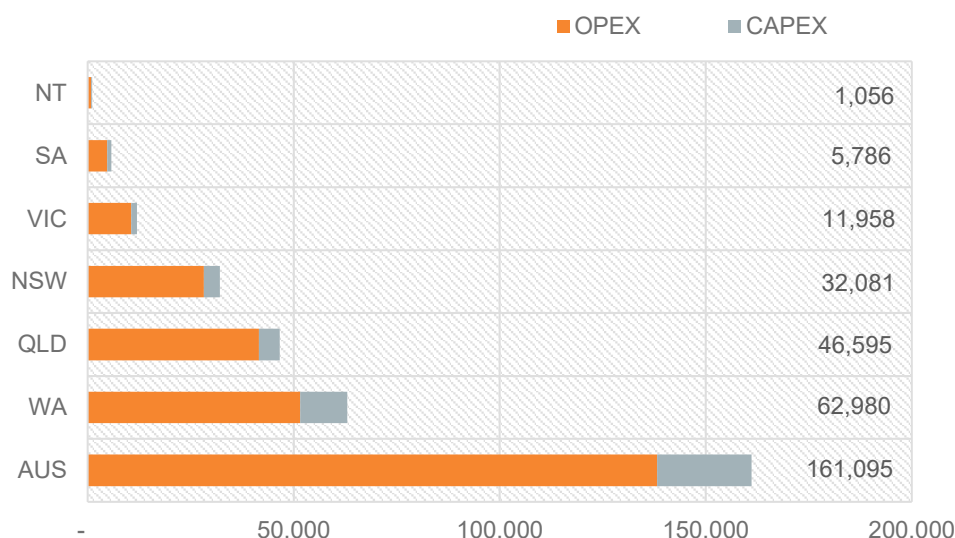
The scale of direct compliance costs will depend materially on how due diligence, disclosure, assurance and information requirements are calibrated. Large corporations will necessarily seek information, assurances, contractual commitments and evidence from suppliers to meet their own obligations. If those requirements are poorly designed, costs associated with information gathering, contract changes, audits or assurance, systems, governance and training will cascade through minerals supply chains without producing a corresponding improvement in risk management or worker outcomes.¹⁵

Cascading obligations will affect suppliers differently according to their size, resources and internal capability. The same fixed burden may fall disproportionately on smaller contractors and suppliers,¹⁶ favour larger businesses with established compliance systems, increase barriers to entry, encourage consolidation of supplier panels and reduce opportunities for smaller businesses where requirements are disproportionate to risk. These are foreseeable risks rather than inevitable outcomes, and calibrated obligations can preserve necessary supplier engagement and information flows while minimising adverse competition effects.

Table 3: Australian resources industry OPEX and CAPEX purchased by jurisdiction, 2023-24

Resources industry purchases by type (\$b)

Note: figures on right hand side are totals



Source: Lawrence Consulting, *Economic Contribution Study, 2023-24*, 2025.

The scale of the minerals procurement base makes these transmission effects material. Australian mining company OPEX and CAPEX purchases totalled approximately \$161.1 billion nationally in

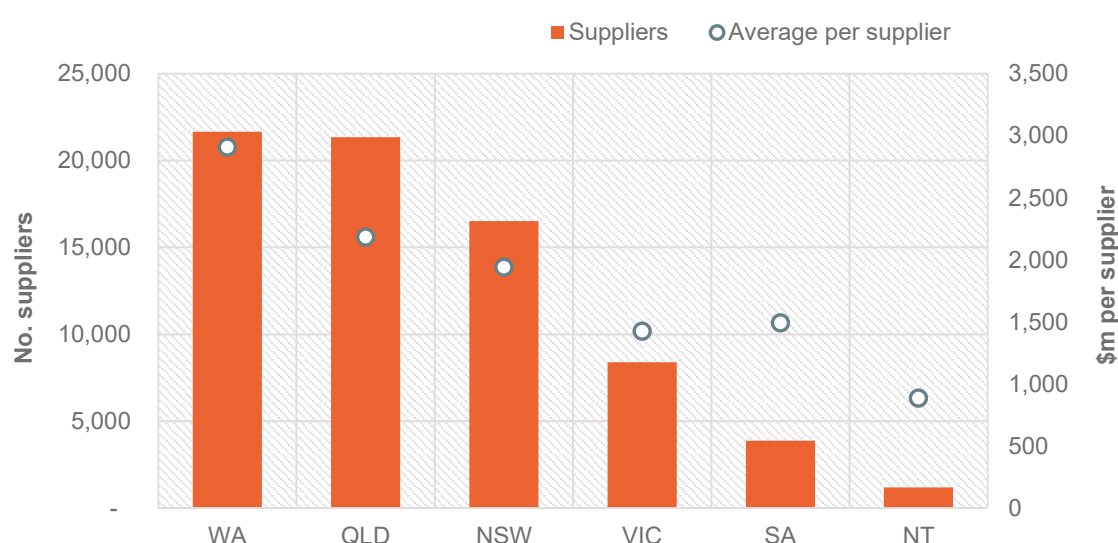
¹⁵ Organisation for Economic Co-operation and Development, [Supporting businesses in trade partner countries to meet social and environmental due diligence standards – OECD Business and Finance Policy Papers, No. 88](#), OECD Publishing Paris, 16 June 2025, pp 5, 8–12, viewed 1 September 2026

¹⁶ *Ibid*, pp 5–6, 10–16

2023–24, illustrating the breadth of commercial activity through which additional information, assurance and contracting requirements may cascade.

Those cost and competition effects can, in turn, shape commercial behaviour. Poorly calibrated incentives may encourage businesses to avoid suppliers or jurisdictions considered difficult, terminate relationships quickly, reduce engagement with higher-risk suppliers or prioritise defensive documentation over effective action.¹⁷ The better objective is to reward identification of risk, engagement with suppliers and practical steps that protect affected workers and reduce harm, including corrective action, remediation or responsible disengagement where appropriate. The breadth of the supplier base reinforces the importance of proportionate design. Australian mining companies purchase from more than 60,000 suppliers, meaning requirements imposed on reporting entities can extend through a large and diverse network of commercial relationships.

Table 4: Resources industry supplier numbers and average purchases per supplier by jurisdiction, 2023–24



Source: Lawrence Consulting, *Economic Contribution Study, 2023-24, 2025*

Protecting workers therefore depends on preserving incentives to discover and disclose problems. A corporation with stronger grievance mechanisms, supplier engagement, assurance, worker-engagement or investigation processes may identify more modern slavery risks or incidents than a corporation that undertakes less scrutiny. Regulation should encourage businesses to investigate credible allegations, preserve evidence, engage affected workers, work with suppliers, refer matters where appropriate, remediate harm and improve systems. It should not create an incentive against transparency by making effective detection itself a source of greater exposure.

Disclosure settings should reinforce that behaviour by encouraging appropriate reporting of findings, responsible supplier engagement and remediation rather than defensive compliance. Businesses operating across multiple jurisdictions may otherwise face overlapping due diligence, disclosure, assurance and information requirements that duplicate costs, create conflicting information requests and divert resources from risk identification and remediation.¹⁸ Targeted assurance of modern slavery statements may improve the credibility and quality of disclosures, but any requirement should be calibrated by threshold and scope, account for compliance costs, particularly for smaller entities and suppliers, and not apply universally to all reporting entities.

¹⁷ *Ibid*, p 5

¹⁸ *Ibid*, pp 8–10

5. DEFERRED PROSECUTION AGREEMENTS

A due diligence framework will deliver its full preventative value only if enforcement settings recognise responsible corporate behaviour when effective systems identify suspected wrongdoing. Where investigation then identifies conduct engaging corporate criminal liability, a Deferred Prosecution Agreement (DPA) can provide one structured enforcement response. That possibility does not establish the need for the proposed corporate failure-to-prevent offence, which MCA does not support, and a broader Commonwealth DPA framework can operate independently of that proposal.

Effective due diligence may reveal suspected conduct engaging existing or future corporate criminal liability, whether or not the due diligence obligations themselves attract criminal liability. Enforcement should therefore preserve incentives to investigate, protect affected workers, preserve evidence, self-report, cooperate and remediate. Properly designed, a DPA can recognise those behaviours where negotiated resolution is appropriate, so that discovery of potential wrongdoing does not itself place a corporation in a worse enforcement position when it responds responsibly.

The value of that mechanism is not leniency. Prompt and genuine self-reporting, preservation of evidence, responsible internal investigation, protection of affected workers, remediation and compensation where appropriate, corrective action, stronger governance and controls, and cooperation with domestic or international investigations¹⁹ all advance detection, remediation and prevention. They should inform prosecutorial discretion and proportionate agreement terms without guaranteeing access to a DPA.

Prosecution must remain available where negotiated resolution would not be appropriate, including in cases involving concealment, obstruction, retaliation, destruction of evidence, repeated misconduct or refusal to remediate. Proportionality, transparency and independent oversight²⁰ should be core safeguards. The terms of any DPA should be directed to the conduct and harm identified and may include cooperation, remediation, compensation, corrective action and improvements to corporate systems and controls.²¹ A DPA should not extinguish victims' existing rights or remedies.

The principal benefit of a broader Commonwealth DPA framework would therefore be better alignment of enforcement incentives with detection, disclosure, remediation and stronger corporate systems. Clear criteria, transparency and independent oversight would be necessary to address risks of inconsistent access or outcomes perceived as inadequate for serious offending.²² International experience may assist the design of a workable Australian framework, including coordination of cross-border matters where corporations face related enforcement action in multiple jurisdictions,²³ but that is secondary to the domestic objective. A credible and predictable process must give proper weight to responsible conduct after discovery without creating an entitlement to negotiated resolution or affecting victims' existing rights and remedies.

¹⁹ Serious Fraud Office, [SFO External Guidance on Corporate Cooperation and Enforcement in relation to Corporate Criminal Offending](#), Government of the United Kingdom, London, 24 April 2025, viewed 3 September 2026

²⁰ Australian Law Reform Commission, [Final Report: Corporate Criminal Responsibility, ALRC Report 136](#), Commonwealth of Australia, Canberra, 30 April 2020, pp 496–501

²¹ Organisation for Economic Co-operation and Development, [Resolving Foreign Bribery Cases with Non-Trial Resolutions: Settlements and Non-Trial Agreements by Parties to the Anti-Bribery Convention](#), OECD Publishing Paris, 2019, pp 98–99, 129–139

²² Australian Law Reform Commission, [Final Report: Corporate Criminal Responsibility, ALRC Report 136](#), Commonwealth of Australia, Canberra, 30 April 2020, pp 496–501; Organisation for Economic Co-operation and Development, [Resolving Foreign Bribery Cases with Non-Trial Resolutions: Settlements and Non-Trial Agreements by Parties to the Anti-Bribery Convention](#), OECD Publishing Paris, 2019, p 153

²³ *Ibid*, pp 37–40

6. CIVIL REMEDIES

Enforcement determines how corporate wrongdoing is dealt with; redress asks whether affected people have effective pathways to remedy. MCA recognises the importance of effective redress for victims and survivors of modern slavery.²⁴ Before creating any new standalone civil cause of action, Government should establish whether there is a genuine remedial gap and distinguish between a substantive liability gap, where the law does not provide a cause of action for particular conduct or harm, and practical barriers to accessing existing remedies, such as cost, evidence, jurisdiction, standing, limitation periods or enforcement.²⁵

Existing pathways include reparation orders under section 21B of the *Crimes Act 1914 (Cth)*, rights and remedies under the *Fair Work Act 2009 (Cth)*, common law causes of action, state and territory victim compensation schemes, other statutory remedies and voluntary mechanisms such as the Australian National Contact Point for Responsible Business Conduct. They may not be sufficient in every case, but the first task is to identify which victims or harms lack effective redress and whether the difficulty lies in substantive law or practical access.

Any new civil cause of action would then require its own policy justification. It should not arise automatically from a proposed criminal offence, another regulatory mechanism or the existence of a commercial or supply-chain relationship. The relevant question is whether a corporation's own conduct and responsibility for harm justify liability under a clearly defined civil framework.

That justification must also address how any remedy would operate with existing civil, criminal, compensation and voluntary pathways. Relevant considerations include causation, responsibility, standing, jurisdiction, extraterritoriality and interaction with existing remedies, including risks of inconsistent outcomes, procedural conflict or overlapping recovery.

Overseas resources-sector litigation illustrates the importance of distinguishing corporate connection from corporate responsibility. Parent-company liability may arise where a corporation has actually intervened in, supervised or assumed responsibility for relevant operations.²⁶ The existence of a corporate group or parent-subsidary relationship does not itself establish responsibility; the inquiry turns on the extent of management and control actually exercised in practice.²⁷ Similarly, a downstream commercial relationship, including purchasing through a complex minerals supply chain, does not of itself establish responsibility for upstream wrongdoing.²⁸ These distinctions reinforce the need for any future civil reform to preserve a clear connection between liability and the corporation's own conduct and responsibility for the harm.

A separate remedial-gap analysis should therefore determine who lacks effective redress, what harms are not adequately addressed, why existing mechanisms are insufficient and whether the problem is substantive law or practical access. Only then can Government assess whether targeted reform is required.

If that analysis demonstrates a genuine gap, reform should be designed directly and proportionately to address it. It should not create broad downstream civil liability merely because a corporation has a commercial connection to upstream conduct.

²⁴ Office of the High Commissioner for Human Rights, [Guiding Principles on Business and Human Rights](#), United Nations, New York, 16 June 2011, pp 27–32

²⁵ *Ibid*, pp 28–31

²⁶ *Vedanta Resources plc and another v Lungowe and others* [2019] UKSC 20

²⁷ *Okpabi and others v Royal Dutch Shell Plc and another* [2021] UKSC 3

²⁸ *Doe v Apple Inc* (US Court of Appeals for the District of Columbia Circuit, 2024)

7. GUIDANCE AND SUPPORT

Substantive due diligence obligations will only work if businesses can translate them into effective practice. Legislation should establish the binding requirements, while practical guidance should support consistent interpretation, explain how they can be implemented and identify good practice without creating new legal obligations, becoming a rigid checklist or producing inconsistent standards across Commonwealth or state guidance products.

The NSW Statutory Review identified the same implementation requirements: clear obligations, practical guidance, training and adequate resourcing.²⁹ The NSW Anti-slavery Commissioner also emphasised that penalties for non-compliance should attach to clear and concrete obligations and recognise differences in entity size, resources and risk profile.³⁰ Commonwealth guidance should apply that practical discipline across different organisational capabilities.

Sector-specific guidance is also necessary to explain how the obligations apply where access to information and workers, traceability, contractual rights and practical leverage vary across commercial and non-commercial relationships. It should clarify what reasonable action looks like where complete visibility cannot be achieved and make clear that difficult traceability does not bring due diligence to an end.

Applying that guidance requires a clear distinction between risk and leverage. The severity and likelihood of potential harm should determine where effort is prioritised, informed by considerations such as geography, sector or activity risk, proximity to the supplier or activity, and the availability and reliability of information. Leverage should determine what action a business can reasonably take to prevent, mitigate or address an identified risk.³¹ That capacity may vary with the nature of the commercial relationship, the corporation's share of a supplier's business, contractual rights, operational control, access to sites or workers, the number of supply-chain tiers and whether inputs are traded, processed, blended or commingled. Commercial leverage is not equivalent to legal responsibility.³² These considerations belong within a risk-based and iterative process in which expected action may change as better information becomes available or circumstances change.

The same practical approach must govern action after discovery. Guidance should address investigation, escalation, engagement with suppliers or contractors, worker engagement and protection, evidence preservation, corrective action, remediation, monitoring of agreed improvements, referral to relevant authorities where appropriate and responsible disengagement where remediation is not possible or appropriate. Due diligence does not end when a risk or incident is discovered. Businesses should be encouraged to respond constructively and focus on outcomes for affected workers. Immediate termination may not always produce the best worker outcome, but businesses should not be expected to remain indefinitely in relationships where serious risks cannot be addressed.³³

Monitoring closes the risk-management cycle by testing whether preventative and corrective measures are effective, reviewing controls as risks change, strengthening supplier engagement, grievance and escalation mechanisms, and adapting business systems as new information becomes available.³⁴ Alignment with comparable international frameworks and internationally recognisable terminology will allow minerals companies operating across multiple jurisdictions to adapt existing

²⁹ Modern Slavery Committee, [Report No. 3 Review of the Modern Slavery Act 2018 — Part 2](#), Parliament of New South Wales, Sydney, 20 December 2024, pp 10-15, 19-20, viewed 25 September 2026

³⁰ Office of the NSW Anti-slavery Commissioner, [Review of the Modern Slavery Act 2018 — Part 2: Response of the NSW Anti-slavery Commissioner](#), Office of the NSW Anti-slavery Commissioner, Sydney, 18 March 2025, pp 5-6, viewed 25 September 2026

³¹ Office of the High Commissioner for Human Rights, [Guiding Principles on Business and Human Rights](#), United Nations, New York, 16 June 2011, pp 21-22, 26

³² *Ibid*, pp 14-15, 21-22

³³ *Ibid*.

³⁴ *Ibid*, pp 17-18, 22

human rights, modern slavery or supply-chain due diligence systems where they meet Australian requirements, avoiding unnecessary duplication, inconsistent reporting or assurance expectations and parallel risk-assessment systems.

Integration into existing procurement, contracting, supplier management, risk management, governance, assurance, grievance, escalation, remediation and reporting processes will be essential.³⁵ Sector-specific examples and tools should help businesses prioritise risks and respond appropriately without requiring a standalone compliance system disconnected from normal business decision-making. Final legislation and final guidance should be settled before an 18-month implementation period begins, allowing businesses to adapt governance, procurement, contracting, supplier data, risk assessment, assurance, training, escalation, reporting and internal responsibilities. Once those systems are operating, enforcement settings must reinforce the same objective by encouraging businesses to identify problems, cooperate and remediate rather than conceal risks or retreat into defensive compliance.

³⁵ Organisation for Economic Co-operation and Development, [*OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas: Third Edition*](#), OECD Publishing Paris, 6 April 2016, pp 15-19, viewed 1 September 2026