

Submission to the Joint Standing Committee on Foreign Affairs, Defence and Trade for the Inquiry into establishing a Modern Slavery Act in Australia by the Advisor Committee of the Modern Slavery Registry

Focus on Labour Exploitation (FLEX)

18 May 2017

Summary

Focus on Labour Exploitation (FLEX) welcomes the opportunity to submit evidence to the Joint Standing Committee on Foreign Affairs, Defence and Trade inquiry into modern slavery.

This submission draws on FLEX's experience, both as an active participant in the UK Modern Slavery Act process, and as experts in domestic and international responses to human trafficking for labour exploitation. The submission calls for a comprehensive approach to addressing modern slavery, that aims to prevent exploitation and protect victims, as well as prosecuting perpetrators. The introduction of a new Act is an opportunity to provide a comprehensive legal framework for addressing human trafficking, forced labour, slavery and slavery-like practices. However the Act must address all three elements of the model response to human trafficking, giving as much weight to prevention measures and the protection of victims as it does to prosecution. In so far as a transparency in supply chains provision is included in the Act, this provision should be seen as part of a broader effort to ensure corporate accountability and prevent exploitation in corporate supply chains.

List of recommendations

Offences:

1. The new Act should make clear that the consent of the victim does not preclude a determination that an offence has been committed.
2. Offences in the new Act should be consistent with international definitions of forced labour, slavery, servitude and trafficking in persons.
3. Recommendation: The new Act should make explicit provision for corporate criminal liability for offences under the Act.

Compensation

4. The new Act should include a requirement that victim compensation orders be considered by the Court in all cases following conviction for an offence under the Act.
5. The new Act should include a civil remedy for victims of modern slavery.
6. The new Act should provide for a specific compensation fund for victims, financed out of proceeds of crime recoveries.

Victim support

7. The entitlement of victims to support and a minimum set of support standards should be included in the new Act.

Independent oversight

8. The Act should include the establishment of an independent Commissioner or similar independent oversight mechanism, that is tasked with monitoring, measuring and improving the government's response to modern slavery.

Corporate accountability

9. The inclusion of any transparency in supply chains provision in the new Act should be recognized as just one part of a more comprehensive response to modern slavery.
10. Any transparency in supply chains provision included in the Act should include mandatory areas for disclosure, including due diligence and risk assessment practices; inspections; engagement with unions and worker organisations; and identification, remedy and response to modern slavery incidents.
11. A publicly accessible central registry where companies would be required to submit their annual statements should be created and maintained by the Australian government.
12. Any transparency in supply chains provision included in the Act should include a strong monitoring and enforcement mechanism, including penalties for failure to produce a statement and failure to comply with the mandatory elements of the statement.

Procurement

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13. Any transparency in supply chains provision included in the Act should include government bodies in the list of legal entities required to report.
14. The Act should exclude from public procurement processes any contractor who has not complied with any reporting requirements under the Act.

Labour inspection and enforcement

15. The Australian Government should ratify the ILO's Forced Labour Protocol.
16. The Australian Government should review and strengthen the operation of the Fairwork Ombudsman, including adequately empowering and resourcing the Ombudsman to carry out proactive investigations and referrals to the Australian Federal Police.

About FLEX

FLEX works to end human trafficking for labour exploitation. To achieve this, FLEX works to prevent labour abuses, protect the rights of trafficked persons and promote best practice responses to human trafficking for labour exploitation by undertaking research, advocacy and by building awareness in this field. Through this work FLEX:

1. Ensures that the enforcement of labour rights forms part of national and international responses to trafficking for labour exploitation;
2. Ensures that victims of trafficking for labour exploitation are recognised as individuals and rights-bearers; and
3. Challenges policies, attitudes and practices that drive labour exploitation.

FLEX established itself as a leader in policy and practice to prevent trafficking for labour exploitation in the UK through its close involvement in the development of the UK Modern Slavery Act 2015. FLEX was a founding member of the NGO coalition on transparency in supply chains, which worked together with companies and industry bodies to progress the transparency in supply chains provision of the Act, including drafting proposed text and briefing MPs. Subsequent to the Act, FLEX has co-written standard setting guidance for companies on complying with the TISC provisions therein. FLEX is also a founding member of the Modern Slavery Registry Advisory Committee. FLEX is a registered charity based in London, UK.

The Labour Exploitation Accountability Hub

The Labour Exploitation Accountability Hub¹ was launched by FLEX in 2015 and is a key resource for the promotion of both government and corporate accountability for human trafficking, forced labour and slavery in national and global business supply chains. The Hub aims to generate a broader discussion about how corporate accountability can be achieved and providing the basic legal information needed to impose accountability on both companies and governments. The Hub also provides a platform for further research and advocacy on accountability issues, including by fostering connections and information sharing among key stakeholders from different parts of the world.

The main feature of the Hub is the publicly accessible database, which provides a broad inventory of national laws and regulations addressing severe labour exploitation in supply chains, including criminal, labour and administrative laws. The database is searchable by country, legal topic, and by keywords, and includes brief notes on the implementation of the collected legal mechanisms. Country summary pages also provide an overview of the national context and legal framework, and highlight key implementation issues.²

¹ See <http://accountabilityhub.org/>

² See <http://accountabilityhub.org/countries/>

1. Provisions in the UK Modern Slavery Act which have proven effective in addressing modern slavery, and whether similar or improved measures should be introduced in Australia;

The Modern Slavery Act was passed into law on 26 March 2015, and its provisions variously came into effect in July and October 2015. On many aspects of the legislation it is therefore too early to give a conclusive assessment of its effectiveness, though some initial effects and assessments are set out below. The provisions covered below are those that FLEX feels are most salient in the Australian context and in which FLEX was most closely involved in developing during the Modern Slavery Bill process. FLEX also advocated strongly for the review of the Gangmaster's Licensing Authority provided for in Section 55 of the Modern Slavery Act. This important prevention and identification component of the Act is covered further in the second part of this submission.

○ *Part 1 - Offences*

The UK Modern Slavery Act clarified and consolidated the UK's criminal law in relation to human trafficking, forced labour and slavery. This has assisted in increasing the number of investigations and prosecutions for modern slavery offences in the UK since the Act.³

FLEX welcomed the addition of Section 1(5) to the offence of forced labour, slavery and servitude, which confirms that:

The consent of a person (whether an adult or a child) to any of the acts alleged to constitute holding the person in slavery or servitude, or requiring the person to perform forced or compulsory labour, does not preclude a determination that the person is being held in slavery or servitude, or required to perform forced or compulsory labour.

This is important, as in many cases the victim will have initially agreed to work for the perpetrator, but is subsequently threatened or coerced in a way that prevents them from leaving or asserting their labour rights. Yet this initial consent is sometimes taken by law enforcement as consent to the exploitation, and leads to the rejection or dismissal of cases.

Recommendation: The new Act should make clear that the consent of the victim does not preclude a determination that an offence has been committed.

³ Haughey, *The Modern Slavery Act Review*, (2016) available at <https://www.gov.uk/government/publications/modern-slavery-act-2015-review-one-year-on>

However FLEX notes that the UK Modern Slavery Act definition of human trafficking differs from the international definition in the *UN Protocol to Prevent, Suppress and Punish Trafficking in Persons* ('The Trafficking Protocol'). Article 3 of the Trafficking Protocol defines trafficking in persons as:

The recruitment, transportation, transfer, harbouring or reception of persons, including the exchange or transfer of control over those persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.

Unlike the international definition of human trafficking, the Modern Slavery Act does not criminalise the 'harbouring', 'reception', 'exchange or transfer of control' of victims, or even the 'recruitment' of victims, where these acts do not involve the arrangement or facilitation of travel. This may be problematic in cases involving large criminal networks where different people carry out different roles in the trafficking process.

The use of definitions that align with internationally accepted definitions is critical to facilitate international cooperation in the investigation and prosecution of crime. It is also essential to ensure that the extensive body of international legal obligations and guidance that has been developed based the Trafficking Protocol can be directly applied to victims meeting that definition in Australia.

Recommendation: Offences in the new Act should be consistent with international definitions of forced labour, slavery, servitude and trafficking in persons.

The Modern Slavery Act also fails to make clear whether companies may be held criminally liable for offences under the Act. While the Government has suggested that the ordinary principles of corporate criminal liability should apply to these offences, how and whether this would occur is by no means clear. Without a specific provision for corporate criminal liability it is highly unlikely that companies will ever be prosecuted, and to date no such prosecutions have been brought, despite the recent prosecution of a company owner.⁴ By contrast, the Scottish *Human Trafficking and Exploitation Act 2015*⁵ makes clear provision for corporate criminal liability, while legislation in Belgium has been used successfully to prosecute a company for the exploitation of their cleaners.⁶

⁴ See BBC News, *Bed firm boss convicted over 'slave workforce'* (20 January 2016) available at <http://www.bbc.co.uk/news/uk-england-leeds-35363259>

⁵ See <http://accountabilityhub.org/provision/section-35-2/>

⁶ See <http://accountabilityhub.org/country/belgium/>

Recommendation: The new Act should make explicit provision for corporate criminal liability for offences under the Act.

- *Section 8 – Reparation orders*

An important inclusion in the UK Modern Slavery Act is the provision for reparation orders to be made for the payment of compensation by the offender to the victim. Reparation orders may be made where an offender is convicted of an offence under the Act, and a confiscation order is made. Crucially, under Section 8(7) the Court must at least *consider* making a reparation order in eligible cases, and if no order is made, reasons must be given. This provision aims to ensure that the compensation of victims is not overlooked in the criminal justice process, and places responsibility for initiating the compensation order with the Court rather than the prosecution.

However, for this requirement to be effective, there also must be awareness-raising and training to ensure Courts and prosecutors are aware of the Court's duty. Despite the entry into force of the Modern Slavery Act in mid-2015, there was only one order for compensation made in that year, out of 31 convictions for human trafficking, forced labour and slavery.⁷ This indicates that despite the new Act, awareness of the rights of victims to compensation remains low.

Recommendation: The new Act should include a requirement that victim compensation orders be considered by the Court in all cases following conviction for an offence under the Act.

- *Part 4 – Independent Anti-Slavery Commissioner*

The Act establishes a new position of 'Independent Anti-Slavery Commissioner', who is tasked with encouraging good practice in the prevention, detection, investigation and prosecution of slavery and human trafficking offences, and the identification of victims of those offences. The Commissioner may also have regard to the assistance and support of victims, but only in as this relates to the above-mentioned activities. In this way, the Commissioner's concern regarding the support of victims is unfortunately tied to the role of such support in achieving prevention, detection, investigation and prosecution.

In carrying out these objectives, the Commissioner may conduct research, make recommendations to public bodies, provide education and information, and report to the Secretary of State. The Commissioner also prepares a Strategic Plan and Annual Report each year, which is approved by the Secretary of State and laid before Parliament.

⁷ See UK Ministry of Justice, *Criminal justice statistics outcomes by offence data tool* (December 2015), available at <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2015>

Important ‘independent’ features of the Commissioner’s post include:

- The ability of the Commissioner to appoint her or his own staff;
- The requirement in Section 44 that the public bodies cooperate with the Commissioner in the exercise of his or her functions.

However the Commissioner’s independence is at the same time restricted by the requirement that the Commissioner report only on ‘permitted matters’ or those matters contained within the Strategic Plan approved by the Secretary of State. The process for the appointment of the Director is also not contained in the Act, and was consequently lacking in transparency.

The Commissioner has the potential to play a crucial function in monitoring and improving the implementation of the Modern Slavery Act and the governments wider modern slavery policy. This role could be further strengthened if the Commissioner was tasked with collecting and analyzing data on modern slavery, including and in particular data on compensation and long-term outcomes for victims, which is currently severely lacking in the UK.

Recommendation: The Act should include the establishment of an independent Commissioner or similar independent oversight mechanism, that is tasked with monitoring, measuring and improving the government’s response to modern slavery.

- *Sections 49 and 50 – support of victims*

Under Sections 49 and 50 of the UK Modern Slavery Act, the Secretary of State may make regulations and issue guidance to public authorities on the support of victims. The Act itself does not contain any detail on the support entitlements of victims, despite the UK government’s obligations to provide such support under the *Council of Europe Convention Against Trafficking in Human Beings* and the EU Trafficking Directive.⁸ This is in contrast with the contemporaneous *Scottish Human Trafficking and Exploitation Act 2015* and the *Northern Ireland Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act 2015*, each of which confirm the entitlement of identified victims to support, and set out the type of support to be provided.

More than two years on from the passage of the Modern Slavery Act, no guidance or regulations have been issued in relation to the support of victims. Such uncertainty should be avoided by ensuring that victim support is included in the primary Act.

⁸ *Directive 2011/36/EU of the European Parliament and of the Council on preventing and combatting trafficking in human beings and protecting its victims* (5 April 2011)

Recommendation: The entitlement of victims to support and a minimum set of support standards should be included in the new Act.

- *Section 54 - Transparency in Supply Chains.*

As a preliminary note, FLEX submits that the inclusion of a transparency in supply chains (TISC) provision is a useful step forward in recognizing and developing corporate responsibility for exploitation in their supply chains. However a TISC provision must be seen as just part of a comprehensive prevention strategy, that also includes effective labour inspection and protection systems, and must be couple with strong criminal and civil enforcement mechanisms where businesses are found to be knowingly using or benefiting from worker exploitation. For example, as noted above, any new Act should make clear provision for corporate criminal liability for modern slavery offences, similar to those included in the *Scottish Human Trafficking and Exploitation Act 2015*. A TISC provision is by no means a ‘silver bullet’ and should not distract from government’s primary obligations to prevent and prosecute exploitation and to identify and protect victims.

Recommendation: The inclusion of any transparency in supply chains provision in the new Act should be recognized as just one part of a more comprehensive response to modern slavery.

The primary benefit of a TISC provision in the UK has been an increase in company awareness and engagement on the issue of modern slavery. The requirement that human trafficking and slavery statements be placed in a prominent place on company websites makes the company response to modern slavery a visible form of accountability to its customers, employees, and the general public. Companies are more motivated to consider their policies and procedures relevant to worker exploitation, to examine their supply chains, and to engage with stakeholders including civil society and their suppliers. Increasingly companies are also undertaking internal training and developing internal policies to increase awareness and formalise their response to modern slavery. In particular the requirement in Section 54(6) for the slavery and human trafficking statement to be approved by the company’s board of directors and signed by a director appears to have increased the engagement of senior executives and helped to mainstream the issue within companies.⁹

Recommendation: Any transparency in supply chains provision included in the Act should include a requirement that modern slavery statements are

⁹ Ethical Trading Initiative and Hult International Business School, *Corporate Leadership on Modern Slavery* (2016)

authorised by the board and signed by a director, and displayed in a prominent position on the company's website.

However there are some deficiencies in Section 54 that any Australian Modern Slavery Act should seek to address.

a) *Content of statements*: Section 54 does not prescribe the content to be included in slavery and human trafficking statements, but instead lists information that “may” be included. This formulation was intended to provide flexibility in the way that companies report, but has resulted in statements that vary drastically in their content and quality,¹⁰ and are consequently difficult to assess and compare.

This approach is in contrast to the *Californian Transparency in Supply Chains Act (SB 657)* which sets out the matters to be disclosed, including risk assessments of product supply chains; supplier audits; supplier certifications; internal accountability standards and procedures; and training. It is also in contrast with the stricter reporting requirements in the new French Duty of Vigilance Law.

Clear content requirements are needed to ensure that modern slavery reports are informative, comparative and useful. These should include due diligence and risk assessment practices; inspections; engagement with unions and worker organisations; and processes for identification, remedy and response to modern slavery incidents.

Recommendation: Any transparency in supply chains provision included in the Act should include mandatory areas for disclosure, including due diligence and risk assessment practices; inspections; engagement with unions and worker organisations; and identification, remedy and response to modern slavery incidents.

b) *Central registry*: The UK legislation does not provide for a central registry for the collection of the statements provided by complying companies. Without a government-run registry, it is left to various civil society organisations to attempt to fill the gap, resulting in confusion and inefficiency.

A central registry maintained by the government is the most efficient and effective way to collect and display statements and to monitor compliance with the Act. Government is best placed to collect statements and should be primarily responsible for monitoring compliance with its own legislation. The central registry

¹⁰ See Business and Human Rights Resource Centre and CORE, *Register of slavery & human trafficking corporate statements released to date to comply with UK Modern Slavery Act (2016)* available at <https://business-humanrights.org/en/uk-modern-slavery-act-analysis-of-early-company-statements-new-guidance-available>

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should be publicly accessible, and should include a list of all companies required to report, in order that non-complying companies can be identified.

Recommendation: A publicly accessible central registry where companies would be required to submit their annual statements should be created and maintained by the Australian government.

c) Enforcement mechanism: The mechanism for enforcing compliance with the UK transparency in supply chains provision is an injunction sought by the Secretary of State under Section 54(11). A very similar mechanism exists under the Californian Transparency in Supply Chains Act. To date no such actions have been brought to enforce compliance in either jurisdiction, creating an atmosphere of impunity for non-compliance.

Without a central registry and list of companies required to report, it is difficult to estimate how many companies are currently in breach of their obligations under the UK Act, however it is estimated to be in the thousands. In order to be effective, the Australian Modern Slavery Act will require a stronger monitoring and enforcement mechanism, including penalties for failure to produce a statement and failure to comply with the mandatory elements of the statement. This ensures that not only industry 'leaders' but also industry laggards are forced to comply, and creates a level playing field amongst all companies required to report.

Recommendation: Any transparency in supply chains provision included in the Act should include a strong monitoring and enforcement mechanism, including penalties for failure to produce a statement and failure to comply with the mandatory elements of the statement.

d) Public procurement: The Modern Slavery Act is silent on the treatment of human trafficking and slavery statements in government procurement. The Act also does not apply to government bodies, so that such bodies are not required to report under the Act, despite the significant influence and purchasing power of the UK Government.

In the United States, *Executive Order 13627 (the "Order") Strengthening Protections Against Trafficking in Persons in Federal Contracts* of 2012 prohibits federal contractors from engaging in practices that relate to or may lead to human trafficking. The Order also imposes certain requirements for the prevention of human trafficking on contracts and subcontracts for materials or services outside the United States. These include the requirement that contractors produce a 'compliance plan' and certify that they have not engaged in human trafficking

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activities. Failure to comply with the requirements may result in suspension, termination of the federal contract, and imprisonment for false certification.¹¹

FLEX recommends that in a new Act the Australian government lead from the front and use its purchasing power to drive change amongst supplier companies. The Act should require that companies bidding for public contracts at the very least have complied with the Act's reporting requirements, and preferably have in place due diligence procedures for the identification and remedy of exploitation in their supply chains.

Recommendation: Any transparency in supply chains provision included in the Act should include government bodies in the list of legal entities required to report. The Act should also exclude from public procurement processes any contractor who has not complied with any reporting requirements under the Act.

¹¹ See further <http://accountabilityhub.org/country/the-united-states/>

2. Identifying international best practice employed by governments, companies, businesses and organisations to prevent modern slavery in domestic and global supply chains, with a view to strengthening Australian legislation;

Addressing exploitation in supply chains requires a holistic approach to prevention, that not only promotes transparency and accountability, but also addresses worker vulnerability and promotes the protection of workers' rights.

The International Labour Organisation's recent Forced Labour Protocol of 2014 provides a comprehensive framework for addressing forced labour, including concrete measures for the prevention of labour exploitation. In particular the Protocol requires States to strengthen labour inspection systems, and to ensure labour laws are implemented and enforced for *all* workers.

Recommendation: The Australian Government should ratify the ILO's Forced Labour Protocol.

FLEX [research](#) has also highlighted the link between labour abuses and vulnerability to labour exploitation, and the [need](#) for a strong and well-resourced labour inspectorate to identify and prevent labour exploitation throughout the labour market. Countries such as France, Belgium and the Netherlands have comprehensive and dedicated labour inspectorates, with at least five inspectors per 100,000 workers, and with powers to proactively investigate labour rights abuses, including forced labour.¹² In Brazil, labour inspectors carry out intelligence-led multi-agency operations, in collaboration with federal police and prosecutors, that not only identify exploited workers but immediately seek the repayment of workers' wages and entitlements.¹³

The UK's Gangmasters' Licensing Authority (GLA) is recognised as highly effective in the prevention and enforcement of labour abuses, through its combination of license monitoring, intelligence gathering, proactive investigations, and collaborative prevention work. However until recently the GLA was restricted in its remit to monitoring the food processing, agriculture, horticulture and shellfish gathering sectors, and has been severely underfunded. Section 55 of the Modern Slavery Act initiated a review of the GLA's remit, ultimately resulting in a significant expansion of its power and scope. The new Gangmasters and Labour Abuse Authority (GLAA) has extended police powers to investigate allegations of abuse across the entire UK labour market. Specialist investigators, called Labour Abuse Prevention Officers, have the power to investigate offences under the Modern Slavery Act, as well as

¹² See Focus on Labour Exploitation, *Combatting Labour Exploitation Through Labour Inspection*, (2015).

¹³ International Labour Organisation, *The good practices of labour inspection in Brazil: the eradication of labour analogous to slavery* (2010).

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offences under the Employment Agencies Act 1973 and the National Minimum Wage Act 1998.¹⁴

The expansion of the GLA enables abuses throughout the labour market to be identified and addressed by specialist labour inspectors, with the power to apply a range of legislation to address labour exploitation. It also goes some way to filling the regulatory 'gap' between labour rights abuses and modern slavery, into which many exploited workers fall. However such an expansion will require significant resourcing in order to be effective, and it is currently unclear the extent to which the GLAAs resources will be increased to meet this increased responsibility.¹⁵

In Australia federal employment legislation is enforced by the Fairwork Ombudsman, who conducts awareness campaigns on migrant workers' rights and pursues civil cases through the courts for workplace violations, such as underpayment of wages. The Ombudsman investigates a small number of cases each year, usually involving systemic or particularly serious cases of exploitation. However, reportedly none of the cases investigated by the Ombudsman in 2015 were referred to police for criminal investigation of potential forced labor.¹⁶ Compared to that of the GLAA and labour inspectorates in Europe, the Fairwork Ombudsman's role is more reactive and less focused on inspection and enforcement. Without a strong and well-resourced labour inspectorate in Australia, the ability of Australian authorities to prevent and detect modern slavery will continue to be limited.

Recommendation: The Australian Government should review and strengthen the operation of the Fairwork Ombudsman, including adequately empowering and resourcing the Ombudsman to carry out proactive investigations and referrals to the Australian Federal Police.

¹⁴ *Immigration Act 2016* (UK), Section 12.

¹⁵ See further, Robinson, 'The Modern Slavery Act is not enough. We must tackle labour exploitation', *Open Democracy* (7 November 2016), available at <https://www.opendemocracy.net/neweconomics/the-modern-slavery-bill-is-not-enough-we-must-tackle-labour-exploitation/>

¹⁶ United States Department of State, *Trafficking in Persons Report: Australia* (2016) available at <https://www.state.gov/j/tip/rls/tiprpt/countries/2016/258716.htm>

3. Federal compensation for victims of modern slavery;

Access to compensation can play an important role in the recovery of survivors of modern slavery. Receiving a fair compensation award can provide victims with a sense of justice and closure, as well as with the financial means to stay safe and rebuild their lives. It can break the cycle of exploitation and reduce victims' vulnerability to re-exploitation, thus making anti-trafficking responses more sustainable in the long term. The effective enforcement of compensation also serves a punitive purpose, making human trafficking and forced labour riskier, less profitable crimes.

FLEX research in the UK has demonstrated that the lack of a clear and specific compensation avenue for victims of human trafficking, forced labour or slavery, means that many victims are unable to access the compensation they deserve.¹⁷ As in Australia, there is no dedicated compensation fund for victims of human trafficking or modern slavery in the UK, and pursuing a civil compensation claim is complex and potentially costly. Compensation obtained following a criminal conviction is also rare, as noted above, due to the low numbers of prosecutions and the failure of Courts to consider compensation in all cases. Some of these issues could be addressed by the creation of a) a specific civil remedy for victims of modern slavery, and/or b) a specific modern slavery victim compensation fund.

a) Civil remedy: In the United States the *Trafficking Victims Protection Re-authorization Act* of 2003 created a civil remedy for victims of trafficking offences that allows victims to claim both actual and punitive damages and legal fees. Damages can include not only compensation for injuries, but also unpaid wages and other entitlements in the case of labour exploitation. Claims under this provision may be made against both primary offenders and those who knowingly benefit from forced labour, allowing victims the possibility to recover from exploiters higher up the supply chain.¹⁸

In the recent case of *David v. Signal International*¹⁹ hundreds of guest workers from India were fraudulently recruited and exploited by a New Orleans construction company in the aftermath of Hurricane Katrina. A jury found that the company, its lawyer and Indian-based recruiter had engaged in labour trafficking, fraud, racketeering and discrimination, and awarded five of the workers USD\$14 million in compensatory and punitive damages. Other workers subsequently settled their claims against the company for a further USD\$20 million.

¹⁷ FLEX, *Working Paper: Access to compensation for victims of human trafficking*, (July 2016), available at <http://www.labourexploitation.org/sites/default/files/publications/DWP-Compensation-F.pdf>

¹⁸ See further <http://accountabilityhub.org/country/the-united-states/>

¹⁹ For details see <https://www.splcenter.org/news/2015/02/18/federal-jury-splc-case-awards-14-million-indian-guest-workers-victimized-labor-trafficking>

Civil litigation of this kind can be driven by the victim and does not rely on the success of criminal justice processes. Importantly, claims under this Act and under US labour legislation are available to both documented and undocumented victims, and exploiters are prohibited from using a victims' immigration status against them in court.

Recommendation: The new Act should include a civil remedy for victims of modern slavery.

b) Dedicated compensation fund: A dedicated compensation fund for victims of modern slavery is the best way to ensure that all victims are able to access compensation in a straightforward and timely manner. The existence of such a fund would ensure that victims are able to access compensation even if their exploiter can not be identified and prosecuted, and does not depend on the amount of the exploiter's assets that are able to be located. In the Australian context, a federally administered fund would also ensure that victims of federal modern slavery crimes would have access to the same compensation no matter where they are located.²⁰

Such a fund could be financed out of proceeds of crime actions (either directly related to modern slavery offences or otherwise). Figures provided by the UK Home Office revealed that over £1million pounds was confiscated from convicted traffickers in 2014-15.²¹ As prosecutions in Australia increase, perhaps as a result of the new Act, similar amounts could also be obtained through proceeds of crime proceedings and used to compensate victims in Australia.

Recommendation: The new Act should provide for a specific compensation fund for victims, financed out of proceeds of crime recoveries.

²⁰ See further Anti-Slavery Australia, *Establishment of a national compensation scheme: Policy position paper No. 2* (March 2016).

²¹ Human Trafficking: Confiscation Orders: Written question – 7204 (July 2015)

<http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2015-07-15/7204>