

25 September 2026

Australian Government
Attorney-General's Department
Robert Garran Offices
3-5 National Circuit
BARTON ACT 2600

Dear Attorney-General's Department,

Submission on the proposed Failure to Prevent amendments to the *Modern Slavery Act 2018* (Cth)

We are grateful for the opportunity to input into the Government's proposed measures to strengthen Australia's legislative response to modern slavery in supply chains.

Walk Free is an international human rights group working to accelerate the end of all forms of modern slavery. In addition to producing the Global Slavery Index, the world's most comprehensive dataset on modern slavery, Walk Free works to strengthen corporate accountability practices together with diverse stakeholders. For example, Walk Free serves as secretariat for the Asia Pacific's Bali Process Government and Business Forum, as steerco member and knowledge partner for Investors Against Slavery and Trafficking-Asia Pacific, and works with several business engagement initiatives aimed at growing responsible supply chains.

We have continuously noted that Australia is overdue to transition the 'United Nations Guiding Principles on Business and Human Rights' from guidelines into binding laws. In line with our past advocacy and Recommendation 11 of the McMillan review of the *Modern Slavery Act 2018* (Cth) (MSA), we urge the introduction of a mandatory, risk-based modern slavery due diligence obligation, backed by civil penalties. This is fundamental to any effective reform package.

Although a strong indicator of Australia's commitment to tackling forced labour, the Government's recently proposed Failure to Prevent (FTP) offence will only drive meaningful change if it is simultaneously paired with an enforceable civil regime. Only due diligence will adequately address the critical enforcement gap between current mandatory reporting and the broadly framed criminal penalty.

A criminal offence on its own will rollback hard-won gains by silencing existing compliance with reporting, and simultaneously encouraging pragmatic businesses to gamble on enforcement given the criminal standard of proof will rarely, if ever, be met. This counter-intuitive approach will fail both those striving to act responsibly and survivors of modern slavery.

This is not a nascent threat. During our engagement with business leaders throughout the consultation period, several already noted plans to disclose fewer details in their modern slavery statements, as well as scaling back engagement with suppliers and civil society organisations, to manage the perceived liability risk.¹ This is the antithesis of the disclosure culture built over the years under the MSA.

Businesses crave regulatory certainty. A standard of conduct that companies can direct their compliance efforts toward, and against which reasonable steps can be recognised,² would encourage genuine engagement. A positive duty can provide that.

What's more, given the inherent complexity of global supply chains, we expect prosecution of an FTP offence will only occur in rare, uniquely egregious circumstances. By incorporating a modern slavery due diligence obligation, there is real opportunity to:

- Convert Australian corporate behaviour from transparency practices to steps that meaningfully stimulate finding, fixing and preventing modern slavery;
- Ensure Australia is no longer outpaced by global regulatory evolution that strongly favours human rights due diligence legislative frameworks and corresponding civil penalties in corporate law reform;³
- Level the playing field by applying due diligence obligations to the Australian Government, where solely relying on criminal liability leaves an accountability gap; and
- Serve as a clear guide to businesses about what factors may be considered to raise a "reasonable steps" defence, if charged with an FTP offence.

Therefore, we strongly recommend that Australia's legal response to forced labour in supply chains include:

- A mandatory, risk-based due diligence obligation in the MSA, applicable to in-scope reporting entities and the Government, and supported by guidance and a competition law class exemption;
- Civil penalties for entities that fail to conduct due diligence or provide remedy, proportionate to the scale and severity of the breach;
- Government-issued, evidence-based high-risk declarations covering sectors, products, and regions where enhanced due diligence is expected. These declarations should be regularly updated and should support, not replace, entities' responsibility to identify their own salient risks; and
- An FTP offence reserved for the most serious conduct only, anchored to the mandatory due diligence duty through the "reasonable steps" defence.

A summary of our key recommendations to Parts A and B of the Consultation Paper are below. This is followed by our detailed responses to the consultation questions, and an Appendix, which applies our recommendations to illustrative case studies.

We welcome the opportunity to discuss this submission in further detail.

Sincerely,



Jacqueline Joudo Larsen
Executive Director, Gender Equality

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Summary of key steps to improve the proposed Failure to Prevent model

To create an effective model to prevent modern slavery in supply chains as outlined in the case studies provided in the **Appendix – Illustrative case studies**, the Australian Government must:

1. Ensure that businesses and the Australian Government have a positive duty to identify modern slavery risks in their value chains¹ and provide remedy when harm occurs, through introducing a mandatory modern slavery due diligence (DD) obligation into the MSA with:
 - a. A practical and scalable obligation, accounting for the reality that businesses have different capacities and risk profiles.
 - b. Guidelines to streamline reporting, including clarifying that suppliers could meet their obligations through risk mapping, effective engagement with their own suppliers, and remediation processes appropriate to their operations.
 - c. Clear definitions to promote consistency and comparability between countries on reportable issues.
2. Introduce civil penalties for businesses that fail to undertake mandatory modern slavery DD or fail to report on actions to identify and remedy risks, with tiered penalties proportionate to the scale and severity of the breach.
3. Recognise the immense challenges in prosecuting modern slavery crimes, and ensure that, at a minimum, any criminal penalty:
 - a. Clearly articulates the MSA's primary objective to prevent and reduce modern slavery, without discouraging disclosures;
 - b. Applies to all businesses, regardless of turnover or size;
 - c. Establishes a broad nexus between the offence and the corporations' products or services;
 - d. Excludes a causal connection between a corporation's conduct and the offence, so that liability is not simply restricted to the first tiers of a supply chain;
 - e. Enforces absolute liability paired with a "reasonable steps" defence;
 - f. Accounts for the extraterritoriality of modern slavery offences;
 - g. Defines "reasonable steps" based on recognised components of modern slavery DD;
 - h. Guides reporting entities with a Government-issued high-risk declarations which cover sectors, products, and regions where enhanced DD is expected;
 - i. Supports a competition law class exemption for DD collaboration;

¹ We note that the *Modern Slavery Act 2018* (Cth) uses the term "operations and supply chains" which is not defined in the Act. This is not aligned with the UNGPs, which uses the term "value chains" to refer to all internal and external activities in the business lifecycle. We have adopted the term value chains throughout this submission in line with best practice.

- j. Restricts the FTP offence to the forms of modern slavery most likely to arise in supply chains (slavery, servitude, forced labour, and debt bondage), and addresses deceptive recruitment through the civil DD obligation, supported by guidance;
 - k. Ensures that a proportion of any penalties is channelled into a fund to support rightsholder-led monitoring and remedy processes; and
 - l. Commences in phases, starting with corporations with annual revenue over \$100 million within 12 months, and extending to all other corporations within a further six months.
4. Provide alternate enforcement mechanisms proportionate to the seriousness of the offence, and tied to adequate civil remedies for victims including:
- a. Deferred Prosecution Agreements (DPAs) which:
 - i. Deliver strong outcomes for workers;
 - ii. Guide collaboration requirements and exclusions for the most serious breaches;
 - iii. Ensure outcomes are predicated in self-reporting or the highest degrees of active cooperation;
 - iv. Consider impacts on victim-survivors, and the corporation's history and compliance culture;
 - v. Require consultations with victim-survivors in the negotiation of the terms of a DPA; and
 - vi. Make arrangements publicly available and subject to independent monitoring
 - b. Civil remedies for victims which are:
 - i. Available regardless of prosecution or conviction;
 - ii. Accessible to victims and their representatives in Australia and overseas;
 - iii. Establish consistent eligibility criteria, categories of harm, time limits and compensation standards; and
 - iv. Resourced through a proportion of monetary penalties collected under the civil penalties and FTP offence.

Part A – Core legislative components of a Failure to Prevent offence

Question 1 Part 1: Are there any other components that should be included within the legislation, or alternative approaches considered, to clearly establish its scope, application and interaction with existing modern slavery and broader legislative frameworks?

Recommendation 1: Introduce a mandatory, risk-based DD obligation into the MSA as a fundamental prerequisite to the proposed FTP offence.

Legislative design that includes an FTP offence requires an integrated civil and criminal model clearly articulated within the purposes of the MSA. This design must reflect the MSA’s primary objective to prevent and reduce modern slavery, without discouraging disclosures.

We strongly recommend that the DD obligation be risk-based and proportionate, acknowledging differences in size, sector, operating context and leverage, while establishing a consistent minimum standard across the market. Given the aim of the measure is to prevent exploitation, the DD obligation should cover all forms of modern slavery that commonly arise in businesses supply chains, in addition to significant risk factors driving exploitation, such as deceptive recruitment. The DD obligation should be accompanied by clear reporting guidance and definitions to support consistent implementation, as well as other ‘smart mix’ measures, such as a high-risk list. This is discussed in more detail in our analysis of the reasonable steps defence at Page 10 below.

To reinforce this obligation, Australia should adopt proportionate civil penalties for businesses that fail to undertake mandatory modern slavery due diligence or fail to report on actions to identify and remedy risks.⁴ For further guidance on crafting an effective DD obligation in Australia, please refer to our recent *Overdue Diligence*⁵ report.

Our continued calls for a DD obligation is aligned with the Australian Law Reform Commission’s consideration that “the Australian Government should inquire further into the possibility of a mandatory due diligence regime, which could apply broadly to all internationally-recognised human rights, and may involve civil penalties for non-compliance, [...] [while] the recommended failure to prevent offence [which] involves a more serious potential consequence (criminal responsibility), [...] is also limited to the most serious crimes.”⁶ While a broader human rights due diligence obligation is needed to improve Australia’s rights framework at scale, in the interim, this submission focuses on modern slavery due diligence as an appropriate addition to the MSA.

Notably, this recommendation also reflects direct feedback from Australian business leaders about the proposed FTP offence who caution that a criminal penalty on its own will lead to counterproductive outcomes. Companies have already warned of the disincentivising effect of the proposed FTP, indicating they may disclose fewer details in their modern slavery statements, narrow the scope of their risk assessments, and scale back engagement with suppliers, workers and civil society organisations.⁷

If corporations reduce community engagement, due diligence, and good practice around transparent practices due to potential legal exposure, then the FTP offence will have produced the opposite of its intended effect and will have undermined years of progress achieved under the MSA.

Recommendation 2: Clearly align the proposed reform with MSA policy objectives through introducing a ‘purpose’ clause, which will better support legal interpretation.

We further submit that the proposed FTP legislation should make explicit its objectives of “enhancing corporate accountability for preventing modern slavery in supply chains, improving protections for workers vulnerable to exploitation, and creating a level playing field for businesses that are already taking meaningful action to identify, manage and address modern slavery risks.”⁸

This can be achieved by including a “purpose” clause in the MSA, such as:

The purpose of this Act is to prevent and reduce modern slavery in the value chains of entities operating in Australia by encouraging proactive risk management, effective due diligence, and meaningful action to address harm.

The Act seeks to create clear expectations, support continuous improvement, and support entities that take reasonable steps to identify, prevent, mitigate and remediate modern slavery risks.

Enforcement measures are intended to promote accountability and a level playing field, ensuring that entities that act responsibly are not disadvantaged by competitors that fail to appropriately manage modern slavery risks.

Nothing in this Act is intended to discourage transparent disclosure of risks, incidents or shortcomings. The Act recognises that open reporting, remediation and continuous improvement are integral to effective modern slavery risk management.

Question 1 Part 2: What are your views on the proposed legislative approach to the core components of a failure to prevent modern slavery offence?

There are a number of factors which must be considered when designing a new joint civil and criminal regime under the MSA. Key recommendations include:

1. As above, simultaneously introduce a positive DD obligation. Consistent with Walk Free’s long-standing position, that DD obligation should be accompanied by a civil penalty regime as the primary accountability and enforcement mechanism.⁹
2. If any FTP offence is introduced to supplement the civil regime, it should be clearly articulated within the purposes of the MSA, to support the consistent interpretation of this law, and reinforce its primary objective to prevent and reduce modern slavery, without discouraging disclosures.

A discussion of the core components of the proposed offence is developed below.

1. Application of the offence

Recommendation 3: Apply the offence to all corporations, regardless of turnover or size, through a phased approach, with any defences calibrated to each corporation's size, risk exposure and capacity.

As reiterated by the UNGPs, “[t]he responsibility of business enterprises to respect human rights applies to all enterprises regardless of their size, sector, operational context, ownership and structure.”¹⁰ A proposed \$100 million revenue threshold for the offence to apply is not aligned with best practice as set out in the UNGPs, and also creates inconsistencies between the Government’s treatment of modern slavery and foreign bribery offences, which have no threshold.¹¹ This inconsistency is unjustifiable as forced labour, recognised as evidence of enslavement by international law experts,¹² is a more egregious crime than foreign bribery.

Importantly, a universal scope does not mean a uniform burden with unjust application.¹³ Liability would only arise where a company has failed to take reasonable steps proportionate to its size, risk exposure, and capacity, so small and medium enterprises (SMEs) are held to a standard relevant and appropriate for their operations. This approach will also allow the Government to maintain its strong commitment to eradicating forced labour at every level through introduction of the FTP. Further, this leverages lessons learned from the UK Foreign Bribery FTP mechanism, where experts recommended the inclusion of SMEs in the scope of an FTP offence.¹⁴

2. The underlying criminal conduct to be prevented

Recommendation 4: Restrict the FTP offence to the forms of modern slavery most likely to arise in supply chains (slavery, servitude, forced labour and debt bondage), and address deceptive recruitment through the civil due diligence obligation, supported by guidance.

Deceptive recruitment, which involves workers being misled with false promises about the location, type, scope, or conditions of their work,¹⁵ is evidence that workers did not fully and freely consent to the labour that was exacted from them. In line with the *1930 Forced Labour Convention (No. 29)*, which also requires involuntary work to be done under coercion, threat, or other abuse of vulnerability to amount to forced labour,¹⁶ deceptive recruitment is a sign of involuntariness and therefore a constituent element of forced labour.¹⁷ As such, if it is also included in the scope of underlying conduct under the FTP, there will likely be overlap in application of the criminal penalty.

However, combatting deceptive recruitment remains relevant to preventing forced labour in the Australian context. The 2023 Global Slavery Index estimated that around 41,000 people live in modern slavery in Australia,¹⁸ and subsequent studies have reinforced our findings that migrant workers on labour mobility schemes are at particular risk.¹⁹ Recent investigations into the Australian agricultural sector have documented how deceptive recruitment by untraceable labour-hire contractors lures temporary migrant workers into forced labour and debt bondage in the country.²⁰

Rather than creating double-handling risks, it is best to address deceptive recruitment through a positive duty to prevent. The mandatory DD obligation should require entities to identify and address recruitment-related risks, and expressly include deceptive recruitment, recruitment fees, and the use of labour-hire intermediaries. These are the risks most amenable to prevention through supplier selection, contractual controls, worker voice mechanisms and grievance channels, meaning that deceptive recruitment can be caught early and addressed before forced labour occurs.

3. *The connection to corporations' sourced product or services*

Recommendation 5: Make clear that the connection to corporations' product or services is broad enough to include where modern slavery occurs in the goods, services, labour, materials or other inputs that form part of the corporation's operations and value chain.

As the 2023 Global Slavery Index observes, "most forced labour occurs in the lowest tiers such as the extraction of raw materials and production stages,"²¹ which are the hardest to trace. A product or service-specific nexus would place an unrealistic evidentiary burden on the prosecution. A defendant could escape liability simply by pointing to the complexity of its supply chain and relying on the prosecution's inability to prove the nexus, without having to provide any positive evidence of its own conduct.

Further, including a service or product-specific nexus in the offence will likely impede corporate due diligence. The French *Loi de Vigilance*, which anchored a due diligence obligation to an "established commercial relationship" with a supplier or subcontractor, has been criticised for creating perverse incentives for corporations to limit their formal commercial relationships in order to avoid liability.²² A narrow nexus in the proposed FTP offence would likewise reward corporations that keep their supply chains deliberately opaque, and would penalise those that engage in due diligence. This is a design flaw the Australian proposal should avoid.

Instead, the nexus to products and services could be addressed within defences available to the company. Locating the nexus within the defence reverses the dynamic noted above: the prosecution only needs to establish that modern slavery occurred in connection with the corporation's value chain, while the business bears the onus of showing it took steps to identify and address that risk to access the defence. This approach better reflects where knowledge and evidence actually sit, and rewards proactive due diligence.

4. *The connection to corporations' conduct*

Recommendation 6: Remove the causal connection between a corporation's conduct and the offence, so that liability is not most likely restricted to the first tiers of a supply chain. A corporation's conduct should instead be considered through the reasonable steps defence.

A causal-conduct nexus would confine DD to the first tiers, where a business' conduct is most easily connected to a supplier. However, as noted above, modern slavery risks heighten deeper into supply chains.²³

A causal conduct nexus also creates a perverse incentive: a corporation that never looks beyond its direct suppliers is less likely to be connected to harm, while one that maps its supply chain and documents risk creates a record that could expose liability. Walk Free's research shows how widespread supply chain blindness already is: in the electronics sector, 89 per cent of companies require their tier-one suppliers to comply with laws and policies but only 31 per cent extend that expectation beyond the first tier.²⁴ A causal conduct nexus would reward this blindness, instead of encouraging due diligence. To better achieve the aims underpinning the FTP reform, it is recommended to remove the causal element entirely, and instead encourage businesses to bring evidence of engagement with suppliers as part of mounting the reasonable steps defence.

However, if in the instance the Government chooses to retain the causal element, it should at a minimum ensure that liability is attached to the capacity of a corporation's conduct, rather than a result. Section 11(3) of the *UK Human Rights and Environment Bill* offers a precedent, extending liability to where an organisation's act was "*capable of encouraging or assisting a third party*" to commit the offence.²⁵ This captures indirect involvement, such as where pricing or purchasing practices create conditions that incentivise modern slavery, without proof that the corporation caused the specific offending.

5. Fault elements

Recommendation 7: Maintain that FTP is structured as absolute liability offence paired with a reasonable steps defence, anchored in a DD obligation.

Absolute liability keeps the focus on what matters: whether modern slavery occurred, balanced with reducing risks for corporations that have genuinely exercised DD. While similar in nature, strict liability would create uncertainty between the "reasonable steps" defence and the "mistake-of-fact" defence. If the courts were to later interpret that "mistake-of-fact" carries a lower threshold for discharging liability, corporations would not need to follow guidance for "reasonable steps" defence. In turn, this would undermine the proposed law's intent to encourage strong prevention. Neither should recklessness be included. This would require the prosecution to present evidence that a corporation authorised or permitted the offence. For modern slavery, where a corporation's culpability typically lies not in conscious authorisation but in systemic failure to investigate and act, this standard is structurally ill-suited.

Recommendation 8: The proposed offence should explicitly encompass extraterritorial conduct that would constitute an FTP offence if it occurred in Australia.

Slavery offences under Division 270 carry universal jurisdiction, but the slavery-like offences carry only extended geographical jurisdiction tied to an Australian citizen, resident or corporation.²⁶ We recommend the Government to adopt the jurisdictional approach taken in the proposed *UK Human Rights and Environment Bill*, which extends the offence to acts committed outside the UK where the act "would, if committed in England and Wales, constitute one of the offences."²⁷ Without such provision, there is risk that prosecution may be unable to establish the offence where it is committed outside Australia by a non-Australian entity, in a country without comparable laws.

Laws are also only as strong as their enforcement, which must be active and timely to be effective. The precedent of wage theft is an instructive example: despite criminalisation in 2025, and the rampant nature of the crime in Australia,²⁸ there have been no prosecutions.²⁹ Due to its extraterritorial nature, the proposed FTP offence would be even harder to investigate.

In this context, we are concerned that the AFP lacks the resources and specialist expertise this offence demands, particularly given jurisdictional constraints, language, cultural and technological barriers, difficulties accessing crime scenes and evidence, and the potential for substantial imbalances in resources and information relative to a company under investigation.³⁰ In light of these challenges, we recommend establishing a specialist enforcement unit that has a clear mandate, and is equipped with the appropriate resources and skills, to investigate modern slavery in value chains.

6. Defence and guidance

Recommendation 9: Define “reasonable steps” based on recognised components of modern slavery due diligence.

The civil and criminal mechanisms in this submission are designed to be complementary: the DD obligation defines the standard of conduct expected of corporations; and meeting that standard would discharge the criminal defence. A corporation that has complied with its DD obligation would, in doing so, already have the evidence to prove it has taken reasonable steps to prevent modern slavery even if a crime occurred in its operations or supply chain.

Guidance to define “reasonable steps” based on the internationally recognised components of human rights DD is required, aligned with the UNGPs and the OECD Guidelines for Multinational Enterprises. By ensuring consistency between the defence elements and practices that are already familiar to businesses, the Government will reduce compliance costs for businesses, as well as avoiding fragmentation in responses to the reform.

The guidance should also align DD expectations with reporting, so that annual modern slavery reporting for those in scope require them to describe not only the risks identified but also the actions taken to address them. The guidance should also introduce government-issued high-risk declarations identifying the sectors, products, and regions where enhanced due diligence is expected, to align business efforts where risk is greatest.³¹

Finally, as modern slavery risks, business models and supply chain practices evolve, so should any guidance. A specialist regulator, such as the Office of the Anti-Slavery Commissioner, should be responsible for reviewing and updating the guidance annually, ensuring the standard of reasonable steps continues to reflect emerging risks and international best practice.

Recommendation 10: Issue high-risk declarations covering sectors, products, and regions where enhanced DD is expected.

DD guidance should include Government-issued, evidence-based high-risk declarations on priority sectors, issues and contexts, to support businesses to fulfil their DD activities. However, it is essential that lists produced by the Government do not dilute the core principle: responsibility for identifying and addressing risk rests with the business itself.³²

High-risk declarations should complement, not replace, entity-level DD. Careful legislative framing will be required to avoid unintended consequences such as disengagement from high-risk regions or an overly narrow focus on listed issues at the expense of investigating actual harm to workers.³³

7. Penalty

Recommendation 11: Ensure that a proportion of any civil or criminal penalties are channelled into a fund to support rightsholder-led monitoring and remedy processes.

The financial penalties proposed in the Consultation Paper are an important deterrent, but a fine paid to the Australian Government does nothing, in itself, for the workers exploited by modern slavery. Thus, remediation should be built into all penalties, including through a proportion of any monetary penalties incurred.

This could be achieved through a remedy fund financed by a percentage of the collected fines (from both civil and criminal penalties), and aimed at supporting rightsholder-led monitoring and remedy processes, such as the one proposed in the *UK Human Rights and Environment Bill*.³⁴ This is also aligned with the *Australian Law Reform Commission's* recommendation that courts should be empowered in corporate criminal sentencing to make “orders requiring the corporation to undertake activities for the benefit of the community” and “facilitate redress of any loss suffered or expense incurred as a result of the offence.”³⁵

8. Commencement

Recommendation 12: Plan to commence the new laws in phases, starting with corporations with annual revenue over \$100 million within 12 months, and extending to all other corporations within a further six months.

The offence should begin applying to corporations with annual revenue over \$100 million within 12 months and extend to all other corporations within a further six months. This phased approach reconciles the UNGPs' principle that the responsibility to respect human rights applies to all enterprises regardless of size with the practical reality that smaller entities would need time to build their due diligence capacity.

Question 2 and 3: What measures could be adopted to minimise costs for affected corporations, while ensuring the offence remains effective in achieving its objective? What support might corporations need to effectively understand and comply with the proposed offence and defence, including to help business more broadly take action to combat modern slavery?

Recommendation 13: Include a clearly defined mandatory DD obligation to ensure compliance costs are managed efficiently, and support its implementation through a competition law class exemption for DD collaboration.

A clear DD obligation under the MSA would deliver regulatory certainty, giving corporations a defined framework against which to direct their compliance efforts, and would level the playing

field across businesses – which is what corporations themselves are calling for.³⁶ The Australian Law Reform Commission likewise found a "strong appetite for greater regulatory clarity" among stakeholders across all sectors.³⁷ A study from the British Institute of International and Comparative Law also found corporate stakeholders are "strongly concerned about the lack of regulatory guidance on the responsibilities of corporations with regard to human rights," with a majority supporting increased regulation "if it would improve regulatory clarity and level the playing field."³⁸

The DD obligation is clearly necessary, and for greatest clarity, should be aligned with existing international standards, such as the UNGPs and the OECD Guidelines for Multinational Enterprises. Ensuring consistency would reduce fragmentation for Australian businesses operating internationally, support interoperability with emerging overseas regimes, and reinforce Australia's reputation as a predictable and credible regulatory environment. Defining the due diligence elements in legislation, supported by guidance, would provide certainty for business and a clear basis for regulatory oversight.³⁹

The Australian Government should also support business collaboration to identify, prevent, and mitigate modern slavery and to provide support and remedy to victims.⁴⁰ This could be done via the ACCC creating a safe harbour for Australian companies to cooperate on supply chain due diligence by way of issuing a class exemption for specific sustainability collaboration. Any Government-issued due diligence guidance should also encourage such collaboration.⁴¹

Part B – Alternative enforcement

Question 4 Part 1: What are the benefits and limitations of a DPA scheme in addressing failure to prevent modern slavery offences?

Recommendation 14: Ensure that central to any DPA scheme is the capacity to deliver meaningful remedial outcomes for survivors of modern slavery.

A DPA scheme predicated on self-reporting could be well suited for the Australian modern slavery context, where evidence often sits overseas, in opaque supply chains, and where information is mostly controlled by corporations.

However, a major concern relating to creating a DPA scheme is that they have the potential to supersede and ultimately replace criminal prosecution, becoming a means of avoiding conviction and the public scrutiny that accompanies a trial.⁴² Moreover, DPAs also often fail to deliver remedy, as exemplified by the UK where only one of nine approved DPAs required victim compensation.⁴³ This is an unacceptable outcome in the context of modern slavery, and as such remedy for survivors must be explicitly included in the design of any DPA scheme in the MSA.

Question 4 Part 2: What terms and conditions should be available for inclusion in a DPA scheme?

Recommendation 15: Design DPAs to encourage self-reporting, collaborating with regulators, consulting with and providing remedy for survivors, and transparency in the public interest.

To deliver stronger outcomes for workers, businesses and the broader public interest than the often lengthy and unpredictable trial process, a DPA scheme in the MSA should:

1. Utilise the flexibility of DPAs to maximise collaboration opportunities between corporations and victim-survivors, minimise incidents of abdication, and enable outcomes that take into account the corporation's history and compliance culture, and impacts on victim-survivors.⁴⁴
2. Require a corporation to self-report or provide the highest degree of active cooperation in order to be eligible for a DPA;⁴⁵
3. Require consultations with survivors in the negotiation of a DPA;
4. Ensure terms related to compensation and remedy are included in every agreement; and
5. Require transparency and independent monitoring to ensure the agreement is fair, reasonable and proportionate, and in the best interest of the public.

A DPA incentivises self-disclosure only if a corporation expects to be prosecuted and convicted without it. This expectation is unlikely where only one per cent of modern slavery reports result in convictions,⁴⁶ and when the FTP offence places the evidentiary burden on the prosecution. In this context, corporations will have reasonable grounds to believe that the safer course of action is to reduce disclosure, regardless of potential eligibility for a DPA.

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

Recommendation 16: Establish a national compensation scheme, independent of prosecution outcomes and with extraterritorial reach, resourced by a remedy fund drawn from a percentage of fines collected through civil penalties and the FTP offence.

Existing remedies in Australian law are deeply inadequate. Reparation orders under section 21B of the *Crimes Act 1914* have rarely been accessed by victims of modern slavery, primarily because access depends on a successful prosecution resulting in conviction, of which there are very few.⁴⁷ The eight separate state and territory compensation schemes potentially available to modern slavery survivors also fail to provide adequate remedy, due to inconsistent categories of harm, time limits, amounts of compensation, and eligibility criteria.⁴⁸

To ensure that survivors can access redress, the Australian Government should establish a nationally coordinated compensation scheme for modern slavery victim-survivors that:

1. Ensures access independent of any prosecution or conviction;
2. Provides access to victim-survivors in Australia and overseas;
3. Provides a mechanism for harmed workers or their representatives to bring compensation claims against corporations, including for failure to conduct adequate due diligence;⁴⁹
4. Applies consistent eligibility criteria, categories of harm, time limits and compensation standards;

5. Provides clear application pathways and appropriate support for victim-survivors seeking compensation domestically and abroad; and
6. Relies on resourcing through a proportion of monetary penalties collected under the civil penalties and FTP offence. This could follow parameters similar to the *UK Human Rights and Environment Bill*, which proposes no less than 80 per cent of fines collected to be paid into a rightsholder remedy fund,⁵⁰ and the *UK's Compensation Principles for Economic Crimes*, which has directed £49.2 million to overseas victims of bribery since 2014.⁵¹

Appendix – Illustrative case studies

The following case studies illustrate the benefits of placing mandatory due diligence, supported by civil penalties for non-compliance, between the existing reporting regime and the proposed FTP offence. For this purpose, we have chosen to analyse case studies 2 and 4 from the Consultation paper.

Case Study 2

Company B is an Australian horticulture business with annual revenue exceeding \$100 million. To meet seasonal labour demands, the company engages a labour hire provider to supply workers for harvesting and packing operations.

Company B has maintained a commercial arrangement with the labour hire provider that allows labour to be supplied at rates significantly lower than legislated minimum pay rates. Internal records show that managers were aware the provider was able to supply workers at unusually low cost but did not make further inquiries. The company also became aware through worker complaints and community organisations that some workers were being paid substantially less than promised, had wages withheld, and were unable to freely access their identity documents.

Although Company B required the labour hire provider to comply with applicable laws and had a basic supplier code of conduct, it did not investigate the complaints, undertake additional due diligence, or take steps to verify workers' living and working conditions.

An investigation finds that the labour hire provider subjected workers to forced labour and debt bondage, including through the confiscation of passports, withholding of wages, and the use of threats that workers would lose accommodation and employment if they attempted to leave. Evidence indicates that Company B's continued acceptance of labour at significantly reduced costs, despite indicators of exploitation, contributed to the continuation of these practices.

Stage	With FTP, but no DD	With FTP, DD and civil penalties
1. Commercial arrangement	Company B relies on contractual requirements and a supplier code of conduct. There is no positive duty requiring it to determine whether the provider's unusually low rates are compatible with lawful wages.	Company B must identify labour hire as a risk connected to its operations and assess whether its pricing and contracting arrangements create or increase risks to workers. If the agreed wages are incompatible with lawful labour costs, Company B must amend those arrangements.
2. Warning signs	Despite allegations of withheld wages, restricted access to identity documents, and information from community organisations, there is no enforceable duty requiring Company B to investigate or respond. Company B continues benefiting from questionably low labour costs.	Company B must investigate the warning signs, engage with workers and relevant organisations, assess the practices of the labour provider, and consider how its own commercial arrangements are contributing to the risk. Including deceptive recruitment within the DD obligation would reinforce the need to intervene at this earlier stage. Failure to do so incurs civil penalties that finance a remedy fund.
3. Enforcement and incentives	Investigation and conviction under the FTP offence is considered a low risk, and not commensurate with the costs tied to adequate due diligence. Company B decides not to investigate complaints, consult with workers and community organisations, or document concerns, to avoid creating evidence that could link it to the exploitation.	Civil penalties are applicable if DD is not adequately applied, regardless of criminal outcomes. Company B is compelled to investigate complaints and document its response, regardless of the likelihood of criminal prosecution. These activities also help establish that it took reasonable steps, making due diligence the most effective way to reduce criminal liability.

Stage	With FTP, but no DD	With FTP, DD and civil penalties
4. Preventive response	The FTP liability is triggered after the criminal conduct reaches the threshold of modern slavery. By that stage, the opportunity for early intervention is lost.	Company B must take ongoing measures to prevent and mitigate the harm, such as use its leverage to stop the confiscation of identity documents and withholding of wages, protect workers from retaliation, and require corrective action. It must track whether these measures are effective and reconsider the labour hire arrangement if the provider cannot or will not address the harm.
5. Criminal proceedings	Although Company B benefited from exploitation, the forced labour and debt bondage were imposed by the labour hire provider. Under a narrow causal test, Company B avoids conviction because the prosecution could not prove beyond reasonable doubt that Company B's continued commercial arrangement made a sufficiently significant contribution to the labour provider's criminal conduct.	The FTP offence remains applicable if modern slavery occurs, but DD establishes the preventive conduct expected before that point. The deterrent effect of civil penalties supports DD compliance. Company B must produce evidence of how it complied with its due diligence duty as part of its reasonable steps defence.
6. Remedy	Access to remedy is challenging for survivors. Reparation orders depend on a successful prosecution and conviction, while state and territory compensation schemes have inconsistent eligibility criteria, time limits and can be overly complicated if victims crossed state boundaries.	Company B's due diligence duty requires it to provide or support remediation when harm is identified, regardless of prosecution or conviction. Failure to do so incurs civil penalties that finance a remedy fund, with remedy outcomes being independent from corporate initiative.

Case Study 4

Company D is an Australian electronics manufacturer with annual revenue exceeding \$100 million. As part of its manufacturing operations, Company D purchases a critical electronic component from a long-standing supplier.

Due to disruptions affecting its existing supply arrangements and rising production costs, the supplier notifies Company D that it intends to source certain mineral inputs for the component from a new overseas supplier operating in a higher-risk jurisdiction. The supplier advises that the change will help maintain production volumes and avoid significant cost increases.

Public reporting, industry alerts and information from civil society organisations identify credible allegations of forced labour associated with the extraction and processing of the relevant minerals in that region.

The minerals are processed, blended and incorporated into components supplied to a range of manufacturers, including Company D's supplier. While the minerals contribute to the components purchased by Company D and used in its manufacturing operations, it is not possible to determine which individual components or finished products contain minerals linked to the alleged exploitation.

An investigation later confirms that forced labour occurred at facilities supplying the mineral inputs.

Stage	With FTP, but no DD	With FTP, DD and civil penalties
1. Sourcing change	Company D relies on its long-standing supplier relationship to maintain production costs and volume. There is no positive duty requiring it to assess the forced labour risks arising from the supplier's move to a high-risk source.	Company D must identify the sourcing change as a risk connected with its supply chain, and assess whether its pricing, volume, delivery or continuity expectations are influencing the supplier's decision to source from the high-risk region.

Stage	With FTP, but no DD	With FTP, DD and civil penalties
2. Warning signs	Public reporting, industry alerts and civil society organisations identify credible forced labour allegations in the region. Processing and blending of the minerals prevent product-level traceability. Company D may disclose the general risk, but there is no enforceable duty requiring it to investigate or alter its sourcing decision.	The allegations trigger enhanced due diligence. Company D must investigate the origin of the mineral inputs, assess its supplier's due diligence, and seek information about the facilities and working conditions, consulting affected workers where feasible. It must then use its leverage with the supplier to require improved traceability, improvement of the working conditions, or reconsideration of the sourcing arrangement where the risk cannot be adequately addressed.
3. Enforcement and incentives	Investigation and conviction under the FTP offence is considered a low risk because the conduct occurred overseas and the affected minerals cannot be traced. Company D decides that the most effective approach is not to map lower tiers, question its supplier or document the allegations, to avoid creating evidence linking its supply chain to the exploitation.	Civil penalties are applicable if DD is not adequately applied, regardless of criminal outcomes. Company D is compelled to investigate credible allegations and document its response, regardless of the likelihood of prosecution. These activities also help establish that it took reasonable steps, making due diligence the most effective way to reduce criminal liability.
4. Preventive response	The FTP liability is applicable only once the alleged conduct has reached the criminal threshold of modern slavery. By that stage, the opportunity for early intervention is lost.	Company D must take ongoing measures to prevent and mitigate the harm, including addressing any contribution of its own purchasing practices, using leverage, requiring corrective action, and tracking whether conditions improve. Civil penalties are applicable if DD is not adequately applied, regardless of criminal outcomes.

Stage	With FTP, but no DD	With FTP, DD and civil penalties
5. Criminal proceedings	Although Company D received credible warnings and continued purchasing inputs sourced through modern slavery, the minerals were processed and blended, undermining traceability. Under a narrow causal test, the prosecution cannot identify which outputs from Company D contain the affected minerals, nor prove beyond reasonable doubt that Company D's conduct made a sufficiently significant contribution to the overseas forced labour.	The FTP offence remains applicable if modern slavery occurs in Company D's value chain. Company D must produce evidence of how it complied with its due diligence duty as part of its reasonable steps defence. The deterrent effect of civil penalties supports DD compliance.
6. Remedy	The affected workers are located overseas, beyond the reach of Australia's fragmented compensation framework. As Company D avoided conviction, the overseas workers may have no access to remedy through the FTP framework.	Company D's due diligence duty requires it to provide or support remediation when harm is identified, regardless of prosecution or conviction. Failure to do so incurs civil penalties that finance a remedy fund available to survivors overseas, with remedy outcomes being independent from corporate initiative.

¹ Field sources.

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¹³ United Nations 2011, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*. Available from: https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf. [14 September 2026].

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