



---

## **Inquiry into establishing a modern slavery act in Australia**

Submission to the Joint Standing Committee on Foreign Affairs, Defence and Trade

---

11 May 2017

## Contents

About UNICEF Australia .....	4
Parameters of this submission .....	4
Definitions .....	6
Executive summary .....	7
Summary of recommendations .....	10
General recommendations .....	10
A modern slavery act in Australia .....	11
Background to UNICEF Australia’s recommendations .....	14
The Sustainable Development Goals 2030.....	14
Australia’s international obligations.....	15
Conditions that create heightened risks of slavery, human trafficking, forced labour and other forms of exploitation .....	18
The spectrum of labour exploitation.....	19
Business impacts on children .....	20
Child labour, including the worst forms of child labour.....	21
Case study: Proposed Dutch law on due diligence regarding child labour.....	23
The nature and extent of modern slavery (ToR 1) .....	23
The prevalence of modern slavery in the domestic and global supply chains of companies, businesses and organisations operating in Australia (ToR 2) .....	26
International best practice (ToR 3) .....	29
The United Nations Guiding Principles on Business and Human Rights .....	29
The State duty to protect human rights .....	31
The corporate responsibility to respect human rights and human rights due diligence .	31
Case study: French Corporate Duty of Vigilance Law .....	36
Capacity-building and support for business to meet the responsibility to respect human rights .....	38
Examination of the provisions in the United Kingdom’s legislation (ToR 5).....	39
Transparency in supply chains (part 6, section 54).....	39
Introduction .....	39
Limitations of the TISC requirement of the UK MSA.....	41
The law does not require action to prevent and mitigate against slavery, human trafficking, forced labour and other forms of exploitation .....	42
The UK MSA does not cover all of the worst forms of child labour, or child labour generally .....	44
Table 1: Examples of some of the worst forms of child labour not captured by the TISC provision of the UK MSA .....	45
Summary of limitations of the TISC section of the UK MSA .....	47

Table 2: Limitations of the transparency in supply chain provision of the UK MSA and recommendations for Australia.....	48
i. Limited scope of human rights protected.....	48
ii. Limited nature of the legal obligation.....	48
iii. Weak measures regarding non-compliance .....	50
iv. Lacking mechanisms for the collection and dissemination of information .....	50
v. Limited coverage .....	51
Whether a Modern Slavery Act should be introduced in Australia (ToR 6) .....	52
Contact .....	53

## About UNICEF Australia

1. UNICEF is a multilateral organisation that works in over 190 countries to promote and protect the rights of children. UNICEF supports child health and nutrition, clean water and sanitation, quality basic education for all boys and girls, and the protection of children from violence, exploitation, abuse and HIV. UNICEF is unique among world organisations for our rights based and participatory approach to working with children and young people.
2. UNICEF Australia is a national committee of UNICEF which advocates for the rights of all children and works to improve public and government support for child rights and international development.
3. Since 2010, UNICEF has worked directly on children's rights and business issues, having developed the *Children's Rights and Business Principles*<sup>1</sup> and other related guidance for governments and businesses.<sup>2</sup> UNICEF has worked in collaboration with various stakeholders to identify the risks to the rights of children in particular industries<sup>3</sup>, as well as in global supply chains.<sup>4</sup> This submission draws upon this work, along with connected frameworks of the United Nations.

## Parameters of this submission

4. UNICEF Australia welcomes the opportunity to make a submission to the Inquiry into establishing a modern slavery act in Australia being conducted by the Joint Standing Committee on Foreign Affairs, Defence and Trade. This Inquiry presents a significant opportunity to devise meaningful policy and legislative responses to help end slavery, human trafficking, forced labour and other exploitative practices.

---

<sup>1</sup> UNICEF, Save the Children and the United Nations Global Compact, *Children's Rights and Business Principles* (2012) <<https://www.unicef.org/csr/12.htm>> ('*Children's Rights and Business Principles*').

<sup>2</sup> See, for example, UNICEF, *Corporate Social Responsibility* <<https://www.unicef.org/csr/>>; UNICEF and International Commission of Jurists *Obligations and Actions on Children's Rights and Business* (2015) <[https://www.unicef.org/csr/files/CSR\\_GC\\_OBLIGATIONS\\_AND\\_ACTIONS\\_FINAL\\_AUGUST05.pdf](https://www.unicef.org/csr/files/CSR_GC_OBLIGATIONS_AND_ACTIONS_FINAL_AUGUST05.pdf)>; UNICEF, *Children are everyone's business – Workbook 2.0* (2013) <[https://www.unicef.org/csr/css/Workbook\\_2.0\\_Second\\_Edition\\_29092014\\_LR.pdf](https://www.unicef.org/csr/css/Workbook_2.0_Second_Edition_29092014_LR.pdf)> and UNICEF *Engaging Stakeholders on Children's Rights* (2014) <[https://www.unicef.org/csr/css/Stakeholder\\_Engagement\\_on\\_Childrens\\_Rights\\_021014.pdf](https://www.unicef.org/csr/css/Stakeholder_Engagement_on_Childrens_Rights_021014.pdf)>.

<sup>3</sup> UNICEF has worked across several industries including travel and tourism, extractives, food and beverage and information, communication and technology (ICT) (UNICEF, *An industry approach* <<https://www.unicef.org/csr/industryapproach.html>>).

<sup>4</sup> UNICEF has worked in relation to global supply chains across garments, tea, cocoa and palm oil (UNICEF, *Global supply chains* <<https://www.unicef.org/csr/garments.html>>). See, for example, UNICEF, *The Ready-Made Garment Sector and Children in Bangladesh* (2015) <[https://www.unicef.org/csr/files/CSR\\_BANGLADESH\\_RMG\\_REPORT.PDF](https://www.unicef.org/csr/files/CSR_BANGLADESH_RMG_REPORT.PDF)>.

5. Drawing on UNICEF's work around children's rights and business, this submission will focus primarily on good practices in business regulation and on the transparency in supply chain requirement of the UK *Modern Slavery Act 2015* (UK MSA). It will make observations in relation to the following the following terms of reference (ToR):
- *The nature and extent of modern slavery (including slavery, forced labour and wage exploitation, involuntary servitude, debt bondage, human trafficking, forced marriage and other slavery-like exploitation) both in Australia and globally;*
  - *The prevalence of modern slavery in the domestic and global supply chains of companies, businesses and organisations operating in Australia;*
  - *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;*
  - *Provisions in the United Kingdom's legislation which have proven effective in addressing modern slavery, and whether similar or improved measures should be introduced in Australia; and*
  - *Whether a Modern Slavery Act should be introduced in Australia.*
6. UNICEF UK, the national committee of UNICEF operating in the United Kingdom, will also be lodging a submission to the Inquiry which will draw upon UNICEF UK's work in relation to unaccompanied children in the United Kingdom, including child victims of trafficking. UNICEF Australia endorses this submission.
7. This submission is informed primarily by the following:
- *The Convention on the Rights of the Child 1989;*<sup>5</sup>
  - *The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography;*<sup>6</sup>
  - *The United Nations Guiding Principles on Business and Human Rights;*<sup>7</sup>
  - *General Comment No. 16. On State obligations regarding the impact of the business sector on children's rights* issued by the United Nations Committee on the Rights of the Child;<sup>8</sup>

---

<sup>5</sup> *Convention on the Rights of the Child* ('CRC') opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990).

<sup>6</sup> Opened for signature 25 May 2000, 2171 UNTS 227 (entered into force on 18 January 2002).

<sup>7</sup> Office of the High Commissioner for Human Rights, *Guiding Principles on Business and Human Rights*, 2011 ('*UN Guiding Principles*').

<sup>8</sup> Committee on the Rights of the Child, *General Comment No. 16 On State obligations regarding the impact of the business sector on children's rights* ('*General Comment No. 16*'), UN Doc. CRC/C/GC/16 (15 March 2013).

- The Sustainable Development Goals 2030;<sup>9</sup>
- *International Labour Organisation (ILO) Convention No. 138 concerning Minimum Age for Admission to Employment* (1973);<sup>10</sup> and
- *International Labour Organisation Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour* (1999).<sup>11</sup>

## Definitions

8. For the purposes of this submission, it is important to define the following terms:

### Child labour

Child labour is “work that deprives children of their childhood, their potential and their dignity, and that is harmful to physical and mental development. The term refers to work that is mentally, physically, socially or morally dangerous and harmful to children; and interferes with their schooling by depriving them of the opportunity to attend school; obliging them to leave school prematurely; or requiring them to attempt to combine school attendance with excessively long and heavy work. In its most extreme forms, child labour involves children being enslaved, separated from their families, exposed to serious hazards and illnesses and/or left to fend for themselves on the streets of large cities...”.<sup>12</sup> *ILO Convention No. 138 concerning Minimum Age for Admission to Employment* (1973) (*‘ILO Convention No. 138’*) was developed “with a view to achieving the total abolition of child labour”.<sup>13</sup> It differentiates permitted work types according to three age groups; between the ages of 13 to 15 years for light work only; over 15 years for general employment (or 14 years for some countries<sup>14</sup>); and over 18 years for hazardous work.<sup>15</sup>

### The worst forms of child labour

*ILO Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour* (1999) (*‘ILO Convention No. 182’*) was developed to complement *ILO Convention No. 138* and is aimed at protecting children from the worst forms of child labour.<sup>16</sup> Article 3 of this Convention defines the worst forms of child labour as:

<sup>9</sup> United Nations General Assembly, *Resolution adopted by the General Assembly on 25 September 2015 Transforming our world: the 2030 Agenda for Sustainable Development – The Sustainable Development Goals* GA Res 70/1, 70<sup>th</sup> sess, Agenda items 15 and 116, UN Doc A/RES/70/1 (21 October 2015) (*‘SDGs 2030’*).

<sup>10</sup> Opened for signature 26 June 1973, (entered into force 19 June 1976).

<sup>11</sup> Opened for signature 17 June 1999, (entered into force 19 November 2000).

<sup>12</sup> International Labour Organisation, *What is child labour* <<http://www.ilo.org/ipec/facts/lang--en/index.htm>> 23 January 2017.

<sup>13</sup> *ILO Convention No. 138*, preamble.

<sup>14</sup> *ILO Convention No. 138*, art 2(4).

<sup>15</sup> *ILO Convention No. 138*, arts 3 and 9.

<sup>16</sup> *ILO Convention No. 182*, art 3.

- (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
- (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
- (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
- (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

### **Hazardous work performed by children**

The types of work captured by article 3(d) of ILO Convention 182 has been further explained by the ILO's *Worst Forms of Child Labour Recommendation, 1999* (No. 190), which outlines that such work includes (article 3):

- (a) work which exposes children to physical, psychological or sexual abuse;
- (b) work underground, under water, at dangerous heights or in confined spaces;
- (c) work with dangerous machinery, equipment and tools, or which involves the manual handling or transport of heavy loads;
- (d) work in an unhealthy environment which may, for example, expose children to hazardous substances, agents or processes, or to temperatures, noise levels, or vibrations damaging to their health; [and]
- (e) work under particularly difficult conditions such as work for long hours or during the night or work where the child is unreasonably confined to the premises of the employer.

## **Executive summary**

9. Slavery, human trafficking, forced labour and other forms of exploitation harms millions of children and adults throughout the world. Protection from slavery has been recognised by the International Court of Justice as one of the few obligations that States have towards all at international law.<sup>17</sup> It is appropriate that legislatures take decisive action to improve the practices of Australian businesses, and of businesses

<sup>17</sup> *Barcelona Traction, Light and Power Co, Ltd. (Belgium v. Spain)*, Judgment of 5 February 1971, I.C.J. Reports, 1970, 32 <<http://www.icj-cij.org/docket/files/50/5387.pdf>>. See also David Weissbrodt and Anti-Slavery International, *Abolishing Slavery and its Contemporary Forms*, Office of the High Commissioner for Human Rights (2002) <<http://www.ohchr.org/Documents/Publications/slaveryen.pdf>>.

operating in Australia, to help end the occurrence of slavery, human trafficking, forced labour and other exploitative practices.

10. Slavery, human trafficking, forced labour and other forms of exploitation are however only a few of the many known adverse impacts on human rights that business can have on children and adults. Additionally, the actions of business can perpetuate (or conversely, challenge) the social, political and economic conditions which increase the vulnerability of children and adults to such harm and exploitation, such as (inter-generational) poverty, inequality and low educational attainment. It must be recognised that slavery, human trafficking, forced labour and other forms of exploitation are commonly symptoms of the failures to realise and protect the human rights of children and adults more broadly. The elimination of such forms of exploitation cannot be separated from a broader agenda to ensure sustainable development for all, including the conditions that allow for decent work. Measures to holistically address poverty, inequality and other factors that lead to increased vulnerability are critical to reducing the supply and demand of children and adults engaged in slavery, human trafficking, forced labour and other exploitation.

11. The *United Nations Guiding Principles on Business and Human Rights*<sup>18</sup> that were unanimously endorsed by the United Nations Human Rights Council in June 2011 provide governments and businesses alike with a practical tool to operationalise the corporate responsibility to respect human rights, including the right to be free from slavery, forced or compulsory labour, human trafficking and other forms of exploitation. In particular, the concept of human rights due diligence as articulated in the UN Guiding Principles requires businesses to identify, prevent, mitigate and account for (including to report on) the risks to human rights created by a business. A human rights due diligence requirement at law would require commercial organisations to proactively identify and address risks posed to the human rights of children and adults that are created by a business's activities and relationships. Preventative action to help ensure that children and adults do not experience human rights abuses (due to business practices or otherwise) should always be a key objective, and legislatures have begun introducing laws which place such a due diligence requirements upon businesses to do so.

12. The UN Guiding Principles also outline the need for states and businesses to pay particular attention to the rights and needs of groups at heightened risk of becoming

---

<sup>18</sup> *UN Guiding Principles*, above n 7.



vulnerable or marginalised, including children.<sup>19</sup> Impacts of businesses activity can have differentiated and more severe impacts on children due to their stage of human development, and these can have life-long and inter-generational consequences.<sup>20</sup> Children are also often unseen and lack political agency.<sup>21</sup> It is therefore essential that parliaments and businesses are particularly attuned to the risks faced by children – with regard to slavery, human trafficking, forced labour or otherwise – and ensure that law, policy and practice specifically protects the rights of children.

13. The *Modern Slavery Act 2015* adopted in the United Kingdom was a significant development, introducing a transparency in supply chain requirement that has triggered some businesses to improve business practices and to voluntarily provide information on these in their slavery and human trafficking statements. There are positive indications that the legislation has elevated the issue in company management and contributed towards improved management of such human rights risks.<sup>22</sup>
14. However, a fundamental limitation in this approach is that it does not require any meaningful action to prevent slavery, human trafficking, forced labour or other exploitative practices. Rather, the requirement to publish a slavery and human trafficking statement largely relies on an inherently limited consumer/investor policing approach that shifts the onus of regulation away from the State and onto the public. Additionally, compliance with the law can still result in little information being disclosed to the public. Rather, the nature and extent of the information is largely dependent on the discretion of individual commercial organisations. This model also suffers several practical shortcomings, including the lack of central registry and information about the organisations required to comply with the law. The lack of mechanisms to assess compliance and the omission of meaningful sanctions for non-compliance also challenges its efficacy.
15. For children as well, the UK MSA omits reference to all of the worst forms of child labour and child labour generally. Rather, it includes only one of the four categories of the worst forms of child labour, namely, slavery and slavery-like practices

---

<sup>19</sup> *UN Guiding Principles*, above n 7, 5-6.

<sup>20</sup> *General Comment No. 16*, above n 8, [4] and UNICEF *Children are everyone's business – Workbook 2.0* (2013) <[https://www.unicef.org/csr/css/Workbook\\_2.0\\_Second\\_Edition\\_29092014\\_LR.pdf](https://www.unicef.org/csr/css/Workbook_2.0_Second_Edition_29092014_LR.pdf)> 5.

<sup>21</sup> *General Comment No. 16*, above n 8, para 4.

<sup>22</sup> See Quintin Lake, Jamie MacAlister, Matthew Gitsham and Nadine Page, *Corporate Leadership on Modern Slavery – Summary Report*, Ethical Trading Initiative and Hult International Business School <<http://www.ethicaltrade.org/resources/corporate-leadership-modern-slavery>> (2016) ('*Corporate Leadership on Modern Slavery*').

(including forced labour). In practice, this means that the millions of children engaged in hazardous work globally are not covered by the transparency in supply chain provision, nor are the many more engaged in child labour generally. This is a significant omission, particularly given the known prevalence of children engaged in the worst forms of child labour throughout the world.

16. Equipped with this knowledge, and supported by the deep community commitment to end slavery expressed by business leaders, non-government organisations and faith-based groups alike, the Australian Government has a significant opportunity to take meaningful and decisive action to eliminate slavery, forced labour, and human trafficking, and secure the elimination of the child labour, including all of the worst forms of child labour, as it committed to do through the Sustainable Development Goals 2030.

## Summary of recommendations

### General recommendations

17. UNICEF Australia recommends that:

**Recommendation 1:** The Australian Government adopt policy and legislative responses to end slavery, human trafficking, forced labour and child labour that are informed by, and consistent with, the Sustainable Development Goals 2030, along with Australia's obligations at international law.

**Recommendation 2:** The Australian Government ratify *ILO Convention No. 138 concerning Minimum Age for Admission to Employment* (1973), *Protocol of 2014 to the Forced Labour Convention, 1930* (No. 29) and the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* 1990 as soon as reasonably practicable.

**Recommendation 3:** The Australian Government, State and Territory Governments, relevant federal, state and territory agencies and community stakeholders work in collaboration to improve national mechanisms for the identification of victims/survivors, and to devise effective mechanisms for the collation and public reporting of data on the prevalence of slavery, human trafficking, forced labour, child labour and other forms of exploitation in Australia.

**Recommendation 4:** The Australian Government introduce a law requiring business enterprises to conduct human rights due diligence (identify, prevent, mitigate and

account for) in line with the United Nations Guiding Principles on Business and Human Rights. Such a law should require the specific consideration of the actual and potential risks to the rights of groups that are particularly vulnerable to adverse human rights impacts, including children, and provide for a remedy in appropriate circumstances.

**Recommendation 5:** The Australian Government allocate appropriate resources to provide awareness-raising, capacity-building and support to business enterprises (and public bodies) that are subject to a human rights due diligence requirement. The Australian Government should also allocate appropriate resources for education and awareness-raising for members of the community to understand the expectations of businesses and have knowledge about their rights and remedies in the event of a breach.

## A modern slavery act in Australia

18. In the event that the Australian Government favours a model based upon the UK MSA, UNICEF Australia recommends that:

**Recommendation 6:** Similarly to the UK MSA, an Australian modern slavery act should:

- i. include an explicit reference to and an obligation regarding a business's supply chain;
- ii. require any reporting obligation to be signed by a director or equivalent;
- iii. require any reporting obligation to be displayed prominently on the organisation's website;
- iv. require the production of further guidance for businesses to understand the obligations of the law; and
- v. establish the role of an Independent Anti-Slavery Commissioner.

**Recommendation 7:** An Australian modern slavery act should:

- i. include child labour, including the all of the worst forms of child labour (in addition to slavery, human trafficking, and forced labour etc.) in the scope of the provision applying to supply chains/business practices and relationships (whether requiring due diligence, reporting or otherwise).
- ii. require a review after 2 years from the commencement of the operation of the Act to consider its effectiveness and improvements that could be made to help reduce adverse impacts on the human rights of children and adults. The review should include meaningful public consultation, be fully transparent and involve consideration of expanding the due diligence requirement to all

human rights in line with the UN Guiding Principles on Business and Human Rights.

- iii. require businesses enterprises subject to the law to conduct human rights due diligence (an obligation to identify, prevent, mitigate and account for) regarding slavery, human trafficking, forced labour and child labour (including all of the worst forms of child labour).
- iv. mandate business enterprises subject to the law to report annually on their business practices and business relationships (including entities within an organisation's supply chain), including:
  - the organisation's structure, its business and its supply chains;
  - its policies in relation to slavery, human trafficking, forced labour and child labour (including all of the worst forms of child labour);
  - its due diligence processes in relation to slavery, human trafficking, forced labour and child labour (including all of the worst forms of child labour) applying to both its business practices and business relationships (including supply chains);
  - the parts of its business and supply chains where there is a risk of slavery, human trafficking, forced labour and child labour (including all of the worst forms of child labour) taking place, and the steps it has taken to assess and manage that risk, including whether it has engaged with rights-holders and other relevant stakeholders/experts;
  - its effectiveness in ensuring that slavery, human trafficking, forced labour and child labour (including all of the worst forms of child labour) is not taking place in its business or supply chains, measured against performance indicators;
  - the training about slavery, human trafficking, forced labour and child labour (including all of the worst forms of child labour) available to its staff (including whether the training is mandatory).
- v. include in the due diligence provision a requirement to consider all relevant business practices and business relationships (including the organisation's own practices, business partners, entities throughout an organisation's supply chain, group companies, and other non-State or State entities linked to business operations, products or services).
- vi. provide penalties in the event of non-compliance. For example, fines, exclusion from eligibility to participate in Commonwealth procurement and exclusion from eligibility to benefit from export finance support provided by the Australian Government.

- vii. establish or require a public agency to host a publicly available, central repository which is independent, free, open and accessible. The agency should be responsible for, amongst other things:
  - publishing the names of all business enterprises subject to the law;
  - providing independent analysis on the legal compliance and quality of the statements;
  - developing and publishing good practice guidance, in consultation with civil society;
  - building the capacity of enterprises that are subject to the legislation to enable them to understand and establish good practices; and
  - raising public awareness.
- viii. adopt a threshold relevant for the context of Australia, having regard what is known about the risks of adverse human rights impacts in both domestic and global supply chains and the desirability of including medium and large-sized enterprises operating in Australia.
- ix. include in the 2 year review consideration of the appropriateness of any threshold.
- x. consider introducing an ‘opt in’ mechanism for smaller businesses.
- xi. lead by example in public procurement to require all areas of Commonwealth Government (including state-owned or controlled enterprises) to adhere to the requirement and provide support to enable them to do so.

**Recommendation 8:** A modern slavery act that incorporates an obligation on business enterprises subject to the law to conduct human rights due diligence (an obligation to identify, prevent, mitigate and account for) specifically regarding slavery, human trafficking, forced labour and child labour (including all of the worst forms of child labour) should be introduced in Australia.

**Recommendation 9:** The Australian Government review and modify other areas of government policy including finance policy (Commonwealth procurement, and the activities of state owned and controlled enterprises), development policy and trade policy (including, for example, support to Australian businesses through EFIC and AusTrade) to ensure policy coherence towards the objective of improving human rights in the supply chains of Australian businesses and reducing the social and economic conditions that increase the vulnerability of children and adults to slavery, human trafficking, forced labour, and child labour.

## Background to UNICEF Australia's recommendations

19. The recommendations and observations outlined in this submission are informed by several important frameworks including the Sustainable Development Goals 2030 (SDGs 2030) and Australia's international obligations at international law. It is further informed by what is known about the interrelatedness of human rights, the spectrum of labour exploitation and the known business impacts on children. Each of these issues will be discussed briefly below.

### The Sustainable Development Goals 2030

20. The SDGs 2030 were adopted by the United Nations General Assembly on 25 September 2015.<sup>23</sup> Aiming to complete what the Millennium Development Goals were unable to, the SDGs 2030 established a bold and transformative plan of action for the world as it seeks to realise the human rights of all people and achieve concurrently the social, environmental and economic aspects of sustainable development.<sup>24</sup> They outline areas of action that are of "critical importance for humanity and the planet," including to end poverty, promote sustainable consumption, promote inclusive and sustainable economic growth, take urgent action to combat climate change and protect natural environments (land and oceans) and promote their sustainable use.<sup>25</sup> The SDGs 2030 recognise that business as usual is no longer acceptable.
21. As a member of the United Nations General Assembly, Australia committed to seek to realise the SDGs 2030, and UNICEF Australia commends the Australian Government for doing so. Having made this commitment, it is necessary and appropriate that when making relevant policy and legislative decisions that the Australian Government seek policy coherence with the SDGs 2030 framework and indicators. This is particularly so when the issues being discussed are connected to the impact of business on human rights, and the current discussion about slavery in supply chains is one such important topic. The SDGs 2030 also recognise that private sector partners and collaborative efforts are critical for the world to achieve these ambitious and important goals.<sup>26</sup>

---

<sup>23</sup> United Nations General Assembly, *Resolution adopted by the General Assembly on 25 September 2015 Transforming our world: the 2030 Agenda for Sustainable Development – The Sustainable Development Goals* GA Res 70/1, 70<sup>th</sup> sess, Agenda items 15 and 116, UN Doc A/RES/70/1 (21 October 2015) ('SDGs 2030'), preamble.

<sup>24</sup> Ibid.

<sup>25</sup> Ibid, 14.

<sup>26</sup> See, for example, the United States Council for International Business, *Business for 2030*, <<http://www.businessfor2030.org/>>.

22. Although the SDGs 2030 are integrated and indivisible, Goal 8.7 is particularly relevant to the current Inquiry. It requires states to:

[t]ake immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025 end child labour in all its forms.<sup>27</sup>

23. The SDGs 2030 therefore explicitly link the issues of forced labour, slavery, human trafficking, the worst forms of child labour and child labour. UNICEF Australia submits that this linking is an important acknowledgement of the similar conditions that can lead to these harmful practices, and the need to make concerted effort to end the occurrence of all of these practices. Child labour, including the worst forms of child labour, is discussed further below at paragraphs 34-36.

**Recommendation 1:** The Australian Government adopt policy and legislative responses to end slavery, human trafficking, forced labour and child labour that are informed by, and consistent with, the Sustainable Development Goals 2030, along with Australia's obligations at international law.

### Australia's international obligations

24. In addition to Australia's commitment to achieve the SDGs 2030, Australia's obligations under international law should also help shape the policy and legislative approach regarding the issues under consideration by the Inquiry. These include:

- The *Convention on the Rights of the Child*;<sup>28</sup>
- The *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography*;<sup>29</sup>
- The *Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict*;<sup>30</sup>
- The *Slavery Convention*;<sup>31</sup>
- The *United Nations Convention against Transnational Organized Crime*;<sup>32</sup>

<sup>27</sup> SDGs 2030, above n 24, 19-20.

<sup>28</sup> *Convention on the Rights of the Child* opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990), ratified by Australia with effect from 16 January 1991.

<sup>29</sup> Opened for signature 25 May 2000, 2171 UNTS 227 (entered into force on 18 January 2002), ratified by Australia with effect from 8 February 2007.

<sup>30</sup> Opened for signature 25 May 2000, 2173 UNTS 222 (entered into force 12 February 2002), ratified by Australia with effect from 26 October 2006.

<sup>31</sup> Opened for signature 25 September 1926, 60 LNTS 254 (entered into force 9 March 1927), ratified by Australia 18 June 1927.

<sup>32</sup> Opened for signature 12 November 2000 (entered into force 29 September 2003), ratified by Australia with effect from 26 June 2004.

- The *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention Against Transnational Organised Crime*;<sup>33</sup>
- The *International Covenant on Civil and Political Rights*;<sup>34</sup>
- The *International Covenant on Economic, Social and Cultural Rights*;<sup>35</sup>
- The *Convention on the Elimination of All forms of Discrimination against Women*;<sup>36</sup>
- The *Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery*;<sup>37</sup>
- *International Labour Organisation Convention on Forced Labour 1930*;<sup>38</sup>
- *International Labour Organisation Worst Forms of Child Labour Convention, 1999 (No. 182) (1999)*;<sup>39</sup> and
- *International Labour Organisation Convention No. 105 - Abolition of Forced Labour Convention, 1957*.<sup>40</sup>

25. Having ratified the *Convention on the Rights of the Child 1989*, Australia has made a commitment to protect children from economic exploitation, hazardous work and work which is harmful to the child's health or physical, mental, spiritual, moral or social development.<sup>41</sup> The Committee on the Rights of the Child has indicated that this requires consideration of children both domestically and internationally, explaining “[t]he Convention does not limit a State's jurisdiction to 'territory'”. In accordance with international law, the Committee has previously urged States to protect the rights of children who may be beyond their territorial borders.”<sup>42</sup> Having also ratified the *ILO Convention No. 182*, Australia has committed to “take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency.”<sup>43</sup> The *Optional Protocol to the Convention on*

---

<sup>33</sup> Opened for signature 15 November 2000, 2237 UNTS 319 (entered into force 25 December 2003), ratified by Australia with effect from 14 October 2005.

<sup>34</sup> Opened for signature on 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976), ratified by Australia with effect from 13 November 1980.

<sup>35</sup> Opened for signature 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976), ratified by Australia with effect from 10 March 1976.

<sup>36</sup> Opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981), ratified by Australia with effect from 27 August 1983.

<sup>37</sup> Opened for signature 7 September 1956, 266 UNTS 3 (entered into force 30 April 1957), ratified by Australia on 6 January 1958.

<sup>38</sup> Opened for signature 1 May 1932, ratified by Australia 2 January 1932.

<sup>39</sup> Opened for signature 17 June 1999 (entered into force 19 November 2000), ratified by Australia 19 December 2006.

<sup>40</sup> Opened for signature 25 June 1957 (entered into force 17 January 1959), ratified by Australia 7 June 1960.

<sup>41</sup> Art 32.

<sup>42</sup> *General Comment No. 16*, above n 8, para 39.

<sup>43</sup> Art 1.



*the Rights of the Child on the sale of children, child prostitution and child pornography* also obliges Australia to protect children who are especially vulnerable to such practices, and incorporates an international dimension through the requirement to criminalise such conduct whether occurring domestically or transnationally.<sup>44</sup> As such, the Australian Government should seek to protect the rights of children both domestically and internationally, in line with international law.

26. However, there are several notable conventions and protocols that Australia has not ratified which are relevant to the issue of labour exploitation in supply chains. Significantly, Australia has not as yet ratified, *ILO Convention No. 138 concerning Minimum Age for Admission to Employment (1973)* regarding child labour. As such, it is the only one of the eight core convention of the International Labour Organisation ('ILO') that Australia has not ratified.<sup>45</sup> This is despite a National Interest Analysis indicating overwhelmingly positive ramifications of ratifying *ILO Convention No. 138*, including that doing so would "...greatly enhance Australia's standing in the international community and the ability to address labour rights issues authoritatively, particularly within the Asia-Pacific region where many children work."<sup>46</sup> As the major convention relating to child labour and the only core ILO Convention Australia has not yet ratified, this represents a significant omission.

27. Additionally, Australia is yet to ratify the *Protocol of 2014 to the Forced Labour Convention, 1930 (No. 29)* and the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*.<sup>47</sup> Any domestic legislation seeking to address supply chain issues should ideally reinforce and reflect these internationally agreed definitions and approaches.

**Recommendation 2:** The Australian Government ratify *ILO Convention No. 138 concerning Minimum Age for Admission to Employment (1973)*, *Protocol of 2014 to the Forced Labour Convention, 1930 (No. 29)* and the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families 1990* as soon as reasonably practicable.

<sup>44</sup> See arts 3 and 9. Although beyond the scope of this submission, it is noted that the *Criminal Code Act 1992* (Cth) criminalises slavery and slavery-like conditions (Division 270), trafficking in persons and debt bondage (Division 271), child sex offences outside Australia (Division 272), Offences involving child pornography material or child abuse material outside Australia (Division 273).

<sup>45</sup> See International Labour Organisation *Up-to-date Conventions and Protocols not ratified by Australia* <[http://www.ilo.org/dyn/normlex/en/f?p=1000:11210:0::NO:11210:P11210\\_COUNTRY\\_ID:102544](http://www.ilo.org/dyn/normlex/en/f?p=1000:11210:0::NO:11210:P11210_COUNTRY_ID:102544)>.

<sup>46</sup> National Interest Analysis [2013] ATNIF 2, 6.

<sup>47</sup> Adopted by General Assembly resolution 45/158 of 18 December 1990.

## Conditions that create heightened risks of slavery, human trafficking, forced labour and other forms of exploitation

28. Human rights are universal and inalienable, indivisible, interdependent and interrelated.<sup>48</sup> All rights are “equal in importance and none can be fully enjoyed without the others”.<sup>49</sup> The interrelated and equal nature of human rights must be borne in mind when determining what policy and legislative measures are appropriate to help protect children and adults from adverse human rights impacts presented by business activity, including slavery, human trafficking, forced labour and other exploitative practices.
29. Research demonstrates that numerous social, economic, cultural, civil and political factors create environments in which children and adults are vulnerable to slavery, human trafficking, forced labour and other exploitative practices. The ILO has outlined that experiences of poverty, limited options, low educational attainment and land inequalities are significant risk factors that expose children and adults to forced labour and other exploitation.<sup>50</sup> The abundance of labour can also have a role to play,<sup>51</sup> as can conflict, displacement and political instability.<sup>52</sup> Practically therefore, slavery, human trafficking, forced labour and other forms of exploitation are very often the symptoms of when other human rights are not protected and realised, such as the right to non-discrimination, the right to education and the right to an adequate standard of living. Unless and until governments and businesses understand the role that they play in contributing to these conditions, and take meaningful action to prevent and mitigate against adverse human rights impacts of all kinds, UNICEF Australia is concerned that efforts to combat slavery, human trafficking and forced labour will be potentially limited. To reduce the risk of slavery, human trafficking, forced labour and other forms of exploitation therefore, it is crucial that these underlying risk factors be acknowledged and addressed by governments, businesses and civil society alike.

---

<sup>48</sup> United Nations Population Fund, *Human Rights Principles* 2005 <<http://www.unfpa.org/resources/human-rights-principles>>.

<sup>49</sup> Ibid.

<sup>50</sup> International Labour Organisation, *Profits and Poverty* (2014) <[http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_243391.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_243391.pdf)>, 30-31.

<sup>51</sup> Ibid, 30.

<sup>52</sup> The Minderoo Foundation, *The Global Slavery Index - What factors explain or predict the prevalence of modern slavery?* (2016) <<https://www.globalslaveryindex.org/findings/>>.

30. The underlying factors contributing to child labour frequently overlap with those that make children and adults vulnerable to slavery, human trafficking, forced labour and other forms of exploitation. They include poverty, limited access to credit markets (making it difficult for families to meet the costs of education), income inequality, lack of quality schooling, gender inequality, household asset portfolios and the structure of the labour market.<sup>53</sup> Businesses around the world play a crucial role in influencing these causal factors – both to perpetuate them, ensuring the continued vulnerability of children and adults – but conversely to leverage their operations, expertise and resources to seek to address and minimise such risks.<sup>54</sup> This has been recognised by the United Nations Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Urmila Bhoola (‘UN Special Rapporteur on contemporary forms of slavery’), who explained in 2015 that “[g]lobal businesses have the capacity and resources to address, jointly with relevant stakeholders, the root causes of contemporary forms of slavery, particularly structural issues relating to discrimination, poverty and inequality and should use this leverage more prominently.”<sup>55</sup> Government policy has a central role to encourage and require businesses to do so.

### The spectrum of labour exploitation

31. Like many human rights abuses, there is a spectrum of labour exploitation which can breach different and multiple human rights of children and adults. The ILO Director General explained in 2005 that “[t]here is a broad spectrum of working conditions and practices, ranging from extreme exploitation including forced labour at one end, to decent work and the full application of labour standards at the other. Within that part of the spectrum in which forced labour conditions may be found, the line dividing forced labour in the strict legal sense of the term from extremely poor working conditions can at times be very difficult to distinguish”.<sup>56</sup> When examining labour exploitation in the Australian construction industry, the Australian Institute of Criminology has similarly explained that seemingly less extreme forms of rights infringements associated with poor working conditions “...may facilitate a breeding

<sup>53</sup> See generally International Labour Organisation, *Explaining the demand and supply of child labour: A review of the underlying theories* (2007).

<sup>54</sup> Business and Sustainable Development Commission, *Better Business, Better World* (2017) <[http://report.businesscommission.org/uploads/BetterBiz-BetterWorld\\_170215\\_012417.pdf](http://report.businesscommission.org/uploads/BetterBiz-BetterWorld_170215_012417.pdf)>.

<sup>55</sup> Human Rights Council, *Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Urmila Bhoola*, 30<sup>th</sup> sess, UN Doc. A/HRC/30/35, 8 July 2015, para 66.

<sup>56</sup> International Labour Organization (ILO) Director-General 2005. The cost of coercion: global report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work. Report to the International Labour Conference, 93rd Session 2005. Report I (B) <[http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_081882.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_081882.pdf)> 8.

ground for human trafficking, slavery and slavery-like practices...”.<sup>57</sup> The reality that labour abuses can escalate and make possible more extreme forms of abuses must be borne in mind when devising policy and legislative responses.

## Business impacts on children

32. Children are particularly and uniquely impacted by the conduct of business enterprises – both positively and negatively. This is the case for both children within Australia’s domestic context and also internationally where Australian businesses operate and source vast amounts of goods and services through complex supply chains. The interaction between business and children is not always direct or purposeful, but can be through indirect and unintended ways.<sup>58</sup> Children are employees and providers of labour, consumers of products and members of communities around business operations and activities. They are also greatly impacted by the working conditions and arrangements provided to their caregivers.<sup>59</sup> Today, it is recognised that the policies and practices of businesses can violate children’s rights. For example, through illegal child labour within supply chains, exposing children to unsafe working conditions, displacement due to land acquisition, aggressive and exploitative marketing techniques, dangerous or unsafe products and causing environmental damage.<sup>60</sup>
33. Because of their developmental stage, children require unique and specific consideration from governments and legislators to help ensure that they do not suffer from adverse human rights impacts, including those involving businesses. This is critical because:<sup>61</sup>
- Childhood is a unique period of physical, mental, emotional and spiritual development and children can suffer of life-long, irreversible and even inter-generational consequences of adverse human rights impacts.
  - Children are less likely to have access to decision makers and may lack access to information.
  - When adverse human rights impacts do occur, children and their families often face compounding barriers to obtaining an effective remedy. They may

---

<sup>57</sup> Bodean Hedwards, Hannah Andreviski and Samantha Bricknell, *Labour exploitation in the Australian construction industry: risks and protections for temporary migrant workers* Australian Institute of Criminology, Research Report 02 (2017) <[http://aic.gov.au/media\\_library/publications/rr/002/rr002.pdf](http://aic.gov.au/media_library/publications/rr/002/rr002.pdf)> 5.

<sup>58</sup> *Children’s Rights and Business Principles*, above n 1 and *General Comment No. 16*, above n 8, para 1.

<sup>59</sup> UNICEF, *The Ready-Made Garment Sector and Children in Bangladesh* (2015) <[https://www.unicef.org/csr/files/CSR\\_BANGLADESH\\_RMG\\_REPORT.PDF](https://www.unicef.org/csr/files/CSR_BANGLADESH_RMG_REPORT.PDF)>.

<sup>60</sup> *General Comment No. 16*, above n 8, paras 1-7.

<sup>61</sup> *Ibid*, para 4.

lack legal standing, knowledge of legal rights and forums and financial resources to commence proceedings or otherwise obtain legal advice and representation.<sup>62</sup>

### Child labour, including the worst forms of child labour

34. As outlined above, child labour is work that deprives children of their childhood, their potential and their dignity, and that is harmful to physical and mental development.<sup>63</sup> The practice of child labour is one of the well-understood and documented business impacts on children<sup>64</sup> and discussions about human rights issues within supply chains regularly and extensively highlight child labour as an issue of concern, alongside exploitative practices such as forced labour.<sup>65</sup>
35. In 2012 the ILO estimated that there were approximately 168 million children engaged in child labour throughout the world, equating to 11% of the global child population.<sup>66</sup> Asia-Pacific is the region with the highest total number of children engaged in child labour (78 million).<sup>67</sup> Of the total number of children engaged in child labour, approximately 85 million are thought to be engaged in hazardous work<sup>68</sup> and 5.5 million in forced labour.<sup>69</sup> Sectors that have been linked with such practices include agriculture, construction, domestic work and manufacturing.<sup>70</sup> In its *2015 Findings on the Worst Forms of Child Labor* report, the US Department of Labor illustrated these figures and definitions in the following diagram:

---

<sup>62</sup> Frances Sheahan for UNICEF's Corporate Social Responsibility Unit, *Effective Remedy and Corporate Violations of Children's Rights* (October 2011), 4.

<sup>63</sup> International Labour Organisation, *What is child labour* <<http://www.ilo.org/ipec/facts/lang--en/index.htm>>.

<sup>64</sup> Olga Martin-Ortega and Rebecca Wallace 'Business, Human Rights and Children: The Developing International Agenda' (2013) 25 *The Denning Law Journal* 105, 105.

<sup>65</sup> See, for example, Walk Free Foundation, *Harnessing the Power of Business to End Modern Slavery* (2016) <<http://walkfreefoundation.org-assets.s3-ap-southeast-2.amazonaws.com/content/uploads/2016/12/01213809/Harnessing-the-power-of-business-to-end-modern-slavery-20161130.pdf>> 15 and Business and Sustainable Development Commission, *Better Business, Better World* (2017) <[http://report.businesscommission.org/uploads/BetterBiz-BetterWorld\\_170215\\_012417.pdf](http://report.businesscommission.org/uploads/BetterBiz-BetterWorld_170215_012417.pdf)> 86.

<sup>66</sup> International Labour Organisation, *Marking progress against child labour – Global estimates and trends 2000-2012* (2013) 3.

<sup>67</sup> *Ibid.*

<sup>68</sup> *Ibid.*, vii.

<sup>69</sup> International Labour Organisation, above n 51, 7.

<sup>70</sup> US Department of Labor, *2015 Findings on the Worst Forms of Child Labor* (2016) <[https://www.dol.gov/sites/default/files/documents/ilab/reports/child-labor/findings/2015TDA\\_1.pdf](https://www.dol.gov/sites/default/files/documents/ilab/reports/child-labor/findings/2015TDA_1.pdf)>, 7.



Source: US Department of Labor, *2015 Findings on the Worst Forms of Child Labor* (2016)

[https://www.dol.gov/sites/default/files/documents/ilab/reports/child-labor/findings/2015TDA\\_1.pdf](https://www.dol.gov/sites/default/files/documents/ilab/reports/child-labor/findings/2015TDA_1.pdf), page 7.

36. Many groups have long advocated for the elimination of child labour, including in the context of global supply chains, and have developed tools and guidance for businesses to do so.<sup>71</sup> Business leaders themselves have recognised the urgent need to eliminate child labour alongside slavery and other exploitation from supply chains as a minimum requirement. For example, the newly established Business and Sustainable Development Commission outlined in January 2017 that “[a]t a minimum, business leaders are expected to ensure that jobs throughout their supply chains are physically safe, and to be ready to show how they are making sustained efforts to

<sup>71</sup> International Labour Office; ILO International Programme on the Elimination of Child Labour; International Organisation of Employers ILO-IOE, *Child Labour Guidance Tool for Business* (2015).



tackle unsafe working conditions, child labour and modern slavery.”<sup>72</sup> Governments are also increasingly looking to legislate for increased protections against child labour in the context of supply chains, as the below case study of the proposed due diligence law regarding child labour in the Netherlands demonstrates.

### Case study: Proposed Dutch law on due diligence regarding child labour

In February 2017, the lower house of the Dutch Parliament passed a draft law proposing to mandate due diligence regarding child labour ('Wet Zorgplicht Kinderarbeid'). The law has been described as follows:

*Due diligence under this law means, first assessing whether one can reasonably presume child labour has contributed to this product or service... If one can reasonably presume child labour has contributed to this product or service, a company is expected to make a plan of action in line with international guidelines (UNGP or OECD) to prevent this contribution. The government can later determine some quality criteria for this plan of action. A company has to declare it has applied due diligence on child labour and send this declaration to the Supervisory Body (to be appointed), six month after this law enters into force (1 January 2020)...It is due diligence that is compulsory, it is not a guarantee that a product is free from child labour, as this is impossible to enforce.*<sup>73</sup>

The law, if passed, would be a significant development for children. The due diligence requirement would require meaningful action to prevent goods and services from being produced using child labour, which would include the worst forms of child labour.

The Dutch Government also supports entrepreneurs to eliminate child labour within their supply chain through a subsidy from the Ministry of Foreign Affairs' Fund against Child Labour.<sup>74</sup>

## The nature and extent of modern slavery (ToR 1)

37. This submission will make brief observations with regard to Terms of Reference (ToR) 1 and 2 as it is anticipated that other submissions to the Committee will cover these issues comprehensively.

<sup>72</sup> Business and Sustainable Development Commission, *Better Business, Better World* (2017) <[http://report.businesscommission.org/uploads/BetterBiz-BetterWorld\\_170215\\_012417.pdf](http://report.businesscommission.org/uploads/BetterBiz-BetterWorld_170215_012417.pdf)> 86.

<sup>73</sup> Liesbeth Unger, 'Due Diligence on child labour in the Netherlands; a new law', LinkedIn (13 February 2017) <[https://www.linkedin.com/pulse/due-diligence-child-labour-netherlands-new-law-liesbeth-unger?trk=pulse\\_spock-articles](https://www.linkedin.com/pulse/due-diligence-child-labour-netherlands-new-law-liesbeth-unger?trk=pulse_spock-articles)>.

<sup>74</sup> Netherlands Enterprise Agency, *Fund against Child Labour* <<http://english.rvo.nl/subsidies-programmes/fund-against-child-labour>>

38. The ILO has also observed that the phrase “modern slavery” “...has emerged as a catch-all for forced labour, human trafficking, forced sexual exploitation and some of the worst forms of child labour.”<sup>75</sup> The United Nations Office of the High Commissioner for Human Rights has previously listed the following practices as included in the term “modern slavery”:

- Traditional slavery;
- Debt bondage;
- Serfdom;
- Forced labour;
- Sale of children and the worst forms of child labour;
- Commercial exploitation of children;
- Trafficking in persons for sexual exploitation and forced labour;
- Sexual Slavery;
- Forced or early marriage; and
- Other forms of slavery.<sup>76</sup>

39. The definitions of each of these terms are largely found in the various international treaties on these issues.<sup>77</sup> UNICEF Australia submits that Australian law should align with the terms and concepts as defined by international law.

40. Regardless of the form of slavery or exploitation as outlined above, it is important to note the unique vulnerabilities of children, and for policy and legislative responses to reflect these. For example, the *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime* defines “trafficking in persons” as:

...the recruitment, transportation, transfer, harbouring or receipt of 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. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual

---

<sup>75</sup> ILO, above n 51, 3.

<sup>76</sup> United Nations Voluntary Trust Fund on Contemporary Forms of Slavery *The Human Faces of Modern Slavery* (date unknown) <<http://www.ohchr.org/Documents/Issues/Slavery/UNVTCFS/UNSlaveryFund.pdf>>

<sup>77</sup> See the main treaties listed at paragraph 24 above.



exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.<sup>78</sup>

41. The elements of trafficking therefore are 1) an action; 2) a means and 3) a purpose. However, a “means” (such as the use of force or coercion etc.) is not required as an element of an offence when the person trafficked is a child, and the issue of consent is irrelevant.<sup>79</sup> Rather, all that is required is the act and the exploitative purpose.<sup>80</sup> This is because “[c]hildren have, in law, often been recognized as being unable to consent to certain types of activities in recognition of the fact that they are more vulnerable and there exists a potential power imbalance.”<sup>81</sup> Further information about the nature of slavery and other forms of exploitation, specifically, the causal social and economic factors which result in the heightened vulnerability of children and adults, is discussed above at paragraphs 28-30.
42. Regarding prevalence, determining reliable estimates is difficult due to the clandestine nature of these practices and ethical considerations, amongst other things.<sup>82</sup> However, there are some estimates of the total number of people affected by some forms of slavery and exploitation as listed above. The ILO has, for example, estimated that 20.9 million people globally are in forced labour, trafficked for labour and sexual exploitation or held in slavery like conditions.<sup>83</sup> Of these:

---

<sup>78</sup> Opened for signature 15 November 2000, 2237 UNTS 319 (entered into force 25 December 2003), ratified by Australia with effect from 14 October 2005, art 3.

<sup>79</sup> United Nations Office on Drugs and Crime, *The Role of ‘consent’ in the trafficking in persons protocol* (2014) <[https://www.unodc.org/documents/human-trafficking/2014/UNODC\\_2014\\_Issue\\_Paper\\_Consent.pdf](https://www.unodc.org/documents/human-trafficking/2014/UNODC_2014_Issue_Paper_Consent.pdf)> 7.

<sup>80</sup> Ibid.

<sup>81</sup> Ibid, 21.

<sup>82</sup> ILO, above n 51, 3.

<sup>83</sup> The ILO clarifies that “*The figures do not include trafficking for the removal of organs or for forced marriage/adoption unless the latter practices lead to a situation of forced labour or service*” and “*It should be noted that, as the scope of the estimate is limited to forced labour, no attempt was made to estimate trafficking of adults or children for forced marriage, adoption or organ transplant. Nonetheless, cases in which victims were deceived with false promises of marriage or adoption but were instead put into situations of forced labour were taken into account*”. ILO, *ILO Global Estimate of Forced Labour – Results and methodology* (2012) <[http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_182004.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_182004.pdf)> 13 and 20.

- 1 in 4 victims are children (26% of the total population affected, or 5.5 million, were children (people aged 17 years old or younger));<sup>84</sup>
- The majority (68%), or 14.2 million adults and children, were victims of forced labour exploitation, in economic activities such as agriculture, construction, domestic work and manufacturing;<sup>85</sup> and
- Women and girls were most affected by forced labour, particularly for sexual exploitation.<sup>86</sup>

43. There is a serious need for governments and business enterprises to consider the significant number of children affected by slavery, human trafficking, forced labour and child labour. This is particularly so given the profitable nature of these practices, with the ILO estimating that forced labour alone generates US\$150.2 billion per year, with one third of the profits (US\$51.2 billion) made through forced labour exploitation”.<sup>87</sup>

44. Regarding slavery specifically, the Global Slavery Index indicated that approximately 45.8 million people were subjected to slavery in 2016.<sup>88</sup> There are continuing efforts to measure the scale of modern slavery globally.<sup>89</sup>

## **The prevalence of modern slavery in the domestic and global supply chains of companies, businesses and organisations operating in Australia (ToR 2)**

45. The risks of human rights abuses in global supply chains has been increasing acknowledged including by the G7,<sup>90</sup> G20,<sup>91</sup> International Labour Conference<sup>92</sup> and

---

<sup>84</sup> ILO, above n 51, 7.

<sup>85</sup> ILO, above n 88, 13.

<sup>86</sup> Ibid, 17.

<sup>87</sup> ILO, above n 51, 13.

<sup>88</sup> The Minderoo Foundation, *The Global Slavery Index - What factors explain or predict the prevalence of modern slavery?* (2016) <<http://www.globalslaveryindex.org/findings/>>.

<sup>89</sup> ILO, *ILO and Walk Free Foundation to collaborate on Global Estimate of Modern Slavery* (17 March 2017) <[http://ilo.org/global/topics/forced-labour/news/WCMS\\_547316/lang--en/index.htm](http://ilo.org/global/topics/forced-labour/news/WCMS_547316/lang--en/index.htm)>.

<sup>90</sup> G7, *Leaders' Declaration*, G7 summit, Schloss Elmau, Germany, 7-8 June 2015, <[https://sustainabledevelopment.un.org/content/documents/7320LEADERS%20STATEMENT\\_FINAL\\_CLEAN.pdf](https://sustainabledevelopment.un.org/content/documents/7320LEADERS%20STATEMENT_FINAL_CLEAN.pdf)>, 4-6.

<sup>91</sup> G20, *Innovation and Inclusive Growth: Decent Work, Enhanced Employability and Adequate Job Opportunities – 2016 G20 Labour and Employment Ministerial Meeting Declaration*, China (2016) <[http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/statement/wcms\\_499403.pdf](http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/statement/wcms_499403.pdf)>, paras 15-19.

<sup>92</sup> International Labour Organisation, *Resolution concerning decent work in global supply chains*, adopted on 10 June 2016 <[http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---relconf/documents/meetingdocument/wcms\\_497555.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_497555.pdf)>.

the European Council.<sup>93</sup> The human rights risks presented by today's complex supply chains has been described as follows:

...many workers in developing countries who produce goods and services for rich consumers experience poor – in many cases appalling – working conditions. Research has reported that the conditions of value chain labour in developing countries can be insecure and unprotected, and labour safety regulations can be non-existent. Many supply chain workers do not earn a wage sufficient to meet their basic living needs, especially in host countries where the minimum wage rate is so low that it will not cover basic needs. There is also evidence of continuation of acceptance of child labour, forced labour, enforced overtime and over-long normal working days, high intensity work and an absence of freedom of association and the right to collective bargaining.<sup>94</sup>

46. These risks have been increasingly documented across many sectors and locations. For example, the US Department of Labor's *List of Goods Produced by Child Labor or Forced Labor* report outlines an extensive list of goods and industries found to produce products involving either forced labour or child labour or both. These include, for example, mining (gold, coal, cobalt ore), agriculture (sugarcane, coffee, nuts, tobacco, cotton, cocoa), and textiles, garments and footwear.<sup>95</sup> The Report estimates that approximately 139 goods from 75 countries have involved forced or child labour.<sup>96</sup> Numerous media reports<sup>97</sup> and civil society investigations<sup>98</sup> have also linked Australian businesses with suppliers that have reportedly engaged in exploitative practices including forced labour in overseas locations.

---

<sup>93</sup> European Council, *Council conclusions on child labour* 10244/16 (20 June 2016).

<sup>94</sup> Michael Rawling, 'Legislative regulation of global value chains to protect workers: A preliminary assessment' ('*Legislative regulation of global value chains to protect workers*') (2015) *Economic and Labour Relations Review*, 26(4), 660, 666.

<sup>95</sup> United States Department of Labor *List of Goods Produced by Child Labor or Forced Labor* (2016) <[https://www.dol.gov/sites/default/files/documents/ilab/reports/child-labor/findings/TVPRA\\_Report2016.pdf](https://www.dol.gov/sites/default/files/documents/ilab/reports/child-labor/findings/TVPRA_Report2016.pdf)> 30-33.

<sup>96</sup> Ibid, 2.

<sup>97</sup> Nick McKenzie and Richard Baker, 'Surf clothing label Rip Curl using 'slave labour' to manufacture clothes in North Korea' *Sydney Morning Herald*, 21 February 2016 <<http://www.smh.com.au/business/consumer-affairs/woolies-coles-aldi-caught-up-in-child-labour-scandal-20151214-glnagx.html>> 30 January 2017; Heidi Pett, 'Thai Union: Australian supermarkets implicated in slave labour accusations against giant seafood company', *ABC News*, 22 December 2015 <<http://www.abc.net.au/news/2015-12-15/major-australian-supermarkets-implicated-in-child-labour/7031350>>; and 'Australian retailers Rivers, Coles, Target, Kmart linked to Bangladesh factory worker abuse' *ABC News*, 24 June 2013 <<http://www.abc.net.au/news/2013-06-24/australian-retailers-linked-to-sweatshop-abuse/4773738>>.

<sup>98</sup> Theuws, Martje, Sandjojo, Virginia, and Vogt, Emma, *Branded Childhood: How garment brands contribute to low wages, long working hours, school dropout and child labour in Bangladesh* (2017) Stichting Onderzoek Multinationale Ondernemingen (SOMO) and Stop Child Labour <<https://www.somo.nl/wp-content/uploads/2017/01/Branded-childhood-web.pdf>>.

47. Within Australia, there is evidence of slavery and exploitation in a range of sectors including construction,<sup>99</sup> horticulture<sup>100</sup> and hospitality<sup>101</sup>, with migrant workers and their families are particularly vulnerable to these forms of abuse and exploitation.<sup>102</sup>
48. The business community has acknowledged the risk of slavery occurring in supply chains. In 2015, the Australian Retail and Supplier Roundtable for example acknowledged that “...[h]uman trafficking, modern slavery and other forms of forced labour are very real human rights abuses occurring in today’s global supply chains. We, the signatories, recognise that such practices may exist beyond our first tier suppliers where we have limited visibility and control”.<sup>103</sup> A 2016 study conducted by the Ethical Trading Initiative and Hult International Business School found that 77% of the 71 companies surveyed considered that slavery is occurring in their supply chains.<sup>104</sup>
49. As outlined above however, exact figures are difficult to determine. In her 2015 mission to Australia, the UN Special Rapporteur on trafficking in persons especially women and children, Joy Ngozi Ezeilo, observed with regard to official figures of trafficking victims alone that:
- ...the official numbers of identified victims may not be indicative of the true extent of the problem of trafficking. For a variety of valid reasons, victims of trafficking may not make their cases known to the authorities, as highlighted by the trafficked persons with whom the Special Rapporteur met. This may explain why official government statistics regarding the numbers of identified trafficked persons within Australia often diverge considerably from the case loads reported by CSOs. Furthermore, the hidden nature of the crime means that not all cases of trafficking are identified. Therefore, the Special Rapporteur concludes that official figures of identified victims may underrepresent the true number of trafficked persons in Australia.<sup>105</sup>

---

<sup>99</sup> Bodean Hedwards, Hanna Andreovski and Samantha Bricknell, *Labour exploitation in the Australian construction industry: risks and protections for temporary migrant workers* Australian Institute of Criminology, Research Report 02 (2017) <[http://aic.gov.au/media\\_library/publications/rr/002/rr002.pdf](http://aic.gov.au/media_library/publications/rr/002/rr002.pdf)>.

<sup>100</sup> Anthony Forsyth, *Victorian Inquiry into the Labour Hire Industry and Insecure Work – Final Report* (31 August 2016) 30

<sup>101</sup> Adele Ferguson, ‘Blackmail, extortion and slavery at a restaurant near you’ *Sydney Morning Herald* (25 March 2017) <<http://www.smh.com.au/business/workplace-relations/blackmail-extortion-and-slavery-at-a-restaurant-near-you-20170324-gv5usu.html>>

<sup>102</sup> See, for example, Fair Work Ombudsman, *Inquiry into the wages and conditions of people working under the 417 Working Holiday Visa Program* (October 2016) 3.

<sup>103</sup> Sustainability Council, Retail and Supplier Roundtable, *Australian Business Pledge against Forced Labour* (8 December 2015)

<[http://www.retailsupplierroundtable.org.au/icms\\_docs/182462\\_Pledge\\_Against\\_Forced\\_Labour.pdf](http://www.retailsupplierroundtable.org.au/icms_docs/182462_Pledge_Against_Forced_Labour.pdf)>.

<sup>104</sup> *Corporate Leadership on Modern Slavery*, above n 23, 8.

<sup>105</sup> Human Rights Council, *Report of the Special Rapporteur on trafficking in persons*,

50. As acknowledged by the *National Action Plan to Combat Human Trafficking and Slavery 2015-19* however “[w]hile there is little reliable data about the nature and extent of human trafficking and slavery, there is general consensus that these exploitative practices affect almost every country in the world, whether as a source, transit or destination country – or as a combination of these.”<sup>106</sup>

51. As such, it is undeniable that slavery and other forms of exploitation exist within the supply chains of Australian businesses, whether by virtue of domestic practices or implication through other means including the goods and services sourced through global supply chains. Undoubtedly there is a need for improved information collection both domestically and internationally to help understand further the prevalence and nature of slavery, human trafficking, forced labour and other forms of exploitation.

**Recommendation 3:** The Australian Government, State and Territory Governments, relevant federal, state and territory agencies and community stakeholders work in collaboration to improve national mechanisms for the identification of victims/survivors, and to devise effective mechanisms for the collation and public reporting of data on the prevalence of slavery, human trafficking, forced labour, child labour and other forms of exploitation in Australia.

## International best practice (ToR 3)

### The United Nations Guiding Principles on Business and Human Rights

52. UNICEF Australia submits that good practice is grounded in the United Nations Guiding Principles on Business and Human Rights (‘UN Guiding Principles’). After years of consultation with governments, businesses and civil society, the UN Guiding Principles were endorsed unanimously by the United Nations Human Rights Council in 2011.<sup>107</sup> Since that time they have become a well-established conceptualisation of the differentiated responsibilities of governments and businesses regarding human rights and are recognised as “...authoritative global framework to address business impact on all human rights, applicable to both States and businesses, and clarified their respective duties and responsibilities for tackling human rights risks related to

*especially women and children, Joy Ngozi Ezeilo - Addendum - Mission to Australia*, UN Doc.

A/HRC/20/18/Add.1, 20<sup>th</sup> sess. 18 May 2012, para [43].

<sup>106</sup> Commonwealth of Australia, *National Action Plan to Combat Human Trafficking and Slavery 2015-19* (2014) <<https://www.ag.gov.au/CrimeAndCorruption/HumanTrafficking/Documents/Trafficking-NationalActionPlanToCombatHumanTraffickingAndSlavery2015-19.pdf>> 5.

<sup>107</sup> Human Rights Council, ‘Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework’, Report of the Special Representative of the Secretary General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, UN Doc. A/HRC/17/31, 17<sup>th</sup> sess. (21 March 2011).

business activities”.<sup>108</sup> The UN Guiding Principles have garnered widespread support from governments, businesses, investors, academics and civil society alike both abroad and within Australia.<sup>109</sup>

53. The UN Guiding Principles outline how States and businesses should implement the 'Protect, Respect, Remedy' framework developed in 2008 by the UN Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises (SRSG), Professor John Ruggie. This framework articulates:

- 1) The State duty to Protect Human Rights;
- 2) The corporate responsibility to Respect human rights; and
- 3) Access to Remedy.

54. UNICEF's work in relation to children's rights and business is grounded in the 'Protect, Respect and Remedy' Framework and the UN Guiding Principles.<sup>110</sup> Importantly, the UN Guiding Principles require States and businesses alike to be particularly conscious of the rights of groups at heightened risk of vulnerability and marginalisation, including children.<sup>111</sup>

55. As part of its voluntary commitments following on from its appearance as part of the Universal Periodic Review, the Australian Government committed in 2016 to conduct a consultation on implementing the UN Guiding Principles in Australia.<sup>112</sup> This commitment is commendable and the relevance of this important framework for the purposes of the current Inquiry is significant. UNICEF Australia submits that the Australian Government should seek to adopt a policy and legislative approach to help eliminate slavery, human trafficking, forced labour and other forms of rights abuses which is consistent with the UN Guiding Principles.

---

<sup>108</sup> Office of the High Commissioner for Human Rights, *Frequently asked questions about the Guiding Principles on Business and Human Rights* (2014) <[http://www.ohchr.org/Documents/Publications/FAQ\\_PrinciplesBusinessHR.pdf](http://www.ohchr.org/Documents/Publications/FAQ_PrinciplesBusinessHR.pdf)> 1.

<sup>109</sup> Australian Human Rights Commission, *Implementing the UN Guiding Principles on Business and Human Rights – Joint Civil Society Statement* (2016); For example, Justine Nolan, 'Business as usual is no longer an option' *ABC News*, 24 April 2014, <<http://www.abc.net.au/news/2014-04-23/nolan-business-as-usual-is-not-an-option/5405338>>. Australian Council of Superannuation Investors, *Labour and Human Rights Risks in Supply Chain Sourcing* (2013) <[https://www.acsi.org.au/images/stories/ACSIDocuments/generalresearchpublic/13%20LHR%20Risks%20in%20Supply%20Chain%20Sourcing\\_Jun13.pdf](https://www.acsi.org.au/images/stories/ACSIDocuments/generalresearchpublic/13%20LHR%20Risks%20in%20Supply%20Chain%20Sourcing_Jun13.pdf)> 31.

<sup>110</sup> See UNICEF, Corporate Social Responsibility, *Our Work* <https://www.unicef.org/csr/>

<sup>111</sup> *UN Guiding Principles*, above n 7, 1.

<sup>112</sup> Human Rights Council, *Report of the Working Group on the Universal Periodic Review – Australia - Addendum - Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review*, UN Doc. A/HRC/31/14/Add.1 31<sup>st</sup> sess. (29 February 2016), para 63.



## The State duty to protect human rights

56. International law creates an obligation on states to protect individuals (including children) from the actions of third parties (including businesses) that infringe upon human rights.<sup>113</sup> This obligation is reiterated in the UN Guiding Principles which state that as part of the state duty to protect human rights, “States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.”<sup>114</sup> Similarly, the UN Special Rapporteur on contemporary forms of slavery affirmed in 2015 that “States bear a fundamental duty to address the preventive aspect of contemporary forms of slavery through tackling its root causes, including poverty, discrimination, stigmatization, inequality and social exclusion of groups most vulnerable to slavery and slavery-like practices, by adopting a human-rights based approach...”<sup>115</sup>

57. There is also a practical reason why the State Duty to protect is significant. States have at their disposal the full range of legal, policy, financial and other levers to ensure effective protection against adverse human rights impacts of all kinds, and provide for a remedy when breaches do occur.<sup>116</sup>

## The corporate responsibility to respect human rights and human rights due diligence

58. The UN Guiding Principles further articulate the corporate responsibility to respect human rights, explaining in Principle 11 that business enterprises “...should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.”<sup>117</sup> The UN Guiding Principles go on to describe how respect for human rights can be operationalised in practice through undertaking certain actions, including a “human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights...”<sup>118</sup> The concept of a human rights due diligence has been described as:

[a]n ongoing risk management process that a reasonable and prudent company needs to follow in order to identify, prevent, mitigate and account for how it addresses its adverse human rights impacts. It includes four key steps: assessing actual and

---

<sup>113</sup> Human Rights Committee, *General Comment No. 31 [80] The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, 80<sup>th</sup> sess, UN Doc. CCPR/C/21/Rev.1/Add. 13 (26 May 2004), para 8.

<sup>114</sup> *UN Guiding Principles*, above n 7, 3.

<sup>115</sup> Human Rights Council, *Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences*, Urmila Bhoola, 30<sup>th</sup> sess, UN Doc. A/HRC/30/35, 8 July 2015, para 68(f).

<sup>116</sup> Such as those identified in *General Comment No. 16*, above n 8.

<sup>117</sup> *UN Guiding Principles*, above n 7, 13.

<sup>118</sup> *Ibid*, 16.

potential human rights impacts; integrating and acting on the findings; tracking responses; and communicating about how impacts are addressed.<sup>119</sup>

59. The concept of human rights due diligence is significant for several reasons. For the purposes of this submission, a few significant benefits of legislating for human rights due diligence will be discussed briefly, namely:

- 1) The relevance of all human rights contained in the International Bill of Human Rights and ILO core conventions;
- 2) The requirement to take action to prevent and mitigate against adverse human rights impacts;
- 3) The scope of business activities and relationships to be considered; and
- 4) The potential for uniformity and a level playing field for responsible businesses.

#### ***The relevance of all human rights contained in the International Bill of Human Rights and ILO core conventions***

60. The UN Guiding Principles, and the concept of a human rights due diligence, reference *all* internationally recognised human rights. This includes all rights contained in the International Bill of Human Rights, to which all people, children included, are entitled. The International Bill of Human Rights consists of the Universal Declaration of Human Rights and the main instruments through which it has been codified including the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, the principles concerning fundamental rights in the eight ILO core conventions as set out in the Declaration on Fundamental Principles and Rights at Work.<sup>120</sup> Other human rights treaties such as the *Convention on the Rights of the Child* are also relevant.<sup>121</sup>

61. The reference to the International Bill of Human Rights is significant because of the varied nature of risks to human rights presented by different business enterprises and the indivisibility and interrelatedness of human rights. This is appropriate as the nature of the risks of adverse impacts on human rights can vary greatly from one business to another based on, for example, the business model used, operating context and the nature and location of work.<sup>122</sup> It can also differ at different points in

---

<sup>119</sup> Shift and Mazars, UN Guiding Principles Reporting Framework, *Human rights due diligence*, <http://www.ungpreporting.org/glossary/human-rights-due-diligence/>

<sup>120</sup> *UN Guiding Principles*, above n 7, 14.

<sup>121</sup> See generally *General Comment No. 16*, above n 8.

<sup>122</sup> See, for example, CORE Coalition, *Beyond Compliance: Effective Reporting under the Modern Slavery Act*, (February 2016), 9-11.



time. For example, the rights to protection<sup>123</sup> and privacy<sup>124</sup> might be more salient for a technology company, whereas cultural rights and the right to self-determination might be more salient for an extractives company.<sup>125</sup> In contrast, the right to be free from slavery and the right to just and favourable conditions of work might be more salient for labour-intensive industries, such as apparel manufacture and agricultural production. As outlined previously, although businesses might have a low risk of slavery in their supply chains, they might, through other businesses activities and relationships, directly or indirectly contribute to the underlying social and economic inequalities that expose children and adults to increased vulnerability to slavery, human trafficking, forced labour, child labour and other forms of exploitation.

62. A human rights due diligence approach requires businesses to identify and understand ‘salient’ human rights risks created by the organisation’s activities and relationships based on these variable factors. Salient human rights issues have been defined as “[t]hose human rights that are at risk of the most severe negative impacts through a company’s activities or business relationships. They therefore vary from company to company”.<sup>126</sup> Importantly, the central consideration in such a process is the risk presented to the human rights of affected or potentially affected stakeholders. This is to be contrasted with traditional risk and materiality assessments that focus on risk to the organisation.<sup>127</sup>

63. Critically as well, human rights due diligence requires, where appropriate, consultation with affected stakeholders and other relevant experts in order for businesses to be duly informed of the type, scope and scale of these impacts, and what measures might be effective to prevent and mitigate against such impacts.<sup>128</sup> Therefore, the concept of human rights due diligence aids businesses to identify and understand the risks to human rights presented by an organisation’s own activities and business relationships at any given time, and to tailor preventative and mitigating responses appropriately. Such a process requires on-going assessment and

<sup>123</sup> UNICEF and the International Telecommunications Union, *Guidelines for Industry on Child Online Protection* (2015) <[https://www.unicef.org/csr/css/COP\\_Guidelines\\_English\\_\(5\).pdf](https://www.unicef.org/csr/css/COP_Guidelines_English_(5).pdf)>.

<sup>124</sup> See UNICEF, *Discussion Paper Series – Children’s Rights and Business in a Digital World: Privacy, Protection of personal information and reputational rights* (2017) <[https://www.unicef.org/csr/files/UNICEF\\_CRB\\_Digital\\_World\\_Series\\_PRIVACY.pdf](https://www.unicef.org/csr/files/UNICEF_CRB_Digital_World_Series_PRIVACY.pdf)>.

<sup>125</sup> UNICEF, *Child Rights and Mining Toolkit* (2017) <[https://www.unicef.org/csr/files/FINAL\\_Child\\_Rights\\_and\\_Mining\\_Toolkit\\_060217.pdf](https://www.unicef.org/csr/files/FINAL_Child_Rights_and_Mining_Toolkit_060217.pdf)>.

<sup>126</sup> Shift and Mazars *UN Guiding Principles Reporting Framework – ‘Salient human rights issues’* (2017) <<http://www.ungpreporting.org/glossary/salient-human-rights-issues/>>.

<sup>127</sup> Shift, *Human Rights Due Diligence in High Risk Circumstances: Practical Strategies for Businesses* (March 2015) <[https://www.shiftproject.org/media/resources/docs/Shift\\_HRDDinhighriskcircumstances\\_Mar2015.pdf](https://www.shiftproject.org/media/resources/docs/Shift_HRDDinhighriskcircumstances_Mar2015.pdf)> 4.

<sup>128</sup> *UN Guiding Principles*, above n 7, 19.

continual improvement. In times characterised by rapidly changing business environments, and highly changeable social, political and economic conditions, a comprehensive framework that seeks to assist businesses respond appropriately to differing and evolving risks to human rights presented by their business activities and business relationships should be utilised.

### ***The requirement to take action to prevent and mitigate against adverse human rights impacts***

64. The human rights due diligence process articulated in the UN Guiding Principles outlines actions for a business to take in order to demonstrate that it ‘knows and shows’ how to respect human rights in practice. Namely, to identify, prevent, mitigate and account for how business enterprises address their impact on human rights. Significantly, preventative and mitigation strategies are expected. Preventing adverse impacts on human rights should be a key objective of both government policy (including legislation) and business action so as to minimise harm to children and adults, whether involving slavery or other human rights abuses. Although access to remedy and prosecutions for criminal conduct are of fundamental importance, an ideal situation is to seek in the first instance to ensure a proactive approach so that the risks of such exploitation occurring are minimised as much as possible, so as to reduce the need for remedy and prosecution after the harm has occurred. As such, an obligation to pro-actively identify, prevent, mitigate and account for how a business enterprise addresses its impacts on human rights (a human rights due diligence) will result in proactive, preventative and mitigating measures from businesses and, in turn, better protection for children and adults from adverse human rights impacts.
  
65. With the widespread acceptance of the concept of human rights due diligence evolving in the six years since the UN Guiding Principles were developed, various sources of guidance, training, expertise and reporting frameworks have been developed available to help businesses adopt such practices.<sup>129</sup> Many leading businesses have endorsed the UN Guiding Principles and sought to act consistently with them, including through the adoption of a due diligence process and public

---

<sup>129</sup> See, for example, United Nations Working Group on Business and Human Rights <<http://www.ohchr.org/EN/Issues/Business/Pages/WGHRandtransnationalcorporationsandotherbusiness.aspx>> UNICEF, *Corporate Social Responsibility* <<https://www.unicef.org/csr/>>; Australian Human Rights Commission, *Business and Human Rights* <<http://www.humanrights.gov.au/education/business-and-human-rights>>, SHIFT <<https://www.shiftproject.org/>> Business and Human Rights Resource Centre <<https://www.business-humanrights.org/>>, Institute for Human Rights and Business <<https://www.ihrb.org/>> Danish Institute for Human Rights <<https://www.humanrights.dk/business-human-rights>>.

reporting.<sup>130</sup> The Special Rapporteur on contemporary forms of slavery has also highlighted how the concept of human rights due diligence provides clarity on how to operationalise the responsibility to respect human rights.<sup>131</sup>

66. Additionally, there is precedent in Australian law for a due diligence obligation on businesses to identify and assess risk, and adopt appropriate risk mitigation measures. Such an obligation was established by the *Illegal Logging Prohibition Act 2012* (Cth) and the *Illegal Logging Prohibition Regulation 2012* (Cth) regarding the importation of regulated timber products and the processing of raw logs.<sup>132</sup> Although applying to specific imports, it demonstrates the ability and willingness of the Australian Parliament to codify expectations on businesses operating in Australia with regard to supply chain practices.

### ***The scope of business activities and relationships to be considered***

67. Another critical element of the corporate responsibility to respect human rights is the scope of businesses activities and relationships required to be considered through human rights due diligence. Specifically, the UN Guiding Principles require consideration of when a business causes, contributes to or is otherwise linked with adverse human rights impacts.<sup>133</sup> The UN Guiding Principles clearly outline the differentiated expectations on businesses based on whether the adverse impact is related to an entity's own activities (both acts and omissions) and 'business relationships'. Business relationships can include business partners (such as joint venture partners), entities within a value chain (such as outsourced labour, sources of production) and other State or non-State entity linked to a business's operations, products or services.<sup>134</sup> The UN Guiding Principles explain that the responsibility to respect human rights requires that business enterprises:

- (a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur;
- (b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.<sup>135</sup>

---

<sup>130</sup> See, for example, *Corporate Human Rights Benchmark* <<https://www.corporatebenchmark.org/>>.

<sup>131</sup> Human Rights Council, *Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences*, Urmila Bhoola, 30<sup>th</sup> sess, UN Doc. A/HRC/30/35, 8 July 2015, para 67.

<sup>132</sup> See Part 2, Division 2 (Due diligence requirements for importing regulated timber products) and Part 3, Division 1 (Due diligence requirements for processing raw logs).

<sup>133</sup> *UN Guiding Principles*, above n 7, 14.

<sup>134</sup> *UN Guiding Principles*, above n 7, 15.

<sup>135</sup> *UN Guiding Principles*, above n 7, 14.

68. The explicit articulation of responsibilities based upon whether a business causes, contributes or is otherwise linked with adverse impacts on human rights is important because it reflects the differentiated ability of a business to change and influence the impact in any given instance. Additionally, it requires businesses to consider ways it might cause, contribute or be linked with adverse human rights impacts broadly, rather than selectively. This responsibility extends beyond activities and business relationships within a business's supply chain to include an entity's own practices (such as employment practices, investment decisions, lobbying activities etc.) and other connections. Regulation which focuses on supply chain practices alone will not necessarily capture these other business activities and relationships which also have the ability to adversely impact on human rights.

### Case study: French Corporate Duty of Vigilance Law

In February 2017, the French National Assembly passed a law requiring certain businesses to adopt a vigilance plan against serious violations of human rights which might result from business operations (which includes controlled companies, subcontractors or suppliers).<sup>136</sup> The law is significant in several respects:<sup>137</sup>

**The obligation of vigilance** – The law largely adopts a human rights due diligence approach in that it extends beyond reporting and imposes an obligation on organisations subject to the law to pro-actively map, identify, mitigate and prevent risks to human rights and ensure on-going monitoring.

**An obligation of conduct, not outcome** - The law imposes an obligation of vigilance, not an obligation of outcome. This means that, provided the company had a satisfactory vigilance plan in place, it cannot be held liable for serious breaches of human rights committed by others in its operations (absent any other form of liability).

**The business activities and relationships included** - The obligation is thorough as it applies not just to entities within an organisation's supply chain, but to controlled companies and broader operations. This is significant because the risks for some entities might not be by virtue of entities providing inputs, but by virtue of group company operations and other businesses relationships.

<sup>136</sup> *Loi n° 945 du 21 février 2017 PROPOSITION DE LOI relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre*, (France), 21 February 2017.

<sup>137</sup> See generally, European Coalition for Corporate Justice, *French Corporate Duty of Vigilance Law* (24 March 2017) <<http://corporatejustice.org/documents/publications/french-corporate-duty-of-vigilance-law-faq.pdf>> Samuel White, 'France leads EU on duty of care requirements for multinationals' Euractiv (23 February 2017) <<http://www.euractiv.com/section/global-europe/news/france-leads-eu-on-duty-of-care-requirements-for-multinationals/>>.

**The scope of human rights protected** - The scope of human rights protected is also significant, with the law applying to serious violations of human rights and fundamental freedoms, serious bodily injury or environmental damage or health risks. This can be contrasted with a narrower, selective approach to human rights risks.

***The potential for uniformity and a level playing field for responsible businesses***

69. Since their development in 2011, the UN Guiding Principles have enjoyed widespread endorsement and acceptance, including incorporation in the *OECD Guidelines for Multinational Enterprises 2011*.<sup>138</sup> As outlined above, the UN Guiding Principles, and the concept of human rights due diligence, are also being increasingly reflected in domestic legislation. With growing alignment through multilateral, regional and domestic avenues, there is great potential for businesses to enjoy greater uniformity of approach. In 2016, the Council of Europe stressed its commitment to realise the UN Guiding Principles and has recommended that Member States “encourage and, where appropriate, require...business enterprises conducting substantial activities within their jurisdiction carry out human rights due diligence in respect of such activities”.<sup>139</sup> Additionally, increasing numbers of states have developed national action plans to implement the UN Guiding Principles, and many others have committed to doing so.<sup>140</sup> The Australian Government has similarly committed to undertaking a national consultation on implementing the UN Guiding Principles in Australia. As such, it could be anticipated that more nations will adopt laws similar to the French legislation outlined above which go beyond reporting requirements and effectively require due diligence, and there are movements in other states to do so.<sup>141</sup>

70. The United Nations Committee on the Rights of the Child has also outlined that States should require businesses to undertake child rights due diligence, through which businesses must identify, prevent, and mitigate their impact on children's rights across global business operations. The Committee has also explained that “[w]here

<sup>138</sup> OECD, *OECD Guidelines for Multinational Enterprises* (2011), OECD Publishing <<http://www.oecd.org/daf/inv/mne/48004323.pdf>> Chapter IV Human Rights, 31-34.

<sup>139</sup> Committee of Ministers of the Council of Europe, Appendix 4 (Item 4.3) Recommendation CM/Rec(2016)3 of the Committee of Ministers to member States on human rights and business (Adopted by the Committee of Ministers on 2 March 2016 at the 1249th meeting of the Ministers' Deputies) <[https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=09000016805c1ad4](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805c1ad4)>.

<sup>140</sup> Office of the High Commissioner for Human Rights, *State national action plans* <<http://www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx>>.

<sup>141</sup> Elizabeth Ulmas, ‘Human rights due diligence: Swiss civil society pushes the envelope’ *Business and Human Rights Resource Centre* (date unknown) <<https://business-humanrights.org/en/human-rights-due-diligence-swiss-civil-society-pushes-the-envelope>>.

child rights due diligence is subsumed within a more general process of human rights due diligence, it is imperative that the provisions of the CRC and its protocols influence decisions. Any plan of action and measures to prevent and/or remedy human rights abuses must have special consideration for the differentiated impact on children.”<sup>142</sup>

71. In light of these evolving legislative developments, and the well-established international framework of the UN Guiding Principles behind them, it is appropriate that Australia seek to adopt a good practice model of regulation which seeks to progressively raise the bar of business conduct globally. For responsible businesses that are already voluntarily seeking to meet their responsibility to respect human rights, legislative requirements that raise the bar of conducts have the benefit of creating a level playing field.<sup>143</sup> Also in the absence of doing so, Australian businesses operating in different jurisdictions might continue to be subject to a range of differing regulatory approaches creating an uneven playing field and inconsistent practices among Australian businesses and businesses operating in our jurisdiction.

### **Capacity-building and support for business to meet the responsibility to respect human rights**

72. To assist commercial organisations understand the risks to human rights presented by their operations and relationships, it is essential that governments provide technical assistance, capacity-building and awareness-raising. This is particularly important for smaller and medium sized enterprises. UNICEF Australia recognises that businesses require support to become sensitised to human rights considerations and to understand and adopt good practices. It is also essential that members of the community, including children, are provided with information to understand the expectations of businesses, and to be equipped with knowledge about their rights and remedies in the event of a breach.<sup>144</sup>

73. Many tools have been developed to support businesses align their practices with the UN Guiding Principles, and to understand and address specific issues.<sup>145</sup> Regarding

---

<sup>142</sup> *General Comment No. 16*, above n 8, para 63.

<sup>143</sup> Business and Human Rights Resource Centre *Inquiry into the establishment of a Modern Slavery Act in Australia* (2017) <<https://business-humanrights.org/en/inquiry-into-establishment-of-a-modern-slavery-act-in-australia>>.

<sup>144</sup> *General Comment No. 16*, above n 8, paras 82-84.

<sup>145</sup> See, for example, Shift, Oxfam and Global Compact Network Netherlands *Doing Business with Respect for Human Rights: A Guidance Tool for Companies* (2016) <[https://www.businessrespecthumanrights.org/image/2016/10/24/business\\_respect\\_human\\_rights\\_full.pdf](https://www.businessrespecthumanrights.org/image/2016/10/24/business_respect_human_rights_full.pdf)>



risks to the rights of children, UNICEF has developed a range of tools for businesses to identify, prevent and mitigate against adverse impacts on the rights of children.<sup>146</sup> Civil society in the United Kingdom has also produced comprehensive guidance to commercial organisations regarding good practice in meeting obligations under the UK MSA.<sup>147</sup> Civil society and affected communities should be key stakeholders of Governments and businesses alike to understand and apply good practice approaches.

**Recommendation 4:** The Australian Government introduce a law requiring business enterprises to conduct human rights due diligence (identify, prevent, mitigate and account for) in line with the United Nations Guiding Principles on Business and Human Rights. Such a law should require the specific consideration of the actual and potential risks to the rights of groups that are particularly vulnerable to adverse human rights impacts, including children, and provide for a remedy in appropriate circumstances.

**Recommendation 5:** The Australian Government allocate appropriate resources to provide awareness-raising, capacity-building and support to business enterprises (and public bodies) that are subject to a human rights due diligence requirement. The Australian Government should also allocate appropriate resources for education and awareness-raising for members of the community to understand the expectations of businesses and have knowledge about their rights and remedies in the event of a breach.

## Examination of the provisions in the United Kingdom’s legislation (ToR 5)

### Transparency in supply chains (part 6, section 54)

#### Introduction

74. When the UK MSA was passed in 2015, the transparency in supply chain (TISC) provision in part 6, s 54 was recognised as a landmark law, subsequently described as holding “tremendous potential to make the step change we need from companies

<sup>146</sup> See, for example, UNICEF, *Corporate Social Responsibility* <<https://www.unicef.org/csr/>>; UNICEF and International Commission of Jurists *Obligations and Actions on Children’s Rights and Business* (2015) <[https://www.unicef.org/csr/files/CSR\\_GC\\_OBLIGATIONS\\_AND\\_ACTIONS\\_FINAL\\_AUGUST05.pdf](https://www.unicef.org/csr/files/CSR_GC_OBLIGATIONS_AND_ACTIONS_FINAL_AUGUST05.pdf)>; UNICEF, *Children are everyone’s business – Workbook 2.0* (2013) <[https://www.unicef.org/csr/css/Workbook\\_2.0\\_Second\\_Edition\\_29092014\\_LR.pdf](https://www.unicef.org/csr/css/Workbook_2.0_Second_Edition_29092014_LR.pdf)> and UNICEF *Engaging Stakeholders on Children’s Rights* (2014) <[https://www.unicef.org/csr/css/Stakeholder\\_Engagement\\_on\\_Childrens\\_Rights\\_021014.pdf](https://www.unicef.org/csr/css/Stakeholder_Engagement_on_Childrens_Rights_021014.pdf)>

<sup>147</sup> CORE Coalition *Beyond compliance: Effective reporting under the Modern Slavery Act* (2016) <<http://www.labourexploitation.org/publications/beyond-compliance-effective-reporting-under-modern-slavery-act>>.

to tackle the curse of modern slavery in their operations and supply chains”.<sup>148</sup>

Having only introduced obligations on commercial organisations from 2015 onwards, the law is still relatively new and it can be expected that good practice, understanding and behaviour change will improve and evolve over time. In order to demonstrate the impact and effectiveness of the act and other measures over time, there is a need for thorough data collection and on-going monitoring to identify changes to the occurrence of slavery and forced labour and possible contributing factors.

75. There are numerous positive aspects of the TISC requirement of the UK MSA, including that:<sup>149</sup>

- the obligation relates to both the organisation’s own practices and, significantly, within in an organisation’s supply chain;
- the statement must be signed by a director or equivalent;
- the statement must be displayed prominently on the organisation’s website;
- the section requires the Secretary of State to produce further guidance for businesses to understand the obligations of the law; and
- the legislation is supported by the role of an Independent Anti-Slavery Commissioner.

76. Already the TISC requirement of the law has been credited with driving change in business behaviour.<sup>150</sup> Such change has included the adoption of risk assessment methods to identify risks of slavery and the adoption of improved contract provisions.<sup>151</sup> There are also indications that the requirement for a director or equivalent to sign the statement has elevated the issue of slavery within organisational leadership, with indications that Chief Executive Officer engagement with modern slavery has doubled since the introduction of the UK MSA.<sup>152</sup> The Business and Human Rights Resource Centre has also observed that “mandatory transparency can spur laggards to take action and follow leading companies’ better practice”.<sup>153</sup>

---

<sup>148</sup> Business and Human Rights Resource Centre, *FTSE 100 At the Starting Line – An analysis of company statements under the UK Modern Slavery Act*, October 2016 <<https://business-humanrights.org/en/msa-briefing>> 1.

<sup>149</sup> See generally, *Corporate Leadership on Modern Slavery*, above n 23 and Advisory Committee of the Modern Slavery Registry, *Submission to the Joint Standing Committee on Foreign Affairs, Defence and Trade for the Inquiry into establishing a modern slavery act in Australia* (2017).

<sup>150</sup> Business and Human Rights Resource Centre, above n 161, 1.

<sup>151</sup> *Ibid.*

<sup>152</sup> *Corporate Leadership on Modern Slavery*, above n 23, 7.

<sup>153</sup> Business and Human Rights Resource Centre, above n 161, 2.



77. The TISC requirement applies to incorporated entities or partnerships that carry on a business or part of a business in the UK.<sup>154</sup> The Guidance provided by the UK Government has indicated that this definition includes organisations conducting public, charitable or educational aims.<sup>155</sup> There is acceptance that this includes at least some public buyers, with Higher Education Institutions generally complying with the law.<sup>156</sup> The Act has served as a catalyst for certain public entities to assess their supply chains and risks involved.<sup>157</sup> Several other public authorities, including local authorities, have voluntarily produced slavery and human trafficking statements during the first year of reporting.<sup>158</sup>

**Recommendation 6:** Similarly to the *UK MSA*, an Australian modern slavery act should:

- i. include an explicit reference to and an obligation regarding a business's supply chain;
- ii. require any reporting obligation to be signed by a director or equivalent;
- iii. require any reporting obligation to be displayed prominently on the organisation's website;
- iv. require the production of further guidance for businesses to understand the obligations of the law; and
- v. establish the role of an Independent Anti-Slavery Commissioner.

### Limitations of the TISC requirement of the UK MSA

78. However, there are also numerous known limitations to the current approach of the TISC requirement in the UK MSA which the Australian Parliament should seek to understand and address in an Australian MSA, particularly in the event that an overarching human rights due diligence obligation is not adopted at this point in time.

<sup>154</sup> Home Office (United Kingdom), *Transparency in Supply Chains etc. A practical guide* (2015) <<https://www.gov.uk/government/publications/transparency-in-supply-chains-a-practical-guide>>, para 3.5.

<sup>155</sup> Ibid, para 3.6.

<sup>156</sup> See Business and Human Rights Resource Centre *UK Modern Slavery Act & Registry* <<https://business-humanrights.org/en/uk-modern-slavery-act-registry>>.

<sup>157</sup> Olga Martin-Ortega, *Modern Slavery and Human Rights in Global Supply Chains: Roles and Responsibilities of Public Buyers. Policy and practice insights for Higher Education Institutions in the framework of their obligations under the UK Modern Slavery Act*. Business, Human Rights and the Environment Research Group, University of Greenwich, BHRE Research Series. Policy Paper no. 2 (December 2016) <<https://static1.squarespace.com/static/56e9723a40261dbb18ccd338/t/5857c23dcd0f68bab21a76b6/1487000267236/Modern+Slavery+and+Human+Rights+Risks+in+Global+Supply+Chains+Insights+for+HEIs+2016.pdf>>.

<sup>158</sup> See, for example, Port of London Authority 'Slavery and Human Trafficking Statement' (20 March 2017) accessible via Business and Human Rights Resource Centre, *Modern Slavery Registry* <<https://www.modernslaveryregistry.org/companies/8626/statements/10454>>.

A summary of the limitations of the TISC requirement (s 54), and recommended actions for an Australian MSA, are outlined in Table 2 below.

79. Before considering these however, two major shortcomings of the TISC requirement will be canvassed. First, that it does not require action to prevent and mitigate against slavery, human trafficking, forced labour and other forms of exploitation and, second, that the provision does not cover all forms of child labour, including all of the worst forms of child labour.

**The law does not require action to prevent and mitigate against slavery, human trafficking, forced labour and other forms of exploitation**

80. As outlined above, a human rights due diligence approach requires action to identify, prevent and mitigate against adverse human rights impacts (including slavery, human trafficking, forced labour and child labour). It also requires businesses to account for these measures; effectively a responsibility to report on them. In contrast, the TISC requirement in the UK MSA falls short of these measures. Although the guidance on the UK MSA states that a key purpose of s 54 is the prevention of modern slavery in organisations and their supply chains,<sup>159</sup> it falls short of requiring organisations to actually take preventative measures against slavery, human trafficking and forced labour. Instead, it only requires commercial organisations with an annual turnover of more than £36 million to publish a ‘slavery and human trafficking statement’ which must include the steps the organisation has taken during the financial year to ensure that slavery and human trafficking is not taking place or a statement that the organisation has taken no such steps (s 54(4)).

81. In effect, the TISC requirement is a “consumer policing”<sup>160</sup> model which has inherent limitations. Such a model shifts the onus of regulation away from the state and onto consumers (both individuals and other businesses) and investors, relying on them to make “more educated purchasing decisions”<sup>161</sup> or alter their investments. Such was acknowledged by the UK Government, which explained that “[t]he [TISC] measure will encourage businesses to do the right thing, by harnessing consumer and wider

---

<sup>159</sup> Home Office (United Kingdom), above n 167, 3.

<sup>160</sup> Ashley Feasley ‘Deploying Disclosure Laws to Eliminate Forced Labour: Supply chain transparency efforts of Brazil and the United States of America’ (2015) *Anti-Trafficking Review*, Issue 5, 30 <[www.antitraffickingreview.org](http://www.antitraffickingreview.org)>, 9.

<sup>161</sup> State of California, Department of Justice *The California Transparency in Supply Chains Act* (2017) <<https://oag.ca.gov/SB657>>.

stakeholder pressure.”<sup>162</sup> It also places significant responsibility onto civil society to effectively monitor these obligations.

82. Additionally, consumer policing models require supportive structures and information sharing to ensure that consumers, investors and the public having the information and ability to utilise information provided by businesses. This is because such mechanisms rely on these groups to:

- 1) know and understand the law and what organisations are covered by it;
- 2) easily access and understand the information provided by businesses;
- 3) be equipped with the knowledge to evaluate different approaches;
- 4) have the ability to move consumer and investor dollars to alternative providers; and
- 5) be at liberty to move consumer dollars elsewhere, potentially, to more expensive products or services.

83. Without these measures, the model becomes even less effective as consumers, investors and the public are unable to access the relevant information and change their behaviour accordingly.<sup>163</sup>

84. Additionally, the degree to which transparency is required in practice is also questionable. This is because the matters listed in s 54(5) which have the potential to provide the public with a degree of information about the organisation are not obliged to be disclosed. Rather, a business can choose whether or not to publish such information as the provision is permissive, not mandatory. Therefore, although the guidance issued by the UK Government outlines that the provision aims to “increase transparency by ensuring the public, consumers, employees and investors know what steps an organisation is taking to tackle modern slavery”,<sup>164</sup> the section does not ensure such transparency in practice.<sup>165</sup> This has been confirmed in the analysis of the Business and Human Rights Resource Centre which has concluded that “to date, the majority of companies are not providing substantive disclosure in most suggested areas, and tend only to report on basic areas.”<sup>166</sup> In contrast, the UN

---

<sup>162</sup> Home Office (United Kingdom) *Modern Slavery and Supply Chains – Government Response* (date unknown) <[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/448200/Consultation\\_Government\\_Response\\_final\\_2\\_pdf.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/448200/Consultation_Government_Response_final_2_pdf.pdf)> 6.

<sup>163</sup> See generally, Advisory Committee of the Modern Slavery Registry, above n 162.

<sup>164</sup> Home Office (United Kingdom), above n 167, 3.

<sup>165</sup> International Trade Union Confederation, *Closing the loopholes – How legislators can build on the UK Modern Slavery Act* (2 February 2017) <<https://www.ituc-csi.org/closing-the-loopholes-how>>.

<sup>166</sup> Advisory Committee of the Modern Slavery Registry, above n 162, 3.

Guiding Principles state that businesses should be prepared to communicate externally on how they address their human rights impacts, including to “...provide information that is sufficient to evaluate the adequacy of an enterprise’s response to the particular human rights impact involved.”<sup>167</sup>

85. Although consumers, investors and the public (including civil society) undoubtedly have an important role to play, such a model alone does not effectively utilise the policy levers available to the state to ensure the protection of human rights. A serious commitment to end slavery, human trafficking, forced labour and other forms of exploitation requires clear legislative obligations on businesses to take action to prevent and mitigate against such practices. UNICEF Australia believes that mechanisms that rely on discretionary consumer and investor behaviours alone are not sufficient to protect children and adults from slavery, human trafficking and forced labour.

### **The UK MSA does not cover all of the worst forms of child labour, or child labour generally**

86. Subjecting children to slavery and forced labour, whether individually or part of a family group, amounts to one of the worst forms of child labour.<sup>168</sup> Such practices are captured by article 3(a) in *ILO Convention No. 182* outlined above at paragraph 8 and slavery and forced labour are captured by the definitions included in the TISC requirement of the UK MSA. However, other practices, whilst still amounting to the worst forms of child labour, are not. This is because the UK MSA does not include a reference to all of the worst forms of child labour, child labour or an encompassing definition of child exploitation. As such, commercial organisations that are subject to the law are not currently required to report on efforts to identify and eliminate child labour, including all of the worst forms of child labour, from their supply chains. With reference to the diagram extracted from the US Department of Labor diagram above at paragraph 35, s 54 of the UK MSA covers just a fraction of the 85 million children engaged in the worst forms of child labour (for example, the 5.5 million children estimated to be in forced labour), and a smaller fraction yet of the 168 million children

---

<sup>167</sup> *UN Guiding Principles*, above n 7, 23.

<sup>168</sup> The ILO has explained that “[c]hild labour amounts to forced labour not only when children are forced by a third party to work under the menace of a penalty, but also when the work of a child is included within the forced labour provided by the family as a whole.” ILO Director-General, *The cost of coercion* (2009) <[http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_106268.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_106268.pdf)>, 6.

engaged in child labour which, although not amounting to the worst forms, still interferes with the development of each child affected.

87. Some types of hazardous work that children perform that have been linked to global supply chains<sup>169</sup> but that would not be captured by the TISC provision of the UK MSA (absent factors which would amount to conditions of slavery or forced labour) are outlined below.

**Table 1: Examples of some of the worst forms of child labour not captured by the TISC provision of the UK MSA**

<p><b>Textiles:</b> Tasks related to dying, weaving, sewing, embroidery, cleaning can involve exposure to harmful dyes; awkward postures; repetitive movements; sharp tools and close work. Injuries and potential health consequences for children can include: “finger deformities and premature arthritis; neck, shoulder and other muscle discomfort; vision loss; skin rashes, nail damage and other dermatitis; breathing difficulties; byssinosis”.<sup>170</sup></p> <p><b>Leather:</b> Tasks related to dehairing, tanning, sewing, cleaning can involve exposure to harmful dyes, solvents and other chemicals, fumes and sharp tools. Injuries and potential health consequences for children can include: “chemical poisoning; lung damage; asthma; bronchitis; skin rashes; bladder cancer; anthrax poisoning.”<sup>171</sup></p> <p><b>Mining and quarrying:</b> Tasks related to tunnelling and diving into muddy wells can involve exposure to drilling equipment; explosives; confined spaces; faulty supports; stagnant air; poisonous gases; dust; darkness; and dampness. Injuries and potential health consequences for children can include: “death or traumatic injury from tunnel collapse; suffocation from compressor mining; injury from explosions; silicosis and related respiratory diseases; nausea; exhaustion.”<sup>172</sup></p> <p><b>Fishing:</b> Tasks related to sorting, unloading and transporting catches can involve exposure to heavy loads and large machines with moving parts. Injuries and potential health consequences for children can include: “joint and bone deformities; blistered hands and feet;</p>
--

<sup>169</sup> See, for example, ILO, *Combating the Worst Forms of Child Labour in Shrimp and Seafood Processing Areas in Thailand* <[http://www.ilo.org/asia/projects/WCMS\\_161095/lang--en/index.htm](http://www.ilo.org/asia/projects/WCMS_161095/lang--en/index.htm)> and Amnesty International and Africa Watch, “*This is what we die for*” – *Human Rights Abuses in the Democratic Republic of the Congo power the global trade in cobalt* (2016) <<https://www.amnesty.org/en/documents/afr62/3183/2016/en/>>.

<sup>170</sup> International Labour Office, *Children in hazardous work* (2011), <[http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms\\_155428.pdf](http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_155428.pdf)> 31.

<sup>171</sup> Ibid.

<sup>172</sup> Ibid, 34.

lacerations; back injury; muscle injury; amputation of fingers, toes and limbs; noise-induced hearing loss.”<sup>173</sup>

Source: International Labour Office, *Children in hazardous work* (2011).

88. UNICEF Australia therefore maintains that the introduction of a modern slavery act in Australia, particularly a provision regarding supply chain practices, is a rare and important opportunity to require businesses to take preventative and mitigating actions to help ensure that child labour, including all of the worst forms of child labour, do not exist within their supply chains through a due diligence requirement to that effect. This would be an important improvement for children which builds upon the significant foundation established by the TISC requirement of the UK MSA.

89. In recommending that any legal obligation regarding supply chain practices should explicitly include reference to child labour, including all of the worst forms of child labour, UNICEF Australia is not suggesting that child labour is synonymous with slavery and forced labour. On the contrary, it is important to note the distinct legal definitions of these terms outlined in international treaty law and for Australian domestic law to similarly reflect these distinct terms also. The ILO has explained as follows:

...the importance of definitions is illustrated in the terms of the ILO Worst Forms of Child Labour Convention, 1999 (No. 182). The Convention makes a distinction between children who are held in slavery, debt bondage or serfdom, or who are trafficked or subjected to forced labour, and those who are in “hazardous work”. All of these forms of child labour should be eliminated within the shortest possible time but different approaches are required. The Convention is part of a larger canon of UN and ILO instruments in which the drafters agreed that children cannot voluntarily “consent” to exploitation and that free movement does not equal free labour.<sup>174</sup>

90. With the widespread recognition of the various forms of child labour existing in supply chains, the large numbers of children affected globally and specifically in the Asia-Pacific region, and Australia’s commitments under the SDGs 2030 to eliminate child labour, UNICEF Australia submits that any new obligation applying to businesses to improve supply chain practices through due diligence, reporting or otherwise would

<sup>173</sup> Ibid, 26.

<sup>174</sup> ILO, above n 51, 4 (references omitted).

be a missed opportunity for children if it does not specifically include a reference to child labour, including all of the worst forms of child labour.

### **Summary of limitations of the TISC section of the UK MSA**

91. Table 2 below lists aspects of the TISC requirement of the UK MSA that limit its potential effectiveness to make progress towards the elimination of slavery, human trafficking and forced labour, and makes recommendations about how an Australian modern slavery act could build upon these mechanisms.



**Table 2: Limitations of the transparency in supply chain provision of the UK MSA and recommendations for Australia**

UK Modern Slavery Act 2015	Recommendations for an Australian modern slavery act (Recommendation 7):
<b>i. Limited scope of human rights protected</b>	
<p><b>It does not encompass all of the worst forms of child labour, nor child labour generally</b></p> <p>As outlined above at paragraphs 86-90, this represents a fundamental omission for children.</p>	<p><b>An Australian modern slavery act should:</b></p> <ul style="list-style-type: none"> <li>i. include child labour, including the all of the worst forms of child labour (in addition to slavery, human trafficking, and forced labour etc.) in the scope of the provision applying to supply chains/business practices and relationships (whether requiring due diligence, reporting or otherwise).</li> </ul>
<p><b>It does not reference all human rights</b></p> <p>The UK MSA applies to a limited range of human rights relating to slavery, human trafficking and forced labour. As outlined above at 60-63 a preferred and a holistic approach requires application to all human rights (including civil, political, economic, social and cultural rights as outlined in the International Bill of Rights and the ILO Core Conventions).</p>	<p><b>An Australian modern slavery act should:</b></p> <ul style="list-style-type: none"> <li>ii. require a review after 2 years from the commencement of the operation of the Act to consider its effectiveness and improvements that could be made to help reduce adverse impacts on the human rights of children and adults. The review should include meaningful public consultation, be fully transparent and involve consideration of expanding the due diligence requirement to all human rights in line with the UN Guiding Principles on Business and Human Rights.</li> </ul>
<b>ii. Limited nature of the legal obligation</b>	
<p><b>It does not legally oblige action to identify, prevent and mitigate against slavery, human trafficking, forced labour and other exploitation</b></p> <p>As outlined above at 80-85, commercial organisations subject to the law are not obliged to take effective action to identify, prevent, mitigate and account for issues such as slavery, human trafficking, forced labour and other forms of exploitation. This represents a fundamental shortcoming. Good practice requires that corporates undertake a human rights due diligence to identify, prevent, mitigate and account for adverse human rights impacts.</p>	<p><b>An Australian modern slavery act should:</b></p> <ul style="list-style-type: none"> <li>iii. require business enterprises subject to the law to conduct human rights due diligence (an obligation to identify, prevent, mitigate and account for) regarding slavery, human trafficking, forced labour and child labour, including all of the worst forms of child labour.</li> </ul>

<p><b>It does not legally oblige transparency</b></p> <p>As outlined above at paragraph 84 despite s 54 indicating that transparency in supply chains is the legislative objective, the section itself does not operate to this effect as there is no obligation to disclose information which would result in transparency in business supply chains. This is because beyond the very minor obligation to publish a statement in s 54(4), a businesses can determine whether or not to provide the information outlined s 54(5). As such, a business can legally meet the requirements of the act but consumers, investors and the public will have no useful information to be able to make an informed assessment and decision about the business.</p>	<p><b>An Australian modern slavery act should:</b></p> <p>iv. mandate business enterprises subject to the law to report annually on their business practices and business relationships (including entities within an organisation's supply chain), including:</p> <ul style="list-style-type: none"> <li>• the organisation's structure, its business and its supply chains;</li> <li>• its policies in relation to slavery, human trafficking, forced labour and child labour (including all of the worst forms of child labour);</li> <li>• its due diligence processes in relation to slavery, human trafficking, forced labour and child labour (including all of the worst forms of child labour) applying to both its business practices and business relationships (including supply chains);</li> <li>• the parts of its business and supply chains where there is a risk of slavery, human trafficking, forced labour and child labour (including all of the worst forms of child labour) taking place, and the steps it has taken to assess and manage that risk, including whether it has engaged with rights-holders and other relevant stakeholders/experts;</li> <li>• its effectiveness in ensuring that slavery, human trafficking, forced labour and child labour (including all of the worst forms of child labour) is not taking place in its business or supply chains, measured against performance indicators;</li> <li>• the training about slavery, human trafficking, forced labour and child labour (including all of the worst forms of child labour) available to its staff (including whether the training is mandatory).</li> </ul>
<p><b>It does not cover other potentially relevant business activities and business relationships</b></p> <p>As outlined above at 67-68, regulation that focuses largely on supply chain practices alone does not require organisations to consider other business practices and relationships that might involve the risk of slavery, human trafficking, forced labour and other exploitation.</p>	<p><b>An Australian modern slavery act should:</b></p> <p>v. include in the due diligence provision a requirement to consider all relevant business practices and business relationships (including the organisation's own practices, business partners, entities throughout an organisation's supply chain, group companies, and other non-State or State entities linked to business operations, products or services).</p>

iii. Weak measures regarding non-compliance	
<p><b>The non-compliance mechanism in the UK MSA is weak</b></p> <p>There are limited consequences established by the UK MSA in the event of non-compliance, with s 54(11) providing that the Secretary of State may bring civil proceedings for an injunction. UNICEF Australia is of the view that this is not sufficient seek compliance with the provision, or to ensure accountability in the event of non-compliance.</p>	<p><b>An Australian modern slavery act should:</b></p> <p>vi. provide penalties in the event of non-compliance. For example, fines, exclusion from eligibility to participate in Commonwealth procurement and exclusion from eligibility to benefit from export finance support provided by the Australian Government.</p>
iv. Lacking mechanisms for the collection and dissemination of information	
<p><b>The UK MSA does not provide the mechanisms to collect and make information accessible to the public</b></p> <p>In addition to the fact that the slavery and human trafficking statements do not oblige any meaningful disclosure of information about supply chains, there are practical shortcomings in the collection and availability of statements made under the Act. Specifically, there is no mechanism for a central repository for the statements, nor a list of organisations captured by the law to be publicly available. In the UK, the Business and Human Rights Resource Centre, an NGO, has taken the initiative to establish a registry.<sup>175</sup></p> <p>A central, government funded registry of the statements, a full list of companies required to produce statements and further information for the public to enable assessment of the quality of such statements are necessary elements to ensuring meaningful transparency in practice.</p>	<p><b>An Australian modern slavery act should:</b></p> <p>vii. establish or require a public agency to host a publicly available, central repository which is independent, free, open and accessible. The agency should be responsible for, amongst other things:</p> <ul style="list-style-type: none"> <li>publishing the names of all business enterprises subject to the law;</li> <li>providing independent analysis on the legal compliance and quality of the statements;</li> <li>developing and publishing good practice guidance, in consultation with civil society;</li> <li>building the capacity of enterprises that are subject to the legislation to enable them to understand and establish good practices; and</li> <li>raising public awareness.</li> </ul>

<sup>175</sup> Business and Human Rights Resource Centre, *Modern Slavery Registry* <<https://www.modernslaveryregistry.org/companies/8626/statements/10454>>.

v. Limited coverage	
<p><b>The obligation is on very large commercial organisations</b></p> <p>The UK MSA applies only to commercial organisations with a total turnover of £36 million. As outlined by the Advisory Committee of the Modern Slavery Registry in the UK, risks exist across sectors and sizes.<sup>176</sup> As such, medium sized companies should also be considered to be subject to any requirement.</p>	<p><b>An Australian modern slavery act should:</b></p> <ul style="list-style-type: none"> <li>viii. adopt a threshold relevant for the context of Australia, having regard what is known about the risks of adverse human rights impacts in both domestic and global supply chains and the desirability of including medium and large-sized enterprises operating in Australia.</li> <li>ix. include in the 2 year review consideration of the appropriateness of any threshold.</li> <li>x. consider introducing an 'opt in' mechanism for smaller businesses.</li> </ul>
<p><b>The Act is not clear regarding application to public bodies</b></p> <p>The TISC requirement of the UK MSA as introduced is not explicit regarding whether or not public bodies are captured by the law. Universities have been receptive and compliant with the law. Other public entities have voluntarily published slavery and human trafficking statements. Consequently, there has been a proposal to amend the law to expand the remit of the UK MSA to apply to public bodies.<sup>177</sup></p>	<p><b>An Australian modern slavery act should:</b></p> <ul style="list-style-type: none"> <li>xi. lead by example in public procurement to require all areas of Commonwealth Government (including state-owned or controlled enterprises) to adhere to the requirement and provide support to enable them to do so.</li> </ul>

<sup>176</sup> Advisory Committee of the Modern Slavery Registry, above n 162, 2.

<sup>177</sup> Modern Slavery (Transparency in Supply Chains) Bill (HL) 56/2, <<https://www.publications.parliament.uk/pa/bills/lbill/2016-2017/0006/17006.pdf>>.

## **Whether a Modern Slavery Act should be introduced in Australia (ToR 6)**

92. UNICEF Australia believes the benefits of a modern slavery act (specifically, a due diligence, reporting or similar requirement that is inclusive of supply chain practices) would include:

- increased protect children and adults from experiences of harm associated with slavery, human trafficking, forced labour and other forms of exploitation;
- help deliver on Australia's commitment under the SDGs 2030;
- help align Australian domestic law with existing obligations under international treaties ratified by Australia;
- promote an ethical Australian brand;
- demonstrate Australia's leadership and commitment to protecting and promoting the human rights of all people;
- create a level playing field for leading Australian businesses that have invested in due diligence and reporting structures to help operate with respect for human rights, and businesses already captured by similar legislative requirements; and
- depending on the model adopted, signal a meaningful step towards aligning Australia's legislative approach with the United Nations Guiding Principles on Business and Human Rights.

93. UNICEF Australia is of the view that a human rights due diligence law is good practice, and Australia should take steps to adopt such an approach in alignment with the UN Guiding Principles. However, if such an approach is not preferred by Parliament at this time, a modern slavery act which incorporates a due diligence requirement on businesses specifically covering slavery, human trafficking, forced labour and other exploitation including child labour (including all of the worst forms of child labour), should be introduced in Australia.

94. It should be recognised however that regulating supply chains of businesses operating in Australia is no silver bullet to ending slavery, human trafficking, forced labour and child labour. This is particularly so given the numerous causal factors that contribute to conditions of exploitation and also the presence of such practices in the wholly domestic supply chains of other countries. It is for this reason that a modern slavery act (with a due diligence, reporting or similar obligation on businesses), although an essential aspect of meeting Australia's obligation to protect children and

adults from adverse human rights impacts, should not be viewed in isolation. It is necessary that such regulation be reinforced by policy coherence across government including, for example, finance (including Commonwealth procurement, state owned and controlled enterprises), development policy and trade policy (including, for example, support to Australian businesses through EFIC and AusTrade).

**Recommendation 8:** A modern slavery act that incorporates an obligation on business enterprises subject to the law to conduct human rights due diligence (an obligation to identify, prevent, mitigate and account for) specifically regarding slavery, human trafficking, forced labour and child labour (including all of the worst forms of child labour) should be introduced in Australia.

**Recommendation 9:** The Australian Government review and modify other areas of government policy including finance policy (Commonwealth procurement, and the activities of state owned and controlled enterprises), development policy and trade policy (including, for example, support to Australian businesses through EFIC and AusTrade) to ensure policy coherence towards the objective of improving human rights in the supply chains of Australian businesses and reducing the social and economic conditions that increase the vulnerability of children and adults to slavery, human trafficking, forced labour, and child labour.

## Contact

For further information, please contact Alison Elliott, Senior Policy Adviser, at UNICEF Australia