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## **JOINT STANDING COMMITTEE ON FOREIGN AFFAIRS, DEFENCE AND TRADE INQUIRY INTO ESTABLISHING A MODERN SLAVERY ACT IN AUSTRALIA**

### **SUBMISSION FROM EY AUSTRALIA**

#### **In brief**

EY welcomes the opportunity to offer its views to the Foreign Affairs and Aid Sub-Committee of the Parliament's Joint Standing Committee on Foreign Affairs, Defence and Trade inquiry into whether Australia should adopt national legislation to combat modern slavery in domestic and global supply chains, comparable to the United Kingdom's *Modern Slavery Act 2015* (with focus on Section 54).

We support the establishment of Australian legislation to address Modern Slavery that drives consistent efforts and does not create unnecessary administrative burden. We believe that such legislation would be additive to, and not duplicative of, current voluntary efforts undertaken in relation to human rights in the supply chain.

#### **About EY**

EY is a global leader in assurance, tax, transaction and advisory services. We have supported numerous Australian and International businesses to investigate and respond to human rights concerns within their operations and broader supply chain.

EY's Climate Change and Sustainability Services is the largest of its kind in the region with over 120 sustainability professionals. We can help organisations identify, develop and deliver strategies that address non-financial risk and opportunities, and measure their effectiveness, or confirm their disclosures. Our focus areas include:

- Climate change and energy
- Sustainability reporting and assurance
- Sustainability and supply chain advisory, including human rights
- Impact, outcome measurement and valuation
- Health, safety and environment

#### *Our standing to comment*

As a leading provider of assurance services we have been exposed to the prevailing methodologies through which businesses seek to assess the compliance of suppliers with their human rights expectations, including as they relate to modern slavery. Via such publications as "Human Rights and Professional Wrongs" we have previously commented on the positive and negative attributes of these current approaches and maintain the view that while the standard mode of supplier human rights assessments represents an important mitigating measure, these approaches are generally not calibrated to address the risks posed by human rights abuses in the supply chain, particularly modern slavery. This assessment informs our support for Australian and global modern slavery related legislation.

In the interests of brevity and to focus on our areas of core competency our submission will not expand on the specific questions of:

- The use of the language "modern slavery", "forced labour", "indentured labour", "human trafficking" and other related terms
- Specific estimates as to the extent of modern slavery in Australia

- The merits of any visa regimes over others
- Detailed content of potential legislation, such as definitions, potential penalties, or specific offences
- Specific examples of good or bad practice encountered through confidential engagements

## Specific input to the terms of reference

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

Numerous Australian and International studies have confirmed the significant extent of modern slavery in global supply chains, in aggregate the largest number of enslaved persons in human history<sup>1</sup>. While in Australia, the type and extent of modern slavery is reportedly comparatively small, recent incidences of modern slavery, largely enacted via third party migrant labour providers, underscore the merit of modern slavery legislation having domestic coverage in addition to a focus on overseas risks.

### 3. *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*

#### *Leading practice employed by business*

The United Nations' Guiding Principles on Business and Human Rights (UNGPs, or "Protect, Respect and Remedy" Framework) have come to be the globally accepted framework against which businesses' responsibility to respect human rights is assessed. While they remain "soft law" at present, they have been integrated in the OECD Guidelines for Multinational Enterprises and are the subject of discussion on a potential binding international treaty. They are also being integrated in national frameworks through National Action Plans on Business and Human Rights in a number of countries and Australia has been exploring this avenue as well.

According to the UNGPs businesses can cause, contribute to, or be directly linked to an adverse human rights impact. All three levels of connection to human rights impacts are to be avoided, but require differing levels of response. Without stakeholders demanding application of the UNGPs in full, many organisations have only adopted the first and, less frequently, the second level of response. However, the majority of human rights abuses have existed and continue to be present in the activities of linked business partners, especially those partners who have operations in areas identified as being more likely to infringe upon human rights. For a thorough application of the UNGPs, there needs to be recognition by businesses that they have to take responsibility for possible violations throughout their entire supply chain.

The Corporate Human Rights Benchmark has built upon the UNGPs to establish a clear framework for leading practice in human rights governance by companies. This framework is based on two years of consultation with over 400 companies, governments, civil society organisations, investors, academics and legal experts. It identifies the key steps for conducting due diligence and remedying abuses.

Some of the key leading practices identified by the report included:

- mapping suppliers and disclosing this publicly
- identifying human rights risks and impacts on an on-going basis
- proactively assessing potential human rights risks and actual human rights impacts

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<sup>1</sup> [www.globalslaveryindex.org](http://www.globalslaveryindex.org)

- integrating the findings of assessments into relevant internal functions and processes and implementing appropriate actions to manage risks (such as in hiring practices, health and safety management, land acquisition, overtime hours, sourcing etc.)
- ensuring procurement/sourcing policy and practices do not undermine human rights commitments (e.g. through short turnaround demands and unrealistic prices)
- tracking the effectiveness of actions taken to incorporate that information into improving processes and systems on an ongoing basis
- communicating externally how the company addresses its human rights impacts in a manner that is accessible to its intended audiences, especially affected stakeholders
- having one or more channel or mechanism through which workers and external individuals and communities can raise complaints or concerns, including in relation to human rights issues
- providing for, or cooperating in, remediation where it has identified that it has caused or contributed to adverse human rights impacts
- imposing requirements on suppliers to apply similar practices, including internal processes, due diligence of their own suppliers, and providing remedial processes

A small number of organisations in Australia have applied this approach in part, and many of our large clients support legislation on modern slavery, as seen in their public submissions to this inquiry. A concerted and joint industry effort impelled by legislation would drive consistent improvement and visibility.

#### *Leading practice employed by governments*

Legislation like the UK Modern Slavery Act 2015 (Section 54) and others have sought to formalise the responsibility of companies to “know and show” that they respect human rights when it comes to the supply chain. The UK legislation was a significant step as the first country to establish such requirements in law, and established a precedent for other jurisdictions to observe and improve upon its design. More recent legislation such as the France Corporate Duty of Vigilance Law (2017) and Netherlands Child Labour Due Diligence Law (2017, pending vote) has attempted such improvements. Legislation addressing the similar social issue of minerals sourcing contributing to funding conflict and human rights abuses has also taken similar approaches, including Section 1502 of the US Dodd-Frank Act (2010) and EU Conflict Minerals Regulation (2017, pending publication).

While the terms of reference (#5) currently only refer to the UK Modern Slavery Act 2015, we recommend that the full spectrum of existing and pending international legislation should be investigated and compared to identify the most effective and internationally consistent design for the potential Australian legislation.

Legislation to date has primarily focused on two approaches: public disclosure of unspecified efforts to combat human rights abuses, and prescribed actions including due diligence.

- Disclosure: The UK Modern Slavery Act and the California Transparency in Supply Chains Act both require companies to publish an annual statement on their website regarding their commitment to human rights in their supply chain and efforts to address risks. The required content of these submissions is not clearly outlined, but instead relies on public and stakeholder pressure on companies to drive increased performance and establishment of expectations.
- Due diligence: The French, Netherlands, US, and EU conflict minerals regulations specify that organisations must conduct due diligence of their supply chains, and where identified, must act. The required approach generally follows the UNGPs and Corporate Human Rights Benchmark approach and may refer to external guidance documents to more clearly define compliance.

On consideration of the spectrum of existing and pending global legislation, some key aspects may be considered as leading practice:

- Requirement to investigate risk, and if found, to act – the French, Netherlands and conflict minerals legislation requires organisations to identify and assess risks in the supply chain, and either implement measures to manage them or disclose the results. This proactive risk identification and management is beyond what the majority of Australian businesses are currently doing.
- Investigation and action to be done in accordance with guidelines provided separately – the EU and Netherlands legislations require the due diligence and response to be in accordance with internationally accepted guidance specified in the Act. This provides clarity on expectations without prescribing them in detail, and also allows for the guidelines to be updated as needed over time.
- Clear disclosure requirements – clarity on what should be included in disclosure allows confidence and consistency for companies and improves regulators' ability to evaluate and enforce compliance.
- Public and easily accessible disclosure – prominent placement of disclosures on companies' website homepages under the UK and California legislations has driven wider stakeholder engagement with the issue.
- Sign off by company directors – the UK legislation requires that company directors review the statement and that a director signs off. This has increased their engagement with the issue, as well as established the highest level of governance over the responses.
- Coverage of conflict minerals under the umbrella of modern slavery – the issue of conflict mines contributing to human rights abuses is closely tied to modern slavery. Such risks should be captured under one legislation rather than potentially introducing an additional legislation along the lines of the new EU Conflict Minerals Regulation in the future.
- Inclusion of environmental damage alongside human rights violations – the French legislation applies the same due diligence and management approach to both human rights and environmental risks.

*5. 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;*

Our submission primarily relates to the applicability of a clause like section 54 (Transparency in Supply Chains) of the Modern Slavery Act in Australian law, and any enforcement mechanisms that might accompany it.

EY recognises the case put by others that modern slavery is something that needs to be more actively managed. Should Australia adopt legislation akin to the Modern Slavery Act with the objective of combating slavery in the supply chains of organisations operating in Australia, we recommend that the following considerations should be borne in mind:

1) Requirement to investigate and act

One of the biggest gaps in the UK Modern Slavery Act and the California Transparency in Supply Chains Act is that while companies are reporting on their commitments to prevent slavery and uphold human rights, there is limited information available on tangible steps to identify, remediate and prevent abuse. Currently, most statements on the UK Modern Slavery Registry present general information on low tolerance for modern slavery rather than providing disclosures on due diligence or risk management. While there has been some benefit in increasing stakeholder expectations of

companies to act and encouraging some companies to improve their performance, this is insufficient to drive change through all of business.

*EY recommends that any Australian Act makes clear that obtaining and relying on supplier assertion of human rights is insufficient. Instead, companies need to form an independent view that is supported by well-developed and documented due diligence activities that extend beyond tier 1 suppliers, similar to what will be required in France and the Netherlands.*

## 2) Content of reporting and independent assurance

As highlighted in EY's recently published survey of 320 institutional investors, there is value and demand for a greater level of third-party assurance over corporate environmental and social risks and disclosures.<sup>2</sup>

The UK Modern Slavery Act does not dictate in precise detail what a statement must include or how it should be structured. It does, however, provide a non-exhaustive list of information that may be included such as organisational information, supply chain descriptions, training and capacity building and policies and procedures. It is not compulsory that an organisation provide information on all aspects. A more straightforward approach mandates structured reporting, which allows for easy comparison, thus providing a level-playing field for all participants.

*EY supports the value of establishing assurance requirements in relation to Modern Slavery disclosures. From an assurance perspective, a standardised approach to those disclosures will allow effective independent auditing and provide customers and investors with the opportunity to make responsible and balanced decisions. The nature of assurance is also that it is a publically visible exercise. We encourage visibility and transparency of disclosure and due diligence plans as a way of driving progress in company supply chains.*

## 3) Thresholds

A size or revenue threshold should be considered to limit the number of companies the legislation applies to, to seek to ensure a burden is not applied to companies that have less influence on modern slavery. If a more stringent requirement is adopted along the line of the French Corporate Duty of Vigilance Law, it should be limited to companies with the highest risk and leverage, as it will come with a higher resource requirement. A more flexible requirement along the lines of the UK Modern Slavery Act may be applied to a larger number to encourage less mature companies to improve their practices.

Another potential consideration is to seek to differentiate those companies that rely upon some form of 'global labour arbitrage' to secure a margin at the price for which their products are being sold. This is under the premise that such companies have knowingly accepted the risk of transacting in lower governance environments which should therefore entail heightened responsibilities towards supply chain due diligence.

*EY suggested that the right balance for the inclusion of companies in Australia under any legislation would benefit significantly from thorough cross-sectoral consultation, and should be based on reliable data on the number and size of potentially affected organisations.*

## 4) Establishing clear expectations

The EU Conflict Minerals Regulation and Dutch Child Labour Due Diligence Law, both still pending approval, support the brief requirements enshrined in law with separate guidance, to be applied 'in

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<sup>2</sup> Tomorrow's Investment Rules 2017, <http://www.ey.com/gl/en/services/assurance/climate-change-and-sustainability-services/ey-nonfinancial-performance-may-influence-investors>



accordance'. This approach allows clarity without being overly prescriptive. Such supporting documents should provide:

- Guidance and examples of definitive actions that can create immediate as well as lasting impact
- Support to companies and executive management in case of identification of slavery in the supply chain without fear of being reprimanded
- Expectations in terms of corrective and remedial actions, including follow up with suppliers
- Discussion of prioritising actions on identifying slavery in the supply chain

#### 5) Accountability

The UK Modern Slavery Act requires statements under the act to be approved by the board of directors (or equivalent management body) and signed by a director (or equivalent) in the case of a body corporate other than a limited liability partnership; by members of a limited liability partnership and signed by a designated member; or by a partner in a partnership, which establishes liability for enforcement. The level of seriousness with which such legislation will be treated is likely to be directly linked to the allocation of responsibility for submissions within the submitting organisation.

#### 6) Language and framing

While Australia has the opportunity to be a global leader with the execution of a strong Act, it is also an opportunity for the executive management of Australian companies to display leadership and accountability. It is recommend that the Act should make it clear that modern slavery is more often than not an outcome of organised crime and should be managed as such, this is to remedy what we commonly observe as the under-resourcing of modern slavery mitigation efforts consequent of them being seen as a social responsibility issue rather than one that presents corporate risk.

### 7. *Any other related matters:*

#### *Addressing government procurement*

The Federal Government is the largest buyer in Australia, and as such has a large role to play in addressing the risk of modern slavery in its supply chain. It has recently recognised the importance of its buying power in the introduction of the Commonwealth Indigenous Procurement Policy, leading private business who are adopting similar measures. *EY would encourage the Commonwealth as well as State and Local Governments to take a similar view on its capacity to lead by example in the context of modern slavery diligence, remedy and reporting.*

#### *Need for consistency*

Ensuring consistency with existing international legislation, guidance and efforts will be welcomed by global companies within Australia who are already regulated overseas to report on modern slavery within their supply chains. We encourage the Commonwealth to consider this as it will support increased compliance and uptake by global companies.

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We would be pleased to discuss our comments with the Joint Standing Committee on Foreign Affairs, Defence and Trade. If you wish to do so, please contact



## About EY

EY is a global leader in assurance, tax, transaction and advisory services. The insights and quality services we deliver help build trust and confidence in the capital markets and in economies the world over. We develop outstanding leaders who team to deliver on our promises to all of our stakeholders. In so doing, we play a critical role in building a better working world for our people, for our clients and for our communities.

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